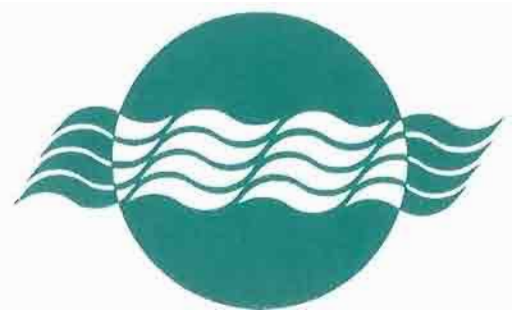
INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS

ANNUAL REPORT

1999

REPORT ON THE ACTIVITIES OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS IN 1999



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FOREWORD

The Director of the International Oil Pollution Compensation Funds 1971 and 1992 (IOPC Funds) presents the Report on the activities of the Organisations during 1999. This is the 21st year of operation of the 1971 Fund and the 4th year of operation of the 1992 Fund.

The 1971 Fund was established in 1978 to administer the system of compensation for oil pollution damage established by the 1969 Civil Liability Convention and the 1971 Fund Convention. In 1992 Protocols were adopted amending the 1969 Civil Liability Convention and the 1971 Fund Convention. These Protocols entered into force on 30 May 1996. A new organisation, known as the 1992 Fund, was established from that date.

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

By the end of 1999, 50 States had ratified the 1992 Protocol to the Fund Convention, and it is expected that a number of other States will do so in the near future. All but two of the States which have deposited instruments of accession to the 1992 Fund Protocol have ceased to be Parties to the 1971 Convention. By the end of 2000 the number of 1971 Fund Member States will have been reduced from its highest level of 76 to 35.

As a result of the rapidly decreasing number of 1971 Fund Member States it is necessary that procedures are established to enable the 1971 Fund to be wound up in the near future.

In 1999 the 1971 Fund has been involved in the handling of claims for compensation arising from a number of oil pollution incidents (cf Section 10). During the year the 1971 Fund has paid significant amounts in compensation to victims of oil pollution. The 1992 Fund has been involved in five incidents during 1999 but has so far made relatively small compensation payments. The Funds' governing bodies have made a number of important decisions of principle in respect of the admissibility of claims for compensation.

The Director hopes that the information contained in this Report will be of interest to the international community and will contribute to a better understanding of the complex issues dealt with by the 1971 and 1992 Funds.

Måns Jacobsson
Director

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PREFACE

The year 1999 was marked by the number of further ratifications of the 1992 Protocol to the 1971 Fund Convention. Many States have thus denounced the 1971 Convention. As foreseen, the quorum needed for the functioning of the Assembly of the 1971 Fund was not achieved, although this happened sooner than anticipated. The mechanisms put in place in 1998 have allowed the 1971 Fund to continue to operate and to deal with those incidents which are still not settled.

We cannot give too much encouragement to those States which have not yet done so to denounce the 1971 Convention and accede to the 1992 Protocols. The great efforts made by the Secretariat to this effect must be sustained. The cover which the 1971 Fund is supposed to provide will quickly become illusory if there are no longer sufficient contributors to finance compensation for damage suffered as a result of any new incidents. Although the Secretariat of the 1992 Fund continues to administer the 1971 Fund, there is no link between the two Organisations other than co-operation for the handling of old incidents. The Member States of the 1992 Fund, and therefore the oil receivers in these States, have no responsibility for compensation for incidents occurring after these States have left the 1971 Fund.

It is to be hoped that in 2000 the process of denouncing the 1971 Convention will be sufficiently advanced to allow the procedures for winding up the 1971 Fund to be put into place.

Once this is accomplished, we must consider the future development of the 1992 Fund, both from the point of view of its operation and as regards compensation for pollution damage. The 1992 Fund was established on the same basis as the 1971 Fund. The 1992 Fund Convention reproduces most of the provisions which govern the 1971 Fund, and this is particularly so in respect of winding up which, in the case of the 1971 Fund, has proved to be completely inappropriate. When the 1992 Fund Convention entered into force it was hoped that there will be few incidents involving the 1992 Fund and above all that the new limits of compensation would not be reached quickly. The first incident belied that expectation. These are important questions. We must not allow the interest in the 1992 Fund, demonstrated by the many ratifications which have taken place, to lead to complacency about the need to reflect on how the international compensation regime should be adapted.

Charles Coppolani
Chairman of the 1992 Fund Assembly

1 INTRODUCTION

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

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

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

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

The main function of the IOPC Funds is to provide supplementary compensation to victims of oil pollution damage in Member States who cannot obtain full compensation for the damage under the applicable Civil Liability Convention. The compensation payable by the 1971 Fund for any one incident is limited to 60 million Special Drawing Rights (SDR) (about £51 million or US$83 million), including the sum actually paid by the shipowner or his insurer under the 1969 Civil Liability Convention. The maximum amount payable by the 1992 Fund for any one incident is 135 million SDR (about £115 million or US$186 million), including the sum actually paid by the shipowner or his insurer and the sum paid by the 1971 Fund.

Each Fund has an Assembly composed of representatives of all Member States of the respective Organisation and an Executive Committee of 15 Member States elected by the respective Assembly. The main function of the Executive Committee is to approve settlements of claims for compensation, to the extent that the Director is not authorised to make such settlements.

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

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

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

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

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

The 1969 and 1971 Conventions apply only to ships which actually carry oil in bulk as cargo, ie generally laden tankers. Spills from tankers during ballast voyages are therefore not covered by these Conventions. The 1992 Conventions apply also to spills of bunker oil from unladen tankers in certain circumstances. Neither the 1969/1971 Conventions nor the 1992 Conventions apply to spills of bunker oil from ships other than tankers.

The limit of the shipowner's liability under the 1969 Civil Liability Convention is the lower of 133 Special Drawing Rights (SDR) (£113 or US$183) per ton of the ship's tonnage or 14 million SDR (£12 million or US$19 million). Under the 1992 Civil Liability Convention, the limits are:

(a) for a ship not exceeding 5 000 units of gross tonnage, 3 million SDR (£2.6 million or US$4.1 million);

(b) for a ship with a tonnage between 5 000 and 140 000 units of tonnage, 3 million SDR (£2.6 million or US$4.1 million) plus 420 SDR (£356 or US$579) for each additional unit of tonnage; and

(c) for a ship of 140 000 units of tonnage or over, 59.7 million SDR (£51 million or US$82 million).

