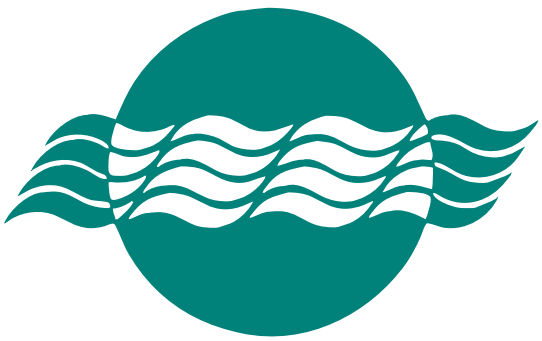
Annual Report 2001

INTERNATIONAL
OIL POLLUTION
COMPENSATION FUNDS

REPORT ON THE ACTIVITIES OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS IN 2001



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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 2001, 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. A Working Group has been considering the need to improve the international compensation system to ensure that it continues to meet the needs of society in the new millenium. Following a proposal by the Working Group, the Assembly approved a draft Protocol establishing a Supplementary Fund which would provide additional compensation in States which are parties to it. The Protocol will be considered by a Diplomatic Conference to be held under the auspices of the International Maritime Organization in the first half of 2003. The Working Group will continue its deliberations during 2002.

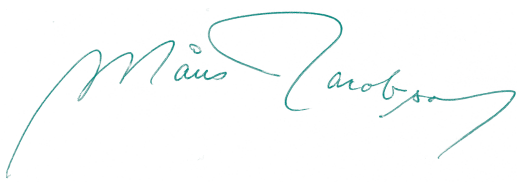
The 1971 Fund faced serious problems due to the decreasing number of Member States and the resulting reduction in the contribution base. However these problems have been largely overcome as a result of the 1971 Fund having taken out insurance to cover any liabilities resulting from incidents occurring after 25 October 2000. Furthermore the 1971 Fund Convention will cease to be in force on 24 May 2002 when the number of Member States will fall below 25, and as a result the 1971 Fund Convention will not apply to incidents occurring after that date.

Fortunately, there have been only a few oil spill incidents during 2001 involving the

Måns Jacobsson

IOPC Funds. The *Erika* incident which occurred in France in 1999 has resulted in some 5 800 claims for compensation and has generated a huge workload for the Secretariat. This has not however 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.

I hope that the information in this Report will be of interest 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

This Annual Report highlights many positive developments in the work of the IOPC Funds during 2001.

The membership of the 1992 Fund has again increased considerably, clearly indicating that, internationally, the 1992 Fund is seen to fulfil an important function in relation to the transport of oil by sea. By the end of 2001, the 1992 Fund had 62 Member States, in all five continents of the world, and, as a result of a number of accessions during 2001, it will have 74 Member States by the end of 2002.

Fortunately, there have not been many incidents during 2001 involving the IOPC Funds, and this has enabled the Secretariat and the governing bodies of the organisation to concentrate on, and to make considerable progress with, claims resulting from major incidents from previous years. This is important since the settlement and payment of claims is, after all, the *raison d'être* of the Funds and, particularly for individuals and small businesses, compensation normally needs to be paid promptly if it is to be useful. The continued development of the use of information technology is also important, not just in this regard, and will no doubt further strengthen the Secretariat's ability to cope with a heavy workload.

As the Director points out in his Foreword, the problems arising from the continuing decrease in the membership of the 1971 Fund have largely been overcome by the insurance arrangements that have been put in place by the Assembly. On 24 May 2002, the 1971 Fund Convention will cease to be in force. I sincerely hope that, during the coming year, all parties involved will endeavour to finalise the settlement of all pending claims. Only then can the actual winding up of the 1971 Fund, which will entail a significant additional challenge for the organisation, be started.

The activities of the Working Group set up by the 1992 Fund Assembly were of great importance during the year. Under the able chairmanship of Mr Alfred Popp QC and with the active participation and co-operation of Member States, the Working Group managed to develop, in a very short time, a draft Protocol to establish a Supplementary Compensation Fund. The draft Protocol was endorsed by the Assembly in October and submitted to the Secretary-General of the International Maritime Organization with a request to convene a Diplomatic Conference which will examine the draft, and hopefully, adopt a Protocol. However, this substantial achievement should not distract us from thoroughly exploring the possibilities of improving other aspects of the Conventions. In the long term, the 1992 Fund will only be able to retain its vital role if it continues to reflect the needs of the global community it serves. It is important therefore that the Working Group continues its work in 2002.

Willem Oosterveen

Lastly, I would like to thank the Secretariat, headed by the Director, the Member States and all other parties involved for their hard work and spirit of co-operation during the year 2001. Together, they have once again ensured the success of the international system in providing prompt and adequate compensation to victims of oil pollution damage in a most efficient and cost-effective manner.

Willem Oosterven
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 £52 million or US$76 million)[1]. The maximum amount payable by the 1992 Fund for any one incident is 135 million SDR (about £117 million or US$170 million). In both cases this amount includes the sum actually paid by the shipowner or his insurer.

Each Fund has an Assembly composed of all Member States of the respective Organisation. The 1992 Fund also has 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 IOPC Funds' 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 2001, ie 1 SDR = £0.86558 or US$1.25976.*

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, civil war or insurrection or a grave natural disaster, or
- the damage was wholly caused by an intentional act or omission with the intent to cause damage 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) (£115 or US$168) 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:

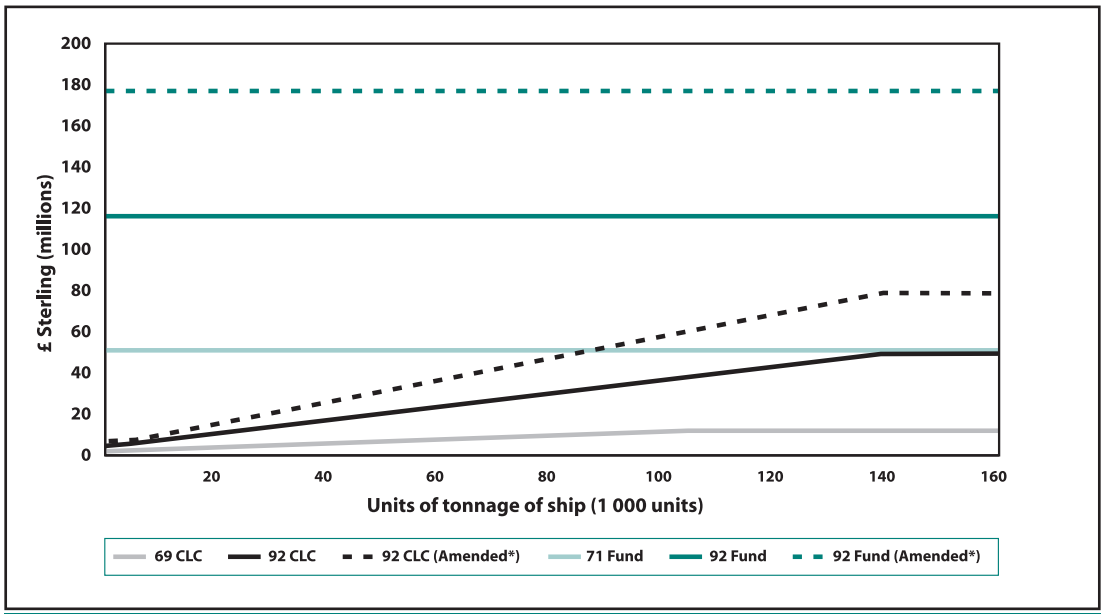
a) for a ship not exceeding 5 000 units of gross tonnage, 3 million SDR (£2.6 million or US$3.8 million);

b) for a ship with a tonnage between 5 000 and 140 000 units of tonnage, 3 million SDR (£2.6 million or US$3.8 million) plus 420 SDR (£364 or US$529) 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$75 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



Limits laid down in the Conventions

the owner's personal fault (actual fault or privity). Under the 1992 Convention, however, the shipowner is deprived of this right only if it is proved that the pollution damage resulted from the shipowner's personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

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 (eg the master and the crew). 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. This protection does not apply if the pollution damage resulted from the personal act or omission of the person concerned, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

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 damage exceeds the limit of the shipowner's liability under the applicable Civil Liability Convention
- 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 shipowner is exempt from liability under the applicable Civil Liability Convention because the damage was caused by a grave natural disaster, or

* *Not in force - see Section 2.2.*

wholly caused by sabotage by a third party or the negligence of public authorities in maintaining lights or other navigational aids.

The compensation payable by the 1971 Fund in respect of an incident is limited to an aggregate amount of 60 million SDR (£52 million or US$76 million). The maximum amount payable by the 1992 Fund in respect of an incident is 135 million SDR (£117 million or US$170 million). In both cases this maximum amount includes the sum actually paid by the shipowner (or his insurer) under the applicable 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 under the 1969 Civil Liability Convention. There are no corresponding provisions in the 1992 Fund Convention.

Claims for compensation under the Civil Liability and Fund Conventions are time-barred (extinguished) unless legal action is brought within three years of the date when the damage occurred and in any event within six years of the date of the incident.

The Courts in the State or States where the pollution damage occurred have exclusive jurisdiction over actions for compensation under the Conventions against the shipowner, his insurer and the IOPC Funds. A judgement by a Court competent under the applicable Convention which is enforceable in the State of origin and is in that State no longer subject to ordinary forms of review shall be recognised and enforceable in the other Contracting States.

The structure and financing of the IOPC Funds are described in 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 under 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. As at 31 December 2001 no such communications had been received.

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$5.7 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$5.7 million) plus 631 SDR (£546 or US$795) for each additional unit of tonnage; and

c) for a ship of 140 000 units of tonnage or over, 89 770 000 SDR (£78 million or US$113 million).

The amendment to the 1992 Fund Convention would bring the total amount available under the 1992 Conventions to 203 million SDR (£176 million or US$256 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 2001, 62 States had become Members of the 1992 Fund. A further 12 States have acceded to the 1992 Fund Protocol, bringing the number of Member States to 74 by the end of 2002, as set out below.

It is expected that when the 1971 Fund Convention ceases to be in force on 24 May 2002, most of the 1971 Fund's former Member States will have ratified the 1992 Fund Convention. It is likely that a number of other States will also become Members of the 1992 Fund in the near future, eg Madagascar, South Africa and Tanzania.

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

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

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

Djibouti	8 January 2002	Angola	4 October 2002
Papua New Guinea	23 January 2002	Saint Vincent and the Grenadines	9 October 2002
Sierra Leone	4 June 2002	Cameroon	15 October 2002
Cambodia	8 June 2002	Portugal	13 November 2002
Turkey	17 August 2002	Colombia	19 November 2002
Dominica	31 August 2002	Qatar	20 November 2002

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 the 1992 Fund Protocol when this condition was fulfilled denounced the 1971 Fund Convention and ceased to be Parties to that Convention on 15 May 1998.

Under Article 43.1 of the original version of the 1971 Fund Convention the Convention would have remained in force until the number of States Parties fell below three. As a result of the entry into force of a Protocol to the 1971 Fund Convention adopted in 2000, Article 43.1 has been amended to the effect that the Convention will cease to be in force on 24 May 2002 when the number of Member States falls below 25, and will not apply to incidents occurring after this date.

The 1971 Fund membership at the end of 2001 is set out below.

24 STATES PARTIES TO THE 1971 FUND CONVENTION

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

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

Papua New Guinea	23 January 2002
Djibouti	17 May 2002
United Arab Emirates	24 May 2002

4 EXTERNAL RELATIONS

4.1 Promotion of 1992 Fund membership and information on Fund activities

The Assemblies of the IOPC Funds have emphasised the importance of the 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 members of the Secretariat have visited a number of 1992 Fund Member States during 2001 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 members of the Secretariat visited several non-Member States. They have also participated in seminars, conferences and workshops in a number of countries and given lectures 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 Secretariat have had discussions with government representatives of non-Member States in connection with meetings within IMO, in particular during the sessions of the IMO Assembly, Council and Legal Committee.

The Secretariat has, on request, assisted some non-Member States in the elaboration of the national legislation necessary for the implementation of the 1992 Conventions.

The 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 2001 the States set out in the table below, which were not Members of either Organisation, had observer status with both.

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.

NON-MEMBER STATES WITH OBSERVER STATUS

Angola
Brazil
Cambodia
Chile
Congo
Democratic People's Republic of Korea
Dominica
Ecuador
Egypt
Indonesia
Iran, Islamic Republic of
Lebanon
Peru
Saint Vincent and the Grenadines
Saudi Arabia
Switzerland
Turkey
United States

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 2001 the Secretariat represented the IOPC Funds at meetings of the IMO Assembly, Council and Legal Committee.

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

- Advisory Committee on Protection of the Sea (ACOPS)
- Baltic and International Maritime Council (BIMCO)
- Comité Maritime International (CMI)
- Cristal Limited
- Federation of European Tank Storage Associations (FETSA)
- Friends of the Earth International (FOEI)
- International Association of Independent Tanker Owners (INTERTANKO)
- International Chamber of Shipping (ICS)
- International Group of P & I Clubs
- International Salvage Union (ISU)
- International Tanker Owners Pollution Federation Limited (ITOPF)
- International Union for the Conservation of Nature and Natural Resources (IUCN)
- Oil Companies International Marine Forum (OCIMF)

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

In the majority of incidents involving the IOPC Funds, clean-up operations are monitored and claims are assessed in close co-operation between the Funds and the shipowner's liability insurer, which in most cases is one of the mutual Protection and Indemnity Associations ('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) supported by a world-wide network of technical experts.

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

5.1 1992 Fund Assembly

5th extraordinary session

The 1992 Fund Assembly held an extraordinary session from 29 to 30 January 2001 under the chairmanship of Mr Willem Oosterveen (Netherlands).

The Assembly was informed of a proposal by the European Commission for a Regulation on the establishment of a fund for the compensation of oil pollution damage in European waters ("COPE Fund"). During the discussion all delegations which intervened stressed the importance of the international regime established by the 1992 Conventions and emphasised that any action within the European Union should not work to the detriment of the international regime. All delegations expressed the view that it was important that any developments in the field of liability and compensation for oil pollution damage should be carried out on a global level. The delegations of the European Union Member States that intervened stated their strong support for the IOPC Fund regime.

The Assembly instructed the Director to provide factual information to the bodies of the European Union on the international compensation regime to enable these bodies to ensure that any measures taken within the European Union would not be detrimental to the global compensation system.

6th session

The 1992 Fund Assembly held its 6th session, which was also chaired by Mr Willem Oosterveen (Netherlands), from 16 to 19 October 2001. The following major decisions were taken at that session.

- The Assembly noted with appreciation the External Auditor's Report and his Opinion on the Financial Statements of the 1992 Fund which went into great depth and detail. The Assembly approved the accounts for the financial period 1 January - 31 December 2000 (cf Section 7.2).
- The following States were elected members of the 1992 Fund Executive Committee:

Algeria	Netherlands
Australia	Norway
Croatia	Philippines
Ireland	Republic of Korea
Italy	Spain
Japan	United Kingdom
Liberia	Vanuatu
Mexico	

- The Assembly decided to increase the 1992 Fund's working capital from £18 million to £20 million.
- The Assembly decided to levy 2001 contributions for an amount of £62 million, with £41 million payable by 1 March 2002 and the remainder deferred and to be invoiced, if and to the extent required, during the second half of 2002 (cf Section 8.5).
- The Assembly adopted the text of a draft Protocol establishing a Supplementary Fund for Compensation prepared by an intersessional Working Group and instructed the Director to submit the draft Protocol to the Secretary-General of IMO, requesting him to convene a Diplomatic Conference to consider the draft Protocol at the earliest opportunity (cf Section 9).
- The Assembly noted the developments in respect of the ratification and implementation of the 1996 International Convention on liability and compensation for damage in connection with the carriage of hazardous and noxious substances by sea (HNS Convention). The Director was instructed to develop a system in the form of a website or CD-Rom to assist States and potential contributors in the identification and reporting of contributing cargo under the Convention.
- The Assembly adopted a Resolution urging all States Parties to the 1992 Fund Convention which have not yet done so to ratify the 1990 International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC).

Gaute Sivertsen

5.2 1992 Fund Executive Committee

11th - 15th sessions

The 1992 Fund Executive Committee held five sessions during 2001. The 11th session was chaired by the Vice-Chairman, Captain Luis Diaz-Monclús (Venezuela) on 29 and 30 January 2001. The 12th - 15th sessions were held under the chairmanship of Mr Gaute Sivertsen (Norway) on 15 March, from 25 to 28 June and on 15, 16 and 19 October 2001.

The main decisions taken by the 1992 Fund Executive Committee at these sessions are reflected in Section 14 in the context of the particular incidents.

5.3 1971 Fund Administrative Council

3rd - 5th sessions

The 6th, 7th and 8th extraordinary sessions of the 1971 Fund Assembly were to be held on 29 January, 15 March and 26 June 2001, respectively, but the Assembly failed to achieve a quorum on these occasions. Therefore, the items on the agendas of these extraordinary Assembly sessions were considered by the Administrative Council at its 3rd, 4th and 5th sessions, respectively. The Council's 3rd and 4th sessions were chaired by Mr Valery Knyazev (Russian Federation) and the 5th session by Captain Raja Malik (Malaysia).

The main decisions taken by the 1971 Fund Administrative Council at these sessions, which only dealt with incidents involving the 1971 Fund, are reflected in Section 13 in the context of the particular incidents.

6th session

The Assembly also failed to achieve a quorum at its 24th session to be held from 15 to 19 October 2001. Therefore, the items on the agenda of that session were considered by the Administrative Council at its 6th session. The Council re-elected Captain Raja Malik (Malaysia) as its Chairman.

The following major decisions were taken by the Administrative Council at its 6th session.

- The Administrative Council noted with appreciation the External Auditor's Report and his Opinion on the Financial Statements of the 1971 Fund which went into great depth and detail. The Council approved the accounts for the financial period 1 January to 31 December 2000 (cf Section 7.2).
- The Council decided to levy 2001 annual contributions for a total amount of £24.2 million, the entire levy to be deferred and invoiced, to the extent necessary, during the second half of 2002 (cf Section 8.3).
- The Administrative Council also took a number of decisions relating to incidents

Raja Malik

Assembly chaired by Willem Oosterveen

involving the 1971 Fund. The main decisions are reflected in Section 13 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 2001 sessions the 1992 Fund Assembly and the 1971 Fund Administrative Council (acting on behalf of the Assembly) took the following major decisions affecting both Organisations.

- The non-submission of oil reports by a number of States continues 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 decided that letters should be sent from the Chairmen on behalf of the bodies to the Governments of States which had outstanding oil reports emphasising their serious concerns and requesting an explanation as to why these reports had not been submitted (cf Section 8.1).
- The budget appropriations for 2002 were adopted, with an administrative expenditure for the joint Secretariat totalling £2 816 663.
- The governing bodies decided to create a joint Audit Body of the two Funds to ensure maximum transparency in the Funds' operations, with the composition and mandate of the Audit Body to be considered at the governing bodies' next sessions.
- The governing bodies considered the working methods and structure of the Secretariat. They decided to separate the roles of Technical Adviser and Head of the Claims Department. They also instructed the Director to appoint a Deputy Director.

6 WINDING UP OF THE 1971 FUND

6.1 The issues

As more States have joined the 1992 Fund and ceased to be Members of the 1971 Fund, the 'old' regime based on the 1969 Civil Liability Convention and the 1971 Fund Convention has lost its importance. 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 8 million tonnes by the end of 2001. This reduction in the contribution base could result in a considerable increase in the financial burden on the contributors in those States which remain Members of the 1971 Fund.

As long as the 1971 Fund Convention remains in force the 1971 Fund may attract additional liabilities arising out of new incidents in the remaining 1971 Fund Member States. There was considerable concern that an incident might occur for which the 1971 Fund had an obligation to pay compensation to victims, but where there were no or very few contributors in any of the remaining Member States.

6.2 Termination of the 1971 Fund Convention

Under Article 43.1 in its original version the 1971 Fund Convention ceases to be in force when the number of Contracting States falls below three.

In October 1999 the 1971 Fund Executive Committee, acting on behalf of the Assembly, noted that although many States had denounced the 1971 Fund Convention, it was unlikely that the number of Contracting States would fall below three in the foreseeable future. A number of ways of accelerating the winding up of the 1971 Fund were therefore considered by the Committee. The 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, so that the Convention would cease to be in force well before the number of Contracting States would fall below three. The Diplomatic Conference was held from 25 to 27 September 2000. The Conference adopted a Protocol under which the 1971 Fund Convention would cease to be in force on the date on which the number of Contracting States falls below 25, or 12 months following the date on which the Assembly (or any other body acting on its behalf) noted that the total quantity of contributing oil received in the remaining Member States had fallen below 100 million tonnes.

Normally such an amendment to a Convention would be binding only on those States which had expressed their acceptance. However, serious difficulties would have resulted if explicit acceptance had been required. For this reason the entry into force of the Protocol is subject to a simplified procedure by tacit or implied consent, ie by States failing to object by 27 March 2001. No such objections were lodged by that date and the Protocol entered into force on 27 June 2001.

Due to a number of recent denunciations of the 1971 Fund Convention, the number of Contracting States will fall below 25 on 24 May 2002, and the Convention will therefore cease to be in force on 24 May 2002. The Convention will not apply to incidents occurring after that date.

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

As authorised by the Administrative Council at its October 2000 session, the Director purchased insurance covering any liabilities of the 1971 Fund for compensation and indemnification up to 60 million SDR (£52 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 insurance came into effect on 25 October 2000. In July 2001, the 1971 Fund exercised an option to extend the cover up to the date when the 1971 Fund Convention will cease to be in force.

The solution adopted offers considerable benefits. It protects the potential victims in the

remaining Member States in respect of incidents occurring before the denunciation of the Convention takes effect for a particular State. 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.

By 31 December 2001 two incidents had occurred where the insurance cover will be called upon, ie the *Zeinab* and the *Singapura Timur* incidents (cf pages 97 and 100).

6.4 Procedure for winding up the 1971 Fund

The termination of the 1971 Fund Convention will not result in the liquidation of the 1971 Fund as it will have to meet its obligations in respect of pending incidents, and it is likely that this will take several years. Steps will have to be taken to ensure that the 1971 Fund is liquidated and wound up in a proper manner.

The Administrative Council decided in October 2000 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.

Since the 1971 Fund Convention will cease to be in force on 24 May 2002, at their October 2001 sessions the governing bodies confirmed previous decisions to maintain the existing arrangement under which the 1992 Fund shares a Secretariat with the 1971 Fund and the 1992 Fund Director is 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.

Assembly in session

7 ADMINISTRATION OF THE IOPC FUNDS

7.1 Secretariat

The 1971 Fund and 1992 Fund have a joint Secretariat headed by one Director. During 2001 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 are crucial to the efficient functioning of the Secretariat.

As mentioned in Section 5.4, the governing bodies of the IOPC Funds decided at their October 2001 sessions to separate the roles of Technical Adviser and Head of the Claims Department. They also instructed the Director to appoint a Deputy Director. In accordance with the governing bodies' decisions, the Director appointed the Head of the Claims Department, Mr Joseph Nichols, as Deputy Director and Technical Adviser, and Mr José Maura as new Head of the Claims Department, with effect from 1 January 2002.

In May 2001, Mr Masamichi Hasebe succeeded Mr Satoru Osanai as Legal Counsel. Ms Catherine Grey succeeded Ms Hilary Warson as Head of the External Relations and Conference Department in August 2001.

The IOPC Funds continue to use external consultants to provide advice on legal and technical matters as well as on matters relating to management and personnel. In connection with a number of incidents the Funds and the P & I insurer involved have jointly established local claims offices to facilitate the efficient handling of the great numbers of claims submitted and in general to assist claimants.

The governing bodies have emphasised the importance of the 1992 Fund's strengthening the Secretariat's activities in the field of public relations. The development of the Funds' website is continuing, in particular in respect of the French and Spanish versions of the website.

7.2 Financial statements for 2000

The financial statements of the 1971 Fund and the 1992 Fund for the period 1 January to 31 December 2000 were approved by the respective governing bodies at their sessions in October 2001.

As in previous years the accounts of both the 1971 Fund and the 1992 Fund 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) (£865 000) or, by the 1992 Fund, 4 million SDR (£3.5 million).

1971 Fund

No annual contributions were receivable in respect of the General Fund during 2000. Contributions receivable in 2000 with respect to the *Nakhodka* Major Claims Fund and the *Osung N°3* Major Claims Fund were £1.0 million and £5.3 million respectively. Reimbursement of £2.5 million was made to those persons who had contributed to the *Haven* Major Claims Fund.

Claims expenditure for the period amounted to £21 million. The majority of this expenditure related to three cases, namely the *Braer*, *Sea Empress* and *Osung N°3* incidents.

The balance sheet of the 1971 Fund as at 31 December 2000 is reproduced in Annex VII. The balances of the various Major Claims Funds are also given. The contingent liabilities were

estimated at £197 million in respect of claims arising from 18 incidents.

1992 Fund

No contributions were receivable in respect of the General Fund during 2000. Contributions receivable in 2000 with respect to the *Nakhodka* and *Erika* Major Claims Funds were £13 million and £40 million respectively. Since all claims expenses had been paid in respect of the *Osung N°3* incident as regards the 1992 Fund, £3.7 million of the surplus on the *Osung N°3* Major Claims Fund was credited to contributors' accounts.

Claims expenditure during 2000 was £30 million. The payments related mainly to the *Nakhodka* incident.

The balance sheet of the 1992 Fund as at 31 December 2000 is reproduced in Annex XIII. The balances of the various Major Claims Funds are also given. The contingent liabilities were estimated at £172 million in respect of claims arising from eight incidents.

7.3 Financial statements for 2001

The financial statements of the 1971 Fund and 1992 Fund for the period 1 January to 31 December 2001 will be submitted to the External Auditor in the spring of 2002, and will be presented to the respective governing bodies for approval at their sessions in October 2002. These accounts will be reproduced in the IOPC Funds' 2002 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 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 2001 with a number of banks and building societies in the United Kingdom. As at 31 December 2001 the 1971 Fund's portfolio of investments totalled some £87 million. The portfolio was made up of the assets of the 1971 Fund and a credit balance on the contributors' account.

Interest due in 2001 on the investments amounted to £5.8 million on an average capital of £93 million.

1992 Fund

Investments were made by the 1992 Fund during 2001 with a number of banks and building societies in the United Kingdom. As at 31 December 2001 the 1992 Fund's portfolio of investments totalled some £96 million. The portfolio was made up of the assets of the 1992 Fund and the Staff Provident Fund.

Interest due in 2001 on the investments amounted to £5.3 million on an average capital of £86 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 at the October 2001 sessions of the governing bodies of both the 1971 Fund and the 1992 Fund. At that time 13 Member States of the 1992 Fund and 32 Member States or former Member States of the 1971 Fund had not submitted their reports on contributing oil received in 2000. For 15 of the 1971 Fund Member States reports were outstanding for between four and 13 years.

The Assembly considered that the situation regarding the submission of oil reports gave rise to serious concern. It was noted that the situation in respect of the 1992 Fund was likely to deteriorate as States which had outstanding reports in respect of the 1971 Fund became Members of the 1992 Fund.

A number of delegations drew attention to the fact that the submission of oil reports was part of the treaty obligations that a State had undertaken when ratifying the 1992 Fund Convention and that a failure to submit these reports constituted a breach of these obligations. The point was made that there should be a balance between treaty obligations and rights under a treaty.

As mentioned in Section 5.4, the governing bodies of the two Organisations decided that letters should be sent from the Chairmen of the bodies to the Governments of States which had outstanding oil reports, emphasising their serious concerns, requesting an explanation as to why reports had not been submitted and explaining the procedure for submission of oil reports.

Initial and annual contributions

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

Initial contributions were payable when a State became a Member of the 1971 Fund. Contributors paid 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 2001 corresponded to £0.0027222.

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: 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, the entire levy to 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.

When assessing the situation in June 2001 the Director decided not to make a deferred levy in respect of the *Nissos Amorgos* Major Claims Fund. Contributors were notified of this decision in July 2001.

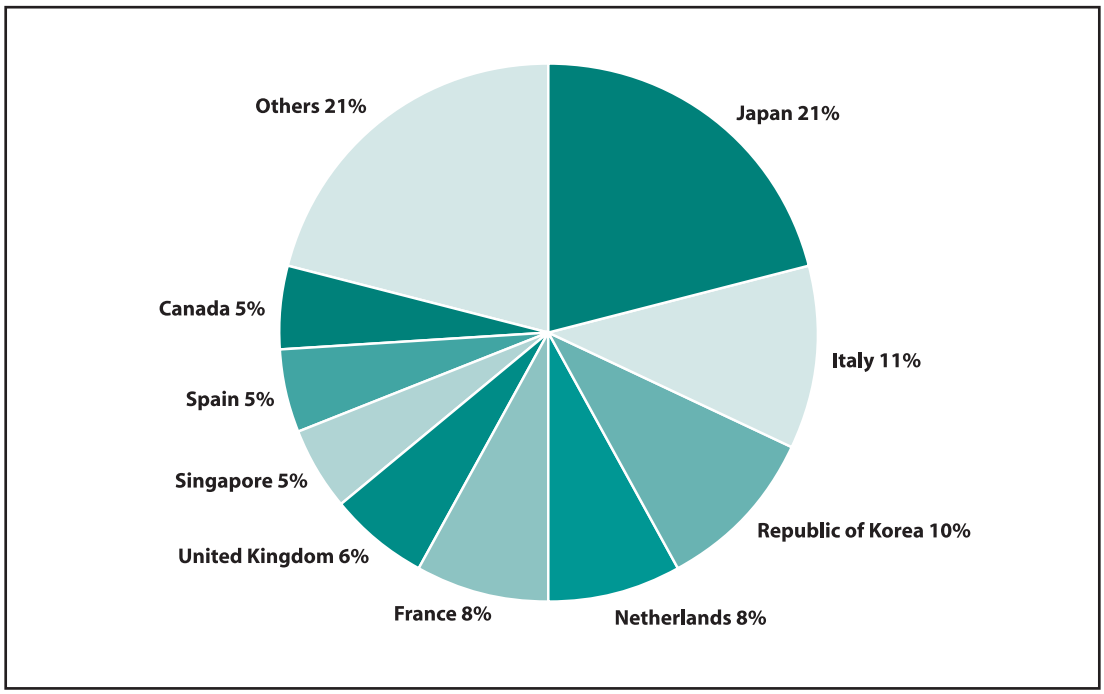
8.3 1971 Fund: 2001 annual contributions

In October 2001 the Administrative Council, acting on behalf of the Assembly, decided to levy annual contributions to the General Fund for £3.2 million. The Council also decided to levy annual contributions to the *Nissos Amorgos* Major Claims Fund for a total amount of £21 million. It was decided that the entire levies should be deferred. The Director was authorised to decide whether to invoice all or part of the amounts of the deferred levies for payment during the second half of 2002.

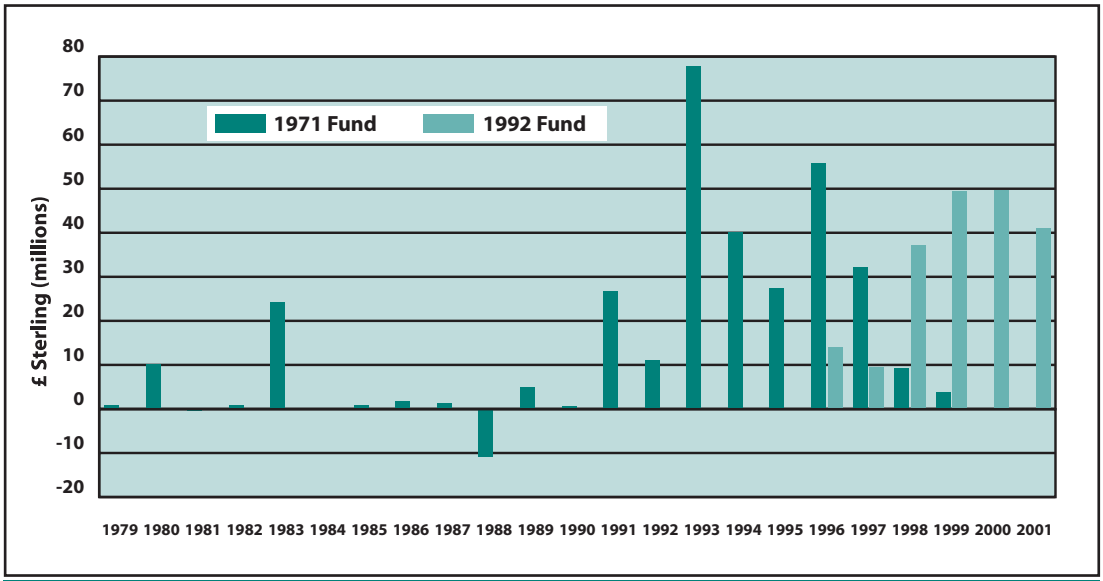
8.4 1992 Fund: 2000 annual contributions

In October 2000 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 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.

