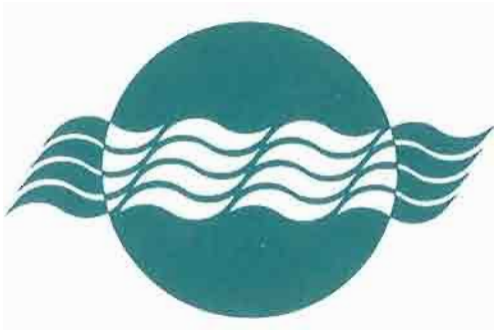
INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS

ANNUAL REPORT

1998

REPORT ON THE ACTIVITIES OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS IN 1998



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FOREWORD

The Director of the International Oil Pollution Compensation Funds 1971 and 1992 (IOPC Funds) presents the Report on the activities of the Organisations during 1998. This is the twentieth year of operation of the 1971 Fund and the third 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. The 1992 Protocols 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.

By the end of 1998, 39 States had ratified the 1992 Protocol to the Fund Convention, and it is expected that a number of other States will do so in the near future. States which have deposited instruments of accession to the 1992 Fund Protocol have ceased to be Parties to the 1971 Convention. By the end of 1999 the number of 1971 Fund Member States will have been reduced from 76 to 44.

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

In 1998 the 1971 Fund has been involved in the handling of claims for compensation arising from a number of oil pollution incidents, including two which occurred during the year (cf Section 8). The 1971 Fund's governing bodies have made a number of important decisions of principle in respect of the admissibility of claims for compensation. During the year the 1971 Fund has paid significant amounts in compensation to victims of oil pollution. The 1992 Fund has become involved in three incidents during 1998 but has so far made relatively small compensation payments.

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

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PREFACE

1998 was an important year for the IOPC Funds and in particular for the 1992 Fund. The transitional period which began on 30 May 1996 with the entry into force of the 1992 Protocols ended on 15 May 1998. From that date, the Organisation established under the 1971 Convention and that set up under the 1992 Protocol are independent.

This independence does not mean, however, that all links between the two institutions are broken. The Secretariat of the 1992 Fund will administer also the 1971 Fund. The 1992 Fund Member States which were previously members of the 1971 Fund remain involved in incidents which occurred before they left the latter Organisation. For this reason the 1992 Fund will follow closely the operation of the 1971 Fund. It is hoped that the mechanisms which have been put in place will ensure smooth co-operation between the two Organisations.

1998 was also marked by the re-organisation of the Secretariat. Whilst conserving the principles which prevailed at the time of its creation in 1978 - a small team, using outside experts when necessary - the Assemblies have recognised the necessary consequences of the transition from a club of 14 States to two global Organisations with Member States in all five continents. This re-organisation, which has involved all staff members and has added to an already heavy workload, has resulted in the establishment of new structures. Once again, under the leadership of Måns Jacobsson, the staff have proved their commitment and ability to adapt.

On behalf of the Member States, we would like to thank them publicly.

Mr Charles Coppolani
Chairman of the 1992 Fund Assembly

Mr Jerzy Vonau
Chairman of the 1971 Fund Assembly

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$85 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 £115 million or US$190 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 composed of representatives of all Member States of the respective Organisation and an Executive Committee of 15 Member States elected by the respective Assembly. The main function of the Executive Committee is to approve settlements of claims for compensation, to the extent that the Director is not authorised to make such settlements.

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 actually undertaken or to be undertaken 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. The 1992 Conventions apply also to spills of bunker oil from unladen tankers in certain circumstances. Neither the 1969/1971 Conventions nor the 1992 Conventions apply to spills of bunker oil from ships other than tankers.

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$187) per ton of the ship's tonnage or 14 million SDR (£12 million or US$20 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 (£2.6 million or US$4.2 million);

(b) for a ship with a tonnage between 5 000 and 140 000 units of tonnage, 3 million SDR (£2.6 million or US$4.2 million) plus 420 SDR (£358 or US$591) for each additional unit of tonnage; and

(c) for a ship of 140 000 units of tonnage or over, 59.7 million SDR (£51 million or US$84 million).

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

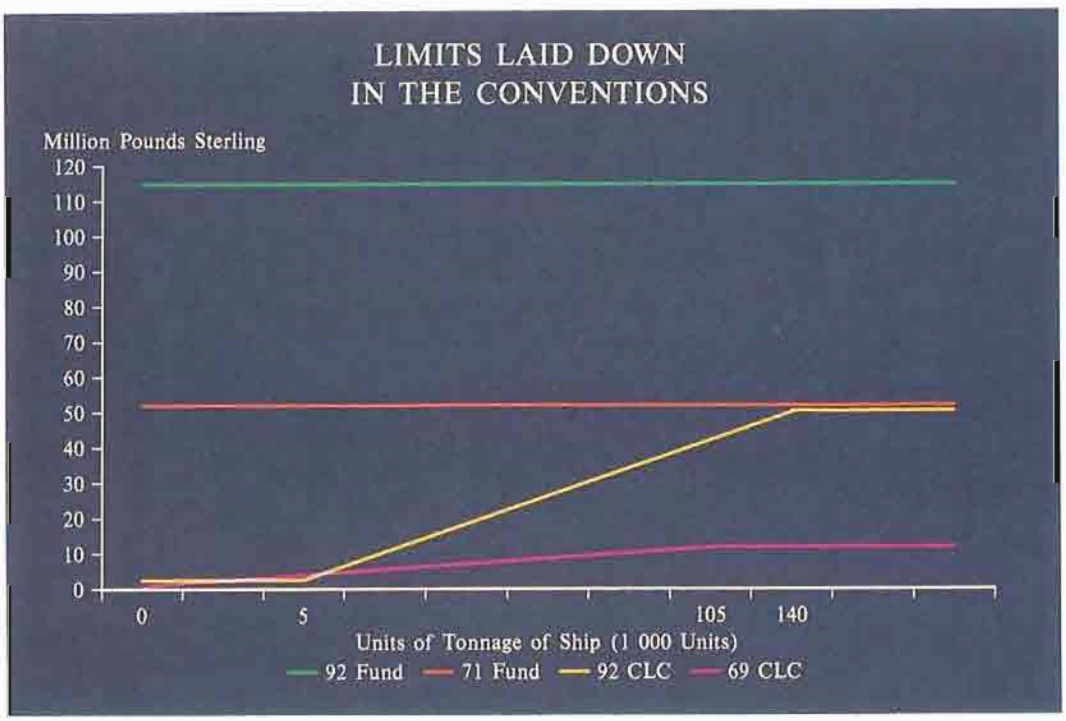
Under the 1969 Civil Liability Convention, the shipowner is deprived of the right to limit his liability if the incident occurred as a result of the owner's personal fault (actual fault or privity). Under the 1992 Convention, however, the shipowner is deprived of this right only if it is proved that 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 ship 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 shipowner. 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$85 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 (£115 million or US$190 million), including the sum actually paid by the shipowner (or his insurer) under the 1992 Civil Liability Convention. 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

3.1 1992 Fund membership

The 1992 Fund Convention entered into force on 30 May 1996 for nine States. By the end of 1998, 28 States had become Members of the 1992 Fund. Eleven further States have acceded to the 1992 Fund Protocol, bringing the number of Member States to 39 by the end of 1999, as set out in the table below.

28 States for which 1992 Fund Convention is in force on 31 December 1998		
Australia	Jamaica	Republic of Korea
Bahamas	Japan	Singapore
Bahrain	Liberia	Spain
Cyprus	Marshall Islands	Sweden
Denmark	Mexico	Tunisia
Finland	Monaco	United Arab Emirates
France	Netherlands	United Kingdom
Germany	Norway	Uruguay
Greece	Oman	
Ireland	Philippines	

11 States which have deposited instruments of ratification, but for which 1992 Fund Convention does not enter into force until date indicated	
Grenada	7 January 1999
Croatia	12 January 1999
Latvia	6 April 1999
Canada	29 May 1999
Algeria	11 June 1999
New Zealand	25 June 1999
Barbados	7 July 1999
Venezuela	22 July 1999
Belgium	6 October 1999
Iceland	13 November 1999
Belize	27 November 1999

It is expected that a number of 1971 Fund Member States will ratify the 1992 Fund Convention in the near future, eg Estonia, Colombia, Ghana, Guyana, Malaysia, Malta, Morocco, Nigeria, Poland, Sri Lanka and Vanuatu. It is likely that a number of other States will also become Members of the 1992 Fund in the near future, eg Argentina and South Africa.

3.2 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. By the end of 1997 there were 75 Member States.

One State became Party to the 1971 Fund Convention during 1998. The 1971 Fund Convention entered into force for Guyana on 10 March 1998, bringing the number of 1971 Fund Member States to 76.

The 1992 Fund Convention provided 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 were Parties to the 1992 Protocol to the Fund Convention (or which had deposited instruments of accession in respect of that Protocol) reached 750 million tonnes. Accordingly, all 24 States which had deposited instruments of accession to the 1992 Fund Protocol when this condition was fulfilled denounced the 1971 Fund Convention and ceased to be Parties to the Convention on 15 May 1998, thereby reducing the number of 1971 Fund Member States to 52.

Eight of these 52 States have since denounced the 1971 Fund Convention, reducing the number of 1971 Fund Member States to 44 by the end of 1999, as set out below:

44 States Parties to 1971 Fund Convention on 31 December 1998		
Albania	Guyana	Poland
Antigua and Barbuda	Iceland	Portugal
Benin	India	Qatar
Brunei Darussalam	Italy	Russian Federation
Cameroon	Kenya	Saint Kitts and Nevis
China (Hong Kong Special Administrative Region)	Kuwait	Seychelles
	Malaysia	Sierra Leone
Colombia	Maldives	Slovenia
Côte d'Ivoire	Malta	Sri Lanka
Djibouti	Mauritania	Syrian Arab Republic
Estonia	Mauritius	Tonga
Fiji	Morocco	Tuvalu
Gabon	Mozambique	United Arab Emirates
Gambia	Nigeria	Vanuatu
Ghana	Papua New Guinea	Yugoslavia

8 States Parties to 1971 Fund Convention which have deposited instruments of denunciation which will take effect on date indicated	
Canada	29 May 1999
New Zealand	25 June 1999
Indonesia	26 June 1999
Barbados	7 July 1999
Venezuela	22 July 1999
Croatia	30 July 1999
Algeria	3 August 1999
Belgium	6 October 1999

3.3 Winding up of the 1971 Fund

States not denouncing 'old' regime when acceding to 1992 Protocols

As the 1992 Protocols provide much higher limits of compensation than the Conventions in their original versions and have a wider scope of application on several points, there are no advantages for a State which has acceded to the 1992 Protocols in remaining a Member of the 1971

Fund. If an incident were to occur in a State which was a Member of both the 1971 Fund and the 1992 Fund, the legal situation would be very complex.

In April 1998 the 1971 Fund Assembly expressed its concern that some States had acceded to the 1992 Protocols without having deposited instruments of denunciation of the 1969 and 1971 Conventions. The Assembly therefore adopted a resolution in which Governments of 1971 Fund Member States which deposited instruments of accession to the 1992 Protocols were reminded of the need to deposit simultaneously instruments of denunciation of the 1969 Civil Liability Convention and 1971 Fund Convention.

Unfortunately there are still two 1971 Fund Member States which have acceded to the 1992 Fund Protocol but have so far not deposited instruments of denunciation of the 1969 and 1971 Conventions.

Financial consequences of remaining in the 1971 Fund

With the departure from the 1971 Fund of a number of States, the total quantity of contributing oil on which contributions are levied has been reduced from its maximum of 1 200 million tonnes to 345 million tonnes by the end of 1998. By January 2000, this quantity will have fallen to some 240 million tonnes. The effect of this reduction in the contribution base is the considerably increased financial burden which might fall on the contributors in those States which remain Members of the 1971 Fund.

Future of the 1971 Fund

The 1971 Fund Convention provides that the Convention will cease to be in force on the date when the number of Contracting States falls below three. There is considerable concern that before then the 1971 Fund will face a situation in which an incident occurs and the 1971 Fund has an obligation to pay compensation to victims, but where there are no contributors in any of the remaining Member States.

At the October 1998 sessions of the 1971 Fund governing bodies a number of ways were suggested in which Governments could assist in making other States aware of the consequences of remaining in the 1971 Fund, such as through diplomatic channels with neighbouring States and at regional workshops and seminars. The Director was instructed to continue and if possible increase his efforts to ensure that the implications of the situation were fully understood by all 1971 Fund Member States.

4 EXTERNAL RELATIONS

4.1 Promotion of 1992 Fund membership and information on Fund activities

During discussions at the Assemblies' April 1998 sessions of a review of the Secretariat's working methods, it was generally considered that the IOPC Funds should strengthen their activities in the field of information and public relations. With this in mind, and in order to establish and maintain personal contacts between the Secretariat and officials within the national administrations dealing with Fund matters, the Director and other Officers have visited six 1992 Fund Member States during 1998 for discussions with government officials on the Fund Conventions and the operations of the IOPC Funds.

The Secretariat has continued its efforts to increase the number of 1992 Fund Member States. To this end, the Director and other Officers have visited four non-Member States. Members of the Secretariat have participated in regional seminars on maritime matters in Malta, the Seychelles and Trinidad. The Director and other Officers have given lectures at and participated in seminars, conferences and workshops in seven other countries on liability and compensation for oil pollution damage and on the operation of the IOPC Funds. The Director has valued the opportunity to lecture to students of the World Maritime University in Malmö (Sweden), where information on the 1992 Fund and its activities will be spread throughout the world when the students return to their national maritime administrations.

The Director and other members of the joint Secretariat have also had discussions with government representatives of non-Member States in connection with meetings within the International Maritime Organization (IMO), in particular during the sessions of the IMO Council and Legal Committee.

The Secretariat has, on request, assisted some non-Member States in the elaboration of the national legislation necessary for the implementation of the 1992 Conventions. The Director has had to inform a number of States, however, that while the Secretariat can provide model legislation and examine draft legislation prepared by States, if so requested, it is not possible for the Secretariat to elaborate specific legislation for an individual State, as the Secretariat would not be acquainted with the details of the legislative tradition of the State in question.

The Assemblies of the 1971 Fund and 1992 Fund have granted observer status to a number of non-Member States. Those States which are Members of only one Organisation have observer status with the other Organisation. At the end of 1998 the following States which were not Members of either Organisation had observer status with both.

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

4.2 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 1998 the Secretariat represented the IOPC Funds at meetings of the IMO Council and Legal Committee.

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 addition, the European Chemical Industry Council (CEFIC) has observer status with the 1992 Fund.

In the majority of incidents involving the IOPC Funds, clean-up operations are monitored and claims are assessed in close co-operation between the Funds and the shipowner's liability insurer, which in practically all cases is one of the 'P & I Clubs'. The technical assistance required by the Funds with regard to oil pollution incidents is usually provided by the International Tanker Owners Pollution Federation Limited (ITOPF).

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

5 1971 FUND AND 1992 FUND ASSEMBLIES AND EXECUTIVE COMMITTEES

The 1971 Fund Assembly and 1992 Fund Assembly each held one regular and one extraordinary session during 1998. The sessions of the 1992 Fund Assembly and the extraordinary session of the 1971 Fund Assembly were held under the chairmanship of Mr Charles Coppolani (France). Since France would cease to be a Member of the 1971 Fund shortly after the extraordinary session held in April 1998, and Mr Coppolani would therefore no longer be able to continue to hold the post of Chairman, the 1971 Fund Assembly elected Mr Jerzy Vonau (Poland) as its new Chairman at the close of that session.

Mr Charles Coppolani

5.1 April 1998 Assembly sessions

1971 Fund Assembly: 4th extraordinary session

The 1971 Fund Assembly held an extraordinary session from 28 April to 1 May 1998. The following major decisions were taken at that session.

- In the light of the developments in respect of the *Haven* incident, the Assembly authorised the Director to sign a tri-partite agreement between the Italian State, the shipowner/his insurer and the 1971 Fund relating to a global settlement of all outstanding issues arising out of this incident. He was also authorised to sign a separate agreement between the shipowner/his insurer and the 1971 Fund concerning indemnification of the shipowner (cf Section 8.2).

- The Assembly addressed the problems which would arise for the 1971 Fund if, with the falling membership, the Assembly were unable to achieve a quorum (more than half of the Member States). There was particular concern that certain functions of the Assembly, such as adopting the budget, fixing annual contributions, settling claims and appointing a legal representative (ie the Director), could not be carried out. It was stressed that every possible effort should be made to urge States which remained Parties to the 1971 Fund Convention to fulfil their responsibilities as Members of the 1971 Fund and attend the Assembly sessions.

  Recognising that it was the general responsibility of the Assembly to ensure the proper functioning of the 1971 Fund and that it was therefore the duty of the Assembly to take the necessary steps to achieve this, the Assembly adopted a Resolution - in the interests of victims of pollution damage - dealing with a number of important issues. Firstly, under the Resolution, with effect from the first session of the Assembly at which the latter was unable to achieve a quorum, various functions of the Assembly should be delegated to the Executive Committee, thereby enabling the Committee to take decisions in place of the Assembly.

It was recognised however, that as States left the 1971 Fund to join the 1992 Fund the Executive Committee itself would fail to achieve a quorum of two thirds of its members. In the Resolution it was therefore further provided that the functions of the Assembly and Committee should then be performed by a newly created body, to be known as the Administrative Council, which would have no quorum requirement. Decisions of the Administrative Council would be taken by majority vote of both remaining 1971 Fund Member States and former 1971 Fund Member States present at the session, but former Member States would have the right to vote only in respect of issues relating to incidents which occurred while they were Members.

1992 Fund Assembly: 3rd extraordinary session

The 1992 Fund Assembly held an extraordinary session from 29 April to 1 May 1998.

The Assembly decided to introduce Spanish as an official and working language of the 1992 Fund from 1 January 1999. It was decided, however, that the introduction would be implemented gradually over a period of a few years.

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.

- The Assemblies considered the report of the consultants who had been engaged to review the working methods within the Secretariat in order to obtain the most efficient and cost effective way of managing the 1971 and 1992 Funds. The consultants emphasised the great increase in the Secretariat's workload in recent years and the need to restructure the Organisation to facilitate the working of the IOPC Funds in the future. The consultants recommended a new structure for the Organisation and the creation of new posts.

- On the basis of proposals submitted by the Director, the Assemblies approved a new structure for the Secretariat, with the establishment of three departments (cf Section 6.1).

- The Assemblies agreed that the scope of the external audit should be extended to include an enhanced ('value for money') audit of the payment of claims and related expenditure.

- Supplementary budget appropriations of £251 000 for 1998 were adopted, most of which related to the increased costs resulting from the implementation in 1988 of the Director's proposals as a result of the review of the Secretariat working methods.

- The Assemblies adopted revised versions of the 1971 Fund and the 1992 Fund Claims Manuals.

5.2 October 1998 Assembly sessions

1971 Fund Assembly: 21st session

The Chairman of the 1971 Fund Assembly, Mr Jerzy Vonau, attempted to open the 21st session on 28 October 1998. However, the Assembly did not achieve a quorum for the session, despite extra efforts on the part of the Secretariat, since only 18 of the 52 Member States were present at the required time. As a result, the items on the agenda of the Assembly were dealt with by the 1971 Fund's Executive Committee, under the Chairmanship of Mr Alfred Popp QC (Canada), pursuant to the Resolution adopted by the Assembly at its April 1998 session. The following major decisions were taken by the Executive Committee, acting on behalf of the Assembly.

Mr Jerzy Vonau

- A number of ways were suggested in which Governments could assist in making other States aware of the consequences of remaining in the 1971 Fund, such as through diplomatic channels with neighbouring States and at regional workshops and seminars. The Director was instructed to continue and if possible increase his efforts to ensure that the implications of the situation were fully understood by all 1971 Fund Member States (cf Section 3.3).

- The Executive Committee 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 1997 (cf Section 6.2).

- The Committee decided to levy 1997 annual contributions for a total amount of £26.7 million, of which £9.2 million was to be paid by 1 February 1999. It was decided that the balance of these levies should be deferred and invoiced, to the extent necessary, during the second half of 1998 (cf Section 7.3).

1992 Fund Assembly: 3rd session

The 1992 Fund Assembly held its 3rd session from 26 to 30 October 1998. The following major decisions were taken at that session.

- The Assembly noted the External Auditor's Opinion on the Financial Statements of the 1992 Fund and approved the accounts for the financial period 1 January - 31 December 1997 (cf Section 6.2).

- The Egyptian delegation proposed that the 1992 Fund Assembly should consider accepting Egypt as a Member of the 1992 Fund on the basis that the oil passing through the SUMED pipeline would not be subject to contributions and that the right to receive compensation from the 1992 Fund would be waived in respect of incidents relating to the SUMED pipeline. The Assembly decided that it could not accept the proposal (cf Section 7.1).

- The following States were elected members of the 1992 Fund Executive Committee:

Cyprus	Netherlands
Denmark	Norway
Finland	Philippines
Greece	Republic of Korea
Ireland	Spain
Japan	Tunisia
Liberia	United Kingdom
Mexico	

- The Assembly considered whether offshore craft, such as floating storage units (FSUs) and floating production storage and offloading units (FPSOs), were covered by the 1992 Civil Liability Convention and the 1992 Fund Convention. The Assembly decided to set up an intersessional Working Group to study the matter further. It was decided that the Group would also consider various aspects of the definition of 'ship' in the 1992 Conventions which had arisen in connection with the Executive Committee's discussion of the *Santa Anna* incident (cf Section 8.3). The Working Group will be held during the week of 26 April 1999.

- The Assembly decided to increase the 1992 Fund's working capital from £9 million to £12 million.

- The 1992 Fund Assembly reiterated its position that deferred levies should be invoiced only if and to the extent necessary for the payment of claims in the period until the following year's contributions would be due (cf Section 7.1).

- The Assembly decided that future levies to the *Nakhodka* Major Claims Fund should be capped up to an amount of £30 million, ie the amount of the deferred levy which had been decided by the Assembly in October 1997 for levy during the second half of 1998 but which had not been required at that time.

- The Assembly decided to levy 1998 contributions for a total amount of £49.6 million, of which £21.4 million was to be paid by 1 February 1999. It was decided that the balance of these levies should be deferred and invoiced, if and to the extent required, during the second half of 1999 (cf Section 7.5).

- The Assembly considered a proposal by the United Kingdom delegation that the 1992 Fund should make it clear at the beginning of a spill, that there might be resources available for environmental impact studies. That delegation suggested that environmental studies of the type suggested would improve knowledge concerning the most effective methods of carrying out clean-up operations and could therefore reduce the Funds' compensation payments in the future. It was recognised that it would be inappropriate for the 1992 Fund to reject systematically all claims for the cost of environmental studies in the future. The Assembly agreed that in cases where the 1992 Fund paid claims for the cost of environmental studies, such costs should be attributed to a specific incident and should not be included in the 1992 Fund's administrative costs. It was also agreed that any such claim would have to be examined on a case by case basis.

Decisions by the governing bodies affecting both the 1971 Fund and the 1992 Fund

The 1971 Fund Executive Committee (acting on behalf of the Assembly) and 1992 Fund Assembly took the following major decisions affecting both Organisations.

Mr Alfred Popp QC

- The non-submission of oil reports by a number of States was considered to be a matter of serious concern to other Member States and in particular to the contributors in those States, since without oil reports the Secretariat cannot issue invoices for contributions by the contributors in the non-reporting State. It was decided that in future the Assemblies would review individually each State which had not submitted its report and decide on the course of action to be taken (cf Section 7.1).

- The budget appropriations for 1998 were adopted, with an administrative expenditure for the joint Secretariat totalling £2 792 360.

- It was decided that condensates (previously always considered as 'non-contributing oil') should be considered as 'contributing oil' if they were 'persistent' oil, but as 'non-contributing oil' if they were 'non-persistent'.

5.3 1971 Fund Executive Committee

The 1971 Fund Executive Committee held three sessions during 1998. The 57th and 58th sessions were held under the chairmanship of Mr Willem Oosterveen (Netherlands) from 4 to 6 February 1998 and from 27 to 29 April 1998, respectively. The 59th session was held under the chairmanship of Mr Alfred Popp QC from 27 to 30 October 1998.

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

57th session

The discussions at the 57th session of the Executive Committee concentrated on questions relating to the *Aegean Sea* (Spain, 1992), *Braer* (United Kingdom, 1993), *Sea Empress* (United Kingdom, 1996), *Nakhodka* (Japan, 1997), *Nissos Amorgos* (Venezuela, 1997) and *Pontoon 300* (United Arab Emirates, 1998) incidents.

58th session

At its 58th session, the Executive Committee continued its consideration of the *Aegean Sea*, *Sea Empress*, *Nakhodka* and *Nissos Amorgos* incidents. In addition, it considered the *Sea Prince* and *Yuil N°1* incidents (both Republic of Korea, 1995) as well as the *Osung N°3* (Republic of Korea and Japan, 1997) incident.

59th session

The Executive Committee at its 59th session continued its consideration of the *Aegean Sea*, *Yuil N°1*, *Sea Empress*, *Nakhodka*, *Nissos Amorgos* and *Osung N°3* incidents. 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.

The Committee considered the items on the agenda of the 21st session of the Assembly, as that body had been unable to achieve a quorum (cf Section 5.2).

Professor Lee Sik Chai

5.4 1992 Fund Executive Committee

The 1st session of the 1992 Fund Executive Committee was held from 28 to 30 October 1998, under the chairmanship of Professor Lee Sik Chai (Republic of Korea).

The Committee considered certain issues relating to the *Nakhodka* and *Osung N°3* incidents and examined several legal issues which had arisen out of the grounding of the unladen Panamanian tanker *Santa Anna* (cf Section 8.3).

The main decisions taken by the 1992 Fund Executive Committee are reflected in Section 8.3 in the context of the particular incidents.

6 ADMINISTRATION OF THE IOPC FUNDS

6.1 Secretariat

The 1971 Fund and 1992 Fund have a joint Secretariat headed by one Director. Until 15 May 1998, the 1971 Fund Secretariat administered also the 1992 Fund. On 16 May 1998, a 1992 Fund Secretariat was created, and since then it has administered both the 1971 Fund and the 1992 Fund. The staff of the 1971 Fund Secretariat were transferred to the 1992 Fund Secretariat on that date.

During 1998 the Secretariat has continued to face a very heavy workload, which has put considerable pressure on staff members. The strong commitment of the staff to their work, as well as their knowledge and expertise, are great assets to the IOPC Funds, and these factors are crucial to the efficient functioning of the Secretariat.

The IOPC Funds use external consultants to provide legal or technical advice. In a number of cases the Funds and the P & I insurer involved have jointly established local claims offices to facilitate an 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 Director was instructed 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.

The final report of the consultants was considered by the Assemblies of the 1971 and 1992 Funds in April 1998. The consultants emphasised the great increase in the Secretariat's workload in recent years and the need to restructure the Organisation to facilitate the working of the IOPC Funds in the future. The consultants recommended a new structure for the Organisation and the creation of new posts.

On the basis of proposals submitted by the Director, the Assemblies approved a new structure for the Secretariat, with the establishment of three departments (a Claims Department, a Finance and Administration Department and an External Relations and Conference Department). The Director, the Legal Counsel and the Heads of the three Departments would form a Management Team which would lead the operation of the Secretariat. The Assemblies approved an increase in the size of the Secretariat from 18 to 25 staff members. It was emphasised that the Director's role should be to concentrate on strategy and policy issues, that the Secretariat should be strengthened with a staff member with a scientific background and that the Director should be able to delegate considerable authority to the Head of the Claims Department in respect of the settlement of claims. The Assemblies also considered that the Secretariat should make the maximum use of information technology (IT) and that the activities in the field of information and public relations should be strengthened.

The Director has commenced the implementation of the decisions of the Assemblies, following the step-by-step approach favoured by a number of delegations. In particular, the departmental structure has been established, and a Head of the Claims Department with a scientific background has been appointed.

6.2 Financial statements for 1997

1971 Fund

The financial statements of the 1971 Fund for the period 1 January to 31 December 1997 were approved by the 1971 Fund Executive Committee (acting on behalf of the Assembly) in October 1998. Statements summarising the information contained in the 1971 Fund's audited financial statements for this period are given in Annexes III - XI 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 1997 are reproduced in full as Annexes XII and XIII.

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.

An amount of £4 971 115 was refunded to contributors from the General Fund in 1997, as a result of the lowering of the 1971 Fund's working capital. The miscellaneous income for the General Fund (Annex III) was £1 446 764, out of which £1 154 983 was derived from interest on the investment of its assets (cf Section 6.4). The administrative expenditure in 1997 totalled £1 067 942, while expenditure on minor claims totalled £1 308 015. There was a shortfall of £5 823 083 at the end of 1997.

On 1 February 1997 reimbursements were made to those persons who had contributed to the *Taiko Maru* and *Toyotaka Maru* Major Claims Funds (Annex IV). The respective balances on these Major Claims Funds were transferred to the General Fund, and these Major Claims Funds were closed.

The *Haven*, *Aegean Sea*, *Braer* and *Keumdong N°5* Major Claims Fund (Annexes V and VI) had yields of £1 722 285, £2 165 995, £374 533 and £424 834, respectively on the investment of their assets. The balances on these Major Claims Funds as at 31 December 1997 amounted to £29 305 321, £37 735 195, £6 361 028 and £7 206 202, respectively.

Compensation payments were made from the *Sea Prince*, *Yeo Myung*, *Yuil N°1* and *Senyo Maru* Major Claims Funds (Annexes VII and VIII) during 1997. Contributions were received in 1997 in respect of the *Sea Prince* and *Yuil N°1* Major Claims Funds. In addition, contributions were received and compensation payments made from the *Sea Empress* and *Nakhodka* Major Claims Funds (Annex IX) during 1997.

During 1997, the compensation payments made by the 1971 Fund totalled £33 399 984, out of which £22.6 million related to the *Nakhodka* incident.

The balance sheet of the 1971 Fund as at 31 December 1997 is reproduced in Annex X. The net assets amounted to £12 263 234. Details of the contingent liabilities of the 1971 Fund are given in a schedule to the financial statements. As at 31 December 1997 the contingent liabilities were estimated at £391 million in respect of claims for compensation arising from 28 incidents.

1992 Fund

The financial statements of the 1992 Fund for the period 1 January to 31 December 1997 were approved by the 1992 Fund Assembly in October 1998. Statements summarising the information contained in the 1992 Fund's audited financial statements for this period are given in Annexes XIV - XVII to this Report.

The 1992 Fund's accounts were audited by the Comptroller and Auditor General of the United Kingdom. The Auditor's opinion on the financial statements for 1997 is reproduced in full as Annex XVIII.

Separate Major Claims Funds are established for incidents for which the total amount payable by the 1992 Fund exceeds four million Special Drawing Rights (SDR), at present approximately £3.4 million. There are separate income and expenditure accounts for the General Fund and for each Major Claims Fund.

The total income for the General Fund (Annex XIV) in 1997 was £7 247 883, of which £245 659 was derived from interest on the investment of the 1992 Fund's assets (cf Section 6.4). Annual contributions accounted for the major part of the General Fund's income. There was a surplus of £6 768 235 at the end of 1997.

Contributions were received into the *Nakhodka* Major Claims Fund (Annex XV) during 1997. The balance on this Major Claims Fund as at 31 December 1997 amounted to £7 028 696.

The balance sheet of the 1992 Fund as at 31 December 1997 is reproduced in Annex XVI. The net assets amounted to £14 021 016. Details of the contingent liabilities of the 1971 Fund are given in a schedule to the financial statements. As at 31 December 1997 the contingent liabilities were estimated at £64 573 000 in respect of claims for compensation arising from four incidents.

6.3 Financial statements for 1998

The financial statements of the 1971 Fund and 1992 Fund for the period 1 January to 31 December 1998 will be submitted to the External Auditor in the spring of 1999, and will be presented to the respective Assemblies for approval at their sessions in October 1999. These accounts will then be reproduced in the IOPC Funds' 1999 Annual Report.

6.4 Investment of funds

Investment policy

In accordance with the Financial Regulations of the 1971 and 1992 Funds, the Director is responsible for the investment of any funds which are not required for the short-term operation of each 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 respective Fund, to avoid undue currency risks and generally to obtain a reasonable return on the investments of each Organisation. The investments are made mainly in Pounds Sterling. The assets are placed on term deposit. Investments may be made with banks and building societies which satisfy certain criteria as to their financial standing.

1971 Fund

Investments were made by the 1971 Fund during 1998 with a number of banks and building societies in the United Kingdom. As at 31 December 1998 the 1971 Fund's portfolio of investments totalled £124 million plus ¥2 205 million (£10 million) and Llt 44 785 million (£15 million). The portfolio was made up of the assets of the 1971 Fund and a credit balance on the contributors' account.

Interest due in 1998 on the investments amounted to £9.9 million on an average capital of £162 million.

1992 Fund

Investments were made by the 1992 Fund during 1998 with a number of banks and building societies in the United Kingdom. As at 31 December 1998 the 1992 Fund's portfolio of investments totalled £24 million. The portfolio was made up of the assets of the 1992 Fund and the Staff Provident Fund.

Interest due in 1998 on the investments amounted to £1.4 million on an average capital of £23 million.

Investment Advisory Bodies

The Assemblies of the 1971 Fund and the 1992 Fund have for each organisation, established an Investment Advisory Body, consisting of experts with specialist knowledge in investment matters, to advise the Director in general terms on such matters. The members of the two bodies are the same.

7 CONTRIBUTIONS

7.1 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.

SUMED pipeline

At the 1992 Fund Assembly's October 1998 session, the Arab Republic of Egypt requested that the 1992 Fund should consider whether the contribution system in the 1992 Fund Convention would apply to oil passing through the SUMED pipeline. The Egyptian delegation proposed that the 1992 Fund Assembly should consider accepting Egypt as a Member of the 1992 Fund on the basis that the oil passing through the SUMED pipeline would not be subject to contributions and that the right to receive compensation from the 1992 Fund would be waived in respect of incidents relating to the SUMED pipeline.

One delegation at the session supported the proposal by the Egyptian observer delegation. Another delegation expressed its understanding of the arguments put forward by the Egyptian delegation, but considered, nevertheless, that the proposal by the Egyptian delegation could be accommodated only by an amendment to the definition of the term 'receiver' in the 1992 Fund Convention, which would require a Diplomatic Conference. The delegation added that in its view it would be dangerous to make acceptance of the 1992 Fund Convention adopted by a Diplomatic Conference conditional upon a waiver of rights in respect of certain types of incidents.

The Assembly decided that it could not accept the Egyptian proposal that oil passing through the SUMED pipeline should not be subject to contributions, since an amendment to the 1992 Fund Convention adopted by a Diplomatic Conference would be necessary for receipts of such oil to be excluded from the contribution system.

Non-submission of oil reports

The non-submission of oil reports by a number of States was considered by the delegations at the October 1998 sessions of the governing bodies of both the 1971 Fund and the 1992 Fund to be a matter of serious concern to other Member States and in particular to the contributors in those States, since without oil reports the Secretariat cannot issue invoices for contributions. At that time four Members of the 1992 Fund and 24 Members of the 1971 Fund had not submitted their reports on contributing oil received in 1997. Moreover, for nine of the 1971 Fund Members, reports were outstanding for between three and ten years.

Some delegations raised the possibility of withholding compensation payments to claimants in States which had not submitted oil reports. Many delegations, however, were of the

view that such a course of action could be considered only in respect of claims submitted by a Government or Government authority.

The 1992 Fund Assembly decided in October 1997 that when electing members to the Executive Committee the Assembly may take into account the extent to which a particular State has fulfilled its obligation to submit reports on receipts of contributing oil in accordance with the 1992 Fund Convention.

In accordance with the decisions taken by the Funds' governing bodies in October 1998, the respective Assembly will review individually each State which has not submitted its report and decide on the course of action to be taken for each State.

It should be noted that under Article 15.4 of the 1992 Fund Convention a Member State which has not submitted its oil reports is liable to compensate the 1992 Fund for any financial loss suffered by the Fund as a result thereof. However, this sanction cannot be implemented in respect of States which fail to submit reports, since the loss suffered by the 1992 Fund cannot be calculated until the reports have actually been submitted.

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 1998 corresponded to £0.0026773.

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.

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 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.

At its October 1998 session the 1992 Fund Assembly reiterated its position that deferred levies should be invoiced only if and to the extent necessary for the payment of claims in the period until the following year's contributions would be due.

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.

Under the Convention the capping of contributions to the 1992 Fund ceases 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 was reached in May 1998. The capping procedure was applied to the 1996 and 1997 contributions as well as to the *Nakhodka* Major Claims Fund contributions originally decided by the Assembly in October 1997.

7.2 1971 Fund: 1997 annual contributions

In October 1997 the Assembly decided to credit contributors in respect of the 1997 General Fund for a total of £2 million on 1 February 1998.

The Assembly took note of the fact that all claims and expenses arising out of the *Senyo Maru* incident had been paid. Since the amount remaining in this Major Claims Fund was considered to be substantial, the Assembly decided, pursuant to the Financial Regulations, that £2.8 million should be reimbursed to the contributors to that Major Claims Fund on 1 February 1998 and that the balance should be transferred to the General Fund.

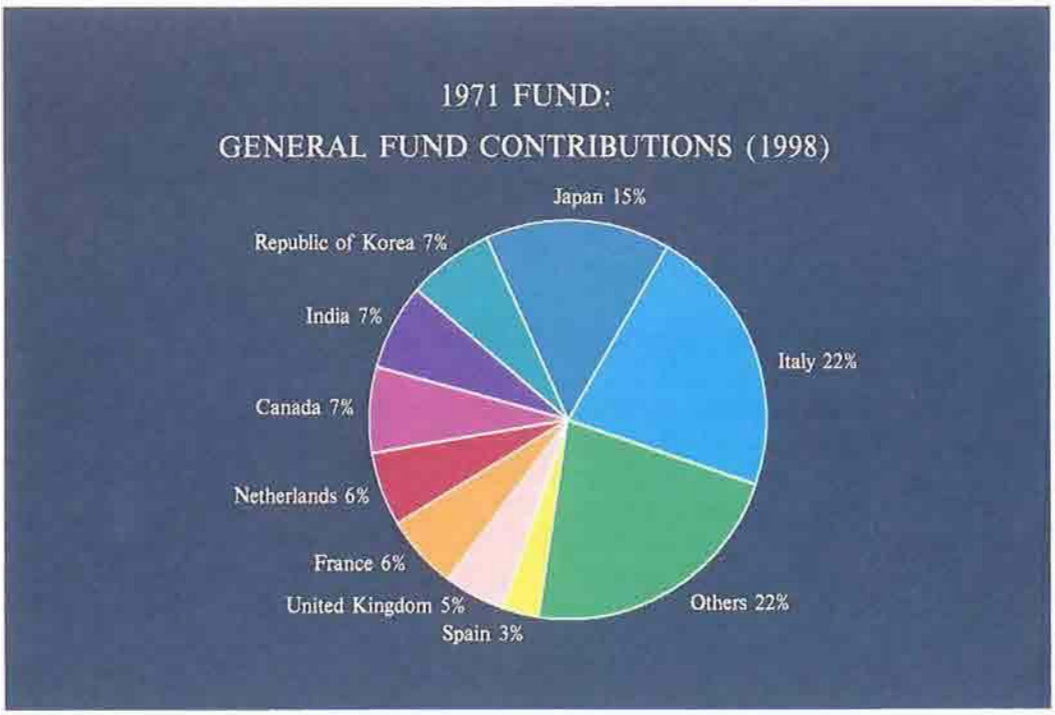
The Assembly also decided to levy 1997 annual contributions to four Major Claims Funds for a total amount of £64 million. It was decided that part of the levies to each of the Major Claims Funds (£37 million) should be due for payment by 1 February 1998, and that the balance should be deferred. The Director 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 1998.