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

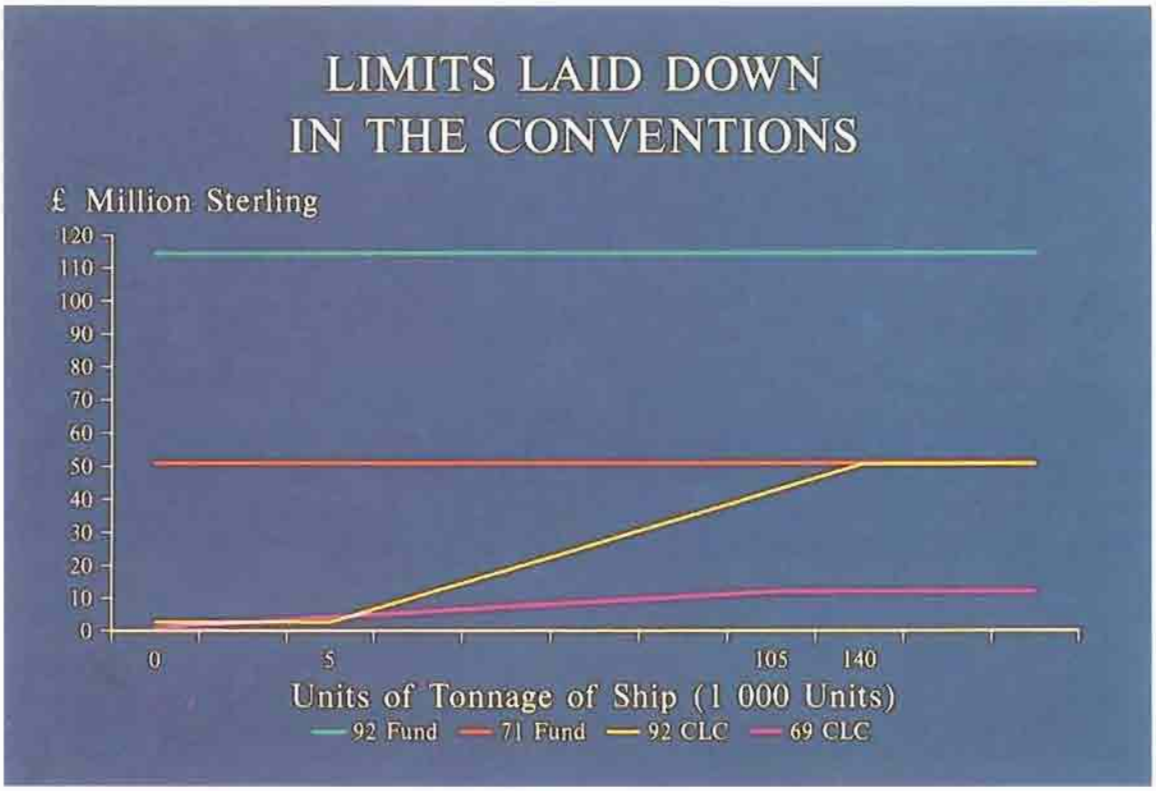
Under the 1969 Civil Liability Convention, the shipowner is deprived of the right to limit his liability if the incident occurred as a result of the owner's personal fault (actual fault or privity). Under the 1992 Convention, however, the shipowner is deprived of this right only if it is proved that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

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

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

The compensation payable by the 1971 Fund in respect of an incident is limited to an aggregate amount of 60 million SDR (£51 million or US$83 million), including the sum actually paid by the shipowner (or his insurer) under the 1969 Civil Liability Convention. The maximum amount payable by the 1992 Fund in respect of an incident is 135 million SDR (£115 million or US$186 million), including the sum actually paid by the shipowner (or his insurer) under the 1992 Civil Liability Convention. The 1992 Fund Convention provides a simplified procedure for increasing the maximum amount payable by the 1992 Fund.

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



3 MEMBERSHIP OF THE IOPC FUNDS

3.1 1992 Fund membership

The 1992 Fund Convention entered into force on 30 May 1996 for nine States. By the end of 1999, 39 States had become Members of the 1992 Fund. Eleven further States have acceded to the 1992 Fund Protocol, bringing the number of Member States to 50 by the end of 2000, as set out in the table below.

39 States for which the 1992 Fund Convention is in force (and therefore Members of the 1992 Fund)		
Algeria	Germany	New Zealand
Australia	Greece	Norway
Bahamas	Grenada	Oman
Bahrain	Iceland	Philippines
Barbados	Ireland	Republic of Korea
Belgium	Jamaica	Singapore
Belize	Japan	Spain
Canada	Latvia	Sweden
Croatia	Liberia	Tunisia
Cyprus	Marshall Islands	United Arab Emirates
Denmark	Mexico	United Kingdom
Finland	Monaco	Uruguay
France	Netherlands	Venezuela

11 States which have deposited instruments of accession, but for which the 1992 Fund Convention does not enter into force until date indicated	
China (Hong Kong Special Administrative Region)	5 January 2000
Sri Lanka	22 January 2000
Vanuatu	18 February 2000
Panama	18 March 2000
Dominican Republic	24 June 2000
Seychelles	23 July 2000
Italy	16 September 2000
Fiji	30 November 2000
Mauritius	6 December 2000
Tonga	10 December 2000
Poland	22 December 2000

It is expected that a number of 1971 Fund Member States will ratify the 1992 Fund Convention in the near future, eg Estonia, Colombia, Ghana, India, Malaysia, Malta, Mauritania, Morocco, Nigeria and the Russian Federation. It is likely that a number of other States will also become Members of the 1992 Fund in the near future, eg Argentina, Israel and South Africa.

3.2 1971 Fund membership

At the time of the entry into force of the 1971 Fund Convention in October 1978, 14 States were Parties to the Convention and thus Members of the 1971 Fund. By 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 the Convention on 15 May 1998, thereby reducing the number of 1971 Fund Member States to 52.

Seventeen of these 52 States have since denounced the 1971 Fund Convention, reducing the number of 1971 Fund Member States to 35 by the end of 2000, as set out below:

35 States Parties to the 1971 Fund Convention		
Albania	Guyana	Papua New Guinea
Antigua and Barbuda	Iceland	Portugal
Benin	India	Qatar
Brunei Darussalam	Kenya	Russian Federation
Cameroon	Kuwait	Saint Kitts and Nevis
Colombia	Malaysia	Sierra Leone
Côte d'Ivoire	Maldives	Slovenia
Djibouti	Malta	Syrian Arab Republic
Estonia	Mauritania	Tuvalu
Gabon	Morocco	United Arab Emirates
Gambia	Mozambique	Yugoslavia
Ghana	Nigeria	

10 States Parties to the 1971 Fund Convention which have deposited instruments of denunciation which will take effect on date indicated	
China (Hong Kong Special Administrative Region)	5 January 2000
Sri Lanka	22 January 2000
Vanuatu	18 February 2000
Panama	11 May 2000
Seychelles	23 July 2000
Italy	8 October 2000
Fiji	30 November 2000
Mauritius	6 December 2000
Tonga	10 December 2000
Poland	22 December 2000

4 EXTERNAL RELATIONS

4.1 Promotion of 1992 Fund membership and information on Fund activities

The Assemblies have emphasised the importance of the IOPC Funds' strengthening their activities in the field of public relations. With this in mind, and in order to establish and maintain personal contacts between the Secretariat and officials within the national administrations dealing with Fund matters, the Director and other Officers have visited a number of 1992 Fund Member States during 1999 for discussions with government officials on the Fund Conventions and the operations of the IOPC Funds.

The Secretariat has continued its efforts to increase the number of 1992 Fund Member States. To this end, the Director and other Officers have visited several non-Member States. Members of the Secretariat have participated in regional seminars on maritime matters in Bahrain, Dubai, Fiji, India, Japan, Mauritius, Singapore and the Ukraine. The Director and other Officers have also given lectures at and participated in seminars, conferences and workshops in a number of other countries on liability and compensation for oil pollution damage and on the operation of the IOPC Funds. The Director has valued the opportunity to lecture to students of the World Maritime University in Malmö (Sweden), where information on the 1992 Fund and its activities will be spread throughout the world when the students return to their national maritime administrations. Lectures have also been given at the IMO International Maritime Law Institute (IMLI) in Malta.

The Director and other members of the joint Secretariat have had discussions with government representatives of non-Member States in connection with meetings within the International Maritime Organization (IMO), in particular during the sessions of the IMO 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 Director has had to inform a number of States, however, that while the Secretariat can provide model legislation and examine draft legislation prepared by States, if so requested, it is not possible for the Secretariat to elaborate specific legislation for an individual State, as the Secretariat would not be acquainted with the details of the legislative tradition of the State in question.

The Assemblies of the 1971 Fund and 1992 Fund have granted observer status to a number of non-Member States. Those States which are Members of only one Organisation have observer status with the other Organisation. At the end of 1999 the following States which were not Members of either Organisation had observer status with both.