When assessing the situation in June 2001 the Director decided not to make a deferred levy in respect of these Major Claims Funds. Contributors were notified of this decision in July 2001.



1992 Fund: General Fund contributions 2001



1971 Fund and 1992 Fund: annual contributions over the years

8.5 1992 Fund: 2001 annual contributions

In October 2001 the Assembly decided to levy 2001 contributions to the General Fund for a total of £5 million, due for payment by 1 March 2002. In addition, the Assembly decided to levy contributions of £11 million to the *Nakhodka* Major Claims Fund and £46 million to the *Erika* Major Claims Fund. It was also decided that the entire levy to the former and £25 million of the levy to the latter Major Claims Fund should be due for payment by 1 March 2002, with the remainder of the levy (£21 million) to the *Erika* Major Claims Fund deferred. The Director was authorised to decide whether to invoice all or part of the deferred levy for payment during the second half of 2002.

The 2001 contributions to the General Fund were based on the quantities of contributing oil received in 2000 in Member States. The shares of the 2001 contributions to that Fund in respect of Member States are illustrated by the chart on page 29.

8.6 1971 and 1992 Funds: Annual contributions over the years

Details of the 1971 and 1992 Funds' 2000 and 2001 annual contributions are set out in the table opposite.

The payments made by the 1971 and 1992 Funds in respect of claims for compensation for oil pollution damage vary considerably from year to year. As a result, the level of annual contributions to the Funds has fluctuated from one year to another, as illustrated in the graph above.

With respect to contributions levied by the 1971 Fund over the years, £946 500 was outstanding as at 31 December 2001. As for contributions levied by the 1992 Fund since its establishment in 1996, £178 500 was outstanding as at that date.

In October 2001 the governing bodies of the 1971 and 1992 Funds expressed their satisfaction with the situation regarding the payment of contributions.

1971 AND 1992 FUNDS' 2000 AND 2001 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	2000	October 2000	1st levy	No levy made			
			2nd levy	No levy made			
	2001	October 2001	1st levy	No levy made			
			2nd levy	General Fund	3 200 000 Maximum[2]	2000	0.0415760
				Nissos Amorgos Venezuela	21 000 000 Maximum[2]	1996	0.0170135
1992 FUND	2000	October 2000	1st levy	General Fund	7 500 000	1999	0.0066366
				Nakhodka Japan	17 000 000	1996	0.0255419
				Erika France	25 000 000	1998	0.0223985
			2nd levy	No levy made			
	2001	October 2001	1st levy	General Fund	5 000 000	2000	0.0039182
				Nakhodka Japan	11 000 000	1996	0.0165271
				Erika France	25 000 000	1998	0.0223985
			2nd levy	*Erika* France	21 000 000 Maximum[2]	1998	0.0188148

[2] *To be invoiced to the extent required for payment in the second half of 2002.*

9 CONSIDERATION OF THE ADEQUACY OF THE INTERNATIONAL COMPENSATION REGIME

9.1 Intersessional Working Group

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. The Group's mandate was 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. The Working Group elected Mr Alfred Popp QC (Canada) as its Chairman.

The Working Group's report of its first meeting held in June 2000 was considered by the Assembly at its October 2000 session. The Assembly instructed the Working Group to continue its work under the following revised mandate:

- 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; and
- 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.

At its meetings held in March and June 2001 the Working Group considered a number of issues, in particular the maximum levels of compensation, the shipowner's liability and environmental damage. It also discussed the admissibility of claims for fixed costs, time bar, alternative dispute settlement procedures, problems caused by States' non-submission of oil reports and methods to achieve uniform application of the Conventions.

The Working Group's report was considered by the 1992 Fund Assembly at its October 2001 session.

In introducing the report to the Assembly, the Chairman of the Working Group mentioned that it had been decided to divide the issues under discussion into the following groups:

- issues in respect of which there was an urgent need for improvement of the compensation regime which could not be achieved within the present text of the 1992 Conventions;
- issues in respect of which solutions could be found in the short term within the scope of the present Conventions, for example by Assembly Resolutions or changes of Fund policy;
- issues which needed further consideration in the longer term.

9.2 Maximum level of compensation

During the discussions in the Working Group at its meetings in 2001, a number of States maintained that in order for the international compensation system to retain credibility the maximum compensation levels it offered should be sufficiently

Alfred Popp QC

high to ensure full compensation to victims even in the most serious oil spill incidents. Other delegations, however, stated that they did not see the need to increase the maximum level of compensation over and above the increases adopted within IMO in October 2000 which would bring the total amount available to 203 million SDR (£176 million) as of 1 November 2003.

In light of this difference in views, the Working Group considered a proposal to establish an optional third tier of compensation by means of a Supplementary Compensation Fund, which would provide additional compensation over and above that available under the 1992 Conventions.

The Working Group prepared a draft Protocol which would establish such an optional Fund. The main features of the proposed optional third tier may be summarised as follows:

> The Supplementary Fund would be established by a Protocol to the 1992 Fund Convention. The Supplementary Fund would only pay compensation for pollution damage in States Parties to the proposed Protocol. The third tier would be financed only by the oil receivers to avoid treaty law difficulties which would arise if the third tier were to contain a layer financed by the shipowners. The Supplementary Fund would be financed by contributions from oil receivers in the States which became Parties to the Protocol. To ensure its optional and distinct character, the Supplementary Fund would be a separate legal entity.

The Assembly considered the draft Protocol at its October 2001 session. It focused its considerations on issues relating to the time and circumstances of payment by the 1992 Fund, capping of contributions, potential conflicts of interest between the 1992 Fund and the Supplementary Fund and criteria for admissibility of claims.

The observer delegation of Oil Companies International Marine Forum (OCIMF) stated that it strongly believed that the optional third tier should consist of two parts so as to preserve the present balance of contributions between shipowner and cargo interests that had been the foundation for the success of the existing system. The OCIMF delegation recognised, however, that there was a need to take prompt action in order to preserve the global character of the existing regime. That delegation accepted therefore that the optional third tier would initially be funded exclusively by oil receivers but saw this only as an interim solution.

The Assembly was informed by the International Group of P & I Clubs that the Clubs, with the support of shipowners, were developing a proposal for a voluntary increase of the limits of liability for small ships under the 1992 Civil Liability Convention which would apply only in those States which ratified the proposed Protocol setting up the Supplementary Fund. The scheme for such a voluntary increase would operate along the following lines:

- The scheme would only apply in the event of a tanker spill affecting a State participating in the third tier when liability was imposed under the 1992 Civil Liability Convention. The scheme would come into effect at the same time as the entry into force of the third tier, regardless of the flag of the vessel or the ownership of the cargo.
- The limit under the 1992 Civil Liability Convention (including the increases which come into effect in 2003) would have to be exceeded but the scheme would operate even if claims did not reach the third tier.
- The tanker owner's liability under the scheme would not exceed the limit under the 1992 Civil Liability Convention plus the voluntary tranche. Although Club Boards had not yet considered the amount of the voluntary increase, a document submitted by the International Group to the June 2001 meeting of the Working Group used an illustrative figure of a voluntarily increased limit of 13.5 million SDR (£11 million).
- The tanker owner would contract with the 1992 Fund to reimburse claims paid in excess of the increased limit under the

1992 Civil Liability Convention. Attempts would be made to find a mechanism which would avoid the necessity for tanker owners to sign up individually to the scheme. The P & I Clubs would guarantee the contractual liability to the Fund under the agreement.

After discussion the Assembly adopted the text of a draft Protocol to set up a fund which would supplement compensation available under the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1992 reflecting the principles proposed by the Working Group.

As instructed by the Assembly, the Director submitted the text of the draft Protocol to the Secretary-General of IMO requesting him to convene a Diplomatic Conference to consider the draft Protocol at the earliest opportunity. It is expected that the Diplomatic Conference will be held in the first half of 2003.

9.3 Environmental damage and environmental studies

The Working Group also considered the admissibility of claims for environmental damage and the costs of environmental impact studies. It was agreed that this should be considered in the context of a change to Fund policy rather than as an amendment to the Convention.

The Working Group examined a proposal to change the 1992 Fund's policy whereby compensation for environmental damage should no longer be limited to cases where the claimant had suffered economic loss, but should also allow compensation to be calculated by means of theoretical models. This proposal was not accepted by the Working Group, since it was considered that it went beyond the present definition of 'pollution damage' in the 1992 Conventions.

The Working Group agreed that an examination should be made of what could be achieved within the present definition of 'pollution damage' as regards the admissibility of claims for reinstatement of the environment and for the costs of environmental impact studies. A proposal to address the issues in an Assembly Resolution received considerable support in the Working Group. There was also support for an in-depth consideration of the issue of environmental damage in the longer term.

At its October 2001 session the Assembly considered a proposal from a number of delegations for new criteria for the admissibility of measures for reinstatement of impaired components of the environment and for post-spill studies. Although there was a clear majority in favour of the proposal, a significant number of delegations expressed serious doubts about the wording of the proposed criteria in respect of reinstatement measures. The Assembly decided for this reason that the matter should be referred back to the Working Group for further consideration with the view that the Assembly should take a decision at its next session.

9.4 Other main issues examined by the Working Group

Shipowner's liability

The Working Group examined the provisions in the 1992 Civil Liability Convention governing the shipowner's liability. It was considered that any attempt at this stage to include shipowners in the funding of the proposed third tier of compensation would create complications of a treaty law nature and could result in an unacceptable delay in the setting up of the Supplementary Fund. Several options for the shipowner's involvement in the supplementary compensation tier were presented, namely: a voluntary increase of the shipowner's/insurer's liability at the lower end of the scale of liability under the 1992 Civil Liability Convention as proposed by the International Group of P & I Clubs; a four-layer system with an additional layer of shipowner's liability forming the third layer and a tier funded by oil receivers forming the fourth layer; a third tier of compensation which would be financed both by shipowners and oil receivers.

It was agreed that the issue of whether to revise the 1992 Civil Liability Convention in respect of the shipowner's liability would have to be considered in the longer term.

Non-submission of oil reports

A number of IOPC Fund Member States do not fulfil their obligation to submit reports on oil receipts, and this has caused significant difficulties in the operation of the compensation system. The Working Group recognised that this was an important issue and that further consideration was required to find a solution which ensured that States fulfilled their obligation to submit these reports.

Under the draft Protocol establishing a Supplementary Fund, a State which fails to submit oil reports will face certain sanctions to the effect that compensation would not be payable for pollution damage caused in that State until the outstanding reports had been submitted.

Admissibility of claims for fixed costs

The Working Group considered a proposal under which States which had invested in craft and equipment for responding to oil spills, such as at-sea recovery vessels, aerial spraying capacity and emergency towing vessels, should be granted additional compensation in the form of an uplift of say 10% on their annual contract costs and/or daily costs of maintaining and deploying such craft and equipment on condition that it could be demonstrated that their use had a beneficial effect in reducing the cost of the incident. The proposal received significant support. It was considered, however, that more details of the proposal were needed, specifically on the conditions for awarding an uplift.

The contribution system

A proposal was made to refine the contribution system with the objective of finding an equitable solution in respect of the obligation to pay contributions to the 1992 Fund of certain oil receivers who did not have any interest in the oil received other than providing oil storage services. The Working Group considered that this issue would have to be examined at a later stage.

Uniform application of the Conventions

The Working Group considered that uniformity of implementation and application of the Conventions was crucial to the proper functioning of the international compensation regime. The Working Group took note of a document presented by the Director dealing with inconsistencies in the application of the Conventions in the past and difficulties which had arisen as a result of the relationship between the Conventions and national law. The Working Group concluded that the issue should be retained for further study.

9.5 Continuation of work

The Working Group recommended that the Assembly should extend the Group's mandate to enable it to consider the issues retained for further consideration in the longer term, namely;

- shipowner's liability
- environmental damage
- alternative dispute settlement procedures
- non-submission of oil reports
- clarification of the definition of 'ship' as regards offshore craft and unladen tankers
- application of the contribution system in respect of entities providing storage services
- uniformity of application of the Conventions
- various issues of a treaty law nature.

At its October 2001 session the Assembly gave the Working Group the following revised mandate:

- to continue an exchange of views concerning the need for and the possibilities of further improving the compensation regime established by the 1992 Civil Liability Convention and the 1992 Fund Convention, including issues referred to above which had already been identified by the Working Group, but had not yet been resolved;
- to report to the next regular session of the Assembly on the progress of its work and make such recommendations as it may deem appropriate.

It is expected that the Working Group will meet in April and July 2002.

10 SETTLEMENT OF CLAIMS

10.1 General

The Assemblies of the 1971 and 1992 Funds have given general authority to the Director to settle claims and pay compensation if it is unlikely that the total payments by the respective Fund with regard to the incident in question will exceed 2.5 million SDR (£2.2 million or US$3.1 million). For incidents leading to larger claims, the Director needs in principle approval of the settlement by the governing body of the Fund in question, (ie the Administrative Council of the 1971 Fund and the Executive Committee of the 1992 Fund). However, the governing bodies normally give the Director very extensive authority to settle claims arising out of particular incidents by authorising him to make binding settlement of all claims arising from a particular incident, except where a specific claim gives rise to a question of principle which has not previously been decided by the governing bodies. The Director is permitted, in certain circumstances and within certain limits, to make provisional payment of compensation before a claim is settled, if this is necessary to mitigate undue financial hardship to victims of pollution incidents. These procedures are designed to expedite the payment of compensation.

If the aggregate amount of the established claims exceeds the total amount of compensation available, ie 60 million SDR (£52 million or US$76 million) for the 1971 Fund and 135 million SDR (£117 million or US$170 million) for the 1992 Fund, claimants will only receive a percentage of the approved amount of their claim. Certain difficulties have arisen in cases where the total amount of the claims arising from a given incident exceeds the total amount available for compensation or where there is a risk that this might occur. Under the Conventions, the Funds are obliged to ensure that all claimants are given equal treatment. The Funds will therefore have to strike a balance between the importance of the Funds paying compensation to victims as promptly as possible and the need to avoid an over-payment situation. In a number of cases the Funds have therefore had to pro rate payments to victims provisionally until the total amount of the approved claims became clear.

10.2 Admissibility of claims for compensation

The Funds can pay compensation to a claimant only to the extent that his claim is justified and meets the criteria laid down in the applicable Fund Convention. To this end, a claimant is required to support his claim by producing explanatory notes, invoices, receipts and other documents.

For a claim to be accepted by the Funds, the claim must be based on an expense actually incurred or a loss actually suffered and there must be a causal link between the expense or loss and the contamination. Any expense should have been incurred for reasonable purposes.

The IOPC Funds have acquired considerable experience with regard to the admissibility of claims. In connection with the settlement of claims they have developed certain principles as regards the meaning of the definition of 'pollution damage', which is specified as 'damage caused by contamination'. In 1994 a Working Group of the 1971 Fund examined in depth the criteria for the admissibility of claims for compensation within the scope of the 1969 Civil Liability Convention, the 1971 Fund Convention and the 1992 Protocols. The Report of the Working Group was endorsed by the Assembly of the 1971 Fund. The Assembly of the 1992 Fund has decided that this Report shall form the basis of its policy on the criteria for the admissibility of claims.

The 1971 and 1992 Fund Assemblies have expressed the opinion that a uniform interpretation of the definition of 'pollution damage' is essential for the functioning of the compensation regime established by the Conventions. The IOPC Funds' position in this regard applies not only to questions of principle relating to the admissibility of claims but also to the assessment of the actual loss or damage where the claims do not give rise to any question of principle.

The Funds consider each claim on the basis of its own merits, in the light of the particular circumstances of the case. Whilst criteria for the

admissibility of claims have been adopted, a certain flexibility is nevertheless allowed, enabling the Funds to take into account new situations and new types of claims. Generally the Funds follow a pragmatic approach, so as to facilitate out-of-court settlements.

The IOPC Funds have published Claims Manuals which contain general information on how claims should be presented and set out the general criteria for the admissibility of various types of claims.

10.3 Incidents involving the 1971 Fund

1971 Fund claims settlements 1978-2001

Since its establishment in October 1978, the 1971 Fund has, up to 31 December 2001, been involved in the settlement of claims arising out of 98 incidents. The total compensation paid by the 1971 Fund amounts to over £280 million (US$410 million).

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 may be made by the Fund. It also includes some incidents in which the 1971 Fund was involved but ultimately was not called upon to make any payments.

There has been a considerable increase in the amounts of compensation claimed from the 1971 Fund over the years. In several recent cases the total amount of the claims submitted greatly 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, were for amounts which the Fund considered greatly exaggerated. As a result, the 1971 Fund and claimants have become involved in lengthy legal proceedings.

The 1971 Fund has made payments of compensation and indemnification of over £2 million as a result of each 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	£8.2 million

In addition, the 1971 Fund has made payments of compensation of over £2 million in connection with the incidents detailed overleaf 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 nine years than in the period up to 1992.

Incidents in 2001 involving the 1971 Fund

The 1971 Fund has been notified of two incidents occurring in 2001 which will give rise

Ship	Place of incident	Year	1971 Fund payments
Aegean Sea	Spain	1992	£5.2 million
Braer	United Kingdom	1993	£46.1 million
Keumdong N°5	Republic of Korea	1993	£11.3 million
Sea Prince	Republic of Korea	1995	£21 million
Yuil N°1	Republic of Korea	1995	£14.5 million
Sea Empress	United Kingdom	1996	£27.3 million
Nakhodka[3]	Japan	1997	£43.3 million

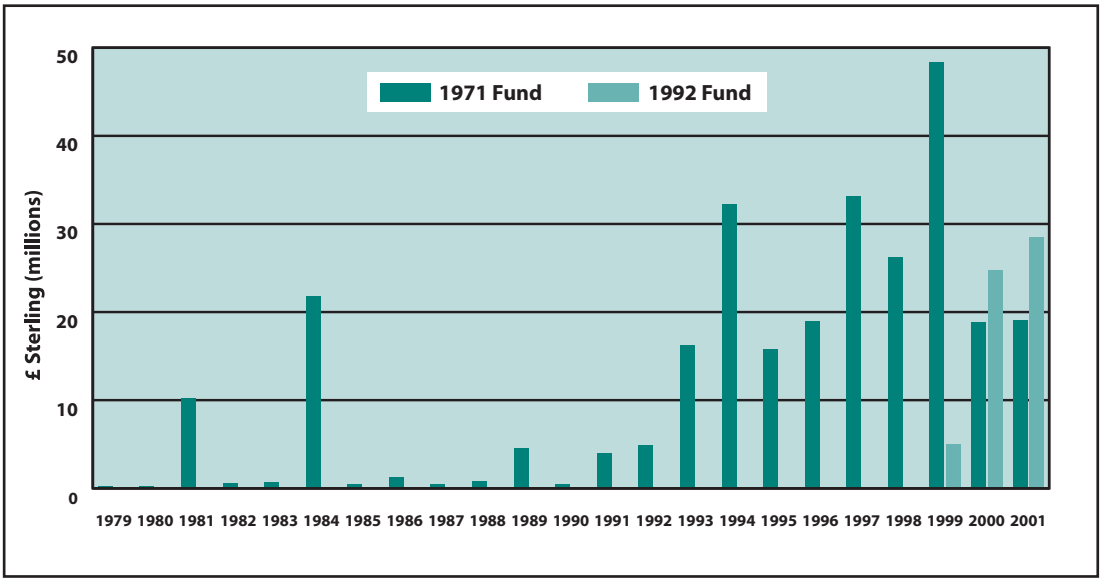
to claims against it, the *Zeinab* and *Singapura Timur* incidents.

In April 2001 the *Zeinab* was arrested by the multinational maritime interception forces. The vessel subsequently sank off Dubai (United Arab Emirates) in unknown circumstances resulting in the loss of some 400 tonnes of oil and the subsequent pollution of the coast. Some 1 100 tonnes of oil remaining on board was removed from the sunken vessel. The United Arab Emirates was at the time Party to both the 1971 Fund Convention and the 1992 Fund Convention, and both the 1971 Fund and the 1992 Fund are therefore involved in the incident. Claims totalling £330 000 have been submitted so far.

The *Singapura Timur*, laden with 1 500 tonnes of asphalt, sank in May 2001 after a collision in the Strait of Malacca off the coast of Malaysia, resulting in an escape of an unknown quantity of bunker fuel and asphalt cargo. Clean-up operations were organised by the cargo owner. No oil is reported to have gone ashore. Whilst it is not yet possible to make a full evaluation of the total amount of the claims for compensation, it is anticipated that preventive measures and clean-up costs will exceed the limitation amount applicable to the *Singapura Timur* under the 1969 Civil Liability Convention. The Malaysian authorities are studying the environmental risks posed by asphalt on board the vessel in order to decide whether steps should be taken to remove the remaining cargo.

Incidents in previous years with outstanding claims against the 1971 Fund

As at 31 December 2001 there were outstanding third party claims in respect of 18 incidents



1971 Fund and 1992 Fund: payment of claims

[3] *The 1992 Fund has paid a further £48.2 million.*

involving the 1971 Fund which had occurred before 2001. 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 £83 million and in civil proceedings totalling some £89 million. The 1971 Fund has paid £5.2 million in compensation, and the shipowner's P & I insurer £3.2 million. The 1971 Fund has held discussions with the Spanish Government with the objective of concluding an agreement with the Spanish State, the shipowner and his insurer on a global solution of all outstanding issues. The 1971 Fund has made a formal offer to the Spanish State to conclude such an agreement.

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. Further 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. After a number of the claims had been withdrawn or rejected by the Courts and out-of-court settlements had been reached in respect of others, the 1971 Fund resumed payment of compensation in October 1999 by paying 40% of the claims which had been approved but not paid. After further claims were subsequently withdrawn or rejected by the Court, the 1971 Fund paid the balance of 60% in respect of approved claims in November and December 2001. Compensation payments total £51.5 million. There remains only one claim which is still subject to court proceedings.

As regards the *Sea Empress* incident (United Kingdom, 1996), claims have been approved for a total of £34.1 million. Payments of £6.9 million have been made by the shipowner's insurer and of £27.2 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. Some of 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 and preparations are being made to pursue this recourse action.

The *Nakhodka* incident (Japan, 1997) was the first incident involving both the 1971 Fund and the 1992 Fund. Claims totalling £189 million have been received. This amount exceeds the maximum amount available from the 1971 and 1992 Funds (135 million SDR or £117 million), as a consequence of which the payments by the 1971 Fund and the 1992 Fund are currently limited to 80% of the damage suffered by each claimant. Agreement has been reached with most claimants on the admissible quantum of their claims. The total payments made by the 1971 Fund to claimants amount to £43.3 million and the 1992 Fund has paid £48.2 million. The shipowner and his insurer have made payments totalling £3.5 million. The Executive Committees of the two Funds 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.

In respect of the *Nissos Amorgos* incident (Venezuela, 1997), claims have so far been settled for a total of £14.3 million. Claims for significant amounts have been lodged in the Venezuelan courts. In view of the uncertainty as to the total amount of the claims, payments are for the time being limited to 40% of the loss or damage suffered by the individual claimants. The shipowner's insurer and the 1971 Fund have made payments totalling £6.2 million corresponding to 40% of the settlement amounts.

10.4 Incidents involving the 1992 Fund

1992 Fund claims settlements 1996–2001

Since its creation in May 1996 the 1992 Fund has been involved in the settlement of claims arising from ten incidents. The total compensation paid by the 1992 Fund amounts to £58.2 million, out of which £48.2 million relates to the *Nakhodka* incident and £9.8 million to the *Erika* incident.

Incidents in 2001 involving the 1992 Fund

During 2001 the 1992 Fund became involved in two incidents which have given or may give rise to claims against the 1992 Fund, namely the *Baltic Carrier* and the *Zeinab* incidents.

In March 2001, the *Baltic Carrier* collided with a bulk carrier in the Baltic Sea off the coast of Germany resulting in an escape of some 2 500 tonnes of heavy fuel oil. The oil affected several of the Danish islands. Oil thought to have originated from the Baltic Carrier was found on the south-west coast of Sweden. The offshore clean-up was carried out by vessels from Denmark, Germany and Sweden. Onshore clean-up was undertaken by the Danish authorities. Substantial claims for compensation for the costs of clean-up operations are expected. Claims have been submitted totalling £3.2 million in respect of property damage and economic losses in the fishing and mariculture sectors.

As regards the *Zeinab* incident which also involves the 1971 Fund, reference is made to page 38.

Incidents in previous years with outstanding claims against the 1992 Fund

As at 31 December 2001 there were nine incidents, an incident in Germany (1996), the *Nakhodka* (Japan, 1997), the *Mary Anne* (Philippines, 1999), the *Dolly* (Martinique, 1999), the *Erika* (France, 1999), the *Al Jaziah 1* (United Arab Emirates, 2000), the *Slops* (Greece, 2000), an incident in Sweden (2000) and the *Natuna Sea* (Indonesia, 2000), which occurred before 2001 and which have given or may give rise to claims against the 1992 Fund. The most important of these are the *Nakhodka* and the *Erika* incidents.

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 £48.2 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 off the coast 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 1992 Fund's payments are for the time being limited to 80% of the amount of the actual loss or damage suffered by the individual claimant. Some 5 840 claims for compensation have been received. Compensation payments totalling £17.7 million have been made in respect of 3 362 claims. Of this sum the shipowner's insurer has paid £7.8 million and the 1992 Fund £9.9 million.

11 LOOKING AHEAD

The year 2002 will be an important one for both the 1971 and the 1992 Funds.

The 1971 Fund Convention will cease to be in force on 24 May 2002 when the number of Member States falls below 25, and the Convention will not apply to incidents occurring after that date. The termination of the 1971 Fund Convention will not result in the liquidation of the 1971 Fund, which will still have to meet its obligations in respect of pending incidents before it can be liquidated and wound up. The winding up will require a significant amount of work over the next few years. The Secretariat will continue its efforts to resolve all outstanding incidents as soon as possible.

It is expected that there will be considerable growth in the 1992 Fund's membership during 2002, as the remaining 1971 Fund Member States ratify the 1992 Fund Convention and more States which were not previously Members of the 1971 Fund join the 1992 Fund. The Secretariat will continue to promote 1992 Fund membership and assist States in the preparation of the legislation necessary for ratification of the 1992 Conventions.

Although there have been only a few new incidents involving the 1992 Fund during 2001, that Fund is still dealing with several incidents which occurred in previous years, in particular the *Nakhodka* and *Erika* incidents. The Secretariat will endeavour to settle claims arising out of these incidents as promptly as possible.

As mentioned in Section 9, the Working Group set up within the 1992 Fund to consider the need to improve the international compensation regime prepared a draft Protocol establishing a Supplementary Fund for Compensation. It is expected that a Diplomatic Conference to consider the Protocol will be held in the first half of 2003 under the auspices of IMO. The Working Group will continue its deliberations during 2002.

The Secretariat will continue to strengthen the IOPC Funds' use of information technology in order to be able to facilitate the settlement of claims and to give Member States and victims of oil spills the most efficient service. It will also endeavour to enhance further its activities in the field of public relations.

The working methods of the Secretariat will be kept under constant review in order to ensure that the Secretariat makes optimal use of the resources available and that the Organisations are operating in the most cost-effective and transparent way.

As instructed by the 1992 Fund Assembly, the Secretariat will participate actively in the preparations for the entry into force of the International Convention on liability and compensation for damage in connection with the carriage of hazardous and noxious substances by sea (HNS Convention).

PART 2

12 INCIDENTS DEALT WITH BY THE 1971 AND 1992 FUNDS DURING 2001

This part of the Report details incidents with which the 1971 Fund and the 1992 Fund have been involved in 2001. The Report sets out the developments of the various cases during 2001 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 2001, 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.

Natuna Sea: containment and recovery of weathered oil at sea

13 1971 FUND INCIDENTS

13.1 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 (£220 000). 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 (£769 000) plus interest.

The insurer has appealed against the judgement. There has been no development in the appeal proceedings during 2001.

13.2 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 (£83 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 (£89 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 (£4.3 million). These claims were settled in October 2000 for Pts 661 million (£2.4 million).

The total amount of all the claims submitted before the criminal and civil courts is Pts 48 187 million (£177 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 1 905 million (£8.5 million). Out of this amount, the UK Club has paid Pts 814 million (£3.3 million) and the 1971 Fund Pts 1 091 million (£5.2 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 million). All the other claims for about Pts 16 110 million (£59 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. No further developments have taken place in respect of these claims.

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 (£37 million) for aquaculture companies and of Pts 2 500 million (£9.2 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 (£4.1 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 = Pts 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 (£35 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 (£15.1 million) and Pts 4 731 million (£17.3 million) as regards fishermen and shellfish harvesters and at Pts 8 329 million (£30.6 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.

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. Some adjustments were later made to these figures. A provisional agreement was later reached on the shipowner's/UK Club's claim. The adjusted provisionally agreed figures are set out in the table below.

At a meeting held in March 2001 consideration was given to the question of how to take into

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	1 164.65	708.03
Amounts awarded by Criminal Courts	4 577.63	893.88
Claims paid by UK Club and 1971 Fund	480.44	252.99
Total (million Pts)	**Pts 48 650.51**	**Pts 11 957.60**
Total (£)	**£179 million**	**£44 million**

account the fact that the major part of the compensation would only be paid some nine years after the incident, ie by adding interest or by an increase to take into account the depreciation of the Spanish Peseta.

The question of whether interest on agreed claims should in principle be paid by the 1971 Fund was discussed by the 5th Intersessional Working Group in 1980. The Working Group took the view that, if interest was admissible under national law, the 1971 Fund would be obliged to follow the applicable national law, although the rate and period of interest could be agreed between claimants and the Fund during negotiations. The Assembly generally endorsed the results of the Working Group's discussions.

The Director was advised by the 1971 Fund's Spanish lawyer that the general position of Spanish law is that interest is only payable on non-contractual claims from the date when the claim has become liquid, which is normally the date when the amount of the compensation is fixed by the court. In the case of the *Aegean Sea* the amount of compensation has not been fixed for most of the claims. The Fund's Spanish lawyer also advised that in accordance with the jurisprudence of the Spanish Supreme Court the amount of the loss or damage fixed by the court could be increased to take into account the depreciation of the Spanish Peseta.

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.

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 and 2001 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 a meeting held in Madrid in June 2001 between representatives of the Spanish Government, the Director and representatives of the shipowner and the UK Club, agreement was reached on the main elements of a global solution.

Consideration by the Administrative Council at its June 2001 session

At its June 2001 session the Administrative Council decided to authorise the Director to conclude and sign on behalf of the 1971 Fund an agreement with the Spanish State, the shipowner and the UK Club on a global solution of all outstanding issues in the *Aegean Sea* case, provided the agreement contained certain elements and to make payments in accordance with such an agreement. The basic element was that in the light of the Court of Appeal's judgements in respect of the distribution of liabilities and the assessment of the losses the total amount payable by the shipowner, the UK Club and the 1971 Fund would be set at Pts 9 000 million (£33 million). The Council noted that the 1971 Fund would pay indemnification to the shipowner/UK Club pursuant to Article 5.1 of the 1971 Fund Convention amounting to Pts 278 197 307 (£1 million).

The Administrative Council emphasised that the 1971 Fund's offer to conclude a global settlement on the basis of the elements set out above was without prejudice to the Fund's position in respect of the issues of distribution of liabilities and time bar.

