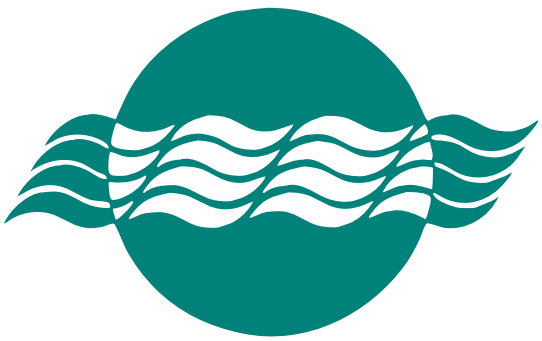
Annual Report 2000

INTERNATIONAL
OIL POLLUTION
COMPENSATION FUNDS

REPORT ON THE ACTIVITIES OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS IN 2000



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FOREWORD

As Director of the International Oil Pollution Compensation Funds 1971 and 1992 (IOPC Funds) I am pleased to present the Annual Report for the year 2000, which has been a significant year for the Organisations in many ways.

The number of 1992 Fund Member States has continued to rise and the membership now includes many States which were not previously members of the 1971 Fund.

There have been important developments for the 1992 Fund. As a result of a decision by the Legal Committee of the International Maritime Organization it is likely that the maximum amount available for compensation will be increased by some 50% with effect from 1 October 2003. A Working Group is considering the need to improve the international compensation system to ensure that it continues to meet the needs of society.

Significant work has been devoted to solving the problems facing the 1971 Fund due to the decreasing number of Member States and the resulting reduction in the contribution base. It is believed that these problems have largely been overcome. The adoption in September 2000 of a Protocol amending the 1971 Fund Convention should result in the termination of the Convention during 2002. Insurance has been taken out to cover any liabilities of the 1971 Fund resulting from incidents occurring after 25 October 2000.

Fortunately, there have been only a few oil spill incidents during 2000 involving the IOPC Funds. The *Erika* incident which occurred in 1999 generated a huge workload for the Secretariat but has not prevented significant progress being made towards resolving a number of other cases involving the 1971 Fund or the 1992 Fund. The settlement of claims arising from incidents involving the 1971 Fund is of course crucial to the eventual winding up of that Fund.

Måns Jacobsson

The year 2000 was also significant for the Secretariat itself as it moved into new offices from which the staff will be able to serve Member States and victims of oil pollution more effectively.

I hope that the information 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

Each Annual Report forms a milestone in the history of the IOPC Funds. Between the past and the future, it provides a useful opportunity for reflection - to appraise what has been good, and to make a commitment to what could be even better.

The year 2000 has been the first in which the 1992 Fund Assembly has had to do without the guidance of Charles Coppolani, the previous Chairman, who so ably steered both the 1971 and the 1992 Fund through the uncharted waters of transition. His importance to the Funds during recent years can hardly be overestimated.

It has also been a year in which the membership of the 1992 Fund has continued to increase, whilst the ongoing efforts by the Secretariat and Member States to smooth the path towards the winding up of the 1971 Fund have begun to bear fruit. Further denunciations of the 1971 Fund Convention have taken place, a Diplomatic Conference with the aim of terminating the Convention has been held and insurance cover for any future incidents has been put in place. Although the 1971 Fund and the 1992 Fund have always been independent organisations, the need to wind up the 1971 Fund has obviously been, and still is, a major concern to 1992 Fund Member States. In the meantime, the Member States of both Funds will have to continue to co-operate in the handling of 1971 Fund incidents, in accordance with the mechanisms put into place in 1998. It is worth noting that, for 1992 Fund incidents as well, considerable progress has been made in the settlement of claims during 2000 as a result of the efforts of all the parties involved.

These achievements will enable the 1992 Fund to concentrate harder on ensuring that its own success continues. For that, growth has been important, but it is dangerous to assume that it will be sufficient. A continuing and shared commitment to quality is also needed amongst Member States. Quality, not just in the way the Fund is run, but also in respect of the Conventions that underlie the successful

Willem Oosterveen

implementation of the international regime by Member States, the governing bodies and the Secretariat. In order for the international regime to continue to be successful, the Conventions will have to be developed and improved further over time, adapting to the developing needs of the international community and thereby ensuring the 1992 Fund's mandate for the future. In this respect, the decisions by the Legal Committee of the International Maritime Organization regarding raising the limits of compensation as well as the setting up of the new Intersessional Working Group by the 1992 Fund Assembly are very important landmarks. They should be welcomed and are essential to the continuing success of the 1992 Fund.

Finally, I would like to express the hope that the new contemporary design will contribute to making this 2000 Annual Report an even better and more accessible source of information.

Willem Oosterveen
Chairman of the 1992 Fund Assembly

PART 1

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 £53 million[1] or US$78 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 £118 million or US$176 million), including the sum actually paid by the shipowner or his insurer.

Each Fund has an Assembly composed of representatives of all Member States of the respective Organisation. The 1992 Fund has also an Executive Committee of 15 Member States elected by the 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.

1 *Conversion of currencies in this Report has been made on the basis of the rates at 31 December 2000, ie 1 SDR = £0.87527 or US$1.30736.*

2 THE LEGAL FRAMEWORK

2.1 The 'old' and 'new' regimes

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 by spills of persistent oil from oil tankers. 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.

'Pollution damage' is defined in the original Conventions as loss or damage caused by contamination. 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. 'Pollution damage' includes the costs of reasonable preventive measures, ie measures to prevent or minimise pollution damage.

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.

Under the Civil Liability Conventions, the shipowner has strict liability for pollution damage caused by the escape or discharge of persistent oil from his ship. This means that he is liable even in the absence of fault on his part. He is exempt from liability only if he proves that:

- the damage resulted from an act of war or a grave natural disaster, or
- the damage was wholly caused by sabotage by a third party, or
- the damage was wholly caused by the negligence of public authorities in maintaining lights or other navigational aids.

The shipowner is normally entitled to limit his liability to an amount determined by the size of the ship. The limit of the shipowner's liability under the 1969 Civil Liability Convention is the lower of 133 Special Drawing Rights (SDR) (£116 or US$174) per ton of the ship's tonnage or 14 million SDR (£12 million or US$18 million). Under the 1992 Civil Liability Convention the limits are:

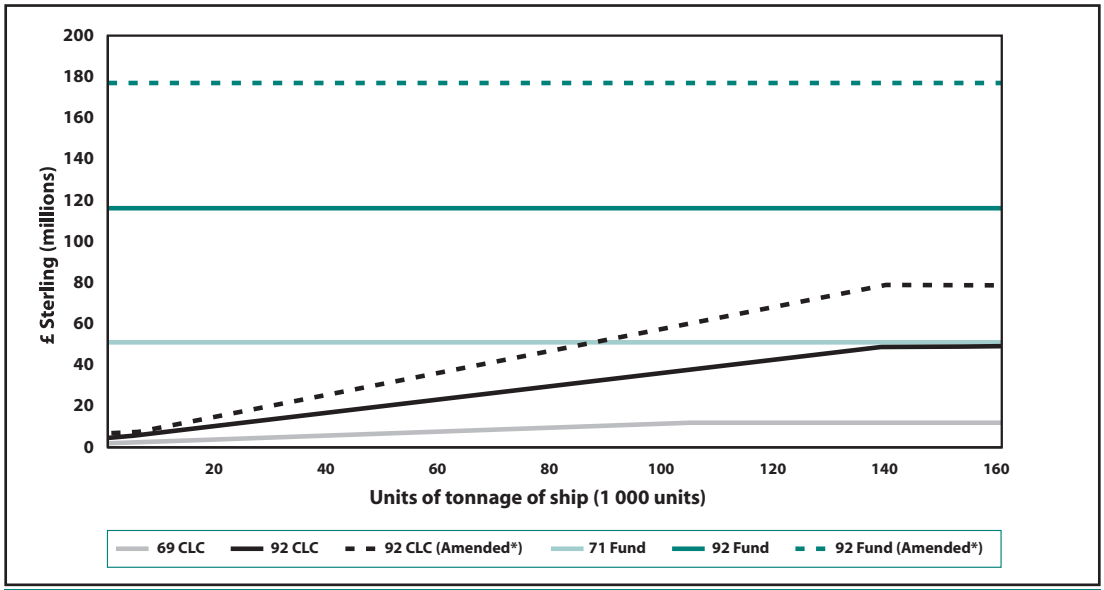
a) for a ship not exceeding 5 000 units of gross tonnage, 3 million SDR (£2.6 million or US$3.9 million);

b) for a ship with a tonnage between 5 000 and 140 000 units of tonnage, 3 million SDR (£2.6 million or US$3.9 million) plus 420 SDR (£367 or US$549) for each additional unit of tonnage; and

c) for a ship of 140 000 units of tonnage or over, 59.7 million SDR (£52 million or US$78 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



Limits laid down in the Conventions

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.

The shipowner is obliged to maintain insurance to cover his liability under the applicable Civil Liability Convention. This obligation does not apply to ships carrying less than 2 000 tonnes of oil as cargo.

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 IOPC Funds pay compensation when those suffering oil pollution damage do not obtain full compensation under the applicable Civil Liability Convention in the following cases:

- the shipowner is exempt from liability under the applicable Civil Liability Convention because the damage was caused by a grave natural disaster, or wholly caused by sabotage by a third party or the negligence of public authorities in maintaining lights or other navigational aids
- the shipowner is financially incapable of meeting his obligations under the applicable Civil Liability Convention in full, and the insurance is insufficient to satisfy the claims for compensation
- the damage exceeds the limit of the shipowner's liability under the applicable Civil Liability Convention.

The compensation payable by the 1971 Fund in respect of an incident is limited to an aggregate amount of 60 million SDR (£53 million or US$78 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 (£118 million or

* *Not in force - see Section 2.2.*

US$176 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.

With respect to the structure of the IOPC Funds and their financing, reference is made to Sections 7 and 8.

2.2 Revision of the limits contained in the 1992 Civil Liability Convention and the 1992 Fund Convention

At its session in October 2000, the Legal Committee of the International Maritime Organization (IMO) considered a proposal by a number of States to increase the limits of liability and compensation laid down in the 1992 Civil Liability Convention and the 1992 Fund Convention by using the special procedure laid down in the Conventions, the 'tacit amendment procedure'. The Committee adopted two Resolutions increasing the limits contained in the Conventions by some 50.37%.

The amendments will enter into force on 1 November 2003, unless prior to 1 May 2002 not less than one quarter of the States which were Contracting States to the respective Conventions on 18 October 2000 have communicated to IMO that they do not accept these amendments.

The increased limits of the shipowner's liability would be as follows:

a) for a ship not exceeding 5 000 units of gross tonnage, 4 510 000 SDR (£3.9 million or US$5.9 million);

b) for a ship with a tonnage between 5 000 and 140 000 units of tonnage, 4 510 000 SDR (£3.9 million or US$5.9 million) plus 631 SDR (£552 or US$825) for each additional unit of tonnage; and

c) for a ship of 140 000 units of tonnage or over, 89 770 000 SDR (£79 million or US$117 million).

The amendment to the 1992 Fund Convention would bring the total amount available under the 1992 Conventions to 203 million SDR (£178 million or US$265 million).

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 2000, 50 States had become Members of the 1992 Fund. Twelve further States have acceded to the 1992 Fund Protocol, bringing the number of Member States to 62 by the end of 2001, as set out in the table below.

It is expected that a number of 1971 Fund Member States will ratify the 1992 Fund Convention in the near future, eg Djibouti, Estonia, Ghana, Kuwait, Malaysia, Nigeria, Papua New Guinea and Portugal. It is likely that a number of other States will also become Members of the 1992 Fund in the near future, eg Brazil, Israel, South Africa and Turkey.

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 March 1998 there were 76 Member States.

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

STATES FOR WHICH THE 1992 FUND CONVENTION IS IN FORCE (AND THEREFORE MEMBERS OF THE 1992 FUND)

Algeria	Germany	Oman
Australia	Greece	Panama
Bahamas	Grenada	Philippines
Bahrain	Iceland	Poland
Barbados	Ireland	Republic of Korea
Belgium	Italy	Seychelles
Belize	Jamaica	Singapore
Canada	Japan	Spain
China (Hong Kong Special Administrative Region)	Latvia	Sri Lanka
	Liberia	Sweden
Croatia	Marshall Islands	Tonga
Cyprus	Mauritius	Tunisia
Denmark	Mexico	United Arab Emirates
Dominican Republic	Monaco	United Kingdom
Fiji	Netherlands	Uruguay
Finland	New Zealand	Vanuatu
France	Norway	Venezuela

STATES WHICH HAVE DEPOSITED INSTRUMENTS OF ACCESSION, BUT FOR WHICH THE 1992 FUND CONVENTION DOES NOT ENTER INTO FORCE UNTIL DATE INDICATED

Comoros	5 January 2001	Antigua and Barbuda	14 June 2001
Malta	6 January 2001	India	21 June 2001
Kenya	2 February 2001	Lithuania	27 June 2001
Trinidad and Tobago	6 March 2001	Slovenia	19 July 2001
Russian Federation	20 March 2001	Morocco	22 August 2001
Georgia	18 April 2001	Argentina	13 October 2001

STATES PARTIES TO THE 1971 FUND CONVENTION

Albania	Gambia	Papua New Guinea
Benin	Ghana	Portugal
Brunei Darussalam	Guyana	Qatar
Cameroon	Kuwait	Saint Kitts and Nevis
Colombia	Malaysia	Sierra Leone
Côte d'Ivoire	Maldives	Syrian Arab Republic
Djibouti	Mauritania	Tuvalu
Estonia	Mozambique	United Arab Emirates
Gabon	Nigeria	Yugoslavia

STATES PARTIES TO THE 1971 FUND CONVENTION WHICH HAVE DEPOSITED INSTRUMENTS OF DENUNCIATION WHICH WILL TAKE EFFECT ON DATE INDICATED

Malta	6 January 2001	India	21 June 2001
Iceland	10 February 2001	Kenya	7 July 2001
Russian Federation	20 March 2001	Slovenia	19 July 2001
Antigua and Barbuda	14 June 2001	Morocco	25 October 2001

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.

Twenty-five of these 52 States have since denounced the 1971 Fund Convention, reducing the number of 1971 Fund Member States to 27 by the end of 2001, as set out in the table above.

4 EXTERNAL RELATIONS

4.1 Promotion of 1992 Fund membership and information on Fund activities

The Assemblies have emphasised the importance of the IOPC Funds' strengthening their activities in the field of 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 a number of 1992 Fund Member States during 2000 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 several non-Member States. Members of the Secretariat have participated in seminars on maritime matters in Bahrain, Curaçao, Lebanon, Morocco, Republic of Korea, Romania and the United Arab Emirates. The Director and other Officers have also given lectures at and participated in seminars, conferences and workshops in a number of 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. Lectures have also been given at the IMO International Maritime Law Institute (IMLI) in Malta and at the IMO International Maritime Academy in Trieste (Italy).

The Director and other members of the joint Secretariat have 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, and during the Diplomatic Conference held from 25 to 27 September 2000 which adopted a Protocol amending the 1971 Fund Convention (see Section 6.5).

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 one Organisation have observer status with the other Organisation. At the end of 2000 the States set out in the table below which were not Members of either Organisation had observer status with both.

NON-MEMBER STATES WITH OBSERVER STATUS

Argentina	Egypt	Saudi Arabia
Brazil	Georgia	Switzerland
Chile	Indonesia	Trinidad and Tobago
Congo	Iran, Islamic Republic of	Turkey
Democratic People's Republic of Korea	Lithuania	United States
Ecuador	Peru	

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 IMO and co-operation agreements have been concluded between each Fund and IMO. During 2000 the Secretariat represented the IOPC Funds at meetings of the IMO Council and Legal Committee, as well as at the Diplomatic Conference which adopted a Protocol amending the 1971 Fund Convention (see Section 6.5).

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 most 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).

5 1992 FUND AND 1971 FUND GOVERNING BODIES

Assembly chaired by Willem Oosterveen

5.1 1992 Fund Assembly

4th extraordinary session

The 1992 Fund Assembly held an extraordinary session from 4 to 6 April 2000 under the chairmanship of Mr Willem Oosterveen (Netherlands). The following major decisions were taken at that session.

- The Assembly decided to levy contributions to the *Erika* Major Claims Fund in the amount of £40 million, for payment by 1 September 2000 (cf Section 8.4).
- The Assembly decided to establish a Working Group to assess the adequacy of the international system of the Civil Liability and Fund Conventions, with the first meeting to be held in July 2000 (cf Section 10).

5th session

The 1992 Fund Assembly held its 5th session, which was also chaired by Mr Willem Oosterveen (Netherlands), from 23 to 27 October 2000. The following major decisions were taken at that session:

- The Assembly noted the External Auditor's Report and his Opinion on the Financial Statements of the 1992 Fund which went into great depth and detail and welcomed, in particular, the 'value for money audit'. The Assembly approved the accounts for the financial period 1 January - 31 December 1999 (cf Section 7.2).
- The following States were elected members of the 1992 Fund Executive Committee:

Algeria	Latvia
Australia	Marshall Islands
Canada	Netherlands
Croatia	Norway
France	Singapore
Germany	Vanuatu
Ireland	Venezuela
Japan	

- The Assembly considered the report of the second meeting of a Working Group which had been set up to study two issues relating to the definition of 'ship' laid down in the 1992 Civil Liability Convention and the 1992 Fund Convention. The Assembly decided to endorse the conclusions of the Working Group regarding the application of the 1992 Conventions to unladen tankers (cf Section 9).
- The Assembly decided to increase the 1992 Fund's working capital from £15 million to £18 million.
- The Assembly decided to levy 2000 contributions for an amount of £92.5 million, £49.5 million payable by 1 March 2001 whilst the remainder would be deferred and invoiced, if and to the extent required, during the second half of 2001 (cf Section 8.5).

5.2 1992 Fund Executive Committee

6th - 10th sessions

The 1992 Fund Executive Committee held five sessions during 2000. The 6th, 7th, 8th and 9th sessions were held under the chairmanship of Professor Lee Sik Chai (Republic of Korea) on 15 February, from 3 to 6 April, on 5 and 6 July and from 23 to 27 October 2000 respectively. The 10th session was held on 27 October 2000 under the chairmanship of Mr Gaute Sivertsen (Norway).

Lee Sik Chai

Matteo Baradà

The main decisions taken by the 1992 Fund Executive Committee at these sessions are reflected in Section 15 in the context of the particular incidents.

5.3 1971 Fund Administrative Council

1st session

The Chairman of the Executive Committee, Dr Matteo Baradà (Italy) attempted to open the 63rd session of the Committee on 3 April 2000, but the Committee failed to achieve a quorum. It was then attempted to open an extraordinary session of the Assembly, but the Assembly also failed to achieve a quorum. Therefore, the items on the agenda of the 63rd session of the Executive Committee were considered by the Administrative Council at its 1st session.

The main decisions taken by the 1971 Fund Administrative Council at this session are reflected in Section 14 in the context of the particular incidents.

2nd session

The acting Chairman of the 1971 Fund Assembly, Mr Pawel Czerwinski (Poland) as representative of the delegation from which the former Chairman was elected, attempted to open the 23rd session on 24 October 2000. However, the Assembly did not achieve a quorum for the session, since only eight of the 39 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 Administrative Council, under the chairmanship of Mr Valery Knyazev (Russian Federation), pursuant to the Resolution adopted by the Assembly at its April 1998 session. The following major decisions were taken by the Administrative Council at its 2nd session, acting on behalf of the Assembly:

- The Administrative Council considered that the problems facing the 1971 Fund had been reduced considerably following the Diplomatic Conference which adopted a Protocol amending the 1971 Fund Convention. The Council decided to take out insurance to cover the 1971 Fund's liability for future incidents (cf Section 6.6).
- The Administrative Council noted the External Auditor's Report and his Opinion on the Financial Statements of the 1971 Fund which went into great depth and detail and welcomed, in particular, the 'value for money audit'. The Council approved the accounts for the financial period 1 January to 31 December 1999 (cf Section 7.2).
- The Council decided to levy 2000 annual contributions for a total amount of £25 million, the entire levy to be deferred and invoiced, to the extent necessary, during the second half of 2001 (cf Section 8.3).

Valery Knyazev

- The 1971 Fund may be exonerated, wholly or partially, from its obligation to pay indemnification to the shipowner for part of his liability if, as a result of the actual fault or privity of the owner, the ship did not comply with the requirements in any of the instruments listed in Article 5.3(a) of the 1971 Fund Convention. The Administrative Council decided to include in the list contained in that Article the July 1999 amendments to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 thereto (MARPOL 73/78), with effect from 1 May 2001.
- The Administrative Council took a number of decisions relating to incidents involving the 1971 Fund. The main decisions are reflected in Section 14 in the context of the particular incidents.

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

At their October 2000 sessions the 1971 Fund Administrative Council (acting on behalf of the Assembly) and 1992 Fund Assembly took the following major decisions affecting both Organisations.

- The non-submission of oil reports by a number of States continued to be a matter of serious concern to the Funds' governing bodies, since without oil reports the Secretariat cannot issue invoices for contributions by the contributors in the non-reporting State. The governing bodies of the two Organisations instructed the Director to inform the competent persons of the States concerned that the respective Assembly would review individually each State which had not submitted its report and that it would then be for the Assembly to decide on the course of action to be taken for each State (cf Section 8.1).
- The budget appropriations for 2001 were adopted, with an administrative expenditure for the joint Secretariat totalling £2 776 970.

6 WINDING UP OF THE 1971 FUND

6.1 The issues

As more States join the 1992 Fund and cease to be Members of the 1971 Fund, the 'old' regime based on the 1969 Civil Liability Convention and the 1971 Fund Convention is losing its importance, and the 1971 Fund will soon cease to be financially viable. With the departure from the 1971 Fund of a number of States, the total quantity of oil on which contributions are levied has been reduced from its maximum of 1 200 million tonnes to 110 million tonnes by the end of 2000. The total quantity of contributing oil will have decreased to as little as 8 million tonnes by the end of 2001. 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.

The 1971 Fund Convention (Article 43.1) in its present wording provides that the Convention will remain in force until the date when the number of Contracting States falls below three. It is very unlikely that this will happen in the foreseeable future. Consideration has therefore been given to the possibility of accelerating the winding up of the 1971 Fund.

There has been considerable concern that before the 1971 Fund Convention can be wound up, the 1971 Fund will face a situation in which an incident occurs and that Fund has an obligation to pay compensation to victims, but where there are no contributors in any of the remaining Member States.

6.2 Steps taken by the Secretariat

The Director has taken a number of steps to draw the attention of the Governments of the remaining 1971 Fund Member States to the significant problems which continuing membership of the 1971 Fund would cause and of the great urgency of acceding to the 1992 Protocols and of denouncing the 1969 Civil Liability Convention and the 1971 Fund Convention. These steps include contacts with the respective Embassies and High Commissions in London, participation in a meeting of States Parties to the United Nations Convention of the Law of the Sea, visits by Fund staff to the capitals of States concerned, presentations by Fund staff at seminars, conferences and workshops with participation of representatives of interested States, and assistance to States to prepare the necessary instruments of denunciation of the 1969 and 1971 Conventions and the legislation required to implement the 1992 Protocols.

On the occasion of the IMO Assembly in November 1999, the Director held meetings with representatives of 31 of the remaining 1971 Fund Member States for the purpose of emphasising the urgency of their respective States' denouncing the 1971 Fund Convention. During the Diplomatic Conference referred to below, the Director discussed this issue with representatives of 12 States.

6.3 Consideration by the Executive Committee at its October 1999 session

A number of ways of accelerating the winding up of the 1971 Fund were considered at the October 1999 session of the 1971 Fund Executive Committee, acting on behalf of the Assembly. During the Executive Committee's discussions it was generally accepted that no option for the early termination of the 1971 Fund Convention was entirely satisfactory.

The main discussion related to the possibility of adopting a Protocol amending Article 43.1 of the 1971 Fund Convention to the effect that the Convention would be terminated well before the number of Member States fell below three. Normally such an amendment would be binding only on the States which had expressed their acceptance. In the light of the difficulties which would result if explicit acceptance of the amendments were required, the Director had suggested that it would be appropriate to consider whether the envisaged amendment to Article 43.1 could be brought into force by means of a simplified procedure under which the consent of a State to be bound would be given not by express indication but by tacit or implied consent, ie by States failing to object within a certain period of time (tacit acceptance procedure). Some delegations considered that since the 1971 Fund Convention did not

provide for a tacit acceptance procedure, it was not possible to follow such an approach.

The Executive Committee decided that IMO should be requested to convene urgently a Diplomatic Conference for the purpose of adopting a Protocol amending Article 43.1 of the 1971 Fund Convention. The Committee elaborated a draft Protocol containing two options, one based on a tacit acceptance procedure and the other requiring explicit acceptance by States. The Diplomatic Conference was held from 25 to 27 September 2000. The results of the Conference are outlined below.

During the Executive Committee's discussion it was noted that the termination of the 1971 Fund Convention would not result in the liquidation of the 1971 Fund. Steps will therefore have to be taken to ensure that the 1971 Fund is liquidated in a proper manner.

6.4 Consideration by the governing bodies in April 2000

At its April 2000 session, the 1971 Fund Administrative Council, acting on behalf of the Assembly, instructed the Director to study all aspects of the winding up and liquidation of the 1971 Fund, including:

a) the role of the Secretariat and the Director, in particular the implications for the 1971 Fund if the 1992 Fund Director and 1992 Fund Secretariat should cease to fulfil also the roles of Director and Secretariat of the 1971 Fund;

b) the budgetary implications which would arise, taking into consideration the interests of contributors in present and former 1971 Fund Member States;

c) the need to appoint a person to oversee the winding up and liquidation processes; and

d) the consequences for the winding up and liquidation process of the outcome of the Diplomatic Conference to be held in September 2000 to amend Article 43.1 of the 1971 Fund Convention.

At the 1992 Fund Assembly's April 2000 session, the Director was instructed to study the possibilities open to the 1992 Fund in respect of the future role of the 1992 Fund, its Secretariat and its Director in the operation and activities of the 1971 Fund, setting out the requirements as well as the legal, practical and organisational consequences of the various options.

6.5 Diplomatic Conference to consider amending Article 43.1 of the 1971 Fund Convention

A Diplomatic Conference held from 25 to 27 September 2000 under the auspices of IMO adopted a Protocol to amend Article 43.1. Under the amended text, the 1971 Fund will cease to be in force on the date on which the number of 1971 Fund Member States falls below 25 **or** 12 months following the date on which the Assembly (or any other body acting on its behalf) notes that the total quantity of contributing oil received in the remaining Member States falls below 100 million tonnes, whichever is the earlier. As for the entry into force of the Protocol, the Diplomatic Conference adopted the option of a tacit acceptance procedure. The Protocol will enter into force on 27 June 2001, unless one third of the remaining Member States have informed the Secretary-General of IMO by 27 March 2001 of their objection to the Protocol. As at 31 December 2000, no objections had been received by the Secretary-General.

As at 31 December 2000, the 1971 Fund has 35 Member States. Eight States have deposited instruments of denunciation, so that the number of Member States will have fallen to 27 by the end of October 2001. It is expected that at least another three States will denounce the 1971 Fund Convention during the first months of 2001 and that consequently the number of Member States will have decreased to 24 in early 2002, which would result in the Convention ceasing to be in force. In any event the total quantity of contributing oil will have fallen below 100 million tonnes by 21 June 2001 (when the denunciation by India takes effect), and the Convention would therefore cease to be in force during the summer of 2002 at the latest. This prediction is based on the

assumption that objections will not be lodged by at least one third of the remaining Member States.

As a result of the adoption of the Protocol, the problems facing the 1971 Fund have been reduced considerably, unless a sufficient number of objections are lodged. The issue is now how to ensure the operation of the 1971 Fund and its viability in respect of incidents occurring before the date when the Convention ceases to be in force, ie the beginning of 2002 or the summer of 2002 at the latest.

6.6 Insurance of the 1971 Fund's liabilities for new incidents

At its October 2000 session, the Administrative Council considered a proposal by the Director that the 1971 Fund should take out insurance to cover its liability for future incidents.

The Administrative Council authorised the Director to purchase insurance covering any liabilities of the 1971 Fund for compensation and indemnification up to 60 million SDR (£53 million) per incident minus the amount actually paid by the shipowner or his insurer under the 1969 Civil Liability Convention, as well as legal and other experts' fees, in respect of all incidents occurring during the period up to 31 December 2001. The 1971 Fund itself has to cover a deductible of 250 000 SDR (£220 000) for each incident. The 1971 Fund has the option to extend the insurance cover up to 31 October 2002.

The insurance came into effect on 25 October 2000. The total cost of the cover is £768 800.

The solution adopted offers considerable benefits. It protects the potential victims in the present Member States which have already denounced the 1971 Fund Convention in respect of incidents occurring during the period up to the date when the denunciation of the 1971 Fund Convention takes effect for the State in question. It gives the other remaining 1971 Fund Member States the benefit of financial protection during the period up to the date when the Convention ceases to be in force. It also ensures that the contributors in the remaining Member States will not be exposed to a heavy financial burden as a result of new incidents.

The Administrative Council decided that it would not be appropriate to appoint a liquidator in the normal sense to deal with the liquidation of the 1971 Fund but that the liquidation should be dealt with by the organs of the 1971 Fund.

The Administrative Council noted the concerns expressed by delegations of former 1971 Fund Member States at the 1992 Fund Assembly's session in April 2000, when the future role of the 1992 Fund in the operation and activities of the 1971 Fund was discussed. A number of those delegations stated that in the light of the adoption of the 2000 Protocol to the 1971 Fund Convention and the 1971 Fund's purchase of insurance cover their concerns had been allayed.

Since it was likely that the 1971 Fund Convention would cease to be in force by the beginning of 2002 or during the summer of 2002 at the latest, the 1992 Fund Assembly decided at its October 2000 session to maintain the existing arrangement under which the 1992 Fund shared a Secretariat with the 1971 Fund and the 1992 Fund Director was also Director of the 1971 Fund, in order to ensure the efficient handling of pending incidents involving the 1971 Fund and the orderly winding up of that Organisation. The Administrative Council of the 1971 Fund agreed that the present arrangement should be maintained.

7 ADMINISTRATION OF THE IOPC FUNDS

7.1 Secretariat

The 1971 Fund and 1992 Fund have a joint Secretariat headed by one Director. During 2000 the Secretariat has continued to face a very heavy workload. 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.

As a result of the Assemblies' decisions in 1998 to increase the size of the IOPC Funds' Secretariat, additional office space was required. The Secretariat had since 1983 been located in the IMO building at Albert Embankment in London. Regrettably no additional office space was available there, and the Secretariat had therefore to relocate outside that building.

In June 2000 the Secretariat was relocated from the IMO building to Portland House, Stag Place in Victoria. The new premises are situated in the heart of London and give the Secretariat the additional office space necessary, including space for future expansion, if required. The new offices provide the Secretariat with a very functional and pleasant working environment.

The sessions of the Assemblies, the Executive Committees, the 1971 Fund Administrative Council and Working Groups will continue to be held in the IMO building. In order to facilitate the work of the Secretariat during these sessions, to maintain contacts with delegates to IMO meetings and to preserve the very important close relationship with IMO, the Funds retain some office space in the IMO building.

At their October 2000 sessions the governing bodies of the 1992 and 1971 Funds expressed their gratitude to the United Kingdom Government for its assistance in finding the new premises, for making available consultants and for the generous financial support.

The IOPC Funds continue to 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.

The Assemblies have emphasised the importance of the 1992 Fund's strengthening the Secretariat's activities in the field of public relations. Work is therefore underway to develop the Funds' website and to use the internet to speed up the distribution of documents.

7.2 Financial statements for 1999

The financial statements of the 1971 Fund and the 1992 Fund for the period 1 January to 31 December 1999 were approved by the respective governing bodies at their sessions in October 2000.

As in previous years both the 1971 Fund's and the 1992 Fund's accounts were audited by the Comptroller and Auditor General of the United Kingdom. The Auditor's reports on the two Organisations are reproduced in full in Annexes III and IX respectively and his opinions on each financial statement are reproduced in Annexes IV and X.

Statements summarising the information contained in the audited statements for this period are given in Annexes V - VIII for the 1971 Fund and in Annexes XI - XIV for the 1992 Fund.

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 1 million Special Drawing Rights (SDR) (£875 000) or, by the 1992 Fund, 4 million SDR (£3.5 million).

1971 Fund

An amount of £1.65 million was receivable by the General Fund in 1999 as annual contributions. Annual contributions of

£7.5 million were receivable in respect of the *Nakhodka* Major Claims Fund.

Claims expenditure for the period amounted to £54.1 million. The majority of this expenditure related to five cases, namely the *Haven*, *Keumdong N°5*, *Sea Empress*, *Nakhodka* and *Osung N°3* incidents.

The balance sheet of the 1971 Fund as at 31 December 1999 is reproduced in Annex VII. The balances of the various Major Claims Funds are also given. The contingent liabilities were estimated at £242 million in respect of claims arising from 19 incidents.

1992 Fund

Contributions of £7.2 million accounted for the major part of the General Fund's income during 1999. Contributions receivable in 1999 with respect to the *Nakhodka* Major Claims Fund were £30.2 million.

The claims expenditure during 1999 was £5.1 million.

The balance sheet of the 1992 Fund as at 31 December 1999 is reproduced in Annex XIII. The balances of the various Major Claims Funds are also given. The contingent liabilities were estimated at £195.8 million in respect of claims arising from six incidents.

7.3 Financial statements for 2000

The financial statements of the 1971 Fund and 1992 Fund for the period 1 January to 31 December 2000 will be submitted to the External Auditor in the spring of 2001, and will be presented to the respective Assemblies for approval at their sessions in October 2001. These accounts will be reproduced in the IOPC Funds' 2001 Annual Report.

7.4 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.

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.

1971 Fund

Investments were made by the 1971 Fund during 2000 with a number of banks and building societies in the United Kingdom. As at 31 December 2000 the 1971 Fund's portfolio of investments totalled £101 million. The portfolio was made up of the assets of the 1971 Fund and a credit balance on the contributors' account.

Interest due in 2000 on the investments amounted to £7 million on an average capital of £107 million.

1992 Fund

Investments were made by the 1992 Fund during 2000 with a number of banks and building societies in the United Kingdom. As at 31 December 2000 the 1992 Fund's portfolio of investments totalled £73.8 million. The portfolio was made up of the assets of the 1992 Fund and the Staff Provident Fund.

Interest due in 2000 on the investments amounted to £3.3 million on an average capital of £54 million.

8 CONTRIBUTIONS

8.1 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.

Non-submission of oil reports

The non-submission of oil reports by a number of States was considered by the delegations at the October 2000 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 ten Member States of the 1992 Fund and 27 Member States of the 1971 Fund (ie over half) had not submitted their reports on contributing oil received in 1999. For 14 of the 1971 Fund Member States reports were outstanding for between three and 12 years.

The governing bodies renewed their instructions that, if a State did not submit its oil reports, the Director should make contacts with that State and emphasise the concerns expressed by the governing bodies in this regard. The Director was also instructed to inform the competent persons of the States concerned that the Assembly would review individually each State which had not submitted its report and that it would then be for the Assembly to decide on the course of action to be taken for each State.

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 2000 corresponded to £0.0027527.

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 of the shipowner under Article 5.1 of the 1971 Fund Convention.

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 March 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.

8.2 1971 Fund: 1999 annual contributions

In October 1999 the Executive Committee, acting on behalf of the Assembly, decided not to levy any annual contributions to the General Fund. However, the Committee decided to levy 1999 annual contributions to three Major Claims Funds for a total amount of £8.3 million. It was decided that the entire levies to the *Nakhodka* (£1 million) and *Osung N°3* (£5.3 million) Major Claims Funds were to be paid by 1 March 2000 and that the entire levy in respect of the *Sea Empress* incident (£2 million) should be deferred. In addition, the Committee decided that an amount of £2.5 million should be reimbursed to the contributors to the *Haven* Major Claims Fund on 1 March 2000. The Director was authorised to decide whether to invoice all or part of the amount of the deferred levy for payment during the second half of 2000.

When assessing the situation in June 2000 the Director decided not to make a deferred levy in respect of the *Sea Empress* Major Claims Fund, since it would be possible to make the necessary payments from the liquid assets of the 1971 Fund. Contributors were notified of this decision in June 2000.

8.3 1971 Fund: 2000 annual contributions

In October 2000 the Administrative Council, acting on behalf of the Assembly, decided not to levy annual contributions in respect of the General Fund. However, the Council decided to levy annual contributions to the *Nissos Amorgos* Major Claims Fund for a total amount of £25 million. It was decided that the entire levy should be deferred. The Director was authorised to decide whether to invoice all or part of the amount of the deferred levy for payment during the second half of 2001.

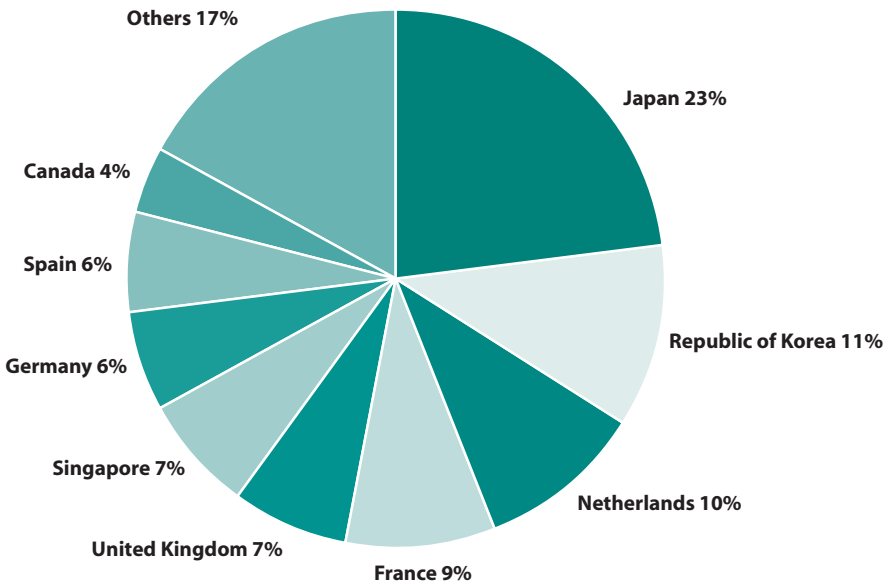
8.4 1992 Fund: 1999 annual contributions

In October 1999 the Assembly decided not to levy any annual contributions to the General Fund. However, the Assembly decided to levy 1999 contributions to the *Nakhodka* Major Claims Fund for an amount of £13 million, the entire levy to be deferred. In addition, the Assembly decided that an amount of £3.7 million should be reimbursed to the contributors to the *Osung N°3* Interim Major Claims Fund on 1 March 2000. In accordance with the authority given to him by the Assembly, the Director decided in June 2000 to invoice £13 million as a deferred levy to the *Nakhodka* Major Claims Fund for payment by 1 September 2000.