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

4.2 Relations with international organisations and interested circles

The IOPC Funds benefit from close co-operation with many intergovernmental and international non-governmental organisations, as well as with bodies set up by private interests involved in the maritime transport of oil.

The following intergovernmental organisations have been granted observer status with both the 1971 Fund and the 1992 Fund:

United Nations
International Maritime Organization (IMO)
United Nations Environment Programme (UNEP)
Baltic Marine Environment Protection Commission (Helsinki Commission)
European Community
International Institute for the Unification of Private Law (UNIDROIT)
Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea (REMPEC)

The IOPC Funds have particularly close links with the International Maritime Organization (IMO), and co-operation agreements have been concluded between each Fund and IMO. During 1999 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 'P & I Clubs'. The technical assistance required by the Funds with regard to oil pollution incidents is usually provided by the International Tanker Owners Pollution Federation Limited (ITOPF).

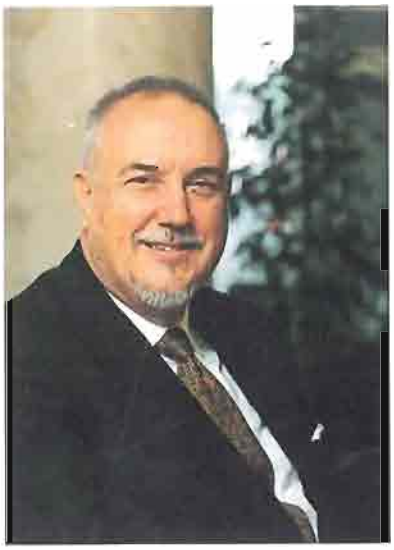
The IOPC Funds co-operate closely with the oil industry, represented by the Oil Companies International Marine Forum (OCIMF) and Cristal Limited.

5 1971 FUND AND 1992 FUND ASSEMBLIES AND EXECUTIVE COMMITTEES

5.1 October 1999 Assembly sessions

1971 Fund Assembly: 22nd session

The acting Chairman of the 1971 Fund Assembly, Ms Katarzyna Jedral (Poland) as representative of the delegation from which the former Chairman was elected, attempted to open the 22nd session on 19 October 1999. However, the Assembly did not achieve a quorum for the session, despite extra efforts on the part of the Secretariat, since only 17 of the 45 Member States were present at the required time. As a result, the items on the agenda of the Assembly were dealt with by the 1971 Fund's Executive Committee, under the Chairmanship of Dr Matteo Baradà (Italy), pursuant to the Resolution adopted by the Assembly at its April 1998 session. The following major decisions were taken by the Executive Committee, acting on behalf of the Assembly.



Dr Matteo Baradà

- The 1971 Fund Convention provides that the Convention will cease to be in force when the number of Contracting States falls below three. The Executive Committee considered whether procedures could be found which could speed up the winding up of the 1971 Fund. It was decided that the Secretary-General of IMO should be requested to convene urgently a Diplomatic Conference, for the purpose of adopting a Protocol amending Article 43.1 of that Convention (cf Section 6).

- The Executive Committee noted the External Auditor's Report and his Opinion on the Financial Statements of the 1971 Fund which went into great depth and detail and welcomed, in particular, the 'value for money audit'. The Committee approved the accounts for the financial period 1 January to 31 December 1998 (cf Section 7.2).

- The Committee decided to levy 1999 annual contributions for a total amount of £8.3 million, of which £6.3 million was to be paid by 1 March 2000. It was decided that the balance of these levies should be deferred and invoiced, to the extent necessary, during the second half of 2000. The Committee also decided that £2.5 million of the balance of the *Haven* Major Claims Fund should be reimbursed to contributors on that date (cf Section 8.3).

- The 1971 Fund may be exonerated, wholly or partially, from its obligation to pay indemnification to the shipowner for part of his liability if, as a result of the actual fault or privity of the owner, the ship did not comply with the requirements in any of the instruments listed in Article 5.3(a) of the 1971 Fund Convention. The Committee decided to include in the list contained in that Article the 1988 Protocol to the International Convention for the Safety of Life at Sea 1974 (SOLAS 74) and the 1988 Protocol to the International Convention on Load Lines, 1966, with effect from 1 May 2000.

1992 Fund Assembly: 4th session

The 1992 Fund Assembly held its 4th session from 18 to 22 October 1999 under the chairmanship of Mr Charles Coppolani (France). The following major decisions were taken at that session.

- The Assembly noted the External Auditor's Report and his Opinion on the Financial Statements of the 1992 Fund which went into great depth and detail and welcomed, in particular, the 'value for money audit'. The Assembly approved the accounts for the financial period 1 January - 31 December 1998 (cf Section 7.2).

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

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

- The Assembly considered the report of a Working Group which had been set up to study two issues relating to the definition of 'ship' laid down in the 1992 Civil Liability Convention and the 1992 Fund Convention. The Assembly decided to endorse the conclusions of the Working Group regarding the applicability of the 1992 Conventions to offshore craft. The Assembly also decided to reconvene the Working Group in April 2000 to consider further the issue of the application of the 1992 Conventions to unladen tankers (cf Section 9).

- The Assembly decided to increase the 1992 Fund's working capital from £12 million to £15 million.

- The Assembly decided to levy 1999 contributions for an amount of £13 million but decided that this entire levy should be deferred and invoiced, if and to the extent required, during the second half of 2000. The Assembly also decided that £3.7 million of the balance on the *Osung N°3* Major Claims Fund should be reimbursed to contributors on that day (cf Section 8.5).

- On 5 January 1999 the People's Republic of China deposited instruments of accession to the 1992 Protocols to the 1969 Civil Liability Convention and the 1971 Fund Convention. As regards the latter Protocol, the instrument of accession was limited in its application to the Hong Kong Special Administrative Region (HKSAR).

  The Japanese delegation stated that it had doubts about the validity of China's accession to the 1992 Fund Protocol being limited to HKSAR. That delegation considered that the accession did not fulfil the requirements of Article 29 of the 1969 Vienna Convention on the Law of Treaties, which provided that a treaty was binding upon each party in respect of its entire territory 'unless a different intention appears from the treaty or is otherwise established', since a different intention did not appear from the treaty nor had it been otherwise established.

  The Chinese delegation expressed the view that Article 29 of the Vienna Convention had been fulfilled on the ground that a different intention had been otherwise established. That delegation drew the Assembly's attention to the fact that some 80 multilateral treaties applied to HKSAR but not to mainland China.

- The Assembly considered whether steps should be taken to facilitate the winding up of the 1992 Fund in the future, should the need arise, possibly by amending the provision in the 1992 Fund Protocol stipulating that the 1992 Fund Convention would cease to be in force when the number of Contracting States fell below three. The Assembly decided that it was premature to address this issue.

- The Chairman, Mr Charles Coppolani (France), informed the Assembly that he would not be available to serve as Chairman beyond the end of the October 1999 session. The Assembly expressed its profound gratitude to Mr Coppolani for the extraordinary professionalism, efficiency and good-humoured nature which he had demonstrated during his chairmanship of the 1992 Fund Assembly and, previously, of the 1971 Fund Assembly. The Assembly elected Mr Willem Oosterveen (Netherlands) as Chairman from the end of the session, to hold office until the next regular session of the Assembly.

- The Assembly granted observer status to the Republic of the Congo and Turkey.

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

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

- The 1992 Fund Assembly appointed the present Director, Mr Måns Jacobsson, to serve as Director of the 1992 Fund for a further term of office for the period 2000 - 2004. Since the 1971 Fund Assembly had decided in April 1998 that (subject to the agreement of the 1992 Fund Assembly) the Director of the 1992 Fund should *ex officio* be the person who held the post of Director of the 1992 Fund, Mr Jacobsson will therefore carry out the functions of Director of the 1971 Fund also for that period.