When assessing the situation in June 1998, the Director found that, in the light of the likely timetable for the settlement and payment of claims, no further monies were required and that therefore, in accordance with the Assembly's decision, no further levies should be made at that stage to the four Major Claims Funds. The Director therefore decided not to use the authority given to him to issue invoices for deferred levies to those Major Claims Funds of up to £27 million. Contributors were notified of this decision in June 1998.

7.3 1971 Fund: 1998 annual contributions

In October 1998 the Executive Committee, acting on behalf of the Assembly, decided to levy annual contributions of £1.7 million in respect of the 1998 General Fund. The Committee also decided to levy annual contributions to five Major Claims Funds for a total amount of £25 million. It was decided that the levies to the General Fund and the *Nakhodka* Major Claims Fund (£7.5 million) should be due for payment by 1 February 1999, whereas the entire levies in respect of the *Yuil N°1, Sea Empress, Osung N°3* and *Evoikos* incidents should be deferred. The Director was authorised to decide whether to invoice all or part of the amounts of the deferred levies for payment during the second half of 1999, if and to the extent required.

The 1998 General Fund contributions were based on the quantities of contributing oil received in 1997 in States which were Members of the 1971 Fund. The shares of the 1998 contributions to the General Fund in respect of Member States are illustrated by the chart overleaf.



7.4 1992 Fund: 1997 annual contributions

In October 1997 the Assembly decided to levy 1997 contributions to the General Fund for a total of £6 million.

The Assembly decided to make a levy of £3.5 million to an *Osung N°3* Interim Major Claims Fund, as 1997 contributions (cf Section 8.3). It was decided that this levy should be due for payment by 1 February 1998.

The Assembly also decided to levy £30 million in 1997 contributions to the *Nakhodka* Major Claims Fund. It was decided that the whole of this levy should be deferred. The Director was authorised by the Assembly to decide whether to invoice all or part of the deferred levy for payment during the second half of 1998.

The total contributions payable to the General Fund and to the *Osung N°3* Interim Major Claims Fund in respect of contributors in Japan would have exceeded 27.5% of the respective total levy. It was therefore necessary to apply the capping procedure described in Section 7.1 above.

When assessing the situation in June 1998, the Director found that, in the light of the likely timetable for the settlement and payment of claims, no further monies were required and that therefore, in accordance with the Assembly's decision, no further levy should be made at that stage to the *Nakhodka* Major Claims Fund. The Director therefore decided not to use the authority given to him to issue invoices for a deferred levy to the *Nakhodka* Major Claims Fund of up to £30 million. Contributors were notified of this decision in June 1998.

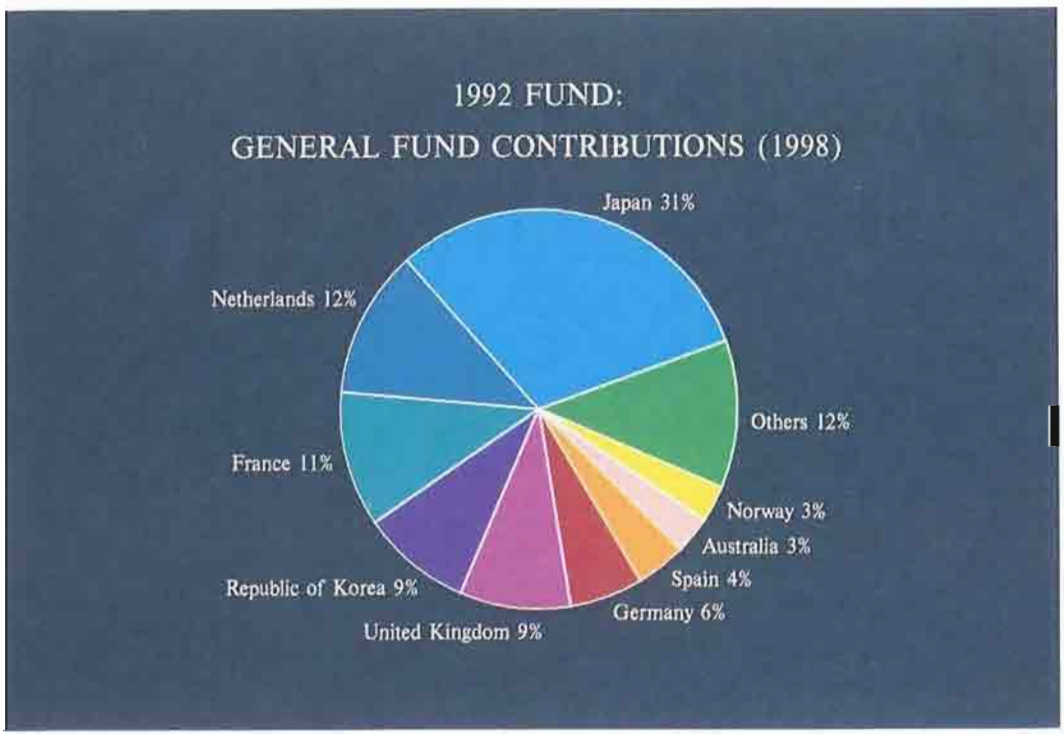
In view of the likely timetable for the settlement and payment of claims, as envisaged in June 1998, at its October 1998 session the Assembly endorsed the Director's decision taken in accordance with the Assembly's instructions not to make a deferred levy to the *Nakhodka* Major Claims Fund.

7.5 1992 Fund: 1998 annual contributions

The Assembly decided to levy contributions to the General Fund for a total of £7.2 million. It was decided that this levy should be due for payment by 1 February 1999.

The Assembly also decided to levy contributions of £41 million to the *Nakhodka* Major Claims Fund as 1998 contributions, £30 million of which represented a renewal of the levy to that Major Claims Fund which had been made by the Assembly in October 1997. The Assembly also decided that £21 million should be due for payment by 1 February 1999 and that the remainder of the levy (£20 million) 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 1999, if and to the extent required. The Assembly decided that the levy to the *Nakhodka* Major Claims Fund should be capped up to an amount of £30 million representing the renewal of the earlier levy.

The Assembly decided to make a levy of £1.4 million to the *Osung N°3* Interim Major Claims Fund. It was decided that the whole 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 1999, if and to the extent required.



The 1998 General Fund levy is based on the quantities of contributing oil received in 1997 in States which are Members of the 1992 Fund. The shares of the 1998 contributions to the General Fund in respect of 1992 Fund Member States are illustrated by the chart shown on the previous page.

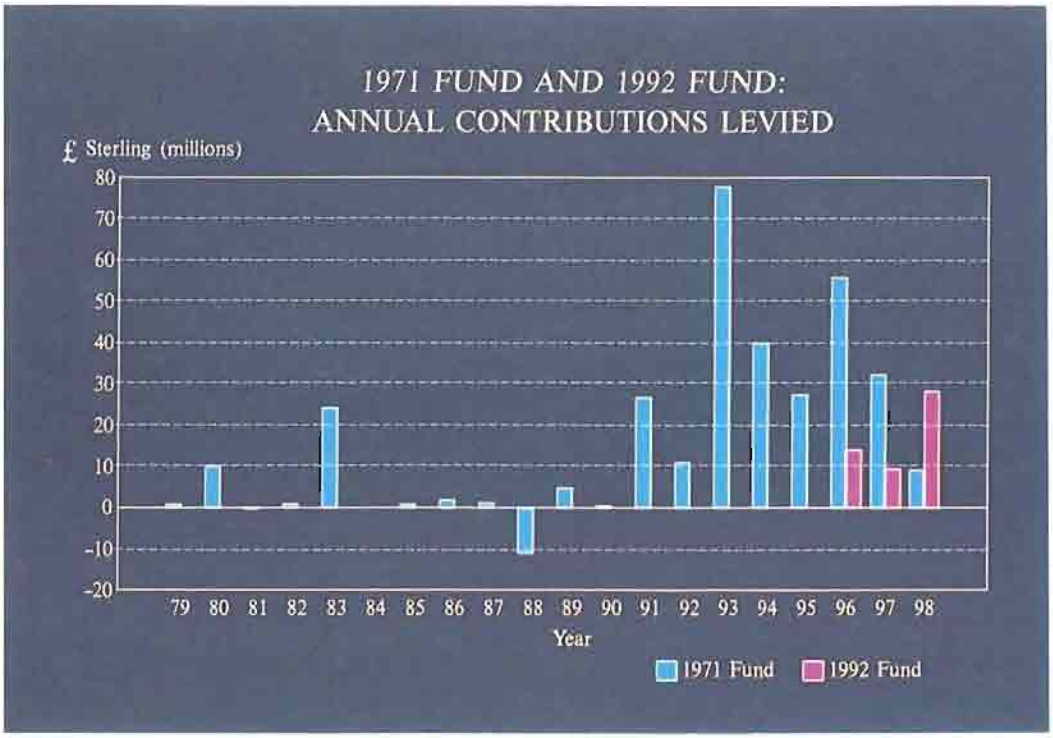
7.6 1971 and 1992 Funds: Annual contributions over the years

Details of the 1971 and 1992 Funds' 1997 and 1998 annual contributions are set out in the table opposite.

The payments made by the 1971 and 1992 Funds 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 Funds has fluctuated from one year to another, as illustrated in the graph below.

With respect to contributions levied by the 1971 Fund over the years, £1 851 000 was outstanding as at 31 December 1998. As for contributions levied by the 1992 Fund in respect of 1996 and 1997, £245 000 was outstanding as at 31 December 1998.

In October 1998 the Assemblies of the 1971 and 1992 Funds expressed their satisfaction with the situation regarding the payment of contributions.



Organisation	Annual Contribution Year	Assembly Decision		General Fund/Major Claims Fund		Total amount due £	Oil year	Levy per tonne £
1971 FUND	1997	October 1997	1st levy	General Fund (credit)		-2 000 000	1996	-0.0016356
				Sea Prince/ Yeo Myung/ Yuil N°1	Republic of Korea Republic of Korea Republic of Korea	3 000 000	1994	0.0025025
				Nakhodka	Japan	30 000 000	1996	0.0246100
				Nissos Amorgos	Venezuela	2 000 000	1996	0.0016348
				Osung N°3	Republic of Korea/Japan	2 000 000	1996	0.0016348
				Credit *Senyo Maru*	Japan	-2 800 000	1994	-0.0023357
			2nd levy	*No levy*				
	1998	October 1998	1st levy	General Fund		1 700 000	1997	0.0024768
				Nakhodka	Japan	7 500 000	1996	0.0061171
			2nd levy	*Sea Prince/ Yeo Myung/ Yuil N°1*	Republic of Korea Republic of Korea Republic of Korea	*Maximum*<1> 2 500 000	1994	
				Sea Empress	United Kingdom	7 000 000	1995	
				Osung N°3	Republic of Korea/Japan	6 000 000	1996	
				Evoikos	Singapore	2 000 000	1996	
1992 FUND	1997	October 1997	1st levy	General Fund		6 000 000	1996	0.0089723
				Osung N°3 Interim	Republic of Korea/Japan	3 500 000	1996	0.0016348
			2nd levy	*No levy*				
	1998	October 1998	1st levy	General Fund		7 200 000	1997	0.0081266
				Nakhodka	Japan	21 000 000	1996	0.0319418
			2nd levy	*Nakhodka*	Japan	*Maximum*<1> 9 000 000	1996	
				Osung N°3 Interim	Republic of Korea/Japan	1 400 000	1996	

<1> To be invoiced to the extent required for payment in the second half of 1999

8 SETTLEMENT OF CLAIMS

8.1 Overview

1971 Fund claims settlements 1978 - 1998

Since its establishment in October 1978, the 1971 Fund has, up to 31 December 1998, been involved in the settlement of claims arising out of 92 incidents. The total compensation paid by the 1971 Fund to date amounts to over £191 million.

The 1971 Fund has made payments of compensation and indemnification of over £2 million as a result of each of the following incidents in respect of which all third party claims have been settled.

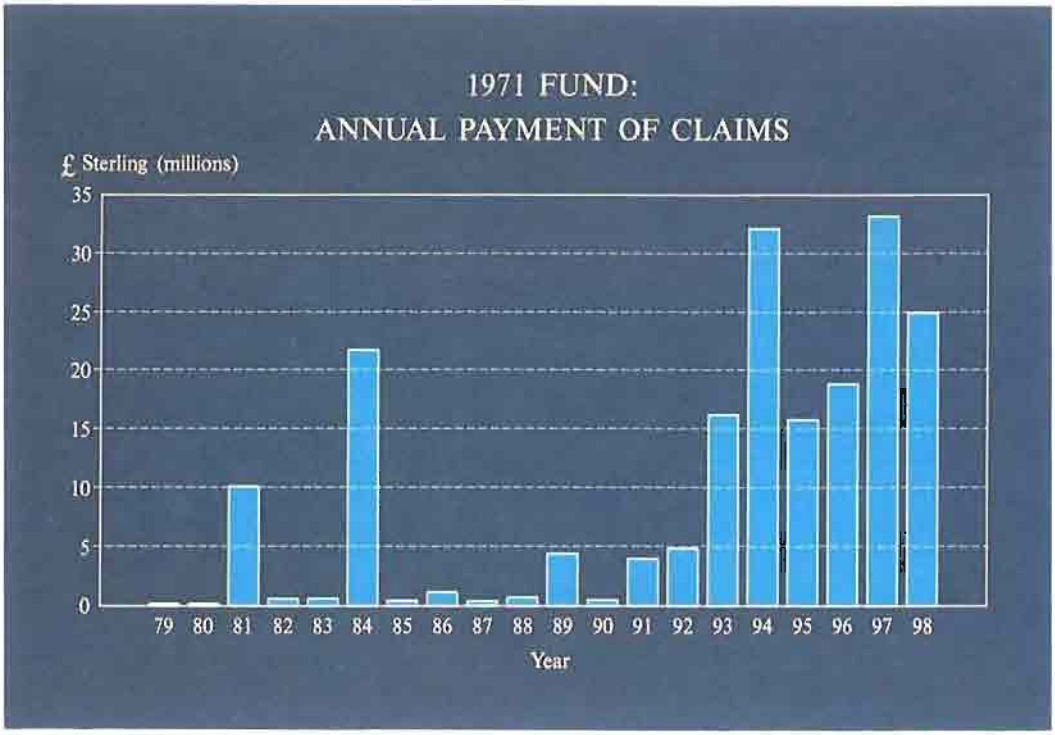
Ship	Place of incident	Year	1971 Fund payments
Antonio Gramsci	Sweden	1979	£9.2 million
Tanio	France	1980	£18.7 million
Ondina	Federal Republic of Germany	1982	£3.0 million
Thuntank 5	Sweden	1986	£2.4 million
Rio Orinoco	Canada	1990	£6.2 million
Taiko Maru	Japan	1993	£7.2 million
Toyotaka Maru	Japan	1994	£5.1 million

In addition, the 1971 Fund has made payments of compensation of over £2 million in connection with each of the following incidents for which third party claims are outstanding. In a number of the cases listed, such as the *Haven*, *Aegean Sea*, *Braer*, *Sea Prince* and *Sea Empress* incidents, considerable payments of compensation have also been made by the shipowner or his insurer.

Ship	Place of incident	Year	1971 Fund payments
Haven	Italy	1991	£2.0 million
Aegean Sea	Spain	1992	£5.2 million
Braer	United Kingdom	1993	£40.6 million
Keumdong N°5	Republic of Korea	1993	£9.7 million
Sea Prince	Republic of Korea	1995	£10.4 million
Yuil N°1	Republic of Korea	1995	£14.2 million
Sea Empress	United Kingdom	1996	£8.4 million
Nakhodka	Japan	1997	£28.0 million
Osung N°3	Republic of Korea/Japan	1997	£4.8 million

As can be seen from the graph opposite, the annual payment of claims by the 1971 Fund has been considerably higher in the last six years than in the period up to 1992.

Annex XXI to this Report contains a summary of all incidents for which the 1971 Fund has paid compensation or indemnification, 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.



There has been a considerable increase in the amounts of compensation claimed from the 1971 Fund over the years. 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 also 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 of admissible claims.

Incidents in 1998 involving the 1971 Fund

During 1998 one incident occurred which has given rise to claims against the 1971 Fund, namely the *Pontoon 300* in the United Arab Emirates. Another incident, which involved the *Maritza Sayalero* and took place in Venezuela, may give rise to claims against the Fund. In addition, the 1971 Fund was notified in 1998 of an incident which occurred in the Republic of Korea in 1995, namely the *Boyang N°51*. Brief information on these incidents is set out below.

Intermediate fuel oil was spilled from the barge *Pontoon 300* off the United Arab Emirates. The barge sank but was later lifted and towed into the port of Hamriyah. After oil residues had been removed, the barge was towed out to sea and scuttled. The spilt oil spread over 40 kilometres of coastline. Ten claims relating to clean-up operations, totalling £1.2 million, have been submitted. No claims have been presented so far in respect of losses in the fishery or tourism related industries. The 1971 Fund's payments of compensation are at present limited to 75% of the

loss or damage actually suffered by each claimant, as it is possible that the total amount of the claims will exceed the maximum amount payable by the 1971 Fund.

The Panamanian tanker *Maritza Sayalero* lost an estimated 262 tonnes of medium diesel while discharging at an oil terminal. A diver found two ruptures in the submarine hose used to discharge the medium diesel. The distance between the tanker and the rupture was approximately 40 metres. Analyses of the oil in question indicated that it was non-persistent. The Executive Committee has taken the view that the incident falls outside the scope of the Conventions because the oil was not being carried (ie in maritime transport) at the time of the spill and because the oil was not persistent.

The Korean tanker *Boyang N°51* collided with another Korean vessel, the *Ocean Daisy*. As a result of the collision, the *Boyang N°51* sank and the oil cargo was spilled. The 1971 Fund was notified of the incident by the P & I insurer of the *Ocean Daisy* in April 1998, nearly three years after the incident. Any claim by the owner of the *Ocean Daisy* against the 1971 Fund has become time-barred, since no legal action was taken against the 1971 Fund before the expiry of the time bar period.

Incidents in previous years with outstanding claims against the 1971 Fund

As at 31 December 1998 there were outstanding third party claims in respect of 18 incidents involving the 1971 Fund which had occurred before 1998. 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. The claims admitted in legal proceedings in Italy total £68 million and include a claim of £14.6 million by the Italian Government relating to environmental damage. The 1971 Fund has lodged opposition in respect of a number of claims. The 1971 Fund has maintained in the legal proceedings 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. The 1971 Fund has paid £2.1 million in respect of claims which it does not consider to be time-barred. The shipowner and his insurer have settled and paid all claims admitted in the legal proceedings except for that of the Italian Government and some claims in the fishing sector which have recently been pursued in court. A Bill authorising the Italian Government to conclude an agreement with the shipowner, his insurer and the 1971 Fund on a global settlement was approved by the Italian Parliament in July 1998. The text of an agreement for a global settlement has been elaborated but has not yet been signed by the parties, since the Government considered it appropriate to obtain the opinion of the Consiglio di Stato confirming the conformity of the proposed agreement with the terms of the Act. This opinion was issued in November 1998 and confirmed that the agreement conformed with the Act. The draft agreement was revised in December 1998 to take into account certain proposals by the Consiglio di Stato. The Agreement has not yet been approved by the Italian Government. The draft agreement conforms with the conditions laid down by the Assembly: the maximum amount payable under the 1969 Civil Liability Convention and the 1971 Fund Convention is 60 million SDR and the 1971 Fund will not make any payment relating to damage to the marine environment *per se*.

Claims arising from the *Aegean Sea* incident (Spain, December 1992) have been submitted in criminal proceedings for a total amount of some £105 million. The 1971 Fund has paid approximately £5.2 million in compensation, and the shipowner's P & I insurer has paid some £4.0 million. In June 1997 the Court of Appeal upheld the judgement of the Criminal Court of first instance with regard to criminal and civil liability and on the claims for compensation presented

in the criminal proceedings. The Courts held *inter alia* that the evidence submitted by the majority of the claimants was insufficient to substantiate the amount of the losses suffered and those claims were referred for quantification to the procedure for the execution of the Court of Appeal's judgement. There is still a high degree of uncertainty as to the total amount of the established claims. The 1971 Fund is considering complex issues relating to the distribution of liability and recourse arising from the Court of Appeal's judgement in respect of the civil liabilities of the parties concerned, in particular as regards the distribution of liability between the 1971 Fund and the Spanish State. It is understood that some 60 claimants have recently brought civil proceedings in respect of claims totalling £93 million, but the actions have not yet been served on the 1971 Fund. The question has arisen as to whether these claims are time-barred, and legal opinions on this point have been exchanged between the 1971 Fund and the Spanish Government. Discussions on the various issues are being held between the Spanish Government and the 1971 Fund.

As regards the *Braer* incident (United Kingdom, January 1993), the 1971 Fund has paid approximately £40.6 million in compensation, and the shipowner's P & I insurer has paid some £4.8 million. Further claims amounting to £5.2 million have been agreed. In addition, claims amounting to £80 million became the subject of legal proceedings in Edinburgh. A number of the claims have been withdrawn and out-of-court settlements have been reached in respect of others, so that the claims remaining in the legal proceedings now total £41.9 million. 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 (£51 million). In view of the uncertainty as regards the outstanding claims, the Executive Committee decided in October 1995 to suspend any further payments of compensation. During 1998 the Court has rendered an important judgement in respect of a claim for losses from a depression in the price of salmon allegedly as a result of the *Braer* incident. The Court rejected this claim on the ground that it was a claim for relational economic loss which was not admissible.

The *Keumdong N°5* incident (Republic of Korea, September 1993) has also given rise to a large number of claims. All claims relating to the clean-up operations have been settled and paid for a total amount of £2.5 million. Claims by fishermen have been agreed for some £4.2 million. Further claims in this category, amounting to £10.6 million, are pending in court.

The claims settled so far in respect of the *Sea Prince* incident (Republic of Korea, July 1995) total some £15 million, and these claims were paid in full, out of which the 1971 Fund has paid £10.4 million. The Fund's payments were increased in March 1998 from 50% to 100% of the settlement amounts. Further fishery claims totalling £82 000 are pending in court. The question has arisen as to whether certain subrogated claims of the shipowner's insurer have become time-barred.

As for the *Yuil N°1* (Republic of Korea, September 1995), the remaining oil has been pumped from the sunken wreck, and the 1971 Fund has paid £3.1 million for these operations. Claims for clean-up operations and fishery damage have been paid so far for a total of some £11.1 million. Further claims for clean-up and fishery damage amounting to some £20 million are pending in court. The Fund's payments were increased in September 1998 from 60% to 100% of the settlement amounts.

As regards the *Sea Empress* incident (United Kingdom, February 1996) claims have been approved for a total of £15.4 million. Payments of £7 million have been made by the shipowner's insurer, and of £8.4 million by the 1971 Fund. Further claims are being examined. The shipowner has commenced limitation proceedings. Criminal prosecutions have been commenced against the Milford Haven Port Authority and the Harbour Master in Milford Haven. The 1971 Fund is

considering the various issues relating to the possibility of taking recourse action against third parties.

The *Nakhodka* (Japan, 1997) broke up in heavy seas, spilling some 6 200 tonnes of oil. The stern section sank and the upturned bow section grounded near the shore, causing heavy contamination of the shoreline. This was the first incident involving both the 1971 Fund and the 1992 Fund. Claims totalling £185 million have been received by the Claims Handling Office in Kobe established by the IOPC Funds and the shipowner's P & I insurer. This amount exceeds the maximum amount available from the 1971 and 1992 Funds (135 million SDR or £115 million), as a consequence of which the 1971 Fund's payments are currently limited to 60% of the damage suffered by each claimant. The total payments made by the 1971 Fund to claimants amount to £24 million. The shipowner and his insurer have made payments totalling £525 000. Further claims are expected. Reports published by the Japanese and Russian authorities on the cause of the incident have been analysed by the Director with the assistance of legal and technical experts.

The *Nissos Amorgos* (Venezuela, 1997) ran aground in the Gulf of Venezuela, spilling an estimated 3 600 tonnes of crude oil. Claims totalling £7.3 million have been presented to the Claims Agency established in Maracaibo by the 1971 Fund and the shipowner's insurer. Claims have so far been approved for £1.4 million, and the settlement amounts have been paid in full by the shipowner's insurer. Claims for significant amounts, including £36 million by the Republic of Venezuela, £78 million by a fishermen's union and £60 million by fish processors, have been lodged in court. Further claims are expected.

As for the *Osung N°3* (Republic of Korea/Japan, 1997), the remaining oil has been pumped from the sunken wreck, and the 1971 Fund has paid £3.1 million for these operations. Claims for clean-up operations and fishery damage have been paid so far for a total of some £2.9 million. Further claims for clean-up and fishery damage amounting to some £500 000 are being examined. The Fund's payments were increased in November 1998 from 25% to 100% of the settlement amounts. Compensation to claimants in Japan was also available under the 1992 Fund Convention. The 1992 Fund paid some claimants in Japan the balance of their claim. When it was established that the total amount of the claims arising from this incident would remain within the maximum amount available under the 1971 Fund Convention, however, the 1992 Fund was reimbursed by the 1971 Fund.

Incidents in 1998 involving the 1992 Fund

During 1998 the 1992 Fund became involved in two incidents which have given or may give rise to claims against the 1992 Fund.

The Panamanian tanker *Santa Anna* grounded on rocks on the south-west coast of England. The ship was in ballast, but had some 270 tonnes of heavy fuel oil and 10 tonnes of diesel oil in bunker tanks. No oil was spilled as a result of the grounding and the refloating operation. The United Kingdom authorities have submitted a claim for £30 000 relating to the cost of mobilising resources to respond to the possible escape of persistent bunker oil. Several legal questions have arisen, namely whether the occurrence falls within the definition of 'incident', whether the *Santa Anna* was a ship for the purpose of the 1992 Conventions and whether in this case the 1992 Civil Liability Convention can be applied in respect of a ship flying the flag of a State Party to the 1969 Civil Liability Convention but not to the 1992 Civil Liability Convention.

The coastal tanker *Milad 1* developed a crack in its hull off the coast of Bahrain. A contractor was engaged to undertake temporary emergency repairs. The *Milad 1* was lightered

without any spill of oil and without the need for emergency repairs. The 1992 Fund has received a claim for compensation for the cost of mobilising the contractor for BD 21 168 (£33 000). The question has arisen as to whether the cost of mobilising the repair team falls within the scope of application of the 1992 Fund Convention.

Incidents in previous years with outstanding claims against the 1992 Fund

As at 31 December 1998 there were three incidents (an incident in Germany (1996), the *Nakhodka* (Japan, 1997) and an incident in the United Kingdom (1997)) which occurred before 1998 which have or might give rise to claims against the 1992 Fund.

8.2 Incidents dealt with by the 1971 Fund during 1998

The following section of this Report details incidents with which the 1971 Fund has been involved in 1998. The Report sets out the developments of the various cases during 1998 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 1998, except in the case of claims paid by the 1971 Fund where conversions have been made at the rate of exchange on the date of payment.

IRVING WHALE

(Canada, 7 September 1970)

While being towed, the Canadian registered oil barge *Irving Whale* loaded with 4 270 tonnes of heavy fuel oil sank on 7 September 1970 in approximately 67 metres of water in the Gulf of St Lawrence (Canada).

The 1971 Fund Convention entered into force in respect of Canada in April 1989.

Following the sinking, heavy fuel oil was released from the barge. Over the years, small quantities of oil continued to seep from the barge. In 1991 it was determined that there was still over 3 000 tonnes of oil on board, and the Canadian Government decided to raise the barge.

The barge was successfully refloated and removed in 1996. A small quantity of oil was released during the refloating operation. The cost of the preparations in 1995 and of the refloating operation in 1996 (including clean-up costs) amounted to some Can$42 million (£16 million).

In 1997 the Canadian Government took action before the Federal Court of Canada against the owners and operators of the *Irving Whale*, claiming compensation for the costs referred to above, but not for the cost of the clean-up operations incurred in connection with the sinking of the *Irving Whale* in 1970. The defendants denied liability and formal defences were filed by all parties. The Government notified the 1971 Fund of the legal action.

The Canadian Government's claim was considered by the Executive Committee in October 1997. The Committee took the view that, although the lifting of the barge was carried out in 1996, these operations should be considered as being part of the incident which had started with the

sinking of the barge in 1970. 'Incident' is defined in the Conventions as any occurrence or series of occurrences having the same origin (Article I.8 of the 1969 Civil Liability Convention and Article 1.1 of the 1971 Fund Convention).

A similar situation had been addressed by the 1971 Fund in the *Czantoria* case (Canada, 1988). The Committee decided in that case that the 1969 Civil Liability Convention and the 1971 Fund Convention did not apply to damage sustained in a given State after the entry into force of the respective Convention for that State resulting from an incident occurring before the entry into force. In the light of its decision in the *Czantoria* case, the Committee decided that the claim presented by the Canadian Government in the *Irving Whale* case did not fall within the scope of application of the 1971 Fund Convention.

In March 1998 the 1971 Fund submitted a note to the other parties involved in the court proceedings informing them that, in the Fund's view, the 1971 Fund Convention did not apply to this incident and giving the reasons therefor. The 1971 Fund requested the parties to acknowledge that the Fund had no involvement in this matter. However, the other parties were not prepared to make such an acknowledgement. The 1971 Fund therefore made a submission to the Court in September 1998 requesting the Court to declare by summary judgement that the 1971 Fund had no liability with regard to the *Irving Whale* incident.

At a Court hearing in December 1998 the Canadian Government contested certain arguments put forward by the 1971 Fund, including the argument that the claim was time-barred, but conceded that the 1971 Fund could not be liable for incidents which occurred before the entry into force of the 1971 Fund Convention in respect of Canada.

In December 1998 the Court dismissed the action against the 1971 Fund. It held that the 1971 Fund could not be liable for events occurring prior to the date of the entry into force of the 1971 Fund Convention in respect of Canada. The Court also held that, although it was not strictly necessary to decide the question, the claim against the 1971 Fund was time-barred. There has been no appeal against the Court's decision.

VISTABELLA

(Caribbean, 7 March 1991)

While being towed, the sea-going barge *Vistabella* (1 090 GRT), registered in Trinidad and Tobago and carrying approximately 2 000 tonnes of heavy fuel oil, 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 but was covered by a third party liability insurance with a Trinidad insurance company. The insurer argued that the insurance did not cover this incident. The limitation amount applicable to the ship was estimated at FFr2 354 000 (£240 000). No limitation fund was established. It was 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 for a total of some £14 250.

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 withdrew 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.

The 1971 Fund 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 (including the British Virgin Islands). The 1971 Fund decided nevertheless not to 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, since the Court had awarded the 1971 Fund the total amount paid by it for damage in the French territories and as the amount paid by the Fund for damage outside those territories was insignificant.

The shipowner and the insurer appealed against the judgement.

The Court of Appeal rendered its judgement on 23 March 1998. In the judgement - which dealt mainly with procedural issues - the Court of Appeal held that the 1969 Civil Liability Convention applied to the incident, since the criterion for applicability was the place of the damage and not the flag State of the ship concerned. The Court further held that the Convention applied to the direct action by the 1971 Fund against the insurer. It was held that this applied also in respect of an insurer with whom the shipowner had taken out insurance although not having been obliged to do so, since the ship was carrying less than 2 000 tonnes of oil in bulk as cargo.

The case has been referred back to the Court of first instance which will have to decide on the merits of the case as regards the direct action taken by the 1971 Fund against the insurer.

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.

The quantity of oil consumed by the fire was not established, but it was estimated that over 10 000 tonnes of fresh and partially burnt oil was spilled into the sea. A significant quantity of oil came ashore between Genoa and Savona. Some oil spread westwards, affecting the coast in four French departments and the Principality of Monaco.

Extensive clean-up operations were carried out in Italy, as well as in France and Monaco.

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 (£8.7 million), which corresponded to 14 million SDR. The shipowner's P & I insurer, the United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Limited (the UK Club), provided a bank guarantee for LIt 24 002 million. 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 were filed in the limitation proceedings against the shipowner.

Question of time bar

The question arose of whether the majority of the claims arising out of the *Haven* incident were 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 of an action against the shipowner and/or his insurer. 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 1971 Fund Assembly took 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 therefore took the necessary steps to preserve its right to invoke the defence of time bar against those claimants who had not notified the Fund of the action against the shipowner or who had not taken action against the Fund within the time limit of three years.

Claims for compensation

Some 1 350 Italian claimants presented claims relating mainly to the cost of clean-up operations, damage to property and loss of income. These claims totalled approximately LIt 765 000 million (£280 million), including a claim by the Italian Government for clean-up operations for LIt 261 000 million (£95 million).

The Italian Government also presented a claim relating to damage to the marine environment. The items of this claim which were quantified by the claimant totalled Lit 883 435 million (£320 million) and related to restoration of phanerogams 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. Also, the Region of Liguria, two provinces and 14 municipalities included items relating to environmental damage in their respective claims.

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 in the limitation proceedings 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 at that time between the claimants and the shipowner/UK Club were admitted for the agreed amounts, since these amounts had not been challenged. The list of admissible claims established by the judge included claims totalling Lit 186 000 million (£68 million) plus interest and compensation for inflation. The judge stated that the numerous claims which were not documented could not be admitted.

As regards the claims for environmental damage, the 1971 Fund maintained the position that claims relating to non-quantifiable elements of damage to the environment could not 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 (1971 Fund 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 a 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 1/3) (Lit 40 000 million or £14.6 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.

Oppositions to the "stato passivo"

Oppositions to the judge's decision were lodged by the 1971 Fund, the Italian Government, one Italian contractor, the shipowner and the UK Club. In its opposition the 1971 Fund has maintained that the judge was wrong in rejecting the defence of time bar. The Fund has also lodged opposition in respect of a number of other issues, in particular the claim relating to environmental damage. 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 (£14.6 million), to LIt 883 435 million (£320 million).

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.

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 arose 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 was 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 drew 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 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 gave an amount of LIt 771 397 947 400 (£281 million) (including the amount paid by the shipowner under the 1969 Civil Liability Convention), instead of LIt 102 643 800 000 (£37 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 the decision.

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 1971 Fund lodged an appeal to the Supreme Court of Cassation against the Court of Appeal's judgement. The appeal is pending.

Settlements made by the shipowner/UK Club

Following the publication of the "stato passivo" in April 1996, the UK Club agreed to pay directly to the Region of Liguria, the Provinces of Genoa and Savona and the 20 municipalities in Italy an *ex gratia* amount of LIt 25 000 million (£9.1 million), in addition to the amounts admitted in the "stato passivo". During the period 1995 - 1997, the shipowner/UK Club settled and paid all the other claims listed in the "stato passivo" with the exception of the claim of the Italian State.

Payments made by the 1971 Fund

The 1971 Fund has paid LIt 1 582 million (£666 000) to two Italian clean-up contractors and FFr10.7 million (£1.4 million) to French public bodies (other than the French State), in both cases against securities protecting the Fund against overpayment.

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 matter. 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.

These conditions were endorsed by the Assembly.

Settlement proposal

In June 1995 an offer for a global settlement was made by the shipowner, the UK Club and the 1971 Fund. Discussions concerning this offer were held during 1996 and 1997 (cf Annual Report 1997, pages 51 - 52).

In April 1998 the Italian Government submitted a Bill to the Italian Parliament authorising the Prime Minister to conclude a settlement agreement with the shipowner/UK Club and the 1971 Fund.

In April 1998 the Assembly authorised the Director to sign an agreement on a global settlement once the Bill had been approved by the Italian Parliament, provided that the agreement fulfilled the conditions for a global settlement laid down by the Assembly. He was also authorised to pay the settlement amounts referred to in the table below to the State of Italy, the French State and the Principality of Monaco. The Assembly also approved, as part of a global settlement, the payment to the UK Club of £2.5 million in respect of indemnification of the shipowner under Article 5.1 of the 1971 Fund Convention.

The Bill was approved by Parliament after some amendments, and the Act in question was promulgated by the President of the Republic on 16 July 1998. Thereafter the text of an agreement for a global settlement (a tri-partite agreement) between the Italian State, the shipowner/UK Club and the 1971 Fund was elaborated. Under this agreement, the parties undertake to withdraw all legal actions in the Italian courts. As regards the 1971 Fund the agreement is based on a maximum amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention of 60 million SDR. The amount to be paid by the 1971 Fund does not relate to environmental damage. The agreement provides for a payment by the shipowner/UK Club to the Italian State on an *ex gratia* basis and without admission as to the liability of any party, to the extent that the payment exceeds the balance of the limitation amount under the 1969 Civil Liability Convention. In addition, under the proposed tri-partite agreement, the shipowner/UK Club undertake to defend further claims which were submitted during 1998 in the limitation proceedings from fishery interests in the Province of Imperia, and to resolve these claims at their own expense.

The Italian Government considered it appropriate to obtain an opinion of the Consiglio di Stato confirming the conformity of the proposed agreement with the terms of the Act. This opinion was issued in November 1998 confirming that the proposed agreement did conform with the Act, but it was considered nevertheless that certain amendments should be made to the agreement. The draft agreement was revised in December 1998 in the light of this opinion.

As at 31 December 1998 the agreement had not yet been approved by the Italian Government.

Executive Committee in session
(photograph: John Ross)

In order to become effective, the tri-partite agreement must be signed by the parties and approved or registered by the Court of Accounts (Corte dei Conti).

The consequences for the 1971 Fund of the global settlement would be as follows:

			Llt
Total available under 1969/1971 Conventions (60 million SDR), converted using rate applicable on date shipowner's limitation fund established			102 643 800 000
Less	Shipowner's limitation amount (14 million SDR)		- 23 950 220 000
			78 693 580 000
Less	Payments by 1971 Fund to two Italian contractors		- 1 582 341 690
			77 111 238 310
Less	Payments made by 1971 Fund to French public bodies other than the French State (FFr10 659 469), converted using rate applicable on date of purchase of French Francs (28.3.96): FFr1 = Llt 311.60		- 3 321 490 540
			73 789 747 770
Less	Payments to be made by the 1971 Fund (converted using the rate applicable on the date of purchase of French Francs: 7.9.98)		
	- To French State	FFr12 580 724	
	- To Principality of Monaco	270 035	
		FFr12 850 759	
			3 787 118 677
Balance to be paid by 1971 Fund to Italian State			70 002 629 093 (£24 700 000)
Payment to the UK Club (indemnification of the shipowner)			£2 500 000

Under the agreement the UK Club would pay to the Italian State a total of Llt 47 597 370 907 (£17.4 million), including the *ex gratia* payment referred to above.