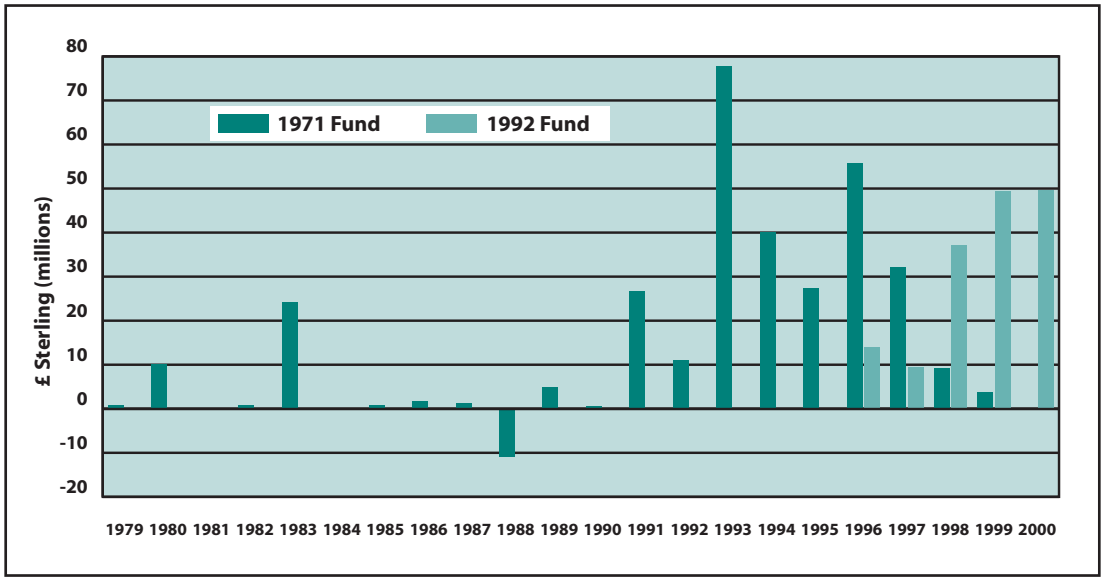
In April 2000 the Assembly decided to levy contributions of £40 million to the *Erika* Major Claims Fund as 1999 contributions, for payment by 1 September 2000.

8.5 1992 Fund: 2000 annual contributions

The Assembly decided to levy 2000 contributions to the General Fund for a total of £7.5 million, due for payment by 1 March 2001. In addition, the Assembly decided to levy contributions of £35 million to the *Nakhodka* Major Claims Fund and £50 million to the *Erika* Major Claims Fund, £17 million and £25 million respectively due for payment by



1992 Fund: Erika Major Claims Fund Contributions (2000)



1971 Fund and 1992 Fund: annual contributions over the years

1 March 2001 with the remainder of the levies deferred. The Director was authorised to decide whether to invoice all or part of the deferred levies for payment during the second half of 2001.

The 2000 contributions to the *Erika* Major Claims Fund were based on the quantities of contributing oil received in 1998 in States which were Members of the 1992 Fund at the time of the *Erika* incident (12 December 1999). The shares of the 2000 contributions to that Fund in respect of Member States are illustrated by the chart opposite.

8.6 1971 and 1992 Funds: Annual contributions over the years

Details of the 1971 and 1992 Funds' 1999 and 2000 annual contributions are set out in the table overleaf.

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 above.

With respect to contributions levied by the 1971 Fund over the years, £1 134 000 was outstanding as at 31 December 2000. As for contributions levied by the 1992 Fund since 1996, £454 000 was outstanding as at 31 December 2000.

In October 2000 the governing bodies of the 1971 and 1992 Funds expressed their satisfaction with the situation regarding the payment of contributions.

1971 AND 1992 FUNDS' 1999 AND 2000 ANNUAL CONTRIBUTIONS

Organisation	Annual Contribution Year	Decision of governing body		General Fund/Major Claims Fund	Total amount due £	Oil year	Levy per tonne £
1971 FUND	1999	October 1999	1st levy	*Nakhodka* Japan	1 000 000	1996	0.0008178
				Osung N°3 Republic of Korea/Japan	5 300 000	1996	0.0043189
				Credit *Haven* Italy	-2 500 000	1990	-0.0026328
			2nd levy	No levy made			
	2000	October 2000	1st levy	No levy made			
			2nd levy	*Nissos Amorgos* Venezuela	25 000 000 Maximum[1]	1996	0.0203583
1992 FUND	1999	October 1999	1st levy	Credit *Osung N°3* Interim Republic of Korea/Japan	-3 700 000	1996	-0.0056367
			2nd levy	*Nakhodka* Japan	13 000 000	1996	0.0134974
		April 2000		*Erika* France	40 000 000	1998	0.0357300
	2000	October 2000	1st levy	General Fund	7 500 000	1999	0.0066372
				Nakhodka Japan	17 000 000	1996	0.0255255
				Erika France	25 000 000	1998	0.0224014
			2nd levy	*Nakhodka* Japan	18 000 000 Maximum[1]	1996	0.0270270
				Erika France	25 000 000 Maximum[1]	1998	0.0224014

[1] *To be invoiced to the extent required for payment in the second half of 2001*

9 THE 1992 FUND WORKING GROUP ON THE INTERPRETATION OF THE DEFINITION OF 'SHIP' IN THE 1992 CONVENTIONS

In October 1998 the Assembly established a Working Group to study *inter alia* the circumstances in which an unladen tanker would fall within the definition of 'ship' laid down in the 1992 Civil Liability Convention and the 1992 Fund Convention.

At a meeting held in April 1999 under the chairmanship of Mr John Wren (United Kingdom) the Working Group drew the following conclusions:

i) the word 'oil' in the proviso in Article I.1 of the 1992 Civil Liability Convention means persistent hydrocarbon mineral oil, as defined in Article I.5 of the Convention;

ii) the expression 'other cargoes' in the proviso should be interpreted to mean non-persistent oils as well as bulk solid cargoes;

iii) as a consequence the proviso in Article I.1 should apply to all tankers and not only to ore/bulk/oil ships (OBOs);

iv) the expression 'any voyage' should be interpreted literally and not be restricted to the first ballast voyage after the carriage of a cargo of persistent oil;

v) a tanker which had carried a cargo of persistent oil would fall outside the definition if it was proven that it had no residues of such carriage on board; and

vi) the burden of proof that there were no residues of a previous carriage of a persistent oil cargo should normally fall on the shipowner.

The Working Group's report was considered by the Assembly at its October 1999 session.

In a document submitted to the Assembly the delegations of Australia, Canada, the Netherlands and the United Kingdom expressed the view that:

i) a dedicated oil tanker (ie a tanker capable of carrying persistent oil and non-persistent oil) is always a 'ship' for the purposes of the 1992 Civil Liability Convention; and

ii) the proviso in the definition of 'ship' applies only to vessels and craft capable of carrying oil, including non-persistent oil, and other cargoes.

During the discussions in the Assembly several delegations stated that they supported the interpretation proposed by the Working Group. Some delegations expressed the opinion that they did not agree with the conclusions of the Working Group but supported the views set out in the document presented by the four delegations. One delegation stated that the overriding issue was the definition of 'oil' in the Convention, which was restricted to 'persistent oil', and that it would not be legally possible to widen the interpretation of the definition of 'ship' beyond that proposed by the Working Group.

The Assembly decided that the Working Group should consider the matter further.

The Working Group met again in April 2000 and reconsidered the issues involved on the basis of further documents presented by various delegations.

In summing up the discussions at the Working Group's second meeting, the Chairman recalled the conclusions reached at the first meeting of the Working Group, at which a

majority had supported the view that an unladen tanker would fall within the definition of 'ship' in the circumstances set out above. He noted that the Working Group had at its second meeting taken up the continuing concerns that a number of delegations had about the definition. He stated that the discussions at the Group's second meeting had benefited from additional explanations and justification for the adoption of the more restrictive interpretation in most circumstances and that this approach had now been generally accepted. He noted, however, that concerns had persisted regarding the applicability of the definition to dedicated crude oil tankers and that the majority of the delegations which had intervened in the discussion were of the view that the Convention should always apply to such tankers. However, the Chairman noted that in view of the fact that it would be rare that such tankers would have no persistent oil residues on board, the assumption should always be that such residues were present and that it would be open to the shipowner to prove otherwise.

The Working Group decided to maintain the conclusions drawn at its first meeting, as set out above, regarding the circumstances in which an unladen tanker would fall within the definition of 'ship' in the 1992 Conventions.

At its October 2000 session the 1992 Fund Assembly endorsed the Working Group's conclusions. The Assembly noted that the Working Group had expressed the view that any remaining ambiguity in the definition of 'ship' could be considered by the Working Group set up to study the adequacy of the international compensation system (cf Section 10).

Assembly in session

10 THE 1992 FUND WORKING GROUP ON THE ADEQUACY OF THE INTERNATIONAL COMPENSATION REGIME

In April 2000 the 1992 Fund Assembly established an intersessional Working Group to assess the adequacy of the international compensation system created by the 1992 Civil Liability Convention and the 1992 Fund Convention with the following mandate:

a) to hold a general preliminary exchange of views, without drawing any conclusions, concerning the need to improve the compensation regime provided by the 1992 Civil Liability Convention and the 1992 Fund Convention;

b) to draw up a list of issues which could merit further consideration in order to ensure that the compensation system meets the needs of society.

The Working Group met on 6 July 2000 under the chairmanship of Mr Alfred Popp QC (Canada).

The Working Group agreed that the following subjects should be included in the list of issues which could merit further consideration:

- Ranking of claims/priority treatment (including prescription periods)
- Uniform application of the Conventions
- Sanctions for failure to submit oil reports
- Dissolution and liquidation of the Fund
- Maximum compensation levels
- Weighting of contributions according to the quality of ships used for the transport of oil
- Environmental damage

The following subjects had been proposed for consideration by various delegations but were not discussed by the Working Group due to lack of time:

- Can co-operation with shipowners be improved?
- Are preventive measures inhibited by the Conventions?
- Should the shipowner's limitation amount be increased for ships carrying cargoes which could cause particularly serious pollution damage?
- Channelling of liability (Article III.4 of the 1992 Civil Liability Convention)
- Possibility of mediation before legal actions are taken
- Restricting the conditions for the shipowner's right to limit his liability
- Clarification of the definition of 'ship', eg in respect of the application of the Conventions to offshore craft
- Geographical scope of application of the Conventions in areas where no exclusive economic zone has been established
- More precise provisions on the submission and handling of claims
- Steps to reduce delays in the payment of compensation
- Admissibility of claims for fixed costs
- Admissibility of claims relating to the cost of salvage operations

The Working Group's report was considered by the 1992 Fund Assembly at its October 2000 session.

In introducing the report to the Assembly the Working Group's Chairman reminded the Assembly that the international compensation regime established under the Civil Liability and Fund Conventions had operated successfully for over 20 years, was one of the most successful compensation schemes in existence, that over the years the vast majority of most compensation claims covered by this regime had been settled amicably as a result of negotiations and that he was not aware of any similar

worldwide system. He stated that the Assembly should not be distracted by the few major cases which had gone to court. He pointed out that as a living scheme, the regime needed to be kept up to date in the light of experience so as to be able to adapt to the changing needs of society and to ensure the regime's survival by remaining attractive to States. The Working Group's Chairman also expressed the view that it would be appropriate to make a distinction at an early stage between issues in respect of which improvements could be achieved within the existing framework of the texts of the 1992 Conventions and issues where improvements could only be made by formal amendments to the Conventions. He made the point that if the work were to be continued, it would be necessary to draw up at some appropriate time a shortlist of items which were essential for improving the system.

During the discussion in the Assembly many delegations emphasised that the international regime established by the Civil Liability and Fund Conventions had in general operated very successfully and that therefore any revision should be carried out in such a way as to preserve and strengthen this regime. It was also stressed that this regime was a world wide system for compensation to victims of oil pollution damage and that it was important that the global character of the regime was preserved. It was stated that lessons should be learned from the experience of several major incidents involving the IOPC Funds in recent years.

Several delegations urged caution in any revision exercise and stressed that it was important that amendments should not be made for the sake of change but should be limited to issues where changes were really justified.

It was emphasised that it would be necessary to examine carefully which issues should be retained for inclusion in a possible revision of the 1992 Conventions, in order to make it possible to carry out such a revision within a reasonable period of time. A number of delegations indicated that it was important to focus on the most important issues, particularly those which could provide clear benefits for claimants, and pointed to the increase of the 1992 Convention limits as an indication of what could be achieved by setting realistic goals. Other delegations, whilst mindful of the need to complete the work within a reasonable period of time, considered that the remit of the Working Group should not be unnecessarily restricted at this early stage and that it was important to make it possible to consider new issues. It was suggested that it should be left for the Working Group to consider the scope of its examination.

The 1992 Fund Assembly instructed the Working Group to continue its work under the following revised mandate:

a) to hold an exchange of views concerning the need for and possibilities of improving the compensation regime established by the 1992 Civil Liability Convention and the 1992 Fund Convention;

b) to continue the consideration of issues identified by the Working Group as important for the purpose of improving the compensation regime and to make appropriate recommendations in respect of these issues; and

c) to report to the Assembly's October 2001 session on the progress of its work and make recommendations as to the continuation of the work.

The Working Group will meet during the weeks of 12 March and 25 June 2001.

11 SETTLEMENT OF CLAIMS

11.1 Incidents involving the 1971 Fund

1971 Fund claims settlements 1978 - 2000

Since its establishment in October 1978, the 1971 Fund has, up to 31 December 2000, been involved in the settlement of claims arising out of 96 incidents. The total compensation paid by the 1971 Fund amounts to over £263 million (US$438 million).

The 1971 Fund has made payments of compensation and indemnification of over £2 million as a result of the incidents detailed below, 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
Haven	Italy	1991	£30.3 million
Taiko Maru	Japan	1993	£7.2 million
Toyotaka Maru	Japan	1994	£5.1 million
Senyo Maru	Japan	1995	£2.3 million
Osung N°3	Republic of Korea/Japan	1997	£7.9 million

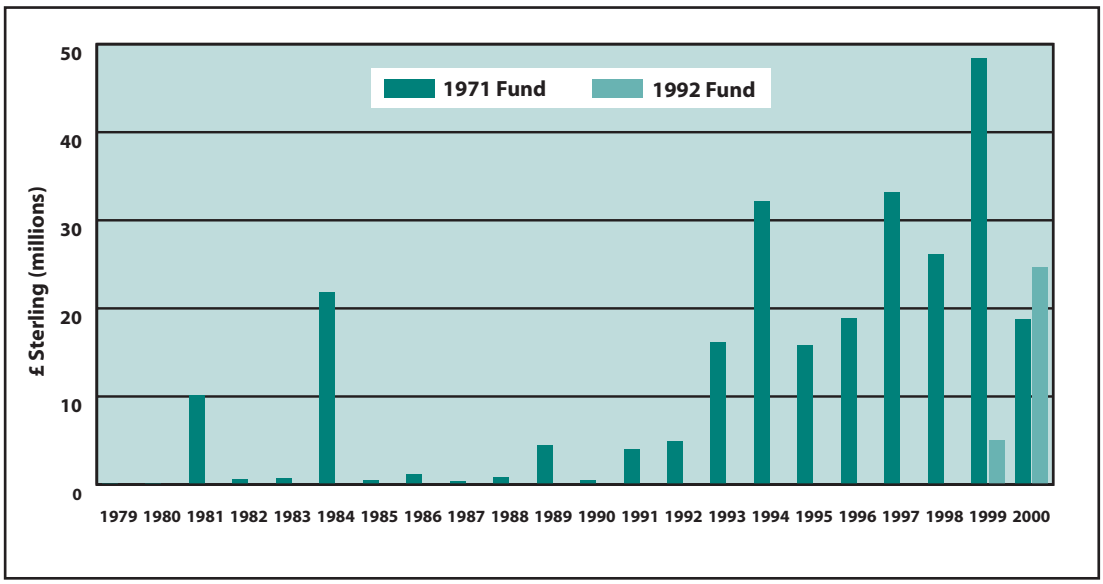
In addition, the 1971 Fund has made payments of compensation of over £2 million in connection with each of the incidents detailed below, for which third party claims are outstanding. In a number of the cases listed, such as the *Aegean Sea*, *Braer*, *Sea Prince* and *Sea Empress* incidents, considerable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

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

Annex XVII 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.

Ship	Place of incident	Year	1971 Fund payments
Aegean Sea	Spain	1992	£5.2 million
Braer	United Kingdom	1993	£42.7 million
Keumdong N°5	Republic of Korea	1993	£11.1 million
Sea Prince	Republic of Korea	1995	£10.6 million
Yuil N°1	Republic of Korea	1995	£14.5 million
Sea Empress	United Kingdom	1996	£24.5 million
Nakhodka[2]	Japan	1997	£43.3 million

[2] *The 1992 Fund has paid a further £29.7 million*



1971 Fund and 1992 Fund: payment of claims

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 exceeded the maximum amount available under the 1971 Fund Convention. In some cases claims have 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 many claims which, although admissible in principle, are for amounts which the Fund considered 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 2000 involving the 1971 Fund

The 1971 Fund has been notified of two incidents occurring in 2000 which may give rise to claims against it, the *Al Jaziah 1* and *Natuna Sea* incidents.

In March 2000 the *Al Jaziah 1* sank off the coast of Abu Dhabi (United Arab Emirates), resulting in the loss of 100 – 200 tonnes of oil and subsequent pollution of coastal areas. Some 430 tonnes of oil remaining on board was removed prior to the vessel being towed and taken to port. The United Arab Emirates is Party to both the 1971 Fund Convention and the 1992 Fund Convention, and both the 1971 Fund and 1992 Fund are involved in this incident.

The *Natuna Sea* grounded on 3 October 2000 in the Singapore Strait, which resulted in a spill of some 7 000 tonnes of crude oil. The oil affected Singapore, Malaysia and Indonesia, necessitating clean-up in all three countries. It has been reported that the oil spill affected the fishing industry in these countries. Since Malaysia at the time of the incident was Party to the 1971 Fund Convention, Singapore was Party to the 1992 Fund Convention and Indonesia Party to neither Convention, both the 1971 Fund and the 1992 Fund could be involved.

Incidents in previous years with outstanding claims against the 1971 Fund

As at 31 December 2000 there were outstanding third party claims in respect of 14 incidents involving the 1971 Fund which had occurred before 2000. The situation in respect of some of these incidents is summarised below.

Claims arising from the *Aegean Sea* incident (Spain, 1992) have been submitted in criminal proceedings for a total amount of some £96 million. The 1971 Fund has paid approximately £5.2 million in compensation, and the shipowner's P & I insurer has paid some £3.2 million. In September 1999 the Spanish Government presented a study by the Instituto Español de Oceanografía containing an assessment of losses suffered by the claimants in the fishery and mariculture sectors, and a provisional agreement was reached in October 2000 on the quantum of the established claims. As a result of legal proceedings complex issues have arisen relating to the distribution of liability between the 1971 Fund and the Spanish State. Some 60 claimants have brought civil proceedings in respect of claims totalling £85 million. The question has arisen as to whether these claims are time-barred. Discussions on the distribution of liabilities and the time bar issue are being held between the Spanish Government and the 1971 Fund.

As regards the *Braer* incident (United Kingdom, 1993), the 1971 Fund had paid approximately £40.6 million in compensation by October 1995, and the shipowner's P & I insurer had paid some £4.3 million. Claims amounting to £80 million became the subject of legal proceedings in Edinburgh. The total amount of the claims presented exceeded the maximum available under the 1969 Civil Liability Convention and the 1971 Fund Convention, *viz* 60 million SDR (£50.6 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. A number of the claims have since been withdrawn or rejected by the Courts, and out-of-court settlements have been reached in respect of others. The claims remaining in the legal proceedings total £7.6 million. In October 1999 the Executive Committee authorised the Director to make partial payments to those claimants whose claims had been approved but not paid, if the claims pending in the court proceedings together with the claims which had been approved but not paid fell below £20 million. In April 2000 the Director decided that the 1971 Fund should pay 40% of the claims which had been approved but not paid. As a result, £2 million was paid during 2000.

As regards the *Sea Empress* incident (United Kingdom, 1996) claims have been approved for a total of £32.4 million. Payments of £6.9 million have been made by the shipowner's insurer and of £24.5 million by the 1971 Fund. A number of claimants pursued their claims in court, but many of these claims have since been settled or withdrawn. The remaining claims are being examined. The shipowner has commenced limitation proceedings. The Executive Committee decided in October 1999 that the 1971 Fund should take recourse action against the Milford Haven Port Authority to recover the amounts paid by it in compensation.

The *Nakhodka* incident (Japan, 1997) was the first incident involving both the 1971 Fund and the 1992 Fund. Claims totalling £233 million have been received. 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 payments by the 1971 Fund and the 1992 Fund are currently limited to 70% of the damage suffered by each claimant. The total payments made by the 1971 Fund to claimants amount to £43.3 million and the 1992 Fund has paid £29.7 million. The shipowner and his insurer have made payments totalling £3 million. The Executive Committees have decided that the IOPC Funds should oppose any attempt by the shipowner to limit his liability. The Funds have taken recourse action against the shipowner, his insurer, the shipowner's parent company and the Russian Maritime Register of Shipping.

Claims totalling £26 million have been presented to the Claims Agency in respect of the *Nissos Amorgos* incident (Venezuela, 1997). Claims have so far been approved for £14.3 million. Claims for significant amounts have been lodged in court. However, a number

of the claims were withdrawn in late 2000. In view of the uncertainty as to the total amount of the claims, payments are for the time being limited to 25% of the loss or damage suffered by the individual claimants.

11.2 Incidents involving the 1992 Fund

1992 Fund claims settlements 1996 – 2000

Since its creation in May 1996 the 1992 Fund has been involved in the settlement of claims arising from six incidents. The total compensation paid by the 1992 Fund amounts to £29.9 million, out of which £29.7 million relates to the *Nakhodka* incident.

Incidents in 2000 involving the 1992 Fund

During 2000 the 1992 Fund became involved in two incidents which have given or may give rise to claims against the 1992 Fund as well as against the 1971 Fund, namely the *Al Jaziah 1* and the *Natuna Sea* incidents (see page 38).

The 1992 Fund was also informed of an incident involving the *Slops* which occurred in Greece. The Executive Committee decided, however, that the *Slops*, which was a waste oil reception facility should not be considered as a 'ship' for the purpose of the 1992 Conventions and that therefore these Conventions did not apply to the incident.

Incidents in previous years with outstanding claims against the 1992 Fund

As at 31 December 2000 there were five incidents, an incident in Germany (1996), the *Nakhodka* (Japan, 1997), the *Mary Anne* (Philippines, 1999), the *Dolly* (Martinique, 1999) and the *Erika* (France, 1999), which occurred before 2000 and which have given or might give rise to claims against the 1992 Fund.

The *Nakhodka* incident has been referred to on page 39 since it also involves the 1971 Fund. The 1992 Fund has paid compensation in respect of this incident totalling £29.7 million in addition to the £43.3 million paid by the 1971 Fund.

The *Erika* incident (France, 1999) is one of the most serious incidents in which the IOPC Funds have been involved. The *Erika*, carrying 30 000 tonnes of heavy fuel oil, broke in two in a storm in the Bay of Biscay some 50 kilometres south of Brittany. The two parts of the wreck sank to a depth of some 100 metres. Approximately 16 000 tonnes of heavy fuel oil was spilled from the ship polluting some 400 kilometres of coastline. The oil remaining in the two parts of the wreck was removed during the summer of 2000. Claims for compensation for significant amounts have been presented. The total amount of the claims is expected to exceed the maximum amount of compensation available under the 1992 Conventions. The French Government and the French oil company Total Fina SA have undertaken to pursue claims for compensation only if and to the extent all other claims have been paid in full. In view of the uncertainty as to the total amount of the established claims, especially those in the tourism sector, the Executive Committee decided in July 2000 to limit for the time being the 1992 Funds payments to 50% of the amount of the actual loss or damage suffered by the individual claimant. The shipowner's P & I insurer has made provisional payments in respect of 852 claims for a total of FFr32 million (£3.1 million).

12 LOOKING AHEAD

The year 2001 will present a number of important challenges for both the 1971 and the 1992 Funds.

It is expected that there will be a considerable growth in the 1992 Fund's membership, as more 1971 Fund Member States ratify the 1992 Fund Convention and States which were not previously Members of the 1971 Fund join the 1992 Fund.

The Working Group set up within the 1992 Fund to consider the need to improve the international compensation regime will hold important meetings during the first half of 2001, and the Assembly will consider the Working Group's Report in October 2001.

Although it appears that the major problems facing the 1971 Fund due to its rapidly decreasing membership and the ensuing reduction of its contribution base have been largely overcome, the winding up of the 1971 Fund will require a significant amount of work during several years. Since the 1971 Fund cannot be wound up until all claims arising out of incidents involving this Fund have been settled, the Secretariat will increase its efforts to resolve all outstanding issues relating to these incidents. The Secretariat will also endeavour to settle claims arising out of incidents involving the 1992 Fund, in particular the *Nakhodka* and *Erika* incidents, as promptly as possible.

The work on strengthening the IOPC Funds' use of information technology will continue. It is hoped that better use of this technology will contribute to the speedier settlement of claims and enable the Funds to give better service to Member States and victims of oil spills.

PART 2

13 INCIDENTS DEALT WITH BY THE 1971 AND 1992 FUNDS DURING 2000

This part of the Report details incidents with which the 1971 Fund and the 1992 Fund have been involved in 2000. The Report sets out the developments of the various cases during 2000 and the position taken by the governing bodies in respect of claims. The Report is not intended to reflect in full the discussions of the governing bodies.

Claim amounts have been rounded in this Report. The conversion of foreign currencies into Pounds Sterling is as at 31 December 2000, except in the case of claims paid by the 1971 Fund or the 1992 Fund where conversions have been made at the rate of exchange on the date of payment.

The stern of the Erika

14 1971 FUND INCIDENTS

14.1 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 that 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 (£225 000). 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 in 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 was referred back to the Court of first instance. In a judgement rendered in March 2000 the Court of first instance ordered the insurer to pay to the 1971 Fund FFr8 239 858 (£790 000) plus interest.

The insurer has appealed against the judgement.

14.2 AEGEAN SEA

(Spain, 3 December 1992)

The incident

During heavy weather, the Greek OBO *Aegean Sea* (56 801 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 for compensation

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 totalling some Pts 22 750 million (£86 million) were presented before the Criminal Court of La Coruña in respect of losses suffered by fishermen and shellfish harvesters and the costs of clean-up operations.

Sixty-three claims totalling Pts 24 255 million (£92 million) were presented in the Civil Court of La Coruña by a number of companies and individuals, principally in the mariculture sector, who had not submitted any claims in the criminal proceedings but who had indicated in those proceedings that they would present their claims at a later stage in civil proceedings.

The UK Club also presented claims in the Civil Court of La Coruña in respect of clean-up and preventive measures associated with salvage operations for Pts 1 182 million (£4.5 million). These claims were settled in October 2000 for Pts 661 million (£2.5 million).

The total amount of all the claims submitted before the criminal and civil courts is Pts 48 187 million (£182 million).

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

Compensation has been paid in respect of 838 claims for a total amount of Pts 1 712 million (£7.7 million). Out of this amount, the UK Club has paid Pts 782 million (£3.2 million) and the 1971 Fund Pts 930 million (£4.5 million).

Criminal proceedings

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 (£1 120). The master, the pilot and

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

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. The Courts found that only six claims were substantiated by acceptable evidence, totalling Pts 815 million (£3.1 million). All the other claims for about Pts 16 110 million (£61 million) were referred to the procedure for the execution of the judgement.

Execution of the Court of Appeal's judgement

The 1971 Fund requested the Court to suspend the proceedings for the execution of the Court of Appeal's judgement, since the evidence referred to in the claimants' pleadings was incomplete. In October 1999 the judge issued an order extending the period for the Fund's submission of its pleadings by three months.

In February 2000 five groups of claimants submitted documentation supporting their claims, including a report prepared by an expert appointed by the Court on losses suffered by a group of fish and shellfish sellers, the claimants' calculations of losses according to the criteria laid down by the Court of Appeal for the execution of the judgement and reports from two accountants containing calculations of two claims. The Court issued an order lifting the suspension of the proceedings.

The Executive Committee authorised the Director to agree with the claimants to request the Court to suspend the legal proceedings. Upon a request from the majority of claimants involved in the procedure for the execution of the judgement, as well as the 1971 Fund, the shipowner and the UK Club, the Court suspended the proceedings in respect of those claimants. Three claimants involved in the procedure for the execution of the judgement did not agree that the proceedings should be suspended. Proceedings in respect of these claims are therefore continuing before the Court in La Coruña.

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 (£38 million) for aquaculture companies and of Pts 2 500 million (£9.4 million) for shellfish harvesters and fishermen. This credit facility was set up through a Spanish State-owned bank.

The terms of the credit facility provide that the claimants cede irrevocably to the bank their rights to any compensation that might be due to them as a result of the *Aegean Sea* incident and agree to assist the Government to take all steps required to obtain compensation from the 1971 Fund or any other party. Under the terms of the facility the claimants retain the right to compensation over and above the amounts of the loans.

Maximum amount payable under the 1971 Fund Convention

Under Article V.9 of the 1969 Civil Liability Convention, the limitation amount applicable to the *Aegean Sea* as expressed in Special Drawing Rights (SDR) shall be converted into the national currency on the basis of the official value of that currency *vis-à-vis* the SDR on the date of the constitution of the shipowner's limitation fund. In December 1992 the Criminal Court of La Coruña ordered the shipowner to constitute a limitation fund, fixing the limitation amount at Pts 1 121 219 450 (£4.2 million). The limitation fund was constituted by means of a bank guarantee provided by the UK Club on behalf of the shipowner for the amount set by the Court.

The conversion of the maximum amount payable under the 1971 Fund Convention, 60 million

SDR, should in the 1971 Fund's view be made using the same rate as that applied for the conversion of the shipowner's limitation amount (cf Article 1.4). The value of the SDR in pesetas on the date of the constitution of the limitation fund was 1 SDR = Ptas 158.55789. Accordingly, the maximum amount of compensation payable in respect of the *Aegean Sea* incident under the 1969 Civil Liability Convention and the 1971 Fund Convention (60 million SDR) converted into pesetas using the rate on that date gives Pts 9 513 473 400 (£36 million).

Main outstanding issues

There are three main outstanding issues in the *Aegean Sea* case:

- the quantification of the losses, except those for which an amount was determined by the Courts;
- the distribution of liabilities between the Spanish State and the shipowner/UK Club/1971 Fund; and,
- the issue of time bar in respect of the claimants who brought action in the civil courts

The quantification of the losses

In September 1999 the Spanish Government presented to the 1971 Fund a study carried out by the Instituto Español de Oceanografía (IEO) containing an assessment of the losses suffered by fishermen and shellfish harvesters and by claimants in the mariculture sector. The IEO had assessed the losses at between Pts 4 110 million (£15.5 million) and Pts 4 731 million (£17.9 million) as regards fishermen and shellfish harvesters and at Pts 8 329 million (£31.4 million) as regards the mariculture sector. Documentation relating to the losses suffered by companies in the mariculture sector was submitted. The assessment made by the IEO did not cover all claims in the fishery, mariculture and other sectors.

During 2000 a number of meetings were held between representatives of the Spanish Government, the Regional Government of Galicia (Xunta de Galicia), the IEO and the 1971 Fund to deal with the assessment of the quantum of the losses. A representative of the shipowner and the UK Club attended most of the meetings. In October 2000 a provisional agreement was reached between the Spanish Government and the Autonomous Government of Galicia (the Xunta de Galicia), on the one hand, and the 1971 Fund, the shipowner and the UK Club on the other, as to the admissible quantum of all claims for compensation arising out of the incident except that presented by the shipowner/UK Club for clean-up and preventive measures in connection with salvage. A provisional agreement was later reached on the shipowner's/UK Club's claim. The provisionally agreed figures are set out in the table below.

Claims	Claimed amount (Pts million)	Agreed amount (Pts million)
Fishermen and shellfish harvesters	14 222.17	3 220.77
Mariculture	20 048.24	5 183.61
Clean-up operations	2 679.67	560.98
Fish wholesalers, transporters and related business	2 120.80	291.62
Tourism	75.20	13.81
Financial costs	2 127.20	371.68
Spanish Government	1 154.50	460.23
Shipowner/UK Club's claim for clean-up and preventive measures	1 181.59	660.81
Amounts awarded by Criminal Courts	4 577.63	814.51
Claims paid by UK Club and 1971 Fund	-	254.55
Total (million Ptas)	**Pts 48 187.01**	**Pts 11 832.55**
Total (£)	**£182 million**	**£45 million**

During the discussions consideration was also given to the question of how to take into account the fact that the major part of the compensation would only be paid some eight years after the incident, ie by adding interest or by an increase to take into account the depreciation of the Spanish Peseta. This point is being considered further between the parties.

The provisional agreement as to the quantum of the claims is subject to agreement on the two other outstanding issues, namely the distribution of liabilities and the time bar.

The distribution of liabilities

As mentioned above, criminal proceedings were initiated against the master of the *Aegean Sea* and the pilot in charge of the ship's entry into the port of La Coruña. The Criminal Court 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.

Differences of opinion exist between the Spanish State and the 1971 Fund as to the interpretation of the judgements. The Spanish Government has maintained that the UK Club and the 1971 Fund should pay up to the maximum amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention (60 million SDR), and that the Spanish State would pay compensation only if and to the extent that the total amount of the established claims exceeded 60 million SDR. The Fund has maintained that the final distribution of the compensation payments between the various parties declared civilly liable should be: the UK Club 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%. The shipowner and the UK Club share the 1971 Fund's interpretation of the judgement.

The Spanish Government and the 1971 Fund have exchanged legal opinions on this issue. As regards these opinions reference is made to the 1999 Annual Report, page 51.

In June 1998 the Spanish Government and the 1971 Fund concluded an agreement to the effect that the Spanish State would not invoke the defence of time bar if the competent bodies of the Fund were to decide to take recourse action against the Spanish State to recover 50% of the amounts paid by the Fund in compensation within one year of the date of the agreement. Subsequent agreements have extended this time period to June 2001.

The issue 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.

The Spanish Government and the 1971 Fund have exchanged legal opinions on the issue. The opinions presented by the Spanish Government conclude that the claims in question are not time-barred, whereas the opinions obtained by the 1971 Fund concludes that the claims are time-barred. As regards these opinions reference is made to the 1999 Annual Report, pages 54 - 55.

Search for a global settlement of all outstanding issues

During 2000 fruitful and constructive discussions were held between the 1971 Fund and representatives of the Spanish Government. During these discussions both parties maintained their positions on the distribution of liabilities and on the issue of time bar. It was recognised by both sides that these matters would be for the Spanish courts to decide unless an out-of-court settlement was reached. Although maintaining their respective positions, the parties recognised that there was always some uncertainty as to the outcome of court proceedings on these very complicated issues.

At the Administrative Council's session in October 2000 the Director expressed the view that litigation in respect of the issues of distribution of liabilities and time bar would be very protracted. He drew attention to the fact that the purpose of the 1971 Fund was to pay compensation to victims of pollution damage. For these reasons, the Director considered that a global settlement of all outstanding issues would be in the interest of all parties involved.

The Administrative Council instructed the Director to continue the discussions with the Spanish Government for the purpose of reaching an agreement with the Government on a proposal for a global settlement to be submitted for consideration to the Assembly or Council.

14.3 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.

Claims settled out of court

By October 1995 some 2 000 claims for compensation had been settled and paid for a total amount of approximately £44.9 million. Due to the fact that legal actions for significant amounts had been brought against the shipowner, his insurer, Assuranceforeningen Skuld (Skuld Club), and the 1971 Fund, the Executive Committee decided at its October 1995 session to suspend further payments. Since then, claims amounting to £5.7 million were accepted as admissible. The suspension of payments was lifted in May 2000, and part payments of these claims were made in May and June 2000.

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 in court was approximately £80 million.

The court actions related 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 had been

rejected by the 1971 Fund on the basis of decisions taken by the Executive Committee, or because the claimants had not presented sufficient supporting evidence. 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.

By 31 December 2000 the majority of the opposed claims had either been dismissed by the court or had been withdrawn from the legal proceedings. The 52 opposed claims remaining in the legal proceedings total £5.2 million.

Developments in the court proceedings during 2000 are set out below.

Salmon price damage claims
A number of salmon farmers have 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 had been 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.

Claims in this category became the subject of legal proceedings.

One salmon price damage claim was the subject of a hearing in November 1998 as to whether it was admissible in principle. In a judgement rendered in December 1998 the Court of Session rejected the case on the ground that the salmon farmer's claim was no more than one for relational economic loss (Annual Report 1999, page 58).

The claimant appealed against the judgement but that appeal was subsequently withdrawn. All the remaining claims in this group pending in court, totalling some £6.7 million, were withdrawn in February 2000.

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 action, claiming compensation for an amount of £900 000, subsequently reduced to £680 000.

In a judgement rendered in January 1999 the Court of Session dismissed the action. The Court considered *inter alia* that the losses were not a direct consequence of the oil spill but were no more than an indirect consequence of the adverse publicity affecting the image of Shetland as a source of fish and fish products and as a holiday destination, and that the adverse publicity was in its turn a consequence of the contamination of other parties' property.

The company appealed against the Court of Session's judgement but withdrew the appeal in February 2000.

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.

Five fish processors brought legal action for claims totalling £7.6 million. The claims related 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.

A hearing was scheduled in the Court of Session during May 1999 for a legal debate on the admissibility of these claims. At the request of the claimants, however, the hearing was postponed until June 2000, and these claims were withdrawn before the hearing took place.

Shetland Sea Farms Ltd
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 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 claiming compensation for £2 million, later reduced to £1.4 million.

In October 2000 a hearing took place in order for the Court to consider whether certain of the documents relied upon by the claimant were genuine. The Court's decision is expected early in 2001.

Legal action by a fish sales company
A fish sales company 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 the Special Drawing Right 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 this compensation claim was admissible. The Court granted this request.

This company withdrew its claim in May 2000, and the legal action was therefore dismissed.

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 35 claims totalling £5.1 million were withdrawn. No satisfactory technical evidence had 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 later hypothesised, however,

that the active component present in the dispersants used to treat the oil was the cause. The 1971 Fund's experts expressed the view that the report of the claimants' expert did not provide satisfactory evidence that the dispersants caused the alleged damage.