The Spanish delegation assured the Council that the Spanish Government would make its best endeavours to fulfil the conditions required under the proposed agreement, ie to obtain acceptance by claimants representing 90% of the total amount claimed in court.

Recent developments

During July 2001 further discussions were held between the representatives of the Spanish Government and the 1971 Fund on the details of a possible global solution. As a result of these discussions, in a letter dated 27 July 2001, the Director made a formal offer

on behalf of the 1971 Fund to the Spanish Government to conclude an agreement between the Spanish State, the Fund, the shipowner and the UK Club, which contained the following elements laid down by the Administrative Council:

1 The total amount due by the owner of the *Aegean Sea,* the UK Club and the 1971 Fund to the victims as a result of the distribution of liabilities determined by the Court of Appeal in La Coruña amounts to Pts 9 000 million (£33 million).

2 The sum payable by the 1971 Fund to the Spanish State, after deduction of certain sums, amounts to Pts 6 386 921 613 (£23 million).

3 In addition, the 1971 Fund undertakes to pay to the victims whose claims have not been included in those agreed with the Spanish State and who are listed in an Annex to the Agreement, the difference between the total agreed amount of the loss or damage and the amount paid to date, amounting to Pts 121 512 031 (£447 000).

4 As a consequence of the distribution of liabilities determined by the Court of Appeal in La Coruña, the Spanish State undertakes to compensate all the victims who may obtain a final judgement by a Spanish court in their favour which condemns the shipowner, the UK Club or the 1971 Fund to pay compensation as a result of the incident.

In the letter the 1971 Fund made it a condition for the conclusion of the Agreement that the Spanish State presented to the 1971 Fund a copy of the withdrawals by the victims of their legal actions, in civil proceedings or in the procedure for execution in the criminal proceedings, representing at least 90% of the principal of the loss or damage claimed, except for the claim by the UK Club for preventive measures. It was stated that the 1971 Fund was prepared to reach a global agreement with the Spanish State on the settlement of all claims for loss or damage pursuant to the 1969 Civil Liability Convention and the 1971 Fund Convention resulting from the *Aegean Sea* incident in accordance with the text of the proposed Agreement provided that this condition was fulfilled. In the letter the 1971 Fund undertook to maintain this offer until November 2001. It was stated in the letter that the shipowner, the UK Club and the 1971 Fund expressly reserved their rights to defend before the Spanish courts and tribunals their position with respect to the distribution of liabilities and with respect to a group of claims being time-barred.

The letter and the text of the proposed Agreement had been approved by the shipowner and the UK Club.

At the Administrative Council's October 2001 session the Spanish delegation stated that the Spanish Government had accepted the conditions set out in the Agreement and in the Director's letter, in order to reach an overall settlement of the incident. That delegation also stated that the Spanish Government was making its best endeavours to reach agreements with claimants in respect of at least 90% of the principal of the loss or damage claimed, as well as to obtain the withdrawals of the associated legal actions. The Spanish delegation stated that the various groups of claimants were participating in the negotiations with open minds and with a willingness to reach an overall agreement, and that it was hoped that the required conditions would be met by the end of November 2001.

In November 2001, at the request of the Spanish Government, the 1971 Fund extended the time period for acceptance by the Spanish Government of the Fund's offer to 28 February 2002.

As at 31 December 2001 the Spanish State had not yet obtained the withdrawal by the victims of their legal actions representing at least 90% of the principal of the loss or damage claimed.

13.3 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 for compensation

General situation

Claims against the 1971 Fund became time-barred on or shortly after 5 January 1996. By that date some 2 000 claims for compensation had been settled and paid for a total amount of approximately £44.9 million. Some 270 claimants had taken action in the Court of first instance (Court of Session) in Edinburgh against the shipowner, his insurer, Assuranceföreningen Skuld (Skuld Club), and the 1971 Fund. The total amount claimed in court was approximately £80 million. Since then, claims amounting to £6.2 million have been accepted as admissible.

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.

All the opposed claims but two have either been dismissed by the Court or have been withdrawn from the legal proceedings.

It should be noted that the Court of Session has rendered four judgements relating to claims or groups of claims which had been rejected by the 1971 Fund. The Court of Session also rejected these claims. One of the Court of Session's judgements was appealed and that judgement was confirmed by the Scottish Appeal Court.

Developments in the court proceedings during 2001 are set out below.

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 was 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.

A four-week hearing was held in the Court of Session commencing in June 1999 in respect of six property damage claims, totalling £170 735, which had been selected to provide a wide geographical spread and variety of types of roof materials. The claimants testified as to the conditions of their roofs, and experts engaged by the claimants gave evidence. Experts engaged by the shipowner, the Skuld Club and the 1971 Fund also gave evidence.

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 nor had such problems been observed outwith the area affected by the aerial pollution, nor on the mainland of Scotland. Their expert indicated that the problems 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. Expert witnesses engaged by the shipowner, the Skuld Club and the 1971 Fund expressed the view however that only minute quantities of dispersant had reached the land and that in any event there was no scientific basis for the assertion that dispersants used to seek to break up the oil spill could cause damage to asbestos cement roofs.

At the conclusion of the June 1999 hearing the Court indicated that it wished to receive written submissions from the lawyers for the parties on the issues raised at the hearing. Following receipt of the submissions hearings were held in December 1999 and January 2000. The Court rendered its judgement on 14 February 2001.

In its judgement the Court held that the claimants had failed to provide scientific or circumstantial evidence linking the alleged defects to their roofs, which are known to occur naturally in asbestos cement roofing materials, to the *Braer* incident.

The expert engaged by the claimants had submitted that whenever oil spray landed on a roof, the spray must have included dispersants. The Court considered that the expert's contention was the merest speculation and was demonstratively wrong. The Court expressed the view that the claimants should have carried out a programme of monitoring of their properties and of control of properties and stated that the evidence presented by the claimants was not based on a systematic methodology of this kind. The Court referred to the fact that the claimants had not established a boundary of the area where dispersant was deposited.

The Court held that the claimants had failed to prove that dispersant in any measurable quantity had been deposited on any of their roofs. The Court also stated that there was no evidence that the oil from the *Braer* had caused damage to the roofs. In addition the Court considered that it was not proved that the defects of the roofs emerged after the *Braer* incident.

In conclusion, the Court held that the claimants had failed to produce a credible scientific theory or a convincing body of scientific evidence that dispersant was capable of causing damage to asbestos cement roofing materials. The Court stated that the claimants' expert had merely suggested a possible mechanism by which the damage could have been caused, but that it was no more than a speculative hypothesis which the expert was in no position to confirm. The Court held that the scientific evidence provided by the expert of the shipowner, the Skuld Club and the 1971 Fund was authoritative and convincing in disproving such a hypothesis. Although the Court was critical of this expert evidence regarding the conditions and age of the claimants' roofs in comparison with control roofs, the Court emphasised that it was for the claimants to provide evidence in this regard.

On the basis of these considerations the Court rejected five of the claims. A sixth claim was

rejected on procedural grounds. The claimants did not appeal against the judgement.

At the Administrative Council's June 2001 session, attention was drawn to the fact that one of the obstacles to the other 43 claimants in this category withdrawing their actions was that the shipowner's insurer and the 1971 Fund were requesting each claimant to contribute to the insurer's and the 1971 Fund's legal costs. It was noted that although it was usual practice for the IOPC Funds to pursue such costs these claimants were not companies but were all individuals, some of whom were pensioners, and that many considered themselves badly treated. Several delegations expressed concern that the IOPC Funds could be setting a precedent by not seeking to recover its legal costs, but stated that in circumstances such as those set out above the 1971 Fund should show some flexibility when trying to settle the issue of legal costs with claimants.

The Administrative Council instructed the Director to take a flexible approach on this issue in order to reach agreement with the claimants on the amount they should contribute towards the 1971 Fund's legal costs and urged the claimants or their representatives to contact the 1971 Fund Secretariat to facilitate a resolution of this matter.

In August 2001 an agreement on the cost issue was reached between the claimants on the one side and the 1971 Fund and the Skuld Club on the other. The remaining 43 claimants withdrew their claims in September 2001.

Shetland Sea Farms Ltd

In 1995 the Executive Committee considered a claim for £2 004 867, later reduced to £1 513 020, 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 decided that in the assessment of the claim account should be taken of any benefits derived by other companies in the same group.

The experts engaged by the 1971 Fund and the Skuld Club assessed the proven losses at £58 000. 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. During the proceedings the claim was reduced to £1 428 891.

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 rendered its decision on 4 July 2001. In the decision the Court dealt with two questions, namely whether a responsible officer or officers of the claimant knowingly presented to the Court false documents in support of a claim for compensation and, in the event that the Court did so decide, whether in those circumstances the claims should be refused without any further procedure.

There are three companies in the group, namely Ettrick Trout Company Ltd and the subsidiaries Shetland Sea Farms Ltd and Terregles Ltd, all controlled by the same person.

Shetland Sea Farms had produced in support of its claim for compensation two letters from Terregles ordering from Shetland Sea Farms a substantial number of smolts which orders predated the grounding of the *Braer*, with a view to giving the impression that Terregles and Shetland Sea Farms had entered into a forward contract at arm's length to supply Shetland Sea Farms a substantial number of smolts on fixed terms with the quantity and price specified. Two invoices were specially drawn up by the financial controller of Shetland Sea Farms on Terregles letterhead to support the claim that the contract existed between Terregles and Shetland Sea Farms for the supply of these smolts.

The Court answered the first question in the affirmative. Having heard the evidence the Court resolved that responsible officers of the claimant had knowingly presented copies of fake letters in support of Shetland Sea Farms' claim for compensation. The Court held that they did

so in the knowledge that Shetland Sea Farms had no documentary evidence showing the existence of a contractual commitment on Shetland Sea Farms' part entered into before the *Braer* incident to take and pay for smolts. The Court further held that these documents had been put forward with the intent to deceive the Claims Office established by the 1971 Fund and the Skuld Club into believing that the Shetland Sea Farms' alleged contractual commitments were based on contemporary correspondence setting out the terms of the contracts. The Court held that they did so as part of a scheme to further a substantial claim for compensation and that the claims having been rejected by the Claims Office they persisted with it on the same false basis.

Having held that both the person controlling the three companies and an employee of Shetland Sea Farms, as responsible officers of the claimant, had false documents presented to the Court in support of the Shetland Sea Farms' claim for compensation, the Court addressed the second question, namely whether as a result of this the claim should be refused without any further procedure.

It was argued by the 1971 Fund and the Skuld Club that it would be contrary to public policy for the Court to adjudicate upon the claim in these circumstances and that, where the claimant had used the court process to further an unlawful purpose, the claims should be rejected without further procedure. They maintained that the Court had an inherent power to prevent misuse of its procedure, where this misuse would be manifestly unfair and would in any event bring the administration of justice into disrepute. The 1971 Fund and the Skuld Club made the point that there had been a deliberate attempt to deceive the Court and that those responsible had falsely denied doing anything wrong.

Shetland Sea Farms argued that to refuse the claim would unfairly penalise the company and that refusing to allow the claim to continue would be out of all proportion to the alleged wrongdoing. Shetland Sea Farms also advanced an argument under the United Kingdom Human Rights Act that in effect to deny the right to a trial in the circumstances would be a breach of Article 6 (1) of the European Convention on Human Rights which entitled every person to a fair and public hearing. The company stated that it was now prepared to seek to prove its claim without reference to the false letters.

The Court acknowledged that it had an inherent power to dismiss the claim where a party has been guilty of an abuse of process but stated that that was a drastic power. The Court held that there had been a false narrative supported by fabricated documents, that this was clearly an abuse of process, that Shetland Sea Farms had attempted to seek to obtain compensation of over £1.9 million and that the attempt had been aggravated by the fact that those primarily responsible had been "untruthful in denying their responsibility". The Court further held that Shetland Sea Farms had misused the time and resources of the Court and had put the 1971 Fund and the Skuld Club to expense and inconvenience. The Court resolved, however, that as Shetland Sea Farms no longer was going to base its claim on the false letters, the company should be given the opportunity to present a revised case which should not depend on the false letters and that not to allow the claim to proceed in its revised version would be an excessive punishment.

Shetland Sea Farms did not appeal against the position taken by the Court as regards the company's use of false documents.

The Director considered whether the 1971 Fund should appeal against the Court's decision not to refuse the claim without any further procedure, but decided that the Fund should not do so.

As regards the continuation of the proceedings the Court decided that the case should proceed to a hearing restricted to the question of whether Shetland Sea Farms could prove that a contract existed before the *Braer* incident occurred for the supply of smolts to Shetland Sea Farms without reference to false letters and invoices. It is expected that this hearing will be held in the summer of 2002.

Other claims pending in court
A claim for £123 357 in the fishery sector was rejected by the Court earlier in 2001. The action was raised directly against the 1971 Fund on the basis of offers made on behalf of the Fund, ie on the basis of an alleged contract. The 1971 Fund maintained that the offers had expired since they had not been accepted within a reasonable period of time. The Court accepted the argument advanced by the 1971 Fund that the offers had not been accepted within a reasonable time and hence had lapsed and rejected the claim. The claimants appealed against the decision to reject the claim. However, in December 2001 the Appellate Court confirmed that decision. The claimants had previously brought an action under the Merchant Shipping Acts 1971 and 1974 (which implement the 1969 Civil Liability Convention and the 1971 Fund Convention) but this action had been abandoned.

A claim for £85 000 for damage to various felt roofs is still in court. Discussions are being held with the claimant and his representatives in an attempt to reach a settlement.

Claims settlements during 2001
In early 2001 a claimant in the fishery sector withdrew his claim for £777 550.

Three personal injury claims totalling £200 000 were settled at £33 500.

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 (£4 883 839.80). 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

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.

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.

Resumption of partial payments

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, five fish processors withdrew their claims, totalling £7.6 million. As a result 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 met in April 2000. On that basis the Director decided that the Fund should pay 40% of the claims that had been approved but not paid. Payments at 40% totalling

£2 286 658 were made during 2000 and in early 2001 in respect of these claims and claims settled thereafter.

Payments to be made in full

In October 2001 the claims which were settled but not paid in full totalled £6 209 798 of which there remained £3 729 354 unpaid.

After the withdrawal of the remaining 43 roof claims referred to above, there were only three opposed claims pending in court, namely that of Shetland Sea Farms for £1 428 891, the claim in the fishery sector for £123 357 and the claim for damage to felt roofs for £85 000.

In October 2001 the total amount paid in compensation was £48 208 644, out of which the 1971 Fund had paid £42 926 938 and the Skuld Club £5 281 706. There was, therefore, £2 400 636 available for further compensation payments.

The shipowner and the Skuld Club are entitled to indemnification under Article 5.1 of the 1971 Fund Convention of £1 211 780. The Skuld Club informed the Director that the shipowner and the Club were prepared to make available the indemnification amount for payments for claimants, resulting in an additional amount of £1 211 780 being available for compensation payments. The total amount available for such payment was therefore £3 612 416.

There remained an amount of £3 729 354 unpaid in respect of the claims which had been settled and not paid in full. As a result of the position taken by the shipowner/Skuld Club in respect of indemnification, an amount of £3 612 416 would be available for compensation payments. There would therefore be a deficit of £116 938 plus any amount which may be awarded by the Court in respect of the claim by Shetland Sea Farms and the other two remaining claims. The Skuld Club undertook to make funds available to cover this deficit and to guarantee the payment of the amount, if any, which may be awarded by a final court judgement in respect of the pending claims.

As a result of the Skuld Club's undertaking, the Director decided in October 2001 that all established claims could be paid in full. The payments of the balance of 60% to those claimants who had only received 40% of the approved amount were made in November and December 2001, as were payments in respect of established claims for which no payments had been made. These payments total £3.3 million. There remain 11 claimants who have not yet been paid. It is expected that these payments totalling £326 000, will be made early in 2002.

The only remaining claim subject to active proceedings is that of Shetland Sea Farms. It is anticipated that the only other case still in court, namely the felt roof case, will be settled shortly.

The Skuld Club is considering how the limitation proceedings are to be terminated.

Considerations by the Administrative Council in October 2001

At its October 2001 session the Administrative Council expressed its gratitude to the shipowner and the Skuld Club for their undertaking to make available the indemnification amount for payments to claimants and for the Club's undertaking to make available funds to allow full payment of all established claims. The Council also thanked the United Kingdom Government for the role it played in this incident and for foregoing its claim in court.

The United Kingdom delegation stated that it was important to note that the *Braer* case was a defining point for the IOPC Funds, with over 2 000 claims processed, some of which had given rise to discussions on policy issues and points of principle, especially as regards claims for economic loss. That delegation pointed out that many of the decisions reached were to the benefit of victims of subsequent incidents. The United Kingdom delegation also stated that an important lesson learned was the need for close co-operation between the Funds, the P & I Club involved and the Government of the affected State, and that it was important for governments to play a part in the system and to ensure that the issues were understood by all parties.

The Director agreed with the United Kingdom delegation that the *Braer* incident was a landmark case which had resulted in a number of important precedents on the admissibility of claims.

13.4 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 exceeded by far 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. 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 were paid in full for the agreed amounts.

In August 2000 a claim by an arkshell fishery co-operative which had been the subject of a legal action against the 1971 Fund was paid in the amount of Won 412 million (£260 000) plus interest in accordance with a mediation decision by the Appellate Court.

Legal action by Yosu Fishery Co-operative

The Yosu Fishery Co-operative (FCU) 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 common fishery grounds totalling Won 17 162 million (£9 million). In addition, claims totalling Won 1 641 million (£860 000) were submitted by over 900 individual members of the 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 shipowner's insurer assessed the losses allegedly suffered by all the claimants of the Yosu FCU at Won 810 million (£420 000). 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 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 (£34 000).

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 (£821 000).

All the claimants belonging to the Yosu FCU, 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 April 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 or condolence money, 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 (£820 000).

In May 2001 the Appellate Court rendered its judgement, which overturned the judgement of the District Court in respect of losses due to pain and suffering and losses in respect of unlicensed and unregistered fishing activities.

In consideration of whether claims for pain and suffering were admissible, the Appellate Court examined first the definition of "pollution damage" in the Korean Oil Pollution Guarantee Act and the 1969 Civil Liability Convention. The Court stated that there were no concrete standards in the international conventions in relation to the definition of pollution damage and that therefore *lex fori* (the law of the State of the court seized) would apply. The Court then examined the legislation in various States. It noted that the legislation in the country accepting the broadest scope of liability, the United States (the Oil Pollution Act 1990), did not make reference to damage resulting from pain and suffering, neither did the Japanese legislation. The Court also noted that the Guidelines of Comité Maritime International (CMI) restricted compensation to proven economic loss or damage.

Referring to the fact that there were no generally accepted principles in the common law system and the continental law system as to compensation for pain and suffering and no internationally adopted standards on this point, the Court took the view that there should not be a difference in the application of the Conventions among Contracting States. In view of this and the special international nature of the 1971 Fund, the Court held that pollution damage under the Korean Act should include only the economic and property damages. For this reason the Court held that claims for pain and suffering were not admissible.

As regards the claims in respect of unregistered and unlicensed fishing activities, the Appellate Court noted that so-called "illegal income" earned through the continued carrying out of illegal activities should not be used as a basis for the determination of compensation. However, the Court stated that a certain income should not be regarded as illegal income only because the law prohibited the activities in question. The Appellate Court referred to a judgement by the Korean Supreme Court, according to which the issue of whether a certain income was illegal should be determined on the basis of the original purpose of the legislation in question, the degree of blameworthiness of the activity, and in particular the degree of illegality of the activity, on a case-by-case basis. The Appellate Court held that in the light of the special position of the 1971 Fund and the 1971 Fund Convention and the fact that a restrictive interpretation of the concept of 'pollution damage' would be closer to international standards, the income of the plaintiffs who did not have the licenses, permits or registrations required under the Korean Fisheries Act to carry out their activities should be regarded as illegal income which could not be included in the calculation of compensation. The Court therefore rejected these claims. The Court also stated that there was no evidence that the claimants who did not have licenses, permits or registrations had suffered the alleged loss of income due to the incident and that there was no evidence of any link of causation between the incident and the alleged reduction in income.

The Appellate Court upheld the decision of the District Court in respect of loss of earnings due to business interruption caused by the clean-up of licensed common fishing grounds and intertidal culture farms.

In the judgement the Appellate Court ordered the Fund to pay Won 143 million (£75 000) plus interest of 5% per annum from 27 September 1993 to 8 May 2001 and 25% per annum from 9 May 2001 until the date of payment.

In view of the fact that the 1971 Fund's position on matters of principle had been accepted, ie that compensation should not be granted for pain and suffering and for losses in respect of unlicensed and unregistered fishing activities, the Director decided that the Fund should not appeal against the decision by the Appellate Court in respect of the claims by Yosu FCU. Although the individual members of the Yosu FCU did not appeal against the decision, 36 village fishery associations appealed to the Korean Supreme Court. The amount claimed in the appeal is Won 2 756 million (£1.4 million). The Court of Appeal has not yet rendered its decision.

13.5 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 (£5.5 million) plus Drs 378 million (£680 000) 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 (£1.9 million), also interrupted the time bar period by taking legal action against the 1971 Fund. All other claims have become time-barred *vis-à-vis* the Fund.

13.6 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.

Claims for compensation

All claims relating to clean-up operations in the Republic of Korea have been settled for a total of Won 20 534 million (£11.7 million). These claims were paid in full by the shipowner and his insurer, the United Kingdom Mutual Steamship Assurance Association (Bermuda) Limited (UK Club), who presented subrogated claims to the 1971 Fund.

In August 1996 the 1971 Fund made an advance payment of £2 million to the UK Club in respect of its subrogated clean-up claims. At the rate of exchange applicable at that time, this payment represented less than 25% of the amounts for which the Club had presented sufficient supporting documentation.

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

In May 2001 the 1971 Fund settled a claim by the National Park Management Public Corporation for Won 6.6 million (£3 630) in respect of clean-up costs and a claim by the Yosu Fisheries Co-operative for Won 24.5 million (£155 000) for costs associated with surveys of polluted areas.

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

Most claims in the fisheries sector have also been settled and paid in full in the amount of Won 17 000 million (£9.4 million).

However, a total of 194 claims totalling Won 5 471 million (£2.9 million), mainly in the fishing and mariculture sectors, remain the subject of legal actions against the 1971 Fund. The majority of these claims (183) had been rejected by the 1971 Fund, and the Court in charge of the limitation proceedings also rejected

these claims. The Court also agreed with the Fund's assessment of the other 11 claims at a total of Won 95.5 million (£50 000).

The UK Club presented a claim on the basis of subrogation for US$8.3 million (£5.7 million) relating to the cost of preventive measures associated with salvage operations. The 1971 Fund approved this claim for a total of US$6.6 million (£4.5 million).

The UK Club also claimed on the basis of subrogation for reimbursements made to the shipowner for payments made by him, mainly to Korean contractors for US$22.6 million, corresponding to Won 17 389 million plus ¥3.7 million.

The shipowner and the UK Club claimed indemnification under Article 5.1 of the 1971 Fund Convention for 5 667 000 SDR (£4.9 million).

Determination of the limitation and indemnification amounts applicable to the *Sea Prince*

Under Article V.9 of the 1969 Civil Liability Convention 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 was 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.

In April 2001 the shipowner/UK Club accepted a proposal by the 1971 Fund that the limitation and indemnification amounts applicable to the *Sea Prince* should be Won 18 308 million (£10.2 million) and Won 7 411 million (£4.1 million) respectively. These amounts were calculated on the basis of the midpoint of the SDR/Won exchange rate on 1 March 1996 (which was representative of rates during the period in which most of the claims were paid by the shipowner/UK Club) and the SDR/Won exchange rate on 9 May 2000 (the date that the Fund made the proposal). The reason for the Fund's proposing a midpoint exchange rate was to reach an equitable settlement taking into account the considerable fluctuations in exchange rates that occurred between 1996 and 2000.

Reimbursement of amounts paid by the shipowner and the UK Club

In view of the fact that the UK Club had reimbursed the shipowner for an amount in excess of the limitation fund applicable to the *Sea Prince*, the 1971 Fund agreed to pay the balance of the shipowner's clean-up costs. This balance was agreed at Won 4 207 million (£2.4 million).

On the basis of the agreed limitation amount applicable to the *Sea Prince*, in May 2001 the 1971 Fund reimbursed the UK Club a further Won 6 487 million (£3.6 million), including interest in respect of clean-up costs and preventive measures associated with salvage, and Won 7 411 million (£4.1 million) in respect of indemnification of the shipowner under Article 5.1 of the 1971 Fund Convention.

Claims by the shipowner for the costs of environmental studies and additional clean-up

In April 1998 the shipowner filed two additional claims with the limitation court, one for the cost of post-spill environmental studies for Won 1 140 million (£600 000) and the other for costs totalling Won 135 million (£71 000) associated with additional clean-up undertaken by the shipowner in early 1998. The studies and the clean-up related to the spills from both the *Sea Prince* and from another vessel, the *Honam Sapphire,* which had been involved in another incident.

On the basis of the information available at the time the Director 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 1971 Fund therefore rejected the claim for the cost of these studies.

On the basis of surveys carried out prior to the additional clean-up, the 1971 Fund's 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.

The claims relating to environmental studies and additional clean-up were rejected by the limitation Court. In May 2000 the shipowner provided further documentation regarding the claim in respect of the costs of environmental studies referred to above. The documentation indicated that some of the studies were aimed at providing baseline data for restoration of the environment and included shoreline surveys to locate buried oil in beach sediments, monitoring subsequent clean-up operations and investigations into the medium and long-term impact of the spill on inshore fisheries and mariculture. The studies on the impact of the spill on fisheries and mariculture, which were carried out on a number of different species of fish, shellfish and seaweeds, indicated that the spill had not resulted in any long-term damage to these resources.

As regards the additional clean-up undertaken to remove the buried oil from a number of shorelines, although the experts from ITOPF had considered that further clean-up was not justified, the Fund's Korean expert, who had monitored the operations, took the contrary view and reported that the quantity of oil removed as a result of the operations was considerably greater than had been expected on the basis of the initial surveys.

In March 2001 the Administrative Council of the 1971 Fund decided to authorise the Director to settle the claims, notwithstanding the fact that the claims relating to environmental studies and additional clean-up had been rejected by the Court in charge of the limitation proceedings, in view of the environmental sensitivity of the polluted area, its importance as a major centre for inshore fisheries and mariculture, and the quantities of buried oil found in the area.

In April 2001 the claim in respect of environmental studies was settled for Won 724 million (£393 000) and the claim in respect of additional clean-up for Won 160 million (£91 000).

Limitation proceedings

The limitation amount applicable to the *Sea Prince* is 14 million SDR, but the shipowner has not yet constituted the limitation fund and the limitation amount in Won has therefore not yet been fixed.

As a consequence of having agreed the limitation amount applicable to the *Sea Prince*, and having settled all outstanding disputed claims in the limitation proceedings, in June 2001 the shipowner/UK Club and the 1971 Fund requested the Court to render the limitation proceedings void with effect from the commencement of the proceedings, which is possible under Korean law if all parties agree.

The claims by the 194 claimants referred to above were brought into the limitation proceedings. The claimants did not appeal against the decision of the Court in charge of those proceedings on the assessment of the claims, but instead filed a separate action against the 1971 Fund. These claimants agreed to join the Fund and the shipowner/UK Club in making an application before the Limitation Court for the discontinuance of the limitation proceedings, provided that the Fund made payments of the amounts assessed by that Court, and gave an undertaking that the claimants' rights to pursue their claims against the Fund would not be prejudiced and that the Fund would pay any sums awarded in a final judgement. In May 2001 the 1971 Fund paid Won 95.5 million (£53 000) in respect of the 11 claims accepted by the Limitation Court and in accordance with its assessments and gave the undertaking requested by the claimants.

Legal action against the 1971 Fund

On 28 December 2001 the Court rendered a judgement in respect of the claims by the 194 claimants referred to above. The court awarded 31 claimants a total of Won 1 438 million (£752 000) plus interest at a rate of 5% per annum from the date of the incident until the date of the judgement and at the rate of 25% per annum from 29 December 2001. The Court dismissed the claims by all the remaining claimants.

The 1971 Fund is studying the judgement in order to decide whether to lodge an appeal.

13.7 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 (£175 000), 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 2001.

13.8 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, but while being towed towards the port of Pusan, the tanker sank in 70 metres of water, ten kilometres from the mainland.

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 (£7.5 million) have been filed in court. These claims have been assessed at Won 449 million (£235 000) 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 (£130 000).

Fishery co-operatives presented claims totalling Won 60 000 million (£31 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.

13.9 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 2 500 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 was closed to the public in February 1998.

Claims for compensation

As at 31 December 2001, 1 034 claimants had presented claims for compensation totalling £50.8 million (including claims for interest and fees). Payments totalling £34.1 million have been made to 805 claimants, of which £6.9 million has been paid by the Skuld Club and £27.2 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 was settled at £9.7 million in early 2001.

Settlements have also been reached during 2001 in respect of a number of other claims including those by the Environment Agency, Carmarthenshire County Council and the Milford Haven Standing Conference.

Elf UK Oil Ltd and Texaco presented claims in respect of their involvement in the clean-up operations. These claims are being assessed and it is expected that final settlements will be reached in the near future. Both companies also presented claims for demurrage payments made in respect of ships which were delayed in entering the port of Milford Haven, prior to the *Sea Empress* being refloated and taken into the port. Elf Oil UK Limited also claimed for the cost of chartering alternative vessels and for

increased refining costs as a result of an interruption in crude oil supplies. The claims for demurrage, chartering alternative vessels and extra refining costs were rejected by the 1971 Fund on the grounds that the alleged losses were not caused by contamination or by preventive measures, but were caused as a result of a decision by the Port Authority taken for the safety of navigation. These claims remain the subject of legal proceedings.

Legal proceedings against the 1971 Fund

Legal proceedings have been commenced against the shipowner, the Skuld Club and the 1971 Fund 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 16 February 1999.

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 (approximately £7.4 million). The decree required all claims to be filed in the limitation proceedings by 18 November 1999 and stayed all other proceedings against the shipowner and the Skuld Club.

In June 2000 the Admiralty Court granted a temporary stay of proceedings against the 1971 Fund until all claims against the shipowner and the Skuld Club in the limitation proceedings have been determined. In addition, the Court ruled 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.

Claims were filed in the limitation proceedings on behalf of 194 claimants. As at 31 December 2001, claims by 151 of these claimants had been settled, discontinued or withdrawn. Of the 43 remaining claims, 30 relate only to legal and professional fees and involve either claims in respect of which the claimants have not accepted the amounts offered by the Skuld Club and the 1971 Fund or claims for fees that have not yet been quantified. It is likely that most of these claims will be referred to court for assessment.

There are 13 remaining claims for compensation that are the subject of legal action. As initially presented, these claims totalled £6.3 million. They have been assessed by the 1971 Fund and the Skuld Club at £2.1 million and, in most cases, interim payments have been made by the 1971 Fund. The amount currently in dispute in relation to these claims is approximately £4.3 million. Attempts are being made by the Fund to settle those claims which are considered admissible in principle but where final agreement has not been reached on the quantum of the losses.

For the purposes of the limitation proceedings, the claims have been divided into the following categories: clean-up, fishing, tourism, economic loss and professional fees. A Case Management Conference (CMC) was held before the Admiralty Registrar on 21 March 2001 to consider the future management of the claims in the limitation proceedings. In relation to each category, directions were made by the Registrar regarding, *inter alia*, disclosure of documents and the timing for exchange of witness statements and expert reports. Following the CMC, trial dates were fixed for each category with a view that each of the claims in the category will be heard consecutively at the same trial.

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 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. 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 MHPA and the way in which it had operated the port.

MHPA appealed against the sentence. In March 2000 the Court of Appeal gave judgement and 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. MHPA has also paid costs of £825 000 as ordered by the Court of first instance.

Recourse action

In October 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.

Legal advice given to the 1971 Fund indicated that the basis of a recourse action against MHPA would be that, as a harbour authority and a pilotage authority, 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 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 MHPA. The Fund intends to issue the claim document in the recourse action in the Admiralty Court in early 2002.

13.10 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 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 (£7.3 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 did not agree with a number of the assessments carried out by the administrator. Appeals were lodged in court by the shipowner, the Club and the 1971 Fund in respect of those claims. A number of claimants also appealed against the decision of the administrator, and the amounts set out in the appeals total

Drs 2 680 million (£4.8 million). The Court's decision is expected in early 2002.