The total amount to be received by the Italian State would therefore be Llt 117 600 million (£42.9 million).

Criminal proceedings

Criminal action was brought in the Court of Genoa against three individuals connected with the ownership and operations of the *Haven*. The accused were acquitted by a verdict delivered in November 1997. The prosecutor appealed against the verdict.

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. The oil

remaining in the aft section was removed by salvors working from the shore. The quantity of oil spilled was not known, but most of the cargo was either consumed by the fire on board the vessel or dispersed in the sea.

Several stretches of coastline east and north-east of La Coruña were contaminated, as well as the sheltered Ria de Ferrol. Extensive clean-up operations were carried out at sea and on shore.

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 claims office in La Coruña.

Claims for compensation

As at 31 December 1998, 1 277 claims had been received by the Joint Claims Office, totalling Pts 24 809 million (£105 million). Compensation had been paid in respect of 838 claims for a total amount of Pts 1 712 million (£8.5 million). Out of this amount, the UK Club had paid Pts 782 million (£4.0 million) and the 1971 Fund Pts 930 million (£4.5 million).

Claims totalling some Pts 24 730 million (£105 million) were submitted to the Criminal Court of first instance in La Coruña. These claims correspond to a great extent to those presented to the Joint Claims Office.

It is understood that some 60 companies and individuals, principally in the mariculture sector, have brought action in the Civil Court in La Coruña against the pilot, the Spanish State, the master, the shipowner, the UK Club and the 1971 Fund. The claims covered by these actions, which may total Pts 22 000 million (£93 million), were not filed in the criminal proceedings. The actions have not yet been served on the 1971 Fund.

Shipowner's right of limitation

In 1992 the Criminal Court ordered the shipowner to constitute a limitation fund and fixed the limitation amount at Pts 1 129 million (£4.8 million). The limitation fund was constituted by means of a bank guarantee provided by the UK Club for the amount set by the Court.

Level of provisional payments

In view of the uncertainty as to the total amount of the claims arising out of the *Aegean Sea* incident, the 1971 Fund initially limited payments to 25% of the established damage suffered by each claimant. This figure was increased to 40% in October 1994.

At the request of a Spanish oil company (Repsol Petroleo SA) the Executive Committee decided in February 1998 that the claim presented by that company relating to clean-up operations and the removal of the oil on board the *Aegean Sea*, which had been settled out of court, could be paid in full, if the company furnished the 1971 Fund with a bank guarantee which would give the Fund adequate protection against overpayment in the event that the claims arising out of the incident ultimately had to be pro-rated. After such a bank guarantee had been provided, the 1971 Fund paid the balance of the company's claim.

Criminal proceedings in La Coruña

Criminal proceedings were initiated in the Criminal Court of first instance 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 Court considered not only the criminal aspects of the case 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.

In a judgement rendered in April 1996 the Criminal Court held that the master and the pilot were both liable for criminal negligence. They were each sentenced to pay a fine of Pts 300 000 (£1 200) or one day's imprisonment for each Pts 5 000 (£20) not paid.

The master, the pilot and the Spanish State appealed against the judgement, but the Court of Appeal upheld the judgement in June 1997.

Distribution of liabilities and questions relating to recourse

The Criminal Court of first instance and the Court of Appeal held that the master of the *Aegean Sea* and the pilot were directly liable for the incident and that they were jointly and severally liable, each of them on a 50% basis, to compensate victims of 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 Courts held that the owner of the *Aegean Sea* and the Spanish State were subsidiarily liable.

The question of whether the 1971 Fund should take recourse action against the pilot and the Spanish State was considered by the Executive Committee in October 1997. The Committee noted that when payments were made to claimants, the defendants who had made these payments could, in the view of the 1971 Fund's Spanish lawyer, take recourse action to claim reimbursement from the other defendants so that ultimately the master/UK Club/1971 Fund would pay 50% of the awarded amounts and the pilot/Spanish State would pay 50% of these amounts.

The Spanish Government has maintained that, even if the Court held that the pilot was liable and that the Spanish State was liable for the acts of the pilot, it was crucial to differentiate the level of liabilities of each party. The Government has stated that the judgements meant that the UK Club and the 1971 Fund should pay the maximum amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention, and that the Spanish State would pay compensation only if the total amount of the established claims exceeded that amount. In addition, the Government has expressed the view that it would be inappropriate to address the question of recourse against the Spanish State, since the 1971 Fund had not taken recourse action against a State in any other case.

The Spanish Government has presented two legal opinions on the distribution of liabilities. The first, by the Legal Department of the Ministry of Public Administrations, draws attention to the fact that the State has subsidiary liability, as opposed to the direct liability of the UK Club and the 1971 Fund. In the opinion it is maintained that the Club and Fund would therefore have to respond to each of the claims within the limits of their respective liabilities under the Conventions. The opinion concludes that the direct liability and the subsidiary liability represent a first and second degree liability, which imposes an obligation on those liable in the first degree and that the victim can seek enforcement against those subsidiarily liable only when the liability of those directly liable has been exhausted. The second opinion, given by a Spanish law firm, also concludes that the liability of the UK Club and the 1971 Fund, within their respective limits of liability under the Conventions, precedes that of the Spanish State. It is stated that the liability of the Spanish State is subsidiary to the pilot's liability and limited to 50% of the total amount of compensation for which the pilot is liable.

The 1971 Fund has obtained an opinion from a former judge of the Spanish Supreme Court on the interpretation of the judgements as regards the distribution of liabilities between the parties concerned. The opinion concludes that the claimants could request the execution of the Court of Appeal's judgement against the UK Club and the 1971 Fund and, until they had been fully compensated, also against the pilot and the Spanish State, which was subsidiarily civilly liable in relation to the pilot. In the opinion it is stated that, between them, the UK Club and the 1971 Fund were liable for 50% of the damage and the State was liable for the other 50%. The legal opinion states that the UK Club and the 1971 Fund could bring a recovery action against the State in the event that they paid the 50% of the damage which should have fallen on the Spanish State. The opinion concludes that the final distribution of the compensation payments between the various parties declared civilly liable after all recovery actions have been carried out should be: the insurer and the 1971 Fund 50% of the total compensation for the damage (within their respective limits laid down in the Conventions), the State the remaining 50%.

In April 1998 the Executive Committee instructed the Director to obtain a binding commitment by the Spanish Government to the effect that the Spanish State would not invoke the time bar if the 1971 Fund were to bring recovery action against the Spanish State. The Committee further instructed the Director that, should such a commitment not be given by the Government, the Fund should take such action in order to preserve the Fund's right, pending a solution of the disagreement between the State and the Fund.

On 12 June 1998 the Spanish Government and the 1971 Fund concluded an agreement to the effect that the Spanish Government would not invoke the defence of time bar if the competent bodies of the Fund were to decide to take recourse action against the State to recover 50% of the amounts paid by the Fund in compensation, provided that such an action was taken within one year of the date of the agreement.

The Courts' decisions in respect of claims for compensation

If a claimant has not proved the quantum of the damage suffered, the quantification may, under Spanish law, 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. In the *Aegean Sea* case, the Criminal Court of first instance and the Court of Appeal considered the evidence presented by many claimants to be insufficient to substantiate the amount of the losses suffered and decided that these claims should be quantified during the procedure for the execution of the judgement.

The Courts found that six claims totalling Pts 840 million (£3.3 million) were substantiated by acceptable evidence. Four of these claims related to clean-up operations or preventive measures and two belonged to the fishery sector. All other claims in the fishery sector were referred to the procedure for the execution of the judgement.

For further details of the judgements and the positions of the parties in the court proceedings reference is made to the 1997 Annual Report, pages 56 - 59.

Determination of the maximum amount payable by the 1971 Fund

During the hearing in the Criminal Court of first instance, a number of claimants raised the issue of the method to be applied for converting 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). Those 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 SDR of the International Monetary Fund had not entered into force at the time of the *Aegean Sea* incident.

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 (cf page 46).

In its judgement, the Criminal Court of first instance stated that as regards the 1971 Fund the applicable limit was the one laid down in Article 4 of the 1971 Fund Convention, ie on the basis of the SDR. The Court of Appeal held that the maximum amount payable by the 1971 Fund was 900 million Poincaré francs or 60 million SDR, which should be converted into the national currency at the official value thereof in relation to a unit consisting of 65.5 milligrams of 900/1000 fine gold, or otherwise in relation to the value of the currency in relation to the SDR. The Court of Appeal stated that the claimants were entitled to opt for the method of conversion that they considered to be most favourable to them.

The Executive Committee expressed the view that it would be difficult to apply the judgement if some claimants were to choose to have the maximum amount converted into Pesetas on the basis of the Poincaré franc, while others chose conversion on the basis of the SDR. If claimants chose to have the maximum amount converted into Pesetas on the basis of the Poincaré franc, this would have to be done using the last official value of gold in Spain, ie that of 19 November 1967, since there was no longer an official value of gold. Converting 900 million (gold) francs into Pesetas on that basis would give Pts 4 179 105 000 (£17.7 million). A conversion based on the value of the SDR on the date of the constitution of the shipowner's limitation fund, on the other hand, would give Pts 9 513 473 400 (£40 million).

Question of time bar

The question of time bar is governed by Article VIII of the 1969 Civil Liability Convention as regards the shipowner and his insurer and by Article 6.1 of the 1971 Fund Convention as regards the 1971 Fund. In order to prevent his claim from becoming time-barred, a claimant must take legal action against the 1971 Fund within three years of the date when the damage occurred, or must notify the 1971 Fund before the expiry of that period of a legal action for compensation against the shipowner or his insurer. This period expired in the *Aegean Sea* case for most claimants on or shortly after 3 December 1995.

A number of claimants in the fishery and aquaculture sectors filed criminal accusations against four individuals. These claimants did not submit claims for compensation in those proceedings, but only reserved their right to claim compensation in future proceedings (ie in civil proceedings to be brought at a later date after the completion of the criminal proceedings) without any indication of the amounts involved. These claimants 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. In December 1995 the Executive Committee, 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, took the view that these claims should be considered time-barred *vis-à-vis* the 1971 Fund.

During 1998 the Spanish Government and the 1971 Fund exchanged legal opinions on the issue.

The opinions presented by the Spanish Government were given by the Legal Department of the Ministry of Public Administrations and a Spanish law firm.

The opinion by the Legal Department makes the point that, pursuant to Spanish procedural law, once criminal proceedings have been brought, the period for prescription does not start to run until the date when the criminal proceedings have been brought to an end. The opinion concludes that the compensation system laid down in the Conventions has to be interpreted and applied by the Spanish Courts in accordance with other provisions of domestic law, and that the claims in question are not, under Spanish law, time-barred.

The law firm's opinion expresses the view that it is left to national law to deal with three fundamental issues, namely:

(i) the possibility of extending or interrupting the three-year period;
(ii) the possibility of considering that the right to claim has been exercised through the criminal proceedings in accordance with national law; and
(iii) the possibility of fulfilling the requirement under Article VIII of the Civil Liability Convention through 'class action' which determines the 1971 Fund's liability.

The opinion also addresses the point made by the 1971 Fund that the criminal actions were made against the master and the pilot and were therefore not actions under the Conventions. The opinion concludes that the actions against the 1971 Fund are not time-barred for the following reasons:

(i) the actions had been brought within the period of six years of the incident, and the period of three years from the date of the damage had not been exceeded, since the determination of that date was to be made in accordance with domestic law;
(ii) the criminal proceedings could be considered as having been brought also against the persons who were strictly liable under the Conventions and the civil proceedings could not be pursued until the criminal proceedings had been concluded;
(iii) the commencement of criminal proceedings fulfilled the requirements of Article VIII of the Civil Liability Convention. Since that Convention did not enter into further detail, it must be assumed that this question should be referred to national law.

The 1971 Fund obtained an opinion of a former Spanish Supreme Court judge. In the opinion he draws attention to the fact that provisions in international treaties ratified by Spain and published in the Official Journal form part of Spanish law, and that international treaties take precedence over non-constitutional domestic legal rules. In his view, the time bar provisions in the Conventions relate to the extinction of rights ('caducidad'). He expresses the view that claimants who had filed criminal actions but who had not submitted claims for compensation in the criminal proceedings, only reserving their right to claim in future civil proceedings after completion of the criminal proceedings, had not interrupted the three-year time bar period laid down in the Conventions. He concludes that these claims should therefore be considered to be extinguished (time-barred).

In view of the different opinions presented in respect of the time bar question, the Director was instructed to study this complex issue further. The Executive Committee noted however, that the civil actions referred to above would be served on the 1971 Fund in the near future and that once served the 1971 Fund would have to present all its defences within a short time period. Pending further study, the Committee instructed the Director to raise the defence of the time bar in the civil proceedings.

Execution of the Court of Appeal's judgement and level of the 1971 Fund's payments

Under Spanish law the Court of Appeal's judgement is not subject to appeal and, consequently, the judgement is enforceable in respect of the claims for which specific amounts have been awarded in compensation.

The 1971 Fund was notified on 16 September 1997 of a decision, issued by the judge in charge of the execution of the judgement, which ordered the two defendants who had been held directly liable, namely the UK Club and the 1971 Fund, to pay the claimants the amounts of compensation awarded by the judgement as modified by the Court of Appeal, and the claimants were invited to submit evidence to substantiate their losses.

The Spanish Government has stated that the Spanish constitution recognised the exclusive jurisdiction of the Spanish Courts as regards the enforcement of judgements rendered by those Courts. It has therefore maintained that it would not be acceptable if the organs of the 1971 Fund took decisions contrary to the Spanish Courts. The Spanish Government has also considered that the caution exercised by the 1971 Fund in limiting the level of payments to 40% of the damage was not justified, since the Spanish State would pay compensation in excess of the maximum amount of compensation available under the 1969 Civil Liability Convention and the 1971 Fund Convention.

Although the enforceability of judgements rendered by national courts was recognised in the 1971 Fund Convention, the Executive Committee considered that, in view of the provisions of Article 8, the Convention also provided that such enforcement could be subject to a decision of the Assembly or of the Executive Committee under Article 18.7 concerning the distribution of the total amount available for compensation under the Conventions.

In view of the high degree of uncertainty as to the total amount of the established claims, both as regards many of the claims covered by the judgements of the Court of first instance and the Court of Appeal and as regards the claims which might be presented at a later stage in the civil proceedings (although the 1971 Fund took the view that these claims were time-barred), the Executive Committee decided that payments to the claimants who had been awarded a specific amount in the judgements should remain at 40% of the respective amounts so awarded.

In June 1998 the 1971 Fund paid four claimants in this category 40% of the awarded amounts, totalling Pts 142 million (£600 000). The remaining two claimants were offered such payments but have not accepted the offer.

Loans to claimants

In June 1997 the Executive Committee was informed of the Spanish Government's decision to provide a credit facility of Pts 10 000 million (£42 million) for aquaculture companies and of Pts 2 500 million (£10.4 million) for shellfish harvesters and fishermen. This credit facility was set up through a Spanish State-owned bank. In October 1998 the Committee was informed that the Spanish Government had decided to increase the credit facility to a maximum of Pts 22 500 million (£95 million).

Search for a mechanism for progress towards solving the outstanding issues

In February 1998 the Executive Committee considered that it was necessary to find a mechanism which would enable progress to be made towards solving the outstanding issues so that claimants could be paid as soon as possible, respecting the basic principles of the Conventions and the principles of the admissibility of claims laid down by the Assembly and the Executive Committee, including the requirement for a claimant to submit evidence to substantiate his losses.

To this end, and within the framework of these principles, a Consultation Group composed of representatives of six delegations to the Executive Committee was set up to assist the Director in his search for solutions.

On the Director's initiative, a meeting was held in Madrid in April 1998 with the Director of the Minister's Office (Director del Gabinete del Ministro) of the Ministry of Public Administrations, at which there was a constructive exchange of views concerning the main problems which had prevented progress from being made.

Noting that the Spanish Government had accepted that the Spanish State was in any event liable to pay the total amount of the established claims in excess of the maximum amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention, that this amount was 60 million SDR, and that the Spanish State was prepared to give a formal binding acceptance on these two points, the Executive Committee considered that, if such an acceptance were given, there would be no risk of overpayment by the 1971 Fund. The Committee therefore decided in April 1998 that, subject to such an acceptance being given, the 1971 Fund should pay 100% of the amounts awarded by the Court of Appeal in respect of individual claims as well as 100% of the amounts established in final out-of-court settlements (to the extent that these claims had not already been paid). In June 1998, however, the Spanish Government informed the Director that, for constitutional reasons, the Government was not prepared to make such a written commitment.

In April 1998 the Executive Committee noted with satisfaction that the Spanish Government would in the near future make available to the 1971 Fund the assessments made by the Instituto Oceanográfico on behalf of the Spanish authorities of the damage suffered by fishermen and shellfish harvesters. The Director was instructed to examine these assessments with the assistance of the Fund's technical experts and consider whether, in the light of the assessments, further payments could be made to these claimants. However, those assessments have not yet been made available to the 1971 Fund.

A further meeting was held between the Spanish Government and the 1971 Fund in October 1998 at which the main outstanding issues were discussed.

In October 1998 the Executive Committee instructed the Director to continue his discussions with the Spanish Government so as to enable progress to be made towards solving outstanding issues.

The Director intends to pursue the discussions with the Spanish Government.

BRAER

(United Kingdom, 5 January 1993)

The incident

The Liberian tanker *Braer* (44 989 GRT) grounded south of the Shetland Islands (United Kingdom). The ship eventually broke up, and both the cargo and bunkers spilled into the sea. Due to the prevailing heavy weather, 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 1998, some 2 000 claims for compensation had been paid, wholly or partly, for a total amount of approximately £45.4 million. Out of this amount the 1971 Fund had paid some £40.6 million and the shipowner's P & I insurer, Assuranceföreningen Skuld (Skuld Club), some £4.8 million. In addition, claims amounting to £5.2 million have been accepted as admissible but have not yet been paid.

Suspension of payments

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 suspension of payments is still in operation.

Court proceedings

General situation

Claims against the 1971 Fund became time-barred on or shortly after 5 January 1996. By that date 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.

By the end of 1998 57 claims amounting to £8.3 million had been withdrawn from the legal proceedings. Fifty-nine of the claims pending in court, totalling £25.6 million, have been settled for a total amount of £4.3 million. The claims remaining in the legal proceedings total £41.9 million.

The court actions relate mainly to claims for reduction in the price of salmon, loss of income in the fishing and fish processing sector, personal injury and damage to asbestos cement roof coverings. The majority of these claims were 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. Some 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. Most claimants have still not produced sufficient documentation to substantiate their claims.

Smolt supplier

In 1994 the Executive Committee considered a claim presented by Landcatch Ltd (hereafter referred to as "Landcatch") for £2.6 million plus interest. Landcatch supplied smolt to salmon farmers on Shetland from its installation on mainland Scotland some 500 kilometres from Shetland. The claim related to losses allegedly suffered as a result of the *Braer* incident having interrupted the normal stocking of salmon smolt in Shetland waters. The Committee rejected this claim as not fulfilling the criteria for the admissibility of claims for compensation.

Landcatch pursued its claim against the shipowner, the Skuld Club and the 1971 Fund in the Court of Session. The main argument invoked by Landcatch was that the United Kingdom Merchant Shipping (Oil Pollution) Act 1971 and the Merchant Shipping Act 1974, which gave effect to the 1969 Civil Liability Convention and the 1971 Fund Convention, imposed an absolute liability of indeterminate extent in respect of all losses caused by contamination.

With respect to the arguments presented by the parties in the court proceedings, reference is made to the 1997 Annual Report, pages 63 - 65.

The Court agreed with the position of the shipowner, the Skuld Club and the Fund that, although the statutory provisions imposed liability for pure economic loss, there was nothing in the provisions to suggest that the limitations upon the recoverability of economic loss in general law were to be displaced. The Court stated that Landcatch's primary argument would extend the scope of statutory liabilities in the case beyond any reasonable limit and beyond any limit which Parliament could have contemplated. It was also stated that although the purpose of the 1971 Fund was to provide full compensation to victims, the Fund's liability was limited. The Court stated that this suggested that the Fund was to compensate proximate claimants and not remote claimants. In conclusion the Court held that the liability for pure economic loss could be satisfactorily interpreted to mean a liability for such loss where it was directly caused by the contamination in accordance with the established principles of Scots law.

Landcatch has appealed against the judgement to the Inner House of the Court of Session (the Court of Appeal for Scotland). The appeal will be heard in January and March 1999.

Smolt purchaser

In 1995 the Executive Committee considered a claim by a Shetland-based company, Shetland Sea Farms Ltd, in respect of a contract to purchase smolt from a related company on the mainland. The smolt had eventually been sold at 50% of its purchase price to another company in the same group. The Executive Committee accepted that the claim was admissible in principle, but considered that account should be taken of any benefits derived by other companies in the same group. Attempts to settle the claim out of court failed and the company took legal action against the shipowner, the Skuld Club and the 1971 Fund.

Shetland Sea Farms Ltd claimed compensation for £2 million allegedly relating to losses on the resale of the smolt and loss of profit on the sale of salmon which would have been reared from the smolt. The shipowner, the Skuld Club and the 1971 Fund maintained that the company could not, as a matter of law, recover damages for loss of profits from the sale of a finished item (salmon) and also recover the costs of the raw material (smolt) needed to produce the finished item.

In September 1998 the Court rejected the argument of the shipowner, the Skuld Club and the 1971 Fund and decided that the matter could not be resolved purely as a matter of law and that evidence had to be presented as to whether the company was entitled to compensation and, if so, to what extent. After a detailed examination of the judgement, the shipowner, the Skuld Club and the 1971 Fund decided not to pursue an appeal against the Court's decision. This claim will be the subject of a hearing on the facts in November 1999.

Adverse health effects

A claimant took legal action against the shipowner, the Skuld Club and the 1971 Fund for £250 000 alleging that he had suffered adverse health effects as a result of contamination following the grounding of the *Braer*. He maintained that he had suffered stress, anxiety and depression as a result of pollution damage to livestock, fields and crops owned by a partnership of which he was

a partner. At a preliminary hearing on admissibility, it was argued by the shipowner, the Skuld Club and the Fund that the alleged stress and depression were not damage caused by contamination or pollution damage in terms of the statutory provisions which implement the 1969 Civil Liability Convention and the 1971 Fund Convention into United Kingdom law. It was accepted by the shipowner, the Skuld Club and the Fund that damage for the purposes of the legislation could include physical injury.

The Court held that, without having heard evidence as to the law, it could not resolve the legal question as to whether psychological symptoms caused by contamination of livestock, fields and crops which the claimant actively farmed as a partner were encompassed within the statutory provisions.

The shipowner, the Skuld Club and the 1971 Fund appealed against this decision on the basis that claims in respect of stress, anxiety, depression or other such symptoms of a psychological nature did not fall within the ambit of damage caused by contamination within the above-mentioned statutory provisions. They also argued that claims for psychological damage allegedly caused by the effects of witnessing damage by contamination to property were not sufficiently proximate to constitute damage caused by contamination or pollution damage in the terms of the provisions. The appeals will be heard in June 1999.

Salmon price damage claims

A number of 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 and claimed compensation for the losses from such price depression. The shipowner, the Skuld Club and the 1971 Fund concluded, on the basis of advice from their experts, that there was a fall in the relative price of Shetland salmon for six months following the *Braer* incident, and the Fund - with the agreement of the shipowner and the Skuld Club - paid compensation totalling £311 600 to a number of claimants on that basis, but further compensation for the period thereafter was rejected.

Further claims in this category amounting to £11.3 million became the subject of legal proceedings. Three of these claims, totalling £600 000, were later withdrawn.

One salmon price damage claim was the subject of a hearing on admissibility in principle in November 1998. The claimant argued that the Court had been mistaken in its decision in respect of the claim of Landcatch, where the Court held that claims for relational economic loss were not admissible. The claimant identified four factors which in his view distinguished the salmon price damage claim from the claim of Landcatch, namely the fact that there was a proximity between the claimant's farms and the exclusion zone, that the claimant's business was in aquaculture, that the claimant shared the same market as fish farms located in the exclusion zone, and that Shetland salmon was a recognised product with a special market identity.

The shipowner and the Skuld Club maintained that the claim was inadmissible, since the salmon farmer had not suffered any loss caused by contamination. They argued that the claimant had suffered no more than relational economic loss and referred to the Court's judgement in the Landcatch case. The 1971 Fund, which had intervened in the proceedings, did not make any submission on the general question of admissibility of this claim, having already made provisional payments to the claimant in respect of losses suffered during the six months following the incident.

In a judgement rendered in December 1998 the Court took the view that the factors advanced by the claimant did not provide any material ground for distinction between the case

under consideration and the Landcatch case. The Court pointed out that all that had happened was that damage to other parties' property had caused the claimant to suffer economic loss. The Court held that the salmon farmer's claim was no more than one for relational economic loss, similar to that of Landcatch which had been rejected by the Court in a previous judgement. The fact that the 1971 Fund had made interim payments to the claimant was in the Court's view irrelevant. Accordingly, the claim was dismissed.

The claimant has appealed against the judgement.

Claim by P & O Scottish Ferries Ltd

In 1995 the Executive Committee considered a claim for £900 000 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 a reduction in the volume of freight. P & O Scottish Ferries Ltd, whose main office is in Aberdeen, is the only operator of passenger ferries between Shetland and the United Kingdom mainland (Aberdeen). The Committee took the view that the criterion of reasonable proximity had not been fulfilled. In particular, it was 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 took legal action against the shipowner and the Skuld Club, and notified the 1971 Fund of the actions, claiming compensation for an amount of £900 000, subsequently reduced to £680 000. The company argued that the Court had been mistaken in the decision in the Landcatch case, where it was held that claims for relational economic loss were not admissible. The company further maintained that this case was distinguishable from the Landcatch and salmon price damage claims in that there was sufficient proximity between the company and the contamination to establish liability. The shipowner, the Skuld Club and the 1971 Fund maintained that this case was one concerning relational economic loss, that the damage covered by the claim was too remote and that the action should therefore be dismissed.

The Court is expected to render its judgement in January 1999.

Fish processors' claims

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

Six claims submitted by fish processors totalling £7.7 million are pending in court. The claims relate to losses allegedly suffered as a result of a reduction in the processing of certain types of fish and shellfish 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 to substantiate the losses is insufficient to make an assessment of the alleged losses.

In December 1998 representatives of the 1971 Fund and some of the claimants met to determine whether the claimants had any more evidence to substantiate their claims in order to allow the Fund to review its assessments. The claimants indicated that they did have evidence to support the claims, but that they had so far only presented the minimum amount of information since preparation of all of the evidence would be time consuming. They stated that this work would not be done until after there had been a court hearing, scheduled for June/July 1999, and an ensuing court decision as to the admissibility of the claims.

Executive Committee chaired by Mr Popp
(photograph: John Ross)

Legal action by Framgord Ltd

In October 1998 a claimant, Framgord Ltd, took legal action against the 1971 Fund requesting a declaration judgement on two points. The claimant requested a declaration to the effect that the 1971 Fund was not entitled to take into account payments made prior to the establishment of liability on the part of the shipowner and his insurer, when calculating the upper limit of the Fund's liability. The claimant also requested that the liability of the 1971 Fund should be calculated by reference not to Special Drawing Rights but to the free market value of gold.

A hearing took place in December 1998 at which the Skuld Club and the 1971 Fund requested that this action should not be considered until it had been determined whether Framgord Ltd's compensation claim was admissible. The Court granted this request.

Property damage claims

Claims were submitted for damage to asbestos cement tiles and corrugated sheets used as roof coverings 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 analyses revealed no evidence that oil from the *Braer* had contributed to the deterioration of the materials examined. The consulting engineers stated that the chemical analyses

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 a total of £8 million, became the subject of legal proceedings, although subsequently 32 claims totalling £2.1 million were withdrawn. No satisfactory technical evidence has been presented in support of these claims which were originally based on the assumption that the alleged damage was caused by oil. The claimants' expert now hypothesises, however, that the active component present in the dispersants used to treat the oil was the cause. The 1971 Fund's experts do not consider that the report of the claimants' expert provides satisfactory evidence that the dispersants caused the alleged damage.

It is expected that a court hearing on these claims will take place in May 1999.

Right of limitation of the shipowner and his insurer

In September 1997 the Court of Session decided that the Skuld Club was entitled to limit its liability in the amount of 5 790 052.50 SDR (£4.9 million). The Court has not yet considered the question of whether or not the shipowner is entitled to limit his liability.

In 1996 the Executive Committee decided 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.

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 was 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.

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 was employed.

Claims for compensation

Claims relating to the cost of clean-up operations were settled at an aggregate amount of Won 5 600 million (£2.5 million) and were paid by the shipowner's P & I insurer by September 1994. The total amount paid by the insurer by far exceeds the limitation amount applicable to the *Keumdong N°5*, Won 77 million (£53 000). The 1971 Fund made advance payments to the insurer 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 (£46 million).

During the period July 1995 - September 1996 agreements were reached on most of the claims presented by the Kwang Yang Bay Federation. The amounts agreed totalled Won 6 163 million (£4.2 million), compared with a total amount claimed of Won 48 047 million (£24 million). These claims have been paid in full for the agreed amounts.

Legal actions

The Yosu fishery co-operative left the Kwang Yang Bay Federation and took legal action against the 1971 Fund in May 1996. Claims for damage to the common fishery grounds totalling Won 17 162 million (£8.6 million) were filed in court. In addition, claims were submitted by over 900 individual members of this co-operative (fishing boat owners, set net fishing licence holders or onshore fish culture facility operators). These claims totalled Won 1 641 million (£820 000).

The experts engaged by the 1971 Fund and the shipowner's P & I insurer, the Standard Steamship Owners' Protection and Indemnity Association (Bermuda) Ltd (Standard Club) assessed the losses allegedly suffered by all the claimants of the Yosu co-operative at Won 810 million (£405 000). 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 did not provide evidence that the alleged losses were caused by the oil spill.

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

The Court rendered a compulsory mediation decision in early December 1998. The Court accepted most of the 1971 Fund's arguments, but decided that the compensation for unregistered and unlicensed fishing boat claimants should be calculated in the same way as for registered and licensed claimants. Although the Court did not give a detailed explanation for its decision, it stated that income from business prohibited by law was not necessarily an illegal income which was inadmissible for compensation. The Court stated that when deciding on the admissibility of claims the Court should take into account, on a case by case basis, the original purpose of the law in question, the degree of blameworthiness of the claimant and the degree of illegality of the act. In the Court's view the income of unlicensed fishermen in this case did not appear to be illegal income. The Court awarded the unlicensed fishing boat claimants Won 65 million (£32 500).

The position taken by the Court in the mediation decision was at variance with the policy adopted by the 1971 Fund, ie that claims for loss of income by fishermen operating without a required licence were inadmissible. As far as the 1971 Fund is aware, there were no such circumstances in respect of the claims dealt with in the mediation decision. The 1971 Fund therefore lodged an opposition to the Court's mediation decision. The Court will resume the normal proceedings and will render a judgement in due course. The Court will also render its judgement in respect of the Yosu co-operative's claim and of the other claims by members of that co-operative.

An arkshell fishery co-operative brought legal action against the 1971 Fund in respect of a claim for Won 4 160 million (£2.1 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. The Court has completed the hearing and will render its judgement on this claim in due course.

The experts engaged by the 1971 Fund and the Standard Club have assessed the claims pending in court at less than Won 1 500 million (£750 000).

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 (£33 000), 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.

ILIAD

(Greece, 9 October 1993)

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 about 80 000 tonnes of Syrian light crude oil, and some 200 tonnes was spilled. The Greek national contingency plan was activated and the spill was cleaned up relatively rapidly.

In March 1994 the shipowner's P & I insurer established a limitation fund amounting to Drs 1 496 533 000 (£3.2 million) with the competent court by the deposit of a bank guarantee. One claimant took legal action to challenge the shipowner's right to limit his liability. The Court of first instance rejected this action. The claimant appealed against that decision but the appeal was rejected.

The Court decided that claims should be lodged by 20 January 1995. By that date, 527 claims had been presented, totalling Drs 3 071 million (£6.6 million) plus Drs 378 million (£810 000) for compensation of 'moral damage'.

The Court appointed a liquidator to examine the claims in the limitation proceedings. It is expected that this examination will be completed in the near future.

Claims against the 1971 Fund in respect of this incident became time-barred on or shortly after 9 October 1996. With the exception of a fish farm, the shipowner and the P & I insurer, the claimants failed to take action against the 1971 Fund or to notify the Fund formally of an action brought against the shipowner and his insurer. These three claims total Drs 1 339 million (£2.9 million).

BOYANG N°51

(Republic of Korea, 25 May 1995)

The *Boyang N°51* (149 GRT), registered in the Republic of Korea, collided with another Korean vessel, the *Ocean Daisy*, off Sandbaeg Do (Republic of Korea). The *Boyang N°51* was carrying some 160 tonnes of diesel oil and heavy fuel oil in its cargo tanks which was to be

delivered as bunker oil to fishing vessels. As a result of the collision, the *Boyang N°51* sank and the oil cargo was spilled.

The Pusan Marine Accident Inquiry Agency carried out an investigation into the cause of the incident. The investigation showed that the incident was due mainly to the *Ocean Daisy*'s failure to sail at a safe speed, but that the *Boyang N°51* had contributed to the incident by not taking proper action to avoid the collision.

The owner of the *Ocean Daisy* incurred clean-up costs totalling Won 142 million (£70 000).

The 1971 Fund was notified of the incident by the P & I insurer of the *Ocean Daisy* in April 1998, ie nearly three years after the incident.

The owner of the *Boyang N°51* commenced limitation proceedings in the competent District Court on the ground that the *Boyang N°51*'s liability for the cost of the clean-up operations incurred by the owner of the *Ocean Daisy* could be limited under the 1969 Civil Liability Convention separately without first having made a set off between the counter claims of the parties. The owner of the *Ocean Daisy* maintained that limitation could not be applied to claims until the counter claims of the two parties had been set off against each other. The District Court agreed with the position taken by the owner of the *Boyang N°51* and granted the request to limit his liability and determined the limitation amount at 19 817 SDR (£17 000).

The owner of the *Ocean Daisy* appealed against this decision. The Court of Appeal upheld the District Court's decision. The owner of the *Ocean Daisy* appealed to the Supreme Court, which also confirmed the District Court's decision.

In April 1998, before the Supreme Court rendered its decision, the owner of the *Ocean Daisy* requested that the 1971 Fund should agree to an extension of the three-year time bar period, which would expire on or shortly after 25 May 1998. The owner of the *Ocean Daisy* stated that he would like to reach an out-of-court settlement with the 1971 Fund. The Executive Committee decided in April 1998 that, in line with the position taken by the 1971 Fund in previous cases, the three-year period laid down in Article 6.1 of the 1971 Fund Convention could not be extended.

The claim by the owner of the *Ocean Daisy* became time-barred, since no legal action was taken against the 1971 Fund before the expiry of the time bar period.

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 spilled into the sea.

Some small islands and inlets 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 contractor presented claims in respect of the clean-up operations for Won 31 million (£24 000) and Won 14 million (£11 000), respectively. The claim of the clean-up contractor was settled at Won 12 million (£10 000). The Marine Police's claim was settled for the amount claimed.

The limitation amount applicable to the *Dae Woong* is estimated at Won 95 million (£65 000). The ship was not covered by any insurance or other guarantee at the time of the incident.

Although the aggregate amount of the claims settled was below the limit of the shipowner's liability, the shipowner did not pay these claims. The shipowner has not commenced limitation proceedings. An investigation by the 1971 Fund into the financial situation of the shipowner showed that the shipowner had no substantial assets. The 1971 Fund therefore paid the settled claims in June 1996.

There were indications that some fishery co-operatives would submit compensation claims. However, no such claims have been presented. Further claims were time-barred on 27 June 1998.

SEA PRINCE

(Republic of Korea, 23 July 1995)

The incident

The Cypriot tanker *Sea Prince* (144 567 GRT) grounded off Sorido island near Yosu (Republic of Korea). Explosions and fire damaged the engine room and accommodation area. Some 5 000 tonnes of Arabian crude oil was spilled as a result of the grounding. During the following weeks small quantities of oil leaked from the half-submerged section of the tanker. Small quantities of oil reached the Japanese islands of Oki.

Clean-up operations and impact on aquaculture and fisheries

Small areas of rocky coasts, sea wall defences and isolated pebble beaches were affected. Most of the clean-up operations were completed by the end of October 1995, and the remainder 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 fisheries, 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.

Level of the 1971 Fund's payments

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 be limited to 25% of the established damage suffered by each claimant. In June 1997 the level of the 1971 Fund's payments was increased to 50%.

By the beginning of March 1998 nearly all the outstanding claims in the fishery sector and tourism sector had been settled on the basis of the method of assessment used by the 1971 Fund's experts, and the amount of the shipowner's claim for the costs of the measures to remove the ship and related operations had been clarified. In view of these developments, and as authorised by the

Executive Committee, the Director decided that the 1971 Fund should pay all settled claims in full (to the extent that they had not already been paid).

Claims for compensation

Nearly all claims relating to clean-up operations have been settled. These claims have been paid in full (approximately Won 19 700 million (£9.8 million)) by the shipowner and his insurer, the United Kingdom Mutual Steamship Assurance Association (Bermuda) Limited (UK Club), who have presented subrogated claims to the 1971 Fund.

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. At the rate of exchange applicable at that time, this payment represented less than 25% of the amounts for which the Club had presented sufficient supporting documentation.

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

In April 1998 the shipowner filed two additional claims with the limitation court, one for the cost of post-spill environmental studies for Won 1 140 million (£570 000) and the other for costs totalling Won 135 million (£59 000) associated with additional clean-up undertaken by the shipowner in early 1998. Both the studies and the clean-up related to the spills from both the *Sea Prince* and the *Honam Sapphire* incidents (see page 73).

The post-spill environmental studies involved the measuring of petroleum hydrocarbons in sea water, sediments and marine products. Although the studies were reported to be for the purpose of obtaining information which could be used for the restoration of the polluted areas, the contracts between the shipowner and the Korea Maritime Institute and Seoul National University (the bodies which undertook the studies) clearly stated that the studies were not to be conducted so as to relate to any form of compensation arising out of the incidents.