During a four-week hearing in June 1999 evidence was heard in the Court of Session in respect of five property damage claims which had been selected to provide a wide geographical spread and variety of types of roof materials.

At the hearing the claimants described various problems associated with their roofs, including the curling of their slates and curling, cracking and softening of the corrugated sheet roofs which had not been observed prior to the incident. Their expert indicated that this might have been caused by the dispersant chemical, which was sprayed on the oil slicks, being blown onto the land and then onto the claimants' roofs. It was accepted by the 1971 Fund that of the 110 tonnes of dispersant sprayed, a very small quantity could have been blown onto the land but only over a restricted geographical area. Expert witnesses engaged by the shipowner, the Skuld Club and the 1971 Fund stated that only minute quantities of dispersant had reached the land and that in any event there was no scientific basis that dispersants used to seek to break up the oil spill could cause damage to asbestos cement roofs.

At the Court's request the parties presented written submissions on the issues raised in the evidence. Further hearings were held in December 1999 and January 2000. The Court is expected to render its decision early in 2001.

Shetland Islands Council

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

As regards environmental impact studies, the Committee noted that the reports on these studies were of a fairly general nature and did not include a level of detail which would support any particular claim, that the reports relied to a great extent on information that was available from other sources, and that due to the timing of their publication they did little to contribute to clarification of the issues relating to compensation. The Committee considered that, for these reasons, the studies did not contribute to the submission of admissible claims for compensation and that the claim for the costs associated with these studies should be rejected. The Committee considered that the items relating to the handling of the media and other visitors were not admissible, since the costs incurred could not be considered as damage caused by contamination. In the Committee's view, the legal fees for advice given by an American law firm on United States legislation were not admissible. The Committee further decided that fees incurred by two United Kingdom law firms were not admissible, since the advice given related mostly to matters other than the preparation and presentation of claims under the Civil Liability Convention and the Fund Convention.

After lengthy discussions the Shetland Islands Council accepted in December 2000 to settle its claim at £651 721, which amount corresponds to those parts of the claim which the 1971 Fund considered admissible. As a result the Council withdrew its court action.

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 December 1995 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.

Suspension of payments and the lifting of the suspension

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 total amount of compensation available under the 1969 Civil Liability Convention and the 1971 Fund Convention is 60 million SDR, which converted at the rate applicable on 25 September 1997 (the date on which the shipowner's limitation fund was established) corresponds to £50 609 280.

In October 1999, the Executive Committee decided to authorise the Director to make partial payments to those claimants whose claims had been approved but not paid, if the claims pending in the court proceedings together with the claims which had been approved but not paid fell below £20 million. The Committee further decided that the proportion of the approved amounts to be paid should be decided by the Director on the basis of the total amount of all outstanding claims.

In April 2000 the United Kingdom Government withdrew its claim for compensation for some £3.6 million. The Skuld Club undertook not to pursue its claim for £1.7 million relating to salvage operations. In addition, the five fish processors referred to above withdrew their claims, totalling £7.6 million. As a result of these withdrawals the total amount of the claims pending in court and the claims which had been approved but not paid fell below £20 million. The condition for resumption of payments laid down by the Executive Committee was therefore met. The claims pending in court totalled £7 611 436, and the claims settled but not paid totalled £5 838 649, or together £13 450 085. On that basis the Director decided that the Fund should pay 40% of the claims which had been approved but not paid. Payments at 40% totalling £2 022 068 were made in respect of these claims.

The Director intends to make additional payments in respect of the claims which have been approved but not paid in full if and to the extent made possible by a further reduction in the total amount of the claims pending in court.

As a result of the withdrawal of the Shetland Islands Council's claim, the opposed claims pending in court total £5.2 million as at 31 December 2000.

So far, the total amount paid in compensation is £47 944 053, out of which the 1971 Fund has paid £42 662 347 and the Skuld Club £5 281 706. There is, therefore, £2 665 227 available for further payments.

14.4 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. Extensive clean-up operations were carried out.

Claims for compensation

Claims relating to the cost of clean-up operations were settled at an aggregate amount of Won 5 600 million (£3.0 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 (£41 000). 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 (£49 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 (£25 million). These claims have been paid in full for the agreed amounts.

Legal actions

Claims by Yosu Fishery Co-operative

The Yosu Fishery Co-operative left the Kwang Yang Bay Federation and took legal action against the 1971 Fund in May 1996 in the Seoul District Court. Claims were filed in court for damage to the common fishery grounds totalling Won 17 162 million (£9.1 million). In addition, claims totalling Won 1 641 million (£870 000) 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).

The experts engaged by the 1971 Fund and the insurer assessed the losses allegedly suffered by all the claimants of the Yosu Co-operative at Won 810 million (£430 000). 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.

The District 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. 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 (£35 000).

The position taken by the District 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. The 1971 Fund therefore lodged an opposition to the Court's mediation decision.

In a judgement rendered in January 1999 the District Court found that the claimants had suffered damage due to the oil pollution, but rejected their calculations of their losses due to the lack of information on the income of individual fishermen, the unreliability of the evidence they had presented, the unreliability of part of the testimony of the Chairman of the Yosu Fishery Co-operative and the lack of a direct causal relationship between the alleged losses of income and the incident.

In determining the amount of the damages the Court awarded compensation for loss of earnings and in some cases for pain and suffering (condolence money). The total amount awarded by the Court was Won 1 571 million (£831 000).

In calculating the loss of earnings in respect of common fishing grounds, intertidal culture farms and fishing vessels the Court applied the same business models and used the same annual productivity data as the 1971 Fund's experts.

The District Court held that the common fishing grounds and intertidal culture farms must also have suffered damage due to mortality, growth retardation, migration of stock and decreased sales. However, due to insufficient

evidence of the quantum of the damage, the Court was unable to assess the amount of the damage. The Court therefore awarded compensation for pain and suffering. The Court specified amounts of compensation for pain and suffering (condolence money) which corresponded to about 10% of the annual production of common fishing grounds and about 8.4% of the annual production of intertidal culture farms.

The District Court held that a number of caged culture farms, one onshore aquarium and one onshore hatchery must also have suffered damage due to mortality of stock, retardation in growth and decreased sales. In the absence of any supporting evidence or any fixed standard to determine such losses, the Court awarded compensation for pain and suffering varying from Won 1 million (£530) to Won 5 million (£2 600). In addition, the District Court decided that the 1971 Fund should pay interest on the awarded amounts, calculated at 5% per annum from 27 September 1993 to 26 January 1999 and at 25% per annum from the latter date to the date of payment.

All the claimants belonging to the Yosu Fishery Co-operative, with the exception of one village fishery association, appealed against the judgement. Their total claimed amount was indicated in the appeal at Won 13 868 million (£7.3 million).

In October 1999 the Executive Committee examined the reasoning in the District Court's judgement. The Director was instructed to pursue appeals in respect of the questions of fact, the decision to allow compensation for pain and suffering, the apparently arbitrary methods used to determine compensation and the decision to award compensation to fishermen operating outside the licensing requirements.

The 1971 Fund lodged appeals against the District Court's judgement. The Court granted provisional enforcement of the judgement. In connection with its appeals the 1971 Fund requested a stay of the provisional enforcement, and this request was granted on payment by the Fund of a deposit with the Court of the amount awarded to the plaintiff, Won 1 571 million (£795 000).

The 1971 Fund has presented technical opinions on the District Court's judgement and further evidence in support of the Fund's opposition to the claims. Several hearings have been held. It is expected that the Appellate Court will render its judgement in early 2001.

Claims by an arkshell fishery co-operative

An arkshell fishery co-operative brought legal action against the 1971 Fund in respect of a claim for Won 4 175 million (£2.2 million) in the Seoul District Court. The claim related to damage allegedly caused during 1994 to the arkshell cultivation farms of its members. This claim was rejected by the 1971 Fund because there was no evidence that the alleged damage was caused by oil pollution.

The District Court rendered its judgement in respect of these claims in January 1999 rejecting the 1971 Fund's arguments. The Court held that oil treated with dispersants moved with the currents and reached the arkshell culture farms and arkshell hatcheries which were located in a shallow and enclosed body of water and that this had led to mortalities and retarded growth of arkshells. Although the Court considered it possible that other environmental factors could have caused the death of arkshells, it held that it could not be said that there was no causal link between the oil spill and the damage suffered by the claimants.

With regard to the arkshell farms the Court rejected the claimants' method of calculating damages on the ground that the sales records used by them were incomplete and unreliable. The Court held therefore that the property losses could not be assessed, but that where it was recognised that there had been a property loss, compensation for pain and suffering should be awarded.

As for the arkshell hatcheries, the Court accepted that the oil spill had a negative effect on seedlings but rejected the claims as presented due to lack

of supporting evidence. The Court held that the clean-up costs accepted by the 1971 Fund for these facilities should be regarded as property losses and that compensation for pain and suffering should be awarded instead of compensation for unquantifiable losses due to mortalities and growth retardation.

The District Court determined the amount of compensation for pain and suffering in respect of arkshell culture farms and hatcheries on the basis of statistics provided to the Court by the 1971 Fund on the national average arkshell production between 1988 and 1992 and the average price of arkshell between April and June 1994. The amounts of compensation were calculated on the basis of the distance between the culture farms and the incident site ranging between 5% and 10% of the average annual production. The total amount awarded to the culture farms in respect of pain and suffering was Won 453 million (£240 000). The two arkshell hatcheries were awarded Won 10 million (£5 300) each plus the clean-up costs admitted by the 1971 Fund, Won 6.3 million (£3 300).

The Court made the same decision in respect of interest and costs as for the claims by the Yosu Fishery Co-operative.

All the owners of the arkshell culture farms accepted the judgement, whereas the owners of two arkshell hatcheries appealed against it. The total amount claimed in the appeal was Won 359 million (£190 000).

The 1971 Fund lodged appeals against the District Court's judgement and deposited Won 474 million (£250 000) with the District Court corresponding to the amount awarded by the Court.

In July 2000 the Appellate Court rendered a compulsory mediation decision in respect of the arkshell fishery co-operative claims. At the final hearing held on that day, the Court stated that it would accept the 1971 Fund's position that compensation should not be granted for pain and suffering. The Court expressed the opinion that all claimants had suffered property damage (also those in the area where there had been no oil on the sea surface since the Court took the view that chemical dispersants used and dispersed oil had affected this area). The Court stated that it would not accept the amounts claimed. It indicated that it would grant compensation for property damage in the arkshell cultivation farms for Won 337 million (£178 000) and that it would award Won 75 million (£40 000) in respect of damage to arkshell hatcheries. In the mediation decision the Court stated that the Fund should pay Won 412 million (£218 000) plus interest at 5% per annum from 27 September 1993 until 31 August 2000 and at 25% per annum thereafter until the date of full payment.

The 1971 Fund would have been able to lodge opposition to the mediation decision and, if necessary, to appeal to the Supreme Court against the Appellate Court's ensuing judgement. However, the 1971 Fund's Korean lawyer advised the Fund that it was likely that the judgement to be rendered by the Appellate Court would not be substantially different from the mediation decision and that it was unlikely that an appeal to the Supreme Court would succeed, since the question to be decided was one of fact. Since the 1971 Fund's position on the matter of principle had been accepted, ie that compensation should not be granted for pain and suffering, the Director decided that the Fund should accept the judgement in respect of the arkshell fishery co-operative claims. The co-operative did not lodge opposition.

In August 2000 the 1971 Fund paid the amount determined by the Appellate Court, Won 412 million (£218 000) plus interest (Won 143 million) from the deposit.

14.5 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 300 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 (£2.7 million) with the competent court by the deposit of a bank guarantee.

The Court decided that claims should be lodged by 20 January 1995. By that date, 527 claims had been presented in the limitation proceedings, totalling Drs 3 071 million (£5.6 million) plus Drs 378 million (£700 000) 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.

The shipowner and his insurer took legal action against the 1971 Fund in order to prevent their rights to reimbursement from the Fund for any compensation payments in excess of the shipowner's limitation amount and to indemnification under Article 5.1 of the 1971 Fund Convention from becoming time-barred. The owner of a fish farm, whose claim is for Drs 1 044 million (£1.4 million), also interrupted the time bar period in respect of the claims by taking legal action against the 1971 Fund. All other claims have become time-barred *vis-à-vis* the Fund.

14.6 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 Oki islands.

A Japanese salvage company was engaged by the shipowner to salve the ship and the remaining cargo, under a salvage contract (Lloyds Open Form 95). The salvor transhipped some 80 000 tonnes of oil following which the salvage contract under Lloyds Open Form 95 was terminated and a contract signed with another salvage company for the removal of the ship. The *Sea Prince* was successfully refloated and was towed out of Korean waters but sank close to the Philippines without any further oil spillage.

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 this oil was removed 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.

Settlement of claims

Nearly all claims relating to clean-up operations have been settled. These claims have been paid in full (at approximately Won 21 100 million (£11.2 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.

All claims in the tourism sector have been settled for Won 538 million (£306 000) and paid in full.

Almost all of the claims in the fisheries sector have also been settled and paid in full in the amount of Won 19 500 million (£10.3 million).

In July 1999 a Village Fishery Association and 506 other individual claimants took legal action against the 1971 Fund for Won 500 000 (£265) for each claimant. The plaintiffs, many of whom had concluded settlements of their claims before the action was commenced, did not make the basis of each claim clear. In June 2000 a total of 313 claimants withdrew their claims from the proceedings. The remaining 194 claimants, whose claims had previously been rejected by the 1971 Fund and by the limitation Court, increased their claims to a total of Won 4 000 million (£2.1 million).

The UK Club presented a claim on the basis of subrogation for US$8.3 million (£5.6 million) relating to the cost of measures associated with the work carried out under the contracts related to salvage, maintenance of the wreck and wreck removal and pollution prevention. The 1971 Fund approved this claim for a total of US$6.6 million (£4.4 million). However, no payment has been made to the UK Club pending agreement on the limitation amount applicable to the *Sea Prince*.

Limitation proceedings

The limitation amount applicable to the *Sea Prince* is 14 million SDR, corresponding to Won 23 000 million (£12.3 million) at the exchange rate applicable on 31 December 2000. 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 (£64 million) had been submitted. These included claims in respect of clean-up and preventive measures associated with salvage operations totalling Won 44 500 million (£24 million), fishery claims totalling Won 70 700 million (£37 million) and claims relating to tourism and agriculture for Won 4 600 million (£2.4 million). The 1971 Fund submitted claims subrogated from the UK Club in the amount of £2 million. The UK Club filed its subrogated claims in the limitation court in respect of clean-up and preventive measures in US dollars and Japanese yen.

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) regarding fishery and non-fishery claims for economic losses. 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.

In April 1998 the shipowner filed two claims with the limitation court, one for the cost of post-spill environmental studies for Won 1 140 million (£603 000) and the other for costs totalling Won 135 million (£71 000) associated with additional clean-up undertaken by the shipowner in early 1998. Both the studies and the clean-up related to the spills from the *Sea Prince* and from another vessel, the *Honam Sapphire.*

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 seawater, sediments and marine products undertaken by the experts appointed by the UK Club and 1971 Fund in 1995 to assist with the assessment of claims for alleged damage to fisheries. 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 additional clean-up operations were not technically justified. 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 Court rendered 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.

Issues which are outstanding in the limitation proceedings are the subrogated claims by the shipowner and the UK Club in respect of preventive measures associated with salvage operations and clean-up operations carried out by various contractors. The Court assessed the shipowner's claims at a total of Won 3 500 million (£1.9 million), and the UK Club's claims at a total of US$27.8 million (£18.7 million) and ¥4 million (£23 400). The 1971 Fund lodged objections to the Court's decision on the grounds that the claimants had not submitted sufficient supporting documentation.

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

Reimbursement of amounts paid by the shipowner/UK Club

The UK Club have maintained that the total amount it has reimbursed the shipowner exceeds the limitation amount applicable to the *Sea Prince* under the 1969 Civil Liability Convention. The UK Club has therefore requested the 1971 Fund to pay the shipowner directly for the amounts paid by the shipowner that have not been reimbursed by the Club. The amount claimed by the shipowner in respect of these payments was Won 3 500 million (£1.9 million). In July 2000 the 1971 Fund approved the shipowner's claim in the amount of Won 3 135 million (£1.7 million) but this amount has not been accepted by the shipowner. The 1971 Fund is assessing the subrogated claims made by the UK Club in respect of reimbursements to the shipowner. However, before the 1971 Fund will be able to make payments it will be necessary to determine the limitation amount applicable to the *Sea Prince*.

Under Article V.9 of the 1969 Civil Liability Convention (as amended by the 1976 Protocol thereto), the limitation amount applicable to the *Sea Prince*, 14 million SDR, should be converted into the national currency of the State concerned on the basis of the value of that currency by reference to the SDR on the date of the constitution of the shipowner's limitation fund. In view of the considerable time that could elapse before the limitation amount is determined by the Court, as an exception, the 1971 Fund's Administrative Council authorised the Director to agree with the shipowner/insurer on an exchange rate between the SDR and Won to be applied to establish the limitation amount in respect of the *Sea Prince* and to determine the amount of indemnification payable by the Fund under Article 5.1 of the 1971 Fund Convention. Discussions have been held between the 1971 Fund and the shipowner/UK Club on this matter, but so far it has not been possible to reach an agreement.

14.7 YEO MYUNG

(Republic of Korea, 3 August 1995)

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, which necessitated clean-up operations at sea and on shore.

Claims relating to clean-up, fishery and tourism for a total of Won 24 483 million (£13 million) have been settled at a total of Won 1 554 million (£990 000). These claims have been paid in full.

The only outstanding claim is within the fisheries sector. The amount claimed is Won 335 million (£180 000), whereas the claim has been assessed by the 1971 Fund's experts at Won 459 000 (£240).

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 (£9 200) to the Court.

In September 1999 the Court held a hearing at which the 1971 Fund filed its subrogated claims against the shipowner's limitation fund. At the Court's request the 1971 Fund has submitted a copy of the Fund's expert's assessment report in respect of the outstanding fishery claim.

There has been no progress in the limitation proceedings during 2000.

14.8 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 means of 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 reportedly breached as a result of the grounding.

Removal of oil from the wreck

Operations to recover the oil from the *Yuil N°1* were carried out from 24 June to 31 August 1998 under a contract between the Korean Marine Pollution Response Corporation (KMPRC) and a Dutch salvage company. Some 670 m^3 of oil was recovered.

Claims for compensation

KMPRC submitted claims for compensation in relation to the *Yuil N°1* oil removal operation. The claims were settled at a total of Won 6 824 million (£3.2 million) and were paid in full by the 1971 Fund.

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

Fishery claims totalling Won 22 490 million (£14.3 million) have been settled at Won 5 522 million (£2.8 million).

Fishery claims totalling Won 14 399 million (£7.6 million) have been filed in court. These claims have been assessed at Won 449 million (£240 000) by the Fund's experts.

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 (£132 000).

Fishery co-operatives presented claims totalling Won 60 000 million (£31.8 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 lodged opposition to the Court's decision. There has been no development in these proceedings.

14.9 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.

Onshore clean-up operations were carried out in the affected areas of south-west Wales. Some tar balls reached the Republic of Ireland, and limited clean-up was carried out on the affected beaches.

A temporary fishing ban was imposed in respect of certain areas affected by the oil spill.

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.

In view of the relatively few claims outstanding, the Claims Handling Office closed to the public in February 1998.

Claims for compensation

As at 31 December 2000, 1 034 claimants had presented claims for compensation totalling £50 million (including claims for interest and fees). Payments totalling £31.4 million have been made to 805 claimants, of which £6.9 million has been paid by the Skuld Club and £24.5 million by the 1971 Fund.

A claim for £11.4 million by the Marine Pollution Control Unit (MPCU) of the United Kingdom Department of Transport for costs relating to clean-up operations has been assessed at £9.7 million. It is expected that the claim will be settled in early 2001.

Several major claims in respect of which assessments have not been finalised relate to clean-up operations, eg claims by the Environment Agency, the Milford Haven Standing Conference, Elf UK Oil Ltd and Texaco. Progress is being made in respect of most of these claims, and it is expected that most of them will be settled out of court.

Legal proceedings against the 1971 Fund

Legal proceedings have been commenced in respect of the majority of those claims where agreement had not been reached prior to the expiry of the three-year time bar period, ie on or shortly after 15 February 1999.

Writs were issued against the shipowner, the Skuld Club and the 1971 Fund in respect of 194 claimants. By 31 December 2000, agreements on the admissible amounts had been reached in respect of 91 claims. Proceedings have been discontinued or withdrawn in respect of 15 claims for which writs were originally issued and which had been either rejected or assessed at nil

by the Skuld Club and the 1971 Fund. Negotiations are taking place in respect of a significant number of the remaining claims.

One hundred and nineteen claimants, all of whom are represented by one firm of loss adjusters, have commenced legal action. Eighty-six claims (totalling £600 000) relate only to fees for work carried out by the loss adjusters. Fifty-four of these claims, totalling £250 000, have been agreed at a total of £45 000. Of the remaining 26 claimants, 25 either have not accepted the amounts of compensation offered by the Skuld Club and the 1971 Fund, or have failed to provide sufficient information in support of their claims. One claimant, a shellfish marketing company in Cornwall, had its claim rejected by the Executive Committee on the ground that the claim did not fulfil the criterion of a reasonable degree of proximity between the alleged loss and the pollution.

Limitation proceedings

In April 1999 the Admiralty Court granted the shipowner and the Skuld Club a decree limiting their liability under the relevant provisions of United Kingdom law to 8 825 686 SDR (£7.5 million). The decree required all claims to be filed by 18 November 1999. The majority of claimants who have served proceedings to prevent their claim becoming time-barred have also filed claims in the limitation action.

In June 2000 a Case Management Conference relating to the limitation proceedings was held at the Admiralty Court. The Conference was attended by representatives of most of the claimants involved in the limitation proceedings. The Conference was held before the Court Registrar for the purpose of organising the proceedings and clarifying the issues involved. A second Conference will be held before the Registrar in the early part of 2001 to consider the future management of the case.

The 1971 Fund made an application to the court for a temporary stay of the proceedings against the Fund until all the claims against the shipowner and the Skuld Club in the limitation proceedings have been determined. Those claimants who served proceedings on the Skuld Club and the 1971 Fund were informed of the 1971 Fund's intention to apply to stay proceedings. The 1971 Fund was not informed of any opposition to the proposed application. The temporary stay was granted on 22 June 2000. In addition the Court made a ruling that the 1971 Fund, as well as those claimants whose claims against the 1971 Fund had been stayed, should be bound by any findings of fact made by the Admiralty Court in any judgement given in respect of claims filed in the limitation proceedings.

Criminal proceedings

Criminal proceedings were brought 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 had 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. In addition, it was alleged that the MHPA had failed properly to regulate navigation and to provide proper pilotage services in the Haven.

At the opening of the criminal trial in January 1999 the Harbour Master pleaded not guilty, and that plea was accepted by the Environment Agency. The MHPA pleaded guilty to the charge under the Water Resources Act 1991 of causing or permitting polluting matter, namely oil and bunkers, to enter controlled waters, the penalty for which is imprisonment for a term not exceeding two years, or a fine, or both. The Port Authority pleaded not guilty to all other charges. Those pleas were accepted by the Environment Agency. As a result, the full trial did not take place. The Court sentenced MHPA to pay a fine of £4 million and to pay £825 000 towards the prosecution costs. In passing sentence the trial judge made a number of highly critical comments relating to the MHPA and the way in which it had operated the port.

MHPA appealed against the sentence. The Court of Appeal gave judgement in March 2000. The Court of Appeal appreciated the trial judge's concern that very serious damage had been

caused by the incident and that the MHPA could not escape a substantial fine. However, the Court of Appeal concluded that the trial judge had failed to give sufficient credit to the MHPA for its guilty plea, had failed to consider the impact of the fine on the MHPA's ability to perform its public function and had taken far too 'rosy' a view of the MHPA's financial position. In these circumstances the Court of Appeal held that the original fine was excessive and should be reduced to £750 000, to be paid in three instalments on 1 June, 1 September and 1 December 2000. The MHPA has also paid costs of £825 000 as ordered by the Court of first instance.

Recourse action

During 1999 the Executive Committee considered whether the 1971 Fund should take recourse action against various third parties to recover the amount paid by the Fund in compensation as a result of the *Sea Empress* incident.

The Committee decided that, due to the channelling provisions of the Merchant Shipping Act 1995 implementing the 1969 Civil Liability Convention, which preclude action for compensation against salvors, and the position of the pilot and his employer under the law of England and Wales, there would be no point in taking recourse action against those parties. The Committee also took the view that there was no evidence of negligence on the part of the MPCU or the Coastguard Agency which would justify recourse action against them.

Legal advice given to the 1971 Fund indicated that the basis of a recourse action against the MHPA would be that, as a harbour authority and a pilotage authority, the MHPA was in breach of both common law and statutory duties (under the Milford Haven Conservancy Act 1983 and the Pilotage Act 1987). In the view of the 1971 Fund's legal advisers, there were good prospects of establishing that the MHPA was in negligent breach of duty in relation to safe navigation within the Haven and its approaches and that the necessary causative link between the breaches and the incident existed.

The Executive Committee decided that the 1971 Fund should take recourse action against the MHPA. The Fund intends to issue the claim document in the recourse action in the Admiralty Court in early 2001.

Sea Empress: beach clean-up

14.10 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 (£4.1 million). The shipowner established the limitation fund in December 1996 by means of a bank guarantee.

The shipowner and his P & I insurer, the United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Ltd (UK Club), and the administrator appointed by the Court to examine claims against the limitation fund were notified of claims totalling Drs 4 054 million (£7.5 million). The administrator reported on his examination of the claims in March 1999. The total amount of the claims accepted by the administrator was Drs 1 130 million (£2 million).

The experts engaged by the UK Club and the 1971 Fund do not agree with a number of the assessments carried out by the administrator. Appeals have been lodged in court by the shipowner, the Club and the 1971 Fund in respect of those claims. A number of claimants have also appealed against the decision of the administrator, and the amounts set out in the appeals total Drs 2 680 million (£4.9 million). The court's decision is expected in early 2001.

In order to prevent their rights becoming time-barred the shipowner and his insurer served a writ on the 1971 Fund in August 1999 in respect of claims in excess of the shipowner's limitation fund as well as a claim for indemnification under Article 5.1 of the 1971 Fund Convention in the amount of Drs 556 million (£1 million).

14.11 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 that did not appear on the chart. As a result, approximately 28 tonnes of medium fuel oil spilled into the sea. Contractors engaged by the shipowner carried out clean-up operations.

The *N°1 Yung Jung* was not entered in any P & I Club, but had liability insurance of US$1 million (£670 000) per incident.

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 (£65 000).

Claims for compensation

All claims for compensation arising out of the incident have been settled for a total amount of Won 743 million (£390 000).

Some of the claims were paid by the 1971 Fund and some by the shipowner's insurer. In September 1998 the 1971 Fund paid to the insurer an amount of £262 373 (equivalent to 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 of the shipowner under Article 5.1 of the 1971 Fund Convention of Won 28 million (£12 000).

The 1971 Fund's payments of compensation and indemnification total Won 670 million (£286 000).

Investigation into the cause of the incident

The Korean authorities did not carry out an investigation into the cause of the incident.

In criminal proceedings the master of the *N°1 Yung Jung* was sentenced to prison for six months (suspended for one year) for having caused oil pollution by negligence.

Question of recovery

The question arose as to whether the 1971 Fund should present a claim to the Republic of Korea for recovery of the amounts paid by the Fund in compensation. The Executive Committee considered the issue at its sessions in April and October 1999.

The facts

As set out above, the *N°1 Yung Jung* , which had a draft of 3.6 metres, grounded on an uncharted submerged granite rock. Divers engaged by the shipowner found that the rock protruded some 1.5 metres from the seabed and was free from seaweed, and concluded that it was not part of the seabed but had only recently been placed there. It appears that the marine police and the public prosecutor did not investigate why the rock was lying on the seabed. In the criminal proceedings brought against the master, the Court did not address the issue, but held that the lowest water depth near the berth was only three metres at low tide and that the master should have checked the depth to ensure that it was safe to take the ship alongside the berth.

The use of the berth in question was restricted to dry cargo vessels of less than 1 000 dwt and these restrictions had been published in the regulations for operation of the berth facilities of the port of Pusan. No restriction had been published in respect of the draught of dry cargo vessels at the berth. A dry cargo vessel with the same draught as the *N°1 Yung Jung* (ie 3.6 metres) would have grounded on the rock in question. The use of the berth was restricted to dry cargo vessels because there were no firefighting facilities at the berth.

1971 Fund's position

The 1971 Fund's Korean lawyer informed the Fund that, according to a judgement by the Korean Supreme Court, the Republic of Korea had no liability *vis-à-vis* third parties for any damage caused as a result of a defective chart. However, if the rock was not a natural part of the seabed but had been placed there, the legal situation was in his view different, as it would be considered that there was a defect in 'public facilities or structures'. He stated that if there was a defect in public facilities or structures owned or managed by the Republic of Korea, the Republic had, under the Korean State Compensation Act, strict liability for any damage resulting therefrom.

At the time of the incident the berth was owned by the Republic of Korea and managed by the Pusan Regional Maritime Affairs and Fisheries Office, which is a Korean governmental office. In the view of the 1971 Fund's Korean lawyer the berth therefore fell under the definition of 'public facilities and structures' laid down in the Korean State Compensation Act. He expressed the view that the Republic of Korea was liable *vis-à-vis* the shipowner's insurer and the 1971 Fund, who had acquired by subrogation the rights of the victims of oil pollution damage, for any payments made by the insurer and the Fund to those victims.

The position of the Korean Government

The Korean Government considered that the 1971 Fund did not have a valid recourse claim against it on the ground that the cause of the incident was not a defect in the installation or maintenance of a public facility or structure owned by the Government, but the gross negligence of the shipowner who had used the facilities illegally in an area where oil tankers were not allowed, without giving notice to or obtaining the permission of the Port Authority, and without giving full consideration to the possible effects of the weather and tide. The Korean Government further maintained that, since Article 4.3 of the 1971 Fund Convention precluded reduction of compensation to a claimant who had taken preventive measures on the grounds of contributory negligence, the 1971 Fund could not pursue a recourse claim against the Korean Government for any payments that the Fund had made in respect of preventive measures. The Korean Government expressed the view that it could itself have carried out the preventive measures, ie clean-up

operations, that other persons carrying out the operations were only permitted to do so by the Government and that therefore the operations should be regarded as taken by the Korean Government. The Government also stated that a recourse action by the 1971 Fund was contrary to the spirit of the 1971 Fund Convention.

Procedure for claiming compensation

Under the Korean State Compensation Act, any claim against the Republic of Korea should first be submitted to the competent Regional Compensation Committee. Claims exceeding a certain amount shall be referred to the Central Government Compensation Committee. Should a claimant not be satisfied with the Committee's decision, he is entitled to bring legal action against the Republic of Korea.

Consideration by the Executive Committee

During the discussions in the Executive Committee the Director expressed the view that the Korean Government could not have been a claimant since the Government did not incur the costs of the clean-up operations and preventive measures (except as regards the operations carried out by the Pusan Marine Police), that if the Korean Government had carried out the operations itself it would have been entitled to claim compensation and that the same would have applied if the Government had engaged contractors to carry out the operations and had paid these contractors. However, this was not the case in respect of the *N°1 Yung Jung* incident.

The Director was instructed by the Executive Committee to pursue the 1971 Fund's claim against the Republic of Korea. The 1971 Fund submitted its claim in August 1999.

Government Compensation Committee's decision

In a decision rendered on 26 June 2000 the Government Compensation Committee dismissed the 1971 Fund's claim. The Committee gave the following reasons for its decision:

" The claimant alleges that the accident occurred because the vessel grounded by coming into contact with a rock near the wall of the berth. The Korean Government who is responsible for managing the public facility including the berth must, therefore, compensate for the damages arising from this accident.

However, the berth in question is a berth only for general cargo vessels with water depth (draft) less than 4.3 metres and dwt less than 1 000 tons for the safety of these vessels. It is thus sufficient that the berth has the normal safety features of a berth for general cargo vessels, for example, that the berth does not cause any problems to the berthing and navigation of general cargo vessels that have low drafts. There is no obligation on the part of the Korean Government to keep the berth safe for oil barges or other vessels with high drafts, expecting these oil barges or other vessels to berth there illegally.

The cause of the accident was that the master of the vessel illegally berthed the vessel which was laden with 1 800 tons of oil cargo at the berth in question without obtaining the approval for use of a port facility from the Port Authority or making any report.

Therefore, the submission of the claim for state compensation is hereby dismissed."

Further consideration by the Executive Committee

The 1971 Fund was entitled to pursue its claim for recovery against the Republic of Korea by legal action. Such an action should have been filed by 20 December 2000.

The 1971 Fund's Korean lawyer had advised the Director that in his view the berth was defective and that the Korean Government which is responsible for the public facility in question should under Korean law be held liable. However, he drew attention to the two arguments raised by the Korean Government, ie that the berth was to be used only by general cargo vessels and the interpretation of Article 4.3 of the 1971 Fund Convention. He expressed the

view that the Korean Courts would be inclined to accept these arguments, in view of the fact that the Courts had been rather reluctant to find the Republic of Korea liable under the State Compensation Act. In his view, therefore, a legal action by the 1971 Fund against the Korean Government was not likely to succeed.

In view of the advice given by the 1971 Fund's Korean lawyer the Administrative Council recognised in October 2000 that there was a considerable risk that a legal action against the Korean Government would not succeed. Taking into account the relatively low amount involved, the Committee decided that the 1971 Fund should not pursue this issue further by taking legal action against the Republic of Korea.

14.12 NAKHODKA

(Japan, 2 January 1997)

The incident

The Russian tanker *Nakhodka* (13 159 GRT), carrying 19 000 tonnes of medium fuel oil, broke in two sections some 100 kilometres north-east of the Oki islands (Japan), 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 grounded on rocks some 200 metres from the shore, near the town of Mikuni in Fukui Prefecture. Following the grounding, a substantial quantity of oil was released, causing heavy contamination of the adjacent shoreline.

The operation to remove the oil from the bow section was completed in February 1997. In total some 2 830 m^3 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 m^3 of oil/water mixture. The causeway was later dismantled and removed.

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 Maritime Disaster Prevention Centre (JMDPC) to organise the clean-up operations by using commercial contractors. In addition, materials were provided by the Petroleum Association of Japan. A considerable number of vessels belonging to the Japan Maritime Safety Agency (now the Japan Coast Guard), the Self Defence Force and local fishermen, vessels owned or chartered by Prefectural Governments, recovery systems from Singapore and vessels belonging to the Russian government.

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.

Claims handling

The 1971 and 1992 Funds, together with the shipowner and his P & I insurer, the United Kingdom Mutual Steamship Assurance Association (Bermuda) Ltd (UK Club), established a Claims Handling Office in Kobe. It currently employs six surveyors and twelve support staff.

Claims for compensation

General situation

Some 450 claims totalling ¥35 068 million (£206 million) have been received. Further claims became time-barred on 2 January 2000 or shortly thereafter.

The great majority of the claims have been settled. There remain however some claims which have not yet been assessed, mainly claims submitted by Government agencies including claims relating to the construction and removal of the causeway.

The total payments made by the IOPC Funds to claimants amounted to ¥13 749 million

(£72 million) as at 31 December 2000. Of this amount ¥8 558 million (£43 million) has been paid by the 1971 Fund and ¥5 191 million (£29 million) by the 1992 Fund. The shipowner/UK Club have made payments totalling US$4.6 million and ¥66 million (£3 million).

Details of the claims submitted and the settlement amounts are contained in the table below.

Situation in respect of major groups of claims
Most of the claims from JMDPC and 54 sub-contractors engaged in clean-up operations under the JMDPC umbrella have been settled.

Claims by JMDPC relating to the construction and removal of a causeway and the removal of oil from the bow section of the *Nakhodka* using the causeway are being examined.

Japanese Government Agencies have submitted eleven claims totalling ¥1 519 million (£8.9 million). In February 2000 the Funds offered to make provisional payments of ¥448 million (£2.6 million). So far no reply has been received on the offer.

Six claims totalling ¥4 600 million (£27 million) out of ten submitted by Prefectural Governments for their costs of clean-up operations have been settled at ¥3 700 million (£22 million). The remaining four claims totalling ¥2 550 million (£15 million) are under examination. The Claims Handling Office is waiting for replies from the claimants on its queries. It is expected that these assessments will be completed in the next few months.

Eight claims presented by fishery co-operative associations totalling ¥4 200 million (£25 million) regarding the loss of income suffered by fishermen have been settled at ¥1 500 million (£9 million). The remaining claim by one such association is expected to be settled in early 2001.

A claim of ¥7 million (£41 000) out of seven claims submitted by electricity power plants for their costs of clean-up operations has been settled at ¥5.4 million (£32 000). The remaining six claims totalling ¥2 720 million (£16 million) are under examination.

All the 347 claims submitted from the tourism sector have been assessed and 283 claims have been settled. Twenty-nine claims have become time-barred since the claimants did not bring legal action within the prescribed period. Thirty-three claims have been rejected. The Funds have been informed that fifteen claimants whose claims had been rejected had decided to withdraw their claims. It is expected that further claimants will withdraw their rejected claims.

Category of claims	Settled claims		Claims pending in court	
	Claimed amount (thousand Yen)	Settled amount (thousand Yen)	Claimed amount (thousand Yen)	Provisional payments (thousand Yen)
JMDPC	12 016 344	10 299 544	3 208 823	0
National Government agencies			1 519 466	0
Local Governments	4 592 938	3 666 910	2 549 628	607 423
Shipowner/UK Club and their contractors	259 088	250 170	381 052	0
Fishery	4 241 401	1 491 772	771 856	100 000
Tourism	2 734 401	1 247 192	212 332	0
Others	15 139	11 428	2 733 252	1 043 000
Total	**23 859 311 (£140 million)**	**16 967 016 (£100 million)**	**11 376 409 (£67 million)**	**1 750 423 (£10 million)**

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 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 indicated in the table below.

The shipowner and the UK Club have taken the view that it was not clear that the 1992 Civil Liability Convention did not apply. They have maintained that it was not for the IOPC Funds to decide the issue but for the Japanese courts.

The Director considered it clear from the point of view of treaty law as well as under the applicable Japanese legislation implementing the 1969/1971 Conventions and the 1992 Conventions that the 1992 Civil Liability Convention did not apply to the *Nakhodka* case. The Executive Committee endorsed this position.

Level of payments

The total amount available under the 1971 and 1992 Fund Conventions is ¥23 164 515 000 (£136 million).

In view of the initial uncertainty as to the level of the total amount of the claims, the Executive Committee of the 1971 Fund and the Assembly of the 1992 Fund originally decided that the payments to be made by the two organisations should 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.