In order to prevent their rights becoming time-barred the shipowner and the UK Club 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 for Drs 556 million (£998 000).

13.11 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 participated.

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. During the period in which the major part of the claims assessments was carried out, the Office employed 22 persons. As the workload decreased the staff has been reduced, and there are as at 31 December 2001 four surveyors and five support staff. The Office will close in early 2002 when the remaining claims have been assessed.

Claims for compensation

General situation

Some 458 claims totalling ¥36 011 million (£189 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 by Government agencies including claims relating to the construction and removal of the causeway.

The payments made by the IOPC Funds to claimants amounted to ¥16 845 million (£91.5 million) as at 31 December 2001. The shipowner and the UK Club have

made payments totalling US$5 million (£4 million).

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

Situation in respect of major groups of claims
Further claims by JMDPC for expenses were settled during 2001 at ¥69 million (£352 678).

JMDPC submitted claims totalling ¥3 336 million (£17.5 million) for the costs of the causeway. The majority of the costs related to the construction and removal of the causeway itself. These claims have been assessed against the criteria for admissibility laid down by the Assemblies, ie that the operation to construct the causeway was reasonable from an objective technical point of view.

In respect of six claims for a total of ¥181 million (£950 000) submitted by Ministries and government agencies, namely three district port construction bureaux and three regional construction bureaux, the Funds have offered payments of 80% of the assessed amounts. However, the claimants have not yet accepted the assessments.

The Self Defence Force submitted claims for ¥663 million (£3.5 million). The Funds have approved these claims at the claimed amount with only minor reductions, but settlements have not yet been reached.

Ten claims were submitted by Prefectures and Municipalities related to the cost of collection of oil on the shore and disposal of the oil. Three of these claims totalling ¥2 342 million (£12.2 million) have been settled at ¥1 815 million (£9.5 million). There remains only one claim in this category for ¥226 million (£1.2 million). The assessment of this claim has been completed, but the claimant has not yet accepted the assessment.

The only remaining fisheries claim, ie that submitted by Kyoto Fishermen's Co-operative Associations for ¥772 million (£4.3 million), was settled at ¥288 million (£1.5 million).

Seven electricity power plants submitted claims for costs of clean-up operations. Four of these claims totalling ¥803 million (£4.1 million) were settled during 2001 at ¥643 million (£3.4 million). The examination of the remaining two claims totalling ¥1 917 million (£10.1 million) has been completed, and it is expected that these claims will be settled early in 2002.

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 15 claimants whose claims had been rejected had decided to withdraw their

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	12 085 303	10 368 503	3 335 857	0
National Government agencies			1 519 466	0
Local Governments	6 917 041	5 482 607	225 526	53 032
Shipowner/UK Club and their contractors	1 129 322	734 195	0	0
Fishery	5 013 257	1 769 172	0	0
Tourism	2 840 858	1 344 157	8 642	0
Others	818 269	655 172	1 930 122	1 023 000
Total	**28 804 050 (£147 million)**	**20 353 806 (£104 million)**	**7 019 613 (£37 million)**	**1 076 032 (£6 million)**

claims. It is expected that further claimants will withdraw their rejected claims.

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 is not clear that the 1992 Civil Liability Convention does not apply. They have maintained that it was not for the IOPC Funds to decide the issue but for the Japanese courts.

The IOPC Funds have 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 does not apply to the *Nakhodka* case.

Level of payments

The total amount available under the 1971 and 1992 Fund Conventions is ¥23 164 515 000 (£121 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.

As a result of developments and as authorised by the governing bodies the Director decided in January 2001 to increase the level of payments from 70% to 80% of the amount of the damage actually suffered by the individual claimants. As a result of the Director's decision, the 1992 Fund made additional payments totalling ¥1 970 million (£12 million) in February and March 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: beach clean-up

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 Committees' consideration 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 £1.2 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 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 concluded that the Register had failed to ensure that the *Nakhodka* met its requirements and that this failure was causative of the incident.

In order to speed up the proceedings, the Japanese Government requested on 7 August 2001 the Tokyo District Court to transfer the Government's action against Prisco and the UK Club to the Fukui District Court. The first hearing in the Tokyo District Court was held on 5 September 2001. The court requested the parties to clarify the main issues of the case. The Court indicated that the case would be transferred to the Fukui District Court if the main issues of this case were nearly the same as those of the cases in the Fukui District Court.

At the hearing Prisco denied liability under the Oil Pollution Damage Compensation Law on the grounds that the incident was caused mainly by an extraordinary natural phenomenon. The UK Club took the same position as Prisco as regards the liability issue. In addition, the Club referred to the arbitration clause in the Club Rules which provided for disputes to be decided by arbitration in London.

The first formal hearing in the Fukui District Court was held on 19 September 2001. The Court invited the parties to endeavour to reach out-of-court settlements. In order to avoid duplication of actions, the court recommended the Funds to withdraw either the Funds' counter-claims against Prisco and the UK Club or parts of the Funds' original claims against them. As the Funds have already submitted pleadings in relation to the counter-claims, the Funds cannot withdraw these claims, and the Funds therefore withdrew parts of their original claims. The Funds have submitted pleadings to the Fukui District Court maintaining that the incident was caused by the *Nakhodka* being unseaworthy and that the unseaworthiness was due to the actual fault or privity of the shipowner.

The Russian Maritime Register has requested the Fukui District Court to dismiss the actions against it on the grounds that the Register enjoys sovereign immunity.

Hearings have been held monthly in the Tokyo District Court since September 2001. As a result of these hearings, it seems unlikely that the Tokyo District court will transfer the Japanese Government's actions against Prisco and the UK Club to the Fukui District Court. For this reason the Director decided in December 2001 to intervene in the proceedings in the Tokyo District Court to protect the Funds' interest.

Legal actions by 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 (£59 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 (£47 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 Tokyo District Court against the

1971 and 1992 Funds for ¥537 million (£2.8 million) in respect of their subrogated rights relating to the payments made by them.

The IOPC Funds submitted defence pleadings against these actions. The Funds have argued that the actions should be rejected on the grounds that the shipowner should not be entitled to limit his liability as the incident resulted from his personal fault or privity and that in any event the shipowner had not commenced limitation proceedings.

Claims relating to the construction and removal of the causeway

As mentioned above, the upturned bow section of the *Nakhodka*, which may have contained 2 800 tonnes of cargo, grounded on the rocks some 200 metres from the shore. A Japanese salvage company was contracted by the shipowner to remove the oil remaining in the bow section, but the operations were hampered by adverse swell and weather conditions. The Japanese authorities took over the operation, using the services of two salvage companies. Some 2 830 m^3 of oil/water mixture was removed through these operations.

Due to concerns that the on-water operations might fail as a result of the adverse conditions, the Japanese authorities ordered the construction of a temporary causeway to the grounded bow section. The causeway was intended to allow road tankers to be brought close to the wreck, thereby facilitating the removal of the oil.

The causeway extended 175 metres from the shore. A large crane was assembled at its seaward end with a sufficiently long arm to reach the bow section. Despite the prevailing conditions, the on-water operations were successful and only the last 380 m^3 of oil/water mixture was removed via the causeway. The causeway was then dismantled and the construction material removed from the site.

JMDPC submitted claims totalling ¥3 336 million (£17.5 million) for the costs of the causeway. The majority of the costs related to the construction and removal of the causeway itself. These claims have been assessed against the criteria for admissibility laid down by the Assemblies, ie that the operation to construct the causeway was reasonable from an objective technical point of view.

At the June 2001 sessions of the IOPC Funds' governing bodies, the Japanese delegation stated that the claims relating to the causeway were being discussed between the IOPC Funds, the shipowner's insurer and the Japanese Government. That delegation pointed out that the Japanese Coast Guard had made the decision to construct the causeway after taking into consideration the unpredictable and severe weather conditions in the Sea of Japan in winter and other difficulties which were encountered at the time.

Several delegations stated that the shipowner's insurer and the IOPC Funds should make every effort to settle these claims and emphasised the importance of the IOPC Funds' keeping an open mind about claims of this type. Some delegations also made the point that the high amount of the claims should not influence the way in which they were treated by the IOPC Funds, although the Funds should exercise great care in the assessment of such big claims. Some delegations stated that it was important for the IOPC Funds not to consider the building of the causeway as unreasonable with the benefit of hindsight, since this could discourage national authorities from taking innovative preventive measures in future cases.

Meetings were held in September and October 2001 between the Japanese Government, on the one hand, and the IOPC Funds and the UK Club, on the other. At these meetings the technical aspects of the causeway claims were discussed in detail. The meetings also addressed the issue as to whether the claims fulfilled the criteria for admissibility laid down by the governing bodies of the IOPC Funds. Progress has been made and further discussions will be held.

Possible global settlement

At their June 2001 sessions, the governing bodies instructed the Director to pursue discussions

with the Japanese Government, the shipowner and the UK Club on outstanding claims and issues and to explore the possibilities of reaching a global settlement of all outstanding issues. The Japanese delegation stated that if the outstanding issues could be resolved to the satisfaction of all parties concerned this could lead to an early global settlement.

The governing bodies again addressed the issue of a global settlement at their October 2001 sessions. They noted that discussions had been held between the UK Club and the IOPC Funds on the possibilities of reaching a global solution and that these discussions would continue. It was further noted that the Director and the UK Club had agreed that the objectives of any global settlement should be that all admissible claims were paid in full, that the IOPC Funds recovered a reasonable amount of the compensation paid by them and that all litigation would cease.

A number of delegations supported the idea of reaching a global solution and stressed the need for flexibility, pragmatism and transparency. Those delegations agreed that it was premature to authorise the Director to conclude any agreement in this regard or for the governing bodies to discuss any settlement amounts.

The Director was instructed to continue to explore the possibilities of reaching a settlement of all outstanding issues, including those relating to the various recourse actions.

13.12 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 2001, 214 claims for compensation totalling Bs15 000 million (£14 million) and US$25 million (£17 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$4 million (£2.7 million). The 1971 Fund has paid US$2.4 million (£1.6 million) to fishermen and fish processors.

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

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 was 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

Claims by six shrimp processors and 2 000 fishermen were settled in December 2000 and as a result a number of claims for compensation were withdrawn from the court proceedings. The current situation in respect of the claims pending in civil proceedings brought before various courts in Venezuela is as follows.

Republic of Venezuela

The Republic of Venezuela presented a claim for pollution damage for US$60 million (£41.2 million) against the master, the shipowner and the Gard Club in the Criminal Court of Cabimas. The claim is based on a letter from the Venezuelan Ministry of Environment and Renewable Natural Resources, which gave details of the amount of compensation allegedly payable to the Republic of Venezuela in respect of oil pollution. Compensation is claimed for damage to the communities of clams living in the 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 prepared by their experts on the various items of the claim by the Republic of Venezuela which concluded that the 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 has 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 (£13.7 million), later increased to US$60 million (£41.2 million). It appears that this claim relates to the same four items of damage as the claim in the Criminal Court of Cabimas.

ICLAM

In March 1998, the Republic of Venezuela presented a claim on behalf of the Instituto para el Control y la Conservación de la Cuenca del Lago de Maracaibo (ICLAM) in the Criminal Court of Cabimas relating to the cost of monitoring the clean-up operations, which included the sampling and analysis of water, sediment and marine life. The same claim was also presented before the Civil Court of Maracaibo.

The Executive Committee considered in February 1999 that the work undertaken by ICLAM formed an important part of prudent and reasonable preventive measures and that therefore the claim for costs as assessed by the experts engaged by the Gard Club and the 1971 Fund at Bs61.1 million (£56 000) was admissible. In September 1999, the 1971 Fund

paid ICLAM Bs15 268 867 (£16 000), ie 25% of the settlement amount. The 1971 Fund has offered to make ICLAM a further payment as a result of the increase of the level of payments to 40% mentioned below. This offer is being considered by ICLAM.

Fish and shellfish processors

Two fish and shellfish processing companies presented a claim for US$20 million (£13.7 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.

In April 2001 a third fish and shellfish processing company presented a claim for US$10 million (£6.8 million) in the Supreme Court requesting that the company should be allowed to join as a third party in the proceedings brought by the first two processing companies before the Supreme Court.

FETRAPESCA

In November 2000 a fishermen's union, FETRAPESCA, withdrew its claims from the Cabimas and Caracas Courts. Four experts engaged by the Civil Court of Caracas at the request of FETRAPESCA have opposed the withdrawal of the action on the grounds that their fees and expenses have not been paid. These experts have also submitted a third party application in which they requested the Supreme Court to declare that the 1971 Fund should pay their fees and expenses of Bs100 million (£91 000).

Republic of Venezuela's former lawyers

Three lawyers previously engaged by the Republic of Venezuela to present its claim in the Civil Court of Caracas have submitted a claim against the Republic before the Supreme Court requesting payment of their fees in the amount of Bs440 million (£400 000). The powers of attorney granted by the Republic to these three lawyers were cancelled on 9 June 1997. In the pleadings the Republic of Venezuela's former lawyers stated that the Supreme Court should not accept the withdrawal of the claim by the Republic until their fees and expenses have been paid by the plaintiffs or the defendants in that claim. It should be noted that the claim by the Republic was brought against, *inter alia*, the 1971 Fund.

PDVSA

Petroleos de Venezuela SA (PDVSA), the national oil company, presented a claim for Bs3 814 million (£3.5 million) in the Civil Court in Maracaibo to recover costs incurred during the clean-up operations and the disposal of the oily sand over and above those already agreed through the Claims Agency in Maracaibo. The total claim for the cost of clean-up operations has been agreed at US$7.1 million (£4.9 million) and for disposal of the oily sand at US$1.3 million (£893 000). The withdrawal of the court action is expected in the near future.

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 (£1.1 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 (£3.2 million) to recover the amounts paid as a result of the incident if the shipowner were to be wholly exonerated from liability under Article III.2(c) of the 1969 Civil Liability Convention or, alternatively, for an amount of Bs862 million (£782 000) for indemnification under Article 5.1 of the 1971 Fund Convention.

Supreme Court: request of 'avocamiento'

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.

In May 1999 two independent requests of 'avocamiento' were filed by two fish processors and by FETRAPESCA before the Supreme Court. 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. The Court has, however, not yet accepted the withdrawal.

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 March 2001 the Administrative Council increased the level of payments to 40%. It also authorised the Director to increase the level of the 1971 Fund's payments to 70% when the 1971 Fund's total exposure in respect of the incident fell below US$100 million. The Council further authorised the Director to increase the payments to between 40% and 70% if and to the extent that actions withdrawn from the courts would allow it. However, there have not been sufficient developments to enable the Director to increase the level of payments.

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 stated 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. However, on the basis of the evidence made available to the 1971 Fund so far, the Director has stated that he is 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 Director was instructed by the Executive Committee 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.

At the Administrative Council's June 2001 session, the Venezuelan delegation stated that after the *Nissos Amorgos* incident INC had carried out a survey of the channel which showed that the conditions were favourable for navigation. It was mentioned that the Republic of Venezuela had also investigated the circumstances of the incident and that the results of this investigation confirmed the conclusions of the study carried out by INC that the channel was in perfect condition for navigation. That delegation stated that INC would make available to the 1971 Fund technical documentation on the conditions of the channel which had been presented to the Supreme Court, in order to enable the Fund to take a decision based on the facts of the case.

In September 2001, INC presented to the 1971 Fund substantial technical documentation on the condition of the channel for navigation. This documentation is being examined by the 1971 Fund.

At the Administrative Council's October 2001 session, the Venezuelan delegation stated that the

Republic of Venezuela had made several proposals to the shipowner and the Gard Club in order to reach agreement and to be able to withdraw the claim by the Republic of Venezuela in the Civil Court of Caracas so that the level of payments could be increased. The delegation stated that technical staff of INC had been present at the negotiations to provide expert input on dredging and other related issues. It further stated that since its construction in 1948, more than 150 000 tankers had passed through the Maracaibo Channel without incident and that the *Nissos Amorgos* had run aground outside the channel.

The Gard Club stated that the issues of the investigation into the cause of the incident and the withdrawal of one of the claims by the Republic of Venezuela were interconnected. The Gard Club referred to the fact that the Venezuelan Government had insisted that, as a condition of withdrawal of the Government's duplicate claim, the shipowner/Gard Club should renounce any claim against the Republic of Venezuela resulting from the incident. The Gard Club mentioned that the shipowner and the Club took the position that, on the basis of the evidence they had so far seen, they had a legitimate recourse claim and that it was appropriate for all potential rights of recourse to be preserved. It was further stated that the shipowner and the Club fully supported the objective of eliminating duplicate actions in order to allow an increase in the level of payments to parties with legitimate claims and that they remained ready to execute whatever formal documentation might reasonably be required to enable the Government to complete the withdrawal of one of its duplicate actions.

Summary of claims pending before the Venezuelan Courts

After the withdrawal of a number of court actions the following claims are pending in the courts:

a) Republic of Venezuela;
   i) in the Criminal Court of Cabimas for US$60 million (£41.2 million);
   ii) in the Civil Court of Caracas for the same amount;

b) three fish and shellfish processing companies in the Supreme Court for US$30 million (£20.6 million);

c) four experts engaged by FETRAPESCA in the Supreme Court for fees for Bs100 million (£91 000);

Nissos Amorgos: recovery of sunken oil near shore

d) three lawyers against the Republic of Venezuela for fees for Bs440 million (£400 000);
e) PDVSA in the Civil Court of Maracaibo for Bs3 314 million (£3 million);
f) ICLAM;
   i) in the Criminal Court of Cabimas for Bs57.7 million (£52 000);
   ii) in the Civil Court of Maracaibo for the same amount;
g) the shipowner and the Gard Club for Bs1 219 million (£1.1 million) and Bs3 473 million (£3.2 million).

13.13 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 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.

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 was 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 US$1 million (£670 000) per incident.

In February 2001 the shipowner established the limitation fund under the 1969 Civil Liability Convention with the competent court in the amount of Won 153 million (£87 000).

In November 2001 the 1971 Fund paid the shipowner's liability insurer Won 38 million (£20 500) in indemnification in accordance with Article 5.1 of the 1971 Fund Convention.

13.14 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.

The limitation amount applicable to the *Katja* in accordance with the 1969 Civil Liability Convention 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 (£840 000).

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 very unlikely, therefore, that the 1971 Fund will be called upon to make any payments in this case.

13.15 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

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.

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$3.1 million (£1.2 million). Contractors appointed by MPA presented claims for a total of S$12.8 million (£4.8 million). The shipowner's insurer, the United Kingdom Mutual Steam Ship Assurance Association Ltd (UK Club), has made a provisional payment to the Singapore authorities of S$500 000 (£190 000). The UK Club has informed the 1971 Fund that these claims will be settled shortly.

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

The UK Club has received a claim from another contractor for clean-up operations for US$5.3 million (£3.6 million).

Claims for property damage total S$1.8 million (£670 000). 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 (£353 000) for the costs of clean-up operations on the island. Three claims for the cleaning of ships' hulls were settled and paid by the UK Club at US$67 000 (£47 800).

The shipowner and the UK Club have indicated that they might maintain that the operations carried out in Singaporean waters (or at least part thereof) were undertaken to prevent or minimise pollution damage in Malaysia or Indonesia and that the 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 took the view that it was premature for the Fund to take any position on these issues.

Malaysia

Claims for clean-up costs totalled RM 1.7 million (£306 000). The UK Club

has settled these claims at RM 1.4 million (£251 000). Fisheries claims totalling RM 1.8 million (£318 000) were settled at RM 1.2 million (£207 000). There are no further claims in Malaysia.

The shipowner and the UK Club commenced proceedings against the 1971 Fund in October 2000 in Malaysia. This action was stayed in July 2001 by mutual consent.

Indonesia

The Indonesian authorities have submitted a claim to the shipowner and the UK Club 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 UK Club 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.

The shipowner and the UK Club commenced proceedings against the 1971 Fund in Indonesia in October 2000, claiming £50 000 each from the Fund. In December 2001 the shipowner and the UK Club requested the Court to discontinue proceedings in Indonesia. On 4 December 2001, the court decided that the proceedings should be discontinued.

In October 2000 the shipowner and the UK Club commenced legal proceedings against the 1971 Fund in London to prevent any claims against the 1971 Fund from becoming time-barred. In the Fund's view, these legal proceedings were not necessary as legal proceedings were taken in Malaysia.

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).

Payments by the 1971 Fund

In view of the uncertainty as to the total amount of the claims, the Administrative Council confirmed in October 2001 its decisions at previous sessions that the Director was not authorised to make any payments of claims for the time being.

Evoikos: protection of fish farms

13.16 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 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.

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* was registered in Abu Dhabi and owned by a citizen of that Emirate.

The *Pontoon 300* was a flat-top barge of 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.

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.

Claims for compensation

Settled claims

As at 31 December 2001 claims totalling Dhs 7.4 million (£1.4 million) in respect of clean-up operations and preventive measures had been settled for a total of Dhs 6.3 million (£1.2 million). The 1971 Fund had paid a total of Dhs 4.8 million (£900 000), corresponding to 75% of the settlement amounts.

Pending claims

In May 2000 the Municipality of Umm Al Quwain presented claims against the 1971 Fund totalling Dhs 199 million (£37 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 (£2.1 million)), property damage (Dhs 7.0 million (£1.3 million)), clean-up costs (Dhs 19.7 million (£3.7 million)) and environmental damage (Dhs 161 million (£30.1 million)). Little or no documentation has been 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 appeared 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, well before the expiry of the three-year time bar period, the Umm Al Quwain Municipality brought legal action in the Umm Al Quwain Court against the tug owner and the owner of the cargo on board the *Pontoon 300* in respect of its claims. The 1971 Fund was not joined as a defendant in the proceedings, nor was it formally notified of the proceedings. However, the plaintiffs requested the Court to notify the 1971 Fund through diplomatic channels in accordance with Article 7.6 of the 1971 Fund Convention and through the Ministry of Justice in accordance with United Arab Emirates law of Civil Procedure.

In June 2001 the Administrative Council considered the question of whether the claims by the Umm Al Quwain Municipality had become time-barred. Under Article 6 of the 1971 Fund Convention, rights to compensation from the 1971 Fund are extinguished unless an action is brought under the Convention against the Fund, or notification has been made to the Fund under Article 7.6 of the Convention of an action against the shipowner or his insurer under the 1969 Civil Liability Convention, within three years of the date when the damage occurred. However, notification under Article 7.6 can be made only in respect of actions against the shipowner liable under the 1969 Civil Liability Convention or his insurer. Actions against other parties would fall outside that Convention. Since none of the defendants listed in the Municipality's writ was the owner of the *Pontoon 300* or his insurer, the 1971 Fund considered that the action could not be based on the 1969 Civil Liability Convention and that Article 7.6 of the Fund Convention was not applicable.

Claims against the 1971 Fund became time-barred on or around 8 January 2001 at which point the Umm Al Quwain Municipality had not taken the measures laid down in the 1971 Fund Convention to prevent the claims becoming time-barred. However, the 1971 Fund's UAE lawyers drew attention to the fact that under the procedural law of the UAE there was no legal distinction between an actual defendant and a notified party and that the Court might identify and confirm the 1971 Fund as a defendant rather than a notified party to get around the problem. Furthermore, since the Municipality's writ was filed in court before the three-year time bar period, the Fund's lawyers believed that it might be considered sufficient by the Court for preventing the Municipality's claim becoming time-barred.

A number of delegations stated that the question of time bar was an important one and that the 1971 Fund should maintain its policy that the provisions on time bar in the 1971 Fund should be strictly observed. The delegation of the UAE stated that under the law of the Emirates, international treaties took precedence over domestic law and that the issue of time bar should be decided in accordance with the Conventions.

In December 2000 the Ministry of Agriculture and Fisheries in Umm Al Quwain joined the Umm Al Quwain Municipality's action as a co-plaintiff, claiming Dhs 6.4 million (£1.2 million), which corresponded to the claim by the marine resource research centre included in the Municipality's claim. However, the Ministry also joined the 1971 Fund as a co-defendant in its action. Although the action had not been served on the 1971 Fund, the Administrative Council decided that this claim was not time-barred, since the Fund had been brought in as a defendant in the action before the expiry of the three-year time bar period.

The Administrative Council also considered the question as to the Umm Al Quwain Municipality's and the Ministry of Agriculture and Fisheries' standing to sue in respect of the alleged damages covered by the claims, since neither of them had any right to claim against the 1971 Fund or anyone else on behalf of any other parties unless a power of attorney or other legal authority was provided by the individual or entity who had suffered the alleged loss. However, it was noted that the Ministry and the Municipality could still present documents showing that they had the power to represent the victims in question.

At a hearing in September 2001 the 1971 Fund's lawyers submitted a memorandum to the Umm

Al Quwain Court denying the validity of the assignment of rights authorising the Umm Al Quwain Municipality and the Ministry of Agriculture and Fisheries to act on behalf of the various parties alleged to have suffered losses. The Fund's lawyers also submitted pleadings at the hearing, maintaining that the claims submitted by the Umm Al Quwain Municipality were time-barred.

Further pleadings were submitted by all parties at subsequent hearings in October and November 2001. In December 2001 the Umm Al Quwain Court issued a preliminary judgement in which it decided to refer the matter to a panel of experts experienced in oil pollution and the environment, to be appointed by the UAE Ministry of Justice. The Court further decided to combine all the pleadings relating to issues of jurisdiction, time bar and title to sue and to review these after the experts had submitted their report.

At a hearing on 29 December 2001 the Court decided at the 1971 Fund's request to postpone the proceedings to allow the Fund to consider further the question of nomination of experts.

Level of the 1971 Fund's payments

The maximum amount of compensation available under the 1969 Civil Liability Convention and the 1971 Fund Convention is 60 million SDR (£51.9 million).

The Executive Committee had previously decided in view of the uncertainty regarding the total amount of claims for compensation that the 1971 Fund's payments should be limited to 75% of the loss or damage actually suffered by each claimant.

The total amount claimed against the 1971 Fund as at 31 December 2001 was Dhs 206 million (£38.5 million), although Dhs 6.4 million (£1.2 million) was claimed both by the Umm Al Quwain Municipality and the Ministry of Agriculture and Fisheries for the same alleged damage. As mentioned above the 1971 Fund considers that the claims by the Umm Al Quwain Municipality, which represent Dhs 193 million (£36.1 million), are time-barred. However, the Fund's lawyers have indicated that the UAE courts might not agree with the Fund on this point. The UAE law is also unclear as to whether claimants can increase the amount of their claims in court, but in any event they would be entitled to interest at 9% per annum on any amounts awarded, either from the date of filing the claims in court or from the date of judgement. The Administrative Council therefore decided in June 2001 to maintain the Fund's level of payments at 75% of the total loss or damage suffered by each claimant.

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.

The master of the tug *Falcon 1* lodged an appeal in the Federal Court of Cassation, which sent the case back to the Court of Appeal to consider the issues of seaworthiness of the *Pontoon 300* and the master's defence of 'force majeure'. In October 2001 the Criminal Court of Appeal issued a preliminary judgement in which it appointed three experts from the UAE Ministry of Justice to provide a report to the Court of Appeal on the cause of the incident.

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

The 1971 Fund took legal action in January 2000 against the owner of the tug *Falcon 1* maintaining that, since the sinking of the

Pontoon 300 occurred due to its unseaworthiness and the negligence of the master and the owner of the *Falcon 1* during the towage, the tug owner was liable for the ensuing damage. The Fund claimed Dhs 6 million (£1.1 million), corresponding to the amounts it had either approved or paid in compensation for clean-up operations and preventive measures.

The owner of the tug *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 had jurisdiction since one of the defendants has a place of business in Dubai and that the Fund had 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. They have stated 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.

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 owner of the cargo on board the *Pontoon 300* to pay the Fund Dhs 4.5 million (£840 000).

The basis of the rejection of the claims against the owner of the *Falcon 1* was that under the terms of the charter party the master of the tug was under the control of the charterer. The 1971 Fund appealed against the judgement, contesting the validity of the charter party, and maintaining that in any event the charter party was only binding upon the parties thereto and not the Fund.

At a hearing in November 2001 the Fund's lawyers filed further pleadings amending the claimed amount to Dhs 4.7 million (£880 000) to reflect the amounts actually paid by the Fund.

13.17 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^2 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 (£480 000). 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 (£9.1 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.

Claims against the 1971 Fund became time-barred on or shortly after 8 June 2001.

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).

13.18 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.

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 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. The oil removal operation was completed on 7 February 2000, and it was reported that some 430 tonnes of oil was 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'

In July 2000 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, 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

When the governing bodies considered the applicability of the 1971 and 1992 Fund Conventions to the *Al Jaziah 1* incident it was 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

Al Jaziah 1: originally designed as an inland waters tanker

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 the 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

In August 2000 claims in respect of clean-up costs totalling US$1.3 million (£890 000) were submitted to the IOPC Funds by two local affiliated 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). These claims have been provisionally assessed at US$579 000 (£400 000).

In August 2001 a third affiliated oil company submitted a claim for US$98 000 (£67 000), which was provisionally assessed at US$26 000 (£18 000).

In July 2000 the FEA submitted a claim for Dhs 2 million (£375 000) 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. This claim was settled for the amount claimed in May 2001.

In August 2000 claims for US$40 000 (£28 000) and Dhs 47 500 (£8 900) were submitted by the FEA in respect of operations to remove the oil residues remaining in the wreck after it had been refloated. These claims were settled in May 2001 in the amounts of US$29 000 (£20 000) and Dhs 47 000 (£9 000) respectively.

13.19 ALAMBRA

(Estonia, 17 September 2000)

The incident

On 17 September 2000 the tanker *Alambra* (75 366 GRT), registered in Malta, was loading a cargo of heavy fuel oil in the Port of Muuga, Tallinn (Estonia) when an alleged 300 tonnes of cargo escaped from one of the vessel's cargo tanks as a result of corrosion of the bottom plating.

The vessel remained alongside the berth until 28 September 2000 in order to minimise the spread of the oil whilst clean-up operations were undertaken.

The *Alambra* was subsequently detained by the Estonian authorities pending a decision by the Tallinn Port Authority to allow the remaining 80 000 tonnes of cargo on board to be removed. The cargo transfer was eventually undertaken in February 2001, and in May 2001 the vessel finally left Estonia for scrapping.

The *Alambra* was entered in the London Steam-Ship Owners' Mutual Insurance Association Ltd (London Club).

Limitation of liability

Estonia is Party to the 1969 Civil Liability Convention and the 1971 Fund Convention.

The limitation amount applicable to the *Alambra* is estimated at 7.6 million SDR (£6.6 million).

Claims for compensation

Claims for clean-up costs were submitted by the Tallinn Port Authority for EEK 6.5 million (£250 000) and by the Ministry of Environment for EEK 4 million (£156 000).

A claim for EEK 45.1 million (£1.8 million) is being pursued against the shipowner by the Environment Inspectorate. This amount appears to have been calculated on the basis of theoretical models and cannot therefore be considered a claim for compensation under the 1969 Civil Liability Convention and the 1971 Fund Convention.

A claim for US$100 000 (£69 000) is being pursued by a charterer of a vessel said to have been delayed whilst clean-up operations were being undertaken.

The owner of the berth in the Port of Muuga from which the *Alambra* was loading cargo at the time of the incident, and a company contracted by the owner of the berth to carry out oil loading activities on its behalf, have filed claims for EEK 29.1 million (£1.1 million) and EEK 9.7 million (£379 000) respectively in respect of loss of income due to the unavailability of the berth whilst clean-up operations were being undertaken.

Legal action

In November 2001 the owner of the berth in the Port of Muuga and the company it had contracted to carry out oil loading operations took legal action against the shipowner and the London Club and requested the Court to notify the 1971 Fund of the proceedings in accordance with Article 7.6 of the 1971 Fund Convention.

13.20 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 lightered of its remaining cargo and refloated without significant further spillage.

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. 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.

The *Natuna Sea* is entered with the London Steam-Ship Owners' Mutual Insurance Association Ltd (London Club).

Clean-up operations

Singapore

The Maritime and Port Authority of Singapore (MPA) 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.