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

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

In June 1998 the 1971 Fund's technical experts reassessed a number of claims presented by the owners of onshore aquaria and hatcheries for stock losses, allegedly caused by the oil spilled

from the *Sea Prince*. These claims, which totalled Won 4 734 million (£2.7 million), had been initially assessed at zero pending further evidence. Subsequent investigations by the experts indicated, however, that while there was no evidence of the alleged stock losses, the owners of the facilities had undertaken a number of prudent preventive measures at the time of the incident, such as monitoring their sea water intakes and cleaning or replacing filters. The experts assessed the costs of these measures at Won 76 million (£38 000). Settlements were reached with most of these claimants in accordance with the experts' assessment.

The experts also completed the assessments of the last outstanding claims in the fishery sector, which related to alleged loss of earnings suffered by the owners of 159 fishing vessels who were members of a Fishery Co-operative Association. The claims, which totalled Won 73 million (£36 000), were assessed in respect of the owners of 129 vessels at Won 18 million (£8 000). Settlements were reached with those claimants for the assessed amounts. The claims by the owners of the remaining 30 vessels were considered inadmissible, since the owners had failed to submit valid licences.

The most important fishery claims for which settlement agreements have not been reached are those relating to caged fish submitted by members of another Fishery Co-operative Association, for a total of Won 1 181 million (£590 000). These claims have been assessed by the 1971 Fund's experts at Won 148 million (£74 000).

The shipowner has presented a claim for Won 20 900 million (£10.5 million) relating to the cost of the measures associated with the work carried out under contract to remove the ship and related operations. The shipowner has not yet presented sufficient documentation in support of this claim to enable the 1971 Fund to assess it.

Limitation proceedings

The limitation amount applicable to the *Sea Prince* is 14 million SDR, corresponding to Won 24 000 million (£12.0 million) at the exchange rate applicable on 31 December 1998. The limitation fund has not yet been constituted and the limitation amount in Won has therefore not yet been fixed.

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 claims totalling Won 120 000 million (£43 million) had been submitted. These included clean-up claims totalling Won 44 500 million (£16 million), fishery claims totalling Won 70 700 million (£25 million) and claims relating to tourism and agriculture for Won 4 600 million (£1.6 million). The 1971 Fund submitted claims subrogated from the UK Club in the amount of £2 million. The shipowner filed a claim for the cost of the measures associated with the work carried out under contract to remove the oil and the vessel and related operations for US$24.8 million (£15.1 million).

At a hearing held in January 1997 the shipowner, after consultation with the UK Club and the 1971 Fund, submitted a report prepared by the International Tanker Owners Pollution Federation Ltd (ITOPF). This report contained criticism of the assessment made by the claimants' experts. In the report ITOPF demonstrated that the assessment of the claims undertaken by the claimants' experts was largely subjective and that the claimants had provided little or no supporting documentation.

At a hearing in February 1997 the administrator appointed by the Court submitted an opinion together with a list of the claims accepted by him. The administrator stated that, due to the lack of objective supporting material, he had experienced difficulties in assessing the claims. The

administrator accepted most of the amounts claimed without any significant modification, however, and did not take into account the above-mentioned ITOPF report. The judge requested that the UK Club and the 1971 Fund should submit comments on the administrator's opinion, whereupon the Court would request the claimants to provide supporting documents.

In June 1998 the Court delivered a decision accepting the assessments made by the 1971 Fund's experts for the unsettled fishery and non-fishery claims. The Court rejected the claims filed by the shipowner for post-spill environmental studies and additional clean-up. The shipowner lodged opposition against the decision. The legal action taken by 19 owners of caged fish facilities for Won 95 million (£48 000) was part of the limitation proceedings, but the claimants have filed a separate action against the 1971 Fund.

There are two other disputes arising from the limitation proceedings. The shipowner's claim for clean-up costs was assessed by the Court at Won 3 541 million (£1.8 million). The UK Club has submitted a claim composed of two elements, both claimed on the basis of subrogation. The Club has claimed firstly for payments it made to mainly non-Korean contractors for US$8.8 million plus ¥3 985 753 (or approximately £5 330 000). Secondly the Club has claimed for reimbursements made to the shipowner for payments made by the latter to mainly Korean contractors for US$22 076 954 (£13 270 000). Since the 1971 Fund has made an account payment to the Club of £2 million, the total amount of the UK Club's claim in the limitation proceedings is approximately £16.6 million. The 1971 Fund has lodged objection to the Court's decisions concerning these items on the grounds of lack of supporting documentation.

The question has arisen as to whether the UK Club's claim has become time-barred. This issue will be considered by the Executive Committee at its February 1999 session.

Claim for indemnification

The shipowner and the UK Club have claimed indemnification under Article 5.1 of the 1971 Fund Convention for 5 667 000 SDR (£4.8 million). The question has arisen whether this claim has become time-barred.

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 near Koeje island (Republic of Korea). Two of the tanker's cargo tanks were breached and about 40 tonnes of oil was spilled.

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. As a result of the clean-up operations, large quantities of oily waste were collected and disposed of.

Claims for compensation

Claims for clean-up operations totalling Won 760 million (£380 000) have been settled at Won 684 million (£457 000). The claims have been paid partly by the shipowner's P & I insurer, partly by the 1971 Fund.

A fishery co-operative presented claims for losses in the fishery and mariculture sector for Won 19 149 million (£9.6 million). These claims were assessed by the 1971 Fund's experts at Won 474 million (£237 000).

The owners of set nets and fish farms presented claims separately for Won 644 million (£322 000) for losses already suffered and for an additional Won 1 618 million (£809 000) for anticipated future losses. The claimed amounts were later reduced to Won 429 million (£214 000) for set nets and Won 669 million (£334 000) for fish farms, excluding future losses. These claims have been assessed by the experts engaged by the Club and the 1971 Fund at Won 36 million (£18 000). Most of these claims have been settled at the amounts assessed by these experts.

The only fishery claims for which settlements have not yet been reached are three claims relating to common fishing grounds and one claim in respect of fish cage culture. These claims, which total Won 2 267 million (£1.1 million), have been assessed by the Fund's experts at Won 79 million (£40 000).

Local businesses in the tourism sector along the affected beaches on Koeje island presented claims for Won 2 592 million (£1.3 million) relating to loss of income. These claims were settled at Won 269 million (£97 000).

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 shipowner's insurer by payment of the limitation amount of Won 21 million (£10 500) to the Court.

Thirteen 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 (£3.5 million). At a hearing held in October 1998, the 1971 Fund informed the Court that settlement negotiations were in the final stage.

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, ten kilometres from the mainland. Three cargo tanks and the engine room were reported to have been breached as a result of the grounding.

Removal of oil from the wreck

In 1997 the Korean Research Institute of Ships and Ocean Engineering presented a report on a survey of the *Yuil N°1*. The report stated that some tanks still contained oil, that corrosion to damaged shell plating would cause release of oil from the wreck within ten years, and that the removal of the remaining oil should therefore be carried out as soon as possible.

At the request of the Korean Government, an expert from a London firm of marine surveyors engaged by the 1971 Fund participated in discussions concerning the most appropriate method to be used for removing the oil from the *Yuil N°1* and the *Osung N°3* (see also page 95).

The Director informed the Korean authorities that the 1971 Fund agreed that the oil should be removed from both wrecks as soon as possible.

A contract was concluded in May 1998 between the Korean Marine Pollution Response Corporation (KMPRC) and a Dutch salvage company (Smit Tak BV) for the removal of the oil from both wrecks. Under the contract the oil would first be removed from the *Yuil N°1* and then from the *Osung N°3*.

The operation to recover the oil from the *Yuil N°1* commenced on 24 June 1998. Initially, a number of technical difficulties arose, but once they were overcome the oil removal proceeded smoothly.

As the wrecks were located at depths of 70 metres, a sophisticated remote operated drilling and pumping system was used to drill holes in the oil tanks and connect valves and hoses so that the oil could be pumped to the surface. On completion of the pumping of the oil, each tank was washed with hot water. The recovered oil and the washing water were stored in a barge and then pumped ashore to a slop reception facility. Smit Tak was responsible for all underwater operations and KMPRC for the operation of the necessary barges, tugs and oil spill recovery vessels and a shore base.

The operations were completed on 31 August 1998. Some 670 m^3 of oil was recovered from the tanks of the *Yuil N°1*. The experts engaged by the 1971 Fund attended throughout the operation as observers.

Level of payments

In view of the uncertainty concerning the total amount of the claims arising out of the *Yuil N°1* incident, the Executive Committee had decided in 1995 that the 1971 Fund's payments should for the time being be limited to 60% of the established damage suffered by each claimant.

The Korean delegation informed the Committee in April 1998 that the question of whether the wreck should be removed would not be considered until a later stage. That delegation stated that the Korean Government was prepared to make an undertaking to the effect that, if and to the extent that a claim by the Korean Government for the cost of the removal of the wreck of the *Yuil N°1* (or that of the *Osung N°3*) were to result in the total amount of the established claims arising out of either incident exceeding the maximum amount of compensation payable under the 1969 Civil Liability Convention and the 1971 Fund Convention (60 million SDR), the Government would not pursue that claim, in its entirety or in part, against the 1971 Fund.

At its April 1998 session the Executive Committee considered that if, in the view of the 1971 Fund's experts, the removal of the oil from the *Yuil N°1* were completed successfully without any significant release of oil, and only a minor quantity of oil remained in the wreck, there would no longer be any risk of the total amount of the claims exceeding 60 million SDR. The Committee therefore decided to authorise the Director to increase the payments in respect of the *Yuil N°1* incident to 100% of the established claims, once he was satisfied that these conditions had been fulfilled, provided that the Korean Government had given an undertaking as set out above.

In September 1998 the 1971 Fund received the requisite undertaking from the Government of the Republic of Korea signed by the Minister of Marine Affairs and Fisheries. After consultation with the 1971 Fund's experts, the Director considered that the conditions for an increase in the level of the payments laid down by the Executive Committee had been fulfilled. He therefore decided to increase the 1971 Fund's payments from 60% to 100% of each established claim.

Claims for compensation

Oil removal operation

During the period July - December 1998, KMPRC submitted a series of claims for compensation in respect of the oil removal operation from both wrecks, totalling Won 7 429 million (£3.7 million) in respect of the *Yuil N°1* operation. The costs relating to both the *Yuil N°1* and the *Osung N°3* operations, such as the cost of mobilisation and demobilisation of craft and equipment, were apportioned on a 50:50 basis between the two cases.

During the period July - December 1998, the 1971 Fund paid Won 6 615 million (£3.1 million) to KMPRC in respect of the *Yuil N°1* operation.

The claimed items which have so far not been approved, totalling Won 517 million (£260 000) in respect of both operations, relate mainly to the cost of KMPRC's personnel and general overhead costs.

Further claims by KMPRC are expected to be in the region of Won 600 million (£300 000) for both operations.

Other claims

So far claims have been agreed for a total of Won 16 024 million, out of which Won 12 393 million relates to clean-up operations and Won 3 631 million to fishery claims. Payments made amount to Won 11 943 million (£4.3 million) including interest, out of which the 1971 Fund's payments total Won 10 015 million (£3.6 million) and the balance the shipowner's P & I insurer's payments. Except for the claim of the shipowner's insurer and a few fishing claims, the claimants have received the balance of 40% of their claims following the Director's decision to increase payments to 100%.

Fishing claims originally totalling Won 25 031 million (£12.5 million), which have been assessed by the 1971 Fund's experts at Won 272 million (£135 000), have not yet been settled. These claims have been filed in court for a reduced amount of Won 12 581 million (£6.3 million). Further fishing claims originally totalling Won 15 530 million (£7.8 million) have been filed in court for Won 2 448 million (£1.2 million), but these claims have not yet been assessed by the Fund's experts. The claims in court total Won 14 329 million (£7.2 million).

Limitation proceedings

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 (£125 000).

Fishery co-operatives have presented claims totalling Won 60 000 million (£30 million) to the Court.

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

In November 1997 the Court decided to adopt the administrator's proposal to accept one third of the amounts claimed as fishery damage. The 1971 Fund has lodged an opposition to the Court's decision.

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. The investigation revealed that the initial grounding was caused by the master of the *Yuil N°1* having chosen to navigate through a narrow and dangerous passage between two islands which resulted in the vessel grounding on a small rocky island.

The hull insurer of the *Yuil N°1* took legal action in the Republic of Korea against the Korean Government and the owner of the tug in respect of negligence during the refloating and towing operation for the purpose of recovering the amount it had paid for the damage to the hull (Won 1 173 million or £803 000). The Court of first instance rendered its judgement in August 1997, rejecting the hull insurer's action. The hull insurer appealed against the judgement, but the Court of Appeal endorsed the position of the Court of first instance that there was no negligence on the part of the tug or naval vessel during the operations and confirmed the rejection of the hull insurer's claim.

In the light of the results of the investigation into the cause of the incident, the Executive Committee decided in October 1997 that there were no grounds on which the 1971 Fund could oppose the shipowner's right to limit his liability. In view of the Court of Appeal's judgement, the Executive Committee further decided in October 1998 that there were no grounds on which the 1971 Fund could take a successful recourse action against third parties.

HONAM SAPPHIRE

(Republic of Korea, 17 November 1995)

The incident

During berthing manoeuvres at the oil terminal in Yosu (Republic of Korea), the fully laden Panamanian tanker *Honam Sapphire* (142 488 GRT) struck a fender, puncturing a tank. An unknown quantity of 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 offshore clean-up operations were led by the Marine Police. The onshore impact was in most areas comparatively light and the onshore clean-up operations were completed in many areas by early January 1996, although in the most heavily polluted areas the operations continued until March 1996.

It was maintained that oil still remained on some shorelines, and the Marine Police requested the shipowner to carry out further clean-up activities. On the basis of the advice of its experts, the 1971 Fund informed the Marine Police that, in the Fund's view, it would not be reasonable to carry out such operations and that the cost of such activities would not be admissible for compensation.

Claims for compensation

Claims for clean-up costs were presented by various local authorities and contractors for a total amount of Won 9 727 million (£4.9 million). Fishery-related claims were submitted totalling Won 49 115 million (£25 million).

The settlements reached so far total Won 10 336 million (£5.2 million). Claims totalling Won 19 562 million (£9.8 million) are being examined.

It is unlikely that the total amount of the established claims will reach the limitation amount applicable to the *Honam Sapphire*, *viz* 14 million SDR (£11.8 million). For this reason, it is unlikely that the 1971 Fund will be called upon to make any payments in respect of this incident.

Limitation proceedings

The shipowner commenced limitation proceedings in September 1996.

At a court hearing held in February 1997 the shipowner, after consultation with his insurer and the 1971 Fund, submitted a report prepared by the International Tanker Owners Pollution Federation Ltd (ITOPF). This report contained criticism of the assessment made by the claimants' experts. In the report ITOPF demonstrated that the assessment of the claims undertaken by the claimants' experts was largely subjective and that little or no supporting documentation had been provided.

In December 1998, the Court rendered a decision on the assessment of the claims in the limitation proceedings. The total amount accepted by the Court is Won 1 657 million (£830 000) plus US$11.4 million (£6.9 million).

SEA EMPRESS

(United Kingdom, 15 February 1996)

The incident

The Liberian registered tanker *Sea Empress* (77 356 GRT), which was laden with more than 130 000 tonnes of crude oil, ran aground in the entrance to Milford Haven in south-west Wales (United Kingdom) on 15 February 1996, resulting in an initial loss of around 2 000 tonnes of crude oil. Although quickly refloated, the tanker grounded a number of times during persistently bad weather. On 21 February, the vessel was refloated and taken alongside a jetty inside the Haven where the remaining 58 000 tonnes of cargo was discharged. It was 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.

Clean-up operations

The Marine Pollution Control Unit (MPCU) of the Department of Transport was responsible for directing the offshore clean-up response and the local authorities organised shoreline clean-up activities. 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.

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.

Fishing ban

Inshore fishermen in the affected area imposed a voluntary ban on fishing from 21 February 1996. On 28 February 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 which extended 10 - 30 kilometres offshore. On 20 March a statutory ban was also imposed on salmon and migratory trout in all freshwater rivers and streams which flow into a specific area of the sea. 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.

The ban was lifted gradually for various species and parts of the affected area during the period 3 May - 11 September 1997.

Claims handling

The shipowner's insurer, Assuranceföreningen Skuld (Skuld Club), and the 1971 Fund together established a Claims Handling Office in Milford Haven to receive and assess claims and forward them to the Skuld Club and the Fund for examination and approval.

Since there were only relatively few outstanding claims, the Claims Handling Office closed to the public in February 1998.

Level of compensation payments

Initially the 1971 Fund limited compensation payments to 75%, since it was considered that the total amount of the claims might exceed the total amount of compensation available under the 1969 Civil Liability Convention and the 1971 Fund Convention.

Since the cargo carried by the *Sea Empress* was owned by a party to CRISTAL (Contract Regarding a Supplement to Tanker Liability for Oil Pollution), a total of at least 19 million SDR (£16 million) is available under that Contract for payment by Cristal Ltd in respect of the *Sea Empress* incident. However, Cristal Ltd is a payer of last resort, so all claimants must first pursue their claims against other persons who are under an obligation to pay compensation, ie against the shipowner/P & I Club and the 1971 Fund.

Sea Empress - beach oil recovery
(photograph: Murray Fenton)

In October 1997 the United Kingdom Government informed the 1971 Fund that, if and to the extent that the claim by the United Kingdom Government, estimated at £11 - 11.5 million, were to result in the total amount of the established claims exceeding the maximum amount of compensation payable under the 1969 Civil Liability Convention and the 1971 Fund Convention (60 million SDR), the Government would not pursue its claim, in its entirety or in part, against the 1971 Fund and would, instead, pursue it against Cristal Ltd.

In the light of the position taken by the United Kingdom Government and the amount available under the CRISTAL contract, the Executive Committee decided in October 1997 to increase the 1971 Fund's payments to 100% of the damage actually suffered by each claimant as assessed by the experts engaged by the Fund and the Skuld Club.

Claims for compensation

General situation

As at 31 December 1998, 1 007 claimants had presented claims for compensation totalling £44 million. Claims have been approved for a total of £15.4 million. Payments have been made to 728 claimants, totalling £15.2 million, of which £6.9 million by the Skuld Club and £8.3 million by the 1971 Fund.

Claims for compensation will become time-barred on or shortly after 15 February 1999.

Claims for clean-up operations

The United Kingdom Government submitted a claim for £11.4 million for the clean-up operations carried out under the auspices of MPCU. This claim is being assessed.

Local authorities in Wales filed claims totalling £7.1 million. As at 31 December 1998, the Skuld Club and 1971 Fund had paid £5.2 million in compensation to these authorities.

Four county councils in Ireland submitted claims totalling Irish pounds 72 734 (£71 000). These claims were assessed at I£33 282 (£29 000), pending clarification of some items from the claimants.

The United Kingdom Environment Agency submitted a claim for £400 000 for costs incurred by the National Rivers Authority in respect of staff costs, transport and equipment hire.

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, presented a claim for £825 000 in respect of costs incurred for the provision of booms, skimmers and spill response craft in the clean-up operations. Texaco, which assisted in the clean-up response and treatment and disposal of oily waste filed a claim for £900 000.

Various trusts and charities claimed compensation totalling £97 600 for bird rescue, cleaning and surveys. As at 31 December 1998 £18 600 has been paid. Further amounts are the subject of queries.

The French Government claimed compensation for FFr1.5 million (£150 000) in respect of the provision of two vessels which assisted in offshore pollution response operations. This claim was settled at FFr1.2 million (£132 000). The claim was not accepted in full, since the 1971 Fund considered that the rate claimed for one of the vessels was too high.

Property claims

A total of 243 claims for contamination to property have been submitted. They relate to contamination of boats and moorings, buildings contaminated by wind-blown oil, damage to carpets of shops and houses located on the sea front of the most severely polluted areas, damage to clothing and equipment worn by personnel involved in the clean-up operations, and damage to private roads caused by the passage of heavy vehicles involved in these operations.

Claims have been approved and paid for a total amount of £282 000. Thirty-two claims totalling £84 500 have been rejected.

Fishery claims

Claims were presented by 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. Claims from 132 fishermen have been approved and paid for a total of £5.7 million.

Most fishermen have agreed with the loss of income assessments made by the Skuld Club and the 1971 Fund. However, nine fishermen involved in catching whelks and crustaceans have not accepted the assessments as a full and final settlement of their claims. These claims total £1.6 million, and interim payments have been made totalling £953 000.

Some fishermen also claimed for lost fishing gear. Eight claims were approved and payments totalling £38 000 were made in respect of these claims. Fifteen claims, totalling £62 000, were rejected. These claims related to fishing gear allegedly lost or damaged as a result of the clean-up operations. Some of these claimants were unable to show that they had any fishing gear in the water immediately before the spill, since they had not been fishing at the time. Others alleged that they had lost pots in areas where no clean-up operations or other activities relating to the oil spill were carried out.

Fourteen fish and shellfish processing companies and merchants claimed compensation for losses suffered as a result of having been deprived of raw material due to the fishing ban. So far, payments totalling £1.7 million have been made to ten of these companies. Eight of these claimants, whose claims total £4.4 million, have not accepted a full and final settlement of their claims on the basis of the assessments.

Claims have been received from seven fishermen for £110 000 relating to allegedly reduced catches of whitefish and squid. Five of these fishermen are based in areas of the Bristol Channel which were not affected by the oil from the *Sea Empress*. The Skuld Club and the 1971 Fund have requested that these fishermen present evidence to support the alleged reduction in catches and to show that the alleged reduction in catches was the result of the *Sea Empress* incident.

Claims from the tourism industry and related businesses

Claims were received from 488 operators in the tourism industry. The majority of the claims are from small businesses providing bed and breakfast or self-catering accommodation. Claims from 359 operators in this category have been approved for a total of £2 million.

Some 100 claims in the tourism sector have been rejected, since they did not fulfil the criteria for admissibility laid down by the Assembly and Executive Committee or it had not been shown that they had suffered any loss as a result of the *Sea Empress* incident.

Claim submitted by medical centre

The Executive Committee considered a claim for £3 800 presented by five doctors operating a medical centre. It was noted that the claim comprised alleged loss of income due to a reduced number of temporary residents (for whose treatment the National Health Service would have made additional payments to the medical centre), and additional work as a result of an increased number of patients treated for conditions which were allegedly consequent upon the *Sea Empress* incident (for whose treatment no additional payments were received by the practice).

The Committee recognised that the medical centre derived a part of its income from tourism, though less than 11.5% in recent years. The Committee considered that, in view of the medical centre's limited dependency on income from temporary residents (including tourists), there was not a sufficient degree of proximity between the *Sea Empress* incident and the alleged losses. For this reason the Committee decided that the claim should be rejected. The Committee took the view that, in any event, the claimants had not shown that the very small reduction in income from temporary residents was attributable to the *Sea Empress* incident, and that the additional workload allegedly resulting from the *Sea Empress* incident should be considered as being covered by the general reimbursement under the National Health Service, as for example would be an increased workload as a result of an epidemic or industrial accident.

Claims for fees

One hundred and twenty-two claims for fees have been received in respect of work carried out by a firm of claims adjusters on behalf of claimants. These claims, totalling £554 000, are being assessed in accordance with the 1971 Fund's policy, taking into account the necessity for the claimant to use expert advice, the usefulness and quality of the work carried out by the expert, the time needed and the appropriate rate for such work.

Investigations into the cause of the incident and related issues

An investigation into the *Sea Empress* incident was carried out by the Marine Accident Investigation Branch (MAIB) of the United Kingdom Department of Transport. The purpose of the investigation was to determine the circumstances and causes of the incident, with the aim of improving the safety of life at sea and avoiding accidents in the future. The report of the investigation, published in March 1997, did not attempt to apportion liability or blame, except insofar as was necessary to achieve the fundamental purpose. The MAIB report concluded that the cause of the initial grounding was pilot error and that this was due in part to inadequate training and experience in the pilotage of large tankers.

The Commissioner of Maritime Affairs of the Republic of Liberia published a report of the investigation into the grounding of the *Sea Empress*. The report concluded that the grounding had occurred because of pilot error and because there were insufficient control procedures on the part of the harbour/pilot authorities.

In the light of the documentation provided by the shipowner, and legal and technical advice from the 1971 Fund's experts, the Executive Committee decided in April 1998 that there were no grounds for challenging the shipowner's right to limit his liability, nor for opposing the shipowner's right of indemnification under Article 5.1 of the 1971 Fund Convention.

The shipowner has commenced limitation proceedings and has taken legal action against the 1971 Fund to prevent his claim for indemnification under Article 5.1 of the 1971 Fund Convention from becoming time-barred.

The Executive Committee has instructed the Director to consider further whether there is a possibility for the 1971 Fund of taking recourse action against third parties in order to recover the amounts paid by it in compensation.

Criminal proceedings

Following the incident criminal prosecutions were commenced by the United Kingdom Environment Agency against two defendants, namely the Milford Haven Port Authority (MHPA) and the Harbour Master in Milford Haven at the time of the incident. Both defendants faced a charge that they caused polluting matter, namely crude oil and bunkers, to enter controlled waters, contrary to Section 85(1) of the Water Resources Act 1991, and that the discharge of crude oil and bunkers amounted to public nuisance. More particularly, the prosecution alleged that MHPA failed in its duties under the Milford Haven Conservancy Act 1983 properly to regulate navigation in the Haven and properly to prevent or reduce the risk of discharge of oil, by inadequately regulating or managing the navigation and/or pilotage of large deep-draughted oil tankers. It was also alleged that, under the Pilotage Act 1987, MHPA failed to provide proper pilotage services for the Haven in that it caused an insufficiently trained and qualified pilot to perform an act of pilotage, alone, on the *Sea Empress*, thereby endangering the marine and coastal environment and posing a danger to public safety. The Harbour Master was accused of failing in his duty safely to control and regulate shipping at the entrance to and within the port.

The criminal trial is due to begin in January 1999. The Director intends to follow closely the criminal proceedings.

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 Theodori (Greece) some 40 kilometres west of Piraeus. Rocky shores and stretches of beach were oiled, seven fish farms were affected and the hulls of pleasure craft and fishing vessels in the area sustained oiling.

Clean-up operations were undertaken by the staff of the terminal and by contractors engaged by the shipowner, the Ministry of Merchant Marine and the local authorities.

The limitation amount applicable to the *Kriti Sea* is estimated at Drs 2 241 million (£4.7 million). The shipowner established the limitation fund in December 1996 by means of a bank guarantee.

The shipowner and his P & I insurer, and the administrator appointed by the Court to examine claims against the limitation fund have been notified of claims totalling Drs 4 054 000 (£8.2 million). The administrator is expected to report on his examination of the claims in the near future.

It is anticipated that the principal clean-up contractor's claim will be settled at about £1.4 million. It is expected that all claims will be settled for a total amount significantly lower than the limitation amount applicable to the *Kriti Sea*.

N°1 YUNG JUNG

(Republic of Korea, 15 August 1996)

The incident

While the Korean sea-going barge *N°1 Yung Jung* (560 GRT) 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. Clean-up operations were carried out by three contractors engaged by the shipowner. The wreck of the *N°1 Yung Jung* was removed and the remaining oil was transhipped to another vessel.

The *N°1 Yung Jung* was not entered in any P & I Club, but had liability insurance of US$1 million (£585 000) per incident.

Claims for compensation

Claims relating to clean-up operations, totalling Won 871 million (£435 000), were presented by the shipowner, the Pusan Marine Police and four clean-up contractors. These claims were settled at Won 690 million (£302 000).

A salvage company presented a claim for Won 77 million (£34 000) for inspection of the bottom of the *N°1 Yung Jung* and videotaping carried out by divers. These operations had a dual purpose, ie they were undertaken partly for the re-floating of the vessel and partly to prevent or minimise pollution damage. After negotiations, the claim was settled at Won 20 million (£9 000). It was agreed that 50% would be paid under the 1969 Civil Liability Convention and the 1971 Fund Convention and 50% by the shipowner outside the Conventions.

A claim relating to operations to tranship the cargo and carry out temporary repairs to the hull of the *N°1 Yung Jung* for Won 70 million (£30 000) was presented to the Pusan District Court. The Court accepted this claim for Won 49 million (£21 000). After negotiations between the 1971 Fund and the shipowner, it was agreed that 50% of that amount should be considered as relating to preventive measures and 50% to salvage.

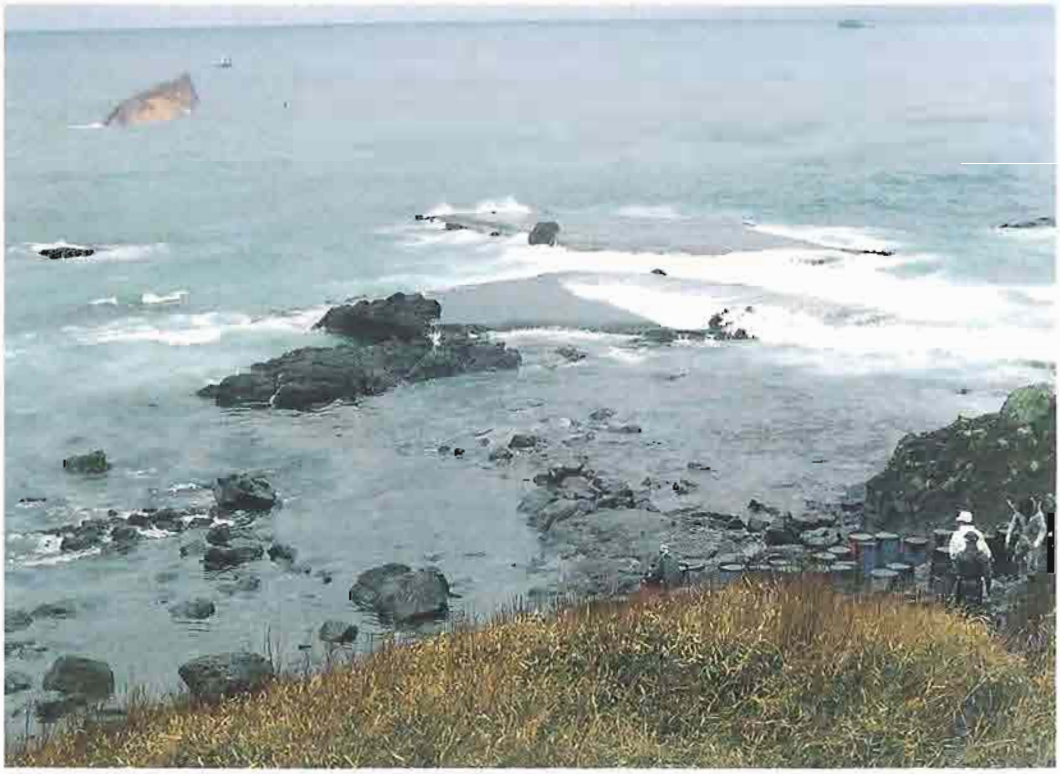
The owners of 25 seafood restaurants submitted claims totalling Won 13 million (£5 700). A fishery co-operative presented a claim for loss of income for Won 105 million (£45 000). These claims were assessed by the 1971 Fund's technical experts at Won 6 million (£2 700) and Won 17 million (£7 130), respectively. The claims were settled at the assessed amounts.

Limitation proceedings

The shipowner commenced limitation proceedings in August 1997. The shipowner's insurer presented a letter of guarantee for the limitation amount to the Court.

In May 1998 the Pusan District Court determined the limitation amount applicable to the *N°1 Yung Jung* at Won 122 million (£60 000).

Some of the claims referred to above had been paid by the 1971 Fund, whereas the shipowner's insurer had paid the other claims. In September 1998 the 1971 Fund paid to the insurer an amount of £262 373 (the sterling equivalent of Won 615 million) corresponding to the amount which the insurer had paid in excess of the limitation amount applicable to the *N°1 Yung Jung* (including interest). The 1971 Fund also paid indemnification to the shipowner under Article 5.1 of the 1971 Fund Convention, Won 28 million (£12 000).



Nakhodka - bow section and polluted coastline
(photograph: General Marine Surveyors)

NAKHODKA

(Japan, 2 January 1997)

The incident

The Russian tanker *Nakhodka* (13 159 GRT), proceeding from Shanghai (China) to Petropavlovsk (Russian Federation) with a cargo of 19 000 tonnes of medium fuel oil, broke up in heavy seas some 100 kilometres north-east of the Oki islands (Japan). The tanker broke into two sections, resulting in a spill of some 6 200 tonnes of oil. The stern section sank soon after the incident, with an estimated 10 000 tonnes of cargo on board. The upturned bow section, which may have contained up to 2 800 tonnes of cargo, drifted towards the coast and the bow section grounded on rocks some 200 metres from the shore, near the town of Mikuni in Fukui Prefecture. Following the grounding of the bow section, a substantial quantity of oil was released, causing heavy contamination of the adjacent shoreline.

The stern section is lying at a depth of 2 500 metres, some 140 kilometres from the nearest coast, but is not considered to be a significant threat to coastal resources. An investigation by a deep-sea unmanned submarine has shown that oil is leaking from two tanks which together contained some 2 480 m³. A committee set up by the Japanese Government concluded that current technology does not offer any practicable methods to prevent such release. Since the release did not pose a significant threat of pollution, no action other than the continued monitoring of the oil reaching the surface was proposed.

The operation to remove the oil from the bow section was completed on 25 February 1997. In total some 2 830 m³ of oil/water mixture was removed. The Japanese authorities simultaneously ordered the construction of a temporary 175 metre-long causeway which, with a large crane, would enable the removal of the oil by road. However, this option was only used to remove the last 380 m³ of oil/water mixture. The causeway was later dismantled and the construction material removed from the site. In May 1997 a Japanese salvage company engaged by the shipowner removed the bow section of the *Nakhodka* on to a barge and transported it to a scrapyard for scrapping.

Clean-up operations

Although much of the oil which was lost when the ship broke up dispersed naturally at sea, several hundred tonnes of emulsion stranded at various locations over a distance of more than 1 000 kilometres covering ten prefectures.

A contract was signed on behalf of the shipowner with the Japan Marine Disaster Prevention Centre (JMDPC) to organise the clean-up operations by using commercial clean-up contractors. In addition, coastal booms and skimmers were provided by the Petroleum Association of Japan. A considerable number of vessels belonging to the Maritime Safety Agency of Japan and the Japan Self Defence Force, vessels owned or chartered by Prefectural Governments, fishing boats belonging to local fishermen, recovery systems from the East Asia Response Ltd (EARL) stockpile in Singapore and vessels belonging to the Russian Ministry of Merchant Marine were engaged in oil recovery operations.

By 30 May 1997 all prefectures affected by the spill had made public declarations that the clean-up operations in their respective prefectures had been completed.

Clean-up operations both at sea and on the shoreline generated an estimated 40 000 tonnes of oily waste. This waste was transported to disposal facilities throughout Japan by ship, rail and road. Lightly oiled sand was buried at local industrial land fill sites.

Claims handling

The 1971 and 1992 Funds, the shipowner and his P & I insurer, the United Kingdom Mutual Steamship Assurance Association (Bermuda) Ltd (the UK Club), jointly established a Claims Handling Office in Kobe. Due to the enormous volume of claim documents, the office is facing a very heavy workload. It currently employs eight surveyors and eight support staff. Additional staff will probably be recruited in early 1999.

Claims for compensation

General situation

Four hundred and fifty-three claims totalling ¥34 709 million (£185 million) have been received. The claims situation is summarised in the table reproduced opposite.

The total payments made by the 1971 Fund to claimants amounted to ¥5 389 million (£24 million) as at 31 December 1998. The shipowner/UK Club have made payments totalling US$868 000 (£525 000).

Details of claims submitted

Claims from JMDPC and 54 contractors engaged in clean-up operations under the JMDPC umbrella (items (a) and (b) in the table opposite) have been submitted. These claims, which total ¥8 320 million (£44 million), include costs for the disposal of oily waste. On the basis

Claims situation as at 31 December 1998

Claim				Claims submitted			Claims paid		
				Number	Amount		Number	Amount	
					US$ <1>	Yen (million)		US$ <1>	Yen (million)
Clean-up costs	(a)	JMDPC	- Operations carried out by JMDPC	2		267	1		<2> 50
	(b)		- Contractors under JMDPC	54		8 053	48		<2> 2 414
	(c)		- Fishery Co-operative Associations	1		2 794	1		<2> 1 299
	(d)		- Japanese Government Agencies	11		1 519	0		0
	(e)		- Prefectures and Municipalities	10		6 939	9		<2> 1 444
	(f)	Electricity companies		6		2 629	0		0
	(g)	Other entities		7		192	2		57
	(h)	EARL		1	542 593	61	1	542 593	<3> 61
	(i)	Russian authorities		2	3 284 322	370	1	325 000	<3> 37
	Sub-total			94		22 824	63		5 362
Loss of income: fishery	(j)			9		5 239	1		<2> 49
Causeway construction and removal	(k)	JMDPC		1		2 333	0		0
Removal of oil from ship	(l)	JMDPC and three contractors		4		1 312	0		0
Aquarium	(m)			1		7	1		<2> 4
Tourism	(n)			344		2 994	8		73
TOTAL				453		34 709	73		5 488
						£185 million			£24 million

<1> Amounts in US$ converted into Yen on the basis of the rate of exchange at 31 December 1998
<2> Includes provisional payments
<3> Payments made by the shipowner/UK Club

of preliminary assessments, the 1971 Fund has made provisional payments totalling ¥2 464 million (£13.2 million), representing 60% of the minimum admissible amount assessed by the experts.

A claim has been received from JMDPC for the participation of members of the National Fishery Federation (which represents nine Prefecture fishery co-operative associations with some 68 000 members) in the clean-up operations (item (c) in the table). After a preliminary examination of this claim, the 1971 Fund has made provisional payments totalling ¥1 299 million (£6.9 million).

JMDPC has claimed compensation relating to the cost of constructing a causeway to the grounded bow section and subsequently removing it (item (k) in the table) and for the cost of removing oil from the bow section (item (l) in the table). This claim totals ¥3 645 million (£18.2 million).

The Government of Japan has made funds available to JMDPC enabling the latter to pay those who participated in the clean-up operations, pending payments from the shipowner/UK Club and the 1971/1992 Funds.

The Japanese Government has claimed (item (d) in the table) for additional costs incurred by MSA for aerial surveillance and offshore clean-up operations, by the Self Defence Force for aerial surveillance, offshore clean-up operations and assistance in the removal of the oil from the shoreline, and by the Department of Transport for the cost of clean-up operations. These claims total ¥1 519 million (£8.1 million).

Ten prefectures have submitted claims (item (e) in the table) for costs incurred in the clean-up operations. On the basis of a preliminary examination of these claims, the 1971 Fund made provisional payments of ¥1 035 million (£4.8 million) in October 1997, of ¥259 million (£1.2 million) in December 1997 and of ¥150 million (£755 000) in February 1998.

Six claims totalling ¥2 629 million (£14.0 million) have been received from electricity companies (item (f) in the table). These claims relate to the cost of clean-up operations and preventive measures in respect of their power stations.