In the light of the developments in respect of the total amount of the claims, the governing bodies of the Funds decided at their April 2000 sessions to increase the level of the IOPC Funds' payments from 60% to 70% of the amount of the damage actually suffered by the respective claimants.

The governing bodies noted at their October 2000 sessions that as a result of further developments the total exposure of the Funds could be estimated at some ¥28 468 million (£167 million). The governing bodies decided to authorise the Director to increase the level of payments to 80% of the amount of the damage actually suffered by the individual claimants when the total amount of the settled and pending claims fell below ¥27 800 million (£164 million).

It is expected that as a result of further settlements and the withdrawal of some claims in the tourism sector the Director will be able to increase the level of payments to 80% in early 2001.

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.

	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**

Nakhodka: fish farms protected from pollution

The Japanese investigation report was published in July 1997. The report concluded that, if the *Nakhodka* had been properly maintained, it 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 area 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 technical condition of the hull at the time of the incident was considered to be satisfactory. It is also stated that the *Nakhodka* must have broken due to the bow section having hit a half-submerged object, most probably a Russian trawler that had sunk in the vicinity shortly before the *Nakhodka* incident. The theory of the Russian investigators is that the ship was being subject to acceptable still water stresses, induced by cargo distribution, to which were added high dynamic loading stresses due to bad weather, particularly high seas. The bow section of the ship then came into close proximity of a large semi-submerged object, which it is alleged induced further high dynamic stresses. According to the Russian report the still water bending moments and stresses were within allowable limits when the ship sailed, but were towards the upper limits. It is maintained by the Russian investigators that the forces produced by the rough weather, the still water conditions and contact with an alleged submerged object, when added together, caused overloading and failure of the ship's structure.

The IOPC Funds' experts studied the Japanese and Russian reports and expressed the opinion that the *Nakhodka* was in a seriously dilapidated condition. In their view there was evidence of serious wastage of hull strength members and inadequate repairs. They stated that it was clear that the hull strength was seriously reduced. While the actual loading of the ship was not in accordance with the loading manual which increased the stress in the ship, this would not in their view have affected a well-maintained ship.

They considered that there was no evidence of a collision or near collision with a low buoyancy object nor of any other contact or any explosion. The fact that the ship failed in these circumstances supported the experts' view that the ship was unseaworthy. The *Nakhodka* did experience bad weather but in their view such bad weather was not exceptional in the area in January. The experts were also of the opinion that the shipowner was or should have been aware of the actual condition of the hull structure.

Executive Committee's consideration in October 1999 of whether to take recourse actions

At their October 1999 sessions the Executive Committees of the 1971 and 1992 Funds considered the results of the Director's investigation into the cause of the incident. The Committees shared the Director's opinion that the *Nakhodka* was unseaworthy at the time of the incident and that the defects which caused the ship to be unseaworthy were causative of the incident. The Committees also agreed with the Director that the shipowner was or at least should have been aware of the defects that caused the ship to be unseaworthy, that the incident was therefore caused by the fault or privity of the shipowner and that consequently, pursuant to Article V.2 of the 1969 Civil Liability Convention, the shipowner was not entitled to limit his liability.

The Executive Committees decided that if the shipowner, Prisco Traffic Limited, initiated limitation proceedings, the 1971 and the 1992 Funds should oppose his right to limit his liability.

The Committees also decided that the Funds should take recourse action against Prisco Traffic and its parent company Primorsk Shipping Corporation ('Primorsk'). Both companies shared the same office until 1996. Prisco Traffic appeared as a subsidiary of Primorsk in Lloyds Confidential Index until late in 1996 and as a separate entry after the incident in 1997. Both companies had the same hull insurer and the same P & I Club, and Primorsk appeared to have a considerable involvement with Prisco Traffic in matters of shipping. The Committees noted that the proximity of the two companies and the links between them suggested that the parent company exercised a considerable degree of control over Prisco Traffic and the fleet and that such control brought with it responsibility for the seaworthiness and safe operation of the fleet.

The Executive Committees considered the further question of whether recovery action should be brought against the UK Club. Under the 1969 Civil Liability Convention the shipowner was obliged to maintain insurance covering the limitation amount applicable to the ship under the Convention, in the case of the *Nakhodka* 1 588 000 SDR (approximately ¥229 million or £1.3 million). It is believed, however, that the *Nakhodka* was covered for its legal liabilities for pollution damage up to an amount of US$500 million, as is normally the case for oil tankers.

The UK Club's Rules contain a 'pay to be paid' clause (ie that the Club is under an obligation to indemnify the shipowner only for compensation actually paid by him to third parties), and this clause has been upheld by the United Kingdom courts. The legal advice given to the Funds indicated, however, that the 'pay to be paid' clause might not be upheld in Japan. In the light of this advice, the Executive Committees decided that the 1971 and 1992 Funds should take recovery action against the UK Club.

The *Nakhodka* was subject to classification under the rules of the Russian Maritime Register of Shipping. The Committees recognised that litigation against classification societies was difficult, due to the special role they play in international shipping. The Committees concluded, however, that the Russian Register had failed to ensure that the *Nakhodka* met its requirements and that this failure was causative of the incident, and therefore decided that the 1971 Fund should initiate recovery action against the Russian Register.

Significant repairs had been carried out on the *Nakhodka* in 1993 at a shipyard in Singapore. The Committees decided that the question of whether or not the 1971 and 1992 Funds should

take legal action against the shipyard should be left to the discretion of the Director, in the light of what was in the best interest of the Organisations. In the light of the advice from the Funds' lawyers and experts the Director decided not to take legal action against the shipyard.

Recourse actions taken by the IOPC Funds

In November and December 1999 the 1971 and 1992 Funds brought legal actions in the Fukui District Court against Prisco Traffic Ltd, Primorsk Shipping Corporation, the UK Club and the Russian Maritime Register of Shipping.

The shipowner and the UK Club have from the outset been represented by the same lawyer in Japan who signed all settlement agreements with claimants on behalf of both the shipowner and the UK Club. He is also representing both the shipowner and the UK Club in their actions against the 1971 and 1992 Funds. The legal actions were served on the UK Club at its Tokyo office. The lawyer referred to above informed the Fukui District Court that he was not authorised to receive service of writs on behalf of the shipowner. It is understood that service of the shipowner in Nakhodka in the Russian Federation might take some 18 months. Similar problems relating to the service of writs will arise in respect of Primorsk in Nakhodka and the Russian Maritime Register of Shipping in St Petersburg.

The Fukui District Court has fixed the first hearing to be held on 19 September 2001.

Legal actions by the claimants

Prefectures, fishermen belonging to nine Prefectural Fisheries Co-operative Associations, one fish farm, 318 claimants in the tourism sector, six oil dispersant manufacturers, seven electricity power plants and three other claimants took actions in the Fukui District Court against the shipowner, the UK Club and the IOPC Funds for claims totalling ¥11 267 million (£66 million).

The Japanese Ministry of Justice acting on behalf of four Governmental Ministries and Agencies and JMDPC took actions in the Tokyo District Court against the shipowner and the UK Club for ¥9 042 million (£53 million). The IOPC Funds have been notified of these actions.

Legal actions by the shipowner/UK Club

The shipowner and the UK Club brought legal actions in the same Court against the 1971 and 1992 Funds for ¥ 537 million (£3.2 million) in respect of their subrogated rights relating to the payments made by them.

Reactions by the shipowner and the Russian Maritime Registry

The shipowner has informed the IOPC Funds that he contests the conclusions drawn by the Funds as to the condition of the *Nakhodka*. The Russian Maritime Register has expressed its regret that the Executive Committees had concluded that the Register had failed to ensure that the *Nakhodka* met its requirements and that this failure was causative of the incident.

14.13 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 spilled.

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.

Claims for compensation

As at 31 December 2000, 214 claims for compensation totalling Bs27 000 million (£26 million) had been presented to the shipowner's insurer, Assuranceföreningen Gard

(Gard Club), and the 1971 Fund. These claims relate to the cost of clean-up operations, disposal of oily sand, damage to property (nets, boats and outboard motors), losses suffered by fishermen, fish transporters, shrimp processors and businesses in the tourism sector. Claims have been approved for a total of Bs3 751 million (£3.6 million) plus US$16 million (£10.7 million). The Gard Club has paid Bs1 261 million (£1.8 million) plus US$1.8 million (£1.2 million). The 1971 Fund has made two payments totalling Bs16.7 million (£16 340) and one payment for US$2.2 million (£1.5 million).

Claims arising out of the *Nissos Amorgos* incident became time-barred on or shortly after 28 February 2000.

Claims relating to clean-up and disposal operations

The claims relating to clean-up operations undertaken by Lagoven and Maraven have been settled. The total admissible amount was agreed at Bs3 462 million (£3.3 million) plus US$35 850 (£24 000). The Gard Club has made interim payments to PDVSA totalling Bs1 046 million (£1.0 million).

In December 2000 PDVSA informed the Gard Club and the 1971 Fund that it had disposed of some 48 000 m^3 of oily sand by land farming in accordance with an agreement with the Gard Club and the 1971 Fund. PDVSA has claimed Bs886 million (£848 000) plus US$16 786 (£11 270) in respect of this operation. The Gard Club and the 1971 Fund are examining the documentation presented by PDVSA in support of the claim.

Claim by ICLAM

The Instituto para el Control y la Conservación de la Cuenca del Lago de Maracaibo (ICLAM) presented a claim for Bs69 million (£66 000) relating to expenses incurred in monitoring the clean-up operations, including the sampling and analysis of seawater, sediment and marine life. This claim was assessed at Bs61 million (£58 000) by the experts engaged by the Gard Club and the 1971 Fund.

Although the Gard Club agreed with the assessed amount, it disputed liability towards ICLAM on the grounds that it was an agency of the Republic of Venezuela and that the incident was substantially caused by negligence imputable to the Republic of Venezuela. For this reason the Gard Club was not prepared to make any payment to ICLAM in respect of this claim.

The Executive Committee considered that since ICLAM's claim fell within the definition of 'preventive measures', the 1971 Fund was not entitled to invoke contributory negligence in respect of its claim. The 1971 Fund therefore paid 25% of the assessed amount in September 1999.

ICLAM has presented a further claim for costs incurred in monitoring the disposal of the oily sand in the amount of Bs9.6 million (£9 200). This claim has been assessed by the experts engaged by the Gard Club and the 1971 Fund in the amount claimed. A payment of Bs2.4 million (£2 300), ie 25% of the approved amount, will be made to ICLAM in early 2001.

Claims presented by six shrimp processors and 2 000 fishermen

A claim for US$25 million (£16.8 million) was presented by six shrimp processing companies and 2 000 fishermen who had alleged that the oil spilled from the *Nissos Amorgos* in the Gulf of Venezuela on 28 February 1997 had caused a reduction in shrimp catches in Lake Maracaibo in 1998.

On the basis of the data obtained from the processing companies, the Director accepted that there was a statistically significant reduction in shrimp supplies to the plants, and hence catches, in 1998 relative to 1997 and 1999. However, the data, as well as long-term national catch statistics, showed that there was considerable variation from year to year in shrimp supplies to individual companies.

The claimants appointed six biologists to consider the possible causes of the reduction in catches/supplies. The 1971 Fund and the Gard Club appointed three marine biologists with worldwide experience of the effects of oil on shrimp fisheries.

At its October 2000 session the Administrative Council noted the Director's analysis of the claim as follows:

> "For any claim to be admissible under the 1969 Civil Liability Convention and the 1971 Fund Convention it must be shown that the alleged loss or damage was caused by the contamination resulting from the oil spill. The Director noted that there was no contemporaneous evidence, such as comparable data on petroleum hydrocarbon concentrations in biota, sediments or water in the oiled area and adjacent un-oiled areas before and after the *Nissos Amorgos* incident. However, the Director took the view that in the case of fishery claims relating to losses arising some time after a pollution incident, it would be unreasonable to expect such data to be available. The Director had taken into account that laboratory experiments had demonstrated that low concentrations of oil could affect the reproduction and feeding of shellfish and the survival of shrimps. Oil was reported in the vicinity of the shrimp spawning areas in the Bay of Calabozo. Although the biologists engaged by the 1971 Fund and the Gard Club had stated that there appeared to be equally plausible factors other than the oil spill which could have contributed to the downturn in catches, they had not been able to identify any such factor which did actually contribute to this downturn. In spite of the lack of conclusive evidence establishing or refuting a direct link between the oil spill and the downturn in shrimp catches, and after having examined the opinions of the various biologists, the Director considered that the oil from the *Nissos Amorgos* was most probably a significant contributory factor to this downturn."

The Administrative Council approved the Director's proposal that the claim should be considered admissible in principle, but stated that in quantifying any losses attributable to the *Nissos Amorgos* incident, account should be taken of other factors as reflected in normal variations from year to year in shrimp catches.

After having considered the factors reflected in normal variations from year to year in shrimp catches, agreement was reached between the claimants, the Gard Club and the 1971 Fund that the losses attributable to the *Nissos Amorgos* incident amounted to US$16 million (£10.8 million). A settlement agreement was concluded on 1 December 2000. On 6 December 2000 the Club and the 1971 Fund paid to the claimants US$4 million (£2.7 million), corresponding to 25% of the admissible amount.

Court proceedings

The incident has given rise to legal proceedings in a Criminal Court in Cabimas, Civil Courts in Caracas and Maracaibo, the Criminal Court of Appeal in Maracaibo and the Supreme Court.

Criminal proceedings

The Criminal Court of Cabimas carried out an investigation into the cause of the incident to determine whether anyone had incurred criminal liability as a result of the incident. As a result of this investigation criminal proceedings were brought against the master. In his pleadings to the Criminal Court of Cabimas the master maintained that the damage was substantially caused by negligence imputable to the Republic of Venezuela.

The 1971 Fund submitted pleadings to the Court maintaining that the damage had been principally caused by negligence imputable to the Republic of Venezuela.

In a judgement rendered in May 2000, the Criminal Court of Cabimas dismissed the arguments made by the master and held him liable for the damage arising as a result of the incident and sentenced him to one year and four months in prison. The master appealed against the judgement before the Criminal Court of Appeal in Maracaibo.

The 1971 Fund presented pleadings to the Court of Appeal arguing that the evidence presented had not been sufficiently considered by the Court.

In a decision rendered in September 2000 the Court of Appeal decided not to consider the

appeal and to order the Court of Cabimas to send the file to the Supreme Court due to the fact that the Supreme Court is considering a request for 'avocamiento' (see below). The Court of Appeal's decision appears to imply that the judgement of the Criminal Court of Cabimas is null and void.

Civil proceedings

As a result of the settlement of the claims by the six shrimp processors and the 2 000 fishermen referred to above, a number of claims for compensation have been withdrawn from the court proceedings. The current situation in respect of the major claims in the civil proceedings brought before various courts in Venezuela is set out below.

Republic of Venezuela

The Republic of Venezuela presented a claim for pollution damage for US$60 million (£40 million) against the master, the shipowner and the Gard Club in the Criminal Court of Cabimas. Compensation is claimed for damage to the communities of clams living in the inter tidal zone affected by the spill, for the cost of restoring the quality of the water in the vicinity of the affected coasts, for the cost of replacing sand removed from the beach during the clean-up operations and for damage to the beach as a tourist resort.

In March 1999 the 1971 Fund, the shipowner and the Gard Club presented to the Court a report on the various items of the claim by the Republic of Venezuela prepared by experts appointed by them. The experts had found that this claim had no merit.

At the request of the shipowner, the Gard Club and the 1971 Fund, the Criminal Court appointed a panel of three experts to advise the Court on the technical merits of the claim presented by the Republic of Venezuela. In its report presented in July 1999, the panel unanimously agreed with the findings of the 1971 Fund's experts that the claim had no merit.

The Republic of Venezuela also presented a claim against the shipowner, the master of the *Nissos Amorgos* and the Gard Club before the Civil Court of Caracas for an estimated amount of US$20 million (£13 million), later increased to US$60 million (£40 million). It appears that this claim relates to the same four items of damage as the claim in the Criminal Court of Cabimas.

These two actions are suspended pending a decision on the request for 'avocamiento' (see below).

ICLAM

In March 1998, the Republic of Venezuela presented a claim on behalf of ICLAM in the Criminal Court of Cabimas relating to the operations referred to above. ICLAM has also presented this claim before the Civil Court of Maracaibo.

The action by ICLAM in Cabimas is suspended pending a decision on the request for 'avocamiento'.

FETRAPESCA

A fishermen's trade union (FETRAPESCA) presented a claim for compensation for pollution damage for an estimated amount of US$130 million (£87 million) plus legal costs in the Criminal Court of Cabimas. FETRAPESCA also submitted a claim for the same amount in the Civil Court of Caracas. A branch of FETRAPESCA presented a claim for an estimated amount of US$10 million (£6.7 million) in the Civil Court of Caracas. On 30 November 2000 FETRAPESCA and its branch withdrew these three actions from the courts.

Group of fish and shellfish processors

Eight fish and shellfish processors presented a claim for compensation for an estimated amount of US$100 million (£67 million) plus legal costs in the Criminal Court of Cabimas. Eleven fish and shellfish processors presented a similar claim for the same amount in the Civil Court of Caracas. This latter claim corresponds to the one filed in the Criminal Court, except that there is a difference in respect of the number of claimants.

On 30 November 2000 four of the eight fish and shellfish processors withdrew their actions from the Criminal Court in Cabimas. On the same date seven of the eleven fish and shellfish processors withdrew their claims from the Civil Court in Caracas. The four processors that did not withdraw their actions from the Criminal Court are the same four that did not withdraw their actions from the Civil Court. The 1971 Fund is aware that these four processors are considering withdrawing their court actions.

However, two of the four processors have also presented claims totalling US$20 million (£13 million) in the Supreme Court against the 1971 Fund and, subsidiarily, against the Instituto Nacional de Canalizaciones (INC). The claim relates *inter alia* to loss of income from the national and export markets. No evidence has been submitted in support of the claim. The Supreme Court would in this case act as court of first and last instance. This action has not been withdrawn.

Six shrimp processors and 2 000 fishermen
A legal action was brought before a Civil Court in Maracaibo against the shipowner, the Gard Club and the 1971 Fund by six shrimp processing companies and by the fishermen supplying shrimps to these companies claiming compensation for US$25 million (£16.8 million). This action was withdrawn on 6 December 2000, as a result of the settlement referred to above.

PDVSA
PDVSA presented a claim for Bs3 814 million (£3.6 million) in the Civil Court in Maracaibo to recover the costs incurred during the clean-up operations and the disposal of the oily sand.

Shipowner and Gard Club
The shipowner and the Gard Club took legal action against the 1971 Fund before the Criminal Court in respect of two claims. The first claim for an amount of Bs1 219 million (£1.2 million) is in subrogation of the rights of the claimants to whom the shipowner and the Club have paid compensation. The second claim is for an amount of Bs3 473 million (£3.6 million) to recover the amounts paid as a result of the incident if the shipowner is wholly exonerated from liability under Article III.2(c) of the 1969 Civil Liability Convention or, alternatively, for an

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amount of Bs862 million (£825 000) for indemnification under Article 5.1 of the 1971 Fund Convention. This action is suspended pending a decision on the request of 'avocamiento'.

Supreme Court: request of 'avocamiento'

In May 1999 two independent requests of 'avocamiento' were filed by two fish processors and by FETRAPESCA before the Supreme Court. Under Venezuelan law, in exceptional circumstances, the Supreme Court may assume jurisdiction, 'avocamiento', and decide on the merits of a case. Such exceptional circumstances are defined as those which directly affect the 'public interest and social order' or where it is necessary to re-establish order in the judicial process because of the great importance of the case. If the request of 'avocamiento' is granted, the Supreme Court would act as a court of first instance and its judgement would be final.

The shipowner and the Gard Club opposed these two requests. The 1971 Fund also opposed the requests on the grounds that the circumstances upon which the requests were based were not exceptional and that the reason for the requests was not the reinstatement of the environment but the private interests of the plaintiffs. The 1971 Fund's opposition was also based on the grounds that public interest and social order had not been threatened by the *Nissos Amorgos* incident nor had it become necessary to re-establish order in the legal proceedings. In addition, the 1971 Fund maintained that justice had not been denied to the plaintiffs to whom the normal legal channels were open. The 1971 Fund also argued that to transfer proceedings to the Supreme Court would deprive the parties of the right of appeal.

In July 1999 the Supreme Court rejected one of the requests of 'avocamiento', namely that of the two fish processors.

As regards the other request of 'avocamiento' filed by FETRAPESCA, in February 2000 the Supreme Court ordered the Criminal Court of Cabimas and the Civil Court of Caracas to send to the Supreme Court the entire court files.

Since the 'avocamiento' proceedings have two phases, namely the delivery of the court files to the Supreme Court and thereafter the decision to grant or to deny the 'avocamiento', the shipowner, the Gard Club and the 1971 Fund requested the Supreme Court to clarify whether the Supreme Court had in fact granted the 'avocamiento' in respect of FETRAPESCA's request.

In a decision dated 29 February 2000 the Supreme Court stated that in its previous decision the Court had considered FETRAPESCA's request admissible only from a procedural point of view and that the decision on the 'avocamiento' itself would be taken once the court files had been considered. The Court has not rendered a decision in this regard.

On 30 November 2000 FETRAPESCA withdrew the request of 'avocamiento' filed before the Supreme Court.

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. In view of the continuing uncertainty in this regard, the level of payments has been maintained at 25%.

Cause of the incident and related issues

As mentioned above 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 shipowner and the Gard Club have taken the position that the incident and resulting pollution were due to the fact that the Maracaibo Channel was in a dangerous condition due to

poor maintenance, that this was known by the Venezuelan authorities, but that its full extent was concealed and that the arrangements for alerting mariners to the dangers which existed were unreliable. They have maintained that the depth of the channel was less than that stated in official information given to the ship and that within that depth there were one or more hard (probably metallic) objects that could cause damage to shipping. They have maintained that the escape of oil from the *Nissos Amorgos* was the result of holes punctured in the vessel's bottom plating sustained by contact with a sharp metal object.

The shipowner and the Gard Club have notified the 1971 Fund that in their view they are entitled 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 and the Gard Club have also expressed the view that in principle the question of exoneration under Article III.2(c) should not affect the claimants in Venezuela, in that, if the shipowner were exonerated, the claims would be paid by the 1971 Fund. The shipowner and the Gard Club have therefore agreed to make compensation payments without invoking against the claimants the ground of exoneration contained in Article III.2(c), whilst reserving the right to pursue this issue with the 1971 Fund at a later date by way of subrogation. However, the shipowner and the Gard Club have notified the 1971 Fund that they intend 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 INC.

The Director, with the assistance of the 1971 Fund's lawyers and its technical experts, has examined the evidence supplied by the shipowner and the Gard Club, which appears to confirm that the channel had deteriorated as a result of poor maintenance on the part of INC, a national body responsible for the maintenance of the channel, and/or of the harbour master (an employee of the Ministry of Transport). There is also in his view evidence to suggest that the poor condition of the channel was known to a number of parties, particularly to the Venezuelan Government and INC, and that the extent of the deficiency of the channel specification had not been made public.

When the Executive Committee considered these issues in October 1999, the Director's view was that negligence on the part of INC might have been a factor that contributed to the incident and the ensuing pollution damage and that therefore the shipowner/Gard Club might be partially exonerated from liability to the Venezuelan Government and to other government bodies. In that event, the 1971 Fund would, in the Director's view, also be partially exonerated in respect of claims by the Venezuelan Government, except to the extent that the claims related to the cost of preventive measures. However, on the basis of the evidence made available to the 1971 Fund so far, the Director has stated that he was not convinced that the damage was caused wholly by the negligence or other wrongful act of INC and that for this reason the shipowner might not be wholly exonerated from liability in respect of this incident pursuant to Article III.2(c) of the 1969 Civil Liability Convention.

In October 1999 the Executive Committee considered it premature to take a decision on the issues relating to the cause of the incident and contributory negligence, since not all the relevant evidence had been made available to the 1971 Fund.

The Director was instructed to investigate these issues further in co-operation with the shipowner/Gard Club to the extent that there was no conflict of interest between them and

the Fund. The Executive Committee also instructed the Director to raise the defence of contributory negligence against the claim submitted by the Venezuelan Government, if this became necessary to protect the interests of the 1971 Fund. However, the Venezuelan observer delegation expressed the view that the 1971 Fund should not take any position on the cause of the incident until this issue had been decided by the Venezuelan courts.

If contributory negligence on the part of INC were to be established, the issue of whether the 1971 Fund should take recourse action against the Republic of Venezuela for the purpose of recovering any amount paid by the Fund in compensation would need to be considered.

14.14 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

Operations to remove the oil from the *Osung N°3* were carried out from 2 September to 9 November 1998 under a contract between the Korean Marine Pollution Response Corporation (KMPRC) and a Dutch salvage company. It had been estimated that the wreck had some 1 400 tonnes of oil in its tanks, but only 27 m^3 was recovered.

Claims for compensation

KMPRC submitted claims for compensation in relation to the oil removal operation. These claims were settled at a total of Won 6 739 million (£3.2 million) and were paid in full by the 1971 Fund.

As regards the Republic of Korea, claims for compensation were presented by the Korean Marine Police, some local authorities, the charterer of the *Osung N°3* and a number of contractors for participation in the clean-up operations and the inspection of the sunken vessel, and by two fishery co-operative associations for loss of income. Claims totalling Won 1 219 million (£645 000) were settled at Won 935 million (£597 000).

Seven claims totalling ¥732 million (£4.3 million) were submitted for clean-up operations carried out in Japan. Six of these claims, for ¥681 million (£4.0 million), were settled at ¥609 million (£3.6 million).

The remaining claim for ¥51 million (£300 000) was submitted by the Japanese Self Defence Forces (JSDF). The 1971 Fund assessed this claim at ¥47.5 million (£280 000). The 1971 Fund rejected certain items, since it had considered it not reasonable for the JSDF to carry out regular aerial reconnaissance of oil on shorelines. The Fund also considered that it had been unnecessary for the Maritime Self Defence Forces to use vessels to search for oil on the sea surface when the Maritime Safety Agency had been providing aerial reconnaissance. The JSDF took legal action against the 1971 Fund. In December 2000 the Court rendered a judgement accepting the claim made by JSDF. The Court considered that the aerial surveillance carried out by JSDF was reasonable in order to enable JSDF to pursue a quick and efficient clean-up. The 1971 Fund decided not to appeal against the judgement, since it was unlikely that an Appellate Court would overrule the assessment of the Court of first instance as to the facts, and taking into account the small amount in dispute. The amount awarded by the Court will be paid to JSDF in early 2001.

A claim was presented by a Japanese fishery co-operative association for ¥282 million (£1.7 million) for loss of income caused by the oil spill. This claim was settled at ¥182 million (£1.2 million).

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 (£670 000) per incident. The limitation amount applicable to the vessel under the 1969 Civil Liability Convention is estimated at 104 500 SDR (£91 000).

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

14.15 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.

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 that 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 (£3.3 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

A fishermen's trade union (FETRAPESCA) presented a petition in the Criminal Court on behalf of 1 692 fishing boat owners, claiming an estimated US$10 060 per boat (£6 800), ie a total of US$17 million (£11.4 million). The claim is for alleged damage to fishing boats and nets and for loss of earnings.

FETRAPESCA 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 (£6.7 million). The claim is for the fishermen's loss of income as a result of the spill.

A local fishermen's union 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 (£13.4 million) plus legal costs.

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

Claims against the 1971 Fund became time-barred on or shortly after 27 May 2000.

14.16 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 cleaning of the beaches was organised by the local authorities. 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 (£4.5 million).

A claim presented by the French Government for clean-up costs was settled in July 2000 at FFr1 356 075 (£127 000). Other claims relating to clean-up, property damage and loss of income in the fisheries sector were settled at a total of FFr14.9 million (£1.4 million).

Legal actions have been taken against the shipowner, his P & I insurer and the 1971 Fund relating to claims for the cost of clean-up operations incurred by the regional and local authorities, property damage and loss of income in the fisheries sector totalling FFr9 million (£860 000).

Further claims became time-barred on or shortly after 7 August 2000.

It is practically certain that all claims will be settled for an amount lower than the limitation amount applicable 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.

14.17 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 was carrying approximately 130 000 tonnes of heavy fuel oil, suffered damage to three cargo tanks, and an estimated 29 000 tonnes of its cargo 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 Strait of Malacca. In December 1997 oil came ashore in places along a 40 kilometre length of the Malaysian coast in the Province of Selangor.

Response and clean-up operations

Singapore

The Maritime and Port Authority of Singapore (MPA) took charge of the clean-up operations, which initially focused on dispersant spraying at sea and was 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.

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 Strait of Malacca, 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. The clean-up was carried out by the Malaysian Department of the Environment with support from the Marine Department. District authorities within the Province of Selangor organised manual removal of oil and oily material from sandy shores. Oiled mangroves were left to recover naturally.

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 weathered oil reached the farms in a few locations.

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

Indonesia
There is minimal information on any clean-up operations in Indonesia. However, it is alleged that mangroves and shorelines were polluted.

Claims for compensation

Singapore
Claims relating to clean-up operations and preventive measures were submitted by Singapore Government agencies for a total amount of S$4.5 million (£1.7 million) but the claims were subsequently reduced to S$3.0 million (£1.2 million). Contractors appointed by MPA presented claims for a total of S$6.7 million (£2.6 million). Another contractor involved in the response submitted a claim for S$5.3 million (£2.0 million). These claims are being examined. The shipowner's insurer has made a provisional payment to the Singapore authorities of S$500 000 (£190 000).

The shipowner's insurer has settled claims by clean-up contractors appointed by the insurer on behalf of the shipowner amounting to some S$4.0 million (£1.5 million).

Claims for property damage total S$1.8 million (£690 000). These include claims for the cleaning of a number of ships' hulls contaminated by oil escaping from the *Evoikos*. Two companies involved in the development of an island submitted claims totalling S$948 000 (£365 000) for the costs of clean-up operations on the island.

The shipowner and his insurer 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 associated costs would therefore qualify for compensation under the 1971 Fund Convention. 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. The Executive Committee has taken the view that it was premature for the Fund to take any position on these issues.

Malaysia
Claims for clean-up costs were submitted by the Department of the Environment and the regional Marine Departments for a total of RM740 000 (£130 000). These claims were settled by the shipowner's insurer at RM690 000 (£120 000).

A Malaysian oil industry co-operative (PIMMAG), which carried out clean-up

operations at the request of the authorities, presented a claim for RM996 000 (£175 000). PIMMAG's claim, which was paid in full by the Malaysian authorities, was settled by the shipowner's insurer at RM 734 000 (£130 000).

Some 1 200 fishery claims totalling RM1.9 million (£335 000) have been settled by the shipowner's insurer for RM1.2 million (£210 000).

Indonesia

The Indonesian authorities have submitted a claim to the shipowner and his insurer for US$3.4 million (£2.3 million). The claim, which is not supported by detailed documentation, relates to pollution of mangroves (US$2 million), pollution of sand (US$1.2 million), fishermen's loss of income (US$11 000) and the cost of clean-up operations (US$152 000). The Indonesian authorities have been invited by the insurer to provide further documentation. This claim has been presented in the limitation proceedings in Singapore.

In view of the paucity of information available in respect of the claim by the Indonesian authorities, the 1971 Fund has not been able to express any opinion on its admissibility. However, the Fund has expressed the view that it appears that the amounts claimed under the items relating to pollution of mangroves and pollution of sand are based on abstract calculations and that these items are therefore inadmissible.

Payments by the 1971 Fund

In view of the uncertainty as to the total amount of the claims, the Executive Committee confirmed in October 2000 its decisions at previous sessions that the Director was not authorised to make any payments of claims for the time being.

Claims against the 1971 Fund became time-barred on or shortly after 15 October 2000. On 9 October 2000 the shipowner and his insurer commenced legal proceedings in London against the 1971 Fund to protect their claim for indemnification under Article 5.1 of the 1971 Fund Convention and their subrogated claims in respect of amounts paid to third parties if and to the extent that the aggregate of such claims were to exceed the limitation amount applicable to the *Evoikos*. The shipowner and his insurer have also initiated corresponding proceedings in Malaysia.

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 (£22 000). 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 commenced limitation proceedings with the competent Singapore court. The court determined the limitation amount applicable to the *Evoikos* at 8 846 941 SDR (£7.7 million).

Evoikos: oiled mangroves

14.18 KYUNGNAM N°1

(Republic of Korea, 7 November 1997)

The incident

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 that were moored in the area at the time of the incident.

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

Claims for compensation

Thirty-one claims totalling Won 970 million (£513 000) were submitted.

In February 1999 the Executive Committee decided that, in view of the relatively small amounts involved, the 1971 Fund should pay all established claims in full and present subrogated claims against the shipowner's limitation fund. As a result of that decision, the 1971 Fund paid Won 229 million (£122 000) to 12 claimants in June 1999.

The shipowner had paid compensation to 14 claimants, totalling Won 27 million (£17 000). In respect of ten of these claims the shipowner's payments were for amounts higher than those assessed by the Fund.

In June 2000 an agreement was reached between the shipowner and the 1971 Fund in respect of the 14 claims paid by the shipowner. After deduction of the amounts paid by the shipowner in excess of the 1971 Fund's assessments in respect of these claims, the 1971 Fund reimbursed the shipowner Won 7 311 259 (£4 400).

Two claims relating to clean-up operations had been presented for a total of Won 35 million (£19 000). These claims were settled in May and June 2000 for Won 16 million (£9 800) and were paid by the 1971 Fund.

Three claims totalling Won 85 million (£45 000) which were assessed at nil by the 1971 Fund's experts were not filed in court. These claims became time-barred on or shortly after 7 November 2000.

Limitation proceedings

The Ulsan District Court fixed the limitation amount applicable to the *Kyungnam N°1* at Won 43 543 015 (£23 000). The shipowner deposited this amount in court. In December the 1971 Fund received Won 45 million (£24 000) from the shipowner's limitation fund in respect of its subrogated claims including interest.

Indemnification of the shipowner

The 1971 Fund paid Won 10 million (£5 600) to the shipowner in indemnification in December 2000.

14.19 PONTOON 300

(United Arab Emirates, 7 January 1998)

The incident

An estimated 8 000 tonnes of 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 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. 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.

The *Pontoon 300* was a flat-top barge 8 037 tons dwt. The barge was constructed with 24 buoyancy tanks in six rows of four tanks each, and a double centre bulkhead. Divers reported signs of diesel oil having been loaded in fore and aft ballast tanks in the barge. Most of the tanks on the barge were interconnected.

Several unsuccessful attempts to raise the barge were made during January 1998. 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. The worst affected Emirate was Umm Al Quwain.

The Federal Environment Agency (FEA) co-ordinated the response to the incident with support from the Frontier and Coast Guard Service and the 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. The work was completed in June 1998.

Applicability of the 1969 and 1971 Conventions

In February 1998 the Executive Committee decided that the *Pontoon 300* fell within the definition of 'ship' in the 1969 Civil Liability Convention, since it had been established that the barge was actually transporting oil in bulk as cargo from one place to another.

Level of the 1971 Fund's payments

The total amount claimed against the 1971 Fund as at 31 December 2000 was Dhs 206 million (£40 million). However, claims against the 1971 Fund will not become time-barred until on or about 7 January 2001. In view of the uncertainty as to the total amount of the claims, the Administrative Council decided in October 2000 to maintain the level of the 1971 Fund's payments at 75% of the total loss or damage suffered by each claimant.

Claims for compensation

Settled claims

As at 31 December 2000, 11 claims for compensation for clean-up operations had been received, totalling Dhs 7.4 million (£1.3 million). Eight of these claims, totalling Dhs 5.3 million (£965 000), which were presented by the FEA, were settled for a total of Dhs 4.2 million (£765 000), and the 1971 Fund has paid 75% of the settlement amount.

A local contractor submitted three claims totalling Dhs 2.2 million (£400 000) in respect of clean-up work. These claims were accepted in full and the 1971 Fund paid 75% of the settlement amount.

Unsettled claims

In May 2000 the Municipality of Umm Al Quwain presented claims against the 1971 Fund totalling Dhs 199 million (£36 million) on behalf of fishermen, tourist hotel owners, private property owners, a marine research centre and the municipality itself. These claims are in respect of economic losses in the fishery and tourism sectors (Dhs 11.1 million (£2.0 million)), property damage (Dhs 7.0 million (£1.3 million)), clean-up costs (Dhs 19.7 million (£3.6 million)) and environmental damage (Dhs 161 million (£29 million)). Little or no documentation was provided in support of the claims and the amounts involved appeared to be based upon estimates. The claim for environmental damage related to alleged losses of fish stocks and other marine resources, including mangroves, and appears to be based upon theoretical models.

The 1971 Fund informed the Umm Al Quwain Municipality that claims in respect of property damage and economic losses actually sustained were admissible in principle but that considerable supporting documentation was required before the Fund could assess the claims. The 1971 Fund also pointed out that claims for environmental damage based upon theoretical models were not admissible.

In September 2000 the Umm Al Quwain Municipality brought legal action against the tug owner and the cargo owner in the

Umm Al Quwain Court in respect of its claims.

In December 2000 the Ministry of Agriculture and Fisheries in Umm Al Quwain joined the Umm Al Quwain Municipality's action in respect of its claim for Dhs 6.4 million (£1.2 million) and also named the 1971 Fund as a defendant.

Investigation into the cause of the incident

The 1971 Fund's lawyers in the United Arab Emirates are investigating the cause of the incident, with the assistance of technical experts.

Criminal proceedings

In November 1999 a Criminal Court of first instance found the master of the tug *Falcon 1*, the tug owner and the alleged cargo owner and their respective general managers guilty of misuse of the barge *Pontoon 300* which was not in a seaworthy condition and thus in violation of United Arab Emirates law, and causing harm to the people and the environment by use of the unseaworthy barge. The master of the tug *Falcon 1*, the tug owner and his general manager appealed against the judgement, but the alleged cargo owner and his general manager did not.

In February 2000 the Criminal Court of Appeal found the tug owner and his general manager not guilty. The Court of Appeal confirmed the guilty verdict against the master of the *Falcon 1*, the alleged cargo owner and his general manager.

Legal action against the owner of the tug *Falcon 1*

In accordance with the Executive Committee's decision, the 1971 Fund commenced legal proceedings in January 2000 against the owner of the tug *Falcon 1* and the company that owned the cargo carried by the *Pontoon 300*. The Fund has maintained that since the sinking of the *Pontoon 300* occurred due to negligence of the *Falcon 1* during the towage, the *Falcon 1* was responsible for the sinking and the tug owner is liable for the ensuing damage.

The owner of the *Falcon 1* filed pleadings opposing the 1971 Fund's action stating that the Dubai Court had no jurisdiction and that the 1971 Fund had no title to pursue a claim against the tug owner. The tug owner further maintained that since the Court of Appeal had found the tug owner and the general manager not guilty, they had no liability in civil law for pollution damage resulting from the incident. The tug owner also pleaded 'force majeure' on the ground that the incident resulted from severe (Force 11) storms and argued negligence on the part of the local authorities in attempting salvage of the *Pontoon 300*.