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. MPA assisted in the disposal of oil and oily debris regardless of whether it had been collected inside or outside Singaporean waters. The oil was bagged and disposed of through a company in Singapore.

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. Oily waste generated from these operations was handled through contractors appointed by the manager of the *Natuna Sea*.

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 and temporarily stored at a local dump. It was later removed to a landfill site in Singapore whilst the original site was cleaned and landscaped.

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, together with a small workforce provided by the manager of the *Natuna Sea*, undertook 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 and claims for cleaning were submitted to the manager of the *Natuna Sea*.

Natuna Sea: stranded oil

Indonesia
The oil affected both fishing and aquaculture activities, and several thousand artisanal fishermen submitted claims for contaminated gear and for business interruption. The impact was greatest along the north coast of Pulua Batam around the outlying islands where the degree of oil contamination was heaviest.

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 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 nor to the 1969 Civil Liability Convention and the 1971 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 (£19.4 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

A claim by EARL for US$1.4 million (£960 000) was provisionally assessed by the experts engaged by the IOPC Funds and the London Club at US$400 000 (£275 000) pending further information in support of the claim. However, the claim was subsequently settled by the London Club for the amount claimed. The 1992 Fund was not a party to the settlement. EARL has submitted a further claim for US$16 000 (£11 000) in respect of damaged clean-up equipment. The London Club has argued that this claim should be met by the equipment insurers.

A claim by MPA in respect of its own personnel and resources for S$2.5 million (£930 000) has been assessed by ITOPF in the amount of S$1.3 million (£480 000). Claims totalling S$1.3 million (£480 000) by contractors engaged by MPA to assist in clean-up operations have been assessed by ITOPF at S$740 000 (£275 000).

A claim for S$140 000 (£53 000) submitted by the owners of a fish farm which was heavily impacted by the spill was settled for S$95 000 (£36 000). A claim by the Singapore Government Food and Veterinary Authority for S$56 000 (£21 000) in respect of oiled fish cages has been provisionally assessed by the Funds' and the London Club's experts at S$12 400 (£4 600).

The Sentosa Development Corporation submitted a claim for S$800 000 (£303 000) in respect of its involvement in shoreline clean-up operations, including the replacement of a damaged oil containment boom. The claim is being assessed.

The London Club has reimbursed the manager of the *Natuna Sea* US$8.7 million (£6.2 million) in respect of payments made to various clean-up contactors in Singapore and Indonesia. The 1992 Fund has not received any documentation in support of these payments.

Indonesia

Local government authorities in Indonesia have submitted claims totalling Rp 21 000 million (£1.4 million) in respect of clean-up operations, waste disposal and the costs of collating fishery claims. The claims were assessed for a total of Rp 1 073 million (£70 000).

A claim for Rp 911 million (£60 000) by an Indonesian oil company that participated in the clean-up was settled by the London Club at Rp 339 million (£23 000).

Fishery claims totalling Rp 102 000 million (£6.7 million) were assessed at Rp 19.3 million (£1.3 million). In December 2000 the London Club made a partial payment of US$1.5 million (£1.1 million) in respect of these claims.

The Indonesian authorities have submitted claims totalling Rp 1 058 000 million (£70 million) for alleged damage to the coastal ecosystem including mangroves, corals and tourist beaches. No documentation has been provided in support of these claims.

Malaysia

Clean-up claims totalling RM 1.4 million (£250 000) were settled by the London Club for a total of RM 1.3 million (£235 000) and fishery claims totalling RM 905 000 (£167 000) were settled by the Club for the amount claimed. No further claims in Malaysia are anticipated.

Likelihood of involvement of the 1971 Fund and the 1992 Fund

All claims for pollution damage in Malaysia have been settled at a total of some £426 000. The limitation amount applicable to the *Natuna Sea* under the 1969 Civil Liability Convention is estimated at £5.4 million. The 1971 Fund will therefore not be called upon to make any payments in respect of compensation or indemnification under Article 5.1 of the 1971 Fund Convention.

The claims submitted in Singapore total US$10.3 million and S$4.75 million (£8.8 million). The claims submitted in Indonesia total Rp 2 181 000 million (£144 million). There is therefore a possibility that the total admissible claims for pollution

damage in Singapore and Indonesia will exceed the limitation amount applicable to the *Natuna Sea* under the 1992 Civil Liability Convention and that the 1992 Fund may be called upon to make payments in respect of pollution damage in Singapore.

13.21 ZEINAB

(United Arab Emirates, 14 April 2001)

The incident

On 14 April 2001, the Georgian-registered vessel *Zeinab*, suspected of smuggling oil from Iraq, was arrested by the multi-national interception forces. The vessel was being escorted to a holding area in international waters when it lost its stability about 16 miles from the Dubai coastline and sank in 25 metres of water.

The vessel was reported to be carrying a cargo of 1 500 tonnes of fuel oil, of which it is estimated that some 400 tonnes was spilled at the time of the incident. The oil drifted towards the nearby shorelines in Dubai and also reached the coasts of the northern Emirates of Sharjah and Ajman.

Some 1 100 tonnes of cargo remained in the unbreached tanks and this cargo was successfully removed from the sunken vessel without further significant spillage of oil.

It appears that the *Zeinab* was not entered with any classification society and was not covered by any liability insurance.

At the IOPC Funds' request a local surveyor was engaged to follow the clean-up and cargo salvage operations, liaise with the competent authorities and advise the authorities and bodies involved on the practical aspects of clean-up.

Clean-up operations

Clean-up operations at sea were co-ordinated by the Dubai Port Authority. Initially, dispersants were applied from vessels and from aircraft. Subsequently, booms and skimmers were used to contain and collect floating oil.

Local authorities mobilised teams of local labourers and mechanical equipment to undertake onshore clean-up. Cleaning of amenity areas was accomplished very rapidly and all major clean-up operations were completed by 6 May 2001.

Definition of 'ship'

In June 2001 the 1992 Fund Executive Committee considered the question of whether the *Zeinab* fell within the definition of 'ship' laid down in the 1969 and 1992 Civil Liability Conventions and as incorporated into the 1971 and 1992 Fund Conventions respectively (cf page 91).

The *Zeinab* appeared to have been built in 1967 in Spain as a two-hatch general cargo vessel of some 4 354 dwt. At some stage around 1998, the vessel had been converted to carry oil in bulk by installing 12 tanks within the cargo holds, although when the conversion had been undertaken the hatch coamings had been left in place and the tanks covered by a tarpaulin so that the *Zeinab* maintained the outward appearance of a general cargo vessel.

The Executive Committee decided that, since the *Zeinab* was actually carrying oil in bulk as cargo at the time of the incident, it should be considered a ship for the purpose of the 1969 Civil Liability Convention and the 1971 Fund Convention. Furthermore, since the *Zeinab* was clearly capable of carrying oil in bulk as cargo, and had been frequently used for carrying oil in the region, the Committee considered that it would be difficult to argue that it was not a ship for the purpose of the 1992 Civil Liability Convention and the 1992 Fund Convention. The Committee therefore took the view that the *Zeinab* fell within the definition of 'ship' laid down in the 1969 Civil Liability Convention and the 1992 Civil Liability Convention.

The 1971 Fund Administrative Council also decided in June 2001 that the *Zeinab* fell within the definition of 'ship' laid down in the 1969 Civil Liability Convention and the 1992 Civil Liability Convention.

Applicability of the Conventions

At their June 2001 sessions, the 1992 Fund Executive Committee and the 1971 Fund Administrative Council decided that since the United Arab Emirates was at the time of the *Zeinab* incident Party to both the 1969/1971 Conventions and the 1992 Conventions, which had been implemented into national law, both sets of Conventions applied to the incident.

The *Zeinab* was reportedly registered in Georgia, which at the time of the incident was Party to the 1969 Civil Liability Convention but not the 1992 Civil Liability Convention. The United Arab Emirates was Party to the 1969 Civil Liability Convention. The Executive Committee and the Administrative Council took the view that the United Arab Emirates was therefore under a treaty obligation to apply the 1969 Civil Liability Convention in respect of the shipowner's liability (cf Article 30.4(b) of the 1969 Vienna Convention on the Law of Treaties).

Distribution of liabilities between the 1971 and 1992 Funds

Having recalled the decisions in respect of the *Al Jaziah 1* incident, both the 1992 Fund Executive Committee and the 1971 Fund Administrative Council decided that the liabilities arising out of the *Zeinab* incident should be distributed between the 1992 Fund and the 1971 Fund on a 50:50 basis.

Settlement of claims

Both the 1992 Fund Executive Committee and the 1971 Fund Administrative Council considered at their June 2001 sessions whether to authorise the Director to make final settlements on behalf of the 1992 Fund and the 1971 Fund of all claims arising out of the *Zeinab* incident.

One delegation raised concerns that the *Zeinab* appeared to have been engaged in oil smuggling and had not been properly classified and certified to carry oil. In that delegation's view, if the 1992 or 1971 Fund were to entertain claims for compensation arising from the incident, the Funds might be seen to be encouraging the operation of sub-standard ships at a time when concerted efforts were being made to improve the quality of shipping. In addition, attention was drawn to the obligations of Contracting States under Article VII.10 of the 1992 and 1969 Civil Liability Conventions. Another

Zeinab: natural containment of oil

delegation referred to Article 4.2(a) under which the Fund was exonerated from paying compensation for pollution damage resulting from *inter alia* an act of war or hostilities. That delegation expressed the view that this defence was worth exploring more closely. Some delegations considered that the multi-national interception forces were merely carrying out policing duties to ensure that sanctions imposed by the United Nations Security Council were respected. Those delegations considered that even if the sinking of the *Zeinab* had been due to a deliberate act, this would be a matter for a possible recourse action by the Fund rather than constituting a defence under Article 4.2(a).

The United Arab Emirates delegation stated that the area in question was no longer under war and that observation of the United Nations Resolutions had no bearing on the right to compensation for oil pollution damage.

The 1992 Fund Executive Committee and the 1971 Fund Administrative Council decided the matter should be given further consideration at their October 2001 sessions.

In July 2001 the Funds' lawyers contacted the United States Navy Maritime Liaison Office in Bahrain requesting copies of documents recovered from the *Zeinab*. In response to that request the US Navy provided copies of the Certificates of Ownership and Navigation issued by the Georgian Maritime Administration and a brief report by the Boarding Officer of the US Navy. The Certificate of Ownership dated 7 June 2000 gave the name of the owner and an address of his representative in Dubai. The Certificate of Registration, also issued on 7 June 2000, indicated that the *Zeinab* was a cargo vessel of 2 178 GT. No IMO number was given on the Certificate.

The Boarding Officer stated in his report *inter alia* that measurements and soundings of upper tanks indicated that there was 1 300 tonnes of fuel oil on board. It is also stated that the boarding team could not access the lower tanks due to the sounding tubes being welded shut. The boarding team estimated that had the lower tanks been full, the total quantity of oil on board would have been about 3 000 tonnes. The boarding team found old fuel receipts indicating that up to 3 000 tonnes of oil had been loaded and discharged on previous occasions and on the basis of this the boarding team decided to divert the vessel.

The Funds' expert reviewed a video of the vessel sinking taken by an observer on the United States Navy arresting vessel and an underwater video of the sunken vessel taken by divers who assisted in the oil removal operations.

The underwater video showed clearly that the majority of the tank openings had been removed, which would have allowed seawater to flow directly into the tanks thereby decreasing the vessel's overall freeboard. The Funds' expert considered that under the prevailing conditions of 2 metre waves, this would have been sufficient to contribute to the ingress of water into the tanks. Since the vessel was not equipped with pumps capable of removing large volumes of seawater, the loss of freeboard could have resulted in the flooding of the machinery spaces and the forepeak, which would have been sufficient to sink the vessel. According to the expert the videos did not show any structural deformation or collision damage.

At their October 2001 sessions the 1992 Fund Executive Committee and the 1971 Fund Administrative Council decided that the interception by the multi-national maritime interception forces could not be considered as an "act of war, hostilities, civil war or insurrection", and that the 1971 Fund and the 1992 Fund should therefore not invoke the defence provided in Article 4.2(a) of the respective Conventions. However, both the Committee and the Council agreed that if, in the light of further investigations, it transpired that the sinking of the *Zeinab* had been a deliberate act, this might be a matter for a possible recourse action by the Funds.

The Committee and the Council decided to authorise the Director to make final settlements on behalf of the 1971 and 1992 Funds of all

claims arising out of the incident to the extent that they did not give rise to questions of principle which had not previously been decided by any of the governing bodies of the 1971 Fund or the 1992 Fund.

Claims for compensation

The Dubai Port Authority has submitted claims totalling US$480 000 (£330 000) in respect of costs of preventive measures and clean-up. These claims are being assessed.

Claims are anticipated from the Federal Environment Agency in respect of operations to remove the remaining oil from the sunken wreck.

Claims are also anticipated from the Dubai Municipality in respect of shoreline clean-up operations. The costs are expected to be in the region of US$1.2 million (£820 000).

Further claims are expected from local oil companies that participated in the clean-up operations.

13.22 SINGAPURA TIMUR

(Malaysia, 28 May 2001)

The incident

On 28 May 2001 the chemical tanker *Singapura Timur* (1 369 GT), registered in Panama, carrying some 1 550 tonnes of asphalt, collided with the unladen Bahamanian-registered tanker Rowan (24 731 GT) near Undan Island, in the Strait of Malacca, Malaysia.

The collision caused several fractures to the shell plating of one of the *Singapura Timur*'s bunker fuel tanks. Damage to the forward and aft bulkheads of the tank is believed to have resulted in the ingress of cargo into the compartment and the flooding of the engine room. The vessel sank in some 47 metres of water later the same day.

At the request of the Malaysian authorities the cargo owner mobilised a tug with pollution response equipment, including equipment of the Malaysian oil industry co-operative (PIMMAG). The clean-up response, which primarily involved the application of chemical dispersants, was terminated on 1 June 2001 when it was established that the remaining oil at sea did not pose a threat to the Malaysian coastline.

The *Singapura Timur* was entered in the Japan Ship Owners' Mutual Protection and Indemnity Association (Japan P & I Club).

A salvage company contracted by the Japan P & I Club sealed all fractures and plugged the vents of the fuel oil tanks to prevent further escape of oil. These operations were completed on 5 June 2001.

Since asphalt is persistent oil, the *Singapura Timur* was actually carrying oil in bulk as cargo and the vessel therefore falls within the definition of 'ship' in Article I.1 of the 1969 Civil Liability Convention.

The Malaysian Department of Environment is carrying out an investigation into the environmental risks posed by the asphalt cargo with a view to deciding whether steps should be taken to remove the cargo.

Limitation of liability

Malaysia is Party to the 1969 Civil Liability Convention and the 1971 Fund Convention.

The limitation amount applicable to the *Singapura Timur* is estimated at 102 000 SDR (£88 000).

Claims for compensation

Whilst it is not yet possible to make a full evaluation of the total amount of the claims for compensation, it is anticipated that claims in respect of the costs of preventive measures and clean-up will exceed the limitation amount applicable to the ship under the 1969 Civil Liability Convention. Claims are being assessed by the Japan P & I Club and its experts in consultation with the 1971 Fund.

A claim for $S2 000 (£750) for the cost of mobilising a response vessel was settled for S$1 450 (£540). A claim for RM 22 100

(£4 000) in respect of the hire of a pollution vessel, a lorry and crane in support of the clean-up response was settled as claimed.

A claim for ¥15.4 million (£80 000) by a salvage company engaged by the Japan P & I Club to stem further leaks from the wreck was settled for ¥11.4 million (£60 000).

PIMMAG has submitted a claim for RM 324 000 (£59 000) in respect of its involvement in the clean-up response. The claim is being assessed.

The Malaysian authorities received reports from fishermen that their fishing nets had been affected by oil and claims for compensation are anticipated.

14 1992 FUND INCIDENTS

14.1 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 Lloyd's 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.

The limitation amount applicable to the *Kuzbass* under the 1992 Civil Liability Convention is estimated at approximately 38 million SDR (£33 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 (£815 000).

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 as follows:

> " 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. The original Russian sea charts, the course recorder and the ship's logbook support 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[4], 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 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 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

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

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* even though the opportunity to do so arose when the vessel was inspected in Italy in July 1996 by the German authorities who decided not to require such sampling. 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 maintained throughout that the evidence available shows that the oil pollution was not 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 based on joint work by a former chief engineer of the shipowner and by an independent expert who both had examined the *Kuzbass* engine logbook and other technical documents. They both have stated that according to the engine log there was no cargo or ballast pump activity recorded from the completion of discharge in Wilhelmshaven 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 this report, in particular the 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 2002 on the procedure for the handling of the case.

Considerations by the Director

In his report on this incident to the Executive Committee's October 2001 session the Director stated that he concurred with the findings of the court expert. The Director mentioned that he had also studied the analytical data submitted by the Federal Maritime and Hydrography Agency, in particular the mass spectrograms of the pollution samples, which in his opinion showed a remarkable match with Libyan Es Sider crude as opposed to Libyan El Brega crude, the latter being the oil transported by the *Kuzbass* on the voyage immediately prior to the alleged pollution offence.

According to the schedule of Libyan crude exports produced by Lloyd's Maritime Information Services, prior to carrying the cargo of El Brega crude to Wilhelmshaven, the *Kuzbass* had carried two cargoes of Es Sider crude (loaded on 14 February and 28 March 1996) and one cargo of Ras Lanuf crude (loaded on 22 February 1996). If the *Kuzbass* had been the source of the

pollution, and if this had resulted from the overboard discharge of slops accumulated over several voyages, this may in the Director's view explain why the mass spectrograms of the pollution samples most resembled mass spectrograms of Es Sider crude.

On the basis of the evidence presented by the German authorities the Director informed the Committee that he considered that the pollution was caused by a discharge of crude oil closely resembling Es Sider crude from a tanker and that the *Kuzbass* was the most likely source of the contamination.

Executive Committee's considerations

At its October 2001 session the Executive Committee noted that the Director had held informal discussions with the West of England Club as regards the evidence but that the Club had continued to maintain that the *Kuzbass* was not to blame. The Executive Committee agreed with the Director that in view of the position taken by the shipowner and the West of England Club, the issues relating to liability would have to be decided by the German courts.

One delegation noted that the claimant in this case was the German Government which could afford to wait for a court decision. In that delegation's view the situation would have been very different if the claimants had been fishermen who were suffering economic hardship as a result of the delays in settling the issue of liability between the shipowner and the 1992 Fund. If such a situation were to arise, it was the view of that delegation that the 1992 Fund would have to consider paying claims and taking over the legal proceedings.

The Director pointed out that this issue raised an important question of principle, since under Article 4.1(b) of the 1992 Fund Convention claimants had to take all reasonable steps to pursue the legal remedies available to them before obtaining compensation from the 1992 Fund.

14.2 NAKHODKA

(Japan, 2 January 1997)

See pages 69 to 76.

14.3 OSUNG N°3

(Republic of Korea, 3 April 1997)

See pages 82 to 83.

14.4 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 1999 the leakage was only about one to five 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), a conventional insurance company which covers P & I risks at fixed premiums.

The 1992 Fund's co-operation with P & I Clubs in respect of the handling of incidents is governed by 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. 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. 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 1999. Diving inspections showed that there was no remaining oil in any of the cargo tanks. The inspections also showed that the bunker tanks were free of oil.

Claims for compensation

As at 31 December 2001 Terra Nova had incurred expenditure of approximately US$2.5 million (£1.7 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 (£730 000) in respect of clean-up operations. This claim became the subject of legal proceedings, but in June 2001 Terra Nova settled the claim out of court for US$500 000 (£360 000).

Terra Nova has not consulted the 1992 Fund on the settlement of the claims.

The limitation amount applicable to the *Mary Anne* is 3 million SDR (£2.6 million). It is therefore 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 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.

Terra Nova requested the 1992 Fund to endorse its action and recognise its potential claim against the Fund. The Director informed Terra Nova that the Fund neither endorsed the action nor recognised any potential claim by Terra Nova for reimbursement against the Fund, since the total amount of the claims fell well below the limitation amount applicable to the *Mary Anne*.

At the October 2000 session the Executive Committee endorsed the Director's opinion that any claim by Terra Nova for reimbursement on the grounds of the shipowner having been in breach of the insurance policy had to be made against the shipowner, since the total amount of the claims paid fell well below the limitation amount applicable to the ship. The Committee noted that the legal situation might be more complicated as regards claims which had not yet been paid and that the Committee might have to consider this issue at a future session.

In October 2001 the Committee noted that the 1992 Fund had recently received a claim for PPs1.8 million (£24 000) from a lawyer in the

Philippines representing a chemical supplier who had provided a quantity of dispersants to the shipowner for use in the clean-up operations. It was noted that the shipowner was insolvent and that Terra Nova had refused to settle the claim.

The Committee recalled that under Article 4.1(b) of the 1992 Fund Convention claimants had to take all reasonable steps to pursue the legal remedies available to them before obtaining compensation from the 1992 Fund. A number of delegations stated that the requirement laid down in Article 4.1(b) was an important point of principle and that the claimant in question should be required to seek recompense from either the shipowner or his insurer. One delegation, whilst agreeing with this view, considered that it was important for the 1992 Fund to follow the events and that if the claimant were to experience difficulties in pursuing the claim the Fund should be prepared to give assistance.

In October 2001 the 1992 Fund informed the claimant of the Committee's decision that he should pursue his claim against the shipowner and/or Terra Nova.

14.5 DOLLY

(Caribbean, 5 November 1999)

The incident

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 national 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.

Definition of ship

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.

In January 2001 the Executive Committee considered the question of whether the *Dolly* fell within the definition of 'ship' in the light of information which the French authorities had provided the 1992 Fund, including the original drawings and a sketch showing modifications that were subsequently made to the vessel.

The Committee noted that the *Dolly* had been built in 1951 as a general cargo vessel and had been listed as such in Lloyd's Register (1998 - 99). It was further noted that at some later date three tanks had been installed in the hold and the opening of the original hatch had been closed with steel plates. The Committee also noted that the sketches available to the 1992 Fund had shown that the tanks were not part of the ship's structure, but were secured within the ship's hold with chains and surrounded with insulation material. The Committee also took note of the 1992 Fund's experts having expressed the opinion, and the Director having concurred, that the *Dolly* had been adapted for the carriage of oil in bulk as cargo and that it therefore fell within the definition of 'ship' laid down in the 1992 Civil Liability Convention.

The Committee endorsed the Director's view that the *Dolly* fell within the definition of 'ship' as laid down in the 1992 Civil Liability Convention.

Measures to prevent pollution

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 provided the 1992 Fund with copies of the salvors' proposals.

Two of the companies 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 (£1 million). The third company proposed righting the wreck and refloating it with its cargo on board, following which the bitumen would then be removed and the wreck scuttled in deep water. The cost of this method was estimated at US$950 000 (£653 000).

At its session in July 2001, the Committee concurred with the Director's opinion that, in view of the location of the wreck in an environmentally sensitive area, an operation to remove the threat of pollution by the bitumen would in principle constitute 'preventive measures' as defined in the 1992 Conventions. The Committee instructed the Director to examine with the 1992 Fund's experts and the French authorities the proposed measures to remove the bitumen.

The 1992 Fund's experts examined the proposed methods and expressed the view that the third company's proposal was preferable on both technical and cost grounds. The French authorities have indicated that they also favour refloating the wreck prior to removing the cargo, but propose to cut up the wreck on shore rather than scuttle it.

In July 2001 the Director informed the French Government of the Fund's expert's opinion. The Director stressed that any claims presented by the French authorities in respect of operations on the wreck of the *Dolly* would be examined against the Fund's admissibility criteria and that the Fund would not approve the costs of the operation in advance of the work being carried out.

At the Executive Committee's October 2001 session the French delegation indicated that the authorities were in the process of seeking international tenders in respect of the proposed measures. That delegation also stated that the French Government had sought advice from the Fund's experts on the operations to benefit from the Fund's technical expertise on these matters and that the French Government would then take its decision and submit a claim for compensation in due course in accordance with the usual procedures.

14.6 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 sank in about 100 metres of water. 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 and water 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 in 2000. 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. Although there was a considerable improvement in the condition of most of the key tourist beaches, not all shores were completely cleaned before the start of the main tourist season in July. In many areas, clean-up was stopped for the main tourist season, although in some cases the municipalities employed local clean-up teams throughout the summer on selected tourist beaches.

Cleaning recommenced in the autumn, and although weather constraints reduced efforts through the winter months, operations to remove residual contamination began in spring 2001. These operations were conducted mainly by specialist contractors.

By the summer tourist season of 2001, almost all of the secondary cleaning had been completed, apart from at a small number of difficult sites in Loire Atlantique and the islands of Morbihan. Clean-up efforts continued at these sites in the autumn and most were completed by November 2001.

Area affected by the Erika incident

More than 200 000 tonnes of oily waste was collected from shorelines and temporarily stockpiled. Total Fina, a French oil company, 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 FFr300 million (£28 million).

Impact of the spill

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

Cleaning operations resulted in damage to roads in a number of communes and départements.

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), in numerous areas cultivated and natural stocks of shellfish 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 shell fishing bans were progressively lifted during the summer of 2000, and by September 2000 all areas were open to fishing and harvesting of marine products, with the exception of a small area in Loire Atlantique where shellfish were still contaminated. This ban was lifted in September 2001.

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. After that date a group of independent producers in Guérande tried to resume salt production but were hampered from doing so. Members of a

Erika: removal of oily residues by crane

co-operative, who account for some 70% of the salt production in Guérande, decided not to produce salt in 2000 on the grounds of protecting market confidence in the product.

At the request of the 1992 Fund and Steamship Mutual a court expert has been appointed to examine whether it would have been feasible to produce salt in 2000 in Guérande that would meet the criteria relating to quality and the protection of human health. Documentation has been submitted to the court expert whose report is expected in the near future.

Claims for 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 (both independent and members of the co-operative) in Guérande and Noirmoutier.

The affected coastline supports an important tourist industry, particularly during the summer months, which was affected to varying degrees during the 2000 tourism season depending on location and type of activity. The indications are that the 2001 season was not affected to any significant degree. Nevertheless claims may be submitted for losses incurred during the 2001 season in areas which remained contaminated.

Removal of the oil remaining in the wreck

The French Government decided that the oil should be removed from the two sections of the wreck. The oil removal operations were carried out by an international consortium during the period 6 June - 15 September 2000. No significant quantities of oil escaped during the operations.

Limitation proceedings

At the request of the shipowner, the Commercial Court (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 (£7.9 million) and declared that the shipowner had constituted the limitation fund by means of a letter of guarantee issued by Steamship Mutual.

A group of claimants lodged an objection to the Court's acceptance of Steamship Mutual's letter of guarantee, maintaining that the limitation fund should have been constituted in cash. In June 2001, the Court declined to take jurisdiction of this matter.

Maximum amount available for compensation

The maximum amount available for compensation under the 1992 Civil Liability Convention and the 1992 Fund Convention is 135 million Special Drawing Rights (SDR) per incident, including the sum paid by the shipowner and his insurer (Article 4.4 of the 1992 Fund Convention). This amount shall be converted into national currency on the basis of the value of that currency by reference to the SDR on the date of the decision by the Assembly as to the first date of payment of compensation.

Applying the principles laid down by the Assembly in the *Nakhodka* case the Executive Committee decided in February 2000 that the conversion should be made using the rate of the SDR as at 15 February 2000 and instructed the Director to make the necessary calculations.

The Director's calculation gave 135 million SDR = FFr1 211 966 811 (£113 million), and the Committee endorsed this calculation at its April 2000 session.

In September 2001 an association for the protection of the sea, 'Keep it Blue', joined by another entity, la Confédération Maritime, made a complaint to the public prosecutor maintaining that the Director had committed fraud in connection with the decision on the conversion of the maximum amount payable under the 1992 Fund Convention expressed in Special Drawing Rights (SDR) into French francs. The Director was accused of having violated the 1992 Fund Convention by converting the SDR into francs on a date different from that laid down in the Convention and of having personally made the calculation on the basis of a rate chosen by him, ie 15 February 2000, whereas the conversion should have been made using the rate on

4 April 2000, ie on the date when the Assembly had considered the matter, thereby depriving the victims of FFr35 227 130 (£3.2 million).

These allegations were reported by the Director at the Executive Committee's October 2001 session. The ensuing discussion was summarised as follows in the Record of Decisions which was approved by the Committee:

> The decision which fixed the date which should be used as a basis for conversion of SDR into French francs had been taken by the Executive Committee and not by the Director. Contrary to what was stated in the complaint, the Director had not violated any Convention but had carried out the conversion in accordance with the Executive Committee's instructions using 15 February 2000 as the date of conversion, a purely mathematical calculation. The Director's actions had been endorsed by the Executive Committee which, acting on the authority of the Assembly, had the power to take this decision. In its decision in the *Nakhodka* case, the Assembly had explicitly recognised that decisions on the date for conversion would be taken by the Executive Committee. The Assembly had approved the reports on the Executive Committee's sessions at which this issue was considered.

At its October 2001 session the Assembly endorsed the position taken by the Executive Committee.

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. 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.

Level of the 1992 Fund's payments

The Executive Committee has at several sessions considered the level of the 1992 Fund's payments in respect of the *Erika* incident.

The Committee has repeatedly recalled that the Assembly had taken the view that 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 are to be given equal treatment. It has also been 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.

In view of the uncertainty as to the total amount of claims arising from the *Erika* incident, the Executive Committee decided, in July 2000, 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.

In the light of an extensive study carried out within the Ministry of Economy, Finance and Industry on the extent of the damage caused by the *Erika* incident in respect of the tourism industry and the opinion of the 1992 Fund's experts, the Executive Committee decided in January 2001 to increase the level of the 1992 Fund's payments from 50% to 60%.

A new study was carried out within the Ministry of Economy, Finance and Industry in June 2001. In the light of this study and the Director's assessment of the situation, the Executive Committee decided in July 2001 to increase the level of the 1992 Fund's payments to 80%.

A supplementary study was carried out in October 2001 within the French Ministry of Economy, Finance and Industry which concluded that compensation at 100% was possible with a safety margin of FFr350 million (£33 million).

The Executive Committee decided at its October 2001 session that in the light of the uncertainties that remained as to the level of admissible claims arising out of the *Erika* incident, the level of payments should be maintained at 80%. It was also decided that the level of payments should be reviewed at the Committee's next session.

Other sources of funds

The French Government 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 (£19 000) 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 2001 OFIMER had paid FFr27.3 million (£2.5 million) to claimants in the fishery sector and FFr13.2 million (£1.2 million) to salt producers.

The French Government also introduced a scheme to provide supplementary payments in the tourism sector. The scheme became operational in October 2001, and payments totalling FFr24 million (£2.2 million) have been made.

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, which has a staff of seven, serves as a focal point for the claimants and the technical experts engaged to examine the claims for compensation. The Office has a purely administrative role and does not carry out assessment of claims.

Some 50 experts have been engaged to examine the claims relating to clean-up, fishing, mariculture and tourism.

Due to the volume of claims for compensation presented as a result of the *Erika* incident, particularly in the tourism sector, the 1992 Fund, with support from the firm of tourism experts engaged in France by the Fund and Steamship Mutual, has developed a computer programme to assist the experts in the assessment of claims for compensation. This programme became operational in May 2001. The programme makes it possible to compare data relating to new claims with data relating to claims previously assessed. If the data provided in respect of the claim under assessment are consistent with those in respect of previously-assessed similar claims in the same sector and geographical location, the time spent on the assessment process can be substantially reduced.

Claims situation

As at 31 December 2001, 5 840 claims for compensation had been submitted for a total of FFr912 million (£85 million).