A claim by EARL for the provision of recovery systems (item (h) in the table) was settled at US$543 000 (£337 000). The settlement amount was paid in full by the shipowner.

A claim by the Russian authorities for the cost of the participation in clean-up operations of two of the vessels under contract with the shipowner (item (i) in the table) was settled at US$325 000 (£202 000). The settlement amount was paid in full by the shipowner.

A claim for US$2 960 000 (£1.7 million) relating to further participation of these two Russian ships and the participation of one other Russian ship was submitted to the IOPC Funds. This claim was rejected by the IOPC Funds on the grounds that the claim related to operations which were not technically reasonable from an objective point of view. By the end of January 1997 most of the spilt oil had reached the shoreline. Consequently the quantity of oil remaining at sea and available for recovery had reduced to such an extent that the experts engaged by the UK Club and the IOPC Funds concluded that it was no longer reasonable to maintain the scale of the operation at sea.

Claims for loss of income suffered by fishermen have been presented for ¥5 239 million (£28 million) (item (j) in the table).

On the basis of a preliminary assessment, in August 1998 the 1971 Fund offered to make a provisional payment of ¥107 million (£570 000) to four local fishery associations in one prefecture. The associations did not take up the offer, however, since they preferred to wait until payments could be made to all associations in the prefecture.

In December 1998 the IOPC Funds offered to settle a claim submitted by a Prefectural Federation of fishery associations at ¥645 million (£3.4 million) and offered to pay 60% of the settlement amount, ¥387 million (£2.1 million). The Federation did not accept this offer, since it did not want to be paid before the other Prefectural Federations.

Claims have been received from 344 operators in the tourism sector (item (n) in the table), totalling ¥2 994 million (£16.0 million).

The assessment of the tourism claims has been carried out by Japanese surveyors in co-operation with the United Kingdom experts who assessed the tourism claims arising out of the *Braer* and *Sea Empress* incidents. A methodology for the assessment of these claims has been agreed. The Japanese surveyors had visited all the claimants by the end of November 1998. In December 1998 eight claims in the tourism sector were settled at a total of ¥122 million (£652 000) and 60% of the settlement amounts, ¥73 million (£320 000), was paid to claimants.

Further claims are anticipated. The shipowner is expected to claim for the cost of contracting a salvor to attempt to tow the bow section before it grounded. Claims will also be presented by the shipowner for costs incurred prior to and during the bow lifting operations. Further claims will be presented for loss of income in the fishing and aquaculture industries. There may also be some further claims by businesses in the tourism industry.

Applicability of the Conventions

The 1992 Protocols entered into force in respect of Japan on 30 May 1996. The 1992 Civil Liability Convention and the 1992 Fund Convention are therefore in principle applicable to this incident.

The *Nakhodka* was registered in the Russian Federation which is a Party to the 1969 Civil Liability Convention and the 1971 Fund Convention but not to the 1992 Protocols. In February 1997 the Executive Committee took the view that, as a result, the shipowner's right of limitation should be governed by the 1969 Civil Liability Convention, to which both Japan and the Russian Federation were Parties on the date of the incident. The Committee confirmed that, in the event that the total amount of the accepted claims were to exceed the maximum amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention (60 million SDR), compensation would be available as follows:

	SDR
Shipowner under the 1969 Civil Liability Convention	1 588 000
1971 Fund	58 412 000
Shipowner under the 1992 Civil Liability Convention	0
1992 Fund, in excess of 60 million SDR	75 000 000
Total compensation available	135 000 000

Until October 1998 compensation payments were made by the 1971 Fund after having been agreed with the shipowner and the UK Club, against a receipt stating that the claim was made

under the 1969 Civil Liability Convention and the 1971 Fund Convention and the 1992 Protocol to the 1971 Fund Convention. The text of these documents had been approved by the shipowner and the Club. In October 1998 the shipowner and the UK Club requested that the documents should be amended to the effect that it would be stated that the claims were made under the 1969 and 1971 Conventions and the 1992 Protocols to both these Conventions, since in their view it was not clear that the 1992 Civil Liability Convention did not apply. They maintained that it was not for the IOPC Funds to decide the issue but for the Japanese courts.

The Director did not agree to make the requested amendment to the documents. In his view it was clear from the point of view of treaty law that the 1992 Civil Liability Convention did not apply to the *Nakhodka* case. He pointed out that for the transitional period when both the 1969/1971 Conventions and the 1992 Conventions applied, the issues relating to limitation of liability were dealt with differently in the Japanese legislation implementing the Conventions dependent on whether the ship flew the flag of a State which had ratified the 1969 Civil Liability Convention but not the 1992 Civil Liability Convention or whether the ship flew the flag of another State.

Level of payments

Consideration by the 1971 Fund Executive Committee and Assembly

In February 1997 the Executive Committee noted that the total amount of the claims arising out of the *Nakhodka* incident would exceed the amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention, ie 60 million SDR (approximately ¥10 100 million or £51 million). Since the 1992 Fund Convention also applied in the *Nakhodka* case, the Committee considered that the level of the 1971 Fund's payments should be determined by taking into account the amounts available under both the 1971 and the 1992 Fund Conventions, ie a total of 135 million SDR.

In view of the uncertainty as to the level of the total amount of the claims, the Executive Committee decided that the payments to be made by the 1971 Fund should, for the time being, be limited to 60% of the amount of the damage actually suffered by the respective claimants as assessed by the experts engaged by the Funds and the shipowner/UK Club at the time when the payment was made.

Consideration by the 1992 Fund Assembly

In April 1997 the Assembly of the 1992 Fund considered that the level of the 1992 Fund's payments should be determined by taking into account the amounts available under both the 1971 and 1992 Fund Conventions. It was considered that, in order to avoid an over-payment situation arising for either the 1971 Fund or the 1992 Fund (or for both), a co-ordinated approach should be taken in respect of the payments by the two Organisations. The Assembly decided that the payments to be made by the 1992 Fund should, for the time being, be limited to 60% of the amount of the damage actually suffered by the respective claimants as assessed by the experts engaged by the Funds and the shipowner/his insurer at the time when the payment was made.

The Assembly decided that the conversion of 135 million SDR into national currency should be made on the basis of the value of that currency *vis-à-vis* the SDR on the date of the 1992 Fund Assembly's (or the Executive Committee's) adoption of the Record of Decisions of the session at which the Assembly (or the Executive Committee) took the decision which made payments of claims possible. It was further decided that, if the Record of Decisions was not adopted during the session, the date for conversion should be that of the last day of session. As regards the *Nakhodka* incident, the relevant Record of Decisions was adopted on 17 April 1997. Using the

rate of exchange on that date (1 SDR = ¥171.589) would result in 135 million SDR equalling ¥23 164 515 000 (£114 million).

Investigation into the cause of the incident

The Japanese and Russian authorities decided to co-operate in the investigation into the cause of the incident. The Japanese investigation was carried out by a Committee set up for this purpose.

The Japanese investigation report was published in July 1997. The report concluded that, if the *Nakhodka* had been properly maintained, she would have been capable of withstanding the wind and wave conditions prevailing at the time of the incident, and that, due to the extensive corrosion weakening the internal structure of the ship, the stresses on the hull as a result of the heavy weather caused the ship to break in two. It was acknowledged that the weather conditions in the Sea of Japan at the time of the incident were among the worst reported, and it was also concluded that the unusual distribution of the cargo would have increased the stresses in the ship's hull.

The Russian report stated that the *Nakhodka* must have broken due to the bow section hitting some half-submerged object, most probably a Russian trawler that had sunk in the vicinity shortly before the *Nakhodka* incident.

At the Executive Committee's October 1997 session, several delegations noted that the conclusions of the Japanese report suggested that the incident had occurred as a result of the actual fault and privity of the shipowner, and that therefore all steps should be taken to preserve the 1971 Fund's right to take recourse action against the shipowner. The Committee instructed the Director to examine the reports on the cause of the incident and to submit his findings to the Committee as soon as possible, so as to enable it to take a decision on issues relating to limitation of liability and recourse.

Experts engaged by the IOPC Funds have studied the Japanese and Russian reports. The experts have stated that the survey results and steel thickness measurements of the structure recorded in Japan after the bow section was salved clearly revealed significant corrosion of the steel structure and defects in the welding. The experts have drawn attention to the fact that no physical damage was found on the bow section of the *Nakhodka* to support the theory put forward in the Russian report that the *Nakhodka* had broken due to the bow coming into contact with a semi-submerged object. In the experts' view the scenario suggested in the Russian report was virtually impossible. The experts have formed the opinion that the *Nakhodka* was improperly maintained and therefore unseaworthy.

The shipowner has commented on the views expressed by the IOPC Funds' experts. He has stated that the Russian report cannot be totally discounted in the manner which has been suggested by the IOPC Funds' experts. He has made the point that if the foresection of the *Nakhodka* had come close to but not in contact with the submerged object, one would not have expected to see signs of physical contact. Attention has been drawn to the fact that the vessel had been built to Russian class standard. The shipowner has mentioned that the vessel was classed by the Russian register and that the vessel was fully in class without any outstanding recommendations at the time of the incident. The shipowner has also criticised the method used in the Japanese report to survey and measure the structure of the bow section. Reference has been made to the fact that the Japanese report implies that the ship was loaded in an unsatisfactory manner with an unusual distribution of cargo. The shipowner has stated that although not loaded in one of the conditions given by way of example in the stability book, the vessel was loaded in a manner which was well

within the loading criteria therein. The shipowner has maintained that whatever caused the loss of the vessel, it was not due to the actual fault or privity of the shipowner, even if the 1969 Civil Liability Convention test were to be relevant.

In May 1997 the Director requested the shipowner and the UK Club to allow access to all classification records, repair and maintenance records, statutory certificates, port state surveys and reports, P & I condition survey reports and all documents concerning the voyage when the incident occurred, including crew statements and communications between the ship and the office. So far the IOPC Funds have been given access to only general arrangement drawings and stability information. No structural plans have been provided.

The Director continues his consideration of the technical and legal issues involved.

TSUBAME MARU N°31

(Japan, 25 January 1997)

Whilst the Japanese coastal tanker *Tsubame Maru N°31* (89 GRT) was being loaded with heavy fuel oil as cargo in the port of Otaru, Hokkaido (Japan), the crew of that ship failed to close in time the inlet valve of the tank into which the oil was being loaded. As a consequence, some of the cargo oil overflowed from the tank and spilled into the sea.

Seven claims for clean-up operations, totalling ¥7 827 589 (£34 000), were submitted. These claims were settled at ¥7 673 830 (£33 300) and were paid by the shipowner's P & I insurer in March 1998.

The P & I insurer requested that the 1971 Fund should in this case waive the requirement to establish the limitation fund. In view of the disproportionately high legal costs which would be incurred in establishing the limitation fund in respect of this incident compared with the low limitation amount under the 1969 Civil Liability Convention in this case, the Executive Committee decided in February 1998 that the requirement to establish the limitation fund should be waived in the *Tsubame Maru N°31* case, so that the 1971 Fund could, as an exception, pay compensation and indemnification without the limitation fund having been established.

In June 1998 the 1971 Fund paid its share of the compensation of ¥5.8 million (£25 600) and paid indemnification to the shipowner in the amount of ¥458 000 (£2 000).

NISSOS AMORGOS

(Venezuela, 28 February 1997)

The incident

The Greek tanker *Nissos Amorgos* (50 563 GRT), carrying approximately 75 000 tonnes of Venezuelan crude oil, ran aground whilst passing through the Maracaibo Channel in the Gulf of Venezuela. The Venezuelan Government has maintained that the actual grounding occurred outside the Maracaibo Channel itself. The tanker sustained damage to three cargo tanks, and an estimated 3 600 tonnes of crude oil was subsequently spilled.

The tanker was refloated six hours after the grounding and proceeded under her own power towards Punta Cardon in the eastern part of the Gulf of Venezuela. Apart from the initial spill of

oil at the grounding position, further small releases occurred over a period of several days at the anchorage off Punta Cardon, until temporary repair work on the damaged hull was completed. After a short delay, the remaining cargo on board the *Nissos Amorgos* was transhipped to another tanker.

Impact of the oil and clean-up operations

In accordance with the Venezuelan National Contingency Plan for Oil Pollution, Lagoven and Maraven (wholly owned subsidiaries of the national oil company, Petroleos de Venezuela SA - PDVSA) undertook clean-up measures. In the latter part of 1997, Lagoven and Maraven were merged into the holding company, PDVSA.

Oil polluted a long sandy beach near the grounding position, spreading along a 45 kilometre stretch of coast. Some of the beached oil was quickly buried under fresh deposits of sand on successive tides, while some of the spilt oil sank in the surf zone, ie the shallow water adjacent to the polluted beach.

Lagoven organised beach cleaning activities, and oil-contaminated sand in the intertidal zone was removed manually and with heavy machinery. Collected oily beach material was deposited in dune areas adjacent to the beach. The clean-up operations were hampered by frequent re-distribution of stranded oil by tidal action, and by the fact that some oil became buried under layers of sand. Lagoven removed large quantities of oil buried in the beach and in the adjacent surf zone, using mechanical excavators.

Nissos Amorgos - beach huts and oiled beach
(photograph: ITOPF)

The clean-up operations were monitored by a committee, comprising representatives from Lagoven, Maraven, a public research institute called the Instituto para el Control y la Conservación de la Cuenca del Lago de Maracaibo (ICLAM) which is part of the Venezuelan Ministry of Environment and Renewable Natural Resources, the Ministry of the Environment and several local government departments. This committee determined the clean-up policy to be followed and when the clean-up operations would be terminated. Shoreline clean-up activity was completed by the end of October 1997. Some 40 000 m^3 of contaminated sand was collected.

In order to determine the best option for treating the oily sand, PDVSA appointed a team of experts who, together with three experts engaged by the Gard Club and the 1971 Fund, reviewed the options available, namely:

- direct spreading of the oily sand in situ
- return of the oily sand to the beach from where it came
- incineration of the oily sand
- using the oily sand for road paving
- treatment of the oily sand with organic material and spreading it in an area to be specified.

On the basis of environmental, legal and economic considerations, the experts recommended in October 1998 that the oily sand should be treated with organic material in the dune system backing the shoreline, following which vegetation would be planted to stabilise the dunes. The cost of the project has been estimated at Bs1 000 million (£1.2 million). The Gard Club and the 1971 Fund have agreed that this is the preferred disposal option.

Claims Agency

The shipowner's P & I insurer, Assuranceföreningen Gard (Gard Club), and the 1971 Fund established a Claims Agency in Maracaibo on 4 April 1997.

Claims presented to the Claims Agency

General situation

As at 31 December 1998, 175 claims for compensation totalling Bs6 371 million (£7.3 million) had been presented to the Claims Agency, 92 of which were approved for a total of Bs1 154 million (£1.3 million). The Gard Club has paid the settlement amounts of the approved claims in full.

Clean-up operations

Lagoven and Maraven presented claims for clean-up operations totalling Bs3 744 million (£4.2 million) and Bs1 044 million (£1.2 million) respectively. Interim assessments of these claims indicated admissible amounts of Bs2 345 million (£2.8 million) in respect of Lagoven and Bs742 million (£890 000) plus US$35 850 (£21 700) in respect of Maraven.

ICLAM presented a claim for Bs69 million (£74 000) relating to the cost of the analysis carried out and the expenses incurred in connection with its command and control of the clean-up operations. This claim has been assessed at Bs61 million (£65 000) by the experts engaged by the Gard Club and the 1971 Fund.

The shipowner and the Gard Club agree with the amount assessed by the Club's and the 1971 Fund's experts as regards ICLAM's claim. However, they dispute liability towards ICLAM on the grounds that it is an agency of the Republic of Venezuela (being part of the Venezuelan Ministry of Environment and Renewable Natural Resources) and that the incident was substantially

caused by negligence imputable to the Republic of Venezuela. For this reason they have stated that they are not prepared to make any payment to ICLAM in respect of this claim.

The 1971 Fund's position in respect of this claim will be considered by the Executive Committee in 1999.

Damage to property

The Claims Agency has received claims totalling Bs28 million (£31 000) from 15 individuals for damage to nets, boats and outboard motors. Thirteen claims in this category have been approved for a total of Bs12 million (£14 100), and these claims have been paid in full by the Gard Club.

Fishery sector

One hundred and forty-five claims by fishermen and fish transporters for loss of income, totalling Bs1 319 million (£1.5 million), have been presented to the Claims Agency.

The 1971 Fund and the Gard Club have approved 64 claims by owners of fishing boats, fishermen who fish on foot, and clam harvesters for amounts totalling Bs86 million (£100 000). Twelve claims from fish transporters totalling Bs13 million (£15 200) have also been approved. These claims have been paid by the Gard Club.

Sixty-two claims totalling Bs865 million (£1.0 million) submitted by other fishermen and fish transporters are being examined by the experts appointed by the Gard Club and the 1971 Fund. Fourteen of these claims are made by fishermen from the affected area who have not provided evidence that they were licensed at the time of the incident.

Fish processing plants

The Claims Agency was informed by a lawyer representing a number of fish processing plants in the Maracaibo area that his clients believed they would suffer losses from a long term reduction in catches as a result of the effects of the pollution of fish stocks. However, no claims had been submitted as at 31 December 1998.

Tourism industry

Twelve claims totalling Bs168 million (£193 500) were submitted from the tourism sector, three of which were approved for Bs25 million (£29 000).

Environmental study proposal

ICLAM requested that the 1971 Fund and Gard Club should contribute towards the cost of a proposed environmental study. The objectives of this study included mapping oil pollutants in sea water, beach substrates and marine life, identifying oil biodegradation mechanisms, determining the diversity and abundance of commercially important shellfish, identifying oil pollution damage to shellfish reproductive functions and developing shellfish cultivation techniques.

The Executive Committee shared the Director's opinion that the proposed study did not relate to pollution damage as defined in the Conventions but involved basic research into oil pollution effects which had already been the subject of extensive study world-wide. The Committee therefore took the view that the study did not meet the criteria for post-spill environmental studies laid down by the Assembly and decided that the 1971 Fund should not contribute to the costs.

Court proceedings

The incident has given rise to legal proceedings in a Criminal Court in Cabimas and a Civil Court in Caracas. No progress has been made in the legal proceedings during 1998.

Criminal Court of Cabimas

The shipowner has presented a guarantee to the Criminal Court for Bs3 473 million (£4.0 million), being the limitation amount applicable under the 1969 Civil Liability Convention.

At a court hearing held in March 1998 the master of the *Nissos Amorgos* maintained that under Article III.4 of the 1969 Civil Liability Convention no claim for compensation for pollution damage could be made against the servants or agents of the owner, whether under the Convention or otherwise, and that since the master fell within this category, no claim could be made against him. The 1971 Fund intervened in the proceedings as an interested party and supported the master's position on this point. The master's defence will be considered in the judgement on the merits of the case.

At the same hearing a fishermen's trade union (FETRAPESCA) presented a claim for compensation for pollution damage for an estimated amount of US$130 million (£78 million) plus legal costs. In addition, eight fish and shellfish processors presented a claim for compensation for an estimated amount of US$100 million (£60 million) plus legal costs. However, in September 1998 this latter claim was declared inadmissible because it had not been filed within the period laid down in the Venezuelan Criminal Procedural Code.

In October 1997 the Republic of Venezuela presented a claim for pollution damage against the master, the shipowner and the Gard Club (in the Criminal Court) for US$60 million (£36 million). The claim is based on a letter to the Attorney General from the Venezuelan Ministry of Environment and Renewable Natural Resources, which gave details of the amount of compensation allegedly payable to the Republic of Venezuela in respect of oil pollution. Compensation is claimed for damage to the communities of clams living in the intertidal zone affected by the spill, for the cost of restoring the quality of the water of the affected coasts, for the cost of replacing damaged sand and for damage to the beach as a tourist resort.

The Republic of Venezuela, on behalf of ICLAM, also presented a claim for pollution damage in the amount of Bs58 million (£65 000). This claim corresponds to the claim presented to the Claims Agency in Maracaibo.

Civil Court of Caracas

The Republic of Venezuela presented a claim against the shipowner, the master of the *Nissos Amorgos* and the Gard Club for an estimated amount of US$20 million (£12 million), later increased to US$60 million (£36 million), before the Civil Court in Caracas. It appears that this claim relates to the same four items of damage as the claim in the Criminal Court.

FETRAPESCA has presented a claim against the shipowner, the Gard Club and the master of the *Nissos Amorgos* for an estimated amount of US$130 million (£79 million) plus legal costs.

At the request of FETRAPESCA the Civil Court appointed a committee composed of lawyers and technical experts to assess the value of the damage to the environment caused by the spill. The report of the committee, which was filed before the Court in October 1997, does not attempt to quantify the effects of the spill. However, the committee suggests that about 20 000 fishermen had seen their income reduced by approximately 80% as a consequence of the incident.

Eleven fish and shellfish processors have presented a claim against the shipowner, the Gard Club and the master of the *Nissos Amorgos* for an estimated amount of US$100 million (£60 million) plus legal costs. This claim corresponds to the one filed in the Criminal Court, except that there is a difference in respect of the number of claimants.

Conflict of jurisdiction

The master, the shipowner and the Gard Club have requested that the Civil Court of Caracas should declare that it does not have jurisdiction over actions brought as a result of the *Nissos Amorgos* incident and that the Criminal Court of Cabimas has exclusive jurisdiction over all such actions. They have also maintained that the action filed by the Attorney General in the Caracas Civil Court should in any case be dismissed, since a corresponding action had been brought before the Cabimas Criminal Court. So far, no decision has been taken on the request.

Level of payments

In October 1997 the Executive Committee noted that there was great uncertainty as to the total amount of the claims arising out of the *Nissos Amorgos* incident. It therefore decided that the 1971 Fund's payments should be limited to 25% of the loss or damage actually suffered by each claimant, as assessed by the experts of the Gard Club and the Fund.

Cause of the incident and related issues

The Criminal Court in Cabimas is carrying out an investigation into the cause of the incident. The Court will determine whether anyone has incurred criminal liability as a result of the incident.

The 1971 Fund is following the investigation into the cause of the incident which is being carried out by the Venezuelan authorities. The Fund has also engaged a technical expert to investigate the cause of the incident.

The shipowner and the Gard Club have taken the position that the incident and resulting pollution were due to the fact that official information given to the ship regarding the safe depth of the Maracaibo Channel was incorrect. They have maintained that within that depth there were one or more hard (probably metallic) objects which could and did penetrate the ship's hull causing oil to escape.

The shipowner has notified the 1971 Fund that he reserves the right to seek exoneration from liability for pollution damage arising from the incident, under Article III.2(c) of the 1969 Civil Liability Convention, on the ground that the damage was caused wholly by the negligence or other wrongful act of a Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.

The shipowner has also notified the 1971 Fund that he intends to resist any claims for pollution damage by the Republic of Venezuela, on the basis of Article III.3 of the 1969 Civil Liability Convention, on the ground that the damage was substantially caused by negligence imputable to the claimant, namely negligence on the part of the Instituto Nacional de Canalizaciones (INC), a national body responsible for the maintenance of the channel, and/or of the harbour master (an employee of the Ministry of Transport).

The shipowner and the Gard Club have expressed the view that in principle the question of exoneration under Article III.2(c) should not affect the claimants in Venezuela. They have maintained that substantial claims have been made in the Venezuelan proceedings which raise important issues of common interest to the 1971 Fund and the Club. It would, in their view, be

desirable to avoid conflicts of interest between the Club and the Fund in the proceedings, as might occur if the issue of exoneration were to be raised by the shipowner and the Club.

The shipowner and the Gard Club have informed the 1971 Fund that they intend, for these reasons, to continue until further notice to pay non-government claims without invoking against the claimants the exoneration clause contained in Article III.2(c), and to pursue this issue at a later date by way of subrogation. They have requested that the 1971 Fund should not for the time being make any decision on the validity or otherwise of their potential subrogation claim.

In December 1998 the shipowner and the Gard Club supplied the 1971 Fund with a detailed analysis of the evidence available to them concerning the cause of the incident, together with a substantial quantity of documentary material. They have supplied the material so that it may be considered by the Fund and its lawyers in connection with the legal proceedings which have been brought in Venezuela and to assist the Fund in deciding whether it wishes to rely on a similar defence under Article 4.3 of the 1971 Fund Convention.

The 1971 Fund is examining the documentation supplied by the shipowner and the Gard Club.

DAIWA MARU N°18

(Japan, 27 March 1997)

While the Japanese tanker *Daiwa Maru N°18* (186 GRT) was loading heavy fuel oil from onshore tanks at an oil refinery in Kawasaki, Kanagawa Prefecture (Japan), some of the cargo oil leaked from the end of a cargo hose connected to the outboard side of the ship's manifold. This hose was not in use at the time of the incident. The oil washed the deck of the *Daiwa Maru N°18* and spilled into the sea. Subsequent investigations showed that there was a defective valve in the ship's manifold and that the blank flange fitted to the end of the cargo hose had been incorrectly secured.

Claims totalling ¥18 million (£90 000) were received from several contractors. These claims were settled at ¥15.6 million (£68 000) and were paid by the shipowner's P & I insurer.

In April 1998 the Executive Committee considered whether the 1969 Civil Liability Convention and the 1971 Fund Convention applied to this incident, as the oil was spilled before it had entered the cargo tanks of the *Daiwa Maru N°18*. The Committee noted that oil is generally considered as cargo once it entered the pipe of a ship through a loading arm on the port side and that the ship had responsibility for the oil from that moment. The Committee decided therefore that the spilt oil should be considered as cargo and that the incident fell within the scope of the Conventions.

The P & I insurer requested that the 1971 Fund should in this case waive the requirement to establish the limitation fund. For the reasons set out above in respect of the *Tsubame Maru N°31* incident, the Executive Committee decided that this requirement should be waived in the *Daiwa Maru N°18* case.

In August 1998 the 1971 Fund paid its share of the compensation of ¥12 million (£51 600) and paid indemnification to the shipowner in the amount of ¥865 000 (£3 700).

JEONG JIN N°101

(Republic of Korea, 1 April 1997)

The Korean barge *Jeong Jin N°101* (896 GRT) was loading heavy fuel oil at a terminal in the port of Pusan (Republic of Korea). Approximately 124 tonnes of oil is believed to have overflowed from one of the tanks of the *Jeong Jin N°101* and spilled into the sea. The spilt oil contaminated various parts of the port.

The *Jeong Jin N°101* was not covered by any insurance for liability under the 1969 Civil Liability Convention. However, the shipowner had a bank guarantee issued by a Korean bank for Won 143 million (£70 000) to cover his civil liability for oil pollution damage in respect of this ship.

Eight claims relating to clean-up operations, totalling Won 567 million (£248 000), were submitted. These claims were settled at Won 418 million (£198 000) as assessed by the experts engaged by the 1971 Fund.

The Pusan District Court determined the limitation amount applicable to the ship at Won 246 million (£123 000).

In May 1998 the 1971 Fund paid Won 172 million (£75 000) to the eight claimants, constituting the difference between the total settlement amount and the limitation amount. The Fund also paid indemnification of Won 58 million (£26 000) to the shipowner.

OSUNG N°3

(Republic of Korea, 3 April 1997)

The incident

The tanker *Osung N°3* (786 GRT), registered in the Republic of Korea, ran aground in the Pusan area (Republic of Korea) on 3 April 1997, and sank to a depth of 70 metres. The vessel was carrying about 1 700 tonnes of heavy fuel oil. Oil was spilled immediately, but it was not possible to assess the quantity spilt or the quantity remaining on board. Oil originating from the *Osung N°3* reached the sea adjacent to Tsushima island in Japan on 7 April 1997.

Removal of oil from the wreck

In 1997 the Korean Research Institute of Ships and Ocean Engineering presented a report on a survey of the *Osung N°3*. In the report it was estimated that the wreck of the *Osung N°3* contained about 1 400 tonnes of oil in her tanks. It was concluded that oil might escape from the wreck because of further deterioration of the damaged ship, or as a result of a ship or fishing gear coming into contact with the submerged wreck, or if the wreck were to be disturbed by a passing typhoon. Given the risk of further spillage and the potential impact on nearby fishing grounds, extensive mariculture facilities and tourist beaches, it was concluded in the report that an oil removal operation should be carried out as soon as possible to reduce the pollution risk.

At the request of the Korean Government, an expert from a London firm of marine surveyors engaged by the 1971 Fund participated in discussions concerning the most appropriate method to be used for removing the oil from the *Yuil N°1* and the *Osung N°3* (see page 70). The Director informed the Korean authorities that the 1971 Fund agreed that the oil should be removed from the wrecks of the *Yuil N°1* and the *Osung N°3* as soon as possible.

With regard to the contract agreed between the Korean Marine Pollution Response Corporation (KMPRC) and a Dutch salvage company (Smit Tak BV) for the removal of the oil from both ships and the method to be used for the removal, reference is made to the information set out in respect of the *Yuil N°1* incident (page 71).

KMPRC and Smit Tak moved the operations from the *Yuil N°1* to the *Osung N°3* on 1 September 1998. The operations were interrupted by typhoons from 18 to 26 September, from 29 September to 2 October and from 14 to 19 October 1998.

Practical problems arose due to strong currents, bad weather, continuous fouling of the wreck by debris, and the discovery that tank hatches and tank cleaning opening covers were not properly secured. The operations were completed on 9 November 1998. Some 27 m³ of oil was recovered. During the operation, there was no release of oil from the wreck into the sea.

Level of payments

In view of the great uncertainty resulting from the belief that a significant quantity of oil remained in the wreck, representing a serious pollution risk, the Executive Committee had considered in June 1997 that it was not possible to make any reasonable estimate as to the total amount of the claims arising out of the *Osung N°3* incident. The Committee had therefore limited the 1971 Fund's payments, for the time being, to 25% of the damage or loss actually suffered by each claimant, as assessed by the experts of the 1971 Fund at the time the payment was made.

At the time of the *Osung N°3* incident, the Republic of Korea was Party to the 1969 Civil Liability Convention and the 1971 Fund Convention, but not to the 1992 Conventions. The amount available for compensation for damage caused in Korea is therefore to be determined pursuant to the 1969 and 1971 Conventions, ie 60 million SDR (approximately £51 million).

Japan, however, was Party to the 1992 Conventions at the time of the incident. The maximum amount available for damage in Japan was therefore 135 million SDR (£115 million), including any payments made to Korean and Japanese claimants under the 1969 and 1971 Conventions. If the total amount of the claims arising out of the incident for damage in Korea and Japan were to exceed 60 million SDR and payment under the 1971 Fund Convention had to be pro rated, the Japanese claimants would be entitled to additional compensation under the 1992 Fund Convention. Since the *Osung N°3* was registered in the Republic of Korea, the limit of the shipowner's liability would be that laid down in the 1969 Civil Liability Convention.

In October 1997 the Assembly of the 1992 Fund considered whether it should pay claimants in Japan the balance of 75%, and then present subrogated claims against the 1971 Fund if and when the 1971 Fund's payments were increased beyond the 25% limit in force at that time. The Assembly decided that it was appropriate for the 1992 Fund to intervene at that stage, so that victims of oil pollution damage in Japan had the benefit of a higher maximum amount of compensation than that provided by the 1971 Fund Convention. The Assembly therefore authorised the Director to pay the balance of the established claims relating to damage in Japan.

In October 1998 the Executive Committee considered that if, in the view of the 1971 Fund's experts, the removal of the oil from the *Osung N°3* were completed successfully without any significant release of oil, and only a minor quantity of oil remained in the wreck, the risk of further pollution would be eliminated and there would no longer be a risk of claims for high amounts. The Committee therefore decided to authorise the Director to increase the limit of the 1971 Fund's payments to 100% of the established claims, once he was satisfied that these conditions had been

fulfilled, provided that the Korean Government had given an undertaking corresponding to that offered by the Government in respect of the *Yuil N°1* incident (see page 71).

On 17 November 1998 the 1971 Fund received an undertaking from the Government of the Republic of Korea signed by the Minister of Marine Affairs and Fisheries in respect of the *Osung N°3* incident corresponding to that provided in respect of the *Yuil N°1* incident.

After consultation with the 1971 Fund's experts, the Director considered that the conditions for an increase in the level of the payments laid down by the Executive Committee had been fulfilled. He therefore decided to increase the 1971 Fund's payments from 25% to 100% of each established claim.

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

Osung N°3 - oiled beach in Japan
(photograph: General Marine Surveyors)

Claims for compensation

Oil removal operations

During the period July - December 1998, KMPRC submitted several claims for compensation relating to the *Osung N°3* operations totalling Won 6 696 million (£3.4 million). These related to the amounts paid to Smit Tak under the oil removal contract and to the costs incurred by KMPRC for its involvement in the operations in terms of personnel, barges, tugs, other craft, engineering services and general support. The costs relating to both the *Yuil N°1* and the *Osung N°3* operations were apportioned provisionally on a 50:50 basis between the two cases.

In October 1998 the Executive Committee noted that at that stage only minor quantities of oil had been found in the cargo tanks of the *Osung N°3*. The Committee considered that, on the basis of the information which was available prior to the commencement of the operations, it had been reasonable to assume that substantial quantities of oil remained on board the *Osung N°3* and that it had therefore been reasonable to take measures to remove the oil. For this reason the Committee decided that claims for compensation in respect of the costs associated with these operations would be admissible in principle, even if no significant quantity of oil were found in the cargo tanks of the *Osung N°3*. As set out above, a quantity of 27 m³ of oil was eventually recovered from the tanks of the *Osung N°3*.

During the period November - December 1998, the 1971 Fund paid Won 6 287 million (£3.1 million) to KMPRC in respect of the *Osung N°3* operations.

The claimed items which so far have not been approved, totalling Won 517 million (£260 000) in respect of both the *Yuil N°1* and the *Osung N°3* operations, relate mainly to the cost of KMPRC's personnel and general overhead costs.

Further claims by KMPRC are expected to be in the region of Won 600 million (£300 000) for both operations.

Other claims

As regards the Republic of Korea, claims for compensation have been presented by the Korean Marine Police, some local authorities, the charterer of the *Osung N°3* and a number of contractors for participation in the clean-up operations and the inspection of the sunken vessel, and by two fishery co-operative associations for loss of income. Claims totalling Won 1 125 million (£560 000) have been settled at Won 822 million (£410 000). Further claims totalling Won 217 million (£108 000) are being examined.

Six claims totalling ¥673 million (£3.6 million) have been submitted for clean-up operations carried out in Japan. One of these claims, for ¥275 million (£1.5 million), was settled at ¥271 million and this amount was paid in full. The remaining five claims are being examined. A claim was presented by a Japanese fishery co-operative association for ¥282 million (£1.5 million) for loss of income caused by the oil spill. This claim was settled at ¥182 million (£970 000) and was paid in full.

A further claim of some ¥60 million (£320 000) for clean-up operations is expected from the Japanese Self Defence Force. No other claims are anticipated in Japan.

Limitation proceedings

The *Osung N°3* was not entered in any P & I Club, but had liability insurance up to a limit of US$1 million (£600 000) per incident. The limitation amount applicable to the vessel under the 1969 Civil Liability Convention is estimated at 104 500 SDR (£87 000). The shipowner applied

to the competent court for the commencement of limitation proceedings. This request was granted in October 1997.

Investigation into the cause of the incident

In a judgement rendered in June 1997, the competent Korean Criminal Court held that the master of the *Osung N°3* had navigated the vessel through a prohibited area in order to save time and had failed to exercise due care in the navigation of the ship. The Court therefore sentenced him to one year's imprisonment.

The Executive Committee decided that, in the light of the findings of the Criminal Court, there were no grounds on which the 1971 Fund could oppose the shipowner's right to limit his liability, nor refuse to pay indemnification under Article 5.1 of the 1971 Fund Convention.

PLATE PRINCESS

(Venezuela, 27 May 1997)

The incident

The Maltese tanker *Plate Princess* (30 423 GRT) was berthed at an oil terminal at Puerto Miranda on Lake Maracaibo (Venezuela). While the ship was loading a cargo of 44 250 tonnes of Lagotreco crude oil, some 3.2 tonnes was reportedly spilled.

A few days before the incident satisfactory examinations of the *Plate Princess*' cargo tanks and ballast tanks had been carried out by an independent inspector and by a pollution inspector. Following the ballast tank inspection, the master had been granted permission by a government inspector to discharge the ballast into Lake Maracaibo.

The master of the *Plate Princess* reported that he believed that couplings on the ship's ballast line might have become loose during bad weather encountered on the ship's voyage to Puerto Miranda. The master suspected that, since the ballast line passed through the tanks into which the cargo of crude was being loaded, oil from those tanks seeped into the ballast line during deballasting, spilling into Lake Maracaibo.

An expert engaged by the 1971 Fund and the shipowner's P & I insurer attended the site of the incident on 7 June 1997 and reported that there were no signs of oil pollution in the immediate vicinity of where the *Plate Princess* was berthed at the time of the spill, nor at nearby launch and tug jetties. The expert was informed that the oil was observed to drift towards the north-west, in the direction of a small stand of mangroves approximately one kilometre away. Oil was observed coming ashore in an area which was uninhabited. No fishery or other economic resources are known to have been contaminated or affected.

The limitation amount applicable to the *Plate Princess* under the 1969 Civil Liability Convention is estimated at 3.6 million SDR (£2.9 million).

In June 1997 the Executive Committee considered that, if it were confirmed that the spilt oil was the same Lagotreco crude as was being loaded on to the *Plate Princess*, then it would appear that the oil which escaped via a defective coupling in the ballast line had first been loaded into the cargo tanks. The Committee took the view that the incident would therefore fall within the scope of the Conventions, as the oil was carried on board as cargo.

Court proceedings

Immediately after the incident a Criminal Court of first instance in Cabimas commenced an investigation into the cause of the incident. The Criminal Court decided that criminal proceedings should be brought against the master of the *Plate Princess*.

A fishermen's trade union (FETRAPESCA) has presented a petition in the Criminal Court on behalf of 1 692 fishing boat owners, claiming an estimated US$10 060 per boat (£6 100), ie a total of US$17 million (£10 million). The claim is for alleged damage to fishing boats and nets and for loss of earnings.

FETRAPESCA has also presented a claim against the shipowner and the master of the *Plate Princess* before the Civil Court of Caracas for an estimated amount of US$10 million (£6 million). The claim is for the fishermen's loss of income as a result of the spill.

A local fishermen's union has presented a claim in the Civil Court in Caracas against the shipowner and the master of the *Plate Princess* for an estimated amount of US$20 million (£12 million) plus legal costs.

The 1971 Fund has not been notified of the legal actions.

The master and the shipowner have filed a motion before the Civil Court of Caracas requesting that the Court should declare that it does not have jurisdiction over actions brought as a result of the *Plate Princess* incident and that the Criminal Court of Cabimas has exclusive jurisdiction over all such actions because the incident occurred within the area over which the Criminal Court has jurisdiction. They have also maintained that the action in the Caracas Court should in any case be dismissed, since the Criminal Court is already carrying out an investigation into the circumstances of the spill. So far, no decision has been taken on the motion.