The 1971 Fund's lawyers have advised the Fund that the Dubai Court has jurisdiction since one of the defendants has a place of business in Dubai and that the Fund has the right to take recourse action based on Article 9 of the 1971 Fund Convention which forms part of the law of the United Arab Emirates. The Fund's lawyers have maintained that the tug *Falcon 1* was in control of the *Pontoon 300* and therefore legally responsible for the *Pontoon 300* in accordance with the principles of law on towage and that under the Maritime Code of the Emirates the towing vessel and the vessel being towed were jointly liable for any loss suffered by third parties arising out of the towage operation. However, the 1971 Fund's lawyers have indicated that the tug owner might be entitled to limit his liability under the Maritime Code to Dhs 75 000 (£13 700) unless the incident was a result of the personal fault of the owner.

In December 2000 the Dubai Court rendered a judgement in which it rejected the 1971 Fund's claim against the owner of the tug *Falcon 1* but ordered the cargo owner to pay the Fund Dhs 4.5 million (£820 000).

14.20 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 m^3 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 were 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.

Claims for compensation

Although it appears that there was minimal impact on fishing and tourism, PDVSA estimated that the claims for commercial losses would be in the region of US$700 000 (£470 000). 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.

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 of Venezuela for an estimated amount of Bs10 000 million (£9.6 million) plus legal costs. The town requested that the Court should notify the 1971 Fund of the proceedings, but no such notification was made. This action was withdrawn in January 2000 except as regards PDVSA.

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 that 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 Executive Committee noted 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 decided that, for this reason also, the incident fell outside the scope of application of the Conventions.

Limitation proceedings

The shipowner has not 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 (£2.7 million).

14.21 AL JAZIAH 1

(United Arab Emirates, 24 January 2000)

The incident

The tanker *Al Jaziah 1* (reportedly of 681 GRT) laden with fuel oil sank in about 10 metres of water five miles north-east of the port of Mina Zayed, Abu Dhabi (United Arab Emirates).

The vessel held a certificate of provisional registration issued by the Registry of Honduras, expiring on 12 November 2000. It has been alleged that the vessel was owned by a company based in Abu Dhabi and Dubai. It appears that the vessel was not entered with any classification society and did not hold any liability insurance.

It is estimated that approximately 100 - 200 tonnes of cargo escaped from the wreck. The oil drifted under the influence of strong winds towards the nearby shorelines polluting a number of small islands and sand banks. Some mangroves were also oiled.

At the IOPC Funds' request a representative of the International Tanker Owners Pollution Federation Ltd (ITOPF) went to Abu Dhabi to follow the clean-up operations, liaise with the competent authorities and advise the authorities and bodies involved on the practical aspects of any clean-up. The Funds also appointed a local surveyor to assist ITOPF and to monitor the salvage operations.

Local oil companies organised the response to the spill using their own resources and those of an industry stockpile located in Abu Dhabi as well as some equipment from the stockpile of the Oil Spill Response Limited in Southampton (United Kingdom). Although the initial response involved the application of dispersants from supply vessels and helicopters, these operations were scaled down when it became apparent that they were not effective. Some defensive booming of sensitive areas was undertaken, including the seawater intakes to two nearby power stations.

Local authorities mobilised teams of labourers to undertake onshore clean-up on various islands, much of which was completed within two weeks.

The Federal Environment Agency (FEA) of the United Arab Emirates appointed a local salvage company to stem further oil leaks from the wreck and to remove the remaining oil on board.

Al Jaziah 1: beach clean-up

The oil removal operation was completed on 7 February 2000, and it was reported that some 430 tonnes of oil had been removed from the sunken vessel. Approximately 70 tonnes of oil was reported to have remained on board as clingage and unpumpable material.

The sunken vessel was refloated by the salvors on 11 February 2000 and taken into the Abu Dhabi Freeport.

Definition of 'ship'

The 1992 Fund Executive Committee and the 1971 Fund Administrative Council considered the question of whether the *Al Jaziah 1* fell within the definitions of 'ship' laid down in the 1969 Civil Liability Convention and the 1992 Civil Liability Convention and as incorporated into the 1971 and 1992 Fund Conventions respectively. These definitions read:

> "**1969 Civil Liability Convention**
> 'Ship' means any sea-going vessel and seaborne craft of any type whatsoever, actually carrying oil in bulk as cargo.
>
> **1992 Civil Liability Convention**
> '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 *Al Jaziah 1* was reportedly some 40 years old, and it was believed that it had been built in the Netherlands. The vessel had a rudder and propeller, but did not carry even basic navigation equipment. The design of the vessel was of the type approved by the Dutch Small Ship Inspectorate as an 'inland waters motor tankship', and at the time of the incident the vessel was operating in open seas unmodified in any material way from the original design, a characteristic feature of which was a very low forecastle. It was not known whether the vessel had been converted for carriage of oil.

The *Al Jaziah 1* had an expired hull insurance with the Saudi Arabian Insurance Company LTD.EC, which covered trading in 'the Persian Gulf, Gulf of Oman, Indian Ocean, East African Coast and Red Sea'. It was reported that the *Al Jaziah 1* had frequently been used by the Abu Dhabi National Oil Company to transport fuel oil in the region.

During the discussion in the 1992 Fund Executive Committee, it was generally considered that a craft fell within the concept of 'seagoing ship or other seaborne craft' if it was actually operating at sea. The Committee took the view therefore that the *Al Jaziah 1* fell within the definitions of 'ship' laid down in the 1969 Civil Liability Convention and the 1992 Civil Liability Convention. The 1971 Fund Administrative Council took the same position.

Applicability of the 1971 and the 1992 Fund Conventions

The United Arab Emirates is a Party to both the 1971 Fund Convention (since March 1984) and the 1992 Fund Convention (since November 1998), having not denounced the former when acceding to the latter.

When considering the applicability of the 1971 and 1992 Fund Conventions to the *Al Jaziah 1* incident the 1992 Fund Executive Committee recalled that the United Arab Emirates was Party to the 1969 Civil Liability Convention and the 1971 Fund Convention as well as to the 1992 Civil Liability Convention and the 1992 Fund Convention, having not denounced the former two Conventions. It was noted that the 1971 Fund Convention had been incorporated in the law of the Emirates by a Federal Decree of 1983 and the 1992 Fund Convention by a Federal Decree of 1997, and that the former decree had not been repealed and was still in force. It was also recalled that the 1992 Fund Convention did not contain any provisions governing the simultaneous application of these four instruments after the expiry of the transitional period on 15 May 1998.

The 1992 Fund Executive Committee and the 1971 Fund Administrative Council decided that

both the 1971 and 1992 Fund Conventions applied to the *Al Jaziah 1* incident.

Distribution of liabilities between the 1971 Fund and the 1992 Fund

Since both Fund Conventions applied to the *Al Jaziah 1* incident, the question arose as to how the liabilities should be distributed between the 1971 Fund and the 1992 Fund.

During the discussion in the Executive Committee and Administrative Council the point was made that each claimant had the right to pursue its claim against either the 1971 Fund or the 1992 Fund, that the Fund against which the claim was pursued was liable for the total amount of the damage up to the limit of its liability under the respective Convention and that the distribution of liabilities between the two Funds would have to be negotiated between them.

The 1971 Fund Administrative Council and the 1992 Fund Executive Committee considered that, since there were neither provisions in the Fund Conventions nor any rules under general treaty law governing the issue under consideration, a practical and equitable solution should be agreed between the two Funds. They decided that the liabilities should be distributed between the 1971 Fund and 1992 Fund on a 50:50 basis.

Claims for compensation

Claims in respect of clean-up costs totalling US$1.3 million (£870 000) have been submitted to the IOPC Funds by two local oil companies engaged in the response. One of the claims includes the costs of mobilising equipment from the stockpile of Oil Spill Response Limited in Southampton (United Kingdom).

The FEA has submitted a claim for Dhs 2 million (£365 000) in respect of operations undertaken by a local salvage company to stem leaks and remove oil from the sunken wreck, and to refloat the wreck and tow it into the Abu Dhabi Freeport.

Claims for US$40 000 (£26 000) and Dhs 47 500 (£8 600) have been submitted by the FEA in respect of operations to remove the oil residues remaining in the wreck after it had been refloated.

The IOPC Funds' experts are currently examining these claims. Further claims are expected.

14.22 NATUNA SEA

(Indonesia, 3 October 2000)

The incident

The Panamanian tanker *Natuna Sea* (51 095 GT) grounded in the Singapore Strait off Batu Behanti, Indonesia. The vessel was carrying a cargo of 70 000 tonnes of Nile Blend crude oil and an estimated 7 000 tonnes was spilled as a result of the grounding. The vessel was lightened of its remaining cargo and refloated without significant further spillage. It was subsequently detained by the Indonesian authorities until 20 December 2000.

On the Singapore side of the Strait a number of islands were polluted, including the resort island of Sentosa. Shoreline oiling also occurred on the south-east coast of Singapore Island. A number of Indonesian islands in the Singapore Strait were also affected by oil, the heaviest accumulations occurring on the north coast of Pulau Batam. Oil also impacted the south-east tip of the Johor Peninsula in Malaysia.

Clean-up operations

Singapore

The Marine and Ports Authority (MPA) of Singapore directed the response, which initially focused on dispersant spraying. The locally based manager of the *Natuna Sea* participated in clean-up operations by engaging a number of local contractors, including East Asia Response Ltd (EARL) and the Singapore Oil Spill Response Centre. Clean-up equipment of the Petroleum Association of Japan stockpile in Singapore was also deployed.

EARL began the aerial application of dispersants on the evening of the first day, but in view of the

oil's high pour point (the temperature below which the oil does not flow) compared with the ambient sea temperatures the shipowner's insurer and the IOPC Funds instructed two scientists from the United Kingdom to travel to Singapore with specialised monitoring equipment for measuring concentrations of oil underneath slicks treated with dispersants. On the basis of *in situ* measurements the scientists concluded that by the third day the oil was no longer amenable to dispersant. The Singapore Government maintained, however, that the dispersant was effective on the first day, and that the response had been set back as a result of the decision to abort spraying on the second day pending the results of laboratory and field tests, which were available only on the third day.

Several barges equipped with mechanical grabs or skimmers designed for viscous oil, and a large fleet of small vessels utilising scoops and nets, were deployed in the Singapore Strait to recover floating oil. After ten days there was little oil remaining at sea and efforts were then focused on shoreline clean-up. Some 260 people were engaged in shoreline cleaning.

Indonesia

The manager of the *Natuna Sea* engaged a local contractor to organise shoreline clean-up using a local labour force of over 320 people to collect oil and oily debris, which was bagged for onward transportation to a local dump. The collected waste was later re-bagged and transported to a landfill site in Singapore.

Malaysia

The Malaysian Marine Department took charge of operations at sea and mobilised a small number of fishing vessels to collect oil using scoops and nets. The Department of Environment organised shoreline clean-up operations using a combination of mechanical and manual techniques. Some 400 people, many of them volunteers, were involved in these operations.

Impact of the spill

Singapore

The floating cages of a fish farm were heavily affected by oil giving rise to concerns that the fish may have become contaminated. The farm owner, assisted by a small workforce, undertook

Location of the Natuna Sea incident

Natuna Sea: dispersant spraying

clean-up of the cages and attempts were made to minimise contamination of fish by adding feed under the water surface.

There were reports of a decrease in the number of visitors to the Sentosa Island resort. A lagoon on the island which houses a dolphinarium was lightly oiled before steps were taken to limit further ingress of oil by extending the seawater intake further out to sea.

A number of vessels in the Singapore Strait had their hulls oiled.

Indonesia
The oil affected both fishing and aquaculture sectors with the fishing communities of six districts reportedly suffering oiled gear and reduced catches. It was also reported that a number of fish farms in the area were affected.

Malaysia
The spill was reported to have had an impact on fishing activities, although some fishermen were understood to have mitigated their losses by fishing in alternative areas.

Applicability of the Conventions

The *Natuna Sea* was registered in Panama, which at the time of the incident was a Party to the 1992 Civil Liability Convention and to the 1992 Fund Convention.

Singapore is Party to the 1992 Civil Liability Convention and the 1992 Fund Convention. Indonesia is Party to the 1992 Civil Liability Convention, but not Party to the 1992 Fund Convention. Malaysia is Party to the 1969 Civil Liability Convention and the 1971 Fund Convention, but not to the 1992 Conventions.

As a consequence of two different regimes being applicable to the incident, the shipowner may be required to establish two limitation funds, one in Malaysia and one in Singapore or Indonesia. The limitation amount applicable to the *Natuna Sea* under the 1992 Civil Liability Convention is approximately 22.4 million SDR (£20 million) and under the 1969 Civil Liability Convention approximately 6.1 million SDR (£5.3 million).

Claims for pollution damage in Indonesia under the 1992 Civil Liability Convention will

compete with claims for pollution damage in Singapore under the same Convention and could ultimately have a bearing on whether or not the 1992 Fund will be required to pay compensation for pollution damage in Singapore. If the total amount of claims for pollution damage in Malaysia were to exceed the limitation amount applicable to the *Natuna Sea* under the 1969 Civil Liability Convention, the 1971 Fund would be called upon to pay compensation.

Claims for compensation

Singapore

Claims in respect of clean-up operations have been estimated at US$7.3 million (£5.2 million), which includes costs incurred by the shipowner and his insurer, various clean-up contractors and the MPA.

Claims totalling US$160 000 (£114 000) have been presented to the shipowner in respect of contamination of fishing gear, mariculture facilities and vessel hulls.

Indonesia

Clean-up costs, most of which were incurred by the shipowner, have been estimated to be in the region of US$700 000 (£500 000).

Claims have been submitted by some 7 000 fishermen for a total of US$2.8 million (£2 million) in respect of contaminated fishing gear and loss of earnings. These claims were provisionally assessed by the experts appointed by the shipowner and his insurer at US$1.2 million (£860 000). Local authorities in Batam have presented claims for US$960 000 (£690 000) in respect of costs incurred in collecting and collating information in support of the fishery claims and for US$9.4 million (£6.7 million) for alleged damage to mangroves.

A law firm reportedly acting on behalf of the Indonesian Government has given notice to the shipowner of claims totalling US$140 million (£100 million) for alleged damage to fisheries, mangroves, coral and coastal sand. The claims also include alleged damage to the tourism industry, ports, transportation and industry. None of the claims have been supported by any documentation.

Malaysia

Clean-up costs have been estimated at US$200 000 (£143 000). Claims, principally by fishermen, totalling some US$240 000 (£170 000) have been presented to the shipowner. These claims are being examined.

15 1992 FUND INCIDENTS

15.1 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. The German authorities have maintained that 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. Chemical analysis showed that the oil in the samples was of Libyan origin.

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 1996 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 GT) had discharged Libyan crude in the port of Wilhelmshaven on 11 June 1996. According to the German authorities there remained on board some 46 m^3 of oil which could not be discharged by the ship's pumps.

The *Kuzbass* 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 have maintained that there were no other movements of tankers with Libyan crude oil on board during the time and in the area in question. According to the German authorities, analyses of oil samples taken from the *Kuzbass* matched the results of the analyses of samples taken from the polluted coastline.

The German authorities approached the owner of the *Kuzbass* and requested that he should accept responsibility for the oil pollution. They stated that, failing this, the authorities would take legal action against him. The shipowner and his P & I insurer, the West of England Ship Owners' Mutual Insurance Association (Luxembourg) (West of England Club), informed the authorities that they denied any responsibility for the spill.

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 would arise as to whether they had proved that the damage resulted from an incident involving one or more ships as defined in the 1992 Civil Liability Convention (cf Article 4.2(b) of the 1992 Fund Convention).

The definition of 'ship' in Article I.1 of the 1992 Civil Liability Convention covers 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 (£35 million).

Legal actions

In July 1998 the Federal Republic of Germany brought legal actions in the Court of first instance in Flensburg against the shipowner and the West of England Club, claiming compensation for the cost of the clean-up operations for an amount of DM2.6 million (£835 000). The German authorities have based their legal actions *inter alia* on the facts set out above.

The 1992 Fund was notified in November 1998 of the legal actions. In August 1999, the 1992 Fund intervened in the proceedings in order to protect its interests.

The owner of the *Kuzbass* and the West of England Club presented pleadings to the Court. The position taken by the owner and the Club is summarised below.

" The chemical analyses provided by the German authorities have shown only that the oil carried in the *Kuzbass* and the oil found ashore both originated from Libya, without stating that the chemical composition of the oils was identical. The chemical analyses carried out on behalf of the shipowner and the Club, however, demonstrated that the oils were not identical. In particular, the latter analyses showed that, although both oils were of Libyan origin, the oil carried by the *Kuzbass* was Libyan Brega crude oil whereas the polluting oil was not.

With respect to the question of whether the oil pollution might have been caused by the washing of the tanks of the *Kuzbass*, tank washing would normally be carried out only in exceptional cases, ie if a tank had to be repaired or if another cargo had to be taken on board that should not come into contact with the residues of the cargo carried on a previous voyage. In the case of the *Kuzbass*, the tanker was proceeding to the Mediterranean to load a cargo of crude oil and the conditions of the tanks were such that they did not require washing. In addition, it would not have been technically possible to pump out the oil which remained on board.

In the period between 18:30 hours on 12 June 1996 and 19:00 hours on 13 June 1996 the *Kuzbass* was lying at anchor to carry out repairs on the ship's cooling system.

The route followed by the *Kuzbass* was far from the areas where the oil which caused the pollution was alleged to have been discharged into the sea. Copies of the original Russian sea charts, the course recorder and the ship's logbook have been provided in support of this position.

As regards the data provided by Lloyd's Maritime Information Services showing that there were no other movements of tankers with Libyan crude oil on board in June 1996 in the area in question, the reports of Lloyd's Maritime Information Services cover only laden tankers, and do not give any information on the movements of unladen tankers which are most likely to carry out tank washing."

The shipowner and the West of England Club have also referred to the results of the investigation of the German police and of the Italian public prosecutor[3], both of which, according to the owner and the Club, have not found any valid evidence to support the accusation against the *Kuzbass*.

In their reply to the Court, the German authorities made the following points:

" The *Kuzbass* had carried Libyan crude oil. The analyses of samples of the oil on the polluted beaches had established that this oil was also Libyan crude oil. The *Kuzbass* was the only oil tanker passing the North Sea en route to Helgoland Bay during June 1996. There was *prima facie* evidence that the pollution could only have been caused by the *Kuzbass*. The analysis carried out on behalf of the shipowner and the Club did not rebut this *prima facie* evidence. The assertion by the shipowner and the Club that the two oils were not identical was not sustainable, on the basis of current scientific standards. The *Kuzbass* had a leak between a sloptank and a cargo tank. It was no

[3] *The port of discharge of the next cargo was in Italy.*

longer maintained that the oil pollution was caused by a single tank washing, but that the pollution was caused by the discharge of slops. It must be assumed, therefore, that on a previous laden voyage crude oil cargo had leaked into the slop tank, which already contained slops originating from previous tank washings, resulting in a mixture of slops highly enriched with crude oil. The *Kuzbass* had then discharged this mixture on the voyage from Cuxhaven to the Mediterranean."

The Court appointed an expert to consider the evidence as to the origin of the oil, and in particular whether the samples of oil and sand mixture contained residues of tank washing and/or residues of slops and whether the residues originated from Libyan Brega crude oil. The expert's report was submitted in October 2000. The expert concluded that the samples in question contained without any doubt residues of crude oil typical of those found in tank washings (slops) from oil tankers. He stated that there was no trace of sludge in the samples. The expert expressed the view that the quantity of oil recovered (ie several hundred tonnes) ruled out that sludge oil had contributed to the pollution. On the basis of the examination carried out by the Federal Maritime and Hydrographic Agency the oil in question was in his view without any doubt Libyan crude oil, but it was not possible to relate this oil to a particular well. The expert also stated that it was not possible to establish whether the pollution was caused by the cargo carried by the *Kuzbass* without having access to samples taken from its slops tank.

The shipowner and the West of England Club have agreed with the expert's conclusion, in particular that the oil originated from Libya but could not be attributed to a particular Libyan well, that it was impossible to attribute the oil to a particular vessel if no sample from the ship was available, and that such samples were never taken from the *Kuzbass* and could not be taken since the vessel had in the meantime carried numerous other cargoes. They have also stated that the expert's finding that the samples taken from the beaches contained typical characteristics of residues from tank washing but no characteristics of sludge did not lead any further since all tankers which passed in the North Sea at the relevant time could have washed their tanks and caused the pollution. The shipowner and the West of England P & I Club have expressed the view that the Federal Republic of Germany would be unable to prove that the pollution was caused by oil from the *Kuzbass*.

The German authorities have submitted comments on the expert's report as to the origin of the oil. The authorities have maintained that on the basis of the expert's findings and the evidence available the pollution must have been caused by the *Kuzbass*. They have also argued that Lloyd's Maritime Information Service on tanker movements in the North Sea, as well as an analysis of Libyan crude oil exports, clearly showed that in June 1996 no tanker other than the *Kuzbass*, coming directly from Libya with a cargo of Libyan crude oil, sailed from Helgoland Bay and along the German and Dutch coasts with its cargo tanks containing residues of Libyan crude oil. The authorities have stated that urgent repairs to a cracked cargo tank had necessitated the tank cleaning.

The shipowner and the West of England Club have also presented a report issued in November 2000 by a former chief engineer who had examined the *Kuzbass* engine logbook and other technical documents. The chief engineer has stated that according to the engine log there was no cargo or ballast pump activity recorded from the completion of discharge in Wilhemshaven until the completion of the maintenance work, that the use of cargo or ballast pumps would have been impossible during the time the repairs were taking place, and that according to the log entries the vessel was anchored for essential maintenance of the ship's cooling water system from 18:30 hours on 12 June until 19:00 hours on 13 June 1996.

The German authorities have challenged the chief engineer's report, in particular his interpretation of the logbook entry relating to the alleged maintenance work. The authorities have explained why in their view no other tanker except the *Kuzbass* could have caused the pollution.

The Court is expected to decide early in 2001 on the procedure for the handling of the case.

15.2 NAKHODKA
(Japan, 2 January 1997)

See pages 69 to 74.

15.3 OSUNG N°3
(Republic of Korea, 3 April 1997)

See pages 81 to 82.

15.4 MARY ANNE
(Philippines, 22 July 1999)

The incident
The Philippines-registered sea-going, self-propelled barge *Mary Anne* (465 GT), en route from Subic Bay to Manila (Philippines), became swamped during strong winds and heavy seas and sank in approximately 60 metres of water off the port of Mariveles at the entrance to Manila Bay. It was reported that the barge was carrying a cargo of 711 tonnes of intermediate fuel oil as well as some 2.5 tonnes of gas oil bunkers. The wreck leaked oil continuously over several days, but by 29 July the leakage was only about 1 to 5 tonnes per day and much of the surfacing oil dispersed naturally. Some oil apparently from the *Mary Anne* stranded on shorelines in the vicinity of Mariveles Harbour and on two islands in the entrance to Manila Bay.

The *Mary Anne* was entered with the Terra Nova Insurance Company Limited (Terra Nova). Most ships are traditionally entered in Protection and Indemnity Associations (P & I Clubs) which are mutual insurers. Terra Nova is not such an insurer but a conventional insurance company which covers P & I risks at fixed premiums.

A Memorandum of Understanding signed in 1985 by the 1971 Fund and the International Group of P & I Clubs, which was extended in 1996 to apply also to the 1992 Fund, governs co-operation between the IOPC Funds and the P & I Clubs in respect of the handling of incidents. Since Terra Nova is not a member of the International Group, the Memorandum does not apply in this case. The Director proposed that Terra Nova and the 1992 Fund should co-operate in accordance with the Memorandum, which had been the case in the past in respect of incidents involving P & I Clubs outside the International Group, but the proposal was not accepted by Terra Nova. However, it was agreed that the 1992 Fund should receive copies of reports of the expert from the International Tanker Owners Pollution Federation Ltd (ITOPF) who attended the incident on behalf of Terra Nova to oversee operations and render advice in respect of clean-up operations.

Clean-up and other preventive measures
The clean-up operations were undertaken under the direction of the Philippines Coast Guard. The shipowner appointed a local salvage company to provide oil spill response services. Although these services included the provision of oil recovery equipment, rough sea conditions precluded its use and the offshore response was based upon dispersant spraying from tugs. Shoreline clean-up involved the manual collection of oil and oily debris by local labour recruited by the municipalities.

Terra Nova contracted an international salvage company, to work in collaboration with a local salvor, to locate the wreck and plug any leaks prior to removing the oil remaining on board. The operations were initially hampered by bad weather, but diving surveys of the wreck and the sealing of vents and other openings were completed by the end of August. Diving inspections showed that there was no remaining oil in any of the cargo tanks, except for small quantities of clingage. The inspections also showed that the bunker tanks were free of oil.

Claims for compensation
As at 31 December 2000 Terra Nova had incurred expenditure of approximately US$1.6 million (£1.1 million) in respect of the oil removal contract and the clean-up operations.

A local salvage and towing company presented the shipowner with a claim for US$1.1 million (£740 000) in respect of clean-up operations. This claim has not been paid and the shipowner has no assets and is in effect in voluntary

liquidation. Terra Nova has informed the 1992 Fund that there are no other outstanding claims arising from the incident.

The limitation amount applicable to the *Mary Anne* is 3 million SDR (£2.6 million). It is unlikely that the total amount of the established claims will exceed the amount of compensation available under the 1992 Civil Liability Convention. However, Terra Nova has informed the 1992 Fund that the shipowner was in breach of the insurance policy in respect of the vessel on the grounds that that the vessel was operated recklessly and that the crew was grossly incompetent. In particular, Terra Nova has maintained that on the basis of diving surveys of the wreck there was no evidence of damage to the vessel's hull which could have caused the sinking, the engine room skylights were open and had no glass in them and the engine room and pump room had been modified in such a way that there was no watertight bulkhead between the two spaces.

Terra Nova has informed the 1992 Fund that it may request the shipowner and the 1992 Fund to reimburse Terra Nova the amounts it has paid to claimants.

Legal proceedings

The local salvage and towing company referred to above has commenced legal action against the shipowner and Terra Nova in a court in Manila in respect of its claim for US$1.1 million (£740 000). Terra Nova has opposed the claim on the basis of the defences set out in the insurance policy and has insisted that it is entitled to recover from the shipowner and/or the 1992 Fund the amounts already paid by it in compensation.

Terra Nova has requested the 1992 Fund to endorse its action and recognise its potential claim against the 1992 Fund. However, the Fund has informed Terra Nova that it neither endorsed the action nor recognised any potential claim by Terra Nova for reimbursement against the Fund, since the total amount of the claims falls well below the limitation amount applicable to the *Mary Anne*. However, the legal situation might be more complicated as regards claims that have not yet been paid by the shipowner or the insurer.

15.5 DOLLY

(Caribbean, 5 November 1999)

The *Dolly* (289 GT), registered in Dominica, was carrying some 200 tonnes of bitumen when it sank at 25 metres depth in a port in Martinique. So far no cargo has escaped.

There is a natural park, a coral reef and mariculture near the grounding site, and artisanal fishing is carried out in the area. There are fears that fishing and mariculture would be affected if bitumen were to escape.

The *Dolly* was originally a general cargo vessel, but special tanks for carrying bitumen had been fitted, together with a cargo heating system. The ship probably did not have any liability insurance. The owner is a company in St Lucia.

The shipowner had been ordered by the authorities to remove the wreck by 7 December 1999. The owner did not comply with the order, probably due to lack of financial resources to do so.

The Director informed the French Government that the 1992 Fund reserved its position as to whether the *Dolly* fell within the definition of 'ship' laid down in the 1992 Civil Liability Convention and the 1992 Fund Convention and whether therefore the 1992 Fund Convention applied to the incident. In the Director's view, more details of the ship are required in order to enable the 1992 Fund to take a position on this issue.

At the Executive Committee's October 2000 session, the French delegation stated that it understood the Director's reservations as to whether the *Dolly* fell within the definition of 'ship'. That delegation stated that, whilst it was trying to obtain further details about the ship, it should be noted that the *Dolly* was carrying a cargo of bitumen, a persistent oil, and also had on board a heating system to keep the oil in such a state that it would be fluid enough for pumping.

The 1992 Fund will consider this issue when further information is received from the French authorities.

Since the shipowner did not take any measures to prevent pollution, the French authorities arranged for the removal of 3.5 tonnes of bunker oil. The French authorities requested three salvage companies to submit proposals on how to eliminate the threat of pollution by bitumen. These companies undertook diving inspections of the wreck in October and November 2000. The French authorities have provided the 1992 Fund with copies of the salvors' proposals.

Two of the companies have proposed removing the bitumen tanks intact while leaving the wreck in its current position. Both companies estimated the cost to be in the region of US$ 1.5 million (£990 000).

The third company has proposed righting the wreck and refloating it with its cargo on board. The cargo would then be removed before scuttling the wreck in deep water. The cost of this operation has been estimated at US$950 000 (£638 000). The French authorities have studied a variation of this method, in which the wreck would be broken up onshore after removal of the bitumen.

The 1992 Fund's experts are examining the proposed methods and will discuss the technical issues involved with the French authorities.

15.6 ERIKA

(France, 12 December 1999)

The incident

On 12 December 1999 the Maltese-registered tanker *Erika* (19 666 GT) broke in two in the Bay of Biscay, some 60 nautical miles off the coast of Brittany, France. All members of the crew were rescued by the French marine rescue services.

The tanker was carrying a cargo of 31 000 tonnes of heavy fuel oil of which some 19 800 tonnes was spilled at the time of the incident. The bow section floated vertically for several hours before sinking during the night of 12 December in about 100 metres of water. A French salvage company succeeded in attaching a line to the stern section and attempted to tow it further off shore. However, during the morning of 13 December the stern section sank to a depth of 130 metres about 10 nautical miles from the bow section.

Some 6 400 tonnes of cargo remained in the bow section and a further 4 700 tonnes in the stern section.

The *Erika* was entered in the Steamship Mutual Underwriting Association (Bermuda) Ltd (Steamship Mutual).

Clean-up operations

The French Naval Command in Brest, Brittany, took charge of the response operations at sea in accordance with the national contingency plan, 'Plan Polmar Mer'. The French Navy mobilised a number of vessels for offshore oil recovery. The Governments of Germany, the Netherlands, Spain and the United Kingdom also provided oil recovery vessels to assist in the response. It was reported that some 1 100 tonnes of oil was collected at sea.

On 25 December 1999 heavy oiling of shorelines occurred in the region of St Nazaire, La Baule, Le Croisic and La Turballe. Widespread but intermittent oiling subsequently occurred over some 400 kilometres of shoreline between Finistère and Charente-Maritime. The Préfets of the five affected Départements initiated the national contingency plan, 'Plan Polmar Terre', and took charge of shoreline clean-up with assistance from the coastal local authorities, the Civil Defence Corps, local fire brigades, the army and volunteers. A total of some 5 000 people were engaged in shoreline clean-up.

Although the removal of bulk oil from shorelines was completed quite rapidly, considerable secondary cleaning was still required in many areas. Finalising cleaning was hampered by new oiling of previously cleaned beaches during storms over the Easter weekend and, on occasions, during subsequent months probably from accumulations of sunken oil close to the

coast. Not all shorelines were completely cleaned before the main tourist season, July and August. In some cases the municipalities employed teams of locally available manpower to continue clean-up operations throughout the summer. The main focus was on the key tourist beaches. The French oil company Total Fina SA organised clean-up operations in some areas.

Clean-up of residual contamination continues throughout the affected Départements. These operations have been limited in scale in Finistère, Morbihan and southern Vendée where the residual contamination is minor. Greater effort has been made in more heavily affected areas, including the offshore islands of Morbihan and in Loire Atlantique and northern Vendée. Cleaning of some areas is expected to continue into the first half of 2001.

Some 200 000 tonnes of oily waste has been collected from shorelines and has been temporarily stockpiled at three locations, much of it without any segregation according to oil content. Total Fina SA has engaged a contractor to deal with the disposal of the recovered waste and the operation is underway. It is estimated that the cost of the waste disposal will be in the region of FFr200 million (£19 million).

The 1992 Fund has monitored the clean-up operations through experts from the International Tanker Owners Pollution Federation Ltd (ITOPF), assisted by a team of local surveyors.

The administrative courts in Nantes and Poitiers appointed experts to carry out an investigation into the condition of the beaches before the incident and the type and extent of the pollution caused. The 1992 Fund has followed these investigations through its technical experts.

Impact of the spill

About 60 000 oiled birds were collected, some 48 000 of which were dead. Attempts were made to clean the remaining 12 000 collected birds, half at various centres in France and the rest in Belgium, the Netherlands and the United Kingdom. However, many of these birds died and only a few hundreds birds have been successfully cleaned and released.

Area affected by the Erika incident

Oil entered a number of coastal marinas contaminating many pleasure boats and moorings.

Oil also affected several important oyster and mussel fisheries. As a result of the monitoring programme put in place by the French authorities and the guidelines issued by the Agence Française de Sécurité Sanitaire des Aliments (AFSSA), cultivated and natural stocks of shellfish in numerous areas were found to have accumulated hydrocarbons exceeding accepted limits, and the marketing of produce in these areas was banned. No fishing bans were imposed in respect of offshore fishing for pelagic fish and crustacea in view of the low levels of contamination of catches.

The fishing bans were lifted during the summer, and all areas were then open to fishing and harvesting of marine products, with the exception of a small area in Loire Atlantique where shellfish are still contaminated.

Efforts were made to minimise the impact of the spill on coastal salt production in marshes in Loire Atlantique and Vendée, and a number of monitoring and analytical programmes were implemented. Salt production resumed in Noirmoutier (Vendée) in mid May 2000 as a result of an improvement in sea water quality, and bans which were imposed to prevent the intake of sea water in Guérande (Loire Atlantique) were lifted on 23 May 2000. Since that date a few producers in Guérande decided to resume salt production, although members of a co-operative who carry out some 70% of the salt production in Guérande decided not to produce salt in 2000.

At the request of the 1992 Fund and Steamship Mutual a court expert has been appointed to examine whether it was feasible to produce salt in 2000 in Guérande that would meet the criteria relating to quality and the protection of human health. All parties have submitted documentation to the court expert.

Claims for compensation resulting from lost salt production due to delays to the start of the 2000 season caused by the imposed ban on water intake have been received from producers in Guérande and Noirmoutier. These claims are being assessed.

The affected coastline supports an important tourist industry during the summer months, which has been affected to varying degrees depending on location and type of activity.

Operations to prevent further oil escaping from the wreck

Various ways to prevent further oil escaping from the wreck were studied by the French Government and Total Fina. Following these studies, the French Government decided that the oil should be removed from the two sections of the wreck. After a tendering procedure the French Government decided on 20 April 2000 to award the contract for the oil removal operation to an international consortium, Stolt/Comex/Coflexship.

The oil removal operations were carried out during the period 6 June - 15 September 2000 and were completed three weeks ahead of schedule. No significant quantities of oil escaped during the operations.

A 'hydrostatic transfer' method was used for removing the oil. This method relies on the pressure differential between the deepest part of the compartment of the wreck containing oil and the oil/water interface forcing the oil out of the cargo tanks through valves fitted at the top of the tanks. Once outside the tank the oil was mixed with a thinning agent to reduce the viscosity. The mixture was then temporarily stored in a sealed pressure tank placed on the seabed before being pumped to the surface.

The 1992 Fund followed the operations closely through its technical experts.

The disposal of the recovered oil will take place during 2001.

Claims handling

The Steamship Mutual and the 1992 Fund established a Claims Handling Office in Lorient,

which opened on 12 January 2000. The Claims Handling Office has a staff of eight persons.

The Claims Handling Office serves as a focal point for the claimants and the technical experts engaged to examine the claims for compensation.

Various claims forms have been prepared and are being made available to claimants.

Claims for compensation

As at 31 December 2000, some 3 400 claims for compensation had been submitted for a total of FFr380 million (£36 million). Of these claims 980 were presented during the months of October - December 2000. Most claims are for relatively modest amounts.

Of the claims received 11% relate to clean-up and property damage, 51% to fishing and mariculture and 38% to tourism.

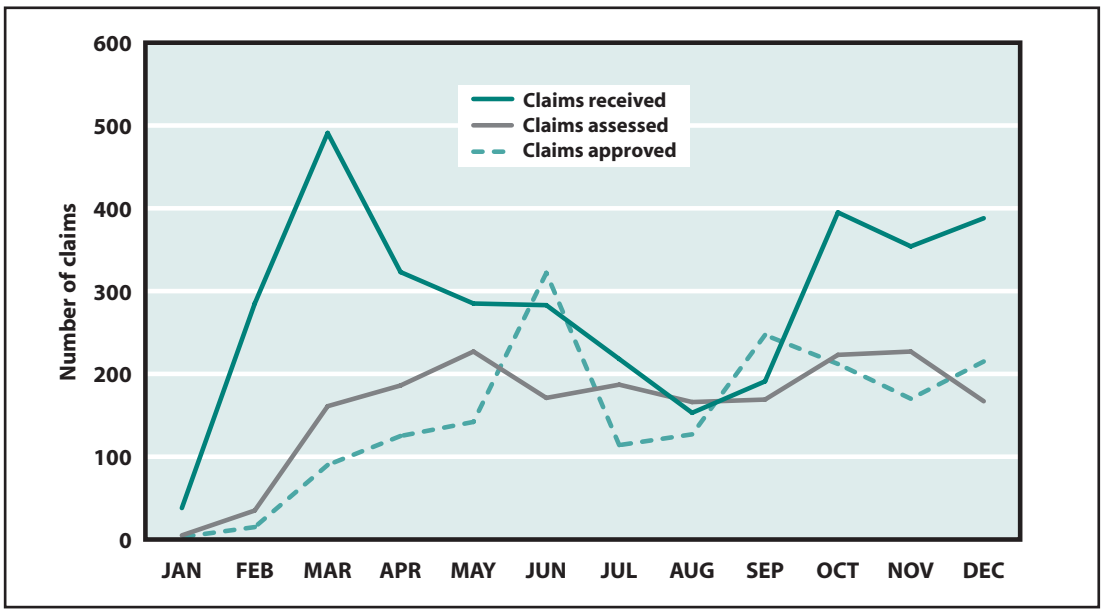
Some 2 000 claims totalling FFr156 million (£15 million) had been assessed by the end of 2000 at a total of FFr111 million (£8 million). Assessment had thus been carried out of 59% of the total number of 3 400 claims received and of 71% of the claims which had been received by 31 October 2000.