Some 4 705 claims totalling FFr565 million (£53 million) had been assessed at a total of

Erika: staff in the Claims Handling Office

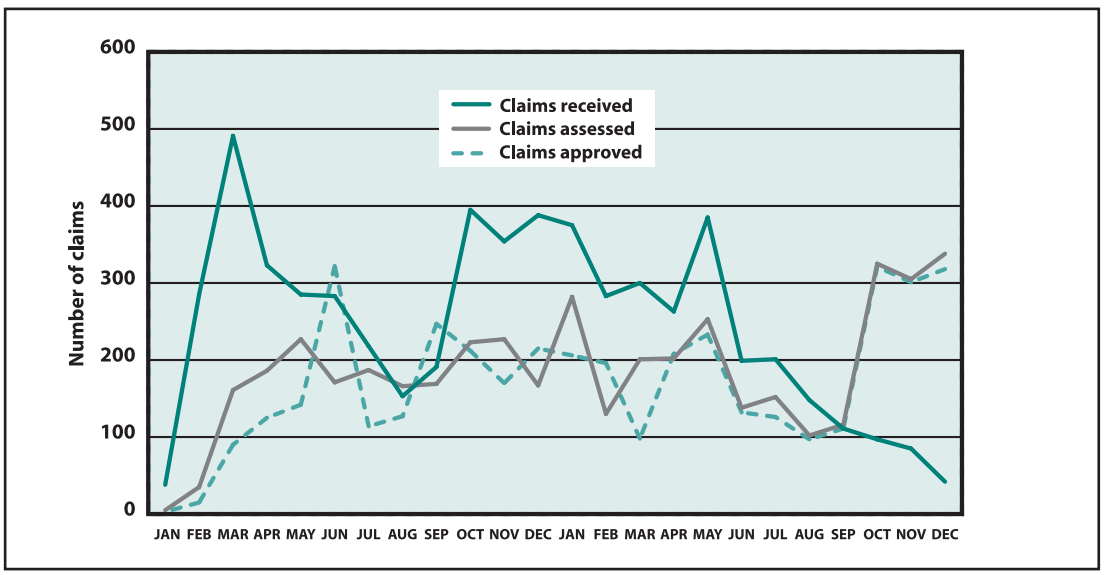
FFr321 million (£30 million). Assessments had thus been carried out of 81% of the total number of claims received.

Four hundred and twenty six claims, totalling FFr59 million (£5.5 million), had been rejected. Many of the rejected claims are being reassessed in the light of additional documentation provided by the claimants.

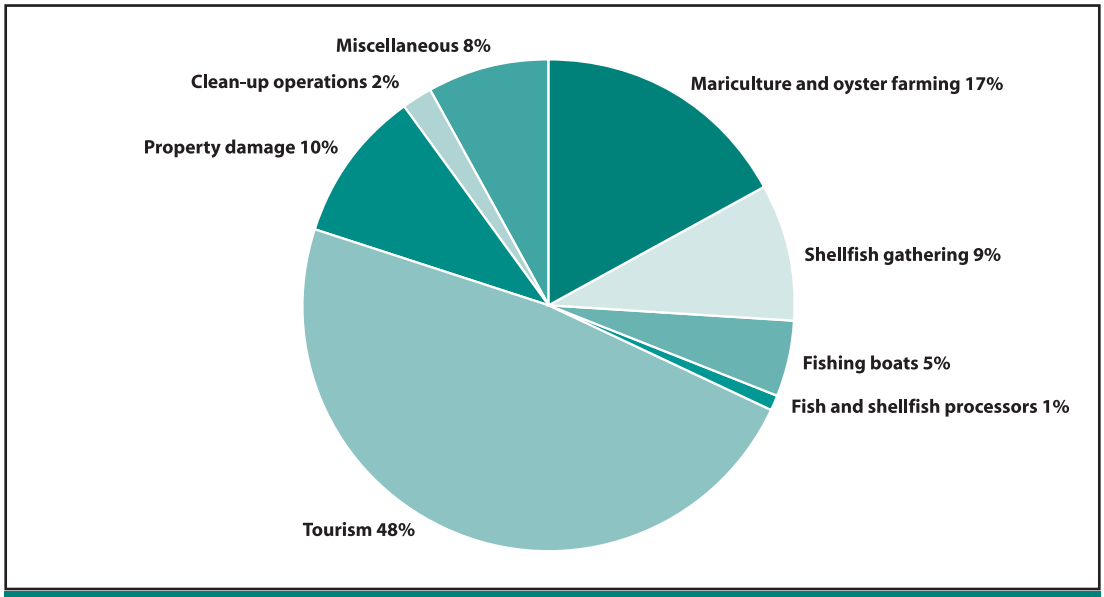
Payments for compensation had been made in respect of 3 362 claims for a total of FFr190 million (£17.7 million), out of which the Steamship Mutual has paid FFr84 million (£7.8 million) and the 1992 Fund FFr106 million (£9.9 million).

A further 1 135 claims, totalling FFr347 million (£32 million), were either in the process of being assessed or were awaiting claimants providing further information necessary for the completion of the assessment.

The charts below and on pages 115 and 116 show the total number of claims received each month against those assessed and approved during the



Claim processing 2000/2001



Number of claims submitted by 31 December 2001 by category

period January 2000 - December 2001, the number of claims submitted by category and the processing of claims in various categories.

As is shown in the tables overleaf, there is a significant difference between the various categories of claims as regards the progress made in the claims assessment. In certain categories over 90% of all claims had been assessed and for most categories payments had been made in respect of over 60% of claims. The majority of the claims in these categories were presented fairly early. On the other hand, in the tourism sector 75% of the claims had been assessed, but of the 2 888 claims in that sector, 1 261 (43%) were presented after 1 March 2001. There is still a delay between the time of approval and the time of payment, mainly as a result of claimants not having accepted the assessed amounts.

Admissibility of claims

As set out above, the 1992 Fund has examined over 4 700 claims. During 2001, some claims were referred to the Executive Committee for decision on their admissibility since they gave rise to important questions of principle.

Oyster farm

In June 2001 the Executive Committee considered a claim by a company producing oysters at a farm in Cancale (Northern Brittany), some 100 kilometres outside the area affected by the oil from the *Erika*, for losses allegedly caused by a reduction in sales due to market resistance as a result of the *Erika* incident.

The claimant purchased seed oysters originating from the Gulf of Morbihan, within the affected area. These seed oysters were then taken to Cancale (outside the affected area) where they were grown to market size. The harvested oysters were returned to Crach (Morbihan) inside the affected area where they were cleaned, graded and put into ponds for depuration. After depuration a label was attached to the packaging, identifying the place of origin of the product as Morbihan. According to the claimant, 80% of the depurated produce was sold to wholesalers in Brittany, 15% to buyers in other parts of France and 5% to purchasers outside the country. Although all the production was normally processed and marketed at Crach, a part could have been processed and sold locally at Cancale.

The Executive Committee agreed with the Director that the criterion of geographic proximity between the claimant's activity and the contamination was fulfilled. The Committee also agreed that the claimant's business should be considered as forming an integral part of the economic activity within the area affected by the

spill. The Committee therefore considered that there was a reasonable degree of proximity between the contamination and any loss actually suffered by the claimant and decided that the claim was admissible in principle.

Claims for reduction in tourism tax revenue

At its October 2001 session the Executive Committee considered the admissibility of claims submitted by four communes for reduction in revenues from tourism tax (taxe de séjour).

Tourism tax is levied by communes that are recognised tourism resorts and destinations. The level of the tax is set annually by the commune on the basis of a fixed amount per visitor per night of stay, the amount varying dependent on the type of accommodation. The levy is not charged in respect of business visitors. The revenue from the tourism tax is used by the commune to support costs of activities and services which are related to levels of tourism in the commune, *inter alia* beach cleaning, rubbish collection, information and local tourism offices.

An initial examination of the claims showed that the decrease in tourism tax revenue from 1999 to 2000 in these four communes fell within a range of 9-16%, broadly comparable with the estimated level of decrease in tourism economic activity in 2000 in the areas affected by the *Erika* incident.

The question arose as to whether claims for reduction in tourism tax revenue were admissible for compensation.

CLAIMS SUBMITTED BY 31 DECEMBER 2001

Category	Claims submitted	Claims assessed		Claims for which payments have been made		Claims rejected	
Mariculture and oyster farming	977	966	99%	689	71%	66	7%
Shellfish gathering	499	474	95%	316	63%	80	17%
Fishing boats	311	301	97%	251	81%	22	7%
Fish and shellfish processors	32	29	91%	22	69%	4	14%
Tourism	2 888	2 168	75%	1 458	50%	222	10%
Property damage	557	254	46%	165	30%	14	6%
Clean-up operations	111	73	66%	53	48%	2	3%
Miscellaneous	465	440	95%	408	88%	16	4%
Total	**5 840**	**4 705**	**81%**	**3 362**	**58%**	**426**	**9%**

PAYMENTS AUTHORISED AND MADE BY 31 DECEMBER 2001

Category	Payments authorised		Payments made	
	Number of claims	Amounts FFr	Number of claims	Amounts FFr
Mariculture and oyster farming	856	31 300 147	689	22 560 109
Shellfish gathering	378	3 688 360	316	3 152 658
Fishing boats	274	4 735 102	251	4 082 249
Fish and shellfish processors	23	3 617 185	22	2 913 776
Tourism	1 653	133 172 574	1 458	122 042 046
Property damage	226	2 996 303	165	2 627 482
Clean-up operations	63	14 386 230	53	11 553 189
Miscellaneous	418	26 737 130	408	21 423 980
Total	**3 891**	**220 633 031**	**3 362**	**190 355 489**

The Director took the view that it was clear that the reduction in tourism tax revenue was largely a result of the reduction in tourism caused by the *Erika* incident. The Director considered therefore that there was a reasonable degree of proximity between the reduction in tourism tax revenue and the *Erika* incident and that for this reason these claims should be considered admissible in principle.

A number of delegations agreed with the Director that the claims were admissible in principle. Other delegations expressed general reservations concerning the acceptance of claims relating to a reduction in tax revenues. It was pointed out that whilst the tourism taxes in question were levied to cover certain specific expenses related to tourism, other countries would rely on their general taxation system or on VAT to cover expenses of this kind. Those delegations pointed out that different taxation systems could give rise to different treatment between Member States. Some delegations expressed concerns that, in assessing claims in respect of losses due to reduction in revenue from tourism tax, it would be difficult to determine any potential savings that might have resulted from a downturn in tourism.

The Executive Committee decided to postpone its decision on the admissibility of the claims for reduction in tourism tax revenue to its next session.

The French delegation urged the Committee to give the claims further consideration since these claims represented a special situation in that the communes had suffered genuine economic losses and had no other means of recovering those losses. That delegation considered that the claims met all of the IOPC Funds' criteria on admissibility.

Claim for reduction in airport tax revenue

In October 2001 the Executive Committee considered a claim for FFr336 739 (£31 000) submitted by the operator of the airport of Lorient Lann Bihoué for reduction in the revenue from airport taxes during 2000. The airport tax was levied at FFr42.06 per passenger. It was maintained that there was a reduction of 8 007 passengers during 2000 compared to 1999.

Historical records showed that the number of passengers at the airport varied by over 5% from one year to another, compared to a decrease of 3% from 1999 to 2000. Lorient airport is a domestic airport for which tourist passengers are of only limited importance.

The Executive Committee considered that it had not been shown that the reduction in passengers from 1999 to 2000 and the ensuing reduction in airport tax revenue were caused by the *Erika* incident. For this reason the claim was rejected.

Attack on the Claims Handling Office in Lorient

Threats and allegations have been made, mainly by one individual, against staff at the Claims Handling Office in Lorient, against experts engaged by the Steamship Mutual and the 1992 Fund and against the Director. These threats and allegations were made more or less continually.

Early in the morning of Saturday 15 December 2001, a person who had previously caused damage to the 1992 Fund's offices in Lorient and Brest, drove a tractor with a front-end loader into the Claims Handling Office building in Lorient, demolishing a number of windows and destroying the door. The two police officers present outside the office were unable to prevent the attack, but arrested the attacker and took him into police custody. After being charged by the investigating judge (juge d'instruction) the person was released the following day. The judge issued an order prohibiting the person from visiting Lorient except to see his lawyer.

As a result of the serious damage caused to the Claims Handling Office, the Director decided to suspend provisionally the operations of the Office until the necessary repairs had been carried out.

The 1992 Fund and the Steamship Mutual will press charges against the attacker.

On the day of the attack the 1992 Fund issued a press communiqué in France condemning the

attack in the strongest possible terms. The Préfet of Morbihan also issued a statement the same day categorically condemning the attack on the Office. On 19 December a spokesman of the French Ministry of Foreign Affairs made a public declaration to the effect that representatives of the Ministry of Foreign Affairs, the Ministry of Economy, Finance and Industry and the Ministry of Interior had reiterated the condemnation of the attack against the Office in Lorient.

The suspension of the operations of the Claims Handling Office necessitated by the attack resulted in a delay in the payment of compensation to the victims of the *Erika* incident. However the 1992 Fund made strenuous efforts to minimise the disruption in order to enable it to continue to carry out the task of the Fund which is to pay compensation to the victims of the *Erika* incident.

The Claims Handling Office in Lorient will resume its operation on 2 January 2002.

Cause of the incident

Since the *Erika* was registered in Malta, the Malta Maritime Authority conducted a Flag State investigation into this incident. The Maltese Maritime Authority issued its report in September 2000.

An investigation was also carried out by the French Permanent Commission of Enquiry into Accidents at Sea (La Commission Permanente d'enquête sur les évènements de mer, CPEM). The report of this investigation was published in December 2000.

The conclusions of the investigation by the Malta Maritime Authority can be summarised as follows:

1 It is not possible to determine with certainty the cause of the initial and subsequent structural failure. It is likely that the failure was caused by a combination of corrosion, local cracks and failures, quality of repairs carried out during a special survey in 1998, quality of the surveys carried out by RINA, vulnerabilities in the design of the ship and sea conditions.

2 The *Erika* was built in accordance with the rules applicable at the time and in some areas in terms of specifications exceeded present day requirements.

3 The *Erika* had encountered very bad weather throughout the voyage from Dunkirk. However, the ship should not have been overwhelmed by the wave loads encountered during its last voyage or by the hull loading, even taking into account the reduced thickness measured during the last special survey.

4 The degree of local wastage, apparent from the submarine ROV footage, indicates that such corrosion could not have occurred in the 16 months which had passed since the last special survey. It is likely that significant corrosion existed after the repairs at a shipyard in Bijela (Croatia) carried out in 1998 and had not been seen or taken note of for repairs by the attending surveyor.

5 Surveys carried out by RINA at Bijela in 1998 and at Augusta (Italy) in 1999 failed to identify and/or take note of significant areas with localised corrosion. The ship's managers who attended to the ship while it was in drydock at Bijela also failed to identify and/or take note of areas of significant local corrosion or to monitor the repairs correctly.

6 The International Safe Management (ISM) audit, carried out by RINA, failed to identify adequately and/or take note of the problems that existed in the way some of the ships were being managed by the company operating the *Erika*.

7 The master failed to make a realistic assessment and monitoring of the situation following the initial listing of the ship.

8 There is no evidence or any reason to believe that use of alcohol or drugs were factors in the conduct of the master or crew responding to the hull failure and during the evacuation of the crew.

9 Analysis carried out following similar incidents has shown that it is extremely unlikely that a freely floating object could strike the side shell of a ship, while underway, with sufficient energy to cause a breach.

The French Commission's conclusions can be summarised as follows:

1 The *Erika* was an old ship, which was used for transporting black products at freight rates which were insufficient to cover costs, unless those costs, especially those for maintenance, were drastically reduced.

2 The *Erika* had always been 'sensitive' to corrosion, but it really began to fall into disrepair when No. 4 and especially No. 2 wing tanks became dedicated ballast tanks. This was witnessed by:

   a) The thickness measurements made of tank internals in 1997 and especially in 1998 revealed an acceptable overall average thickness except in the No.2 ballast tanks.

   b) The absence or poor condition of the protective coating and insufficient cathodic protection.

   c) The replacement of half the longitudinal deck stiffeners and those of the upper parts of practically all the transverse webs in No.2 ballast tanks.

   d) The extensive corrosion and deposits of rust observed by the ROV.

3 The inadequate repairs carried out at the Bijela shipyard were also a decisive factor in the sequence of events leading up to the casualty.

4 The weakening of the structure in the region of No. 2 ballast tanks was due to insufficient maintenance and the corresponding rapid development of corrosion, leading to a succession of ruptures that caused the whole structure to collapse. This factor was decisive to such an extent that the other factors can be considered as secondary. The state of the vessel and its rapid deterioration in the last hours of its life were such that nothing could have prevented the disaster.

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 an examining magistrate in Paris. During 2000 charges were 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. In December 2001 charges were brought against Total Fina and some of its senior staff on the basis of a report by an expert appointed by the Court. The investigation has not yet been completed.

At the request of a number of parties, the Commercial Court (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 court in Dunkirk through its French lawyers and technical experts.

Court surveys 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 a number of other regional bodies requested that the court in Sables d'Olonne should appoint experts who should make an evaluation of 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.

Similar 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 Court in Sables d'Olonne to assess the damage suffered by the respective claimants.

The court experts held meetings in early December 2000 and in September 2001.

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 might 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 a commune in Loire-Atlantique brought legal proceedings against the Group Total Fina in the Commercial Court in 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 1992 Fund considered that, since this action fell outside the scope of the 1992 Conventions, the Fund should not intervene in the proceedings.

In a judgement rendered in December 2000, the Commercial Court 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. The commune has appealed against this judgement. The Court of Appeal has not yet rendered its decision.

Action in Italy by RINA Spa/Registro Italiano Navale

In late April 2000 RINA SpA and Registro Italiano Navale[5] 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[6].

In the submission to the Court the plaintiffs stated that Registro Italiano Navale had classed the *Erika* in August 1998 and that RINA had carried out an annual survey of the *Erika* which had 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 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.

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

[6] *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.*

The 1992 Fund, the French State and the companies in the Total Group maintained that the plaintiffs' action was a nullity due to the fact that the plaintiffs had not given sufficient details on the grounds of their action. In February 2001 the Court rejected the defence of nullity.

In March 2001 the 1992 Fund commenced legal action under a special procedure directly before the Supreme Court of Cassation requesting that the Court should decide that Article 5.3 of the Brussels Convention did not apply to the plaintiffs' action, since it related to a declaration of non-liability. Subsequently the French Government and the companies in the Total Group took corresponding actions. As a consequence of this procedure, the Tribunal of Syracuse suspended the proceedings on the merits pending the decision of the Court of Cassation. It is expected that the hearing before the Court of Cassation will take place in 2002.

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

In order to protect the 1992 Fund's position, the Fund filed legal actions against RINA SpA and Registro Italiano Navale in the Commercial Courts in Vannes, La Roche sur Yon and 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 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 have been no developments during 2001 in respect of the legal actions taken by the 1992 Fund.

14.7 AL JAZIAH I

(United Arab Emirates, 24 January 2000)

See pages 90 to 93.

14.8 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). 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. A local contractor carried out clean-up operations at sea and on shore.

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 was 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* appeared to have remained permanently at anchor at its present location and had been used exclusively as a waste oil storage and processing unit. The local Port Authority confirmed that the

Slops had been permanently at anchor since May 1995 without propulsive equipment. It was understood that the oil residues recovered from the processed slops were 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. That definition is set out on page 91. The Executive Committee considered this issue in July 2000.

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 carry oil as cargo on a voyage to or from a port or terminal outside the oil field in which they normally operate. 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.

Claim by a Greek clean-up contractor

In October 2000 London-based lawyers acting for the contractor which had performed clean-up operations contacted the 1992 Fund requesting the Executive Committee to reverse its previous decision and accept that the *Slops* was a 'ship' for the purpose of the 1992 Civil Liability Convention. In support of the claimant's contention the lawyers placed emphasis on the first part of the definition of 'ship', ie 'any seagoing vessel and seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo'. They further argued that the proviso in the definition requiring a ship to be 'actually carrying oil in bulk as cargo' related to combination carriers, ie OBOs, and therefore had no relevance to the present situation.

The Director informed the claimant that he was not prepared to submit the claim to the Executive Committee for further consideration.

The lawyers acting for the claimant indicated that the claimant remained of the view that the *Slops* fell within the definition of 'ship' in the 1992 Civil Liability Convention. They requested the 1992 Fund to submit the claim to binding arbitration as provided in Internal Regulation 7.3 of the 1992 Fund.

The claimant argued that the question of whether the *Slops* fell within the definition of 'ship' in the 1992 Conventions was one of interpretation of the wording of the definition. As regards the conclusions of the Intersessional Working Group, the claimant made the point that the issue of whether floating storage units fell within the scope of application of the 1992 Conventions was never considered when the Conventions were drafted. In his opinion the deliberations by the Second Intersessional Working Group represented a later attempt to define what was covered by the Conventions. He has also pointed out that it was recognised by the Assembly that the final decision regarding the

applicability of the 1992 Conventions to offshore craft was a matter for national courts. The claimant expressed the view that the dispute could be settled more cheaply and speedily by arbitration.

The Committee endorsed the Director's view that it would not be appropriate to submit to arbitration the question of whether the governing bodies' interpretation of the definition was correct. The Committee expressed the view that if the claimant did not accept the Executive Committee's position in this regard, he should follow the procedure for solving disputes laid down in the 1992 Conventions, ie to take legal action against the shipowner and the 1992 Fund through the competent national court.

It is understood that the claimant may take legal action against the 1992 Fund.

14.9 INCIDENT IN SWEDEN

(Sweden, 23 September 2000)

The incident

Between 23 September and 9 October 2000 persistent oil landed on the shores of Fårö and Gotska sandön, two islands to the north of Gotland in the Baltic Sea, and on several islands in the Stockholm archipelago.

The Swedish Coastguard and other national and local authorities undertook clean-up operations, which resulted in the collection of some 20 m^3 of oil from the sea and from shore.

Investigations by the Swedish authorities indicated that the oil could have been discharged on 3 September 2000 within the Swedish Exclusive Economic Zone to the east of Gotland, possibly from the Maltese tanker *Alambra*, which had passed the area at the assumed time of the oil spill on a ballast voyage to Tallinn, Estonia (cf page 93).

According to the Coastguard, analyses of oil samples from the polluted islands match those of samples taken from the *Alambra*.

The *Alambra* was entered in the London Steam-Ship Owners' Mutual Insurance Association Ltd (London Club).

The shipowner and the insurer maintain that the oil did not originate from the *Alambra*.

Limitation of liability

Sweden is Party to the 1992 Civil Liability Convention and the 1992 Fund Convention.

The limitation amount applicable to the *Alambra* under the 1992 Civil Liability Convention is 32 684 760 SDR (£28 million).

Claims for compensation

The Coastguard, as well as other national and local authorities, incurred costs for clean-up operations. Although the assessment of the costs has not been completed, it is expected that they will fall well below the limitation amount applicable to the *Alambra*.

The Swedish authorities have indicated that they will try to recover their costs from the shipowner, but in the event that they are unsuccessful, claims may be made against the 1992 Fund if the authorities were able to prove that the damage resulted from an incident involving a ship as defined in the 1992 Civil Liability Convention (cf page 91).

14.10 NATUNA SEA

(Indonesia, 3 October 2000)

See pages 94 to 97.

14.11 BALTIC CARRIER

(Denmark, 29 March 2001)

The incident

The *Baltic Carrier* (23 235 GT), registered in the Marshall Islands, was carrying some 30 000 tonnes of heavy fuel oil when on 29 March 2001 it collided with the *Tern* (20 362 GT), a sugar-laden bulk carrier registered in Cyprus, some 30 miles north-east of

Rostock (Germany). The collision caused a hole approximately 20 m^2 in one of the *Baltic Carrier*'s cargo tanks, resulting in an escape of some 2 500 tonnes of heavy fuel oil.

The *Baltic Carrier* remained at anchor near the collision site during the first week in April until lightering operations of the undamaged cargo tanks were completed. The vessel was then escorted to a shipyard in Sczcecin (Poland) for repair.

The spilled oil drifted north-westwards from the collision point and quickly approached the Danish coast just north of the island of Falster. Considerable quantities of floating oil were found off the islands of Møn and Falster as well as in the sounds between Falster, Sjælland and Møn. The heaviest oiling of the shoreline occurred along the southern shores of Farø and Bogø. Lighter oiling of beaches occurred along the entire southern shores of Møn, along the northern coast of Falster and along the coastal areas of Sjælland east of Vordingborg.

Both the *Baltic Carrier* and the *Tern* were entered in Assuranceforeningen Gard (the Gard Club).

Experts from the International Tanker Owners Pollution Federation Ltd (ITOPF) attended the incident on behalf of the Gard Club and the 1992 Fund.

Clean-up operations in Denmark

The Danish Coast Guard responded to the spill with seven of its oil response vessels. The Swedish and German authorities despatched three and two response vessels respectively, under the terms of the Convention on the Protection of the Marine Environment of the Baltic Sea Area (Helsinki Convention).

Due to the nature of the oil, mechanical grabs were used to greater effect than skimmers in the recovery of the oil/water mix. After adjusting for water content, it was estimated that approximately 900 tonnes of oil was recovered, ie about one third of the spilled oil quantity.

Booms were used to protect the entrances to small harbours, to contain oil at sea to facilitate collection, and to drag oil towards the shore for land-based recovery. Booms were also deployed to protect ecologically sensitive areas, including wetlands and bird habitats.

Since the oil reached a number of shallow water areas, there was only limited possibility to conduct water-based recovery operations. In areas of depths greater than 70 cm, shallow-draught workboats from the Swedish Coast Guard were able to recover oil. However, in many areas even these boats were unable to operate.

The offshore response was terminated on 2 April 2001, when it was established that no more floating oil could be found in open water areas accessible to large vessels. By 6 April all response vessels had discharged the collected oil into temporary storage barges. One Danish vessel remained on stand-by somewhat longer, as did the Swedish shallow-draft boats.

In the emergency phase the onshore clean-up was organised by the Danish Emergency Management Agency (the Agency). The shore-line clean-up involved several hundred people, including conscripts, police, municipal workers, contractors and local volunteers.

Specialised oil spill response equipment for the shore-based activities was supplied by the Agency from its emergency stocks, by the Swedish emergency services and from a Danish response equipment manufacturer. Much of the heavy equipment (eg excavators), ground transport and operators of the equipment were supplied by local commercial contractors or farmers in the area. Recovery was carried out using mechanical grabs and vacuum trucks. Manual recovery was undertaken in areas not accessible to heavy equipment, along slightly-oiled beaches and in areas with rocky/cobble substrate or in more sensitive environments.

When the emergency response phase was terminated on 9 April 2001, responsibility for cleaning was transferred to the municipalities concerned. Discussions took place between the municipalities regarding the techniques and

standards for the fine-scale shoreline cleaning. The municipalities requested assistance from the Agency for the co-ordination of the operations.

Clean-up work, including the fine cleaning of the coastline and the disposal of oily waste, was completed during the summer.

Oil/water collected in the offshore operations was brought by the respective response vessels to the nearby port of Vordingborg, where it was transferred to barges. Oil and oiled debris recovered from the shore were transferred to temporary storage in barges and on land.

In line with Danish policy, most of the collected oil and oily debris was disposed of by incineration.

More than 2 000 dead birds have been reported, including swans, herons, ducks and moorhens. In accordance with Danish policy, bird washing was not carried out. It was also considered that many of the birds would have died before they could have been brought into any washing facilities.

Oil pollution in Sweden

Oil thought to have originated from the *Baltic Carrier* was found on the south-west coast of Sweden and clean-up operations were undertaken to remove the oil. The Swedish authorities have indicated that if the chemical analysis of the polluting oil shows that this oil matches the oil from the *Baltic Carrier*, the Swedish Coast Guard and local authorities intend to file claims in respect of clean-up operations.

Oil pollution in Rostock and Ventspils

The *Tern* suffered severe damage to its bow above and below the water line leading to the flooding of the vessel's forepeak. Some of the cargo oil spilled by the *Baltic Carrier* entered the forepeak tank of the *Tern* immediately following the collision. On the day of the collision the *Tern* proceeded to Rostock (Germany) where it was discovered that about 230 tonnes of the *Baltic Carrier* oil was trapped in the *Tern*'s forepeak tank. During the latter vessel's stay in Rostock its bow was cleaned and most of the oil in the forepeak tank was removed. A small oil spill occurred in Rostock.

Baltic Carrier: location of collision

Clean-up operations were undertaken by the local fire brigade at a cost of DM600 (£188). It is understood that the German authorities do not intend to carry out an investigation into the events leading to the spill.

After about 800 tonnes of the *Tern*'s cargo of sugar had been redistributed to trim the vessel by the stern, Class' approval was obtained for the vessel to proceed with a tug escort to its discharge port of Ventspils (Latvia). The *Tern* discharged its cargo in Ventspils from 5 to 17 May 2001, during which time a further spillage of *Baltic Carrier* oil occurred.

A local contractor in Ventspils was engaged by the Gard Club to undertake clean-up operations in Ventspils and to remove the remaining *Baltic Carrier* oil from the forepeak tank. About 95 tonnes of oil was removed from the damaged tank. The Gard Club has received claims for pollution damage from the Ventspils Port Authority as well as from the owner of the terminal alongside which the spill occurred, the Marine Environment Organisation, a yacht harbour, fishermen and the owners of other vessels that were in the port at the time. It is understood that the Club intends to settle the oil pollution claims on best possible terms, without consulting the 1992 Fund. The Fund will obviously not be bound by any settlements made by the Club.

In June 2001 the Executive Committee considered the question as to whether the spills of *Baltic Carrier* oil from the *Tern* fell within the scope of application of the 1992 Conventions or, in other words, how far the liability of the ship originally carrying the oil reached. The *Tern* was a bulk carrier and was therefore not a 'ship' for the purpose of the 1992 Civil Liability Convention.

Under Article III.1 of the 1992 Civil Liability Convention the owner of the ship carrying the oil is liable for pollution damage caused by his ship as a result of an incident. 'Pollution damage' is defined as loss or damage caused outside the ship by contamination resulting from the escape or discharge of oil from the ship (Article I.6) and 'incident' means any occurrence, or series of occurrences having the same origin, which causes pollution damage or creates a grave and imminent threat of causing such damage (Article I.7).

The oil spilled in Rostock and Ventspils originated from the *Baltic Carrier* and caused damage by contamination outside that ship. In the Fund's view had the oil from the *Baltic Carrier* which entered the *Tern* spilled on to the sea at the collision point shortly after the collision, there would not be any doubt that the 1992 Conventions would have applied to that spill.

The Committee considered the question of whether the fact that the *Tern* had been moved with the *Baltic Carrier* oil in the forepeak tank before this oil spilled into the sea at Rostock should imply that this spill was not caused by a series of occurrences having the same origin, ie the collision. The Committee noted that since it had been necessary and prudent to bring the *Tern* to Rostock for inspection, the Director considered that there was a sufficiently close link of causation between the collision and the pollution damage caused in Rostock and that this spill fell within the scope of the 1992 Conventions.

The Committee noted that as regards the spill in Ventspils, the situation was, in the Director's view, different, since it had not been a foreseeable consequence of the collision that the oil originating from the *Baltic Carrier* would cause pollution damage in Latvia. It was noted that it was known at the time of departure from Rostock that there was *Baltic Carrier* oil remaining on board the *Tern*. The Committee noted the Director's view that the voyage from Rostock to Ventspils constituted an intervening factor breaking the link of causation between the collision and the pollution damage in Ventspils, and that the spill in Ventspils therefore constituted a different incident caused by an event, the origin of which was not the collision, nor an occurrence having its origin in the collision, but the failure to remove the oil from the *Tern*. The Committee noted that the Director considered therefore that this latter oil

spill did not fall within the scope of the 1992 Conventions and that the liability for the pollution damage in Ventspils would not fall on the owner of the *Baltic Carrier* but would have to be determined under common law.

A number of delegations took the view that it was not foreseeable that the collision between the *Baltic Carrier* and the *Tern* would lead to pollution in Ventspils and that the *Tern*'s voyage from Rostock to Ventspils constituted an intervening factor which broke the link of causation between the collision and the pollution damage in Ventspils.

Other delegations considered that before any decision could be taken on the scope of application of the 1992 Conventions to the spills in Rostock and Ventspils, it would be necessary to establish the precise chain of events that led to the spills.

In October 2001 the Executive Committee considered again the question of whether the spills of the *Baltic Carrier* oil from the *Tern* fell within the scope of application of the 1992 Conventions.

As regards the spill in Rostock, the Committee noted that the costs for clean-up were insignificant, that the German authorities would not present any claim for compensation and that the question of whether the spill of *Baltic Carrier* oil from the *Tern* in Rostock was covered by the 1992 Conventions was academic. It was also noted that the German authorities did not intend to carry out any investigation into the circumstances surrounding the spill in Rostock. The Committee therefore decided not to give the matter any further consideration.