There has been no progress in the court proceedings during 1998.

DIAMOND GRACE

(Japan, 2 July 1997)

The Panamanian tanker *Diamond Grace* (147 012 GRT), carrying a cargo of about 257 000 tonnes of crude oil, grounded in Tokyo Bay (Japan). As a result, the shell plating of three starboard tanks was fractured and crude oil spilled into the sea. Initial estimates of the quantity of oil spilled were in the region of 15 000 tonnes, but the estimate was revised to 1 500 tonnes when much of the cargo reported missing from one of the starboard tanks was located in a ballast tank.

The *Diamond Grace* was registered in Panama which is Party to the 1969 Civil Liability Convention but not to the 1992 Civil Liability Convention. The shipowner's right of limitation is therefore governed by the 1969 Civil Liability Convention to which both Japan and Panama were Parties.

The limitation amount applicable to the *Diamond Grace* under the 1969 Civil Liability Convention is 14 million SDR, corresponding to approximately ¥2 330 million (£11.8 million).

Immediately after the incident there were fears that the incident would give rise to claims for compensation for very high amounts. The 1971 Fund and the shipowner's P & I insurer therefore jointly set up a Claims Handling Office in Tokyo.

As at 31 December 1998 the Claims Handling Office had received 75 claims totalling ¥2 138 million (£10.6 million). Out of this amount, ¥1 356 million (£6.7 million) relates to clean-up operations and ¥592 million (£2.9 million) to fishery damage. Fifty-nine claims have been settled for a total of ¥855 million (£4.3 million). The outstanding claims total ¥813 million (£4.1 million).

It is unlikely that there will be any further claims for significant amounts. It is likely, therefore, that the total amount of the claims will not exceed the limitation amount applicable to the *Diamond Grace* and that the 1971 Fund will not be called upon to make any payments in respect of this incident.

KATJA

(France, 7 August 1997)

The Bahamas-registered tanker *Katja* (52 079 GRT) struck a quay while manoeuvring into a berth at the Port of Le Havre (France). The contact with the quay caused a hole in a fuel oil tank, and 190 tonnes of heavy fuel oil was spilled. Booms were placed around the berth, but oil escaped from the port and affected beaches both to the north and to the south of Le Havre. Approximately 15 kilometres of quay and other structures within the port were contaminated. Oil entered a marina at the entrance to the port and many pleasure boats were polluted. Oil was also found in the area of the port where a new harbour for inshore fishing boats was being constructed.

Clean-up operations within the port area were arranged by the port authority and the operators of various berths. The operations were undertaken by local contractors. The cleaning of the beaches was organised by the local authorities using local contractors, the Fire Brigade and the Army. Bathing and watersports were prohibited for a short time (one or two days) while oil remained on the beaches. Some shrimp fishermen from Le Havre were prevented from storing their catch in the port, as is their custom.

At the time of the incident, the Bahamas was not Party to the 1992 Civil Liability Convention. The limitation amount applicable to the *Katja* is therefore to be determined in accordance with the 1969 Civil Liability Convention and is estimated at FFr48 million (£5.2 million).

Claims for compensation have been presented for the cost of clean-up operations incurred by the regional and local authorities in the amount of FFr17.3 million (£1.8 million).

A number of claims have been presented for damage to property in the amount of FFr7.8 million (£821 000) and for loss of income in the amount of FFr1.2 million (£130 000).

It is expected that all claims will be settled for an amount significantly lower than the limitation amount which applies to the *Katja* under the 1969 Civil Liability Convention. It is unlikely, therefore, that the 1971 Fund will be called upon to make any payments in this case.

EVOIKOS

(Singapore, 15 October 1997)

The incident

The Cypriot tanker *Evoikos* (80 823 GRT) collided with the Thai tanker *Orapin Global* (138 037 GRT) whilst passing through the Strait of Singapore. The *Evoikos*, which carried approximately 130 000 tonnes of heavy fuel oil, suffered damage to three cargo tanks, and an estimated 29 000 tonnes of heavy fuel oil was subsequently spilled. The *Orapin Global*, which was in ballast, did not spill any oil.

At the time of the incident, Singapore was Party to the 1969 Civil Liability Convention but not to the 1971 Fund Convention or the 1992 Protocols, whereas Malaysia and Indonesia were Parties to the 1969 Civil Liability Convention and the 1971 Fund Convention, but not to the 1992 Protocols thereto.

Impact of the spill

The spilt oil initially affected the waters and some southern islands of Singapore, but later oil slicks drifted into the Malaysian and Indonesian waters of the Malacca Straits. On 23 December 1997 oil came ashore in places along a 40 kilometre length of the Malaysian coast in the Province of Selangor.

Clean-up operations

Singapore

The Maritime and Port Authority of Singapore (MPA) took charge of the clean-up operations, initially focused on dispersant spraying at sea and followed by the containment and recovery of the floating oil. Clean-up equipment owned by East Asia Response Ltd (EARL) and the Petroleum Association of Japan (PAJ) was deployed as well as local industry and commercially available response resources.

Once the oil moved out of Singapore waters it was necessary to clean selected areas of shore on a number of small islands to the south of Singapore. This was arranged by the shipowner/P & I Club and carried out by local contractors.

Malaysia

After the first few days natural weathering processes had rendered the oil no longer amenable to chemical dispersants. The oil slicks were nearly solid and had spread over a wide area in the Malacca Strait, making at-sea recovery operations impractical. The Malaysian Marine Department undertook aerial and boat surveillance and placed equipment on stand-by so as to make it possible to take preventive measures to protect sensitive resources if required. In the event, some five kilometres of shore was oiled. The clean-up was carried out under the co-ordination of the Malaysian Department of Environment with support from the Marine Department.

Impact on fishing in Malaysia

Many fish farms are located along the Malaysian coast, and measures were taken to protect those threatened by the oil. Fish farmers were encouraged to surround their fish cages with protective barriers against floating oil using locally available resources. Only very small spots of tar reached the nets in a few locations.

Evoikos - oiled mangroves
(photograph: ITOPF)

Many prawn farms along the Strait rely on intakes of fresh water for their operations. Measures were taken by the owners of the farms, upon advice from the Malaysian Fisheries Department, to monitor the intakes to prevent any oil being drawn into the facilities Some fishermen sustained an oiling of their boats, nets and ropes.

Claims for compensation

MPA has presented claims in respect of clean-up operations carried out under its directive for approximately S$13 million (£4.7 million). A breakdown of these costs has been submitted to the shipowner/the United Kingdom Mutual Steamship Insurance Association (Bermuda) Ltd, (UK Club).

The UK Club, on behalf of the shipowner, contracted a number of clean-up operators whose claims amount to S$3.7 million (£1.3 million). A further claim for clean-up has been submitted by a private company for S$1.23 million. The shipowner/UK Club has been notified by owners of other ships and terminal operators of claims for property damage for S$7.3 million (£2.7 million).

As regards Malaysia, claims for clean-up costs have been submitted by the Department of the Environment and the regional Marine Departments for a total of RM1.8 million (£285 000). The Malaysian Fisheries Department has submitted a claim for RM471 492 (£75 000).

The shipowner and the UK Club have indicated that they might maintain that the operations carried out in Singaporean waters (or at least part thereof) were undertaken to prevent

or minimise pollution damage in Malaysia or Indonesia and that the costs thereof would therefore qualify for compensation under the 1971 Fund Compensation, and have referred to the position taken by the Executive Committee in respect of the *Kihnu* incident. In addition, claims for salvage operations might be submitted not only under Article 13 of the 1989 International Convention on Salvage but also under Article 14 of that Convention.

At its session in October 1998 the Executive Committee maintained its view that it was premature for the Committee to take any position on these issues.

In view of the uncertainty as to the total amount of the claims, the Committee also decided that the Director was not authorised to make any payments of claims for the time being.

Criminal proceedings

Following the collision criminal charges were brought against the masters of both ships. The master of the *Evoikos* was sentenced to three months' imprisonment and fines totalling S$60 000 (£21 000) and the master of the *Orapin Global* was sentenced to two months' imprisonment and a fine of S$11 000 (£4 000).

Limitation proceedings

The shipowner has commenced limitation proceedings with the competent Singapore court. The shipowner has maintained that the limitation amount applicable to the *Evoikos* is approximately 5.9 million SDR (£5.0 million), whereas lawyers acting for some claimants have argued that the figure should be approximately 8.8 million SDR (£7.5 million).

KYUNGNAM N°1

(Republic of Korea, 7 November 1997)

The coastal tanker *Kyungnam N°1* (168 GRT), registered in the Republic of Korea, ran aground off Ulsan (Republic of Korea). The Marine Police estimated that about one tonne of cargo oil was spilled. The 1971 Fund's experts estimate, however, that there was a spill of some 15 - 20 tonnes. The spilt oil affected several kilometres of rocky shoreline.

There are significant aquaculture activities along the affected coast. Some sea mustard farms and some set nets were contaminated, as well as 20 - 30 small fishing vessels which were moored in the area at the time of the incident.

Offshore clean-up operations were carried out by the Marine Police. Local fishermen and divers were engaged by the shipowner to carry out manual clean-up operations on shore.

The Ulsan District Court fixed the limitation amount applicable to the *Kyungnam N°1* at Won 43 million (£21 500). The shipowner deposited that amount in court.

The Court decided that claims in the limitation proceedings should be filed by 17 August 1998. In August 1998 the 1971 Fund filed subrogated claims with the limitation court for Won 449 million (£224 000). The subrogated claims were those known to the 1971 Fund at that time. Further claims were presented to the 1971 Fund later.

So far claims totalling Won 514 million (£257 000) have been assessed by the 1971 Fund's experts at Won 105 million (£53 000). The remaining claims totalling Won 454 million (£227 000) are being examined by the experts.

Further claims are expected from the fishery sector.

The criminal investigation into the cause of the incident concluded that the master had failed to check the sea chart and had followed a dangerous course which caused the ship to ground on a submerged rock. In the light of the findings of the criminal investigation, the Executive Committee decided that there were no grounds on which the 1971 Fund could challenge the shipowner's right of limitation, nor refuse to pay indemnification to the shipowner under Article 5 of the 1971 Fund Convention.

PONTOON 300

(United Arab Emirates, 7 January 1998)

The incident

Intermediate fuel oil was spilled from the barge *Pontoon 300* (4 233 GRT), which was being towed by the tug *Falcon 1* off Hamriyah in Sharjah, United Arab Emirates. The barge had reportedly become swamped during high seas and strong north-westerly winds on 7 January 1998 and had taken on water whilst losing oil. During the course of the night of 8 January, the barge sank and settled on the seabed at a depth of 21 metres, six nautical miles off Hamriyah.

The *Pontoon 300* was registered in Saint Vincent and the Grenadines and was owned by a Liberian company. It appears that the barge was not covered by any insurance for oil pollution liability. The tug *Falcon 1* is registered in Abu Dhabi and owned by a citizen of that Emirate.

Attempts to raise the sunken barge

Divers employed by a local salvage contractor, Whitesea Shipping & Supply Co (WSS), surveyed the sunken *Pontoon 300* on 8 January 1998 and reported that at least 3 000 - 4 000 tonnes of intermediate fuel oil had escaped. During the following week further work was carried out by the divers to plug and seal the various points of seepage. In the afternoon of 9 January there was a sudden release of about 300 tonnes of intermediate fuel oil when a tank cover broke free after divers had been plugging remaining leaks from cracks and holes. The divers later discovered that most of the tanks on the barge were interconnected, making it more difficult to estimate the total quantity of oil which had been spilled.

WSS had been appointed by the Sharjah Ports Authority to inspect the sinking barge and to plug the worst leaks at a fixed price of US$20 000 (£12 000). On completion of this phase the Federal Government of the United Arab Emirates appointed WSS as salvor to remove oil from the tanks and raise the sunken barge for a lump sum of Dhs 2 million (£330 000).

Several unsuccessful attempts were made to raise the barge during which up to 100 tonnes of oil was lost. The barge was finally lifted on 4 February 1998 and was towed into the port of Hamriyah. After oil residues had been removed, the barge was towed out to sea and scuttled.

Clean-up operations

The spilt oil spread over 40 kilometres of coastline, affecting four Emirates, namely Sharjah, Ajman, Umm Al Quwain and Ras Al Khaymah. The worst affected Emirate was Umm Al Quwain, where there is a beach hotel and a fishing harbour at Al Naqaa.

The Federal Environment Agency (FEA) co-ordinated spill response activity, with support from the Frontier and Coast Guard Service (FCGS) and municipal authorities. Onshore clean-up operations were carried out by an oil company and a number of local contractors. Collected oily

waste was transported to an inland disposal site. All shoreline clean-up operations were suspended on 24 January, when government funds allocated for the task had been exhausted. After a standstill of seven weeks, beach cleaning was resumed on 12 March 1998 with a labour force of 100 men provided by a local contractor, Lamnalco. The work was completed in June 1998.

Applicability of the Conventions

In February 1998 the Executive Committee considered whether the *Pontoon 300* fell within the definition of 'ship' laid down in Article I.1 of the 1969 Civil Liability Convention, ie "any seagoing vessel and any seaborne craft of any type whatsoever, actually carrying oil in bulk as cargo". The *Pontoon 300* was a flat-top barge designed for deck cargoes, although on this voyage the barge was carrying intermediate fuel oil in its buoyancy tanks. According to the 1971 Fund's technical expert, the *Pontoon 300* had been built as a launch vessel for offshore oil structures, was designed to proceed to sea, and should be considered as a seaborne barge, or even a seagoing vessel.

Although some delegations expressed doubts as to whether the Conventions applied in this case, the Executive Committee took the view that it was the factual situation which was of primary importance, and noted that it had been established that the barge was actually transporting oil in bulk as cargo from one place to another. The Committee therefore decided that the *Pontoon 300* fell within the definition of 'ship' in the 1969 Civil Liability Convention.

Level of the 1971 Fund's payments

In view of the continuing uncertainty as to whether the total amount of the claims might exceed the total amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention (60 million SDR, corresponding to approximately £51 million), the Executive Committee decided in February 1998 to limit the level of the 1971 Fund's payments to 50% of the loss or damage actually suffered by each claimant. In April 1998 the Committee increased the level of payments to 75%.

Claims for compensation

As at 31 December 1998, ten claims for compensation had been received. These claims, totalling Dhs 7.4 million (£1.2 million), related to clean-up operations.

Seven of these claims, totalling Dhs 5.2 million (£835 000), have been presented by FEA. Six of the claims presented by FEA have been approved for a total of Dhs 2.7 million (£446 000) and the Fund has offered to pay 75% of the agreed amount, ie Dhs 2.0 million (£327 500).

Lamnalco has submitted three claims totalling Dhs 2 154 000 (£345 000) in respect of work carried out between 12 March and 10 June 1998. These claims have been settled at Dhs 2 153 000 (£344 800) and paid at 75% of the agreed amount, ie Dhs 1 615 000 (£258 600).

No claims have been submitted so far in respect of losses in the fishery or tourism related industries.

Investigation into the cause of the incident

The Director has instructed the 1971 Fund's lawyers in the United Arab Emirates to investigate the cause of the incident, with the assistance of technical experts, as required. The Director is considering in particular whether there are grounds on which the 1971 Fund could take recourse action against any third party.

Pontoon 300 - temporary oil storage pit
(photograph: ITOPF)

MARITZA SAYALERO

(Venezuela, 8 June 1998)

The incident

The Panamanian tanker *Maritza Sayalero* (28 338 GRT) was berthed at an oil terminal at Carenero Bay (Venezuela) operated by Petroleos de Venezuela SA (PDVSA), the national oil company, where it was to discharge its cargo. While the tanker was discharging medium diesel oil, a member of the crew observed a slick of oil of about 140 m² on the port side of the ship. The crew stopped the discharging operation. On the basis of shore tank and ship's cargo tank measurements it was estimated that 262 tonnes of medium diesel was lost from the tanker and a further 699 tonnes of medium diesel was lost from the terminal.

A diver checked the hoses and found two ruptures on the submarine hose used to discharge the medium diesel. This hose, which belonged to the oil terminal, consisted of six pieces of flexible hose of about 9 metres each, hooked together by bolts. One end of this set of hoses was connected to the shore submarine pipeline and the other to the vessel's manifold. The ruptures were located in the second and third hoses from the end which was connected to the shore submarine pipeline. The distance between the tanker and the rupture was approximately 40 metres.

Clean-up operations

Under the Venezuelan National Contingency Plan for Oil Pollution, PDVSA is responsible for implementing oil spill response measures in Carenero Bay. PDVSA activated the contingency

plan and booms were deployed to protect sensitive areas. A small quantity of spilt medium diesel reached a nearby beach and reportedly affected bivalves living in the intertidal zone. Clean-up operations were carried out on the affected beaches. PDVSA instructed three Venezuelan bodies to assess the damage caused to the environment.

Impact on fishing and tourism

Although it appears that there was minimal impact on fishing and tourism, PDVSA has estimated that the claims for commercial losses will be in the region of US$700 000 (£425 000). It is understood that PDVSA has settled some claims. There has not been any consultation between PDVSA and the 1971 Fund with regard to claim settlements.

Court proceedings

The town of Brion presented a claim for compensation against the terminal operator, PDVSA, the shipowner and his P & I insurer before the Supreme Court in Caracas for an estimated amount of Bs10 000 million (£10.6 million) plus legal costs. The town of Brion requested that the Court should notify the 1971 Fund of the proceedings. The 1971 Fund has not yet been notified of this action.

Applicability of the Conventions

At its October 1998 session the Executive Committee noted that the spill emanated from a hose belonging to the oil terminal which had ruptured at a distance of approximately 40 metres from the ship's manifold. The Committee considered that the maritime transport of the oil had been completed and that the oil could not be considered as being carried by the *Maritza Sayalero* at the time of the spill. For this reason the Committee decided that the incident fell outside the scope of application of the 1969 Civil Liability Convention and the 1971 Fund Convention.

The 1969 Civil Liability Convention and the 1971 Fund Convention apply only to spills of oil falling within the definition of 'oil' in Article I.5 of the 1969 Civil Liability Convention which covers only persistent oil. The 1971 Fund has elaborated a non-technical guide to the nature and definition of persistent oil, which was considered by the Assembly in 1981. Under this guide an oil is considered non-persistent if at the time of shipment at least 50% of the hydrocarbon fractions, by volume, distill at a temperature of 340°C and at least 95% of the hydrocarbon fractions, by volume, distill at a temperature of 370°C. The Committee noted in October 1998 that the analysis of a sample of the medium diesel oil taken from one of the ship's cargo tanks had shown that the oil was non-persistent. The Committee therefore decided that, for this reason also, the incident fell outside the scope of application of the Conventions.

Limitation proceedings

The shipowner has not yet commenced limitation proceedings.

If the 1969 Civil Liability Convention were to apply to the incident, the limitation amount applicable to the *Maritza Sayalero* would be in the region of 3 million SDR (£2.5 million).

Investigations into the cause of the incident

A criminal first instance Court in Miranda is carrying out an investigation into the cause of the incident. The Court will determine whether anyone has incurred criminal liability as a result of the incident.

An investigation by the shipowner's insurer into the cause of the incident has ruled out any fault or negligence on the part of the vessel.

8.3 Incidents dealt with by the 1992 Fund during 1998

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 1998.

INCIDENT IN GERMANY

(Germany, June 1996)

The incident

From 20 June to 10 July 1996 crude oil polluted the German coastline and 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 and some 1 574 tonnes of oil and sand mixture was removed from the beaches.

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

Computer simulations of currents and wind movements made by the Maritime and Hydrographic Agency indicated that the oil could have been discharged between 12 and 18 June approximately 60 - 100 nautical miles north-west of the isle of Sylt.

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. According to the German authorities there remained on board some 46 m³ of oil which could not be discharged by the ship's pumps.

The *Kuzbass* had departed from Wilhelmshaven on 11 June 1996 and passed a control point near the Dover Coast Guard station on 14 June 1996. Based on an evaluation of data provided by Lloyds Maritime Information Services, the German authorities maintain that there were no other movements of tankers with Libyan crude oil on board during the time and in the area in question.

The German authorities maintain that an analysis of oil samples taken from the *Kuzbass* matched the results of an analysis of samples taken from the polluted coastline. According to the German authorities comparisons with an analytical chemical database on North Sea crude oils originally developed by the Federal Maritime and Hydrographic Agency showed that the pollution was not caused by crude oil from North Sea platforms.

1992 Fund's involvement

The German authorities informed the 1992 Fund that, if their attempts to recover the cost of the clean-up operations from the owner of the *Kuzbass* and his insurer 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 (Article 4.2(b) of the 1992 Fund Convention). 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.

The definition of 'ship' in Article I.1 of the 1992 Civil Liability Convention covers also unladen tankers in certain circumstances and so, by reference, does 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.

The limitation amount applicable to the *Kuzbass* under the 1992 Civil Liability Convention is estimated at approximately 38 million SDR (£32 million).

Legal actions

In July 1998 the Federal Republic of Germany brought legal action in the Court of first instance in Flensburg against the shipowner and his insurer, claiming compensation for the cost of the clean-up operations for an amount of DM2 610 226 (£930 000).

The German authorities have based their legal actions *inter alia* on the facts set out above. The 1992 Fund is examining the documents presented in support of the actions.

The 1992 Fund was notified in November 1998 of the legal actions against the owner of the *Kuzbass* and his P & I insurer.

The Director will intervene in the legal proceedings in due course to protect the 1992 Fund's interests, and the necessary preparations for the intervention are being undertaken by the Fund's German lawyer.

NAKHODKA

(Japan, 2 January 1997)

See pages 81 - 88 above.

OSUNG N°3

(Republic of Korea, 3 April 1997)

See pages 95 - 99 above.

As set out on page 96, the 1992 Fund made some payments of claims in Japan arising out of this incident. However, it was later established that all claims arising out of this incident will be paid in full by the 1971 Fund. The 1971 Fund has reimbursed the amount paid by the 1992 Fund. The 1992 Fund will therefore ultimately not be liable in respect of this incident.

INCIDENT IN THE UNITED KINGDOM

(United Kingdom, 28 September 1997)

On 28 and 29 September 1997, bunker fuel oil landed on sandy beaches in Essex on the east coast of England, United Kingdom. Clean-up operations on shore were carried out by the local authority. The origin of the oil is not known.

The local authority has submitted a claim for compensation to the 1992 Fund for the cost of the clean-up operations, provisionally indicated at approximately £10 000.

In order for this spill to fall within the scope of application of the 1992 Fund Convention, the claimant must show that the oil originated from a ship as defined in Article I.1 of the 1992 Civil Liability Convention which by reference is included in the 1992 Fund Convention, ie a laden or unladen tanker. This definition is quoted on page 110 in connection with the incident which took place in Germany in June 1996.

In view of the small quantity of oil which reached the beaches, however, it is unlikely that it can be established that the oil came from a tanker, whether laden or unladen. For this reason, it is unlikely that this claim will be pursued.

SANTA ANNA

(United Kingdom, 1 January 1998)

Sequence of events

The Panamanian tanker *Santa Anna* (17 134 GRT) dragged her anchor in heavy weather and grounded on rocks on the Devon (United Kingdom) coast. The ship was refloated the same day by an emergency towing vessel under contract with the United Kingdom Government. As a result of the grounding, several of the ship's cargo tanks were punctured.

The *Santa Anna* was in ballast, but had some 270 tonnes of heavy fuel oil and 10 tonnes of diesel oil in bunker tanks. No oil was spilled as a result of the grounding and the refloating operation.

The United Kingdom authorities mobilised oil combatting equipment and surveillance aircraft.

Claim for compensation

The United Kingdom Government notified the IOPC Funds of the incident. In its notification the Government stated that it appeared that no claim was possible under the 1969 and 1971 Conventions, since these Conventions did not cover pre-spill preventive measures. The Government also stated that it did not seem possible to present claims for compensation against the shipowner, since the ship was registered in Panama, which was Party to the 1969 Civil Liability Convention but not to the 1992 Civil Liability Convention.

The United Kingdom Government has submitted a claim for £30 000 relating to the cost of mobilising resources to respond to the possible escape of persistent bunker oil.

It is estimated that the liability limit of the *Santa Anna* under the 1992 Civil Liability Convention, if applicable, would be approximately 10.2 million SDR (£8.6 million).

Applicability of the 1992 Conventions

This incident has given rise to three important questions as to the applicability of the 1992 Civil Liability Convention and the 1992 Fund Convention which were considered by the Executive Committee at its October 1998 session.

Definition of 'incident'

The first question was whether the grounding and subsequent refloating constitute an 'incident' as defined in the 1992 Conventions. The definition of 'incident' in Article I.8 of the 1992 Civil Liability Convention reads:

> 'Incident' means any occurrence, or series of occurrences having the same origin, which causes pollution damage or creates a grave and imminent threat of causing such damage.

The Committee took the view that in the *Santa Anna* case there had been such a grave and imminent threat and that therefore the 1992 Conventions did in principle apply to this incident. It was noted, however, that the usual criteria for admissibility would apply, ie that the measures were reasonable from an objective technical point of view.

Definition of 'ship'

The second question was whether the *Santa Anna* fell within the definition of 'ship' laid down in Article I.1 of the 1992 Civil Liability Convention, which is quoted on page 110.

The shipowner and his P & I insurer take the view that the 1992 Civil Liability Convention was not applicable to the incident. They have argued that the purpose of the 1992 Civil Liability Convention was to cover spills of persistent oil from persistent oil tankers. They have pointed out that the distinction drawn by the Convention is between persistent oil and all other cargoes, whether they are non-persistent oil, other liquids or bulk solids. For this reason they take the view that a vessel does not fall within the definition of 'ship' unless it is actually carrying persistent oil in bulk as cargo or is on the ballast voyage immediately following the carriage of persistent oil in bulk as cargo. They have stated that, in respect of such a ballast voyage, the shipowner may prove that there were no residues of the persistent cargo remaining on board during the subsequent ballast voyage.

The shipowner and his P & I insurer have given an assurance that the claim of the United Kingdom Government will be settled. They have stated that they simply wish to establish that the shipowner's liability in respect of this incident arises under the section of the 1995 Merchant Shipping Act providing for liability in respect of bunker spills from vessels to which the 1992 Civil Liability Convention does not apply.

The Executive Committee accepted that the *Santa Anna* had been constructed or adapted for the carriage of oil in bulk as cargo. The Committee took the view that the issue in question was how to interpret the proviso in Article I.1, ie 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".

It was generally considered that the word 'oil' in the proviso should be interpreted in accordance with the definition of oil in Article I.5, namely any persistent hydrocarbon mineral oil.

Some delegations took the view that the phrase "unless it is proved that it has no residues of such carriage of oil in bulk aboard" indicated that spills from unladen tankers were covered only

if residues of persistent oil were on board. Other delegations maintained that this phrase related only to combination carriers and that dedicated tankers in ballast would always be covered whether or not they were carrying residues of persistent oil. A number of delegations raised the question of the interpretation of the expression 'any voyage', and in particular whether that expression referred to any voyage following the carriage of persistent oil or only to the first voyage following such carriage. Some delegations considered that the expression covered only the first ballast voyage and that the *Santa Anna* incident therefore did not fall within the scope of the Conventions.

Given the importance of this matter, the Executive Committee decided that the interpretation of the definition of 'ship' in the 1992 Civil Liability Convention should be studied by a Working Group to be held in April 1999. For this reason, the Committee took the view that it was premature to take any decision on this issue in respect of the *Santa Anna* incident.

Applicability of the 1992 Civil Liability Convention

The Executive Committee also considered whether the 1992 Civil Liability Convention could be applied to the *Santa Anna* which was registered in a State Party to the 1969 Civil Liability Convention but not to the 1992 Civil Liability Convention. It was noted that since the occurrence had taken place before 16 May 1998 (the date when the United Kingdom's denunciation of the 1969 Civil Liability Convention took effect), the United Kingdom was under a treaty obligation to respect the provisions of the 1969 Civil Liability Convention in respect of ships registered in Panama and that that Convention did not cover pre-spill preventive measures. The Committee took the view, however, that since the 1969 Civil Liability Convention dealt only with laden tankers, the United Kingdom could apply the 1992 Civil Liability Convention to an unladen tanker registered in Panama.

MILAD 1

(Bahrain, 5 March 1998)

The Belize registered coastal tanker *Milad 1* was intercepted by the United States Coast Guard (USCG), 25 nautical miles north east of Bahrain. The tanker, carrying 1 500 tonnes of mixed diesel/crude oil, was found to have a crack in the hull approximately 6 metres long, allowing sea water into the ballast tanks. The USCG considered that the *Milad 1* was in danger of sinking and that it posed a grave and imminent threat of pollution to the coast of Bahrain. The USCG placed damage control experts on board to stabilise the tanker, using pumps to compensate for the flooding, and subsequently escorted it to a more central location in the Gulf, some 50 nautical miles to the north-east of Bahrain.

The shipowner sent another tanker to lighter the *Milad 1*. The Marine Emergency Mutual Aid Centre (MEMAC) in Bahrain engaged a contractor to undertake temporary emergency repairs to the *Milad 1* to prevent the risk of pollution, at a cost of BD21 168 (£33 000). No oil was spilled while the lightering operation was carried out and the vessel was eventually allowed to sail.

The Executive Committee instructed the Director to investigate the various issues further in order to establish whether or not the occurrence had constituted a grave and imminent risk of pollution damage to the territory, territorial sea or Exclusive Economic Zone of a 1992 Fund Member State, and if so, whether the claim for the cost of the temporary repairs was admissible. It was noted that the Director considered that more information concerning the shipowner was required before a decision could be taken as to whether MEMAC had fulfilled its obligation to take all reasonable steps to pursue the legal remedies available to it, in accordance with Article 4.1(b) of the 1992 Fund Convention.

9 LOOKING AHEAD

The membership of the 1971 Fund increased steadily over the years, reaching 76 by March 1998. However, a third of the Organisation's Members left the 1971 Fund on 16 May 1998, as required under the 1992 Fund Protocol, and a number of other States have since denounced the 1971 Fund Convention. It is likely that many of the remaining 1971 Fund Member States will soon leave the Organisation. In the light of this development there is a risk that in the near future the 1971 Fund will be unable to function properly and will therefore not be able to fulfil its objective of paying compensation to victims of future oil spills in the remaining Member States. It is essential, therefore, that all the remaining 1971 Fund Member States soon leave the 1971 Fund so as to enable that Organisation to be wound up without undue delay. The Secretariat will make strenuous efforts to achieve the smooth winding up of the 1971 Fund as soon as possible.

Meanwhile, the number of States which have ratified the 1992 Fund Convention has increased rapidly since the Convention came into force in May 1996. At the end of 1998, 39 States had ratified the 1992 Fund Protocol. It is interesting to note that some of the 1992 Fund Member States were not previously Members of the 1971 Fund. It is expected that there will be a steady growth in 1992 Fund membership in the coming years.

From June 1996 the 1971 Fund Secretariat administered the 1992 Fund as well as the 1971 Fund. On 16 May 1998, however, the 1971 Fund ceased to have its own Secretariat, and it has since then been administered by the newly established Secretariat of the 1992 Fund. As a result of a review carried out by external consultants, the joint Secretariat has been given a new structure and increased resources and the working methods have been modified. The Secretariat is therefore in a better position to provide the services which victims of oil pollution incidents, Member States and interested circles are entitled to expect.

The Secretariat will pursue its efforts to bring the pollution cases which the Funds are now handling to satisfactory conclusions as soon as possible. In particular, the Secretariat will endeavour to build on the considerable progress made during 1998 towards the settlement of claims with regard to a number of incidents involving the 1971 Fund. This is especially important, since the 1971 Fund cannot be wound up until the claims arising out of incidents involving that Fund are resolved.

An essential task for the joint Secretariat of the 1971 and 1992 Funds is to consolidate and develop the international compensation system. The Secretariat will endeavour to work to this end, in the interests of both Organisations and their respective Member States and of victims of oil pollution.

ANNEX I

Structure of the IOPC Funds

1971 FUND GOVERNING BODIES

ASSEMBLY

Composed of all Member States

4th extraordinary session

Chairman:	Mr C Coppolani (France)
Vice-Chairmen:	Mr A H E Popp QC (Canada)
	Mrs I Barinova (Russian Federation)

21st session

Chairman:	Mr J Vonau (Poland)
Vice-Chairmen:	Mr A H E Popp QC (Canada)
	Mrs I Barinova (Russian Federation)

EXECUTIVE COMMITTEE

57th and 58th sessions

Chairman:	Mr W J G Oosterveen (Netherlands)
Vice-Chairman:	Professor L S Chai (Republic of Korea)

Algeria	Greece	Morocco
Belgium	India	Netherlands
Colombia	Italy	Poland
Denmark	Japan	Republic of Korea
France	Malaysia	United Kingdom

59th session

Chairman:	Mr A H E Popp QC (Canada)
Vice-Chairman:	Mr M Janssen (Belgium)

Algeria	Fiji	Nigeria
Belgium	India	Poland
Canada	Italy	Russian Federation
Colombia	Malaysia	United Arab Emirates
Côte d'Ivoire	New Zealand	Venezuela

1992 FUND GOVERNING BODIES

ASSEMBLY

Composed of all Member States

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

EXECUTIVE COMMITTEE

1st session

Chairman:	Professor L S Chai (Republic of Korea)
Vice-Chairman:	Mr J Wren (United Kingdom)

Cyprus	Japan	Philippines
Denmark	Liberia	Republic of Korea
Finland	Mexico	Spain
Greece	Netherlands	Tunisia
Ireland	Norway	United Kingdom

JOINT SECRETARIAT

Officers

Mr M Jacobsson	Director
Mr S Osanai	Legal Counsel
Mr J Nichols	Head, Claims Department
Mr R Pillai	Head, Finance & Administration Department
Miss S Gregory	Claims Officer
Mr J Maura	Claims Officer
Ms H Warson	Head, External Relations & Conference Department
Mrs P Binkhorst-van Romunde	Finance Officer

AUDITORS OF THE 1971 FUND AND THE 1992 FUND

Comptroller and Auditor General
United Kingdom

ANNEX II

Note on 1971 and 1992 Funds' Published Financial Statements

The financial statements reproduced in Annexes III to XI, and XIV to XVII are an extract of information contained in the audited financial statements of the International Oil Pollution Compensation Funds 1971 and 1992 for the year ended 31 December 1997, approved by the Executive Committee of the 1971 Fund at its 59th session acting on behalf of the 1971 Fund Assembly and by the Assembly of the 1992 Fund at its 3rd session.

EXTERNAL AUDITOR'S STATEMENT

The extracts of the financial statements set out in Annexes III to XI and XIV to XVII are consistent with the audited financial statements of the International Oil Pollution Compensation Funds 1971 and 1992 for the year ended 31 December 1997.