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

- The Assemblies decided to change the normal due date for the payment of contributions from 1 February to 1 March, to allow contributors more time to make arrangements for the transfer of contributions to the IOPC Funds.

- The budget appropriations for 2000 were adopted, with an administrative expenditure for the joint Secretariat totalling £3 225 040.

- The Assemblies had previously decided that a bituminous emulsion used for the production of heat and power, known as 'orimulsion', should be considered as falling within the definition of 'contributing oil' laid down in Article 1.3 of the Fund Conventions. It was noted that there were a number of products similar to 'orimulsion' used for the same purpose. It was decided that these products should also be considered as contributing oil. It was further decided that they should be referred to by the generic term 'bituminous emulsions and fuel oil emulsions'. It was also decided that no allowance should be made for the water content in those products for the assessment of contributions.

5.2 1971 Fund Executive Committee

60th - 62nd sessions

The 1971 Fund Executive Committee held three sessions during 1999. The 60th and 61st sessions were held under the chairmanship of Mr Alfred Popp QC (Canada) from 1 to 3 February and from 27 to 29 April 1999, respectively. The 62nd session was held under the chairmanship of Dr Matteo Baradà (Italy) from 19 to 22 October 1999. At that session the Committee considered the items on the agenda of the 22nd session of the Assembly, as that body had been unable to achieve a quorum (cf Section 5.1).

The main decisions taken by the 1971 Fund Executive Committee at these sessions are reflected in Section 10.2 in the context of the particular incidents.

Mr Alfred Popp QC

5.3 1992 Fund Executive Committee

2nd - 5th sessions

The 1992 Fund Executive Committee held four sessions during 1999. The 2nd, 3rd, 4th and 5th sessions were held under the chairmanship of Professor Lee Sik Chai (Republic of Korea) from 1 to 3 February, 27 to 29 April, 20 to 22 October and 22 October 1999 respectively.

The main decisions taken by the 1992 Fund Executive Committee at these sessions are reflected in Section 10.3 in the context of the particular incidents.

Professor Lee Sik Chai

6 WINDING UP OF THE 1971 FUND

6.1 The problem

As more States join the 1992 Fund and cease to be Members of the 1971 Fund, the 'old' regime is losing its importance, and the 1971 Fund will soon cease to be financially viable. However, the 1971 Fund Convention provides that the Convention will remain in force until the date when the number of Contracting States falls below three, and it is unlikely that this will happen in the near future. Consideration has therefore been given to the possibility of accelerating the winding up of the 1971 Fund.

Financial consequences of remaining in the 1971 Fund

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 250 million tonnes by the end of 1999. By January 2001, this quantity will have fallen to some 95 million tonnes. The effect of this reduction in the contribution base is the considerably increased financial burden which might fall on the contributors in those States which remain Members of the 1971 Fund.

Risk of no contributors in remaining Member States

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

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

As the 1992 Protocols provide much higher limits of compensation than the Conventions in their original versions and have a wider scope of application on several points, there are no advantages for a State which has acceded to the 1992 Protocols in remaining a Member of the 1971 Fund. If an incident were to occur in a State which was a Member of both the 1971 Fund and the 1992 Fund, the legal situation would be very complex.

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

6.2 Steps taken by the Secretariat

The Director has taken a number of steps to draw the attention of the Governments of the remaining 1971 Fund Member States to the significant problems which continuing membership of the 1971 Fund would cause and of the great urgency of acceding to the 1992 Protocols and of denouncing the 1969 Civil Liability Convention and the 1971 Fund Convention. These steps include contacts with the respective Embassies and High Commissions in London, visits by Fund staff to the

capitals of States concerned, presentations by Fund staff at seminars, conferences and workshops with participation of representatives of interested States, and assistance to States to prepare the necessary instruments of denunciation of the 1969 and 1971 Conventions and the legislation required to implement the 1992 Protocols.

The Director and the Head of the External Relations and Conference Department attended the 9th meeting of States Parties to the United Nations Convention of the Law of the Sea, held in New York from 19 to 28 May 1999. In connection with that meeting, they met representatives (in many cases at the level of ambassadors) of 21 of the remaining 1971 Fund Member States, mainly those States which do not normally attend the sessions of the 1971 Fund's governing bodies, to inform them of the problems which their States would face if they were to remain Parties to the 1971 Fund Convention. The representatives of those States were invited to draw the attention of their respective Governments to the importance of their States' denouncing the 1971 Fund Convention as soon as possible.

On the occasion of the IMO Assembly in November 1999, the Director held meetings with representatives of 31 of the remaining 1971 Fund Member States for the purpose of emphasising the urgency of their respective States' denouncing the 1971 Fund Convention.

6.3 Consideration by the 1971 Fund Executive Committee

A number of ways of accelerating the winding up of the 1971 Fund were considered at the October 1999 session of the 1971 Fund Executive Committee, acting on behalf of the Assembly. The discussions were based on a study by the Director and the opinions of two eminent experts in public international law. The examination addressed the issue of whether the general rules of international treaty law could be used to speed up the termination of the Convention. It was noted that as a matter of customary international law a treaty may be terminated as a result of unforeseen fundamental changes in the basis for the Parties' agreement to the treaty ('fundamental change of circumstances').

Four options were studied, namely:

(a) amendment of Article 43.1 of the 1971 Fund Convention by means of a Protocol to the effect that the Convention would be terminated well before the number of Contracting States fell below three;

(b) adoption of a Resolution by the 1971 Fund Assembly terminating the Convention;

(c) use of the procedure for rapid denunciation laid down in Article 42 of the 1971 Fund Convention; and

(d) involvement of the International Court of Justice or an Arbitration Tribunal.

During the Executive Committee's discussions it was generally accepted that no option for the early termination of the 1971 Fund Convention was entirely satisfactory.

6.4 Accelerating the winding up

Acceleration of the denunciation procedure

Under Article 41.3 of the 1971 Fund Convention, an instrument of denunciation takes effect one year after it is deposited with the Secretary-General of IMO. This period of one year may be reduced by implementation of the procedure laid down in Article 42. That Article deals with the case where denunciation by one Member State significantly increases the level of contributions for the remaining Member States. In that situation any Member State may request the Director to convene an extraordinary session of the Assembly, to be held within 60 days of such a request. Such a request must be made within 90 days of the deposit of the instrument of denunciation in question. The Director may also convene such an Assembly on his own initiative. If the Assembly decides that the denunciation in question will result in a significant increase in the level of contributions for the remaining Member States, any such State may denounce the Convention not later than 120 days before the date when that denunciation takes effect, with effect from the same date.

It was generally acknowledged that the accelerated denunciation procedure provided in Article 42 of the 1971 Fund Convention would only assist those States which did in fact submit instruments of denunciation, by reducing the time it would take before the denunciation took effect. It was noted that the procedure would have only a limited effect on the winding up process since a number of States would not denounce the Convention during the period specified in that Article. It was further noted that it was extremely unlikely that an extraordinary session of the Assembly convened under Article 42 would obtain a quorum, and that it was very questionable whether either the Executive Committee or the Administrative Council could take the decisions envisaged in Article 42.

The Executive Committee therefore decided that, despite Italy's denunciation of the 1971 Fund Convention on 8 October 1999 having reduced the contributing oil base of the 1971 Fund from 250 million tonnes to some 100 million tonnes, the Director should not, on his own initiative, convene an extraordinary session of the Assembly. However, the Director was instructed to write to all remaining 1971 Fund Member States, informing them of the effects of Italy's denunciation and advising them of the possibility of their requesting the Director to convene such an extraordinary session. A letter to this effect was sent to all remaining Member States in November 1999. By the end of 1999 no State had requested the Director to convene such a session.