The graph below shows the number of claims received each month against those assessed and approved during 2000. It can be seen that the rate at which claims have been assessed has kept in step with the rate at which claims are received.

Payments had been made by Steamship Mutual in respect of 852 claims for a total of FFr32 million (£3.1 million). Most of these payments correspond to 50% of the approved amounts, but some hardship payments made at an early stage were made in full or at percentages higher than 50%. One hundred and fifty claims, totalling FFr11 million (£1.1million), had been rejected. Many of the rejected claims are being reassessed in the light of additional documentation provided by the claimant.

Approved payments in respect of a further 480 claims, totalling FFr14 million (£1.3 million), had not been made. This is due to the fact that confirmation and acceptance of the assessed amount had not been received in respect of 284 claims, the receipt and release form had not been signed in respect of 40 claims and the assessment had been rejected by the claimants in respect of 133 claims.

A further 1 348 claims, totalling FFr217 million (£20.8 million), were either in the process of



Claim processing in 2000

being assessed or were awaiting claimants providing further information necessary for the completion of the assessment.

As regards the clean-up costs incurred by the local authorities (the communes) it is understood that the major part of their costs will be claimed within the framework of the French Oil Spill Contingency Plan (Plan Polmar). However, the communes have incurred costs which would not qualify for compensation under Plan Polmar, mainly so-called fixed costs, but which may be admissible under the 1992 Conventions.

The assessments of many of the remaining claims from the communes have been hampered by insufficient information in support of the claims. It is understood that most of these communes will also submit claims to the French Government under Plan Polmar for their additional costs. Before these claims can be settled it has to be verified that the same items of expenditure are not claimed under both the 1992 Conventions and Plan Polmar.

Other sources of funds

The French Government established a procedure under which claimants whose claims have been approved by the 1992 Fund and Steamship Mutual could obtain advance payments from the Banque du développement des petites et moyennes entreprises (BDPME) (Small and Medium Enterprise Development Bank). The Bank has not made any advances. It appears that since Steamship Mutual and the 1992 Fund pay 50% of the approved amount of the individual claims, it is unlikely that this procedure for advances will be used.

The French Government also introduced a scheme to provide emergency payments in the fishery sector. This scheme is administered by OFIMER (Office national interprofessionnel des produits de la mer et de l'aquaculture), a government agency attached to the French Ministry of Agriculture and Fisheries. OFIMER may make payments to claimants of up to FFr200 000 (£19 200) on the basis of its own assessment of the losses, without consultation with Steamship Mutual and the 1992 Fund. OFIMER has stated that it bases its assessments on the criteria laid down in the 1992 Fund's Claims Manual. As at 31 December 2000 OFIMER had paid FFr18.7 million (£1.8 million) to claimants in the fishery sector and FFr12.5 million (£1.2 million) to salt producers.

In August 2000 the French Government established a procedure for extension of the periods for payment of taxes and social security charges and for advance payments through BDPME to claimants in the tourism sector facing financial difficulties. This scheme is administered by special committees set up in each of the five Départements affected by the oil spill.

Publicity campaigns

The French Government, through the Ministry of Tourism, has been carrying out a co-ordinated campaign to counteract the negative impact of the *Erika* incident on tourism in the affected area. The campaign has consisted mainly of press and television advertising and mail marketing activities directed at travel operators, and has been targeted at specific foreign markets. A television advertising campaign for the French domestic market has also been undertaken. In order to avoid internal competition, the campaigns have been aimed at restoring the image of the Atlantic coast as a whole. The purpose of these campaigns has also been to provide support for the various regions and Départements which are carrying out their own promotional activities targeting the French market.

Level of payments

Undertakings by Total Fina and the French Government

In a letter to the 1992 Fund Total Fina undertook not to pursue against the 1992 Fund or against the limitation fund constituted by the shipowner or his insurer the claims relating to the cost of any inspections and the operations in respect of the wreck, if and to the extent that the presentation of such claims would result in the total amount of all claims arising out of this incident exceeding the maximum amount of

compensation available under the 1992 Conventions, ie 135 million SDR. Total Fina made a corresponding undertaking in respect of the cost of the collection and disposal of the oily waste generated by the clean-up operations, of the cost of its participation in the beach clean-up up to a maximum of FFr40 million and of the cost of a publicity campaign to restore the touristic image of the Atlantic coast up to a maximum of FFr30 million.

The French delegation informed the Committee at its April 2000 session that the French Government also undertook not to pursue claims for compensation against the 1992 Fund or the limitation fund established by the shipowner or his insurer if and to the extent that the presentation of such claims would result in the maximum amount available under the 1992 Conventions being exceeded. The delegation stated that this undertaking covered all the expenses incurred by the French State in combating the pollution, *inter alia* those expenses falling within the framework of Plan Polmar, including expenses incurred by local authorities paid or reimbursed through Plan Polmar. That delegation also stated that the undertaking also covered all measures that the State might take in different sectors to reduce the consequences of the incident, including any publicity campaigns to this effect. That delegation made the point that the French Government's claims would rank before any claims by Total Fina if funds were available after all other claims had been paid in full.

Consideration by the Executive Committee

At its sessions in February and April 2000, the Executive Committee considered whether and, if so, to what extent, the 1992 Fund should make payments in respect of the *Erika* incident.

The Committee recalled that the Assembly had taken the view that - like the 1971 Fund - the 1992 Fund should exercise caution in the payment of claims if there was a risk that the total amount of the claims arising out of a particular incident might exceed the total amount of compensation available under the 1992 Civil Liability Convention and the 1992 Fund Convention, since under Article 4.5 of the 1992 Fund Convention all claimants have to be given equal treatment. It was also recalled that the Assembly had expressed the view that it was necessary to strike a balance between the importance of the 1992 Fund's paying compensation as promptly as possible to victims of oil pollution damage and the need to avoid an over-payment situation.

The Executive Committee considered that it was not possible at that session to make a meaningful estimate of the total amount of the established claims and that this applied in particular to the claims in the fishery and tourism sectors. In view of this uncertainty, the Committee decided, therefore, that the Director's authority to make payments should for the time being be limited to provisional payments under the 1992 Fund's Internal Regulations.

The level of payments was reviewed at the Executive Committee's July 2000 session. The Committee considered estimates of the total amount of the established claims and took note of the result of an extensive study carried out in June 2000 within the French Ministry of Economy, Finance and Industry on the extent of the damage caused by the *Erika* incident on the tourism industry. In the study the total amount of the admissible claims in the tourism sector was estimated to fall within the range of FFr800 - 1 500 million (£80 - 150 million).

In view of the uncertainty as to the total amount of the claims arising from the *Erika* incident, the Executive Committee decided that the payments by the 1992 Fund should be limited to 50% of the amount of the loss or damage actually suffered by the respective claimants, as assessed by the 1992 Fund's experts.

The Executive Committee reviewed again the level of payments at its October 2000 session taking note of a further study carried out in October 2000 within the Ministry of Economy, Finance and Industry. The latest study had found that the tourist season in 2000 had turned out better than expected and that the total amount of the losses in the tourism sector

admissible for compensation could be estimated at FFr1 096 million (£105 million), representing a considerable reduction of the potential risk assessed in the earlier study. The report on the study concluded that, on the basis of the most recent data, the level of compensation payments could be increased while still maintaining a safety margin. The October 2000 report suggested that, on the assumption that the claims from the sectors other than tourism would amount to FFr300 million (£29 million) (which in the view of the public bodies involved would be on the high side), and adding an extra safety margin of FFr200 million (£19 million) in the tourism sector, the total amount of the admissible claims would reach FFr1 600 million (£153 million). It was maintained in the report that this would allow the 1992 Fund to increase the level of payments to 75% and that if the level of payments were increased to 60%, the safety margin would be FFr600 million (£56 million).

The Committee noted that the 1992 Fund's experts had expressed the view that the October 2000 study provided a valuable follow-up to the June 2000 study and that it was particularly valuable that the statistical data for the period January - August 2000 had been made available, thus covering the main tourist season. It was noted that the 1992 Fund's experts had stated that they broadly agreed with the interpretations made and the conclusions drawn in the October 2000 study but that they had expressed reservations as regards two of the assumptions used in the study which might have led to an underestimate of the potential admissible losses. The first reservation was that the calculations in the October 2000 study had been based on tourism spending in 1999 and had not taken into account the fact that in the assessment of individual claims the 1992 Fund had taken into account proven trends of continued growth which might have led to turnover figures higher than those used in the October 2000 study. The second reservation was that the assumptions made for estimating the losses for types of accommodation other than hotels and camping sites might result in these losses being underestimated.

The Committee decided that, in view of the continuing uncertainty as to the total amount of the claims arising from the *Erika* incident, the level of payments should be maintained at 50%. It was also decided that the payment level should be reviewed at the session in January 2001.

Erika: beach clean-up

Admissibility of claims

At its October 2000 session the Executive Committee considered a number of claims for pure economic loss, ie loss of earnings suffered by persons where property had not been contaminated.

Fish trader in Spain

A claim had been presented by a seller of fish and shellfish located in the Basque country in Spain. The claimant had stated that he imported goose barnacles from one supplier in Brittany and sold them to customers (restaurants, hotels, markets) in Bilbao in Spain and that he had been deprived of his supply as a result of the *Erika* incident. The claimant had maintained that the sales of the produce from Brittany represented some 80% of his turnover.

The Committee agreed with the Director that the claimant appeared to be economically dependent to a high degree on the produce from the area affected by the oil spill and might have had only limited possibilities of replacing the supply from the affected area by other supplies. The Committee took the view, however, that since the claimant's business was located some 800 kilometres from the area affected by the pollution there was no geographic proximity between the claimant's activity and the contamination and that the claimant's business could not be considered as forming an integral part of the economic activity within the area affected by the *Erika* oil spill. For these reasons, the Committee considered that there was not a reasonable degree of proximity between the contamination and the alleged losses and that the claim should be rejected.

Businesses within the affected area

The Executive Committee considered claims by a fishmonger, a fish trader, an itinerant fish trader and a fish merchant who carried out their activities within the area affected by the spill.

The Committee took the view that these claims fulfilled the criterion of geographic proximity and that the claimants' businesses formed an integral part of the economic activity within the area affected by the spill. The Committee noted that the claimants received their supplies or part of their supplies from the area affected by the spill but had not experienced any significant difficulty in obtaining supplies and that the alleged losses were caused by market resistance. The Committee nevertheless considered that since the area had been affected by the spill, the alleged losses resulting from market resistance should be considered as damage caused by contamination. The Committee decided therefore that these claims should be considered admissible in principle.

Manufacturer of fishing equipment

A manufacturer of nets and other fishing equipment had claimed compensation for reduction in sales. The claimant's business was located some 100 kilometres south of the area affected by the oil spill. A considerable part of his sales were to businesses, which in their turn sold nets and other fishing equipment to fishermen operating in the area affected by the oil spill. The claimant had maintained that his customers had reduced their purchases during the period following the *Erika* incident.

The Committee considered that, since the claimant's activity was located some distance outside the area affected by the oil spill, his business could not be considered an integral part of the economic activity in the affected area and that there was therefore not a reasonable degree of proximity between the alleged losses and the contamination. The Committee also took the view that there had not been any general ban imposed on fishing which could have caused a reduction in the sales of the claimant's products. The Committee therefore decided that the claim should be rejected.

British holiday group

A British-based holiday company, which was part of a major tour operator in the United Kingdom, had notified the 1992 Fund of its intention to submit a claim in respect of financial losses suffered as a result of the incident. The company owned mobile homes at various sites along the coastline affected by the *Erika* oil spill, as well as in other locations in continental Europe. The company had

maintained that it had taken all opportunities to relocate business from the affected area, but that the incident had nevertheless resulted in a substantial loss in terms of holidays sold and margins achieved. The company had stated that the mobile home industry on the French Atlantic coast was a major part of its activity and that it employed a significant number of local people to install and maintain its facilities.

The Committee considered that although the company was based in the United Kingdom, part of its business activity was undertaken in the affected area. The Committee took the view that, given that the company owned and operated mobile homes in the affected area, there was geographic proximity between the claimant's activity and the contamination. The Committee also considered that by employing significant numbers of local people the part of the company's business should be considered as forming an integral part of the economic activity of the area affected by the *Erika* oil spill. It further noted that although the company had alternative sources of income, it would appear that its sites on the French Atlantic coast represented a major part of its business and that the company was economically dependent on this activity. The Committee decided, therefore, that a claim submitted by the company for losses suffered in the business carried out in the affected area should be considered admissible in principle.

Request by a committee of shellfish producers for contribution to the cost of a publicity campaign

Le Comité National de la Conchyliculture (CNC) (the national committee of shellfish producers) had requested the 1992 Fund to contribute to the cost of a publicity campaign to restore the confidence of French consumers in oysters, thereby preventing potential losses by the CNC's members as a result of market resistance, in particular during the critical period over Christmas and New Year 2000/2001.

The Director had informed the CNC at an early stage that the 1992 Fund did not normally accept claims for measures to prevent pure economic loss until they had been carried out and that the 1992 Fund was reluctant to grant advance payments for such measures, since it would not take on the role of a claimant's banker.

On the advice of a French consulting firm specialising in marketing and cost control of publicity campaigns, the Director commissioned Ipsos, one of the leading French institutes for opinion research, to investigate the attitude of French consumers to oysters in the aftermath of the *Erika* incident. The questions to be used were drafted after consultation with the CNC. An opinion poll was carried out over the weekend of 7 and 8 October 2000 in the form of telephone interviews with 1 025 persons representative of the French population. The main result of the opinion poll was that 88% of those questioned who ate oysters had considered generally that they would eat oysters as normal during the coming months, and in particular during the Christmas/New Year season. Eighty-nine percent of those questioned who ate oysters had stated that they had confidence in the health control put in place by the authorities and that 78% of them had considered that it was not risky to eat oysters.

The CNC was given access to the results of the poll and did not agree with the interpretation of the data, drawing attention to the fact that 50% of the people who ate oysters had expressed the view that the *Erika* incident had had an impact on the quality of oysters and that 20% of those people had stated that it was risky to eat oysters.

In the light of the result of the poll, the Director informed the CNC that he did not consider that the proposed publicity campaign to counteract market resistance was justified.

At its October 2000 session, the Executive Committee endorsed the position taken by the Director in respect of the CNC's request.

The French delegation asked whether the 1992 Fund would reconsider its position if the CNC were able to provide further information justifying its request. The Director stated that in his response to the request by the CNC he had

addressed not only the issue of whether the 1992 Fund would be prepared to grant an advance but that he had also taken the view that, in the light of the results of the opinion poll carried out by Ipsos, the marketing campaign was not justified. The Director confirmed that the 1992 Fund would be prepared to reconsider its position in the light of new information.

Claim by the Tourism Committee of the Department of Vendée

The Tourism Committee of the Department of Vendée (Comité Départemental du Tourisme de Vendée (CDT)) had submitted a claim for FFr10.2 million (£950 000) in respect of the cost of a publicity campaign to restore the confidence of traditional Vendée tourists in the area following the clean-up of the polluted beaches and in response to extensive negative media coverage of the spill. The Vendée is an important tourist destination with an annual tourism spend of FFr5 500 million (£500 million).

The Executive Committee noted that the beaches of Vendée had been contaminated by the oil spill and had been the subject of negative media coverage following the spill. The Committee considered that it was reasonable for the CDT to undertake a publicity campaign in an attempt to mitigate potential losses in the tourism industry and noted that in the view of the experts engaged by the 1992 Fund and the Steamship Mutual, the claim was very well documented. The Committee also noted the experts' view that the costs incurred, which represented only 1.8% of the reduction in tourism spending that might have resulted if the number of visitors had dropped by 10%, were reasonable and not disproportionate to the potential losses that the campaign was intended to mitigate. The Committee noted that as a result of the high level of knowledge of Vendée's tourism client base, the CDT had been able to target accurately its campaigns on actual markets and considered that the measures therefore offered a reasonable chance of success at the time they were undertaken. For these reasons the Committee decided that the claim for the costs of the publicity campaign undertaken by CDT fulfilled the criteria for admissibility and that the claim should therefore be considered admissible in principle.

Cause of the incident

The French Permanent Enquiry Commission for Incidents at Sea (Commission Permanente d'enquête sur les événements de Mer) carried out an investigation into the cause of the *Erika* incident. A preliminary report was published on 13 January 2000. The Commission's final report was published on 18 December 2000.

The Maltese authorities have also carried out an investigation into the cause of the incident. The report on this investigation was published in October 2000.

The 1992 Fund's lawyers and the Fund's technical experts are studying the reports by the French Enquiry Commission and the Maltese authorities.

A criminal investigation into the cause of the incident is being carried out by the Tribunal de Grande Instance in Paris. Charges have been brought against the master of the *Erika*, the representative of the registered owner (Tevere Shipping), the president of the management company (Panship Management and Services Srl), the management company itself, the deputy manager of Centre Régional Opérationnel de Surveillance et de Sauvetage (CROSS), three officers of the French Navy who were responsible for controlling the traffic off the coast of Brittany, the classification society (RINA) and one of RINA's managers.

At the request of a number of parties, the Tribunal de Commerce in Dunkirk appointed experts to investigate the cause of the incident ('expertise judiciaire'). The Court decided that the investigation should be carried out by a panel of four experts. Most of the interested parties have participated in the proceedings.

The 1992 Fund is following the investigations carried out by the courts in Paris and Dunkirk through its French lawyers and technical experts.

Limitation proceedings

At the request of the shipowner, the Tribunal de Commerce in Nantes issued an order on 14 March 2000 opening the limitation proceedings. The Court determined the limitation amount applicable to the *Erika* at FFr84 247 733 (£8.4 million) and declared that the shipowner had constituted the limitation fund by means of a letter of guarantee issued by the Steamship Mutual.

Nomination of court experts for evaluation of the damage

Under French law a person who has suffered damage is entitled to a court survey (expertise judiciaire) for the purpose of assessing his loss.

In April 2000 the Conseil Genéral de Vendée and 47 other claimants requested that the experts appointed by the Tribunal de Grande Instance in Sables d'Olonne should be instructed to evaluate the damage by contamination of the affected sectors, in particular fisheries, the tourism industry, municipalities, départements and regions. They also requested that the Court should order the 1992 Fund to intervene in the proceedings. The request was made not by the individual claimants in the fishery and tourism sectors but by regional public bodies.

At a court hearing the 1992 Fund stated that it did not object in principle to being forced to intervene in the proceedings. However, the Fund did not agree to the proposed extended mandate for the court experts. The Fund made the point that if the Court were to give the experts the proposed mandate this would impose a considerable workload on them. The Fund informed the Court that the proposed task, ie to assess the losses suffered by all victims, was exactly the task carried out by the experts engaged by Steamship Mutual and the 1992 Fund. Attention was drawn to the Fund's established policy to endeavour to reach out-of-court settlements. The Fund requested that the proposed mandate of the experts should be modified to the effect that the experts should make an evaluation of the damage only at the specific request of the individual victims in order to avoid interference with the claims handling carried out through the Claims Handling Office in Lorient. In May 2000 the Court in Sables d'Olonne decided in accordance with the Fund's request.

Corresponding requests were made by communes in Loire Atlantique and Charente Maritime to the administrative courts in Nantes and Poitiers. The Courts appointed the same experts as those already appointed by the Tribunal de Grande Instance in Sables.

The court experts held their first meetings in early December 2000.

Actions in France against Total Fina, the shipowner and others

In April and May 2000 a number of public and private bodies brought actions in various courts in France against the following parties and requested that the Court should hold the defendants jointly and severally liable for any damage not covered by the 1992 Civil Liability Convention:

- Total Fina SA
- Total Raffinage Distribution SA
- Total International Ltd
- Total Transport Corporation
- Tevere Shipping Co Ltd (the registered owner of the *Erika*)
- Steamship Mutual
- Panship Management and Services Srl (the company operating the *Erika*)
- RINA (Registro Italiano Navale) (the *Erika*'s classification society

The plaintiffs have maintained that Tevere Shipping Company Ltd and Panship had unlimited liability, due to the fact that the *Erika* was unseaworthy. It has been argued that RINA had not fulfilled its obligations to survey and monitor the *Erika* and, by allowing the vessel to go to sea on 24 November 1999 knowing that repairs were urgently needed, had deliberately taken a risk knowing that damage would occur. As for Total, the plaintiffs have stated that Total had chartered a vessel which was 25 years old and for which the class certificate had expired. They have also maintained that Total had failed

to inspect the vessel properly and that ultimately Total had not taken the necessary measures during the 24 hours immediately preceding the incident to ensure salvage of the *Erika*.

The 1992 Fund has requested to be allowed to intervene in the proceedings. So far only procedural hearings have been held.

In June 2000 the commune of Mesquer in Loire-Atlantique brought legal proceedings against the Group Total Fina in the Tribunal de Commerce de Saint Nazaire on the ground that the product carried by the *Erika* was to be considered as waste and that Total Fina should therefore be liable for any damage caused by this product. The Fund considered that, since this action fell outside the scope of the 1992 Conventions, the 1992 Fund should not intervene in the proceedings.

In a judgement rendered in December 2000, the Tribunal de Commerce de Saint Nazaire rejected the action. The Court held that in order to be considered as waste a substance or product must be intended for abandonment and that this was not the case in respect of the fuel oil N°2 carried on board the *Erika* which had been sold by Total International to an Italian company.

Action in Italy by RINA Spa/Registro Italiano Navale

In late April 2000 RINA SpA and Registro Italiano Navale[4] brought legal action in the Court of Syracusa (Augusta section) (Italy) against the following defendants:

- Tevere Shipping Co Ltd
- Panship Navigational and Services Srl
- Steamship Mutual
- Conseil Général de la Vendée
- Total Fina SA
- Total Fina Raffinage Distribution SA
- Total International Ltd
- Total Transport Corporation
- Selmont International Inc
- The 1992 Fund
- The French State

RINA SpA and Registro Italiano Navale requested that the Court should declare that they were not liable, jointly or severally or alternatively, for the sinking of the *Erika* and for the pollution of the French coast, or for any other consequence of the incident whatsoever.

The plaintiffs also requested that, in the event that they were to be held liable and that there was a link of causation between this hypothetical liability and the consequences of the incident, the Court should declare that they would not have any obligation to pay compensation towards any of the defendants on any ground whatsoever, either directly or indirectly or by way of recourse. They also requested that the Court should declare that this hypothetical liability would be limited as provided in the applicable Rules of the plaintiffs[5].

In the submission to the Court the plaintiffs stated that Registro Italiano Navale classed the *Erika* in August 1998 and that RINA had carried out an annual survey of the *Erika* which commenced on 16 August 1999 in Genoa (Italy) and had been completed on 24 November 1999 in Augusta (Italy). The plaintiffs stated that since various parties had made public their intention to involve RINA for omissions during a survey on 24 November 1999, they had an interest in obtaining as soon as possible a judgement declaring them not liable for the incident and its consequences, maintaining that there was no link of causation between any conduct of the plaintiffs and the incident.

The plaintiffs have maintained that the Italian Courts are competent in accordance with Article 5.3 of the 1968 Brussels Convention on Jurisdiction and Enforcement of Judgements in Civil and Commercial Matters, which provides that a person domiciled in a Contracting State may in another Contracting State be sued in matters relating to tort, delict or quasi delict, in the courts of the place where the harmful event occurred.

The plaintiffs have argued that the channelling provisions in Articles III.1 and III.4 of the 1992

[4] *According to the plaintiffs, RINA SpA replaced Registro Italiano Navale as the Italian classification society on 1 August 1999.*

[5] *These Rules provide: In no case shall the liability of RINA, regardless of the amount of the claimed damages, exceed the value equal to five times the total of the fees received by RINA as consideration of the services rendered from which the damage derives.*

Civil Liability Convention preclude any liability of classification societies. They have also maintained that it has been established by English and American leading cases that the shipowner is the only party responsible for the operation, maintenance and seaworthiness of the vessel and that no such liability can lie with the classification society which is neither the guarantor nor the underwriter of the classed vessel.

The first court hearing was held on 4 December 2000. Only procedural issues were dealt with at the hearing. The Court ordered the parties to submit pleadings on a specific procedural issue, ie whether the plaintiffs' action was a nullity due to the fact that the plaintiffs had not given sufficient details on the grounds of their action.

Action by the 1992 Fund against RINA Spa and Registro Italiano Navale

In order to protect the 1992 Fund's position, the Fund had filed legal actions against RINA SpA and Registro Italiano Navale in the Tribunal de Commerce in Vannes, the Tribunal de Commerce in La Roche sur Yon and the Tribunal de Commerce in Lorient, requesting the Courts to join the 1992 Fund in the proceedings commenced by the Conseil Général de Morbihan and others. The 1992 Fund requested that the Courts should suspend the proceedings until the results of the various investigations into the cause of the incident had been completed. The 1992 Fund emphasised that its actions were of a protective nature and that the Fund reserved its right to present at a later stage claims against the two defendants for reimbursement of any amounts which the Fund might have paid under the 1992 Conventions to victims of oil pollution damage and that the Fund had also reserved its right to take similar actions against any other party which might be liable in the light of the results of the investigations into the cause of the incident.

There has been no development in respect of the legal actions taken by the 1992 Fund during 2000.

Criticisms against the 1992 Fund

The 1992 Fund and the international compensation regime have been subject to severe criticism in France. The criticism, which was aired by cabinet ministers, other politicians and various bodies and individuals, can be summarised as follows.

It has been stated that the total amount of compensation of 135 million SDR (FFr1 200 million) fixed in the 1992 Fund Convention is unacceptably low and that the Fund should take steps to ensure that more money is available. It has been maintained that it is unacceptable that early claimants have their payments pro-rated and that the problem of equal treatment of early and late claimants is for the 1992 Fund to solve. It has been maintained that the claims settlement is far too slow, as evidenced by the very low amount paid. The Fund's policy of requiring claimants to substantiate their losses by supporting documents or other evidence has also been criticised, and it has been argued that the criteria applied by the Fund are too strict.

In his contacts with the media and representatives of the public and private sectors the Director has explained the main features of the international regime based on the 1992 Conventions. He has stated that the 1992 Conventions have been agreed between a number of States, including France, that the Conventions have been approved by the Assemblée Nationale and the Sénat and that they form part of French domestic law. He has made the point that the maximum amount available was decided by Governments when the Conventions were adopted and that the 1992 Fund has no legal possibility of increasing this amount for the *Erika* incident. He has pointed out that under the 1992 Fund Convention the 1992 Fund has a legal obligation to ensure that, to the extent possible, all claimants are treated equally and that, if the total amount of all established claims exceeds the total amount available for compensation, all claimants must

receive the same percentage of the approved amounts of their respective claims. He has also explained that the criteria for the admissibility of claims have been determined by the representatives of the Governments of Member States, including the requirement that claimants should substantiate their losses by the production of supporting documents and other evidence.

15.7 AL JAZIAH I

(United Arab Emirates, 24 January 2000)

See pages 90 to 92.

15.8 SLOPS

(Greece, 15 June 2000)

The incident

The Greek-registered waste oil reception facility *Slops* (10 815 GT) laden with some 5 000 m^3 of oily water, of which 1 000 – 2 000 m^3 was believed to be oil, suffered an explosion and caught fire at an anchorage in the port of Piraeus (Greece). One worker onboard died and two others were injured. Two vessels near the *Slops* caught fire from flying burning debris. An unknown but substantial quantity of oil was spilled from the *Slops*, some of which burned in the ensuing fire.

It appears that the *Slops* had no liability insurance in accordance with Article VII.1 of the 1992 Civil Liability Convention.

Port berths, dry docks and repair yards to the north of the anchorage were impacted before the oil moved southwards out of the port area and stranded on a number of islands, including the north coast of Egina island, some 11 nautical miles south of the port. A local contractor was engaged by the owner of the *Slops* to undertake clean-up operations at sea in conjunction with the Hellenic Coastguard. The same contractor undertook shoreline clean-up operations, focusing on sensitive tourist areas.

Applicability of the 1992 Civil Liability Convention and the 1992 Fund Convention

The *Slops*, which was registered with the Piraeus Ships Registry in 1994, was originally designed and constructed for the carriage of oil in bulk as cargo. In 1995 it underwent a major conversion in the course of which its propeller was removed and its engine was deactivated and officially sealed. It has been indicated that the purpose of the sealing of the engine and the removal of the propeller was to convert the status of the craft from a ship to a floating oily waste receiving and processing facility. Since the conversion the *Slops* appears to have remained permanently at anchor at its present location and has been used exclusively as a waste-oil storage and processing unit, the product being sold as low-grade fuel oil.

The question arose as to whether the craft fell within the definition of 'ship' under the 1992 Civil Liability Convention and the 1992 Fund Convention. The Executive Committee considered this issue in July 2000.

The definition of 'ship' in Article I.1 of the 1992 Civil Liability Convention, which is incorporated in the 1992 Fund Convention, is set out on page 87 above.

The Executive Committee recalled that the 1992 Fund Assembly had decided that offshore craft, namely floating storage units (FSUs) and floating production, storage and offloading units (FPSOs), should be regarded as ships only when they are carrying oil as cargo on a voyage to or from a port or terminal outside the oil field in which they normally operated. The Committee noted that this decision had been taken on the basis of the conclusions of the Second Intersessional Working Group that had been set up by the Assembly to study this issue. The Committee also noted that although the Working Group had mainly considered the applicability of the 1992 Conventions in respect of craft in the offshore oil industry, there was no significant difference between the storage and processing of crude oil in the offshore industry and the storage and

processing of waste oils derived from shipping. It was further noted that the Working Group had taken the view that in order to be regarded as a 'ship' under the 1992 Conventions, an offshore craft should *inter alia* have persistent oil on board **as cargo or as bunkers**.

A number of delegations expressed the view that since the *Slops* was not engaged in the carriage of oil in bulk as cargo it could not be regarded as a 'ship' for the purpose of the 1992 Conventions. One delegation pointed out that this was supported by the fact that the Greek authorities had exempted the craft from the need to carry liability insurance in accordance with Article VII.1 of the 1992 Civil Liability Convention.

The Committee decided that, for the reasons set out above, the *Slops* should not be considered as a 'ship' for the purpose of the 1992 Civil Liability Convention and 1992 Fund Convention and that therefore these Conventions did not apply to this incident.

15.9 NATUNA SEA

(Indonesia, 3 October 2000)

See pages 92 to 95.

ANNEXES

ANNEX I

STRUCTURE OF THE IOPC FUNDS

1992 FUND GOVERNING BODIES

ASSEMBLY

Composed of all Member States

5th session

Chairman: Mr W Oosterveen (Netherlands)
Vice-Chairmen: Professor H Tanikawa (Japan)
Mr J Aguilar Salazar (Mexico)

EXECUTIVE COMMITTEE

6th - 9th sessions

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

Canada
Denmark
France
Germany
Greece
Latvia
Liberia
Marshall Islands
Mexico
Republic of Korea
Singapore
Spain
Tunisia
United Kingdom
Venezuela

10th session

Chairman: Mr G Sivertsen (Norway)
Vice-Chairman: Captain P San Miguel (Venezuela)

Algeria
Australia
Canada
Croatia
France
Germany
Ireland
Japan
Latvia
Marshall Islands
Netherlands
Norway
Singapore
Vanuatu
Venezuela

1971 FUND ADMINISTRATIVE COUNCIL

Composed of all Member States and former Member States

1st session

Chairman:	Dr M Baradà (Italy)
Vice-Chairman:	Mr V Knyazev (Russian Federation)

2nd session

Chairman:	Mr V Knyazev (Russian Federation)
Vice-Chairman:	Mr R Musa (Malaysia)

JOINT SECRETARIAT

Officers

Director:	Mr M Jacobsson
Legal Counsel:	Mr S Osanai
Head, Claims Department:	Mr J Nichols
Claims Managers:	Ms S Gregory (until 29 November 2000) Mr J Maura Ms L Plumb (from 1 December 2000)
Head, Finance & Administration Department:	Mr R Pillai
Finance Officer:	Mrs P Binkhorst-van Romunde
IT Officer:	Mr R Owen
Head, External Relations & Conference Department:	Ms H Warson
Acting Head, External Relations & Conference Department:	Ms C Grey
Senior French Translator/Reviser:	Mrs M Sirgent

AUDITORS OF THE 1992 FUND AND THE 1971 FUND

Comptroller and Auditor General
United Kingdom

ANNEX II

NOTE ON 1971 AND 1992 FUNDS' PUBLISHED FINANCIAL STATEMENTS

The financial statements reproduced in Annexes V to VIII and XI to XIV 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 1999, approved by the Administrative Council of the 1971 Fund at its 2nd session acting on behalf of the 1971 Fund Assembly and by the Assembly of the 1992 Fund at its 5th session.

EXTERNAL AUDITOR'S STATEMENT

The extracts of the financial statements set out in Annexes V to VIII and XI to XIV are consistent with the audited financial statements of the International Oil Pollution Compensation Funds 1971 and 1992 for the year ended 31 December 1999.

R Maggs
Director
for the Comptroller and Auditor General
National Audit Office, United Kingdom
31 January 2001

ANNEX III

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 1999

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 twenty first financial period ended 31 December 1999. My examination was carried out with due regard to the provisions of the 1971 Fund Convention and to Regulation 13 of the Financial Regulations. My audit has been conducted in conformity 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, comprised of the Director and his appointed staff, were responsible for preparing these financial statements, and I am responsible for expressing an opinion on them, based on evidence obtained in my audit.

2 Following this introduction, my report is set out as follows:

Part 2 – Follow up Comments

3 This section (paragraphs 11 to 20) sets out my comments on action taken by the Secretariat in response to previous external audit recommendations.

Part 3 – An Executive Summary

4 This section (paragraphs 21 to 27) summarises the main conclusions and recommendations arising from my 1999 audit.

Part 4 – Detailed Findings

5 This section (paragraphs 28 to 47) details my findings in 1999 relating to:

- Claims expenditure
- Investment and cash management
- Other financial matters

Audit Objective

6 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 1999 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 1999.

Audit Approach

7 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.

8 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.

9 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 Four of this report.

Overall Results

10 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. Accordingly, I have placed an unqualified opinion on the financial statements for 1999. Without qualifying my audit opinion I have also drawn the Assembly's attention in my audit opinion to Note 1(b) of the financial statements, see paragraphs 12 and 13 below.

PART TWO – ACTION TAKEN BY THE SECRETARIAT IN RESPONSE TO MY PREVIOUS YEAR'S AUDIT RECOMMENDATIONS

11 In my 1998 report I made a number of observations and recommendations concerning the winding up of the 1971 Fund. In particular, I addressed issues relating to whether the Fund was a going concern, its resources management, the nature of its working capital and the eventual liquidation of the Fund.

Going Concern

12 In my 1998 report, I considered those factors which indicated that the 1971 Fund would continue to meet its financial obligations for the foreseeable future.

13 I have now re-reviewed the situation as at 31 December 1999 and for the coming year. As described in Note 1(b) of the financial statements, there has been a significant fall in the number of contributors in member states, and of the corresponding amounts of reported oil quantities, upon which contributions are based. All existing liabilities for past incidents are covered by current investments and cash holdings or the reasonable expectation that contributors in the member states remaining at the time of the incident will continue to pay contributions so as to enable the Fund to meet compensation claims. However, should a major incident occur in future there is no certainty that the contributors in the remaining member states will be able to fund compensation claims arising from the incident. In these circumstances the Fund would no longer be financially viable and the going concern assumption, upon which the financial statements have been prepared, would no longer be applicable.

Resources Management

14 In the circumstances of the falling membership I recommended that there could be a need to:

- restrict inter-fund borrowing between Major Claims Funds to those incidents where the same contributors are involved; and
- allocate the extensive cash holding of the 1971 Fund to named bank accounts, which are designated to funding only claims for specific incidents where the same contributors are responsible for the payment of these claims.

15 The Director has responded that up to the end of the transitional period between the 1971 and 1992 Funds on 15 May 1998, contributors to the major claims were largely identical and there was a sufficient contribution base for future levies. However, the Director has stated that loans will not be made between Major Claims Funds relating to incidents prior to 15 May 1998 and Major Claims Funds relating to incidents after 15 May 1998, nor between Major Claims Funds of the second group, nor from the General Fund to Major Claims Funds of either group.

16 Concerning the establishment of separate bank accounts, the Director believes that adequate records are maintained and does not consider it necessary, at present, to hold the funds allocated to the individual incidents in separate accounts.

Working Capital

17 As the size of the Fund's available working capital is included in the calculation of the level of future contributions, I recommended that the Secretariat should closely monitor the adjustments that would be necessary to the working capital in a winding up situation. For example, in adjusting amounts receivable to take into account the fact that the Fund makes no provision against the possible non-payment of outstanding contributions.

18 The Director has responded that as by the end of 2000 there will only be a handful of major contributors left in the 1971 Fund, there would be merit in evaluating the extent to which the contributors in the remaining member states will be in a position to fulfil their obligations to the 1971 Fund.

19 I also recommended that the Secretariat should seek the Assembly's early decision on what practical methods are available for reducing and ultimately distributing the working capital fund back to contributors in member states. The Director has replied that the Secretariat will continue to seek the Governing Body's decision on the appropriate method to be used.

Liquidation of the 1971 Fund

20 I strongly recommended that the Governing Body consider the need ultimately to appoint a Liquidator to take over the administration of the 1971 Fund, including its and any resulting bodies' eventual liquidation. On this matter the Director is awaiting the results of the consultations which he has set in motion with the Fund's solicitors.

PART THREE – EXECUTIVE SUMMARY

21 This executive summary outlines the main observations and recommendations arising from the detailed findings provided in Part Four of my report.

Claims Expenditure

22 As part of my review of claims expenditure my staff visited the *Nakhodka* local claims office operated by General Marine Surveyors (GMS) as well as the offices of Cornes and Co Ltd, who specifically dealt with the tourist industry claims arising from this incident.

23 With regard to the claims processed by Cornes & Co Ltd, I was pleased to note the consistent and systematic approach to the claims calculations, which were also subject to oversight by L and R Management Consultants (UK). However, I **recommend** that there should be established for each incident, and as the claims situation becomes clearer, the overall principles for the settlement of tourist claims, covering such factors as extent of area affected, duration of the claim and calculation methodology. In order to reduce duplicated efforts of those involved, I also **recommend** that standard calculation submission forms should be used, which would have

supporting notes covering the methodology and supporting evidence to be supplied in the claims calculation.

24 With regard to the processing of all other claims categories by GMS I found some weaknesses in the quality of their filing and documentation. To overcome this I **recommend** that the standard database currently being developed to monitor claims processing should include details of and/or cross references to the full history of the individual claims and their review, including supporting documentation/evidence.

25 Despite the number of visits and meetings that have been held by the Fund, staff at GMS felt that outstanding issues could be more quickly resolved if there were more face-to-face meetings, in particular with ITOPF staff and other technical experts. Accordingly, I **recommend** that due consideration is taken to holding such meetings in order to speed-up claims settlement.