R Maggs
Director
for the Comptroller and Auditor General
National Audit Office, United Kingdom
31 January 1999

ANNEX III

General Fund

1971 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 1997

	1997		1996	
INCOME	£	£	£	£
Contributions (Schedule I)				
Initial contributions		70 136		*1 162*
(Refund working capital)/Annual contributions		(4 971 115)		*5 808 890*
Adjustment to prior years' assessment		412 253		*7 212*
		(4 488 726)		*5 817 264*
Miscellaneous				
Miscellaneous income	5 571		*248 545*	
Income from 1992 Fund	-		*68 117*	
Transfer from *Kasuga Maru N°1* MCF	-		*29 744*	
Transfer from *Rio Orinoco* MCF	-		*83 017*	
Transfer from *Taiko Maru* MCF	112 567		-	
Transfer from *Toyotaka Maru* MCF	104 237		-	
Interest on loan to *Vistabella* MCF	20 459		*18 618*	
Interest on loan to *Yuil N°1* MCF	-		*8 306*	
Interest on loan to *Sea Empress* MCF	-		*113*	
Interest on overdue contributions	48 947		*28 710*	
Interest on investments	1 154 983		*1 070 460*	
		1 446 764		*1 555 630*
		(3 041 962)		*7 372 894*
EXPENDITURE				
Secretariat expenses (Statement I)				
Obligations incurred		1 067 942		*975 953*
Claims (Schedule II)				
Compensation		70 528		*1 977 901*
Claims related expenses (Schedule II)				
Fees	1 226 620		*1 492 239*	
Travel	9 346		*1 769*	
Miscellaneous	1 521		*6 808*	
		1 237 487		*1 500 816*
		2 375 957		*4 454 670*
Income less expenditure		(5 417 919)		*2 918 224*
Exchange adjustment		(405 164)		*(44 026)*
		(5 823 083)		*2 874 198*
Transfer from *Agip Abruzzo* MCF		-		*(176 662)*
(Shortfall)/Excess of income over expenditure		**(5 823 083)**		*2 697 536*

ANNEX IV

Major Claims Funds - *Taiko Maru* and *Toyotaka Maru*

1971 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 1997

	Taiko Maru Major Claims Fund				*Toyotaka Maru* Major Claims Fund			
	1997		*1996*		1997		*1996*	
INCOME	£	£	*£*	*£*	£	£	*£*	*£*
Contributions (Schedule I)								
Annual contributions	-		-		-		-	
Adjustment to prior years' assessment	-		*5 707*		-		*3 480*	
		-		*5 707*		-		*3 480*
Miscellaneous								
Interest on overdue contributions	-		*2 526*		-		*9 771*	
Interest on investments	-		*195 612*		-		*258 558*	
		-		*198 138*		-		*268 329*
		-		*203 845*		-		*271 809*
EXPENDITURE (Schedule II)								
Compensation	-		-		-		*125 189*	
Fees	-		-		-		*16 242*	
Miscellaneous	-		-		-		*92*	
		-		-		-		*141 523*
Excess of income over expenditure		-		*203 845*		-		*130 286*
Balance b/f. 1 January		3 599 255		*3 395 410*		4 781 651		*4 651 365*
Credit to Contributors' Account	3 486 688		-		4 677 414		-	
Transfer to General Fund	112 567		-		104 237		-	
		(3 599 255)		-		(4 781 651)		-
Balance as at 31 December		NIL		*3 599 255*		NIL		*4 781 651*

ANNEX V
Major Claims Funds - *Haven* and *Aegean Sea*

1971 FUND: INCOME AND EXPENDITURE ACCOUNT
FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 1997

	Haven Major Claims Fund				*Aegean Sea* Major Claims Fund			
	1997		*1996*		1997		*1996*	
INCOME	£	£	*£*	*£*	£	£	*£*	*£*
Contributions (Schedule I)								
Annual contributions (second levy)	-		-		-		-	
Annual contributions (first levy)	-		-		-		-	
Adjustment to prior years' assessment	30 258		*921*		263 006		*676 876*	
		30 258		*921*		263 006		*676 876*
Miscellaneous								
Interest on overdue contributions	71 680		-		52 298		*25 122*	
Interest on investments	1 722 285		*1 523 134*		2 165 995		*1 914 053*	
Interest on loans to *Braer* MCF	-		*41 850*		-		-	
Interest on loans to *Nakhodka* MCF	-		-		158 724		-	
		1 793 965		*1 564 984*		2 377 017		*1 939 175*
		1 824 223		*1 565 905*		2 640 023		*2 616 051*
EXPENDITURE (Schedule II)								
Compensation	-		*2 048 108*		-		*356 613*	
Fees	523 655		*662 958*		297 031		*698 706*	
Travel	2 927		*2 160*		2 969		*6 245*	
Interest on loan from *Haven* MCF	-		-		-		-	
Miscellaneous	303		*1 126*		462		*1 304*	
		526 885		*2 714 352*		300 462		*1 062 868*
Excess/(shortfall) of income over expenditure		1 297 338		*(1 148 447)*		2 339 561		*1 553 183*
Balance b/f: 1 January		28 007 983		*29 156 430*		35 395 634		*33 842 451*
Balance as at 31 December		**29 305 321**		***28 007 983***		**37 735 195**		***35 395 634***

ANNEX VI
Major Claims Funds - *Braer* and *Keumdong N°5*

1971 FUND: INCOME AND EXPENDITURE ACCOUNT
FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 1997

	Braer Major Claims Fund				*Keumdong N°5* Major Claims Fund			
	1997		*1996*		1997		*1996*	
INCOME	£	£	*£*	*£*	£	£	*£*	*£*
Contributions (Schedule I)								
Annual contributions (second levy)	-		*13 940 004*		-		-	
Annual contributions (first levy)	-		-		-		-	
Adjustment to prior years' assessment	393 504		*21 919*		133 320		*8 576*	
		393 504		*13 961 923*		133 320		*8 576*
Miscellaneous								
Interest on overdue contributions	9 726		*22 275*		5 762		*13 252*	
Interest on investments	374 533		*286 353*		424 834		*493 479*	
Interest on loans to *Braer* MCF	-		-		-		-	
Interest on loans to *Nakhodka* MCF	-		-		-		-	
		384 259		*308 628*		430 596		*506 731*
		777 763		*14 270 551*		563 916		*515 307*
EXPENDITURE (Schedule II)								
Compensation	-		*(1 454)*		-		*5 639 236*	
Fees	241 379		*570 150*		57 437		*133 907*	
Travel	11 586		*14 495*		-		-	
Interest on loan from *Haven* MCF	-		*41 850*		-		-	
Miscellaneous	427		*14 698*		70		*179*	
		253 392		*639 739*		57 507		*5 773 322*
Excess/(shortfall) of income over expenditure		524 371		*13 630 812*		506 409		*(5 258 015)*
Balance b/f. 1 January		5 836 657		-		6 699 793		*11 957 808*
Amount due to *Haven* MCF		-		*(7 794 155)*		-		-
Balance as at 31 December		6 361 028		*5 836 657*		7 206 202		*6 699 793*

ANNEX VII

Major Claims Funds - *Sea Prince* and *Yeo Myung*

1971 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 1997

	Sea Prince Major Claims Fund				*Yeo Myung* Major Claims Fund			
	1997		*1996*		1997		*1996*	
INCOME	£	£	*£*	*£*	£	£	*£*	*£*
Contributions (Schedule I)								
Annual contributions (third levy)	4 816 324		*-*		-		*-*	
Annual contributions (second levy)	6 747 898		*-*		963 986		*-*	
Annual contributions (first levy)	-		*10 650 275*		-		*1 936 414*	
Adjustment to prior years' assessment	243 899		*-*		44 345		*-*	
		11 808 121		*10 650 275*		1 008 331		*1 936 414*
Miscellaneous								
Interest on overdue contributions	5 799		*21 433*		704		*3 897*	
Interest on investments	961 098		*502 481*		173 075		*97 109*	
Recovery from shipowner's insurer	-		*-*		-		*-*	
		966 897		*523 914*		173 779		*101 006*
		12 775 018		*11 174 189*		1 182 110		*2 037 420*
EXPENDITURE (Schedule II)								
Compensation	4 315 189		*1 318 262*		317 850		*-*	
Fees	237 500		*14 824*		64 557		*-*	
Interest on loan from General Fund	-		*-*		-		*-*	
Travel	5 255		*-*		-		*-*	
Miscellaneous	75		*79*		56		*-*	
		4 558 019		*1 333 165*		382 463		*0*
Excess of income over expenditure		8 216 999		*9 841 024*		799 647		*2 037 420*
Amount due to General Fund		-		*-*		-		*-*
Balance b/f: 1 January		9 841 024		*-*		2 037 420		*-*
Balance as at 31 December		18 058 023		*9 841 024*		2 837 067		*2 037 420*

ANNEX VIII
Major Claims Funds - *Yuil N°1* and *Senyo Maru*

1971 FUND: INCOME AND EXPENDITURE ACCOUNT
FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 1997

	Yuil N°1 Major Claims Fund				*Senyo Maru* Major Claims Fund			
	1997		*1996*		1997		*1996*	
INCOME	£	£	*£*	*£*	£	£	*£*	*£*
Contributions (Schedule I)								
Annual contributions (third levy)	5 779 589		-		-		-	
Annual contributions (second levy)	4 819 928		-		-		-	
Annual contributions (first levy)	-		*6 777 448*		-		*2 904 620*	
Adjustment to prior years' assessment	155 208		-		66 518		-	
		10 754 725		*6 777 448*		66 518		*2 904 620*
Miscellaneous								
Interest on overdue contributions	4 663		*13 639*		432		*4 728*	
Interest on investments	364 599		-		104 757		*87 583*	
Recovery from shipowner's insurer	-		-		1 418 375		-	
		369 262		*13 639*		1 523 564		*92 311*
		11 123 987		*6 791 087*		1 590 082		*2 996 931*
EXPENDITURE (Schedule II)								
Compensation	41 846		*5 959 273*		26 184		*1 450 409*	
Fees	125 840		*313 055*		19 337		*111 016*	
Interest on loan from General Fund	-		*8 306*		-		*904*	
Travel	-		-		-		-	
Miscellaneous	1 605		*286*		51		*1 417*	
		169 291		*6 280 900*		48 572		*1 563 746*
Excess of income over expenditure		10 954 696		*510 187*		1 544 510		*1 433 185*
Amount due to General Fund		-		*(402 929)*		-		-
Balance b/f. 1 January		107 258		-		1 433 185		-
Balance as at 31 December		11 061 954		*107 258*		2 977 695		*1 433 185*

ANNEX IX

Major Claims Funds - *Sea Empress* and *Nakhodka*

1971 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 1997

	Sea Empress Major Claims Fund 1997		*Nakhodka* Major Claims Fund 1997	
INCOME	£	£	£	£
Contributions (Schedule I)				
Annual contributions (2nd levy)	19 862 302		-	
Annual contributions (1st levy)	9 942 231		14 717 793	
		29 804 533		14 717 793
Miscellaneous				
Interest on overdue contributions	14 834		5 309	
Interest on investments	757 303		-	
		772 137		5 309
		30 576 670		14 723 102
EXPENDITURE (Schedule II)				
Compensation	6 045 226		22 583 161	
Fees	952 762		1 545 877	
Interest on loan from *Aegean Sea* MCF	-		158 724	
Travel	5 700		23 537	
Miscellaneous	12 440		7 144	
		7 016 128		24 318 443
Excess/(shortfall) of income over expenditure		23 560 542		(9 595 341)
Amount due to General Fund		(58 257)		-
Balance as at 31 December		23 502 285		
Amount due to *Aegean Sea* MCF				(9 595 341)

ANNEX X

1971 FUND: BALANCE SHEET AS AT 31 DECEMBER 1997

	1997	*1996*
ASSETS	£	*£*
Cash at banks and in hand	139 738 751	*115 793 967*
Contributions outstanding	2 610 543	*1 354 808*
Due from 1992 Fund	355 320	*237 898*
Due from *Vistabella* MCF	386 056	*347 808*
Due from *Nakhodka* MCF to *Aegean Sea* MCF	9 595 341	-
Due from MCF *Sea Empress*	-	*58 257*
Tax recoverable	41 607	*77 257*
Miscellaneous receivable	14 259	*11 710*
Interest on overdue contributions	26 898	*25 342*
TOTAL ASSETS	152 768 775	*117 907 047*
LIABILITIES		
Staff Provident Fund	905 366	*1 005 794*
Accounts payable	31 213	*31 987*
Unliquidated obligations	143 222	*135 327*
Prepaid contributions	245 053	*374 897*
Contributors' account	135 917	*532 865*
Due to *Haven* MCF	29 305 321	*28 007 983*
Due to *Aegean Sea* MCF	37 735 195	*35 395 634*
Due to *Braer* MCF	6 361 028	*5 836 657*
Due to *Taiko Maru* MCF	-	*3 599 255*
Due to *Keumdong N°5* MCF	7 206 202	*6 699 793*
Due to *Toyotaka Maru* MCF	-	*4 781 651*
Due to *Sea Prince* MCF	18 058 023	*9 841 024*
Due to *Yeo Myung* MCF	2 837 067	*2 037 420*
Due to *Yuil N°1* MCF	11 061 954	*107 258*
Due to *Senyo Maru* MCF	2 977 695	*1 433 185*
Due to *Sea Empress* MCF	23 502 285	-
TOTAL LIABILITIES	140 505 541	*99 820 730*
GENERAL FUND BALANCE	12 263 234	*18 086 317*
TOTAL LIABILITIES AND GENERAL FUND BALANCE	152 768 775	*117 907 047*

ANNEX XI

1971 FUND: CASH FLOW STATEMENT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 1997

	1997 £	1997 £	*1996 £*	*1996 £*
Cash as at 1 January		115 793 967		*91 016 695*
OPERATING ACTIVITIES				
Initial contributions	55 084		*15 535*	
Previous year's contributions received	60 961 984		*41 764 651*	
Prior years' contributions received	2 218 580		*1 240 358*	
Recovery *Senyo Maru*	1 418 375		-	
1992 Fund income	124 128		*4·225*	
Interest received on overdue contributions	218 598		*124 397*	
Other sources of income	443 768		*355 267*	
Receipts from contributors	21 019		*363 838*	
Exchange adjustment	(405 164)		*(44 026)*	
Administrative expenditure (1971/1992 Funds)	(1 539 495)		*(1 083 350)*	
Claims expenditure	(38 795 242)		*(22 997 471)*	
Repayment to contributors	(8 601 141)		*(1 673 412)*	
Other cash payments	(341 225)		*(10 000)*	
Net cash from operating activities before net current asset changes	15 779 269		*18 060 012*	
Increase (Decrease) in net current liabilities	(130 618)		*207 711*	
Net cash flow from operating activities		15 648 651		*18 267 723*
RETURNS ON INVESTMENTS				
Interest on investments	8 296 133		*6 509 549*	
Net cash inflow from returns on investments		8 296 133		*6 509 549*
Cash as at 31 December		139 738 751		*115 793 967*

ANNEX XII

REPORT OF THE EXTERNAL AUDITOR ON THE FINANCIAL STATEMENTS OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1971 FOR THE FINANCIAL PERIOD 1 JANUARY TO 31 DECEMBER 1997

PART ONE - INTRODUCTION

Scope of the audit

1 I have audited the financial statements of the International Oil Pollution Compensation Fund 1971 ("the 1971 Fund") for the nineteenth financial period ended 31 December 1997. My examination was carried out with due regard to the provisions of the 1971 Fund Convention and to 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 1997 had been received and incurred for the purposes approved by the 1971 Fund Assembly; whether income and expenditure were properly classified and recorded in accordance with the 1971 Fund's Financial Regulations; and whether the financial statements presented fairly the financial position as at 31 December 1997.

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 1971 Fund's financial statements are free of material misstatement. The 1971 Fund's Secretariat were responsible for preparing these financial statements, and I am responsible for expressing an opinion on them, based on evidence gathered in my audit.

Audit Approach

4 My examination was based on a test audit, in which all areas of the financial statements were subject to direct substantive testing of the transactions and balances recorded. Finally an examination was carried out to ensure that the financial statements accurately reflected the 1971 Fund's accounting records and were fairly presented.

5 My audit examination included a general review and such tests of the accounting records and other supporting evidence as I considered necessary in the circumstances. These audit procedures are designed primarily for the purpose of forming an opinion on the 1971 Fund's financial statements. Consequently, my work did not involve a detailed review of all aspects of the 1971 Fund's budgetary and financial information systems, and the results should not be regarded as a comprehensive statement on them.

6 In addition to my audit of the 1971 Fund's accounts and financial transactions, and as approved by the 1971 Fund Assembly in April 1998 (71FUND/A/ES.4/16), I have carried out an enhanced ("value for money") audit of the payment of claims and related expenditure.

7 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 part two of this report.

Overall Results

8 Notwithstanding the observations in this report, my examination revealed no weaknesses or errors which I 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 in the *Haven* incident (paragraphs 48 to 55), I confirm that, in my opinion, the financial statements present fairly the financial position as at 31 December 1997.

PART TWO - AUDIT FINDINGS

Claims and Related Expenditure

Introduction

9 As part of my 1997 audit, I undertook an enhanced examination of the payment of claims and related expenditure. The objective of this examination was to test whether the Fund's claims handling procedures ensured that claims are treated equally and in accordance with the Fund's Regulations and established procedures, and that claims and related expenditure are incurred in a cost effective manner, taking into account the Fund's objectives of paying compensation.

Background

10 Total claims and claims related payments in 1997 amounted to £38 974 425. Of this, £25 164 098 (64 per cent) was paid in respect of the *Nakhodka* incident and £7 016 128 (18 per cent) was paid in respect of the *Sea Empress* incident. An analysis of 1997 claims and claims related payments is shown in Table 1 below:

Table 1 - Claims and Claims Related Payments (1 January to 31 December 1997)

	Claims	Claims related	Total	Percentage (of total)
	£	£	£	
Nakhodka (2/1/97)	22 583 161	2 580 937	25 164 098	64
Sea Empress (15/2/96)	6 045 226	970 902	7 016 128	18
Sea Prince (23/7/95)	4 315 189	242 830	4 558 019	12
Other incidents	456 408	1 779 772	2 236 180	6
	33 399 984	5 574 441	38 974 425	100

Audit Approach

11 My staff selected and examined a sample of claims and claims related payments made in 1997 (covering all incidents for which payments had been made in the year). My staff reviewed the associated files and related documents held at the Fund's headquarters in London. In addition, they visited the *Sea Empress* local claims office in Milford Haven in August 1997. The purpose of this visit was to gain an insight into how a local claims office operates and the nature and extent of the 1971 Fund's internal controls at this level. They also visited the *Nakhodka* local claims office in Kobe in August 1998 where they examined the files and supporting documents relating to specific claims payments made in 1997 in respect of the *Nakhodka* incident.

Milford Haven Claims Handling Office

12 The 1971 Fund and the Skuld Club established a local claims handling office in Milford Haven to deal with claims for compensation arising from the *Sea Empress* incident. This office was closed in February 1998, by which time final settlements had been reached in respect of the majority of claims presented.

13 My staff visited the local claims office in Milford Haven in August 1997 and were favourably impressed by the way in which it was operated and managed. During the visit they were able to review and assess the overall procedures and internal controls in operation. Subsequently, as part of their routine examination of a sample of 1997 claims payments at the Fund's headquarters, they examined a number of claims payments relating to the *Sea Empress* incident.

14 My staff were satisfied in all of the cases examined, that assessments had been carried out thoroughly and in accordance with the 1971 Fund's claims policy. *Sea Empress* claims files held at the claims office and the Fund's headquarters were particularly well structured and documented, thereby aiding my staff's review, and providing transparency to the whole claims process. Each file contained all key documents relating to that individual claim including:

- a record of all individual payments made in respect of the claim;
- ITOPF (International Tanker Owners Pollution Federation) or other expert's assessment report(s);
- correspondence between the local claims office and the Fund and the Club;
- letters sent by the Fund to the claimant giving an explanation of the assessment:
- copies of the authorisation for payment from the Fund and the Club;
- a copy of the signed receipt(s) obtained from the claimant.

From their visit to the local claims office my staff also noted that many of the office procedures had been systematically documented and where necessary, standardised documents produced.

15 I consider that there is much scope for the Fund to capitalise on the experience of, and the work carried out by the Milford Haven claims office, and to use this for the benefit of other local claims offices. This would minimise the amount of time spent "reinventing the wheel" whenever a new claims office is established and would increase overall consistency in the claims handling process. Similarly lessons learned from other local claims offices should be identified and passed on to others. I therefore welcome the recent action taken by the Fund to clarify and expand existing claims handling office guidelines and to engage two people with recent experience of setting up and running local claims offices to review the operation of such offices. I also welcome the Director's proposal to seek endorsement from the international group of P&I Clubs for a standard set of claims handling office guidelines.

16 In order to further strengthen the guidance given to local claims offices I recommend that these guidelines are further developed and expanded into a comprehensive claims office manual. This manual should set out the role of a local claims office and cover all procedures and processes appropriate to this level of the Fund's operations. The manual, which should be continually reviewed and revised as necessary, should draw together best practice and aim to standardise the work of local claims offices. I have commented further on the need for greater standardisation in paragraph 41 below.

Nakhodka Claims Handling Office

Background

17 The 1971 Fund, the 1992 Fund, the shipowner and his insurer (the UK Club), have established jointly a claims handling office in Kobe, Japan, to deal with the assessment of claims arising from the *Nakhodka* incident. This local claims office is operated and managed by General Marine Surveyors and Co Ltd of Japan (GMS). The International Tanker Owners Pollution Federation Ltd (ITOPF) also provides expertise on claims on behalf of both the UK Club and the Fund. Tourism claims are being separately handled and assessed by the Japanese firm of surveyors, Cornes and Co Ltd.

18 As at 13 July 1998, 449 claims totalling ¥34 006 million (approximately £143 million) had been received. Of this, 343 claims totalling ¥2 910 million (approximately £12 million) were from businesses in the tourism industry. Claims payments made to July 1998 totalled £23.6 million and are analysed in Table 2 below:

Table 2 - *Nakhodka* Claims Payments (January 1997 to July 1998)

	1997	1998 (to July)	Total
	£	£	£
Clean up operations			
Japan Marine Disaster Prevention Centre (JMDPC) and contractors	12 351 184	-	12 351 184
Shipowner's contractors	47 268	237 542	284 810
Fishery Co-operatives	3 438 871	-	3 438 871
Prefectures and Municipalities	6 490 224	754 694	7 244 918
Loss of income			
Fishery	236 995	-	236 995
Aquarium	18 619	-	18 619
	22 583 161	992 236	23 575 397

Provisional Payments

19 As shown above, total *Nakhodka* claims payments made in 1997 amounted to £22 583 161. I noted that final agreed assessments had been made only in respect of payments to a shipowner's contractor (£47 268) and in respect of part of a fishery claim (£236 995). The remainder of payments made in 1997 were provisional payments, made to alleviate hardship, and were based on a prudent initial assessment of the likely amounts payable. These payments ranged from between 27 per cent to 58 per cent of the total amounts claimed.

20 I found that in all cases where provisional payments had been made, the basis on which they had been calculated was appropriate and reasonable and unlikely to exceed 60 per cent of the eventual assessments (the level provisionally set by the Executive Committee for all *Nakhodka* claims payments). Provisional payments were almost exclusively in respect of clean up operations.

21 In reviewing the basis on which these provisional payments had been calculated, my staff found that in all cases, GMS had prepared detailed assessment reports. These reports gave a summary translation in English of the content of the claims and the detailed amounts claimed, most of which were extremely voluminous. Some of the GMS assessment reports were final, although they had not been fully reviewed by ITOPF and agreed by the Fund and the UK Club (see further comments at paragraph 24 below), and some were only preliminary provisional assessments for the purpose of making an initial payment to the claimant. A considerable amount of work had been undertaken by GMS in preparing these assessment reports, which will have to be revisited before the assessments are finalised.

22 Given the extent of work undertaken to form a view as to the level of preliminary payments, in particular the high level of administrative work involved, efficiency could be increased if the process for making preliminary assessments were simplified. This would of course only be appropriate in cases such as claims for clean up operations, where there are no matters of principle involved. A simple checklist could be drawn up against which key criteria (such as evidence of a fully documented claim, a bona fide claimant and admissibility in principle) could be checked. The surveyor or expert assessing the claim should only need to produce a summary report, containing a preliminary assessment of the claim, which would cover the principles and justification for a provisional payment as well as setting out the basis for the proposed level of the initial payment. This simplified process could be adopted in all incidents where claims are large and/or complicated and where some provisional payment is appropriate due to the inevitable delay necessary for completing a full assessment.

23 I therefore recommend that the Fund reviews the criteria and procedures to be adopted for making provisional payments to claimants. I also recommend that guidelines are drawn up, which can be used for any incident, setting out the principles involved and the level and extent of documentation required, and that these guidelines are incorporated into the claims office manual referred to in paragraph 16 above.

Key Principles

24 In reviewing the assessment reports prepared by GMS, my staff noted that some of these were final although they had not yet been fully considered by ITOPF and agreed by the Fund and the UK Club. With regard to the claims for clean up operations, the main concerns lay in the rates assessed by GMS for labour and vessel charges and for the level of general expenses accepted. Resolution of these key issues has caused delay in the settlement of claims, although it is understood that these issues are currently being negotiated. Also, if the rates eventually agreed by all parties are different to those assessed by GMS, the assessment reports will have to be revised and the calculations reperformed, thereby adding to the delay and administrative effort.

25 I recommend that, for outstanding claims in respect of clean up operations in the *Nakhodka* incident, the 1971 Fund now take steps to identify and resolve the outstanding issues of principle with the UK Club, in consultation with ITOPF, so that these claims can be settled as quickly as possible.

26 In my view, there appears to be scope for agreeing the general principles to be applied in respect of the assessment of claims at a much earlier stage in the assessment process. I therefore recommend that in future, where claims are not straightforward, where possible, the key principles of an individual claim or group of claims are identified and isolated at the initial stage of assessment. These issues should then be clearly analysed and an initial proposed assessment or methodology formally reported to all parties for discussion and agreement. Final agreement would of course be subject to a full and complete assessment. I also recommend that a reasonable timetable for agreeing these general principles is established and agreed between the parties, once a particular problem has been recognised, and that a written record of all correspondence and decisions on these principles is filed by the Fund on an individual claim basis.

Staffing of Claims Office

27 The volume of claims received for this incident is extremely large and many of the claims themselves are very detailed. My staff were concerned that the level of work remaining before final assessments can be agreed is considerable and that these may not be completed for some time.

28 GMS have had to expand the size of their workforce from three staff to thirteen in order to cope with the increased workload related to the *Nakhodka* incident. The office staff now comprises seven marine surveyors and six secretaries. Cornes and Co employ three surveyors and three accounting clerks for the assessment of tourism claims.

29 Since the number of suitably qualified and experienced marine surveyors available in Japan is limited, the expertise of the GMS surveyors and the time they spend in assessing claims is extremely valuable. My staff consider that it may be possible to free up some of the surveyors' time by employing additional staff such as accountants or other professional experts to check less specialised areas of the claims. The time spent by the surveyors can then be focused on the areas of the claim where their specialised knowledge and expertise is vital. I therefore recommend that the Fund carry out a review of the current workload of the local claims office in order to assess whether such additional staff ought to be employed, or whether the mix of staff could be changed. I understand that measures to this effect are currently being considered. I have commented further on the Fund's role in establishing and managing local claims offices, including the associated staffing issues at paragraphs 39, 40 and 43 below.

Filing and Documentation

30 My staff found that documents at the local claims office were carefully and systematically filed, however they found that the method of filing individual documents did not easily facilitate external, independent review of individual claims. For example, correspondence between GMS and the Fund and UK Club was filed chronologically in a central file rather than by individual claim and therefore it was difficult for my staff to obtain and to review a complete set of all documents and correspondence relating to the individual claims selected for examination. In addition, summaries or notes of events such as site visits or key meetings ought to be recorded on the individual claims file so as to facilitate independent third party review of all action taken in respect of the assessment.

31 I therefore recommend that documentation both at the local claims office and at the Fund's headquarters is filed as far as possible by individual claim, and that notes of key actions taken are documented on the individual claim file or are cross referred to a central file. In this respect I recommend that the Fund draws up detailed guidance on the filing and documentation standards required and that all files, whether at headquarters or at the local claims office are maintained on a consistent and standardised basis. These guidelines should also address key audit requirements.

Assessment of Claims

32 My staff found that the assessment reports produced by GMS were very detailed. All elements of the claim and the individual amounts claimed were clearly explained, and in those cases where assessment reports were final, my staff were satisfied that the assessment had been carried out thoroughly and adhered to the Fund's criteria regarding the admissibility of claims. In reviewing the assessment reports themselves, however, my staff found that these did not always fully explain all of the judgements made and the methodologies used, nor were these judgements and methodologies set out clearly in other supporting documents held. Whilst I appreciate that the parties involved were fully briefed on the relevant issues, and that GMS were able to give further explanations directly to my staff, I consider that assessment reports should, as far as possible, stand alone. They should provide a complete and succinct explanation supporting the basis on which the assessment has been made, so that all decisions and judgements made may be reviewed and understood by a competent, independent third party.

33 I therefore recommend that the Fund establish guidelines covering the structure and general content of assessment reports. These guidelines should cover such matters as the need to:

- clearly document the assessment process including the extent to which supporting documents and records were provided by the claimant and the extent to which these have been examined by the assessor; and

- clearly explain the basis on which the amounts claimed were agreed, reduced or rejected.

These guidelines should be incorporated into the claims office manual referred to in paragraph 16 above.

34 By establishing common and appropriate guidelines/instructions for assessment reports, the Fund would increase both the transparency of decisions taken with regard to individual claims settlements, and reduce the risk of inequality in treatment of claimants by different assessors. Additionally, it is possible that the number of subsequent questions raised by the Fund, the Club or ITOPF on the principle of the claim or on the methodology used, could be minimised if, from the outset, surveyors and other experts were more fully briefed on the reporting requirements.

Tourism Claims

35 My staff visited the office of Cornes and Co Ltd in Kobe where they spoke with staff to determine the approach to be adopted in respect of the assessment of tourism claims. As no payments had been made at that time in respect of tourism claims, my staff did not carry out a detailed examination of any particular claims.

36 Cornes and Co explained to my staff that claims were being examined on a case by case basis and that the same assessment process was being followed in the *Nakhodka* incident as in the *Sea Empress* incident. The Fund had provided Cornes and Co with sample reports from the *Sea Empress* incident, prepared by L and R Management Consultants Ltd (UK), and had also engaged L and R Management Consultants Ltd to advise in the assessment process for the *Nakhodka* incident. I welcome the action taken by the Fund to ensure that Cornes and Co were provided with appropriate advice and support with regard to the Fund's requirements for assessing tourism claims and also welcome the proposed consistency in approach between the two incidents.

Claims Related Expenditure

37 As shown in Table 1 above, total *Nakhodka* claims related payments in 1997 amounted to £2 580 937. Of this, £1 688 932 related to the cost of running the local claims office (including the fees of GMS and Cornes and Co) for the period January to October 1997.

38 My staff examined the records maintained by GMS for recording time worked and costs incurred in relation to the *Nakhodka* incident. They examined the invoice for March 1997 in detail and were satisfied that this was properly prepared and in accordance with the tariff of survey fees agreed between the Fund and GMS.

Headquarters' Procedures and Controls

Management of Local Claims Offices

39 The recent review of Secretariat working methods carried out by external consultants identified the need for improved management of local claims offices by the Fund. The areas for improvement identified included the need for the Fund to "take full responsibility for defining and reviewing the parameters of local claims office activity, the nature of the interface between the local claims office and London, and the appropriate allocation of tasks".

40 I endorse the consultants' findings and recommendations, and from my review of operations both at Milford Haven and Kobe, I would also agree that the Fund should exercise a greater managerial and advisory role with regard to day to day operations at the local claims offices. Due to the small size of the Secretariat in London it has been the policy up to now to fully contract out the work of the local claims office to independent experts. The Fund has therefore relied heavily on those contractors to establish appropriate systems and procedures, within the parameters and guidelines provided by the Fund.

41 Given the need for consistency in the treatment of claimants, I consider that it is the responsibility of the Fund to establish appropriate systems and procedures at each of the local claims offices, and to ensure that these are implemented and followed by the contractors employed. In my view, the risk of

inconsistency in the treatment of claims can be reduced through the standardisation of processes and procedures, whilst still allowing a necessary degree of flexibility to accommodate local circumstances. To this end I have recommended above that the Fund draw up a comprehensive local claims office manual (paragraph 16) and that general guidelines on specific issues are established (see paragraph 23 regarding provisional payments, paragraph 31 regarding filing and documentation, and paragraph 33 regarding assessment reports). Processes and procedures at the local claims offices should in turn be consistent with those adopted for other incidents which are handled directly by the Fund.

42 The availability of guidance and set procedures will also assist the local claims office staff in carrying out their responsibilities and ensure that they are more fully supported. This is often important where the contractor (such as GMS in Japan) has had no previous experience in running a local claims office, and where their expertise is predominantly in carrying out assessments of claims.

43 I recommend that the Fund is more fully involved in the administrative arrangements at the local claims office by taking a lead in the establishment of the office, including the recruitment of staff employed; by providing day to day advice on management issues; and through actively reviewing operations. I welcome the recent restructuring of the Fund's secretariat and the recruitment of a Head of Claims, whose responsibilities will include management and oversight of these offices.

Use of Experts

44 The Fund employs a variety of experts to operate local claims offices, to review and assess claims and to provide legal advice and services. A paper on the 1971 Fund's use of experts was prepared by the Director in September 1996 and submitted to the Executive Committee (71FUND/EXC.50/15). In this paper the Director reported that in many fields in which the Fund requires expertise, there are very few experts available with the appropriate experience, thus limiting the choices open to the Fund. At this time the Executive Committee did not consider that it was possible to establish firm criteria for the selection of experts and expressed the view that it should be left to the Director to decide on the most appropriate expert for each particular incident.

45 Given the nature of the expertise required by the Fund and the immediacy with which services are often required, it is not always possible to enter into detailed contractual negotiations with experts or lawyers before they are appointed. However, there are several ways in which the Fund can attempt to minimise the risks to value for money in this area. In particular, I recommend that:

- wherever possible, fees/tariffs and contractual terms are agreed in writing before appointment, or if this is not possible, as soon as possible thereafter;

- experts/lawyers are requested to provide a reasonable minimum level of detail in their invoices to support the amounts billed;

- a database of fees paid to individual experts is established so that the Fund can more easily monitor amounts paid against specific work carried out and also the fee levels between individual experts working in similar fields:

- a database of qualified experts/lawyers is drawn up to assist the Fund in its selection of such experts. This database should contain details of those experts/lawyers already used by the Fund (where performance has been satisfactory) and also any others who may be suitably qualified.

Other Financial Matters

Contingent Liabilities

General

46 The 1971 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 1971 Fund Convention, those liabilities which mature, will be met by contributions assessed by the 1971 Fund Assembly.

47 As disclosed in Schedule III to the financial statements, the 1971 Fund has assessed contingent liabilities of £390 555 000 as at 31 December 1997, compared with £276 846 632 in 1996. Of the total for 1997, £29 336 000 relates to the *Haven* incident, which is explained in more detail below.

Haven Incident

48 The total amount payable of £29 336 000 (Schedule III) represents the 1971 Fund's view of the maximum compensation of £35 284 000 (60 million Special Drawing Rights) payable under the 1971 Fund Convention, less amounts paid in 1996 of £2 048 000, less the shipowner's limitation amount of £8 233 000, plus indemnification of £3 333 000 and fees of £1 000 000.

49 As at 31 December 1997, claims submitted for compensation for oil pollution damage resulting from the *Haven* incident totalled approximately £575 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 1971 Fund's liability under the 1971 Fund Convention.

50 On 14 March 1992, the judge in the Court of first instance in Genoa in charge of the limitation proceedings rendered a decision which indicated that the 1971 Fund would face a potential maximum liability of Llt 771 397 947 400 (approximately £265 million). This compared with the 1971 Fund's assessment of Llt 102 643 800 000 (60 million Special Drawing Rights, approximately £35 million), being the maximum amount available under the 1969 Civil Liability and 1971 Fund Conventions.

51 The 1971 Fund lodged opposition to the judge's decision of 14 March 1992. On 26 July 1993, the Italian Court of first instance in Genoa rendered its judgement in respect of the 1971 Fund's opposition in which it upheld the judge's decision of 14 March 1992. The 1971 Fund appealed against this judgement.

52 In a judgement rendered on 30 March 1996, the Court of Appeal in Genoa confirmed the judgement of the Court of first instance. In April 1996, the Executive Committee instructed the Director to take the necessary steps to appeal to the Supreme Court of Cassation. An appeal was lodged in January 1997.

53 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. These amounted to some Llt 186 000 million (£64 million) plus interest and compensation for devaluation. The 1971 Fund has lodged opposition to a number of these claims.

54 In June 1995 and again in October 1996, the 1971 Fund Assembly instructed the Director to explore the possibility of arriving at a global settlement which fell within the maximum amount of compensation available. In February 1998, the Italian government submitted a bill to parliament which, if approved, would enable the government to conclude an agreement for a global settlement fulfilling the conditions laid down by the Assembly and the Executive Committee. The bill was approved by the Italian parliament in July 1998. I understand that an agreement on a global settlement will be signed shortly.

55 As explained in my previous reports, because of the uncertainty surrounding the outcome of these proceedings, I have qualified my audit opinion on the 1971 Fund's financial statements in respect of the contingent liability for the *Haven* incident.

Recovery of VAT

56 As I noted in my report on the 1971 Fund's 1995 and 1996 financial statements, a number of invoices received from Italian law firms, dating back to 1991, have been paid inclusive of Italian value added tax. The Italian authorities have agreed in principle that some £303 000 of value added tax should be repaid to the 1971 Fund. Although the financial statements do not record the amounts due for repayment, and to date no money has been repaid, the 1971 Fund still expects to receive a full refund.

Control of Supplies and Equipment

57 In accordance with the 1971 Fund's stated accounting policies, purchases of equipment, furniture, office machines, supplies and library books are not included in the 1971 Fund's balance sheet. Note 13 (b) to the financial statements shows that the value of these assets held by the 1971 Fund as at 31 December 1997 amounted to £178 193.

58 My staff carried out a test examination of the 1971 Fund's records of supplies and equipment under Financial Regulation 13.16 (d). As a result of this examination, I am satisfied that the supplies and equipment records as at 31 December 1997 properly reflect the assets held by the 1971 Fund. No losses were reported by the 1971 Fund during the year.

Amounts Written Off and Fraud

59 The Secretariat have informed me that there were no amounts written off, or cases of fraud or presumptive fraud during the financial period, other than the write off of uncollected interest amounting to £41 037 as noted in paragraph 62 below.

Contributors in Liquidation

60 As recorded in the 1971 Fund's balance sheet, outstanding contributions due to the 1971 Fund as at 31 December 1997 totalled £2 610 543. Of this, a total of £287 258 was due from two individual contributors who have gone into liquidation (£9 945 was due from a Dutch contributor, and £277 313 from a German contributor).

61 The Director provided the Assembly with information on these two cases in April 1998 (7IFUND/A/ES.4/6). In the case of the German contributor, negotiations have been carried out and it is expected that a major part of the amount owed will be recovered. However in the case of the Dutch contributor, it is highly unlikely that all of the monies owed to the 1971 Fund will be received. The 1971 Fund has made no provision in the 1997 financial statements against amounts owed which may not subsequently be recovered, however the relevant amounts are disclosed in note 14 to the financial statements.

62 In the case of a third contributor in liquidation (as detailed in Assembly paper 71FUND/A/ES.4/6), £180 000 was paid to the 1971 Fund in 1997, in full and final settlement of all outstanding amounts. The total amount due as at 1 September 1997 amounted to £221 037, including £41 037 in interest. Interest was therefore not recovered.

PART THREE - ACKNOWLEDGEMENT

63 I wish to record my appreciation of the willing cooperation and assistance extended by the Director, his staff, and the staff at the local claims handling offices in Milford Haven and Kobe during the course of my audit.

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

6 October 1998

ANNEX XIII

FINANCIAL STATEMENTS OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1971 FOR THE YEAR ENDED 31 DECEMBER 1997

OPINION OF THE EXTERNAL AUDITOR

To: the Assembly of the International Oil Pollution Compensation Fund 1971

I have examined the appended financial statements, comprising Statements I to IX, Schedules I to III and Notes, of the International Oil Pollution Compensation Fund 1971 for the year ended 31 December 1997 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, as appropriate. 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 48 to 55 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 1997 and the results of the year then ended; that they were prepared in accordance with the 1971 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

6 October 1998

ANNEX XIV

General Fund

1992 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 1997

	1997		*1996*	
INCOME	£	£	£	£
Contributions (Schedule I)				
Contributions		6 996 681		-
		6 996 681		-
Miscellaneous				
Interest on overdue contributions	5 543		-	
Interest on investments	245 659		-	
		251 202		-
		7 247 883		-
EXPENDITURE				
Secretariat expenses (Statement I)				
Obligations incurred		479 648		*242 123*
Excess/(shortfall) of income over expenditure		6 768 235		*(242 123)*

ANNEX XV

Major Claims Fund - *Nakhodka*

1992 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 1997

	1997	
INCOME	£	£
Contributions (Schedule II)		
Contributions	6 897 108	
		6 897 108
Miscellaneous		
Interest on overdue contributions	3 048	
Interest on investments	128 540	
		131 588
		7 028 696
EXPENDITURE		-
Balance as at 31 December		7 028 696

ANNEX XVI

1992 FUND: BALANCE SHEET AS AT 31 DECEMBER 1997

	1997	*1996*
ASSETS	£	£
Cash at banks and in hand	13 715 350	-
Contributions outstanding	301 524	-
Tax recoverable	35	-
Miscellaneous receivable	482	-
Interest on overdue contributions	3 625	-
TOTAL ASSETS	14 021 016	-
LIABILITIES		
Due to 1971 Fund	355 320	*237 898*
Prepaid contributions	110 888	*4 225*
Due to *Nakhodka* MCF	7 028 696	-
TOTAL LIABILITIES	7 494 904	*242 123*
GENERAL FUND BALANCE	6 526 112	*(242 123)*
TOTAL LIABILITIES AND GENERAL FUND BALANCE	14 021 016	*NIL*

ANNEX XVII

1992 FUND: CASH FLOW STATEMENT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 1997

	1997 £	1997 £
Cash as at 1 January		-
OPERATING ACTIVITIES		
Interest received on overdue contributions	4 966	
Receipts from contributors	13 592 265	
Repayment of 1996 administrative cost to 1971 Fund	(237 898)	
Other payments	(717)	
Income held by 1971 Fund	(124 128)	
Net cash flow from operating activities before net current asset changes	13 234 488	
Increase (Decrease) in net current liabilities	106 663	
Net cash flow from operating activities		13 341 151
RETURNS ON INVESTMENTS		
Interest on investments		374 199
Cash as at 31 December		13 715 350

ANNEX XVIII

FINANCIAL STATEMENTS OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1992 FOR THE YEAR ENDED 31 DECEMBER 1997

OPINION OF THE EXTERNAL AUDITOR

To: the Assembly of the International Oil Pollution Compensation Fund 1992

I have examined the appended financial statements, comprising Statements I to V, Schedules I to III and Notes, of the International Oil Pollution Compensation Fund 1992 for the year ended 31 December 1997 in accordance with generally accepted common auditing standards. 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.