Assembly Resolution

Under this option, the 1971 Fund Assembly would adopt a Resolution to the effect that the 1971 Fund Convention would cease to be in force when certain conditions were fulfilled, although the number of the remaining Member States had not fallen below three.

The Director considered that the adoption of a Resolution by the Assembly would be a legally effective way of terminating the 1971 Fund Convention and laying down the procedures for the winding up of the 1971 Fund. He took the view, however, that this option was less solid than the adoption of a Protocol amending Article 43.1. A few delegations expressed doubts as to whether a body (ie the Assembly) could take steps to bring about a demise of the treaty by which it had been elected (ie the 1971 Fund Convention).

Involvement of the International Court of Justice

The Executive Committee shared the Director's view that the involvement of the International Court of Justice was not a viable option for the 1971 Fund's purposes.

Amending Article 43.1

The main discussion related to the possibility of adopting a Protocol amending the 1971 Fund Convention to the effect that the Convention would be terminated well before the number of Member States fell below three.

Normally such an amendment would be binding only on the States which had expressed their acceptance. In the light of the difficulties which would result if explicit acceptance of the amendments were required, the Director had suggested that it would be appropriate to consider whether the envisaged amendment to Article 43.1 could be brought into force by means of a simplified procedure under which the consent of a State to be bound would be given not by express indication but by tacit or implied consent, ie by States failing to object within a certain period of time. Some delegations considered that since the 1971 Fund Convention did not provide for a tacit amendment procedure, it was not possible to follow such an approach.

The Executive Committee decided that IMO should be requested to convene urgently a Diplomatic Conference for the purpose of adopting a Protocol amending Article 43.1 of the 1971 Fund Convention. The Committee elaborated a draft Protocol containing two options, one based on a tacit amendment procedure and the other requiring explicit acceptance by States. In November 1999 the IMO Assembly approved the 1971 Fund's request. The Diplomatic Conference is expected to be held in September 2000.

Liquidation of the 1971 Fund

Termination of the 1971 Fund Convention would not result in the liquidation of the 1971 Fund. Steps will therefore have to be taken to ensure that the 1971 Fund is liquidated in a proper manner. The Executive Committee held a preliminary discussion of this issue and instructed the Director to study the matter further.

7 ADMINISTRATION OF THE IOPC FUNDS

7.1 Secretariat

The 1971 Fund and 1992 Fund have a joint Secretariat headed by one Director. During 1999 the Secretariat has continued to face a very heavy workload. The strong commitment of the staff to their work, as well as their knowledge and expertise, are great assets to the IOPC Funds, and these factors are crucial to the efficient functioning of the Secretariat.

In the light of the changing nature of the work of the Secretariat, the need to administer two Funds, and the workload on staff members, in 1998 an external consultant was engaged to undertake a review of the working methods within the Secretariat, in order to obtain the most efficient and cost-effective way of managing the IOPC Funds. As a result of this review, the Assemblies took certain decisions in 1998 on a new structure of the Secretariat and new working methods. These decisions have been implemented gradually during 1998 and 1999.

The Assemblies' decisions included an increase in the size of the Secretariat, and as a result significant additional office space is required. The Secretariat is at present located in the IMO building in London. Regrettably, no additional space is available there, resulting in the Secretariat having to relocate outside the IMO building. New premises have been found in Victoria, a short distance from the IMO building. It is expected that the Funds will relocate to the new premises in the spring of 2000.

The IOPC Funds continue to use external consultants to provide legal or technical advice. In a number of cases the Funds and the P & I insurer involved have jointly established local claims offices to facilitate an efficient handling of the great numbers of claims submitted.

The Assemblies have emphasised the importance of the 1992 Fund's strengthening the Secretariat's activities in the field of public relations. To this end, the IOPC Funds' web site was launched at the address http://www.iopcfund.org in October 1999.

The Secretariat took a number of steps during 1999 to ensure that the IOPC Funds' IT system was 2000 compliant.

7.2 Financial statements for 1998

The financial statements of the 1971 Fund and the 1992 Fund for the period 1 January to 31 December 1998 were approved by the respective governing bodies at their sessions in October 1999.

As in previous years both the 1971 Fund's and the 1992 Fund's accounts were audited by the Comptroller and Auditor General of the United Kingdom. The Auditor's report covering both Organisations is reproduced in full in Annex III and his opinions on each financial statement are reproduced in Annexes IV and XIV.

Statements summarising the information contained in the audited statements for this period are given in Annexes V - XIII for the 1971 Fund and in Annexes XV - XVIII 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) (£850 000) or 4 million SDR (£3.4 million) by the 1992 Fund.

1971 Fund

An amount of £1 972 491 was refunded to contributors from the General Fund in 1998 as a result of the lowering of the 1971 Fund's working capital from £10 million to £5 million. Reimbursement of £2.8 million was also made to those persons who had contributed to the *Senyo Maru* Major Claims Fund. This Major Claims Fund was closed in 1998.

Annual contributions were receivable in respect of the *Nakhodka* (£29.8 million), *Sea Prince* (£3.0 million), *Nissos Amorgos* (£2.0 million) and *Osung N°3* (£2.0 million) Major Claims Funds. Claims expenditure for the period amounted to some £30.8 million. The majority of this expenditure related to four cases, namely the *Nakhodka, Sea Prince, Yuil N°1* and *Osung N°3* incidents.

The balance sheet of the 1971 Fund as at 31 December 1998 is reproduced in Annex XII. The balances of the various Major Claims Funds are also given. The contingent liabilities were estimated at £307 million in respect of claims arising from 22 incidents.

1992 Fund

Annual contributions of £5.9 million accounted for the major part of the General Fund's income during 1998. Contributions of £3.5 million were receivable with respect to the *Osung N°3* Interim Major Claims Fund during this period. The balance on this Major Claims Fund as at 31 December 1998 amounted to some £3.7 million. No contributions were receivable in 1998 with respect to the *Nakhodka* Major Claims Fund.

There was no net claims expenditure during 1998.

The balance sheet of the 1992 Fund as at 31 December 1998 is reproduced in Annex XVII. The balances of the various Major Claims Funds are also given. The contingent liabilities were estimated at £74 million in respect of claims arising from four incidents.

7.3 Financial statements for 1999

The financial statements of the 1971 Fund and 1992 Fund for the period 1 January to 31 December 1999 will be submitted to the External Auditor in the spring of 2000, and will be presented to the respective Assemblies for approval at their sessions in October 2000. These accounts will be reproduced in the IOPC Funds' 2000 Annual Report.

7.4 Investment of funds

Investment policy

In accordance with the Financial Regulations of the 1971 and 1992 Funds, the Director is responsible for the investment of any funds which are not required for the short-term operation of each Fund. In accordance with these Regulations, in making any investments all necessary steps are

taken to ensure the maintenance of sufficient liquid funds for the operation of the respective Fund, to avoid undue currency risks and generally to obtain a reasonable return on the investments of each Organisation. The investments are made mainly in Pounds Sterling. The assets are placed on term deposit. Investments may be made with banks and building societies which satisfy certain criteria as to their financial standing.

Investment Advisory Bodies

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

1971 Fund

Investments were made by the 1971 Fund during 1999 with a number of banks and building societies in the United Kingdom. As at 31 December 1999 the 1971 Fund's portfolio of investments totalled £113 million. The portfolio was made up of the assets of the 1971 Fund and a credit balance on the contributors' account.

Interest due in 1999 on the investments amounted to £6.8 million on an average capital of £118 million.

1992 Fund

Investments were made by the 1992 Fund during 1999 with a number of banks and building societies in the United Kingdom. As at 31 December 1999 the 1992 Fund's portfolio of investments totalled £57 million. The portfolio was made up of the assets of the 1992 Fund and the Staff Provident Fund.