As regards the spill of *Baltic Carrier* oil from the *Tern* in Ventspils, the Latvian delegation stated that the authorities in Latvia were still conducting their own investigations into the cause of the incident in Ventspils and requested the Committee to defer making a decision as to whether this incident was covered by the 1992 Conventions until these investigations had been completed.

The Committee instructed the Director to continue his investigations recognising that if all claims arising from the oil spill in Ventspils were settled by the shipowner without any involvement of the 1992 Fund, the question of the applicability of the 1992 Conventions to the spill in Ventspils might also become academic.

Claims for compensation

Experts have been appointed to assess claims for compensation for pollution damage in Denmark. The experts' reports are submitted to the Gard Club and the 1992 Fund for their consideration and approval.

As at 31 December 2001 55 claims in respect of property damage and economic losses in the fishing and mariculture sectors had been submitted totalling DKr52.5 million (£4.3 million). The German authorities have filed a claim for DM32 000 (£10 000) for clean up costs.

Twenty-one claims, mainly for property damage, have been settled for DKr980 000 (£81 000). Property damage claims involved physical damage to agricultural land and private gardens resulting from clean-up operations, and the oiling of fishing boats, fishing gear and mariculture facilities. Claims in respect of damage to agricultural land and gardens were assessed in line with guidelines used by Danish telecommunications companies for the payment of compensation for damage caused by cable laying operations. Claims for contamination of fishing gear have been assessed on the basis of replacement costs after having taken into account the age of the oiled equipment and its normal working life. The oiling of fishing gear gave rise to economic loss claims in some cases.

Claims have been submitted by three fish farms for DKr36.7 million (£3 million). The floating cages of three fish farms were oiled. At the time of the oiling the fish farms were in the process of being stocked with young trout, which were to be reared for the production of roe for sale to Japan.

The Gard Club arranged for a Norwegian laboratory to obtain samples of water and fish from one of the fish farms for analysis of

Baltic Carrier: deck of an offshore recovery vessel

concentrations of a group of Polynuclear Aromatic Hydrocarbons (PAH), which are often used to provide guidance on whether marine products are fit for human consumption or should be subject to temporary harvesting or sales bans. Although the analyses showed that PAH levels in seawater were not significantly different from background levels in adjacent waters unaffected by the spill, the results for fish were less conclusive, since no comparative data for an unpolluted control site were available. Whilst slightly elevated PAH levels were found compared with results from other recent spills in Europe, the Gard Club's and the Fund's experts considered that these levels would quickly subside and that it would be technically feasible to continue cultivating fish in the affected areas, given the normal timetable for spring/summer cultivation and autumn slaughter.

However, the owners of the fish farms contacted their Japanese buyers who indicated that they would not be willing to purchase roe produced in the area during 2001. It is understood that the fish farm owners tried but failed in their efforts to obtain permission from the Danish authorities to cultivate the fish at alternative sites. Norwegian mariculture experts appointed by the Gard Club after consultation with the Fund are examining the claims. One fish farm owner's claim for DKr32 million (£2.6 million) has been settled at DKr15.4 million (£1.3 million).

It is not yet possible to make an evaluation of the total amount of the claims for compensation. Consequently it is not known whether the limitation amount applicable to the *Baltic Carrier* will be exceeded and whether the 1992 Fund will be called upon to pay compensation.

Environmental monitoring

The Danish authorities indicated their intention to carry out a study of the distribution of the oil and to investigate if further clean-up is necessary, possibly through biodegradation.

The 1992 Fund considered that whilst the purpose of the proposed study, which was said to focus on the impact of the spill on recreational and economic resources, appeared to relate to 'pollution damage' as defined in the 1992

Conventions, there appeared to be some degree of overlap with a monitoring programme already undertaken by the authorities in connection with the damage to the fish farm referred to above. The Fund also expressed doubts to the Danish authorities about the need to measure PAH in sediment samples in the context of the impact of the spill on recreational activities and requested further details of the proposal to measure PAH in mussels.

The Danish authorities submitted a revised proposal for environmental monitoring in June 2001. The reason given by the Danish authorities for the monitoring was for the authorities to obtain an overview of the current situation in order to act appropriately and to monitor the environmental situation following the pollution incident until conditions 'normalised'. It was acknowledged in the proposal that PAH, due to their property of heavily tainting the taste of products for human consumption, pose little toxicological threat for humans.

After consultation with the 1992 Fund the Gard Club responded to the Danish authorities confirming acceptance of the costs of certain parts of the programme that were consistent with the Fund's criteria for environmental studies, in particular the proposal to study the effects of the clean-up on flora. The Fund and the Club also acknowledged the possibility that reinstatement measures might be appropriate in accelerating the natural recovery of certain areas damaged during the shoreline clean-up operations. In the response it was also stated that costs for the long-term environmental monitoring programme would not be accepted. The Danish authorities were informed of the wealth of data available from previous oil spills in other countries, which indicated that, not withstanding the known carcinogenicity of many PAH compounds, the public health implications from oil and/or PAH contamination in seafood were unlikely to be significant.

Limitation of liability

The shipowner has not yet commenced limitation proceedings.

The limitation amount applicable to the *Baltic Carrier* is estimated at DKr118 million (£9.7 million).

14.12 ZEINAB

(United Arab Emirates, 14 April 2001)

See pages 97 to 100.

ANNEXES

ANNEX I

STRUCTURE OF THE IOPC FUNDS

1992 FUND GOVERNING BODIES

ASSEMBLY

Composed of all Member States

6th session

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

EXECUTIVE COMMITTEE

11th - 14th sessions

Chairman:	Mr G Sivertsen (Norway)
Vice-Chairman:	Captain L Díaz Monclús (Venezuela)

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

15th session

Chairman:	Mr G Sivertsen (Norway)
Vice-Chairman:	Dr J Cowley (Vanuatu)

Algeria	Japan	Philippines
Australia	Liberia	Republic of Korea
Croatia	Mexico	Spain
Ireland	Netherlands	United Kingdom
Italy	Norway	Vanuatu

1971 FUND ADMINISTRATIVE COUNCIL

Composed of all Member States and former Member States

3rd and 4th sessions

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

5th and 6th sessions

Chairman:	Captain R Malik (Malaysia)

JOINT SECRETARIAT

Officers

Director:	Mr M Jacobsson
Legal Counsel:	Mr M Hasebe
Head, Claims Department:	Mr J Nichols
Claims Managers:	Mr J Maura
	Mr P Joseph
	Ms L Plumb
Head, Finance & Administration Department:	Mr R Pillai
Personnel Administrator:	Mrs R Dockerill
Finance Officer:	Mrs L Srinivasan
IT Officer:	Mr R Owen
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 2000, approved by the Administrative Council of the 1971 Fund at its 6th session acting on behalf of the 1971 Fund Assembly and by the Assembly of the 1992 Fund at its 6th 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 2000.

G Miller
Director
for the Comptroller and Auditor General
National Audit Office, United Kingdom
31 January 2002

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 2000

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 financial period ended 31 December 2000. My examination was carried out with due regard to the provisions of 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 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 25) 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 26 to 31) summarises the main conclusions and recommendations arising from my 2000 audit.

Part 4 - Detailed Findings

5 This section (paragraphs 32 to 45) details my findings in 2000 relating to:

- Claims expenditure;
- Financial controls;
- The Fund's Website; and
- 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 2000 had been received and incurred for the purposes approved by the 1971 Fund Governing Bodies; 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 2000.

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 2000.

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

11 In my 1999 report I made a number of observations and recommendations. The actions taken in response to these are detailed below.

Going Concern

12 I first raised the issue of whether the 1971 Fund remained a 'going concern' in my 1998 report. In particular, whether the Fund's declining contribution base would be sufficient to cover the compensation claims and related administrative costs of a future major incident.

13 The risk that the Fund may cease to be a going concern was highlighted last year by way of a note to the financial statements, to which I drew the Assembly's attention in my audit opinion. The note stated that "should a future major incident occur 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 1971 Fund would no longer be financially viable and the going concern assumption, upon which the Financial Statements are prepared, would no longer be applicable".

14 I am pleased to report that this uncertainty has now been removed, as the Fund has been able to insure against future incidents with Lloyds of London. Subject to a modest deductible, the insurance covers up to the Fund's limit of 60 million Special Drawing Rights per incident, as well as any fees, costs and expenses incurred in the handling of each incident.

15 The insurance has been taken for the period to 31 December 2001, with an option to extend to 31 October 2002; by which time the 1971 Fund Convention will have ceased to be in force as detailed below.

16 With regard to the winding up the 1971 Fund, the 1971 Fund Convention states that it should remain in force until the Fund has only two Member States left. As this was extremely unlikely to be achieved within the foreseeable future, a special Diplomatic Conference was organised by the International Maritime Organization in September 2000. As a result of this conference a new Protocol ("the 2000 Protocol") to the Convention was adopted. Under the Protocol, the 1971

Fund Convention ceases to be in force either when the number of 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 in the remaining Member States has fallen below 100 million tonnes, whichever is the earlier.

17 The United Arab Emirates (UAE) deposited its instrument of denunciation of the 1971 Fund Convention on 24 May 2001, which will take effect from 25 May 2002. The UAE's denunciation will result in the number of Member States remaining parties to the 1971 Fund Convention falling below 25. The 1971 Fund Convention will therefore cease to be in force on 25 May 2002.

Claims Expenditure

18 In 2000, apart from the payment of some £9,000 in fees, all payments – fees and compensation – in respect to the *Nakhodka* incident were made by the 1992 Fund. Nevertheless, earlier payments were borne by the 1971 Fund up to its compensation limit.

19 On behalf of both Funds, my staff visited the Kobe Claims Office, run by General Marine Surveyors Ltd (GMS), in 1998 and in 1999. Additionally, in 1999, my staff visited the office of Cornes & Co Ltd, Kobe, Japan, to review the tourist industry claims payments. With regard to these claims, I recommended that:

- overall claims principles be fully documented for the settlement of claims for each incident; and
- standard claims calculation submission forms should be utilised.

20 The Director has since responded that it would not be possible to establish in the abstract accurate principles for the assessment of tourist claims beyond the principles relating to the admissibility of claims for pure economic loss laid down in the Claims Manual.

21 Partly in response to my earlier recommendations in this area, a computerised system, to assist in the assessment of tourism claims, has recently been developed. The Director has informed me that an evaluation will be made to see whether a standard form for claims assessment can be satisfactorily generated from the system.

22 With regard to the remaining, non-tourism claims, which are dealt with by the Kobe Claims Office run by General Marine Surveyors Ltd (GMS), I recommended that

- the standard data base then being developed to monitor claims processing should include details of and/or cross references to the full history of the individual claims, including meetings held and telephone conversations with claimants, and their review, with full supporting documentation/evidence; and
- due consideration be given to holding more face-to-face meetings, in particular between GMS staff and International Tanker Owners Pollution Federation Ltd (ITOPF) staff and other technical experts, in order to speed-up claims settlement.

23 The Director has informed me that he has considered and taken into account the details that I recommend should be included in the designing of the claims database.

24 With regard to the need for more face-to-face meetings, I am pleased to note that during 2000 the Director, Legal Counsel and Head of Claims Department made a total of seven visits to Japan to resolve outstanding claims and related matters. In several instances the ITOPF experts accompanied the Fund staff and meetings were held with a wide participation of the persons involved. Considerable progress has been made in the settlement of claims from this incident, with only relatively few claims pending.

Investments and Cash Management

25 I recommended that the Secretariat should continue to monitor the position carefully to ensure that investments were properly safeguarded, should a decision be taken to increase the amount that can be invested with an institution. The limits have in fact not been increased, although this situation may change if the trend of mergers amongst banks and building societies continues. Our testing confirmed that investments during the 2000 year have been made in accordance with the Fund's investment policies, as recommended by the Investment Advisory Body.

PART THREE - EXECUTIVE SUMMARY

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

Claims Expenditure

27 Total 1971 Fund claims payments in 2000 amounted to £21.2 million and related mainly to the *Sea Empress*, *Braer* and *Osung N°3* incidents. My staff selected and examined a sample of this expenditure, including reviewing whether claims had been treated equally and in accordance with the Fund's Regulations.

Financial controls

28 In addition to their review of claims expenditure, my staff reviewed the financial control systems at the Fund's Secretariat relating to:

- Contributions income;
- Payroll;
- Administrative expenditure;
- Cash forecasting and investment of surplus cash.

29 They found that these systems had adequate control systems in place, and control procedures had been adhered to in audit testing. They were particularly pleased to note that quarterly accounts are now being produced by staff at the Secretariat. This represents a significant improvement in financial monitoring controls, and I **welcome** this very positive development.

The Fund's Website

30 My staff noted that a website for the 1971 and 1992 Funds has now been established. This is a very encouraging move, which should ensure that the Funds are able to provide a positive image to the outside world, demonstrating openness and transparency.

31 I **welcome** the potential efficiency savings from the website's Document Server's facility to electronically distribute Assembly and Executive Committee documents to Fund Member States and other authorised users.

PART FOUR - DETAILED FINDINGS

Claims Expenditure

32 Total 1971 Fund claims payments in 2000 amounted to £21.2 million and were largely (73%) in respect of the *Sea Empress* incident. The other incidents with significant levels of expenditure are the *Braer* (£2.1m) and the *Osung N°3* (£1.2m). Of the £21.2 million total expenditure,

approximately £18.8 million related to compensation, with the other £2.4 million relating to fees, travel and miscellaneous expenses incurred in relation to claims.

33 My staff selected and examined a sample of claims and claims related payments made in 2000, covering those 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 held discussions with key Secretariat staff, including the Director, the Head of the Claims Department and the Legal Counsel.

34 As well as verifying payments to supporting claims documentation my staff also 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.

Financial Controls

35 In addition to their review of claims expenditure, my staff examined and documented the following financial control systems at the Fund Secretariat:

- Contributions income;
- Payroll;
- Administrative expenditure;
- Cash forecasting and investment of surplus cash.

36 They found that these systems had adequate control systems in place, and during audit testing found that control procedures had been adhered to. I was pleased to note that management letter recommendations made by my staff in previous years, designed to improve the control environment, had all be actioned by the Secretariat.

37 I was particularly pleased to note that quarterly accounts are now being produced by staff at the Secretariat. This represents a significant improvement in financial monitoring controls, and I **welcome** this very positive development.

38 Concerning the controls relating to the investment of surplus cash, the Fund has an investment policy, which sets out the types of institutions (and required credit ratings) in which the Fund may invest. The policies are subject to review by the Investment Advisory Body, who advise the Director with regard to which policies would be appropriate.

39 My staff reviewed a sample of the investments held by the Fund and found that they were all in accordance with the Investment Policy.

The Fund's Website

40 My staff noted that a website for the 1971 and 1992 Funds has now been established. This is a very encouraging move, which should ensure that the Funds are able to provide a positive image to the outside world, demonstrating openness and transparency.

41 Information is currently available at two levels:

- The general website, available to all internet users - this gives general information on the Fund, including publications such as the annual report and claims manuals.
- The Document Server, which is only available to authorised users such as Fund Member States, gives access to Fund documents.

42 The general website gives a good introduction to the role and work of the IOPC Funds, and gives links to useful publications such as the Claims Manuals and Annual Reports. It is currently available only in English. I understand that preparations are made for making the website available also in the other two official languages of the Funds.

43 The Document Server gives access to the Assembly and Executive Committee documents, and is available in the three official languages of the Funds. Currently only relatively recent documents are contained on the Document Server, but consideration is being given to extending this to historical information. There is a search facility, in addition to listings of documents by meetings, and these should assist a timely accessing of information by interested parties. As some delegations have confirmed that they no longer wish to receive hard copy information, cost savings should eventually be generated through the distribution of information via the Internet rather than the use of postal services.

44 I **welcome** these potential efficiency savings in information distribution and the use of the general website in promoting the wider understanding of the role of the Funds and the valuable work that they do.

Other Financial Matters

Amounts Written Off and Fraud

45 The Secretariat have informed me that there were no amounts written off, or cases of fraud or presumptive fraud during the financial period.

ACKNOWLEDGEMENT

46 I wish to record my appreciation of the willing co-operation and assistance extended by the Director and his staff 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 2000 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 2000. 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 2000 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.

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 2000

	2000		1999	
	£	£	£	£
INCOME				
Contributions				
Annual contributions/(Refund working capital)	-		1 649 098	
Initial contributions	4 187		-	
Adjustment to prior years' assessment	10 275		(37 450)	
Total contributions		**14 462**		**1 611 648**
Miscellaneous				
Miscellaneous income	-		27 055	
Transfer from *Haven* MCF	299 693		-	
Interest on loan to *Vistabella* MCF	20 145		18 691	
Interest on loan to *Pontoon 300* MCF	5 254		-	
Interest on overdue contributions	5 667		2 461	
Interest on investments	537 021		529 782	
Total miscellaneous		**867 780**		**577 989**
TOTAL INCOME		**882 242**		**2 189 637**
EXPENDITURE				
Secretariat expenses				
Obligations incurred		1 214 742		891 748
Claims				
Compensation		325 835		174 045
Claims related expenses				
Insurance	691 970		-	
Fees	384 065		576 196	
Travel	18 549		9 365	
Miscellaneous	1 239		736	
Total claims related expenses		**1 095 823**		**586 297**
TOTAL EXPENDITURE		**2 636 400**		**1 652 090**
Income less expenditure		(1 754 158)		537 547
Exchange adjustment		(90 060)		(11 489)
(Shortfall)/Excess of income over expenditure		**(1 844 218)**		**526 058**

ANNEX VI

MAJOR CLAIMS FUNDS
1971 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 2000

	Haven		*Aegean Sea*	
	2000	**1999**	**2000**	**1999**
	£	**£**	**£**	**£**
INCOME				
Contributions				
Annual contributions (third levy)	-	-	-	-
Annual contributions (fourth levy)	-	-	-	-
Adjustment to prior years' assessment	-	-	8 391	(79 798)
Total contributions	**-**	**-**	**8 391**	**(79 798)**
Miscellaneous				
Interest on overdue contributions	-	-	-	13
Interest on investments	-	592 456	2 654 079	1 965 272
Interest on loans to *Osung N°3* MCF	-	-	86 362	238 258
Miscellaneous income	-	-	-	-
Total miscellaneous	**-**	**592 456**	**2 740 441**	**2 203 543**
TOTAL INCOME	**-**	**592 456**	**2 748 832**	**2 123 745**
EXPENDITURE				
Compensation	-	28 237 676	-	-
Fees	-	405 547	318 002	393 788
Travel	-	847	20 968	16 425
Miscellaneous	-	8 266	184	478
TOTAL EXPENDITURE	**-**	**28 652 336**	**339 154**	**410 691**
Excess/(shortfall) of income over expenditure	-	(28 059 880)	2 409 678	1 713 054
Exchange adjustment	-	(952 825)	-	-
Balance b/f: 1 January	2 785 840	31 798 545	40 746 484	39 033 430
Credit to Contributors' Account	2 486 147	-	-	-
Transfer to General Fund	299 693	-	-	-
TOTAL	**2 785 840**	**-**	**-**	**-**
Balance as at 31 December	**-**	**2 785 840**	**43 156 162**	**40 746 484**

	Braer		*Keumdong N°5*		*Sea Empress*		*Nakhodka*	
	2000 £	**1999 £**	**2000 £**	**1999 £**	**2000 £**	**1999 £**	**2000 £**	**1999 £**
	-	-	-	-	-	-	-	7 466 202
	-	-	-	-	-	-	998 141	-
	8 232	-	2 299	-	-	95 913	-	411 743
	8 232	**-**	**2 299**	**-**	**-**	**95 913**	**998 141**	**7 877 945**
	-	309	763	59	3 209	(1 535)	11 943	45 588
	338 319	355 182	429 370	364 172	876 364	1 193 554	310 318	302 269
	-	-	-	-	-	-	-	-
	-	-	6 352	-	-	75	-	-
	338 319	**355 491**	**436 485**	**364 231**	**879 573**	**1 192 094**	**322 261**	**347 857**
	346 551	**355 491**	**438 784**	**364 231**	**879 573**	**1 288 007**	**1 320 402**	**8 225 802**
	2 022 068	-	48 953	653 380	15 132 300	1 009 915	-	15 299 385
	94 666	588 421	150 150	58 964	392 294	377 101	9 174	2 295 875
	3 167	9 076	-	1 415	793	2 634	-	37 836
	204	580	15	795 075	394	513	62	105 704
	2 120 105	**598 077**	**199 118**	**1 508 834**	**15 525 781**	**1 390 163**	**9 236**	**17 738 800**
	(1 773 554)	(242 586)	239 666	(1 144 603)	(14 646 208)	(102 156)	1 311 166	(9 512 998)
	-	-	-	-	-	-	(3 952)	(1 356 116)
	6 319 393	6 561 979	6 459 032	7 603 635	21 929 790	22 031 946	4 122 340	14 991 454
	-	-	-	-	-	-	-	-
	-	-	-	-	-	-	-	-
	-	**-**	**-**	**-**	**-**	**-**	**-**	**-**
	4 545 839	**6 319 393**	**6 698 698**	**6 459 032**	**7 283 582**	**21 929 790**	**5 429 554**	**4 122 340**

MAJOR CLAIMS FUNDS
1971 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 2000

	Sea Prince		*Yeo Myung*	
	2000	**1999**	**2000**	**1999**
	£	**£**	**£**	**£**
INCOME				
Contributions				
Annual contributions (second levy)	-	-	-	-
Adjustment to prior years' assessment	3 901	(3 137)	454	(565)
Total contributions	**3 901**	**(3 137)**	**454**	**(565)**
Miscellaneous				
Interest on overdue contributions	4 556	427	766	(60)
Interest on investments	1 287 768	1 026 152	207 612	166 370
Total miscellaneous	**1 292 324**	**1 026 579**	**208 378**	**166 310**
TOTAL INCOME	**1 296 225**	**1 023 442**	**208 832**	**165 745**
EXPENDITURE				
Compensation	10 791	188 964	-	49 264
Fees	47 649	91 141	14 485	9 157
Interest on loan from *Aegean Sea* MCF	-	-	-	-
Travel	8 850	1 490	-	-
Miscellaneous	127	165	1	11
TOTAL EXPENDITURE	**67 417**	**281 760**	**14 486**	**58 432**
Excess/(shortfall) of income over expenditure	1 228 808	741 682	194 346	107 313
Balance b/f: 1 January	19 078 936	18 337 254	3 077 284	2 969 971
Balance as at 31 December	**20 307 744**	**19 078 936**	**3 271 630**	**3 077 284**
Amount due to *Aegean Sea* MCF	**-**	**-**	**-**	**-**

Yuil N°1		*Nissos Amorgos*		*Osung N°3*	
2000	**1999**	**2000**	**1999**	**2000**	**1999**
£	**£**	**£**	**£**	**£**	**£**
-	-	-	-	5 290 346	-
2 698	(3 362)	-	18 640	-	18 640
2 698	**(3 362)**	**-**	**18 640**	**5 290 346**	**18 640**
3 074	689	306	2 596	3 159	2 873
337 742	277 964	152 412	119 183	-	-
340 816	**278 653**	**152 718**	**121 779**	**3 159**	**2 873**
343 514	**275 291**	**152 718**	**140 419**	**5 293 505**	**21 513**
89 648	243 456	-	-	1 011 369	1 722 890
41 927	134 466	-	-	113 213	369 154
-	-	-	-	86 362	238 258
-	2 273	-	-	-	1 565
5	8	-	-	732	432
131 580	**380 203**	**-**	**-**	**1 211 676**	**2 332 299**
211 934	(104 912)	152 718	140 419	4 081 829	(2 310 786)
5 157 953	5 262 865	2 251 870	2 111 451	(5 143 081)	(2 832 295)
5 369 887	**5 157 953**	**2 404 588**	**2 251 870**	**-**	**-**
-	**-**	**-**	**-**	**(1 061 252)**	**(5 143 081)**

ANNEX VII

BALANCE SHEET OF THE 1971 FUND AS AT 31 DECEMBER 2000

	2000 £	1999 £
ASSETS		
Cash at banks and in hand	103 833 554	114 694 416
Contributions outstanding	1 133 908	1 609 769
Due from *Vistabella* MCF	453 656	431 412
Due from *Pontoon 300* MCF	213 412	-
Due from *Osung N°3* MCF to *Aegean Sea* MCF	1 061 252	5 143 081
Tax recoverable	158 802	73 193
Miscellaneous receivable	1 684	76
Interest on overdue contributions	73 156	97 907
TOTAL ASSETS	**106 929 424**	**122 049 854**
LIABILITIES		
Accounts payable	993	1 021
Unliquidated obligations	6 936	-
Prepaid contributions	-	62 709
Contributors' account	150 814	193 009
Due to 1992 Fund	1 007 465	724 443
Due to *Haven* MCF	-	2 785 840
Due to *Aegean Sea* MCF	43 156 162	40 746 484
Due to *Braer* MCF	4 545 839	6 319 393
Due to *Keumdong N°5* MCF	6 698 698	6 459 032
Due to *Sea Empress* MCF	7 283 582	21 929 790
Due to *Nakhodka* MCF	5 429 554	4 122 340
Due to *Sea Prince* MCF	20 307 744	19 078 936
Due to *Yeo Myung* MCF	3 271 630	3 077 284
Due to *Yuil N°1* MCF	5 369 887	5 157 953
Due to *Nissos Amorgos* MCF	2 404 588	2 251 870
TOTAL LIABILITIES	**99 633 892**	**112 910 104**
GENERAL FUND BALANCE	**7 295 532**	**9 139 750**
TOTAL LIABILITIES AND GENERAL FUND BALANCE	**106 929 424**	**122 049 854**

ANNEX VIII

CASH FLOW STATEMENT OF THE 1971 FUND FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 2000

	2000		1999	
	£	£	£	£
Cash as at 1 January		114 694 416		154 999 522
OPERATING ACTIVITIES				
Operating Surplus	(18 590 291)		(47 469 383)	
(Increase)/Decrease in Debtors	413 395		256 289	
Increase/(Decrease) in Creditors	173 082		3 229	
Net cash flow from operating activities		(18 003 814)		(47 209 865)
RETURNS ON INVESTMENTS				
Interest on investments	7 142 952		6 904 759	
Net cash inflow from returns on investments		7 142 952		6 904 759
Cash as at 31 December		**103 833 554**		**114 694 416**

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 2000

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 financial period ended 31 December 2000. 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 (paragraphs 11 to 19) 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 20 to 35) summarises the main conclusions and recommendations arising from my 2000 audit.

Part 4 – Detailed Findings

5 This section (paragraphs 36 to 64) details my findings in 2000 relating to:

- Claims expenditure;
- Proposed supplementary European Union Compensation Fund;
- Financial controls;
- The Fund's Website; and
- 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 2000 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 2000.

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 2000.

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

11 In my 1999 report I made a number of observations and recommendations. The actions taken in response to these are detailed below.

Claims Expenditure

12 In 2000, apart from the payment of some £9,000 in fees, all payments – fees and compensation – in respect to the *Nakhodka* incident were made by the 1992 Fund. However, earlier payments were borne by the 1971 Fund up to its compensation limit.

13 On behalf of both Funds, my staff visited the Kobe Claims Office, run by General Marine Surveyors Ltd (GMS), in 1998 and in 1999. Additionally, in 1999, my staff visited the office of Cornes & Co Ltd, Kobe, Japan, to review the tourist industry claims payments. With regard to these claims, I recommended that:

- overall claims principles be fully documented for the settlement of claims for each incident; and
- standard claims calculation submission forms should be utilised.

14 The Director has since responded that it would not be possible to establish in the abstract accurate principles for the assessment of tourist claims beyond the principles relating to the admissibility of claims for pure economic loss laid down in the Claims Manual.

15 Partly in response to my earlier recommendations in this area, a computerised system, to assist in the assessment of tourism claims, has recently been developed. The Director has informed me that an evaluation will be made to see whether a standard form for claims assessment can be satisfactorily generated from the system.

16 With regard to the remaining, non-tourism claims, which are dealt with by the Kobe Claims Office run by General Marine Surveyors Ltd (GMS), I recommended that

- the standard data base then being developed to monitor claims processing should include details of and/or cross references to the full history of the individual claims, including meetings held and telephone conversations with claimants, and their review, with full supporting documentation/evidence; and
- due consideration be given to holding more face-to-face meetings, in particular between GMS staff and International Tanker Owners Pollution Federation Ltd (ITOPF) staff and other technical experts, in order to speed-up claims settlement.

17 The Director has informed me that he has considered and taken into account the details that I recommend should be included in the designing of the claims database.

18 With regard to the need for more face-to-face meetings, I am pleased to note that during 2000 the Director, Legal Counsel and Head of Claims Department made a total of seven visits to Japan to resolve outstanding claims and related matters. In several instances the ITOPF experts accompanied the Fund staff and meetings were held with a wide participation of the persons involved. Considerable progress has been made in the settlement of claims from this incident, with only relatively few claims pending.

Investments and Cash Management

19 I recommended that the Secretariat should continue to monitor the position carefully to ensure that investments were properly safeguarded, should a decision be taken to increase the amount that can be invested with an institution. The limits have in fact not been increased, although this situation may change if the trend of mergers amongst banks and building societies continues. Our testing confirmed that investments during the 2000 year have been made in accordance with the Fund's investment policies, as recommended by the Investment Advisory Body.

PART THREE - EXECUTIVE SUMMARY

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

Claims Expenditure

21 Total 1992 Fund claims payments in 2000 amounted to £30 million and were largely in respect of the *Nakhodka* and *Erika* incidents. My staff selected and examined a sample of this expenditure, including reviewing whether claims had been treated equally and in accordance with the Fund's Regulations.

Lorient Claims Handling Office

22 The 1992 Fund and Steamship Mutual Underwriting Association (Bermuda) Ltd (the P&I Club) established a local claims handling office in Lorient, France, to deal with claims for compensation arising from the *Erika* incident, which occurred at the end of 1999.

23 As part of the 1999 audit, my staff first visited the claims office, in May 2000, to review whether satisfactory local procedures had been established for the processing of claims. At that time no actual claim payments had been made. Payments have now been initiated by the P&I Club and my staff re-visited the Lorient Office in April 2001.

24 My staff continued to be favourably impressed by the way in which the Lorient Office is operated and managed, including the extent of direct contact between the Office and the Fund's Secretariat in the discussions that have been held with the P&I Club and with various claimants.

25 They also noted that guidance on how to set out reports had been provided to the assessors contracted to review the claims. I **welcome** such action as a positive step that should help ensure that consistency in assessment of claims is maintained, with due consideration being given to the relevant factors affecting the claim, regardless of which assessor is reviewing a particular claim.

New Claims Handling Database

26 A new claims handling database has been established by the Secretariat, which has been introduced first to the Lorient claims office. Its design has, partly, been in response to my earlier recommendations concerning the details that should be included in the database. My staff reviewed the database and noted that its introduction has resulted in enhanced claims reporting and management, which should make a significant contribution to the Secretariat's ability to review the status and progress of claims and payments for incidents.

27 The database also includes a Tourism Claims Assessment Tracking System (TCATs), and has been developed in conjunction with L&R, the Fund's experts for assessing tourism claims in France. However, the TCATs system is still in its infancy and, as such, my staff have not yet undertaken a detailed appraisal of this aspect of the database. It is their intention, for the 2001 audit, to visit both the L&R office and to review the TCATs system and its use in more depth.

28 As a possible future development to the database, the Secretariat has plans to address whether it could be directly linked into the accounting system. This would further enhance the management information of the Fund, as it will provide additional assurance over the accuracy of the information with respect to claims paid.

Proposed Supplementary European Union Compensation Fund

29 The Commission of the European Communities has published a proposal for a Regulation, which would set up a fund to provide supplementary compensation up to a maximum limit of 1,000 million Euros for oil spills in Member States of the European Union. Compensation would only be payable for claims which have been approved by the IOPC Fund.

30 The audit arrangements for the EU proposal have yet to be clarified, including the extent of reliance that the Commission might place on the audit work of my staff in verifying the correctness of contributions data and claims payments. The Secretariat is also concerned about the additional burden that may be placed on them if there should be any duplication of audit effort.