Investment and Cash Management

26 My staff undertook a review of the investment and cash management procedures at the Fund, which included an examination of the procedures for determining the cash available to invest and the controls over such investments.

27 Overall, my staff found that the investments and cash management procedures were operating well. However, I **recommend** that the Secretariat should continue to monitor the position carefully to ensure that investments remain properly safeguarded, in particular, in respect to any raising of the maximum limits of the amounts that may be invested at any one financial institution.

PART FOUR – DETAILED FINDINGS

Claims Expenditure

Introduction

28 As well as verifying payments to supporting claims documentation, as part of my 1999 audit, I reviewed whether claims had been treated equally and in accordance with the Fund's Regulations and established procedures, and that claims expenditure was incurred in a cost effective manner, taking into account the Fund's objectives of paying compensation.

Background

29 Total 1971 Fund claims payments in 1999 amounted to £47.3 million. An analysis of this expenditure is shown in Table 1 below:

TABLE 1 – CLAIMS PAYMENTS IN 1999

Incident (date of incident)	Claims payments (£)	Percentage of total
Haven (11.4.91)	28 237 676	59.7%
Nakhodka (2.1.97)	15 299 385	32.3%
Osung N°3 (3.4.97)	1 722 890	3.6%
Sea Empress (15.2.96)	1 009 915	2.1%
Other incidents	1 069 237	2.3%
Total:	**47 339 103**	**100%**

Audit Approach

30 My staff selected and examined a sample of claims and claims related payments made in 1999, covering incidents for which significant payments had been made in the year. They reviewed the associated files and related documents held at the Fund's headquarters in London and interviewed key Secretariat staff, including the Director, the Head of the Claims Department and the Legal Counsel. In addition, they reconciled the payments made on the global settlement of the *Haven* incident and they visited the *Nakhodka* local claims office in Kobe, Japan, in November/December 1999; where they examined the files and supporting documents relating to specific claims payments made in 1999 in respect of the *Nakhodka* incident.

Haven

31 The largest claims expenditure during the year was in respect of the *Haven* incident. My staff have satisfactorily reconciled the amount paid to the global settlement with the Italian state (£24,405,301), payments to the French State and the Principality of Monaco (£1,332,375) and to the UK Club for the indemnification of the shipowner (£2,500,000).

Nakhodka Claims Handling Office

Background

32 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 Ltd (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 and L & R Management Consultants.

33 During the transitional period, when both the 1969/1971 Conventions and the 1992 Convention applied to this incident, the 1971 Fund is liable for payments up to its limit of 60 million Special Drawing Rights (less the amount due from the shipowner under the 1969 Civil Liability Convention), with further payments made under the 1992 Fund. As at 31 December 1999, 457 claims totalling ¥35,068 million (£213 million) had been submitted in respect of both the 1971 and 1992 Funds and £44 million had been paid in respect of the 1971 Fund, as analysed in Table 2 below:

TABLE 2 – NAKHODKA CLAIMS RECEIVED AND PAYMENTS AS AT 31 DECEMBER 1999

Category of Claims	Claims* Total £ (millions)	Payments 1999 £ (millions)	Payments Total £ (millions)
Clean up operations	140	9	38
Causeway construction and removal	15	0	0
Removal of oil from ship	8	2	2
Fishery	32	3	3
Tourism	18	1	1
Total:	**213**	**15**	**44**

(total claims against both the 1971 and 1992 Funds; payments are only in respect of the 1971 Fund)*

34 My staff undertook a visit to the Kobe Claims Office in August 1998 as part of their 1997 audit examination. At that time there had been no payments made to the tourist industry. Such claims, as at 31 December 1999, account for 347 (76 per cent) of the 457 claims submitted. Accordingly, in their second visit to the claims office, in November/December 1999, my staff paid particular attention to such claims payments, as well as test sampling further payments in the other claims categories.

Cornes and Co Ltd

35 My staff visited the offices of Cornes and Co Ltd in order to examine a sample of tourist claims payments. They were pleased to note the consistent and systematic approach to the claims calculations, which were also subjected to oversight by L and R Management Consultants Ltd (UK). Although the Claims Manual lays down the general policy on claims, my staff felt, based on their experience from an earlier visit to another claims office, that there should be established for each incident, and as the claims situation becomes clearer, the overall principles for the settlement of tourism claims. This would include such matters as the extent of tourist areas affected, duration of claim and calculation methodology. Accordingly, I **recommend** that such claims principles be fully documented.

36 My staff observed that the standard calculation approach undertaken by Cornes & Co generally did not follow the various methods used by claimants to calculate the loss that had incurred. In order to reduce the duplicated efforts of those involved, I **recommend**, that, in future, a standard calculation submission form should be utilised, which would have supporting notes covering the methodology and supporting evidence to be employed in the claims calculation.

General Marine Surveyors Ltd (GMS)

37 The remaining claims categories are being dealt with by GMS.

38 In my 1997 report, I referred to the quality of filing and documentation at the GMS. In particular, 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.

39 My staff continued to find difficulties in vetting supporting claims documentation in respect to these matters. However, they understand that the Fund is now developing a standard database for claims processing. In this regard, I **recommend** that the database, which should be used/accessible by HQ, the local solicitors' office and the local claims office, should include full details of and/or cross-references to:

- revisions to the original submitted claim;
- the nature of any requests made by the claims office for supporting documentation;
- details of the nature of the claims office review, including details of visits/meetings at or with claimants and the additional information seen but not copied at that time; and
- details of telephone conversations with claimants, and all correspondence concerning the claim.

40 Although the Secretariat considers that sufficient visits/ meetings were held, GMS personnel felt that issues delaying claims settlements could be more easily resolved if there were more face-to-face meeting, in particular with ITOPF staff and other technical experts. Accordingly, I recommend that due consideration is given to holding such meetings regarding unresolved differences as soon as possible to speed-up claims settlement.

Investment and Cash Management

41 My staff carried out a review of the investment and cash management procedures at the Fund. This included an examination of the procedures for determining the availability of funds to invest and the controls over investments. Overall, my staff found that the investments and cash management procedures were operating well.

42 Decisions about the availability of funds for investment are made following detailed consideration of the amounts required to fund regular administrative expenditure and claims expenditure coming due. All decisions are referred to the Director for final approval.

43 There are two key controls over the investment of funds; a set of approved investment policies and an Investment Advisory Body.

44 The investment policies set out the types of institutions, investments and credit rating that the Funds may invest in. It also sets out the maximum limit that they should hold in any one institution. My staff reviewed the investments held by the Fund and found that they were all in line with the Investment Policy.

45 My staff spoke with the members of the Investment Advisory Body, which is comprised of three external independent professional advisors. Although the Investment Advisory Body is not normally consulted on individual investments, when there are new funds available for investment the Investment Advisory Body are notified and their advice requested. For the existing invested funds the independent advisors provide advice to the Head of Finance and Administration on an ad hoc basis. The investment advice is reviewed and then implemented by the Head of Finance and Administration and his team. There are internal procedures and controls covering the implementation of investment decisions concerning the making and withdrawal of investments.

46 In accordance with the Fund's procedures the normal limit for investment in any one institute should be 25 per cent of the fund's total assets, provided that investments with any one institution should not normally exceed £15 million. However, the Fund has found it increasingly difficult to meet these requirements. This has been caused by the trend of mergers among building societies and banks. So there are now fewer individual institutions with the necessary credit rating to invest in. The Investment Advisory Body has considered whether the amount per institution should be increased but has not yet made a formal recommendation. I recommend that the Secretariat should continue to monitor the position carefully to ensure that investments are properly safeguarded.

Other Financial Matters

Amounts Written Off and Fraud

47 The Secretariat have informed me that there were no amounts written off, or cases of fraud or presumptive fraud during the financial period.

ACKNOWLEDGEMENT

48 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 office in Kobe during the course of my audit.

Sir John Bourn
Comptroller and Auditor General, United Kingdom
External Auditor

ANNEX IV

FINANCIAL STATEMENTS OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1971 FOR THE YEAR ENDED 31 DECEMBER 1999 OPINION OF THE EXTERNAL AUDITOR

To: the Assembly of the International Oil Pollution Compensation Fund 1971

I have audited the appended financial statements, comprising Statements I to VIII, Schedules I to III and Notes, of the International Oil Pollution Compensation Fund 1971 for the year ended 31 December 1999. These financial statements are the responsibility of the Director. My responsibility is to express an opinion on these financial statements based on my audit.

I conducted my audit in accordance with the Common Auditing Standards of the Panel of External Auditors of the United Nations, the Specialised Agencies and the International Atomic Energy Agency as appropriate. Those standards require that I plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining on a test basis evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by the Director, as well as evaluating the overall financial statement presentation.

In my opinion the financial statements present fairly the financial position as at 31 December 1999 and the results of the year then ended; and 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.

Further, in my opinion, the transactions of the 1971 Fund, which I have tested as part of my audit, have, in all material respects, been in accordance with the Financial Regulations and legislative authority.

Without qualifying my opinion I draw attention to Note 1(b) to the financial statements. The Fund's future financial viability is affected by the continued reduction in the number of member states. Although all existing liabilities arising from past incidents are covered either by cash and investment holdings or the reasonable expectation of future contributions from the contributors in existing and past member states, there is no certainty that the Fund could meet the liabilities arising from future major incidents.

In accordance with Financial Regulation 13, I have also issued a long-form Report on my audit of the Fund's financial statements.

Sir John Bourn
Comptroller and Auditor General, United Kingdom
External Auditor

ANNEX V

GENERAL FUND
1971 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 1999

	1999		1998	
	£	£	£	£
INCOME				
Contributions				
Annual contributions/(Refund working capital)		1 649 098		(1 972 491)
Adjustment to prior years' assessment		(37 450)		366 977
		1 611 648		**(1 605 514)**
Miscellaneous				
Miscellaneous income	27 055		5 353	
Income from 1992 Fund	-		60 000	
Transfer from *Senyo Maru* MCF	-		201 533	
Interest on loan to *Vistabella* MCF	18 691		23 353	
Interest on overdue contributions	2 461		3 719	
Interest on investments	529 782		576 220	
		577 989		**870 178**
		2 189 637		**(735 336)**
EXPENDITURE				
Secretariat expenses				
Obligations incurred		891 748		954 789
Claims				
Compensation		174 045		1 455 954
Claims related expenses				
Fees	576 196		881 903	
Travel	9 365		14 951	
Miscellaneous	736		1 506	
		586 297		**898 360**
		1 652 090		**3 309 103**
Income less expenditure		537 547		(4 044 439)
Exchange adjustment		(11 489)		10 797
Excess/(Shortfall) of income over expenditure		**526 058**		**(4 033 642)**

ANNEX VI

MAJOR CLAIMS FUNDS
1971 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 1999

	Haven		*Aegean Sea*	
	1999	**1998**	**1999**	**1998**
	£	**£**	**£**	**£**
INCOME				
Contributions				
Annual contributions (first levy)	-	-	-	-
Annual contributions (second levy)	-	-	-	-
Annual contributions (third levy)	-	-	-	-
Annual contributions (fourth levy)	-	-	-	-
Adjustment to prior years' assessment	-	-	(79 798)	-
Total contributions	**-**	**-**	**(79 798)**	**-**
Miscellaneous				
Interest on overdue contributions	-	-	13	1 049
Interest on investments	592 456	1 785 994	1 965 272	2 546 378
Interest on loans to *Osung N°3* MCF	-	-	238 258	2 729
Interest on loans to *Nakhodka* MCF	-	-	-	50 639
Miscellaneous income	-	-	-	-
Total miscellaneous	**592 456**	**1 785 994**	**2 203 543**	**2 600 795**
TOTAL INCOME	**592 456**	**1 785 994**	**2 123 745**	**2 600 795**
EXPENDITURE				
Compensation	28 237 676	-	-	1 052 359
Fees	405 547	218 943	393 788	239 593
Interest on loan from *Aegean Sea* MCF	-	-	-	-
Interest on loan from 1992 Fund	-	-	-	-
Travel	847	1 667	16 425	9 851
Miscellaneous	8 266	262	478	757
TOTAL EXPENDITURE	**28 652 336**	**220 872**	**410 691**	**1 302 560**
Excess/(shortfall) of income over expenditure	(28 059 880)	1 565 122	1 713 054	1 298 235
Exchange adjustment	(952 825)	928 102	-	-
Prior years' exchange adjustment	-	-	-	-
Balance b/f: 1 January	31 798 545	29 305 321	39 033 430	37 735 195
Balance as at 31 December	**2 785 840**	**31 798 545**	**40 746 484**	**39 033 430**
Amount due to *Aegean Sea* MCF	**-**	**-**	**-**	**-**

Braer		*Keumdong N°5*		*Sea Empress*		*Nakhodka*	
1999	**1998**	**1999**	**1998**	**1999**	**1998**	**1999**	**1998**
£	**£**	**£**	**£**	**£**	**£**	**£**	**£**
-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	29 810 924
-	-	-	-	-	-	7 466 202	-
-	-	-	-	-	-	-	-
-	19 829	-	5 539	95 913	(139 070)	411 743	56 693
-	**19 829**	**-**	**5 539**	**95 913**	**(139 070)**	**7 877 945**	**29 867 617**
309	-	59	-	(1 535)	21 480	45 588	53 238
355 182	430 918	364 172	493 456	1 193 554	1 481 151	302 269	246 571
-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-
-	-	-	-	75	557	-	-
355 491	**430 918**	**364 231**	**493 456**	**1 192 094**	**1 503 188**	**347 857**	**299 809**
355 491	**450 747**	**364 231**	**498 995**	**1 288 007**	**1 364 118**	**8 225 802**	**30 167 426**
-	(3 697)	413 508	-	1 009 915	2 350 654	15 299 385	5 463 564
588 421	245 149	58 964	101 513	377 101	480 353	2 295 875	1 424 910
-	-	-	-	-	-	-	50 639
-	-	-	-	-	-	-	-
9 076	7 399	1 415	-	2 634	2 513	37 836	20 809
580	945	1 034 947	49	513	937	105 704	1 927
598 077	**249 796**	**1 508 834**	**101 562**	**1 390 163**	**2 834 457**	**17 738 800**	**6 961 849**
(242 586)	200 951	(1 144 603)	397 433	(102 156)	(1 470 339)	(9 512 998)	23 205 577
-	-	-	-	-	-	(1 356 116)	1 765 318
-	-	-	-	-	-	-	(384 100)
6 561 979	6 361 028	7 603 635	7 206 202	22 031 946	23 502 285	14 991 454	(9 595 341)
6 319 393	**6 561 979**	**6 459 032**	**7 603 635**	**21 929 790**	**22 031 946**	**4 122 340**	**14 991 454**
-	**-**	**-**	**-**	**-**	**-**	**-**	**-**

MAJOR CLAIMS FUNDS
1971 FUND: INCOME AND EXPENDITURE ACCOUNT
FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 1999

	Sea Prince		*Yeo Myung*	
	1999	**1998**	**1999**	**1998**
	£	**£**	**£**	**£**
INCOME				
Contributions				
Annual contributions (first levy)	-	-	-	-
Annual contributions (second levy)	-	-	-	-
Annual contributions (third levy)	-	-	-	-
Annual contributions (fourth levy)	-	2 974 310	-	-
Adjustment to prior years' assessment	(3 137)	715 996	(565)	98 639
Total contributions	**(3 137)**	**3 690 306**	**(565)**	**98 639**
Miscellaneous				
Interest on overdue contributions	427	7 999	(60)	923
Interest on investments	1 026 152	1 232 251	166 370	195 067
Interest on loans to *Osung N°3* MCF	-	-	-	-
Interest on loans to *Nakhodka* MCF	-	-	-	-
Miscellaneous income	-	-	-	-
Total miscellaneous	**1 026 579**	**1 240 250**	**166 310**	**195 990**
TOTAL INCOME	**1 023 442**	**4 930 556**	**165 745**	**294 629**
EXPENDITURE				
Compensation	188 964	4 086 510	49 264	147 141
Fees	91 141	562 847	9 157	14 536
Interest on loan from *Aegean Sea* MCF	-	-	-	-
Interest on loan from 1992 Fund	-	-	-	-
Travel	1 490	1 880	-	-
Miscellaneous	165	88	11	48
TOTAL EXPENDITURE	**281 760**	**4 651 325**	**58 432**	**161 725**
Excess/(shortfall) of income over expenditure	741 682	279 231	107 313	132 904
Exchange adjustment	-	-	-	-
Prior years' exchange adjustment	-	-	-	-
Balance b/f: 1 January	18 337 254	18 058 023	2 969 971	2 837 067
Balance as at 31 December	**19 078 936**	**18 337 254**	**3 077 284**	**2 969 971**
Amount due to *Aegean Sea* MCF	**-**	**-**	**-**	**-**

Yuil N°1		*Nissos Amorgos*		*Osung N°3*	
1999	**1998**	**1999**	**1998**	**1999**	**1998**
£	**£**	**£**	**£**	**£**	**£**
-	-	-	1 983 912	-	1 983 912
-	-	-	-	-	-
-	-	-	-	-	-
-	-	-	-	-	-
(3 362)	543 726	18 640	-	18 640	-
(3 362)	**543 726**	**18 640**	**1 983 912**	**18 640**	**1 983 912**
689	6 208	2 596	2 697	2 873	2 697
277 964	692 948	119 183	124 842	-	112 204
-	-	-	-	-	-
-	-	-	-	-	-
-	-	-	-	-	-
278 653	**699 156**	**121 779**	**127 539**	**2 873**	**114 901**
275 291	**1 242 882**	**140 419**	**2 111 451**	**21 513**	**2 098 813**
243 456	6 798 140	-	-	1 722 890	4 832 713
134 466	233 936	-	-	369 154	62 271
-	-	-	-	238 258	2 729
-	-	-	-	-	29 294
2 273	9 702	-	-	1 565	4 019
8	193	-	-	432	82
380 203	**7 041 971**	**-**	**-**	**2 332 299**	**4 931 108**
(104 912)	(5 799 089)	140 419	2 111 451	(2 310 786)	(2 832 295)
-	-	-	-	-	-
-	-	-	-	-	-
5 262 865	11 061 954	2 111 451	-	(2 832 295)	-
5 157 953	**5 262 865**	**2 251 870**	**2 111 451**	**-**	**-**
-	**-**	**-**	**-**	**(5 143 081)**	**(2 832 295)**

ANNEX VII

BALANCE SHEET OF THE 1971 FUND AS AT 31 DECEMBER 1999

	1999 £	1998 £
ASSETS		
Cash at banks and in hand	114 694 416	154 999 522
Contributions outstanding	1 609 769	1 850 517
Due from *Vistabella* MCF	431 412	412 722
Due from *Osung N°3* MCF to *Aegean Sea* MCF	5 143 081	2 832 295
Tax recoverable	73 193	98 917
Miscellaneous receivable	76	1 834
Interest on overdue contributions	97 907	85 966
TOTAL ASSETS	**122 049 854**	**160 281 773**
LIABILITIES		
Accounts payable	1 021	14 556
Unliquidated obligations	-	123 077
Prepaid contributions	62 709	122 967
Contributors' account	193 009	157 913
Due to 1992 Fund	724 443	547 038
Due to *Haven* MCF	2 785 840	31 798 545
Due to *Aegean Sea* MCF	40 746 484	39 033 430
Due to *Braer* MCF	6 319 393	6 561 979
Due to *Keumdong N°5* MCF	6 459 032	7 603 635
Due to *Sea Prince* MCF	19 078 936	18 337 254
Due to *Yeo Myung* MCF	3 077 284	2 969 971
Due to *Yuil N°1* MCF	5 157 953	5 262 865
Due to *Sea Empress* MCF	21 929 790	22 031 946
Due to *Nakhodka* MCF	4 122 340	14 991 454
Due to *Nissos Amorgos* MCF	2 251 870	2 111 451
TOTAL LIABILITIES	**112 910 104**	**151 668 081**
GENERAL FUND BALANCE	**9 139 750**	**8 613 692**
TOTAL LIABILITIES AND GENERAL FUND BALANCE	**122 049 854**	**160 281 773**

ANNEX VIII

CASH FLOW STATEMENT OF THE 1971 FUND FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 1999

	1999		1998	
	£	£	£	£
Cash as at 1 January		154 999 522		139 738 751
OPERATING ACTIVITIES				
Operating Surplus	(47 469 383)		4 826 598	
(Increase)/Decrease in Debtors	256 289		1 011 393	
Increase/(Decrease) in Creditors	3 229		(535 371)	
Net cash flow from operating activities		(47 209 865)		5 302 620
RETURNS ON INVESTMENTS				
Interest on investments	6 904 759		9 958 151	
Net cash inflow from returns on investments		6 904 759		9 958 151
Cash as at 31 December		**114 694 416**		**154 999 522**

ANNEX IX

REPORT OF THE EXTERNAL AUDITOR ON THE FINANCIAL STATEMENTS OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1992 FOR THE FINANCIAL PERIOD 1 JANUARY TO 31 DECEMBER 1999

PART ONE – INTRODUCTION

Scope of the Audit

1 I have audited the financial statements of the International Oil Pollution Compensation Fund 1992 ("the 1992 Fund") for the third financial period ended 31 December 1999. My examination was carried out with due regard to the provisions of the 1992 Protocol to the 1971 Fund Convention and to Regulation 13 of the Fund's Financial Regulations. My audit has been conducted in conformity 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 1992 Fund's financial statements are free of material misstatement. The 1992 Fund's Secretariat, comprised of the Director and his appointed staff, were responsible for preparing these financial statements, and I am responsible for expressing an opinion on them, based on evidence obtained in my audit.

2 Following this introduction, my report is set out as follows:

Part 2 – Follow up Comments

3 This section (paragraph 11) sets out my comments on action taken by the Secretariat in response to previous external audit recommendations.

Part 3 – An Executive Summary

4 This section (paragraphs 12 to 19) summarises the main conclusions and recommendations arising from my 1999 audit.

Part 4 – Detailed Findings

5 This section (paragraphs 20 to 44) details my findings in 1999 relating to:

- Claims expenditure
- Investment and cash management
- Other financial matters

Audit Objective

6 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 1999 had been received and incurred for the purposes approved by the 1992 Fund Assembly; whether income and expenditure were properly classified and recorded in accordance with the 1992 Fund's Financial Regulations; and whether the financial statements presented fairly the financial position as at 31 December 1999.

Audit Approach

7 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 1992 Fund's accounting records and were fairly presented.

8 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 1992 Fund's financial statements. Consequently, my work did not involve a detailed review of all aspects of the 1992 Fund's budgetary and financial information systems, and the results should not be regarded as a comprehensive statement on them.

9 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 Four of this report.

Overall Results

10 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. Accordingly, I have placed an unqualified opinion on the financial statements for 1999.

PART TWO – ACTION TAKEN BY THE SECRETARIAT IN RESPONSE TO MY PREVIOUS YEAR'S AUDIT RECOMMENDATIONS

11 There were no recommendations specific to the 1992 Fund in last year's joint 1971 and 1992 Funds' report which required follow-up action by the Secretariat.

PART THREE – EXECUTIVE SUMMARY

12 This executive summary outlines the main observations and recommendations arising from the detailed findings provided in Part Four of my report.

Claims Expenditure

13 As part of my review of claims expenditure my staff visited the *Nakhodka* local claims office operated by General Marine Surveyors (GMS) as well as the offices of Cornes and Co, who specifically dealt with the tourist industry claims arising from this incident.

14 With regard to the claims processed by Cornes & Co Ltd, I was pleased to note the consistent and systematic approach to the claims calculations, which were also subject to oversight by L and R Management Consultants (UK). However, I **recommend** that there should be established for each incident, and as the claims situation becomes clearer, the overall principles for the settlement of tourist claims, covering such matters as the extent of the area affected, duration of the claim and the calculation methodology. In order to reduce the duplicated efforts of those involved, I also **recommend**, that standard calculation submission forms should be used, which would have supporting notes covering the methodology and supporting evidence to be supplied in the claims calculation.

15 With regard to the processing of all other claims categories by GMS I found some weaknesses in the quality of their filing and documentation. To overcome this I **recommend** that the standard data base currently being developed to monitor claims processing should include details of and/or cross references to the full history of the individual claims and their review, including supporting documentation/evidence.

16 Despite the number of visits and meetings that have been held by the Fund, staff at GMS felt that outstanding issues could be more quickly resolved if there were more face-to-face meetings, in particular, with ITOPF staff and other technical experts. Accordingly, I **recommend** that due consideration is taken to holding such meetings in order to speed up claims settlement.

17 My staff also visited the Lorient local claims office in respect of the *Erika* incident, in order to assess the overall procedures and internal controls in operation. They found these to be satisfactory.

Investment and Cash Management

18 My staff undertook a review of the investment and cash management procedures at the Fund, which included an examination of the procedures for determining the cash available to invest and the controls over such investments.

19 Overall, my staff found that the investments and cash management procedures were operating well. However, I **recommend** that the Secretariat should continue to monitor the position carefully to ensure that investments remain properly safeguarded, in particular, in respect to any raising of the maximum limits of the amounts that may be invested at any one financial institution.

PART FOUR – DETAILED FINDINGS

Claims Expenditure

Introduction

20 As well as verifying payments to supporting claims documentation, as part of my 1999 audit, I reviewed whether claims had been treated equally and in accordance with the Fund's Regulations and established procedures, and that claims expenditure was incurred in a cost effective manner, taking into account the Fund's objectives of paying compensation.

Background

21 Total 1992 Fund claims payments in 1999 amounted to £4.9 million and were almost entirely in respect of the *Nakhodka* incident.

Audit Approach

22 My staff selected and examined a sample of claims and claims related payments made in 1999, covering all incidents for which significant payments had been made in the year. They reviewed the associated files and related documents held at the Fund's headquarters in London and interviewed key Secretariat staff, including the Director, the Head of the Claims Department and the Legal Counsel. In addition, they visited the *Nakhodka* local claims office in Kobe, Japan, in November/December 1999; where they examined the files and supporting documents relating to specific claims payments made in 1999 in respect of the *Nakhodka* incident.

23 My staff also visited the local claims office in Lorient, France, in respect of the *Erika* incident, which occurred at the end of 1999. Although no claims payments have been made in 1999, they undertook a review of the systems and procedures that had been established at the claims office.

Nakhodka Claims Handling Office

Background

24 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 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 and L & R Management Consultants.

25 During the transitional period, when both the 1969/1971 Conventions and the 1992 Convention applied to this incident, the 1971 Fund is liable for payments up to its limit of 60 million Special Drawing Rights (less the amount due from the shipowner under the 1969 Civil Liability Convention) with further payments made under the 1992 Fund. As at 31 December 1999, 457 claims totalling ¥35,068 million (£213 million) had been submitted in respect of both the 1971 and 1992 Funds and £4.9 million had been paid in respect of the 1992 Fund, as analysed in Table 1 below:

TABLE 1 – NAKHODKA CLAIMS RECEIVED AND PAYMENTS AS AT 31 DECEMBER 1999

Category of Claims	Claims* Total £ (millions)	Payments 1999 £ (millions)	Payments Total £ (millions)
Clean up operations	140	4.4	4.4
Causeway construction and removal	15	0	0
Removal of oil from ship	8	0	0
Fishery	32	0	0
Tourism	18	0.5	0.5
Total:	**213**	**4.9**	**4.9**

(total claims against both the 1971 and 1992 Funds; payments are only in respect of the 1992 Fund)*

26 My staff undertook a visit to the Kobe Claims Office in August 1998 as part of their 1997 audit examination. At that time there had been no payments made to the tourist industry. Such claims, as at 31 December 1999, account for 347 (76 per cent) of the 457 claims submitted. Accordingly, in their second visit to the claims office, in November/December 1999, my staff paid particular attention to such claims payments, as well as, test sampling further payments in the other claims categories.

Cornes and Co Ltd

27 My staff visited the offices of Cornes and Co Ltd in order to examine a sample of tourist claims payments. They were pleased to note the consistent and systematic approach to the claims calculations, which were also subjected to oversight by L and R Management Consultants Ltd (UK). Although the Claims Manual lays down the general policy on claims, my staff felt, based on their experience from an earlier visit to another claims office, that there should be established for each incident, and as the claims situation becomes clearer, the overall principles for the

settlement of tourism claims. This would include such matters as the extent of tourist areas affected, duration of claim and calculation methodology. Accordingly, I **recommend** that such claim principles be fully documented.

28 My staff observed that the standard calculation approach undertaken by Cornes & Co generally did not follow the various methods used by claimants to calculate the loss that had incurred. In order to reduce the duplicated efforts of those involved I **recommend** that, in future, a standard calculation submission form should be utilised, which would have supporting notes covering the methodology and supporting evidence to be employed in the claims calculation.

General Marine Surveyors Ltd (GMS)

29 The remaining, non-tourist claims, are being dealt with by GMS.

30 In my 1997 report, I referred to the quality of filing and documentation at the GMS. In particular, 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 My staff continued to find difficulties in vetting supporting claims documentation in respect to these matters. However, they understand that the Fund is now developing a standard data base for claims processing. In this regard, I r**ecommend** that the data base, which should be used/accessible by HQ, the local solicitors' office and the local claims office, should include full details of and/or cross-references to:

- revisions to the original submitted claim;
- the nature of any requests made by the claims office for supporting documentation;
- details of the nature of the claims office review, including details of visits/meetings at or with claimants and the additional information seen but not copied at that time; and
- details of telephone conversations with claimants, and all correspondence concerning the claim.

32 Although the Secretariat considers that sufficient visits/meetings were held, GMS personnel felt that issues delaying claims settlements could be more easily resolved if there were more face-to-face meeting, in particular, with ITOPF staff and other technical experts. Accordingly, I **recommend** that due consideration is given to holding such meetings regarding unresolved differences as soon as possible to speed-up claims settlement.

Lorient Claims Handling Office

33 The 1992 Fund and Steamship Mutual Underwriting Association (Bermuda) Ltd established a local claims handling office in Lorient to deal with claims for compensation arising from the *Erika* incident.

34 My staff visited the local claims office in Lorient in May/June 2000 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, and found these to be satisfactory.

35 No expenditure has been incurred in 1999 by the Fund for the *Erika* incident, which occurred towards the end of 1999, but it is the intention of my staff to revisit the claims office as part of next year's audit when significant amounts will have been paid out.

Investment and Cash Management

36 My staff carried out a review of the investment and cash management procedures at the Fund. This included an examination of the procedures for determining the availability of funds to invest and the controls over investments. Overall, my staff found that the investments and cash management procedures were operating well.

37 Decisions about the availability of funds for investment are made following detailed consideration of the amounts required to fund regular administrative expenditure and claims expenditure coming due. All decisions are referred to the Director for final approval.

38 There are two key controls over the investment of funds; a set of approved investment policies and an Investment Advisory Body.

39 The investment policies set out the types of institutions, investments and credit rating that the Fund may invest in. It also sets out the maximum limit that they should hold in any one institution. My staff reviewed the investments held by the Fund and found that they were all in line with the Investment Policy.

40 My staff spoke with the members of the Investment Advisory Body, which is comprised of three external independent professional advisors. Although the Investment Advisory Body is not normally consulted on individual investments, when there are new funds available for investment the Investment Advisory Body are notified and their advice requested. For the existing invested funds the independent advisors provide advice to the Head of Finance and Administration on an ad hoc basis. The investment is reviewed and then implemented by the Head of Finance and Administration and his team. There are internal procedures and controls covering the implementation of investment decisions concerning the making and withdrawal of investments.

41 In accordance with the Fund's procedures the normal limit for investment in any one institute should be 25 per cent of the fund's total assets, provided that investments with any one institution should not normally exceed £15 million. However, the Fund has found it increasingly difficult to meet these requirements. This has been caused by the trend of mergers among building societies and banks. So there are now fewer individual institutions with the necessary credit rating to invest in. The Investment Advisory Body has considered whether the amount per institution should be increased but not yet made a formal recommendation. I **recommend** that the Secretariat should continue to monitor the position carefully to ensure that investments are properly safeguarded.

Other Financial Matters

Control of Supplies and Equipment

42 As recorded in Note 8(b) to the Fund's financial statements, the value of supplies and equipment held by the Fund was £139,410 as at 31 December 1999. In accordance with the Fund's stated accounting policies, purchases of equipment, furniture, office machines, supplies and library books are not included in the Fund's balance sheet, but are charged as expenses when purchased.

43 My staff carried out a test examination of the 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 1999 properly reflect the assets held by the Fund. No losses were reported by the Fund during the year.

Amounts Written Off and Fraud

44 The Secretariat have informed me that there were no amounts written off, or cases of fraud or presumptive fraud during the financial period.

ACKNOWLEDGEMENT

45 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 Kobe and Lorient during the course of my audit.

Sir John Bourn
Comptroller and Auditor General, United Kingdom
External Auditor

ANNEX X

FINANCIAL STATEMENTS OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1992 FOR THE YEAR ENDED 31 DECEMBER 1999 OPINION OF THE EXTERNAL AUDITOR

To: the Assembly of the International Oil Pollution Compensation Fund 1992

I have audited the appended financial statements, comprising Statements I to VII, Schedules I to III and Notes, of the International Oil Pollution Compensation Fund 1992 for the year ended 31 December 1999. These financial statements are the responsibility of the Director. My responsibility is to express an opinion on these financial statements based on my audit.

I conducted my audit in accordance with the Common Auditing Standards of the Panel of External Auditors of the United Nations, the Specialised Agencies and the International Atomic Energy Agency as appropriate. Those standards require that I plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining on a test basis evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by the Director, as well as evaluating the overall financial statement presentation.

In my opinion the financial statements present fairly the financial position as at 31 December 1999 and the results of the year then ended; and 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.

Further, in my opinion, the transactions of the 1992 Fund, which I have tested as part of my audit, have, in all material respects, been in accordance with the Financial Regulations and legislative authority.

In accordance with Financial Regulations 13, I have also issued a long-form Report on my audit of the Fund's financial statements.

Sir John Bourn
Comptroller and Auditor General, United Kingdom
External Auditor

ANNEX XI

GENERAL FUND
1992 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 1999

	£	1999 £	£	1998 £
INCOME				
Contributions				
Contributions	7 207 711		5 935 786	
Adjustment to prior years' assessment	129 107		(1 395)	
		7 336 818		**5 934 391**
Miscellaneous				
Miscellaneous income	27 350		236	
Repayment from 1971 Fund re: *Osung N°3*	-		1 640 751	
Interest on loan to 1971 Fund re: *Osung N°3*	-		29 294	
Interest on overdue contributions	5 647		14 802	
Interest on investments	758 521		758 454	
		791 518		**2 443 537**
		8 128 336		**8 377 928**
EXPENDITURE				
Secretariat expenses				
Obligations incurred		815 304		678 425
Claims				
Compensation		3 414 149		1 640 739
Claims related expenses				
Fees	17 837		-	
Travel	1 182		-	
Miscellaneous	1 720		63	
		20 739		**63**
		4 250 192		**2 319 227**
Excess/(Shortfall) of income over expenditure		**3 878 144**		**6 058 701**

ANNEX XII

MAJOR CLAIMS FUNDS
1992 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 1999

	Nakhodka		*Osung N°3* (Interim Major Claims Fund)	
	1999 £	**1998** £	**1999** £	**1998** £
INCOME				
Contributions				
Contributions (first levy)	-	-	-	3 461 413
Contributions (second levy)	21 237 294	-	-	-
Contributions (third levy)	8 942 874	-	-	-
Adjustment to prior years' assessment	106 081	(1 110)	77 524	-
Total contributions	**30 286 249**	**(1 110)**	**77 524**	**3 461 413**
Miscellaneous				
Interest on overdue contributions	17 439	2 740	100	7 628
Interest on investments	1 210 538	445 302	153 676	209 279
Total miscellaneous	**1 227 977**	**448 042**	**153 776**	**216 907**
TOTAL INCOME	**31 514 226**	**446 932**	**231 300**	**3 678 320**
EXPENDITURE				
Compensation	1 557 216	-	-	-
Fees	100 908	-	-	-
Travel	-	-	-	-
Miscellaneous	849	-	-	-
TOTAL EXPENDITURE	**1 658 973**	**-**	**-**	**-**
Excess/(shortfall) of income over expenditure	29 855 253	446 932	231 300	3 678 320
Balance b/f: 1 January	7 475 628	7 028 696	3 678 320	-
Balance as at 31 December	**37 330 881**	**7 475 628**	**3 909 620**	**3 678 320**

ANNEX XIII

BALANCE SHEET OF THE 1992 FUND AS AT 31 DECEMBER 1999

	1999 £	1998 £
ASSETS		
Cash at banks and in hand	57 424 942	24 323 173
Contributions outstanding	552 579	14 557
Due from 1971 Fund	724 443	547 038
Tax recoverable	24 804	21 507
Miscellaneous receivable	12 153	6 985
Miscellaneous advances	8 686	-
Interest on overdue contributions	18 672	24 761
TOTAL ASSETS	**58 766 279**	**24 938 021**
LIABILITIES		
Staff Provident Fund	999 252	851 876
Accounts payable	31 997	19 207
Unliquidated obligations	31 418	107 185
Prepaid contributions	-	220 992
Contributors' account	154	-
Due to *Nakhodka* MCF	37 330 881	7 475 628
Due to *Osung N°3* Interim MCF	3 909 620	3 678 320
TOTAL LIABILITIES	**42 303 322**	**12 353 208**
GENERAL FUND BALANCE	**16 462 957**	**12 584 813**
TOTAL LIABILITIES AND GENERAL FUND BALANCE	**58 766 279**	**24 938 021**

ANNEX XIV

CASH FLOW STATEMENT OF THE 1992 FUND FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 1999

	1999		1998	
	£	£	£	£
Cash as at 1 January		24 323 173		13 715 350
OPERATING ACTIVITIES				
Operating Surplus	31 841 962		8 770 918	
(Increase)/Decrease in Debtors	(726 489)		(309 182)	
Increase/(Decrease) in Creditors	(202 289)		695 062	
Net cash flow from operating activities		30 913 184		9 156 798
RETURNS ON INVESTMENTS				
Interest on investments	2 188 585		1 451 025	
Net cash inflow from returns on investments		2 188 585		1 451 025
Cash as at 31 December		**57 424 942**		**24 323 173**

ANNEX XV

1971 FUND: CONTRIBUTING OIL RECEIVED IN THE CALENDAR YEAR 1999 IN THE TERRITORIES OF STATES WHICH WERE MEMBERS OF THE 1971 FUND ON 31 DECEMBER 2000

As reported by 31 December 2000

Member State	Contributing Oil (Tonnes)	% of Total
India	57 335 297	54.60%
Malaysia	17 692 334	16.85%
Portugal	16 999 706	16.19%
Cameroon	7 696 622	7.33%
Russian Federation	1 699 455	1.62%
Ghana	1 477 869	1.41%
Malta	1 283 616	1.22%
Colombia	816 658	0.78%
Brunei Darussalam	0	0.00%
Djibouti	0	0.00%
Estonia	0	0.00%
Iceland	0	0.00%
Qatar	0	0.00%
Slovenia	0	0.00%
Tuvalu	0	0.00%
United Arab Emirates	0	0.00%
	105 001 557	**100.00%**

Note: No report from Albania, Antigua and Barbuda, Benin, Côte d'Ivoire, Gabon, Gambia, Guyana, Kenya, Kuwait, Maldives, Mauritania, Morocco, Mozambique, Nigeria, Papua New Guinea, Saint Kitts and Nevis, Sierra Leone, Syrian Arab Republic and Yugoslavia.