Interest due in 1999 on the investments amounted to £2 million on an average capital of £36 million.

8 CONTRIBUTIONS

8.1 The contribution system

Basis for levy of contributions

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

Non-submission of oil reports

The non-submission of oil reports by a number of States was considered by the delegations at the October 1999 sessions of the governing bodies of both the 1971 Fund and the 1992 Fund to be a matter of serious concern to other Member States and in particular to the contributors in those States, since without oil reports the Secretariat cannot issue invoices for contributions. At that time two Member States of the 1992 Fund and 32 Member States of the 1971 Fund (ie over two-thirds) had not submitted their reports on contributing oil received in 1998. For 16 of the 1971 Fund Member States reports were outstanding for between three and 11 years.

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

Initial and annual contributions

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

Initial contributions are payable when a State becomes a Member of the 1971 Fund. Contributors pay a fixed amount per tonne of contributing oil received during the year preceding that in which the 1971 Fund Convention entered into force for the State in question. This amount was fixed by the Assembly at 0.04718 (gold) francs per tonne (0.003145 SDR), which at 30 December 1999 corresponded to £0.0026689.

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 February (1 March for 2000) 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: 1998 annual contributions

In October 1998 the Executive Committee, acting on behalf of the Assembly, decided to levy 1998 annual contributions to the General Fund and five Major Claims Funds for a total amount of £26.7 million. It was decided that the entire levies to the General Fund (£1.7 million) and the *Nakhodka* Major Claims Fund (£7.5 million) should be due for payment by 1 February 1999, whereas the entire levies in respect of the *Yuil N°1*, *Sea Empress*, *Osung N°3* and *Evoikos* incidents should be deferred. The Director was authorised to decide whether to invoice all or part of the amounts of the deferred levies for payment during the second half of 1999.

When assessing the situation in June 1999 the Director decided not to make a deferred levy in respect of the above-mentioned Major Claims Funds, since it would be possible to make the necessary payments from the liquid assets of the 1971 Fund. Contributors were notified of this decision in June 1999.

8.3 1971 Fund: 1999 annual contributions

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

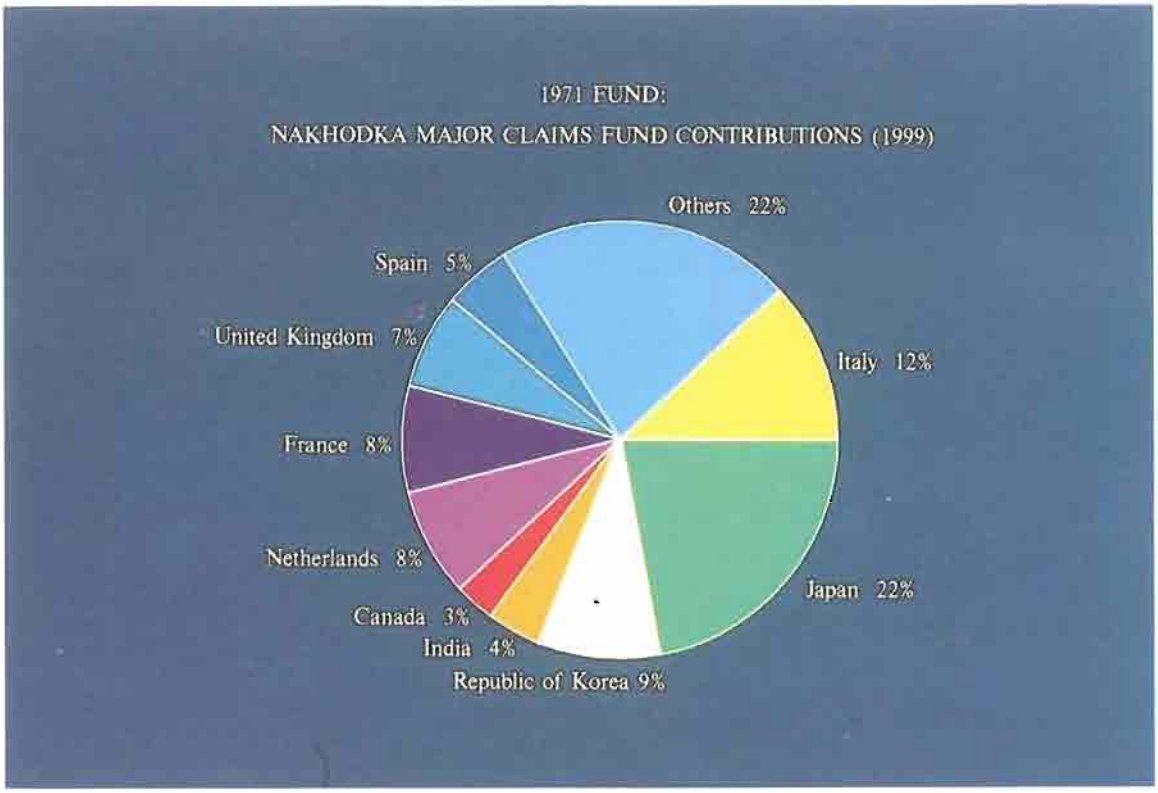
The Committee also decided that, since all claims and expenses arising out of the *Haven* incident had been paid and the amount remaining in this Major Claims Fund was considered to be substantial, an amount of £2.5 million should be reimbursed to the contributors to the *Haven* Major Claims Funds and the balance be transferred to the General Fund. The Committee decided that this reimbursement should be made on 1 March 2000.

The 1999 contributions to the *Nakhodka* Major Claims Fund were based on the quantities of contributing oil received in 1996 in States which were Members of the 1971 Fund at the time of the *Nakhodka* incident (2 January 1997). The shares of the 1999 contributions to that Fund in respect of Member States are illustrated by the chart opposite.

8.4 1992 Fund: 1998 annual contributions

In October 1998 the Assembly decided to levy 1998 contributions to the General Fund for a total of £7.2 million, due for payment by 1 February 1999.

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



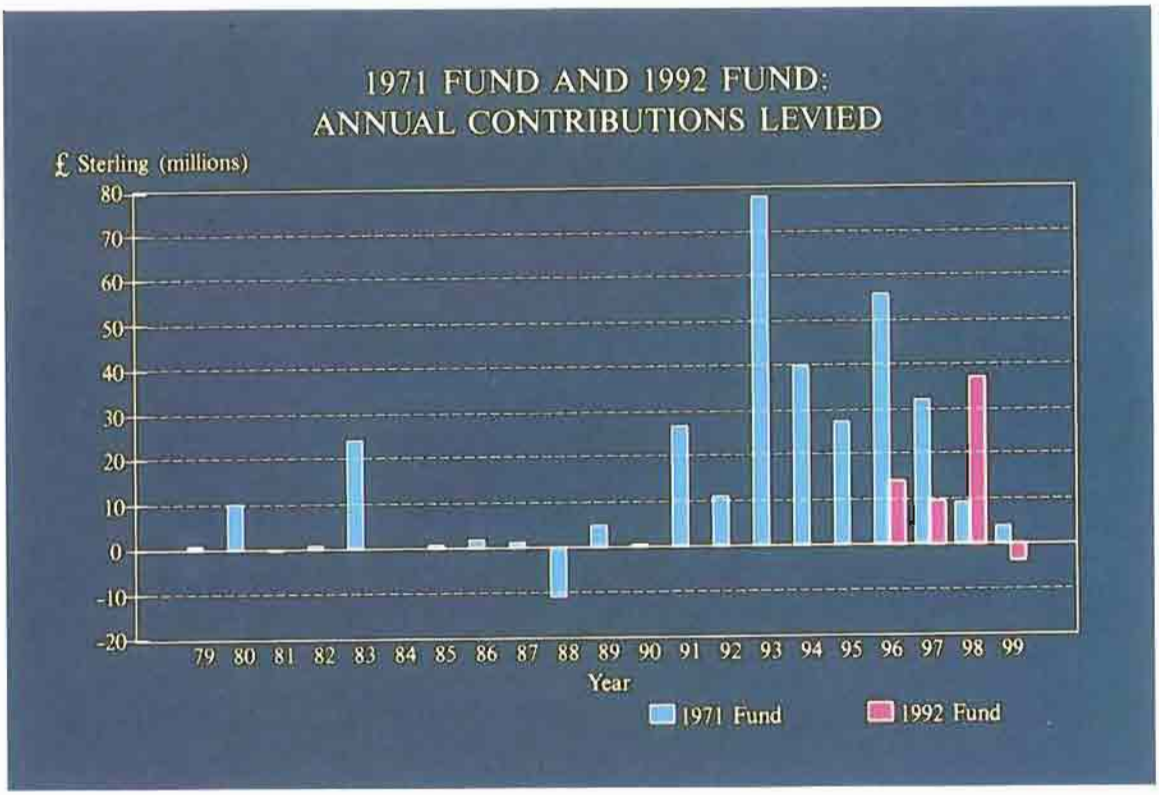
The Assembly decided further to make a levy of £1.4 million to the *Osung N°3* Interim Major Claims Fund, as 1998 contributions. It was decided that the whole of this levy should be deferred.