31 Should a European Supplementary Fund be established along the lines of the proposed Regulation, I **recommend** that, in the context of the necessary liaison between the Fund Secretariat and the European Commission, due attention is placed on ensuring efficient audit arrangements are put into place that are satisfactory to all parties. My staff would wish to participate in such discussions.

Financial controls

32 In addition to their review of claims expenditure, my staff reviewed the financial control systems at the Fund's Secretariat relating to:

- Contributions income;
- Payroll;

- Administrative expenditure;
- Cash forecasting and investment of surplus cash.

33 They found that these systems had adequate control systems in place, and control procedures had been adhered to in audit testing. They were particularly pleased to note that quarterly accounts are now being produced by staff at the Secretariat. This represents a significant improvement in financial monitoring controls, and I **welcome** this very positive development.

The Fund's Website

34 My staff noted that a website for the 1971 and 1992 Funds has now been established. This is a very encouraging move, which should ensure that the Funds are able to provide a positive image to the outside world, demonstrating openness and transparency.

35 I **welcome** the potential efficiency savings from the website's Document Server's facility to electronically distribute Assembly and Executive Committee documents to Fund Member States and other authorised users.

PART FOUR - DETAILED FINDINGS

Claims Expenditure

36 Total 1992 Fund claims payments in 2000 amounted to £30 million and were largely (92%) in respect of the *Nakhodka* incident. The only other incident with a significant level of expenditure is the *Erika*, with £2.3m spent on claims related expenditure in the year. Of the £30 million total expenditure, approximately £25 million related to compensation, with the other £5 million relating to fees, travel and miscellaneous expenses incurred in relation to claims.

37 My staff selected and examined a sample of claims and claims related payments made in 2000, covering those 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 held discussions with key Secretariat staff, including the Director, the Head of the Claims Department and the Legal Counsel.

38 As well as verifying payments to supporting claims documentation my staff also 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.

Lorient Claims Handling Office

39 The 1992 Fund and Steamship Mutual Underwriting Association (Bermuda) Ltd (the P&I Club) established a local claims handling office in Lorient, France, to deal with claims for compensation arising from the *Erika* incident, which occurred at the end of 1999.

40 As part of the 1999 audit, my staff first visited the claims office, in May 2000, to review whether satisfactory local procedures had been established for the processing of claims. At that time no actual claim payments had been made. Payments have now been initiated by the P&I Club and my staff re-visited the Lorient Office in April 2001.

41 My staff continued to be favourably impressed by the way in which the office is operated and managed. They were able to review and assess the overall procedures and internal controls in

operation, including a test sample of a number of payments made by the P&I Club, and found these to be satisfactory. They noted that guidance on how to set out reports had been provided to the assessors contracted to review the claims. I **welcome** such action as a positive step that should help ensure that consistency in assessment of claims is maintained, with due consideration being given to the relevant factors affecting the claim, regardless of which assessor is reviewing a particular claim.

42 My staff also noted that there has been a lot of direct contact between the Lorient office and the 1992 Fund Secretariat, and that numerous visits have been made by staff from the Fund to this office, where discussions have been held with the P&I Club and with various claimants. In my view this should considerably assist the process of settling claims.

New Claims Handling Database

43 A new claims handling database has been established by the Secretariat, which has been introduced first to the Lorient claims office. Its design has, partly, been in response to my earlier recommendations concerning the details that should be included in the database.

44 My staff reviewed the database and noted that its introduction has resulted in:

- Improved reporting of the overall position of the claims. Examples of the information that can be presented include: total claims by status (claimed, assessed, approved, agreed, authorised for payment, payments made, claims rejected); claims by geographical area; and claims by category (e.g. tourism, fisheries etc.);
- Performance data, which will assist management of the claims situation: for example the average time to assess a claim from arrival at the office, or the average time taken by each of the contracted assessors to review and assess claims;
- Information that allows the Secretariat to establish, on an ongoing basis, the total that has been paid by the P&I Club. This will facilitate identification of the point where the Club has paid up to its limit and the Fund takes responsibility for further payments.

45 Furthermore, the database is being used to speed up the claims approval process by allowing the Fund to establish "populations" of claims, against which individual claims can be reviewed to establish whether the claim fits within the "expected value" for that population. Such a system has been established in relation to tourism claims resulting from the *Erika* incident. This is known as the Tourism Claims Assessment Tracking System (TCATs), and has been developed in conjunction with L&R, the Fund's experts for assessing tourism claims in France. Once the claim details have been entered into the system, the claim is categorised, and the information is analysed to assess (i) whether the claim can be regarded as "simple" for comparison purposes, and (ii) whether the claim matches up to the parameters of the population that has been established for that category of claim. Whilst this does not replace the expert and his knowledge-based assessment, it is helpful in identifying obviously inflated or inaccurate claims, and is used to determine which claims can be passed for approval on the basis of information submitted, and which require more investigation. As a result, this should lead to significant increases in the efficiency of claims assessments.

46 The TCATs system is still in its infancy and, as such, my staff have not yet undertaken a detailed appraisal of this aspect of the database. It is their intention, for the 2001 audit, to visit both the L&R office and to review the TCATs system and its use in more depth.

47 Overall, the introduction of the new claims handling database, with the type of reporting and management facilities outlined briefly above, should make a significant contribution to the

Secretariat's ability to review the status and progress of claims and payments for incidents. Furthermore, this information will assist the Secretariat to identify problem areas, and to take remedial action that may be required.

48 However, the database has no direct link into the accounts system, although the Secretariat has plans to address this issue. This development will further enhance the management information of the Funds, as it will provide additional assurance over the accuracy of the information with respect to claims paid.

Proposed Supplementary European Union Compensation Fund

49 The Commission of the European Communities has published a proposal for a Regulation, which would set up a fund to provide supplementary compensation up to a maximum limit of 1,000 million Euros for oil spills in Member States of the European Union. Compensation would only be payable for claims which have been approved by the IOPC Fund. The proposed fund would be financed by contributions levied on receivers of sea-borne oil in European Union Member States.

50 The audit arrangements for the EU proposal have yet to be clarified, including the extent of reliance that the Commission might place on the audit work of my staff in verifying the correctness of contributions data and claims payments. The Secretariat is also concerned about the additional burden that may be placed on them if there should be any duplication of audit effort.

51 Should a European Supplementary Fund be established along the lines of the proposed Regulation, I **recommend** that, in the context of the necessary liaison between the Fund Secretariat and the European Commission, due attention is placed on ensuring efficient audit arrangements are put into place that are satisfactory to all parties. My staff would wish to participate in such discussions.

Financial Controls

52 In addition to their review of claims expenditure, my staff examined and documented the following financial control systems at the Fund Secretariat:

- Contributions income;
- Payroll;
- Administrative expenditure;
- Cash forecasting and investment of surplus cash.

53 They found that these systems had adequate control systems in place, and during audit testing found that control procedures had been adhered to. I was pleased to note that management letter recommendations made by my staff in previous years, designed to improve the control environment, had all be actioned by the Secretariat.

54 I was particularly pleased to note that quarterly accounts are now being produced by staff at the Secretariat. This represents a significant improvement in financial monitoring controls, and I **welcome** this very positive development.

55 Concerning the controls relating to the investment of surplus cash, the Fund has an investment policy, which sets out the types of institutions (and required credit ratings) in which the Fund may invest. The policies are subject to review by the Investment Advisory Body, who advise the Director with regard to which policies would be appropriate.

56 My staff reviewed a sample of the investments held by the Fund and found that they were all in accordance with the Investment Policy.

The Fund's Website

57 My staff noted that a website for the 1971 and 1992 Funds has now been established. This is a very encouraging move, which should ensure that the Funds are able to provide a positive image to the outside world, demonstrating openness and transparency.

58 Information is currently available at two levels:

- The general website, available to all internet users - this gives general information on the Fund, including publications such as the annual report and claims manuals.
- The Document Server, which is only available to authorised users such as Fund Member States, gives access to Fund documents.

59 The general website gives a good introduction to the role and work of the IOPC Funds, and gives links to useful publications such as the Claims Manuals and Annual Reports. It is currently available only in English. I understand that preparations are made for making the website available also in the other two official languages of the Funds.

60 The Document Server gives access to the Assembly and Executive Committee documents, and is available in the three official languages of the Funds. Currently only relatively recent documents are contained on the Document Server, but consideration is being given to extending this to historical information. There is a search facility, in addition to listings of documents by meetings, and these should assist a timely accessing of information by interested parties. As some delegations have confirmed that they no longer wish to receive hard copy information, cost savings should eventually be generated through the distribution of information via the Internet rather than the use of postal services.

61 I **welcome** these potential efficiency savings in information distribution and the use of the general website in promoting the wider understanding of the role of the Funds and the valuable work that they do.

Other Financial Matters

Control of Supplies and Equipment

62 As recorded in Note 11(b) to the Fund's financial statements, the value of supplies and equipment held by the Fund was £285,983 as at 31 December 2000. 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.

63 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 2000 properly reflect the assets held by the Fund. No losses were reported by the Fund during the year.

Amounts Written Off and Fraud

64 The Secretariat have informed me that there were no amounts written off, or cases of fraud or presumptive fraud during the financial period.

ACKNOWLEDGEMENT

65 I wish to record my appreciation of the willing co-operation and assistance extended by the Director, his staff, and the staff at the local claims handling office in 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 2000 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 VI, Schedules I to III and Notes, of the International Oil Pollution Compensation Fund 1992 for the year ended 31 December 2000. 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 2000 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 2000

	2000		1999	
	£	£	£	£
INCOME				
Contributions				
Contributions	-		7 207 711	
Adjustment to prior years' assessment	-		129 107	
Total contributions		**-**		**7 336 818**
Miscellaneous				
Miscellaneous income	325		27 350	
Transfer from *Osung N°3 Interim MCF*	160 376		-	
Interest on overdue contributions	(11 502)		5 647	
Interest on investments	1 303 799		758 521	
Total miscellaneous		**1 452 998**		**791 518**
TOTAL INCOME		**1 452 998**		**8 128 336**
EXPENDITURE				
Secretariat expenses				
Obligations incurred		1 246 005		815 304
Claims				
Compensation		-		3 414 149
Claims related expenses				
Fees	2 294 323		17 837	
Travel	36 623		1 182	
Miscellaneous	56 889		1 720	
Total claims related expenses		**2 387 835**		**20 739**
TOTAL EXPENDITURE		**3 633 840**		**4 250 192**
(Shortfall)/Excess of income over expenditure		**(2 180 842)**		**3 878 144**

ANNEX XII

MAJOR CLAIMS FUNDS
1992 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 2000

	Nakhodka		*Osung N°3* (Interim Major Claims Fund)		*Erika*
	2000 £	**1999** £	**2000** £	**1999** £	**2000** £
INCOME					
Contributions					
Contributions (fourth levy)	12 957 208	-	-	-	-
Contributions (third levy)	-	8 942 874	-	-	-
Contributions (second levy)	-	21 237 294	-	-	-
Contributions (first levy)	-	-	-	-	39 883 216
Adjustment to prior years' assessment	-	106 081	-	77 524	-
Total contributions	**12 957 208**	**30 286 249**	**-**	**77 524**	**39 883 216**
Miscellaneous					
Interest on overdue contributions	34 608	17 439	-	100	23 842
Interest on investments	1 505 288	1 210 538	-	153 676	517 346
Total miscellaneous	**1 539 896**	**1 227 977**	**-**	**153 776**	**541 188**
TOTAL INCOME	**14 497 104**	**31 514 226**	**-**	**231 300**	**40 424 404**
EXPENDITURE					
Compensation	24 746 690	1 557 216	-	-	-
Fees	2 803 723	100 908	-	-	-
Travel	27 346	-	-	-	-
Miscellaneous	14 613	849	-	-	-
TOTAL EXPENDITURE	**27 592 372**	**1 658 973**	**-**	**-**	**-**
(Shortfall)/excess of income over expenditure	(13 095 268)	29 855 253	-	231 300	40 424 404
Exchange adjustment	(265 156)	-	-	-	99 188
Balance b/f: 1 January	37 330 881	7 475 628	3 909 620	3 678 320	-
Credit to Contributors' Account	-	-	3 749 244	-	-
Transfer to General Fund	-	-	160 376	-	-
TOTAL	**-**	**-**	**3 909 620**	**-**	**-**
Balance as at 31 December	**23 970 457**	**37 330 881**	**-**	**3 909 620**	**40 523 592**

ANNEX XIII

BALANCE SHEET OF THE 1992 FUND AS AT 31 DECEMBER 2000

	2000 £	1999 £
ASSETS		
Cash at banks and in hand	79 265 275	57 424 942
Contributions outstanding	470 163	552 579
Due from 1971 Fund	1 007 465	724 443
Tax recoverable	511 319	24 804
Miscellaneous receivable	297 645	12 153
Miscellaneous advances	-	8 686
Interest on overdue contributions	23 517	18 672
TOTAL ASSETS	**81 575 384**	**58 766 279**
LIABILITIES		
Staff Provident Fund	1 197 466	999 252
Accounts payable	27 738	31 997
Unliquidated obligations	199 805	31 418
Prepaid contributions	1 331 381	-
Contributors' account	42 830	154
Due to *Nakhodka* MCF	23 970 457	37 330 881
Due to *Erika* MCF	40 523 592	-
Due to *Osung N°3* Interim MCF	-	3 909 620
TOTAL LIABILITIES	**67 293 269**	**42 303 322**
GENERAL FUND BALANCE	**14 282 115**	**16 462 957**
TOTAL LIABILITIES AND GENERAL FUND BALANCE	**81 575 384**	**58 766 279**

ANNEX XIV

CASH FLOW STATEMENT OF THE 1992 FUND FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 2000

	2000		1999	
	£	£	£	£
Cash as at 1 January		57 424 942		24 323 173
OPERATING ACTIVITIES				
Operating Surplus	17 746 274		31 841 962	
(Increase)/Decrease in Debtors	(968 772)		(726 489)	
Increase/(Decrease) in Creditors	1 620 181		(202 289)	
Net cash flow from operating activities		18 397 683		30 913 184
RETURNS ON INVESTMENTS				
Interest on investments	3 442 650		2 188 585	
Net cash inflow from returns on investments		3 442 650		2 188 585
Cash as at 31 December		**79 265 275**		**57 424 942**

ANNEX XV

1971 FUND: CONTRIBUTING OIL RECEIVED IN THE CALENDAR YEAR 2000 IN THE TERRITORIES OF STATES WHICH WERE MEMBERS OF THE 1971 FUND ON 31 DECEMBER 2001

As reported by 31 December 2001

Member State	Contributing Oil (Tonnes)	% of Total
Malaysia	17 427 546	49.64%
Portugal	14 440 126	41.13%
Cameroon	1 391 303	3.96%
Ghana	1 131 834	3.22%
Colombia	717 229	2.04%
Brunei Darussalam	0	0.00%
Djibouti	0	0.00%
Estonia	0	0.00%
Papua New Guinea	0	0.00%
United Arab Emirates	0	0.00%
Yugoslavia	0	0.00%
	35 108 038	**100.00%**

Note

No report from Albania, Benin, Côte d'Ivoire, Gabon, Gambia, Guyana, Kuwait, Maldives, Mauritania, Mozambique, Nigeria, Qatar, Saint Kitts and Nevis, Sierra Leone, Syrian Arab Republic and Tuvalu.

ANNEX XVI

1992 FUND: CONTRIBUTING OIL RECEIVED IN THE CALENDAR YEAR 2000 IN THE TERRITORIES OF STATES WHICH WERE MEMBERS OF THE 1992 FUND ON 31 DECEMBER 2001

As reported by 31 December 2001

Member State	Contributing Oil (Tonnes)	% of Total
Japan	261 966 122	21.00%
Italy	139 921 672	11.22%
Republic of Korea	132 580 436	10.63%
Netherlands	106 328 628	8.52%
France	100 443 445	8.05%
United Kingdom	73 680 299	5.91%
Singapore	66 440 341	5.33%
Spain	60 597 636	4.86%
Canada	59 637 436	4.78%
Germany	36 756 554	2.95%
Australia	31 637 455	2.54%
Norway	30 412 128	2.44%
Greece	22 723 893	1.82%
Sweden	21 547 654	1.73%
Philippines	18 347 006	1.47%
Mexico	12 284 880	0.98%
Finland	10 250 333	0.82%
Belgium	9 197 419	0.74%
Venezuela	8 977 000	0.72%
Denmark	5 505 131	0.44%
New Zealand	4 802 516	0.38%
Ireland	4 651 783	0.37%
Croatia	4 034 331	0.32%
China (Hong Kong Special Administrative Region)	3 224 782	0.26%
Jamaica	2 740 469	0.22%
Sri Lanka	2 425 891	0.19%
Tunisia	2 410 000	0.19%
Panama	2 306 658	0.18%
Bahamas	2 111 792	0.17%
Cyprus	2 047 573	0.16%
Russian Federation	1 998 890	0.16%
Uruguay	1 731 170	0.14%
Malta	1 592 283	0.13%
Poland	1 429 236	0.11%
Algeria	434 000	0.03%
Lithuania	391 433	0.03%
	1 247 568 275	**100.00%**

Notes

Nil return from Antigua and Barbuda, Barbados, Belize, Fiji, Iceland, Latvia, Liberia, Marshall Islands, Mauritius, Monaco, Oman, Seychelles, Slovenia, Tonga, United Arab Emirates and Vanuatu.

No report from Argentina, Bahrain, Comoros, Dominican Republic, Georgia, Grenada, India, Kenya, Morocco and Trinidad and Tobago.

ANNEX XVII

1971 FUND: SUMMARY OF INCIDENTS (31 DECEMBER 2001)

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 **¥95 458 298**	¥68 609 674 ¥25 502 144 ¥1 346 480	
Collision	80	Clean-up Indemnification **¥26 598 669**	¥26 124 589 ¥474 080	¥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 849 704**	DKr9 455 661 DKr394 043	
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 903 069**	SKr23 168 271 SKr49 361 SKr685 437	
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	Dhs 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	¥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 1 091 million paid by 1971 Fund. Pts 814 million paid by shipowner's insurer. Further claims brought in civil court for Pts 24 255 million.
Grounding	84 000	Clean-up Fishery-related Tourism-related Farming-related Other damage to property Other loss of income	£593 883 £38 370 480 £77 375 £3 572 392 £8 715 826 £229 861 **£51 559 817**	Further payments of £200 000 will be made in early 2002. Two claims amounting to £1.5 million subject to 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

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 8 718 601 175 Won 14 206 046 **Won 16 235 562 491**	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	 Won 2 756 471 759	
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 3 380 204 011**	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.

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
78	*Dae Woong*	27.6.95	Kojung, Republic of Korea	Republic of Korea	642	Won 95 000 000 (estimate)
79	*Sea Prince*	23.7.95	Yosu, Republic of Korea	Cyprus	144 567	Won 18 308 275 906
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	1	Clean-up	Won 43 517 127	
Grounding	5 035	Clean-up (paid)	Won 20 709 245 359	Won 18 308 275 906 paid by shipowner's insurer.
		Fishery-related (paid)	Won 19 619 888 052	
		Tourism-related (paid)	Won 538 000 000	
		Oil removal (paid)	Won 8 420 123 382	
		Environmental studies (paid)	Won 723 490 410	
			Won 50 010 747 203	
		Clean-up (paid)	¥357 214	
		Indemnification (paid)	Won 7 410 928 540	
		Claims pending in court:		
		Fishery-related	Won 5 471 360 585	
Collision	40	Clean-up (paid)	Won 684 000 000	Won 560 945 437 paid by shipowner's insurer.
		Fishery-related (paid)	Won 600 000 000	
		Tourism-related (paid)	Won 269 029 739	
			Won 1 553 029 739	
		Claims pending in court:		
		Fishery-related	Won 335 000 000	
Mishandling of oil supply	0.5	Clean-up (paid)	¥8 650 249	¥3 718 455 paid by shipowner's insurer.
		Indemnification (paid)	¥984 327	
			¥9 634 576	
		Other damage to property (agreed)	US$3 103	
		Other loss of income (agreed)	US$2 560	
			US$5 663	
Collision	94	Clean-up	¥314 838 937	¥279 973 101 recovered by way of recourse action.
		Fishery-related	¥46 726 661	
		Indemnification	¥5 012 855	
			¥366 578 453	
Sinking	(unknown)	Clean-up (paid)	Won 12 393 138 987	Won 1 654 million paid by shipowner's insurer.
		Fishery-related (paid)	Won 5 522 034 932	
		Oil removal operation (paid)	Won 6 824 362 810	
			Won 24 739 536 729	
		Claims pending in court:		
		Fishery-related (claimed)	Won 14 399 050 906	
Contact with fender	1 800	Clean-up (paid)	Won 9 033 000 000	US$13.5 million paid by shipowner's insurer.
		Fishery-related (paid)	Won 1 112 000 000	
		Environmental studies (claimed)	Won 114 000 000	
			Won 10 259 000 000	
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	5 245 000 SDR (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)	£22 800 216	£6 866 809 paid by shipowner's insurer.
		Other damage to property (paid)	£358 554	
		Fishery-related (paid)	£8 526 640	
		Tourism-related (paid)	£2 159 169	
		Other loss of income (paid)	£268 780	
			£34 113 359	
		Claims pending in court:		
		Clean-up	£900 000	
		Fishery-related	£3 700 000	
		Tourism-related	£160 000	
		Other loss of income	£350 000	
			£5 110 000	
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)	¥17 240 477 000	Provisional payments of ¥16 845 million made by 1971 Fund and 1992 Fund. Payments of US$5 million made by shipowner's insurer.
		Fishery-related (settled)	¥1 769 172 000	
		Tourism-related (settled)	¥1 344 157 000	
		Sub total	**¥20 353 806 000**	
		Clean-up (claimed)	¥3 675 114 000	
		Tourism-related (claimed)	¥8 642 000	
		Causeway (claimed)	¥3 335 857 000	
		Sub total	**¥7 019 613 000**	
		Total	**¥27 373 419 000**	
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 related (paid)	$2 104 218	
		Clean-up related (paid)	Bs16 664 002	
		Fishery-related (paid)	Bs120 246 417	
		Tourism-related (paid)	Bs77 839 753	
			Bs214 750 172	
		Fishery-related (paid)	US$ 6 413 355	

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

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 **Total**	¥415 600 000 ¥865 406 **¥416 465 406**	
Overflow during loading operation	124	Clean-up Indemnification **Total**	Won 418 000 000 Won 58 000 000 **Won 476 000 000**	
Grounding	(unknown)	Clean-up (paid) Fishery-related (paid) Oil removal operation (paid) **Total**	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) Fishery-related (paid) **Total**	¥669 252 879 ¥181 786 486 **¥851 039 365**	
		Indemnification	Won 37 963 635	
Overflow during loading operation	3.2	Fishery-related (claimed)	US$47 000 000	Claims against the 1971 Fund time-barred.
Grounding	1 500	Clean-up (paid) Fishery-related (paid) Tourism-related (paid) Other loss of income (paid) **Total**	¥1 074 000 000 ¥263 000 000 ¥23 000 000 ¥8 000 000 **¥1 680 000 000**	Total amount of established claims did not exceed shipowner's liability.
Striking a quay	190	Clean-up (paid) Clean-up (claimed) Fishery-related (paid) Other damage to property (paid) **Total**	FFr15 686 739 FFr1 136 805 FFr328 000 FFr261 156 **FFr17 412 700**	FFr16 139 000 paid by shipowner's insurer. Practically certain that total of the established claims will be less than shipowner's liability.
		Claims pending in court: Clean-up (claimed)	 FFr9 346 371	
Collision	29 000	*Singapore* Clean-up (claimed) Other damage to property (claimed) Other damage to property (paid) **Total**	 S$15 948 000 S$1 733 000 S$67 000 **S$17 748 000**	Provisional payment of S$4.6 million by shipowner in respect of clean-up claims.
		Malaysia Clean-up (paid) Fishery-related (paid) **Total**	 RM1 424 000 RM1 200 000 **RM2 624 000**	RM2.6 million paid by shipowner.
		Indonesia Clean-up (claimed) Environmental damage (claimed) Fishery-related (claimed) **Total**	 US$152 000 US$3 200 000 US$11 000 **US$3 363 000**	

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
100	*Kyungnam N° 1*	7.11.97	Ulsan, Republic of Korea	Republic of Korea	168	Won 43 543 015
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	*Alambra*	17.9.00	Estonia	Malta	75 366	£6 600 000 (estimate)
105	*Natuna Sea*	3.10.00	Indonesia	Panama	51 095	6 100 000 SDR (estimate)
106	*Zeinab*	14.4.01	United Arab Emirates	Georgia	2 178	Not available
107	*Singapura Timur*	28.5.01	Malaysia	Panama	1 369	102 000 SDR (estimate)

Notes

See page 192.

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1971 Fund, unless indicated to the contrary)		Notes
Grounding	15-20	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.
Sinking	4 000	Clean-up (settled) Other damage (claimed) **Dhs 205 061 489**	Dhs 6 308 992 Dhs 198 752 497	Payments limited to 75% (Dhs 4 731 743).
Ruptured discharge pipe	262	*Claims against shipowner 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. Claims against Fund time-barred.
Sinking	100-200	Clean-up (claimed) Clean-up (paid) Clean-up (paid)	US$1 417 847 US$29 000 Dhs 2 470 500	The 1971 and 1992 Funds have each paid 50% of the amounts paid.
Corrosion	300 (estimate)	Clean-up (estimated) *Claims pending in court:* Economic loss	EEK6 500 000 EEK27 000 000	
Grounding	7 000 (estimate)	*Singapore* Clean-up (paid) Clean-up (settled) Clean-up (claimed) **US$10 260 000**	 US$8 700 000 US$1 400 000 US$160 000	No further claims are anticipated for damage in Malaysia. The 1971 Fund will not be called upon to make payments in respect of compensation for damage or indemnification as regards Malaysia. The 1992 Fund might be called upon to make payments for damage in Singapore.
		Clean-up (claimed) Fishery-related (paid) Fishery-related (claimed) **S$4 751 000**	S$4 600 000 S$95 000 S$56 000	
		Malaysia Clean-up (paid) Fishery-related (paid) **RM2 205 000**	 RM1 300 000 RM905 000	
		Indonesia Clean-up (settled) Clean-up (claimed) Fishery-related (claimed) Environmental damage (claimed) **Rp1 181 339 000 000**	 Rp339 000 000 Rp21 000 000 000 Rp102 000 000 000 Rp1 058 000 000 000	
Sinking	400	Clean-up (claimed)	US$480 000	Further claims are anticipated.
Collision	Unknown	Clean-up (claimed) Clean-up (settled) **RM346 100**	RM324 000 RM22 100	Further claims are anticipated. It is anticipated that total claims will exceed the limitation amount.
		Clean-up (settled) Clean-up (settled)	¥11 400 000 000 S$1 450	

ANNEX XVIII

1992 FUND: SUMMARY OF INCIDENTS (31 DECEMBER 2001)

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) Fishery-related (settled) Tourism-related (settled) **Sub total** Clean-up (claimed) Tourism-related (claimed) Causeway (claimed) **Sub total** **Total**	¥17 240 477 000 ¥1 769 172 000 ¥1 344 157 000 **¥20 353 806 000** ¥3 675 114 000 ¥8 642 000 ¥3 335 857 000 **¥7 019 613 000** **¥27 373 419 000**	Provisional payments of ¥16 845 million made by 1971 Fund and 1992 Fund. Payments of US$5 million made by shipowner's insurer.
Grounding	Unknown	Clean-up (paid) Fishery-related (paid) Oil removal operation (paid) Clean-up (paid) Fishery-related (paid)	Won 866 906 355 Won 68 795 729 Won 6 738 565 917 **Won 7 674 268 001** ¥669 252 879 ¥181 786 486 **¥851 039 365**	The 1992 Fund paid ¥340 million to claimants. This amount was later reimbursed by the 1971 Fund.
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	
Sinking	Unknown	Clean-up (paid) Clean-up (claimed)	US$2 500 000 PPs1 800 000	US$2.5 million paid by shipowner's insurer.
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	*Slops*	15.6.00	Piraeus, Greece	Greece	10 815	None
12	Incident in Sweden	23.9.00	Sweden	Unknown	Unknown	Unknown
13	*Natuna Sea*	3.10.00	Indonesia	Panama	51 095	22 400 000 SDR (estimate)
14	*Baltic Carrier*	29.3.01	Denmark	Marshall Islands	23 235	DKr118 million
15	*Zeinab*	14.4.01	United Arab Emirates	Georgia	2 178	Not available

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 (settled) Clean-up (claimed) Fishery-related (settled) Fishery-related (claimed) Other damage to property (settled) Other damage to property (claimed) Tourism (settled) Tourism-related (claimed) Other loss of income (settled) Other loss of income (claimed)	FFr11 553 189 FFr37 428 595 FFr32 708 792 FFr109 116 738 FFr2 627 482 FFr23 362 256 FFr122 042 046 FFr515 354 330 FFr21 423 980 FFr36 200 819 **FFr911 818 227**	Payments made by the shipowner's insurer for FFr84 million and by the 1992 Fund for FFr106 million. These payments represent between 50% and 80% of the settlement amounts. Further claims are expected.
Sinking	100-200	Clean-up (claimed) Clean-up (paid) Clean-up (paid)	US$1 417 847 US$29 000 Dhs2 047 500	The 1971 and 1992 Funds have each paid 50% of the amounts paid.
Fire	Unknown			The 1992 Fund considers that the *Slops* does not fall within the definition of 'ship'. A contractor may take legal action against the 1992 Fund.
Unknown	Unknown			No claims submitted to date.
Grounding	7 000 (estimate)	*Singapore* Clean-up (paid) Clean-up (settled) Clean-up (claimed) Clean-up (claimed) Fishery-related (paid) Fishery-related (claimed) *Malaysia* Clean-up (paid) Fishery-related (paid) *Indonesia* Clean-up (settled) Clean-up (claimed) Fishery-related (claimed) Environmental damage (claimed)	 US$8 700 000 US$1 400 000 US$160 000 **US$10 260 000** S$4 600 000 S$95 000 S$56 000 **S$4 751 000** RM1 300 000 RM905 000 **RM2 205 000** Rp339 000 000 Rp21 000 000 000 Rp102 000 000 000 Rp1 058 000 000 000 **Rp1 181 339 000 000**	No further claims are anticipated for damage in Malaysia. The 1971 Fund will not be called upon to make payments in compensation or indemnification as regards Malaysia. The 1992 Fund might be called upon to make payments for damage in Singapore.
Collision	2 500	Clean-up (claimed) Property (paid) Fishery-related (paid) Fishery-related (claimed)	DM32 000 DKr980 000 DKr15 400 000 DKr21 300 000 **DKr37 680 000**	
Sinking	400	Clean-up (claimed)	US$480 000	Further claims are anticipated.

Notes to Annexes XVII and XVIII

1 Amounts are given in national currencies. The relevant conversion rates as at 31 December 2001 are as follows:

£1 =

Algerian Dinar	Din	111.866	Malaysian Ringgit	RM	5.5305
Bahrain Dinar	BD	0.5488	Moroccan Dirham	Mor Dhr	16.7652
Canadian Dollar	Can$	2.3232	Philippines Peso	PPs	75.0987
Danish Krone	DKr	12.1532	Republic of Korea Won	Won	1911.67
Estonian Kroon	EEK	25.5809	Russian Rouble	Rbls	44.3824
Finnish Markka	FM	9.7186	Singapore Dollar	S$	2.6874
French Franc	FFr	10.7219	Spanish Peseta	Pts	271.966
German Mark	DM	3.1969	Swedish Krona	SKr	15.2667
Greek Drachma	Drs	556.972	UAE Dirham	UAE Dhs	5.3456
Indonesian Rupiah	Rp	15136.2	United States Dollar	US$	1.4554
Italian Lira	LIt	3164.92	Venezuelan Bolivar	Bs	1102.47
Japanese Yen	¥	190.745			

£1 = 1.1553 SDR or 1 SDR = £0.86558

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 or 1992 Funds.

3 Where claims are indicated as paid, the figure given shows the actual amount paid by the 1971 or 1992 Funds (ie excluding the shipowner's liability).

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