In my opinion the financial statements present fairly the financial position as at 31 December 1997 and the results of the year then ended; that they were prepared in accordance with the 1992 Fund's stated accounting policies which were applied on a basis consistent with that of the preceding financial year; and the transactions were in accordance with the Financial Regulations and legislative authority.

I have not considered it necessary to issue a report on my audit of the 1992 Fund's financial statements.

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

6 October 1998

ANNEX XIX

1971 Fund: Contributing oil received in the calendar year 1997 in the territories of States which were Members of the 1971 Fund on 31 December 1998

As reported by 31 December 1998

Member State	Contributing Oil (tonnes)	% of Total
Italy	145 735 659	46.04%
India	47 749 000	15.09%
Canada	46 488 631	14.69%
Malaysia	17 166 245	5.42%
Portugal	14 997 390	4.74%
Indonesia	12 006 831	3.79%
Belgium	8 257 914	2.61%
China (Hong Kong Special Administrative Region)	5 593 135	1.77%
New Zealand	4 961 442	1.57%
Croatia	3 699 225	1.17%
Poland	3 315 258	1.05%
Côte d'Ivoire	3 041 283	0.96%
Malta	1 397 901	0.44%
Ghana	1 384 090	0.44%
Russian Federation	541 000	0.17%
Barbados	190 066	0.06%
Brunei Darussalam	0	0.00%
Djibouti	0	0.00%
Estonia	0	0.00%
Gambia	0	0.00%
Iceland	0	0.00%
Mauritius	0	0.00%
Seychelles	0	0.00%
Vanuatu	0	0.00%
	316 525 070	100.00%

Note: No report from Albania, Algeria, Antigua and Barbuda, Benin, Cameroon, Colombia, Fiji, Gabon, Guyana, Kenya, Kuwait, Maldives, Mauritania, Morocco, Mozambique, Nigeria, Papua New Guinea, Qatar, Saint Kitts and Nevis, Sierra Leone, Slovenia, Sri Lanka, Syrian Arab Republic, Tonga, Tuvalu, United Arab Emirates, Venezuela and Yugoslavia.

ANNEX XX

1992 Fund: Contributing oil received in the calendar year 1997 in the territories of States which were Members of the 1992 Fund on 31 December 1998

As reported by 31 December 1998

Member State	Contributing Oil (tonnes)	% of Total
Japan	272 379 312	28.10%
Republic of Korea	130 112 237	13.42%
Netherlands	105 419 367	10.88%
France	101 397 026	10.46%
United Kingdom	80 342 029	8.29%
Germany	58 547 165	6.04%
Spain	58 498 323	6.04%
Australia	30 897 505	3.19%
Norway	29 776 828	3.07%
Sweden	21 184 839	2.19%
Greece	20 840 438	2.15%
Philippines	20 024 704	2.07%
Mexico	12 494 253	1.29%
Finland	9 024 832	0.93%
Denmark	6 586 150	0.68%
Ireland	4 001 170	0.41%
Tunisia	3 085 093	0.32%
Cyprus	1 802 267	0.19%
Bahamas	1 451 209	0.15%
Uruguay	1 396 099	0.14%
Liberia	0	0.00%
Marshall Islands	0	0.00%
Monaco	0	0.00%
	969 260 846	100.00%

Note: No report from Bahrain, Jamaica, Oman, Singapore and United Arab Emirates.

ANNEX

SUMMARY OF

(31 December

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

	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC	Cause of incident
1	*Irving Whale*	7.9.70	Gulf of St Lawrence, Canada	Canada	2 261	*(unknown)*	Sinking
2	*Antonio Gramsci*	27.2.79	Ventspils, USSR	USSR	27 694	Rbls 2 431 584	Grounding
3	*Miya Maru N°8*	22.3.79	Bisan Seto, Japan	Japan	997	¥37 710 340	Collision
4	*Tarpenbek*	21.6.79	Selsey Bill, United Kingdom	Federal Republic of Germany	999	£64 356	Collision
5	*Mebaruzaki Maru N°5*	8.12.79	Mebaru, Japan	Japan	19	¥845 480	Sinking
6	*Showa Maru*	9.1.80	Naruto Strait, Japan	Japan	199	¥8 123 140	Collision
7	*Unsei Maru*	9.1.80	Akune, Japan	Japan	99	¥3 143 180	Collision
8	*Tanio*	7.3.80	Brittany, France	Madagascar	18 048	FFr11 833 718	Breaking
9	*Furenas*	3.6.80	Oresund, Sweden	Sweden	999	SKr612 443	Collision
10	*Hosei Maru*	21.8.80	Miyagi, Japan	Japan	983	¥35 765 920	Collision

XXI

INCIDENTS: 1971 FUND

1998)

- 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	
(unknown)			*Irving Whale* refloated in 1996. Canadian Court dismissed action against 1971 Fund as Fund could not be held liable for events which occurred prior to entry into force of 1971 Fund Convention for Canada.	1
5 500	Clean-up	SKr95 707 157		2
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.	3
(unknown)	Clean-up	£363 550		4
10	Clean-up Fishery-related Indemnification	¥7 477 481 ¥2 710 854 ¥211 370 ¥10 399 705		5
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.	6
<140			Because of the distribution of liability between the two colliding ships, 1971 Fund not called upon to pay any compensation.	7
13 500	Clean-up Tourism-related Fishery-related Other loss of income	FFr219 164 465 FFr2 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.	8
200	Clean-up Clean-up Indemnification	SKr3 187 687 DKr418 589 SKr153 111	SKr449 961 recovered by way of recourse.	9
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.	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	*Jose Marti*	7.1.81	Dalarö, Sweden	USSR	27 706	SKr23 844 593	Grounding
12	*Suma Maru N°11*	21.11.81	Karatsu, Japan	Japan	199	¥7 396 340	Grounding
13	*Globe Asinu*	22.11.81	Klaipeda, USSR	Gibraltar	12 404	Rbls 1 350 324	Grounding
14	*Ondina*	3.3 82	Hamburg, Federal Republic of Germany	Netherlands	31 030	DM10 080 383	Discharge
15	*Shiota Maru N°2*	31.3.82	Takashima island, Japan	Japan	161	¥6 304 300	Grounding
16	*Fukutoko Maru N°8*	3.4.82	Tachibana Bay, Japan	Japan	499	¥20 844 440	Collision
17	*Kifuku Maru N°35*	1.12.82	Ishinomaki, Japan	Japan	107	¥4 271 560	Sinking
18	*Shinkai Maru N°3*	21.6.83	Ichikawa, Japan	Japan	48	¥1 880 940	Discharge
19	*Eiko Maru N°1*	13.8.83	Karakuwazaki, Japan	Japan	999	¥39 445 920	Collision
20	*Koei Maru N°3*	22.12.83	Nagoya, Japan	Japan	82	¥3 091 660	Collision
21	*Tsunehisa Maru N°8*	26.8.84	Osaka, Japan	Japan	38	¥964 800	Sinking
22	*Koho Maru N°3*	5.11.84	Hiroshima, Japan	Japan	199	¥5 385 920	Grounding
23	*Koshun Maru N°1*	5.3.85	Tokyo Bay, Japan	Japan	68	¥1 896 320	Collision
24	*Patmos*	21.3.85	Straits of Messina, Italy	Greece	51 627	Llt 13 263 703 650	Collision
25	*Jan*	2.8.85	Aalborg, Denmark	Federal Republic of Germany	1 400	DKr1 576 170	Grounding

Quantity of oil spilled (tonnes)	Compensation (Amounts paid by 1971 Fund, unless indicated to the contrary)		Notes	
1 000			Total damage less than shipowner's liability (clean-up SKr20 361 000 claimed). Shipowner's defence that he should be exonerated from liability rejected in final court judgement.	11
10	Clean-up Indemnification	¥6 426 857 ¥1 849 085 ¥8 275 942		12
>16 000	Indemnification	US$467 953	No damage in 1971 Fund Member State.	13
200-300	Clean-up	DM11 345 174		14
20	Clean-up Fishery-related Indemnification	¥46 524 524 ¥24 571 190 ¥1 576 075 ¥72 671 789		15
85	Clean-up Fishery-related Indemnification	¥200 476 274 ¥163 255 481 ¥5 211 110 ¥368 942 865		16
33	Indemnification	¥598 181	Total damage less than shipowner's liability.	17
3.5	Clean-up Indemnification	¥1 005 160 ¥470 235 ¥1 475 395		18
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.	19
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.	20
30	Clean-up Indemnification	¥16 610 200 ¥241 200 ¥16 851 400		21
20	Clean-up Fishery-related Indemnification	¥68 609 674 ¥25 502 144 ¥1 346 480 ¥95 458 298		22
80	Clean-up Indemnification	¥26 124 589 ¥474 080 ¥26 598 669	¥8 866 222 recovered by way of recourse.	23
700			Total damage agreed out of court or decided by court (Lit 11 583 298 650) less than shipowner's liability.	24
300	Clean-up Indemnification	DKr9 455 661 DKr394 043 DKr9 849 704		25

	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
26	*Rose Garden Maru*	26.12.85	Umm Al Qaiwain, United Arab Emirates	Panama	2 621	US$364 182 *(estimate)*	Discharge of oil
27	*Brady Maria*	3.1.86	Elbe Estuary, Federal Republic of Germany	Panama	996	DM324 629	Collision
28	*Take Maru N°6*	9.1.86	Sakai-Senboku, Japan	Japan	83	¥3 876 800	Discharge of oil
29	*Oued Gueterini*	18.12.86	Algiers, Algeria	Algeria	1 576	Din1 175 064	Discharge
30	*Thuntank 5*	21.12.86	Gävle, Sweden	Sweden	2 866	SKr2 741 746	Grounding
31	*Antonio Gramsci*	6.2.87	Borgå, Finland	USSR	27 706	Rbls 2 431 854	Grounding
32	*Southern Eagle*	15.6.87	Sada Misaki, Japan	Panama	4 461	¥93 874 528	Collision
33	*El Huni*	22.7.87	Indonesia	Libya	81 412	£7 900 000 *(estimate)*	Grounding
34	*Akari*	25.8.87	Dubai, United Arab Emirates	Panama	1 345	£92 800 *(estimate)*	Fire
35	*Tolmiros*	11.9.87	West coast, Sweden	Greece	48 914	SKr50 000 000 *(estimate)*	*Unknown*
36	*Hinode Maru N°1*	18.12.87	Yawatahama, Japan	Japan	19	¥608 000	Mishandling of cargo
37	*Amazzone*	31.1.88	Brittany, France	Italy	18 325	FFr13 860 369	Storm damage to tanks
38	*Taiyo Maru N°13*	12.3.88	Yokohama, Japan	Japan	86	¥2 476 800	Discharge
39	*Czantoria*	8.5.88	St Romuald, Canada	Canada	81 197	*(unknown)*	Collision with berth
40	*Kasuga Maru N°1*	10.12.88	Kyoga Misaki, Japan	Japan	480	¥17 015 040	Sinking

Quantity of oil spilled (tonnes)	Compensation (Amounts paid by 1971 Fund, unless indicated to the contrary)		Notes	
(unknown)			Claim against 1971 Fund (US$44 204) withdrawn.	26
200	Clean-up	DM3 220 511	DM333 027 recovered by way of recourse.	27
0.1	Indemnification	¥104 987	Total damage less than shipowner's liability.	28
15	Clean-up Clean-up Clean-up Other loss of income Indemnification	US$1 133 FFr708 824 Din5 650 £126 120 Din293 766		29
150-200	Clean-up Fishery-related Indemnification	SKr23 168 271 SKr49 361 SKr685 437 SKr23 903 069		30
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.	31
15			Total damage less than shipowner's liability (¥35 346 679 clean-up and ¥51 521 183 fishery-related agreed).	32
3 000			Clean-up claim (US$242 800) not pursued.	33
1 000	Clean-up Clean-up	Dhr 864 293 US$187 165	US$160 000 refunded by shipowner's insurer.	34
200			Clean-up claim (SKr100 639 999) not pursued, since legal action by Swedish Government against shipowner and 1971 Fund withdrawn.	35
25	Clean-up Indemnification	¥1 847 225 ¥152 000 ¥1 999 225		36
2 000	Clean-up Fishery-related	FFr1 141 185 FFr145 792 FFr1 286 977	FFr1 000 000 recovered from shipowner's insurer.	37
6	Clean-up Indemnification	¥6 134 885 ¥619 200 ¥6 754 085		38
(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.	39
1 100	Clean-up Fishery-related Indemnification	¥371 865 167 ¥53 500 000 ¥4 253 760 ¥429 618 927		40

	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
41	*Nestucca*	23.12.88	Vancouver island, Canada	United States of America	1 612	*(unknown)*	Collision
42	*Fukkol Maru N°12*	15.5.89	Shiogama, Japan	Japan	94	¥2 198 400	Overflow from supply pipe
43	*Tsubame Maru N°58*	18.5.89	Shiogama, Japan	Japan	74	¥2 971 520	Mishandling of oil transfer
44	*Tsubame Maru N°16*	15.6.89	Kushiro, Japan	Japan	56	¥1 613 120	Discharge
45	*Kifuku Maru N°103*	28.6.89	Otsuji, Japan	Japan	59	¥1 727 040	Mishandling of cargo
46	*Nancy Orr Gaucher*	25.7.89	Hamilton, Canada	Liberia	2 829	Can$473 766	Overflow during discharge
47	*Dainichi Maru N°5*	28.10.89	Yaizu, Japan	Japan	174	¥4 199 680	Mishandling of cargo
48	*Daito Maru N°3*	5.4.90	Yokohama, Japan	Japan	93	¥2 495 360	Mishandling of cargo
49	*Kazuei Maru N°10*	11.4.90	Osaka, Japan	Japan	121	¥3 476 160	Collision
50	*Fuji Maru N°3*	12.4.90	Yokohama, Japan	Japan	199	¥5 352 000	Overflow during supply operation
51	*Volgoneft 263*	14.5.90	Karlskrona, Sweden	USSR	3 566	SKr3 205 204	Collision
52	*Hato Maru N°2*	27.7.90	Kobe, Japan	Japan	31	¥803 200	Mishandling of cargo
53	*Bonito*	12.10.90	River Thames, United Kingdom	Sweden	2 866	£241 000 *(estimate)*	Mishandling of cargo
54	*Rio Orinoco*	16.10 90	Anticosti island, Canada	Cayman Islands	5 999	Can$1 182 617	Grounding
55	*Portfield*	5.11.90	Pembroke, Wales, United Kingdom	United Kingdom	481	£69 141	Sinking
56	*Vistabella*	7.3.91	Caribbean	Trinidad and Tobago	1 090	FFr2 354 000 *(estimate)*	Sinking

Quantity of oil spilled (tonnes)	Compensation (Amounts paid by 1971 Fund, unless indicated to the contrary)		Notes	
(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.	41
0.5	Clean-up Indemnification	¥492 635 ¥549 600 ¥1 042 235		42
7	Other damage to property Indemnification	¥19 159 905 ¥742 880 ¥19 902 785		43
(unknown)	Other damage to property Indemnification	¥273 580 ¥403 280 ¥676 860		44
(unknown)	Clean-up Indemnification	¥8 285 960 ¥431 761 ¥8 717 721		45
250			Total damage less than shipowner's liability (clean-up Can$292 110 agreed).	46
0.2	Fishery-related Clean-up Indemnification	¥1 792 100 ¥368 510 ¥1 049 920 ¥3 210 530		47
3	Clean-up Indemnification	¥5 490 570 ¥623 840 ¥6 114 410		48
30	Clean-up Fishery-related Indemnification	¥48 883 038 ¥560 588 ¥869 040 ¥50 312 666	¥45 038 833 recovered by way of recourse.	49
(unknown)	Clean-up Indemnification	¥96 431 ¥1 338 000 ¥1 434 431	¥430 329 recovered by way of recourse.	50
800	Clean-up Fishery-related Indemnification	SKr15 523 813 SKr530 239 SKr795 276 SKr16 849 328		51
(unknown)	Other damage to property Indemnification	¥1 087 700 ¥200 800 ¥1 288 500		52
20			Total damage less than shipowner's liability (clean-up £130 000 agreed).	53
185	Clean-up	Can$12 831 892		54
110	Clean-up Fishery-related Indemnification	£249 630 £9 879 £17 155 £276 663		55
(unknown)	Clean-up Clean-up	FFr8 237 529 US$8 068		56

	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
57	*Hokunan Maru N°12*	5.4.91	Okushiri island, Japan	Japan	209	¥3 523 520	Grounding
58	*Agip Abruzzo*	10.4.91	Livorno, Italy	Italy	98 544	Llt 21 800 000 000 *(estimate)*	Collision
59	*Haven*	11.4.91	Genoa, Italy	Cyprus	109 977	Llt 23 950 220 000	Fire and explosion
60	*Kaiko Maru N°86*	12.4.91	Nomazaki, Japan	Japan	499	¥14 660 480	Collision
61	*Kumi Maru N°12*	27.12.91	Tokyo Bay, Japan	Japan	113	¥3 058 560	Collision
62	*Fukkol Maru N°12*	9.6.92	Ishinomaki, Japan	Japan	94	¥2 198 400	Mishandling of oil supply
63	*Aegean Sea*	3.12.92	La Coruña, Spain	Greece	57 801	Pts 1 121 219 450	Grounding
64	*Braer*	5.1.93	Shetland, United Kingdom	Liberia	44 989	£5 790 052	Grounding
65	*Kihnu*	16.1.93	Tallinn, Estonia	Estonia	949	113 000 SDR *(estimate)*	Grounding

Quantity of oil spilled (tonnes)	Compensation (Amounts paid by 1971 Fund, unless indicated to the contrary)		Notes	
(unknown)	Clean-up	¥2 119 966		57
	Fishery-related	¥4 024 863		
	Indemnification	¥880 880		
		¥7 025 709		
2 000	Indemnification	Llt 1 666 031 931	Total damage less than shipowner's liability.	58
(unknown)	*Figures as awarded in 'stato passivo':*		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 Llt 1 582 341 690 paid by 1971 Fund. Llt 31 630 million paid by shipowner's insurer.	59
	Clean-up:			
	∘ Italian Government	Llt 105 260 722 046		
	∘ Other Italian Authorities	Llt 1 457 371 664		
	∘ Private claimants	Llt 16 481 320 800		
	∘ French Government	Llt 4 277 446 160		
	∘ Other French Authorities	Llt 3 321 490 540		
	∘ Principality of Monaco	Llt 91 811 900		
	∘ Shipowner/UK Club	Llt 4 277 446 160		
		Llt 135 167 609 270		
	Tourism-related:			
	∘ Italian private claimants	Llt 4 705 136 915		
	∘ French private claimants	Llt 73 447 387		
		Llt 4 778 584 302		
	Fishery-related:			
	∘ Italian private claimants	Llt 8 933 580 000		
	Environmental damage:			
	∘ Italian Government	Llt 40 000 000 000		
	Total	Llt 188 879 773 572		
25	Clean-up	¥53 513 992		60
	Fishery-related	¥39 553 821		
	Indemnification	¥3 665 120		
		¥96 732 933		
5	Clean-up	¥1 056 519	¥650 522 recovered by way of recourse.	61
	Indemnification	¥764 640		
		¥1 821 159		
(unknown)	Other damage to property	¥4 243 997		62
	Indemnification	¥549 600		
		¥4 793 597		
73 500	*Figures as in criminal court judgement:*		Amounts indicated as claimed relate to claims referred to the procedure for the execution of judgement. Pts 930 million paid by 1971 Fund. Pts 782 million paid by shipowner's insurer. Further claims brought in civil court for Pts 22 000 million.	63
	∘ Spanish Government *(claimed)*	Pts 1 154 500 000		
	∘ Public Bodies *(awarded)*	Pts 303 263 261		
	∘ Private claimant *(claimed)*	Pts 184 216 423		
	Fishery-related:			
	∘ Private claimants *(awarded)*	Pts 327 027 638		
	∘ Private claimants *(claimed)*	Pts 14 955 486 084		
		Pts 16 924 493 406		
84 000	Clean-up	£200 285	Further claims amounting to £5.2 million agreed. Claims amounting to £41 882 606 subject of court proceedings. £4 807 323 paid by shipowner's insurer.	64
	Fishery-related	£33 269 350		
	Tourism-related	£77 375		
	Farming-related	£3 533 504		
	Other damage to property	£8 259 156		
	Other loss of income	£186 985		
		£45 526 655		
140	Clean-up	FM543 618		65

	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
66	*Sambo N°11*	12.4.93	Seoul, Republic of Korea	Republic of Korea	520	Won 77 786 224 *(estimate)*	Grounding
67	*Taiko Maru*	31.5.93	Shioyazaki, Japan	Japan	699	¥29 205 120	Collision
68	*Ryoyo Maru*	23.7.93	Izu peninsula, Japan	Japan	699	¥28 105 920	Collision
69	*Keumdong N°5*	27.9.93	Yosu, Republic of Korea	Republic of Korea	481	Won 77 417 210	Collision
70	*Iliad*	9.10.93	Pylos, Greece	Greece	33 837	Drs 1 496 533 000	Grounding
71	*Seki*	30.3.94	Fujairah, United Arab Emirates, and Oman	Panama	153 506	14 million SDR	Collision
72	*Daito Maru N°5*	11.6.94	Yokohama, Japan	Japan	116	¥3 386 560	Overflow during loading operation
73	*Toyotaka Maru*	17.10.94	Kainan, Japan	Japan	2 960	¥81 823 680	Collision
74	*Hoyu Maru N°53*	31.10.94	Monbetsu, Japan	Japan	43	¥1 089 280	Mishandling of oil supply
75	*Sung Il N°1*	8.11.94	Onsan, Republic of Korea	Republic of Korea	150	Won 23 000 000 *(estimate)*	Grounding
76	Spill from unknown source	30.11.94	Mohammédia, Morocco	-	-	-	*(Unknown)*
77	*Boyang N°51*	25.5.95	Sandbaeg Do, Republic of Korea	Republic of Korea	149	19 817 SDR	Collision
78	*Dae Woong*	27.6.95	Kojung, Republic of Korea	Republic of Korea	642	Won 95 000 000 *(estimate)*	Grounding

Quantity of oil spilled (tonnes)	Compensation (Amounts paid by 1971 Fund, unless indicated to the contrary)		Notes	
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.	66
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.	67
500	Clean-up Indemnification	¥8 433 001 ¥7 026 480 ¥15 459 481	¥10 455 440 recovered by way of recourse.	68
1 280	Clean-up *(paid)* Fishery-related *(paid)* Fishery-related *(claimed)* Other damage to property *(paid)*	Won 5 587 815 812 Won 6 163 000 000 Won 22 963 000 000 Won 14 206 046 Won 34 728 021 858	Won 5 587 815 812 paid by shipowner's insurer, of which US$6 million reimbursed by 1971 Fund. Claims amounting to Won 22 963 million subject of legal proceedings.	69
200	Clean-up *(paid)* Clean-up *(paid)* Fishery-related *(claimed)* Other loss of income *(claimed)* Moral damages *(claimed)*	Drs 356 204 011 US$565 000 Drs 1 099 000 000 Drs 1 547 000 000 Drs 3 002 204 011 Drs 378 000 000	Drs 356 204 011 paid by shipowner's insurer.	70
16 000			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.	71
0.5	Clean-up Indemnification	¥1 187 304 ¥846 640 ¥2 033 944		72
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.	73
(unknown)	Other damage to property Clean-up Indemnification	¥3 954 861 ¥202 854 ¥272 320 ¥4 430 035		74
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.	75
(unknown)	Clean-up *(claimed)*	Mor Dhr 2 600 000	Not established that oil originated from a ship as defined in 1971 Fund Convention.	76
160			Clean-up claim (Won 142 million) time-barred as necessary legal action not taken.	77
1	Clean-up	Won 43 517 127		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	*Sea Prince*	23.7.95	Yosu, Republic of Korea	Cyprus	144 567	14 million SDR	Grounding
80	*Yeo Myung*	3 8.95	Yosu, Republic of Korea	Republic of Korea	138	Won 21 465 434	Collision
81	*Shinyu Maru N°8*	4.8.95	Chita, Japan	Japan	198	¥3 967 138	Mishandling of oil supply
82	*Senyo Maru*	3 9.95	Ube, Japan	Japan	895	¥20 203 325	Collision
83	*Yuil N°1*	21.9.95	Pusan, Republic of Korea	Republic of Korea	1 591	Won 250 million *(estimate)*	Sinking
84	*Honam Sapphire*	17.11.95	Yosu, Republic of Korea	Panama	142 488	14 million SDR	Contact with fender
85	*Toko Maru*	23.1.96	Anegasaki, Japan	Japan	699	¥18 769 567 *(estimate)*	Collision
86	*Sea Empress*	15.2.96	Milford Haven, Wales, United Kingdom	Liberia	77 356	£8 million *(estimate)*	Grounding
87	*Kugenuma Maru*	6.3.96	Kawasaki, Japan	Japan	57	¥1 175 055 *(estimate)*	Mishandling of oil supply

Quantity of oil spilled (tonnes)	Compensation (Amounts paid by 1971 Fund, unless indicated to the contrary)		Notes	
5 035	Clean-up *(paid)*	Won 19 919 000 000		79
	Fishery-related *(paid)*	Won 14 611 000 000		
	Tourism-related *(paid)*	Won 488 000 000		
		Won 35 018 000 000		
	Clean-up *(paid)*	¥1 864 000 000		
	Claims pending in Court:			
	Removal of oil and vessel	US$8 827 729		
		¥4 342 967		
		Won 24 031 688 854		
	Fishery-related	Won 14 193 560		
40	Clean-up *(paid)*	Won 684 000 000	Won 560 945 437 paid by shipowner's insurer.	80
	Fishery-related *(paid)*	Won 510 000 000		
	Fishery-related *(claimed)*	Won 2 267 000 000		
	Tourism-related *(paid)*	Won 269 029 739		
		Won 3 730 000 000		
0.5	Clean-up *(paid)*	¥8 650 249	¥3 718 455 paid by shipowner's insurer.	81
	Indemnification *(paid)*	¥984 327		
		¥9 634 576		
	Other damage to property *(agreed)*	US$3 103		
	Other loss of income *(agreed)*	US$2 560		
		US$5 663		
94	Clean-up	¥314 838 937	¥279 973 101 recovered by way of recourse action.	82
	Fishery-related	¥46 726 661		
	Indemnification	¥5 012 855		
		¥366 578 453		
(unknown)	Clean-up *(paid)*	Won 12 393 000 000	Won 1 654 million paid by shipowner's insurer.	83
	Clean-up *(claimed)*	Won 25 000 000		
	Fishery-related *(paid)*	Won 3 631 000 000		
	Fishery-related *(claimed)*	Won 40 561 000 000		
		Won 56 610 000 000		
	Claims pending in Court:			
	Fishery-related *(claimed)*	Won 15 029 000 000		
1 800	Clean-up *(paid)*	Won 9 033 000 000	Won 10 336 million paid by shipowner's insurer.	84
	Fishery-related *(paid)*	Won 1 303 000 000		
	Clean-up and fishery-related *(claimed)*	Won 19 562 000 000		
		Won 29 898 000 000		
4			Total damage less than owner's liability. Indemnification not requested.	85
72 360	Clean-up	£5 180 089	Claims totalling £16 960 654 being examined. £6 866 809 paid by shipowner's insurer.	86
	Other damage to property	£282 141		
	Fishery-related	£7 636 303		
	Tourism-related	£1 846 333		
	Other loss of income	£273 865		
		£15 218 731		
0.3	Clean-up	¥1 981 403	¥1 197 267 recovered by way of recourse action.	87
	Indemnification	¥297 066		
		¥2 278 469		

	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
88	*Kriti Sea*	9.8.96	Agioi Theodoroi, Greece	Greece	62 678	Drs 2 241 million	Mishandling of oil supply
89	*N°1 Yung Jung*	15.8.96	Pusan, Republic of Korea	Republic of Korea	560	Won 122 million	Grounding
90	*Nakhodka*	2.1.97	Oki island, Japan	Russian Federation	13 159	1 588 000 SDR	Breaking
91	*Tsubame Maru N°31*	25.1.97	Otaru, Japan	Japan	89	¥1 843 849	Overflow during loading operation
92	*Nissos Amorgos*	28.2.97	Maracaibo, Venezuela	Greece	50 563	Bs3 473 million *(estimate)*	Grounding
93	*Daiwa Maru N°18*	27.3.97	Kawasaki, Japan	Japan	186	¥3 372 368 *(estimate)*	Mishandling of oil supply
94	*Jeong Jin N°101*	1.4.97	Pusan, Republic of Korea	Republic of Korea	896	Won 246 million	Overflow during loading operation
95	*Osung N°3*	3.4.97	Tunggado, Republic of Korea	Republic of Korea	786	104 500 SDR *(estimate)*	Grounding
96	*Plate Princess*	27.5.97	Puerto Miranda, Venezuela	Malta	30 423	3.6 million SDR *(estimate)*	Overflow during loading operation

Quantity of oil spilled (tonnes)	Compensation (Amounts paid by 1971 Fund, unless indicated to the contrary)		Notes	
30	Clean-up *(paid)*	Drs 199 492 557	Drs 342 131 123 paid by shipowner's insurer. Further claims being examined.	88
	Clean-up *(agreed)*	Drs 2 098 624 280		
	Fishery-related *(paid)*	Drs 83 464 212		
	Fishery-related *(claimed)*	Drs 813 391 187		
	Tourism-related *(paid)*	Drs 35 375 000		
	Tourism-related *(claimed)*	Drs 10 715 500		
	Other loss of income *(paid)*	Drs 23 799 354		
	Other loss of income *(claimed)*	Drs 241 353 652		
		Drs3 506 215 242		
28	Clean-up *(paid)*	Won 690 000 000	Won 690 million paid by shipowner's insurer.	89
	Salvage *(paid)*	Won 10 000 000		
	Fishery-related *(paid)*	Won 17 000 000		
	Loss of income *(paid)*	Won 6 000 000		
	Cargo transhipment *(claimed)*	Won 20 376 827		
	Indemnification *(paid)*	Won 28 071 490		
		Won 771 448 317		
6 200	Clean-up *(claimed)*	¥22 824 000 000	Provisional payments of ¥5 389 million made by 1971 Fund. Payments of US$867 593 made by shipowner's insurer. Further claims expected.	90
	Fishery-related *(claimed)*	¥5 239 000 000		
	Oil removal *(claimed)*	¥1 312 000 000		
	Tourism-related *(claimed)*	¥2 994 000 000		
	Causeway construction *(claimed)*	¥2 333 000 000		
		¥34 709 000 000		
0.6	Clean-up	¥7 673 830	¥1 710 173 paid by shipowner's insurer.	91
	Indemnification	¥457 497		
		¥8 131 327		
3 600	Clean-up *(paid)*	Bs1 046 000 000	Bs1 154 143 398 paid by shipowner's insurer. Claims for significant amounts being examined. Further claims expected.	92
	Other damage to property *(paid)*	Bs12 230 431		
	Fishery-related *(paid)*	Bs75 085 817		
	Tourism-related *(paid)*	Bs20 827 150		
		Bs1 154 143 398		
1	Clean-up	¥415 600 000		93
	Indemnification	¥ 865 406		
		¥416 465 406		
124	Clean-up	Won 418 000 000		94
	Indemnification	Won 58 000 000		
		Won 476 000 000		
(unknown)	Clean-up *(paid)*	Won 7 109 000 000	Further claims expected.	95
	Clean-up *(claimed)*	Won 734 000 000		
		Won 7 843 000 000		
	Clean-up *(paid)*	¥271 000 000		
	Clean-up *(claimed)*	¥398 000 000		
	Fishery-related *(claimed)*	¥182 000 000		
		¥851 000 000		
3.2	Fishery-related *(claimed)*	US$30 000 000		96

	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
97	*Diamond Grace*	2.7.97	Tokyo Bay, Japan	Panama	147 012	14 million SDR	Grounding
98	*Katja*	7.8.97	Le Havre, France	Bahamas	52 079	FFr 48 million *(estimate)*	Striking a quay
99	*Evoikos*	15.10.97	Strait of Singapore	Cyprus	80 823	7.9 million SDR *(estimate)*	Collision
100	*Kyungnam N°1*	7.11.97	Ulsan, Republic of Korea	Republic of Korea	168	Won 43 543 015	Grounding
101	*Pontoon 300*	7.1.98	Hamriyah, Sharjah, United Arab Emirates	Saint Vincent and the Grenadines	4 233	*Not available*	Sinking
102	*Maritza Sayalero*	8.6.98	Carenero Bay, Venezuela	Panama	28 338	3 million SDR *(estimate)*	Ruptured discharge pipe

NOTES

1 Amounts are given in national currencies. The relevant conversion rates as at 31 December 1998 are as follows:

£1 =	Algerian Dinar	Din	101.074	Moroccan Dirham	Mor Dhr	15.3876
	Canadian Dollar	Can$	2.5555	Omani Rial	OR	0.6405
	Danish Krone	DKr	10.5890	Republic of Korea Won	Won	2000.66
	Finnish Markka	FM	8.4243	Russian Rouble	Rbls	35.8540
	French Franc	FFr	9.2940	Singapore Dollar	S$	2.7452
	German Mark	DM	2.7711	Spanish Peseta	Pts	235.746
	Greek Drachma	Drs	465.933	Swedish Krona	SKr	13.4860
	Italian Lira	Lit	2743.43	UAE Dirham	UAE Dhr	6.1108
	Japanese Yen	¥	187.671	United States Dollar	US$	1.6638
	Malaysian Ringgit	RM	6.3224	Venezuelan Bolivar	Bs	939.195 (v)

£1 = 1.1747 SDR or 1 SDR = £0.85128

(v) = variable

Quantity of oil spilled (tonnes)	Compensation (Amounts paid by 1971 Fund, unless indicated to the contrary)		Notes	
1 500	Clean-up *(paid)*	¥572 000 000	No further claims expected. Claims also submitted for personal injury but for relatively small amounts.	97
	Clean-up *(claimed)*	¥622 000 000		
	Fishery-related *(paid)*	¥263 000 000		
	Fishery-related *(claimed)*	¥169 000 000		
	Tourism-related *(paid)*	¥11 000 000		
	Tourism-related *(claimed)*	¥18 000 000		
	Other loss of income *(paid)*	¥9 000 000		
	Other loss of income *(claimed)*	¥5 000 000		
		¥1 669 000 000		
190	Clean-up *(claimed)*	FFr 17 300 000	Probable that total damage will be less than owner's liability. FFr9 866 000 paid by shipowner's insurer.	98
	Other damage to property *(claimed)*	FFr 1 200 000		
		Ffr 18 500 000		
29 000	Clean-up *(claimed)*	S$17 930 000		99
	Other damage to property*(claimed)*	S$7 300 000		
		S$ 25 230 000		
	Clean-up *(claimed)*	RM 1 800 000		
	Fishery-related *(claimed)*	RM 471 492		
		RM 2 271 492		
-5	Clean-up *(paid)*	Won 45 365 830		100
	Clean-up *(claimed)*	Won 166 687 168		
	Fishery-related *(paid)*	Won 59 976 084		
	Fishery-related *(claimed)*	Won 287 970 000		
		Won 559 990 082		
4000	Clean-up *(paid)*	Dhr 1 615 000		101
	Clean-up *(claimed)*	Dhr 5 216 000		
		Dhr 6 831 000		
262	*Claims pending in Court:*		Further claims expected.	102
	Clean-up and environmental damage *(claimed)*	Bs10 000 000		

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).

ANNEX

SUMMARY OF

(31 December

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

	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under applicable CLC	Cause of incident
1	Unknown	20.6.96	North Sea coast, Germany	-	-	-	*Unknown*
2	*Nakhodka*	2.1.97	Oki island, Japan	Russian Federation	13 159	1 588 000 SDR	Breaking
3	*Osung N°3*	3.4.97	Tunggado, Republic of Korea	Republic of Korea	786	104 500 SDR *(estimate)*	Grounding
4	Unknown	28.9.97	Essex, United Kingdom	-	-	-	*Unknown*
5	*Santa Anna*	1.1.98	Devon, United Kingdom	Panama	17 134	10 196 280 SDR *(estimate)*	Grounding
6	*Mitaf I*	5.3.98	Bahrain	Belize	801	*Not available*	Damage to hull

NOTES

1 Amounts are given in national currencies. The relevant conversion rates as at 31 December 1998 are as follows:

£1 =	Bahrain Dinar	BD	0.6272
	German Mark	DM	2.7711
	Japanese Yen	¥	187.671
	Republic of Korea Won	Won	2000.66

£1 = 1.1747 SDR or 1 SDR = £0.85128

1998)

- Clean-up (including preventive measures)
- Pre-spill preventive measures
- Fishery-related
- Tourism-related
- Other damage to property

Quantity of oil spilled (tonnes)	Compensation (Amounts paid by 1992 Fund, unless indicated to the contrary)		Notes	
Unknown	Clean-up *(claimed)*	DM2 610 226	German authorities have taken legal action against a shipowner whose ship is suspected of being responsible for the oil spill. If this action is unsuccessful, authorities will claim against 1992 Fund.	1
6 200	Clean-up *(claimed)* Fishery-related *(claimed)* Tourism-related *(claimed)* Causeway construction *(claimed)*	¥24 136 000 000 ¥5 239 000 000 ¥2 994 000 000 ¥2 333 000 000 ¥34 709 000 000	Provisional payments of ¥5 389 million made by 1971 Fund. US$867 593 paid by shipowner's insurer. Further claims expected.	2
Unknown			1992 Fund paid 75% of Japanese claims (¥340 million) while 1971 Fund's payments limited to 25%. 1971 Fund later reimbursed 1992 Fund in full. 1992 Fund will untimately not be liable in respect of this incident.	3
Unknown	Clean-up *(claimed)*	£10 000	Unlikely that claim will be pursued.	4
280	Clean-up *(claimed)*	£30 000	Questioned whether *Santa Anna* falls within definition of "ship".	5
0	Pre-spill preventive measures *(claimed)*	BD 21 168		6

2 The inclusion of claimed amounts is not to be understood as indicating that either the claim or the amount is accepted by the 1992 Fund.

3 Where claims are indicated as paid, the figure given shows the actual amount paid by the 1992 Fund (ie excluding the shipowner's liability).

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