The Director was authorised to decide whether to invoice all or part of the deferred levies for payment during the second half of 1999. In accordance with this authority, the Director decided in June 1999 to invoice £9 million as a deferred levy to the *Nakhodka* Major Claims Fund for payment by 1 September 1999 but not to make a deferred levy to the *Osung N°3* Major Claims Fund.

8.5 1992 Fund: 1999 annual contributions

The Assembly decided not to levy 1999 contributions to the General Fund. However, the Assembly decided to levy contributions of £13 million to the *Nakhodka* Major Claims Fund as 1999 contributions, the entire levy to be deferred. The Director was authorised to decide whether to invoice all or part of the deferred levy for payment during the second half of 2000.

The Assembly decided that, since all claims and expenses arising out of the *Osung N°3* incident had been paid and the amount remaining in this Major Claims Fund was considered to be substantial, an amount of £3.7 million should be reimbursed to the contributors to the *Osung N°3* Major Claims Funds and the balance be transferred to the General Fund. The Assembly decided that this reimbursement should be made on 1 March 2000.



8.6 1971 and 1992 Funds: Annual contributions over the years

Details of the 1971 and 1992 Funds' 1998 and 1999 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, £1 609 000 was outstanding as at 31 December 1999. As for contributions levied by the 1992 Fund since 1996, £552 000 was outstanding as at 31 December 1999.

In October 1999 the governing bodies of the 1971 and 1992 Funds expressed their satisfaction with the situation regarding the payment of contributions.

Organisation	Annual Contribution Year	Decision of governing body		General Fund/Major Claims Fund		Total amount due £	Oil year	Levy per tonne £
1971 FUND	1998	October 1998	1st levy	General Fund		1 700 000	1997	0.0024768
				Nakhodka	Japan	7 500 000	1996	0.0061171
			2nd levy	No levy made				
	1999	October 1999	1st levy	*Nakhodka*	Japan	1 000 000	1996	0.0008178
				Osung N°3	Republic of Korea/Japan	5 300 000	1996	0.0043189
				Credit *Haven*	Italy	-2 500 000	1990	-0.0026328
			2nd levy	*Sea Empress*	United Kingdom	Maximum<1> 2 000 000	1995	
1992 FUND	1998	October 1998	1st levy	General Fund		7 200 000	1997	0.0081266
				Nakhodka	Japan	21 000 000	1996	0.0319418
			2nd levy	*Nakhodka*	Japan	9 000 000	1996	0.0134974
	1999	October 1999	1st levy	Credit *Osung N°3* Interim	Republic of Korea/Japan	-3 700 000	1996	-0.0056367
			2nd levy	*Nakhodka*	Japan	Maximum<1> 13 000 000	1996	

<1> To be invoiced to the extent required for payment in the second half of 2000

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

In October 1998 the 1992 Fund Assembly established an intersessional Working Group to study two issues relating to the definition of 'ship' laid down in the 1992 Civil Liability Convention and the 1992 Fund Convention, namely

(i) the circumstances in which an unladen tanker would fall within the definition of 'ship'; and

(ii) whether, and if so to what extent, the 1992 Conventions apply to offshore craft, namely floating storage units (FSUs) and floating production, storage and offloading units (FPSOs).

The definition of ship in Article I.1 of the 1992 Civil Liability Convention reads:

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

This definition is incorporated in the 1992 Fund Convention.

The Working Group met on 26 and 27 April 1999 under the chairmanship of Mr John Wren (United Kingdom).

9.1 Application of the 1992 Conventions to offshore craft

As regards the application of the 1992 Conventions to offshore craft it was noted that the Working Group had drawn the following conclusions:

(i) Offshore craft should be regarded as 'ships' under the 1992 Conventions 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.

(ii) Offshore craft would fall outside the scope of the 1992 Conventions when they leave an offshore oil field for operational reasons or simply to avoid bad weather.

In letters to the Director some companies operating in the offshore sector had expressed concerns as to the restrictive interpretation recommended by the Working Group. These companies had expressed the view that there was no support in the text of the 1992 Civil Liability Convention for a distinction between offshore craft and trading tankers.

A number of delegations expressed their surprise at the late intervention of some members of the offshore industry, given that wide consultations had taken place prior to and during the Intersessional Working Group, and that no new legal or technical arguments were being presented. Those delegations stressed that any final decision regarding the applicability of the 1992 Conventions to offshore craft was a matter for national courts, but that it was expedient for the 1992 Fund to adopt a policy before an incident involving such a craft occurred in a 1992 Fund Member

State. For this reason those delegations were of the view that the Assembly should not defer its decision on the issue, recognising that such a decision was always open to revision in the light of new information.

The Assembly decided to endorse the conclusions of the Working Group regarding the applicability of the 1992 Conventions to offshore craft. The Assembly emphasised that in any event the decision as to whether the 1992 Conventions applied to a specific incident would be taken in the light of the particular circumstances of that case. It was noted that the issue could be reconsidered if new information were to come to light.

9.2 Application of the 1992 Conventions to unladen tankers

The Working Group had drawn the following conclusions as regards the circumstances in which an unladen tanker would fall within the definition of 'ship':

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

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

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

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

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

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

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

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

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

Several delegations stated that they supported the interpretation proposed by the Working Group. Some delegations expressed the opinion that they did not agree with the conclusions of the Working Group but supported the views set out in the document presented by the four delegations.

One delegation stated that the overriding issue was the definition of 'oil' in the Convention, which was restricted to 'persistent oil', and that it would not be legally possible to widen the interpretation of the definition of 'ship' beyond that proposed by the Working Group.

Assembly chaired by Mr Coppolani
(photograph: John Ross)

Other delegations considered that it was premature for the Assembly to take a decision, particularly in view of the limited time which had been available to study the new document, and that the matter should be examined further.

The Assembly instructed the Director to reconvene the Working Group for a one day meeting during the week of the session of the 1992 Fund Executive Committee in April 2000 and urged all interested delegations to submit documents well in advance of that meeting in order to allow delegations to consider the matter in detail before the meeting. The Director was invited to carry out a further study, with particular emphasis on the ramifications of the proposal by Australia, Canada, the Netherlands and the United Kingdom.