ANNEX XVI

1992 FUND: CONTRIBUTING OIL RECEIVED IN THE CALENDAR YEAR 1999 IN THE TERRITORIES OF STATES WHICH WERE MEMBERS OF THE 1992 FUND ON 31 DECEMBER 2000

As reported by 31 December 2000

Member State	Contributing Oil (Tonnes)	% of Total
Japan	258 976 830	21.15%
Italy	137 723 531	11.25%
Republic of Korea	125 999 268	10.29%
Netherlands	101 333 406	8.28%
France	95 337 019	7.79%
United Kingdom	74 428 167	6.08%
Singapore	70 064 523	5.72%
Germany	60 967 906	4.98%
Spain	60 591 936	4.95%
Canada	51 126 968	4.18%
Norway	33 630 908	2.75%
Australia	30 606 352	2.50%
Sweden	20 100 612	1.64%
Greece	18 418 473	1.50%
Philippines	17 513 567	1.43%
Mexico	15 137 613	1.24%
Finland	10 666 009	0.87%
Belgium	7 002 841	0.57%
Denmark	5 177 830	0.42%
New Zealand	4 603 891	0.38%
Ireland	4 581 084	0.37%
Croatia	4 143 434	0.34%
Bahamas	4 065 769	0.33%
China (Hong Kong SAR)	3 656 411	0.30%
Jamaica	2 324 445	0.19%
Cyprus	2 117 114	0.17%
Poland	1 917 408	0.16%
Sri Lanka	1 908 598	0.16%
Algeria	276 000	0.02%
Mauritius	168 052	0.01%
Barbados	0	0.00%
Iceland	0	0.00%
Latvia	0	0.00%
Liberia	0	0.00%
Marshall Islands	0	0.00%
Monaco	0	0.00%
Oman	0	0.00%
United Arab Emirates	0	0.00%
Vanuatu	0	0.00%
	1 224 565 965	**100.00%**

Note: No report from Bahrain, Belize, Dominican Republic, Fiji, Grenada, Panama, Seychelles, Tonga, Tunisia, Uruguay and Venezuela.

ANNEX XVII

1971 FUND: SUMMARY OF INCIDENTS (31 DECEMBER 2000)

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

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

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
1	*Irving Whale*	7.9.70	Gulf of St Lawrence, Canada	Canada	2 261	(unknown)
2	*Antonio Gramsci*	27.2.79	Ventspils, USSR	USSR	27 694	Rbls 2 431 584
3	*Miya Maru N°8*	22.3.79	Bisan Seto, Japan	Japan	997	¥37 710 340
4	*Tarpenbek*	21.6.79	Selsey Bill, United Kingdom	Federal Republic of Germany	999	£64 356
5	*Mebaruzaki Maru N°5*	8.12.79	Mebaru, Japan	Japan	19	¥845 480
6	*Showa Maru*	9.1.80	Naruto Strait, Japan	Japan	199	¥8 123 140
7	*Unsei Maru*	9.1.80	Akune, Japan	Japan	99	¥3 143 180
8	*Tanio*	7.3.80	Brittany, France	Madagascar	18 048	FFr11 833 718

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1971 Fund, unless indicated to the contrary)		Notes
Sinking	(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.
Grounding	5 500	Clean-up	SKr95 707 157	
Collision	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.
Collision	(unknown)	Clean-up	£363 550	
Sinking	10	Clean-up Fishery-related Indemnification	¥7 477 481 ¥2 710 854 ¥211 370 **¥10 399 705**	
Collision	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.
Collision	<140			Because of the distribution of liability between the two colliding ships, 1971 Fund not called upon to pay any compensation.
Breaking	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.

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
9	*Furenas*	3.6.80	Oresund, Sweden	Sweden	999	SKr612 443
10	*Hosei Maru*	21.8.80	Miyagi, Japan	Japan	983	¥35 765 920
11	*Jose Marti*	7.1.81	Dalarö, Sweden	USSR	27,706	SKr23 844 593
12	*Suma Maru N°11*	21.11.81	Karatsu, Japan	Japan	199	¥7 396 340
13	*Globe Asimi*	22.11.81	Klaipeda, USSR	Gibraltar	12 404	Rbls 1 350 324
14	*Ondina*	3.3.82	Hamburg, Federal Republic of Germany	Netherlands	31 030	DM10 080 383
15	*Shiota Maru N°2*	31.3.82	Takashima island, Japan	Japan	161	¥6 304 300
16	*Fukutoko Maru N°8*	3.4.82	Tachibana Bay, Japan	Japan	499	¥20 844 440
17	*Kifuku Maru N°35*	1.12.82	Ishinomaki, Japan	Japan	107	¥4 271 560
18	*Shinkai Maru N°3*	21.6.83	Ichikawa, Japan	Japan	48	¥1 880 940
19	*Eiko Maru N°1*	13.8.83	Karakuwazaki, Japan	Japan	999	¥39 445 920
20	*Koei Maru N°3*	22.12.83	Nagoya, Japan	Japan	82	¥3 091 660
21	*Tsunehisa Maru N°8*	26.8.84	Osaka, Japan	Japan	38	¥964 800

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1971 Fund, unless indicated to the contrary)		Notes
Collision	200	Clean-up Clean-up Indemnification	SKr3 187 687 DKr418 589 SKr153 111	SKr449 961 recovered by way of recourse.
Collision	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.
Grounding	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.
Grounding	10	Clean-up Indemnification	¥6 426 857 ¥1 849 085 **¥8 275 942**	
Grounding	>16 000	Indemnification	US$467 953	No damage in 1971 Fund Member State.
Discharge	200-300	Clean-up	DM11 345 174	
Grounding	20	Clean-up Fishery-related Indemnification	¥46 524 524 ¥24 571 190 ¥1 576 075 **¥72 671 789**	
Collision	85	Clean-up Fishery-related Indemnification	¥200 476 274 ¥163 255 481 ¥5 211 110 **¥368 942 865**	
Sinking	33	Indemnification	¥598 181	Total damage less than shipowner's liability.
Discharge	3.5	Clean-up Indemnification	¥1 005 160 ¥470 235 **¥1 475 395**	
Collision	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.
Collision	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.
Sinking	30	Clean-up Indemnification	¥16 610 200 ¥241 200 **¥16 851 400**	

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
22	*Koho Maru N°3*	5.11.84	Hiroshima, Japan	Japan	199	¥5 385 920
23	*Koshun Maru N°1*	5.3.85	Tokyo Bay, Japan	Japan	68	¥1 896 320
24	*Patmos*	21.3.85	Straits of Messina, Italy	Greece	51 627	LIt 13 263 703 650
25	*Jan*	2.8.85	Aalborg, Denmark	Federal Republic of Germany	1 400	DKr1 576 170
26	*Rose Garden Maru*	26.12.85	Umm Al Qaiwain, United Arab Emirates	Panama	2 621	US$364 182 (estimate)
27	*Brady Maria*	3.1.86	Elbe Estuary, Federal Republic of Germany	Panama	996	DM324 629
28	*Take Maru N°6*	9.1.86	Sakai-Senboku, Japan	Japan	83	¥3 876 800
29	*Oued Gueterini*	18.12.86	Algiers, Algeria	Algeria	1 576	Din1 175 064
30	*Thuntank 5*	21.12.86	Gävle, Sweden	Sweden	2 866	SKr2 741 746
31	*Antonio Gramsci*	6.2.87	Borgå, Finland	USSR	27 706	Rbls 2 431 854
32	*Southern Eagle*	15.6.87	Sada Misaki, Japan	Panama	4 461	¥93 874 528
33	*El Hani*	22.7.87	Indonesia	Libya	81 412	£7 900 000 (estimate)
34	*Akari*	25.8.87	Dubai, United Arab Emirates	Panama	1 345	£92 800 (estimate)

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1971 Fund, unless indicated to the contrary)		Notes
Grounding	20	Clean-up Fishery-related Indemnification	¥68 609 674 ¥25 502 144 ¥1 346 480 **¥95 458 298**	
Collision	80	Clean-up Indemnification	¥26 124 589 ¥474 080 **¥26 598 669**	¥8 866 222 recovered by way of recourse.
Collision	700			Total damage agreed out of court or decided by court (LIt11 583 298 650) less than shipowner's liability.
Grounding	300	Clean-up Indemnification	DKr9 455 661 DKr394 043 **DKr9 849 704**	
Discharge of oil	(unknown)			Claim against 1971 Fund (US$44 204) withdrawn.
Collision	200	Clean-up	DM3 220 511	DM333 027 recovered by way of recourse.
Discharge of oil	0.1	Indemnification	¥104 987	Total damage less than shipowner's liability.
Discharge	15	Clean-up Clean-up Clean-up Other loss of income Indemnification	US$1 133 FFr708 824 Din5 650 £126 120 Din293 766	
Grounding	150-200	Clean-up Fishery-related Indemnification	SKr23 168 271 SKr49 361 SKr685 437 **SKr23 903 069**	
Grounding	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.
Collision	15			Total damage less than shipowner's liability (¥35 346 679 clean-up and ¥51 521 183 fishery-related agreed).
Grounding	3 000			Clean-up claim (US$242 800) not pursued.
Fire	1 000	Clean-up Clean-up	Dhr 864 293 US$187 165	US$160 000 refunded by shipowner's insurer.

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
35	*Tolmiros*	11.9.87	West coast, Sweden	Greece	48 914	SKr50 000 000 (estimate)
36	*Hinode Maru N°1*	18.12.87	Yawatahama, Japan	Japan	19	¥608 000
37	*Amazzone*	31.1.88	Brittany, France	Italy	18 325	FFr13 860 369
38	*Taiyo Maru N°13*	12.3.88	Yokohama, Japan	Japan	86	¥2 476 800
39	*Czantoria*	8.5.88	St Romuald, Canada	Canada	81 197	(unknown)
40	*Kasuga Maru N°1*	10.12.88	Kyoga Misaki, Japan	Japan	480	¥17 015 040
41	*Nestucca*	23.12.88	Vancouver island, Canada	United States of America	1 612	(unknown)
42	*Fukkol Maru N°12*	15.5.89	Shiogama, Japan	Japan	94	¥2 198 400
43	*Tsubame Maru N°58*	18.5.89	Shiogama, Japan	Japan	74	¥2 971 520
44	*Tsubame Maru N°16*	15.6.89	Kushiro, Japan	Japan	56	¥1 613 120
45	*Kifuku Maru N°103*	28.6.89	Otsuji, Japan	Japan	59	¥1 727 040
46	*Nancy Orr Gaucher*	25.7.89	Hamilton, Canada	Liberia	2 829	Can$473 766

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1971 Fund, unless indicated to the contrary)		Notes
Unknown	200			Clean-up claim (SKr100 639 999) not pursued, since legal action by Swedish Government against shipowner and 1971 Fund withdrawn.
Mishandling of cargo	25	Clean-up Indemnification	¥1 847 225 ¥152 000 **¥1 999 225**	
Storm damage to tanks	2 000	Clean-up Fishery-related	FFr1 141 185 FFr145 792 **FFr1 286 977**	FFr1 000 000 recovered from shipowner's insurer.
Discharge	6	Clean-up Indemnification	¥6 134 885 ¥619 200 **¥6 754 085**	
Collision with berth	(unknown)			1971 Fund Convention not applicable, as incident occurred before entry into force of Convention for Canada. Clean-up claims (Can$1 787 771) not pursued.
Sinking	1 100	Clean-up Fishery-related Indemnification	¥371 865 167 ¥53 500 000 ¥4 253 760 **¥429 618 927**	
Collision	(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.
Overflow from supply pipe	0.5	Clean-up Indemnification	¥492 635 ¥549 600 **¥1 042 235**	
Mishandling of oil transfer	7	Other damage to property Indemnification	¥19 159 905 ¥742 880 **¥19 902 785**	
Discharge	(unknown)	Other damage to property Indemnification	¥273 580 ¥403 280 **¥676 860**	
Mishandling of cargo	(unknown)	Clean-up Indemnification	¥8 285 960 ¥431 761 **¥8 717 721**	
Overflow during discharge	250			Total damage less than shipowner's liability (clean-up Can$292 110 agreed).

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
47	*Dainichi Maru N°5*	28.10.89	Yaizu, Japan	Japan	174	¥4 199 680
48	*Daito Maru N°3*	5.4.90	Yokohama, Japan	Japan	93	¥2 495 360
49	*Kazuei Maru N°10*	11.4.90	Osaka, Japan	Japan	121	¥3 476 160
50	*Fuji Maru N°3*	12.4.90	Yokohama, Japan	Japan	199	¥5 352 000
51	*Volgoneft 263*	14.5.90	Karlskrona, Sweden	USSR	3 566	SKr3 205 204
52	*Hato Maru N°2*	27.7.90	Kobe, Japan	Japan	31	¥803 200
53	*Bonito*	12.10.90	River Thames, United Kingdom	Sweden	2 866	£241 000 (estimate)
54	*Rio Orinoco*	16.10.90	Anticosti island, Canada	Cayman Islands	5 999	Can$1 182 617
55	*Portfield*	5.11.90	Pembroke, Wales, United Kingdom	United Kingdom	481	£69 141
56	*Vistabella*	7.3.91	Caribbean	Trinidad and Tobago	1 090	FFr2 354 000 (estimate)
57	*Hokunan Maru N°12*	5.4.91	Okushiri island, Japan	Japan	209	¥3 523 520
58	*Agip Abruzzo*	10.4.91	Livorno, Italy	Italy	98 544	LIt 21 800 000 000 (estimate)

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1971 Fund, unless indicated to the contrary)		Notes
Mishandling of cargo	0.2	Fishery-related Clean-up Indemnification	¥1 792 100 ¥368 510 ¥1 049 920 **¥3 210 530**	
Mishandling of cargo	3	Clean-up Indemnification	¥5 490 570 ¥623 840 **¥6 114 410**	
Collision	30	Clean-up Fishery-related Indemnification	¥48 883 038 ¥560 588 ¥869 040 **¥50 312 666**	¥45 038 833 recovered by way of recourse.
Overflow during supply operation	(unknown)	Clean-up Indemnification	¥96 431 ¥1 338 000 **¥1 434 431**	¥430 329 recovered by way of recourse.
Collision	800	Clean-up Fishery-related Indemnification	SKr15 523 813 SKr530 239 SKr795 276 **SKr16 849 328**	
Mishandling of cargo	(unknown)	Other damage to property Indemnification	¥1 087 700 ¥200 800 **¥1 288 500**	
Mishandling of cargo	20			Total damage less than shipowner's liability (clean-up £130 000 agreed).
Grounding	185	Clean-up	Can$12 831 892	
Sinking	110	Clean-up Fishery-related Indemnification	£249 630 £9 879 £17 155 **£276 663**	
Sinking	(unknown)	Clean-up Clean-up	FFr8 237 529 £14 250	
Grounding	(unknown)	Clean-up Fishery-related Indemnification	¥2 119 966 ¥4 024 863 ¥880 880 **¥7 025 709**	
Collision	2 000	Indemnification	LIt 1 666 031 931	Total damage less than shipowner's liability.

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
59	*Haven*	11.4.91	Genoa, Italy	Cyprus	109 977	LIt 23 950 220 000
60	*Kaiko Maru N°86*	12.4.91	Nomazaki, Japan	Japan	499	¥14 660 480
61	*Kumi Maru N°12*	27.12.91	Tokyo Bay, Japan	Japan	113	¥3 058 560
62	*Fukkol Maru N°12*	9.6.92	Ishinomaki, Japan	Japan	94	¥2 198 400
63	*Aegean Sea*	3.12.92	La Coruña, Spain	Greece	57 801	Pts 1 121 219 450
64	*Braer*	5.1.93	Shetland, United Kingdom	Liberia	44 989	£4 883 840
65	*Kihnu*	16.1.93	Tallinn, Estonia	Estonia	949	113 000 SDR (estimate)
66	*Sambo N°11*	12.4.93	Seoul, Republic of Korea	Republic of Korea	520	Won 77 786 224 (estimate)
67	*Taiko Maru*	31.5.93	Shioyazaki, Japan	Japan	699	¥29 205 120

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1971 Fund, unless indicated to the contrary)		Notes
Fire and explosion	(unknown)	Italian State Two Italian contractors French State Other French public bodies Principality of Monaco Indemnification	LIt 70 002 629 093 LIt 1 582 341 690 **LIt 71 584 970 783** FFr12 580 724 FFr10 659 469 FFr270 035 **FFr23 510 228** £2 500 000	Agreement on a global settlement of all outstanding claims between the Italian State, the shipowner/ Club and the 1971 Fund was signed in Rome on 4 March 1999. The 1971 Fund's payments are set out in the previous column. The shipowner's insurer paid LIt47 597 370 907 to the Italian State. The shipowner and his insurer paid all accepted claims by other Italian public bodies and private claimants.
Collision	25	Clean-up Fishery-related Indemnification	¥53 513 992 ¥39 553 821 ¥3 665 120 **¥96 732 933**	
Collision	5	Clean-up Indemnification	¥1 056 519 ¥764 640 **¥1 821 159**	¥650 522 recovered by way of recourse.
Mishandling of oil supply	(unknown)	Other damage to property Indemnification **Total**	¥4 243 997 ¥549 600 **¥4 793 597**	
Grounding	73 500	*Figures as in criminal court judgement:* Spanish Government (claimed) Public bodies (awarded) Private claimant (claimed) Fishery-related: Private claimants (awarded) Private claimants (claimed)	 Pts 1 154 500 000 Pts 303 263 261 Pts 184 216 423 Pts 327 027 638 Pts 14 955 486 084 **Pts 16 924 493 406**	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 Pts24 255 million.
Grounding	84 000	Clean-up Fishery-related Tourism-related Farming-related Other damage to property Other loss of income	£201 311 £35 465 466 £77 375 £3 548 940 £8 452 100 £198 861 **£47 944 053**	Further claims amounting to £5.7 million agreed. Claims amounting to £5.2 million subject of court proceedings. £5 281 706 paid by shipowner's insurer.
Grounding	140	Clean-up	FM543 618	
Grounding	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.
Collision	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.

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
68	*Ryoyo Maru*	23.7.93	Izu peninsula, Japan	Japan	699	¥28 105 920
69	*Keumdong N°5*	27.9.93	Yosu, Republic of Korea	Republic of Korea	481	Won 71 853 943
70	*Iliad*	9.10.93	Pylos, Greece	Greece	33 837	Drs 1 496 533 000
71	*Seki*	30.3.94	Fujairah, United Arab Emirates, and Oman	Panama	153 506	14 million SDR
72	*Daito Maru N°5*	11.6.94	Yokohama, Japan	Japan	116	¥3 386 560
73	*Toyotaka Maru*	17.10.94	Kainan, Japan	Japan	2 960	¥81 823 680
74	*Hoyu Maru N°53*	31.10.94	Monbetsu, Japan	Japan	43	¥1 089 280
75	*Sung Il N°1*	8.11.94	Onsan, Republic of Korea	Republic of Korea	150	Won 23 000 000 (estimate)
76	Spill from unknown source	30.11.94	Mohammédia, Morocco	-	-	-
77	*Boyang N°51*	25.5.95	Sandbaeg Do, Republic of Korea	Republic of Korea	149	19 817 SDR
78	*Dae Woong*	27.6.95	Kojung, Republic of Korea	Republic of Korea	642	Won 95 000 000 (estimate)

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1971 Fund, unless indicated to the contrary)		Notes
Collision	500	Clean-up Indemnification	¥8 433 001 ¥7 026 480 **¥15 459 481**	¥10 455 440 recovered by way of recourse.
Collision	1 280	Clean-up (paid) Fishery-related (paid) Other damage to property (paid)	Won 7 502 755 270 Won 8 518 467 621 Won 14 206 046 **Won 16 035 428 937**	Won 5 587 815 812 paid by shipowner's insurer, of which US$6 million reimbursed by 1971 Fund.
		Claims pending in court: Fishery-related	Won13 868 000 000	
Grounding	200	Clean-up (paid) Fishery-related (claimed) Other loss of income (claimed) Moral damages (claimed)	Drs 356 204 011 Drs 1 099 000 000 Drs 1 547 000 000 Drs 378 000 000 **Drs 3 002 204 011**	Drs 356 204 011 and US$565 000 paid by shipowner's insurer.
		Clean-up (paid)	US$565 000	
Collision	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.
Overflow during loading operation	0.5	Clean-up Indemnification	¥1 187 304 ¥846 640 **¥2 033 944**	
Collision	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.
Mishandling of oil supply	(unknown)	Other damage to property Clean-up Indemnification	¥3 954 861 ¥202 854 ¥272 320 **¥4 430 035**	
Grounding	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.
(Unknown)	(unknown)	Clean-up (claimed)	Mor Dhr 2 600 000	Not established that oil originated from a ship as defined in 1971 Fund Convention.
Collision	160			Clean-up claim (Won 142 million) time-barred as necessary legal action not taken.
Grounding	1	Clean-up	Won 43 517 127	

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
79	*Sea Prince*	23.7.95	Yosu, Republic of Korea	Cyprus	144 567	14 million SDR
80	*Yeo Myung*	3.8.95	Yosu, Republic of Korea	Republic of Korea	138	Won 21 465 434
81	*Shinryu Maru N°8*	4.8.95	Chita, Japan	Japan	198	¥3 967 138
82	*Senyo Maru*	3.9.95	Ube, Japan	Japan	895	¥20 203 325
83	*Yuil N°1*	21.9.95	Pusan, Republic of Korea	Republic of Korea	1 591	Won 250 million (estimate)
84	*Honam Sapphire*	17.11.95	Yosu, Republic of Korea	Panama	142 488	14 million SDR
85	*Toko Maru*	23.1.96	Anegasaki, Japan	Japan	699	¥18 769 567 (estimate)

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1971 Fund, unless indicated to the contrary)		Notes
Grounding	5 035	Clean-up (paid) Fishery-related (paid) Tourism-related (paid) **Won 41 138 000 000**	Won 21 100 000 000 Won 19 500 000 000 Won 538 000 000	
		Clean-up (paid)	¥357 214	
		Claims pending in court: Fishery-related Post spill environmental studies Clean-up **Won 1 528 500 000**	 Won 253 500 000 Won 1 140 000 000 Won 135 000 000	
		Removal of oil and vessel	US$8 253 706 ¥4 342 967	
Collision	40	Clean-up (paid) Fishery-related (paid) Tourism-related (paid) **Won 1 553 029 739**	Won 684 000 000 Won 600 000 000 Won 269 029 739	Won 560 945 437 paid by shipowner's insurer.
		Claims pending in court: Fishery-related	 Won 335 000 000	
Mishandling of oil supply	0.5	Clean-up (paid) Indemnification (paid) **¥9 634 576**	¥8 650 249 ¥984 327	¥3 718 455 paid by shipowner's insurer.
		Other damage to property (agreed) Other loss of income (agreed) **US$5 663**	US$3 103 US$2 560	
Collision	94	Clean-up Fishery-related Indemnification **¥366 578 453**	¥314 838 937 ¥46 726 661 ¥5 012 855	¥279 973 101 recovered by way of recourse action.
Sinking	(unknown)	Clean-up (paid) Fishery-related (paid) Oil removal operation (paid) **Won 24 739 536 729**	Won 12 393 138 987 Won 5 522 034 932 Won 6 824 362 810	Won 1 654 million paid by shipowner's insurer.
		Claims pending in court: Fishery-related (claimed)	 Won 14 399 050 906	
Contact with fender	1 800	Clean-up (paid) Fishery-related (paid) Environmental studies (claimed) **Won 10 259 000 000**	Won 9 033 000 000 Won 1 112 000 000 Won 114 000 000	US$13.5 million paid by shipowner's insurer.
Collision	4			Total damage less than owner's liability. Indemnification not requested.

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
86	*Sea Empress*	15.2.96	Milford Haven, Wales, United Kingdom	Liberia	77 356	£7 395 748
87	*Kugenuma Maru*	6.3.96	Kawasaki, Japan	Japan	57	¥1 175 055 (estimate)
88	*Kriti Sea*	9.8.96	Agioi Theodoroi, Greece	Greece	62 678	Drs 2 241 million (estimate)
89	*N°1 Yung Jung*	15.8.96	Pusan, Republic of Korea	Republic of Korea	560	Won 122 million
90	*Nakhodka*	2.1.97	Oki island, Japan	Russian Federation	13 159	1 588 000 SDR
91	*Tsubame Maru N°31*	25.1.97	Otaru, Japan	Japan	89	¥1 843 849
92	*Nissos Amorgos*	28.2.97	Maracaibo, Venezuela	Greece	50 563	Bs3 473 million (estimate)

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1971 Fund, unless indicated to the contrary)		Notes
Grounding	72 360	Clean-up (paid)	£20 375 546	£6 866 809 paid by shipowner's insurer.
		Fishery-related (paid)	£8 269 825	
		Tourism-related (paid)	£2 138 311	
		Other damage to property (paid)	£330 829	
		Other loss of income (paid)	£268 779	
			£31 383 290	
		Claims pending in Court:		
		Clean-up	£4 513 000	
		Fishery-related	£4 523 000	
		Tourism-related	£570 500	
		Other damage to property	£158 500	
		Other loss of income	£2 350 000	
			£12 115 000	
Mishandling of oil supply	0.3	Clean-up	¥1 981 403	¥1 197 267 recovered by way of recourse action.
		Indemnification	¥297 066	
			¥2 278 469	
Mishandling of oil supply	30	Clean-up (paid)	Drs 522 162 557	Drs 664 801 123 paid by shipowner's insurer. Further claims being examined.
		Clean-up (claimed)	Drs 366 676 811	
		Clean-up (agreed)	Drs 518 030 496	
		Fishery-related (paid)	Drs 83 464 212	
		Fishery-related (claimed)	Drs 813 464 212	
		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 241 629 000	
			Drs2 285 317 142	
Grounding	28	Clean-up (paid)	Won 689 829 037	Won 690 million paid by shipowner's insurer.
		Salvage (paid)	Won 20 376 927	
		Fishery-related (paid)	Won 16 769 424	
		Loss of income (paid)	Won 6 161 710	
		Cargo transhipment (paid)	Won 10 000 000	
		Indemnification (paid)	Won 28 071 490	
			Won 771 208 588	
Breaking	6 200	Clean-up (paid)	¥14 228 052 000	Provisional payments of ¥8 558 million made by 1971 Fund and ¥5 191 million by the 1992 Fund. Payments of ¥66 million and US$4.6million made by shipowner's insurer.
		Clean-up (claimed)	¥7 183 398 000	
		Fishery-related (paid)	¥1 491 772 000	
		Fishery-related (claimed)	¥771 856 000	
		Oil removal (claimed)	¥1 312 000 000	
		Tourism-related (paid)	¥1 247 192 000	
		Tourism-related (claimed)	¥212 332 000	
		Causeway construction (claimed)	¥2 397 000 000	
			¥28 843 602 000	
Overflow during loading operation	0.6	Clean-up	¥7 673 830	¥1 710 173 paid by shipowner's insurer.
		Indemnification	¥457 497	
			¥8 131 327	
Grounding	3 600	Clean-up (paid)	Bs1 061 268 867	Bs1 261 000 000 and US$1.8 million paid by shipowner's insurer. Claims for significant amounts being examined. Further claims expected. Claims for Bs320 000 000 are the subject of legal proceedings.
		Other damage to property (paid)	Bs16 766 431	
		Fishery-related (paid)	Bs119 846 417	
		Tourism-related (paid)	Bs77 002 672	
			Bs1 274 884 387	
		Fishery-related (paid)	US$ 4 008 347	

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
93	*Daiwa Maru N° 18*	27.3.97	Kawasaki, Japan	Japan	186	¥3 372 368 (estimate)
94	*Jeong Jin N° 101*	1.4.97	Pusan, Republic of Korea	Republic of Korea	896	Won 246 million
95	*Osung N° 3*	3.4.97	Tunggado, Republic of Korea	Republic of Korea	786	104 500 SDR (estimate)
96	*Plate Princess*	27.5.97	Puerto Miranda, Venezuela	Malta	30 423	3.6 million SDR (estimate)
97	*Diamond Grace*	2.7.97	Tokyo Bay, Japan	Panama	147 012	14 million SDR
98	*Katja*	7.8.97	Le Havre, France	Bahamas	52 079	FFr48 million (estimate)
99	*Evoikos*	15.10.97	Strait of Singapore	Cyprus	80 823	8 846 941 SDR
100	*Kyungnam N° 1*	7.11.97	Ulsan, Republic of Korea	Republic of Korea	168	Won 43 543 015

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1971 Fund, unless indicated to the contrary)		Notes
Mishandling of oil supply	1	Clean-up Indemnification **¥416 465 406**	¥415 600 000 ¥ 865 406	
Overflow during loading operation	124	Clean-up Indemnification **Won 476 000 000**	Won 418 000 000 Won 58 000 000	
Grounding	(unknown)	Clean-up (paid) Fishery-related (paid) Oil removal operation (paid) **Won 7 674 268 001**	Won 866 906 355 Won 68 795 729 Won 6 738 565 917	
		Clean-up (paid) Clean-up (claimed) Fishery-related (paid) **¥841 395 808**	¥608 853 754 ¥50 755 568 ¥181 786 486	
Overflow during loading operation	3.2	Fishery-related (claimed)	US$47 000 000	
Grounding	1 500	Clean-up (paid) Fishery-related (paid) Tourism-related (paid) Other loss of income (paid) **¥1 680 000 000**	¥1 074 000 000 ¥263 000 000 ¥23 000 000 ¥8 000 000	Total amount of established claims will not exceed shipowner's liability.
Striking a quay	190	Clean-up (paid) Clean-up (claimed) Fishery-related (paid) Other damage to property (paid) **FFr17 275 895**	FFr15 549 934 FFr1 136 805 FFr328 000 FFr261 156	FFr16 139 000 paid by shipowner's insurer. Probable that total of the established claims will be less than owner's liability.
		Claims pending in court: Clean-up (claimed)	 FFr 8 973 973	
Collision	29 000	*Singapore* Clean-up (claimed) Other damage to property (claimed) **S$17 748 000**	 S$15 948 000 S$1 800 000	Provisional payment of S$4.5 million by shipowner in respect of clean-up claims. RM2.6 million paid by shipowner.
		Malaysia Clean-up (paid) Fishery-related (paid) **RM 2 624 000**	 RM 1 424 000 RM 1 200 000	
		Indonesia Clean-up (claimed) Environmental damage (claimed) Fishery-related (claimed) **US$3 363 000**	 US$152 000 US$3 200 000 US$11 000	
Grounding	-5	Clean-up (paid) Fishery-related (paid) **Won 265 023 170**	Won 189 214 535 Won 82 818 635	The shipowner has paid Won 26 622 030.

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
101	*Pontoon 300*	7.1.98	Hamriyah, Sharjah, United Arab Emirates	Saint Vincent and the Grenadines	4 233	Not available
102	*Maritza Sayalero*	8.6.98	Carenero Bay, Venezuela	Panama	28 338	3 million SDR (estimate)
103	*Al Jaziah 1*	24.1.00	Abu Dhabi, UAE	Honduras	681	Not available
104	*Natuna Sea*	3.10.00	Indonesia	Panama	51 095	6 100 000 SDR (estimate)

Notes

1 Amounts are given in national currencies. The relevant conversion rates as at 31 December 2000 are as follows:

£1 =

Algerian Dinar	Din	109.676	Moroccan Dirham	Mor Dhr	15.779
Canadian Dollar	Can$	2.2437	Omani Rial	OR	0.5752
Danish Krone	DKr	11.8756	Republic of Korea Won	Won	1899.66
Finnish Markka	FM	9.4602	Russian Rouble	Rbls	42.8034
French Franc	FFr	10.4369	Singapore Dollar	S$	2.5903
German Mark	DM	3.112	Spanish Peseta	Pts	264.736
Greek Drachma	Drs	542.166	Swedish Krona	SKr	14.0948
Italian Lira	LIt	3080.79	UAE Dirham	UAE Dhr	5.4868
Japanese Yen	¥	170.592	United States Dollar	US$	1.4938
Malaysian Ringgit	RM	5.6765	Venezuelan Bolivar	Bs	1045.29

£1 = 1.14250 SDR or 1 SDR = £0.875273

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).

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1971 Fund, unless indicated to the contrary)		Notes
Sinking	4 000	Clean-up (paid) Other damage (claimed)	Dhr 6 308 992 Dhr 198 752 497 **Dhr 205 061 489**	Provisional payments have been made at 75% in respect of the agreed amounts.
Ruptured discharge pipe	262	*Claims pending in court:* Clean-up and environmental damage (claimed)	 Bs10 000 000	The 1971 Fund considers that the Conventions do not apply to this incident.
Sinking	100-200	Clean-up (claimed)	Dhr 7 042 717	
Grounding	7 000 (estimate)	*Singapore* Clean-up (claimed)	 US$160 000	
		Malaysia Fishery-related (claimed)	 US$240 000	
		Indonesia Fishery-related (claimed) Other loss of income (claimed) Environmental damage (claimed)	 US$3 760 000 US$9 400 000 US$140 000 000 **US$153 160 000**	

ANNEX XVIII

1992 FUND: SUMMARY OF INCIDENTS (31 DECEMBER 2000)

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

- Clean-up (including preventive measures)
- Pre-spill preventive measures
- Fishery-related
- Tourism-related
- Other damage to property

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GT)	Limit of shipowner's liability under applicable CLC
1	Unknown	20.6.96	North Sea coast, Germany	-	-	-
2	*Nakhodka*	2.1.97	Oki island, Japan	Russian Federation	13 159	1 588 000 SDR
3	*Osung N°3*	3.4.97	Tunggado, Republic of Korea	Republic of Korea	786	104 500 SDR (estimate)
4	Unknown	28.9.97	Essex, United Kingdom	-	-	-
5	*Santa Anna*	1.1.98	Devon, United Kingdom	Panama	17 134	10 196 280 SDR (estimate)
6	*Milad 1*	5.3.98	Bahrain	Belize	801	Not available
7	*Mary Anne*	22.7.99	Philippines	Philippines	465	3 000 000 SDR
8	*Dolly*	5.11.99	Martinique	Dominican Republic	289	Not available

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1992 Fund, unless indicated to the contrary)		Notes
Unknown	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 the 1992 Fund.
Breaking	6 200	Clean-up (paid) Clean-up (claimed) Fishery-related (paid) Fishery-related (claimed) Oil removal (claimed) Tourism-related (paid) Tourism-related (claimed) Causeway construction (claimed)	¥14 228 052 000 ¥7 183 398 000 ¥1 491 772 000 ¥771 856 000 ¥1 312 000 000 ¥1 247 192 000 ¥212 332 000 ¥2 397 000 000 **¥28 843 602 000**	Provisional payments of ¥8 558 million made by 1971 Fund and ¥5 191 million by the 1992 Fund. Payments of ¥66 million and US$4.6 million made by shipowner's insurer.
Grounding	Unknown	Clean-up (paid) Fishery-related (paid) Oil removal operation (paid)	Won 866 906 355 Won 68 795 729 Won 6 738 565 917 **Won 7 674 268 001**	The 1992 Fund paid ¥340 million to claimants. This amount was later reimbursed by the 1971 Fund.
		Clean-up (paid) Clean-up (claimed) Fishery-related (paid)	¥608 853 754 ¥50 755 568 ¥181 786 486 **¥841 395 808**	
Unknown	Unknown	Clean-up (claimed)	£10 000	Claim will not be pursued.
Grounding	280	Clean-up (claimed)	£30 000	Questioned whether *Santa Anna* falls within definition of 'ship'.
Damage to hull	0	Pre-spill preventive measures (paid)	BD 21 168	The clean-up claims have been paid by the shipowner's insurer. Further claims are expected.
Sinking	Unknown	Clean-up (paid) Clean-up (claimed)	US$1 000 000 US$1 100 000 **US$2 100 000**	
Sinking	Unknown			No claims submitted so far.

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GT)	Limit of shipowner's liability under applicable CLC
9	*Erika*	12.12.99	Brittany, France	Malta	19 666	FFr84 247 733
10	*Al Jaziah 1*	24.1.00	Abu Dhabi, UAE	Honduras	681	Not available
11	*Natuna Sea*	3.10.00	Indonesia	Panama	51 095	22 400 000 SDR (estimate)
12	*Slops*	15.6.00	Piraeus, Greece	Greece	10 815	None

Notes

1 Amounts are given in national currencies. The relevant conversion rates as at 31 December 2000 are as follows:

£1 =

Bahrain Dinar	BD	0.5632
French Francs	FFr	10.4369
German Mark	DM	3.112
Japanese Yen	¥	170.592
Republic of Korea	Won	1889.66
UAE Dirham	UAE Dhr	5.4868
United States Dollar	S$	1.4938

£1 = 1.14250 SDR or 1 SDR = £0.875273

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).

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1992 Fund, unless indicated to the contrary)		Notes
Breaking	14 000 (estimate)	Clean-up (approved)	FFr7 650 421	Further claims are expected. Provisional payments totalling FFr32 million have been made by the shipowner's insurer at 50% of the approved amount.
		Clean-up (claimed)	FFr22 737 513	
		Other damage to property (approved)	FFr3 995 584	
		Other damage to property (claimed)	FFr16 855 426	
		Fishery-related (approved)	FFr40 151 694	
		Fishery-related (claimed)	FFr68 224 159	
		Tourism (approved)	FFr30 016 294	
		Tourism (claimed)	FFr80 392 743	
		Other loss of income (approved)	FFr2 295 392	
		Other loss of income (claimed)	FFr24 929 220	
			FFr297 248 446	
Sinking	100-200	Clean-up (claimed)	Dhr 7 042 717	
Grounding	7 000 (estimate)	*Singapore*		
		Clean-up (claimed)	US$160 000	
		Malaysia		
		Fishery-related (claimed)	US$240 000	
		Indonesia		
		Fishery-related (claimed)	US$3 760 000	
		Other loss of income (claimed)	US$9 400 000	
		Environmental damage (claimed)	US$140 000 000	
			US$153 160 000	
Fire	Unknown			The 1992 Fund considers that the *Slops* does not fall within the definition of 'ship'.

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