10 SETTLEMENT OF CLAIMS

10.1 Overview

1971 Fund claims settlements 1978 - 1999

Since its establishment in October 1978, the 1971 Fund has, up to 31 December 1999, been involved in the settlement of claims arising out of 94 incidents. The total compensation paid by the 1971 Fund to date amounts to over £243 million (US$390 million).

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

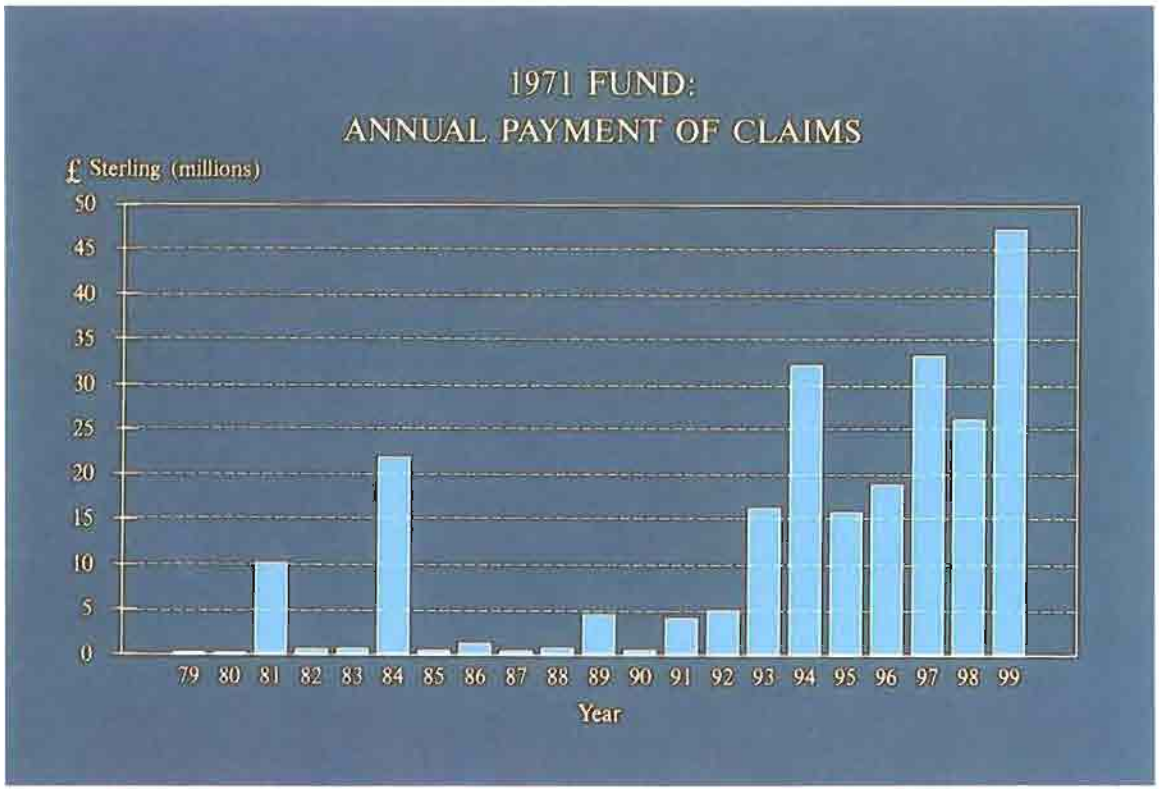
Ship	Place of incident	Year	1971 Fund payments
Antonio Gramsci	Sweden	1979	£9.2 million
Tanio	France	1980	£18.7 million
Ondina	Federal Republic of Germany	1982	£3.0 million
Thuntank 5	Sweden	1986	£2.4 million
Rio Orinoco	Canada	1990	£6.2 million
Haven	Italy	1991	£30.3 million
Taiko Maru	Japan	1993	£7.2 million
Toyotaka Maru	Japan	1994	£5.1 million
Senyo Maru	Japan	1995	£2.3 million

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

Ship	Place of incident	Year	1971 Fund payments
Aegean Sea	Spain	1992	£5.2 million
Braer	United Kingdom	1993	£40.6 million
Keumdong N°5	Republic of Korea	1993	£10.0 million
Sea Prince	Republic of Korea	1995	£10.6 million
Yuil N°1	Republic of Korea	1995	£14.4 million
Sea Empress	United Kingdom	1996	£9.4 million
Nakhodka<1>	Japan	1997	£43.3 million
Osung N°3	Republic of Korea/Japan	1997	£6.9 million

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

<1> The 1992 Fund has paid a further £4.9 million.



Annex XXI to this Report contains a summary of all incidents for which the 1971 Fund has paid compensation or indemnification, or where it is possible that such payments will be made by the Fund. It also includes some incidents in which the 1971 Fund was involved but ultimately was not called upon to make any payments.

There has been a considerable increase in the amounts of compensation claimed from the 1971 Fund over the years. In several recent cases the total amount of the claims submitted greatly exceeds the maximum amount available under the 1971 Fund Convention. 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 claims which, although admissible in principle, are for amounts which the Fund considers greatly exaggerated. As a result, the 1971 Fund and claimants have become involved in lengthy legal proceedings. In these circumstances, it is becoming increasingly difficult for the 1971 Fund to achieve its aim of providing prompt payment of admissible claims.

Incidents in 1999 involving the 1971 Fund

The 1971 Fund has not been notified of any incidents occurring in 1999 which may give rise to claims against it.

Incidents in previous years with outstanding claims against the 1971 Fund

As at 31 December 1999 there were outstanding third party claims in respect of 18 incidents involving the 1971 Fund which had occurred before 1999. The situation in respect of some of these incidents is summarised below.

Claims arising from the *Aegean Sea* incident (Spain, 1992) have been submitted in criminal proceedings for a total amount of some £96 million. The 1971 Fund has paid approximately £5.2 million in compensation, and the shipowner's P & I insurer has paid some £3.2 million. In June 1997 the Court of Appeal upheld the judgement of the Criminal Court of first instance with regard to criminal and civil liability and on the claims for compensation presented in the criminal proceedings. The Courts held *inter alia* that the evidence submitted by the majority of the claimants was insufficient to substantiate the amount of the losses suffered and those claims were referred for quantification to the procedure for the execution of the Court of Appeal's judgement. There is still a high degree of uncertainty as to the total amount of the established claims. In September 1999 the Spanish Government presented a study by the Instituto Español de Oceanografía containing an assessment of losses suffered by the claimants in the fishery and mariculture sectors. Discussions are being held concerning this assessment. The 1971 Fund is considering complex issues relating to the distribution of liability and recourse arising from the Court of Appeal's judgement in respect of the civil liabilities of the parties concerned, in particular as regards the distribution of liability between the 1971 Fund and the Spanish State. It is understood that some 60 claimants have brought civil proceedings in respect of claims totalling £85 million, but the actions have not yet been served on the 1971 Fund. The question has arisen as to whether these claims are time-barred, and legal opinions on this point have been exchanged between the 1971 Fund and the Spanish Government. Discussions on the various issues are being held between the Spanish Government and the 1971 Fund.

As regards the *Braer* incident (United Kingdom, 1993), the 1971 Fund has paid approximately £40.6 million in compensation, and the shipowner's P & I insurer has paid some £4.3 million. Claims amounting to £80 million became the subject of legal proceedings in Edinburgh. The total amount of the claims presented exceeded the maximum available under the 1969 Civil Liability Convention and the 1971 Fund Convention, *viz* 60 million SDR (£50.6 million). In view of the uncertainty as regards the outstanding claims, the Executive Committee decided in October 1995 to suspend any further payments of compensation. A number of the claims have since been withdrawn and out-of-court settlements have been reached in respect of others. The claims remaining in the legal proceedings now total £27.6 million. Further claims amounting to £5.7 million have been agreed but not paid. During 1999 the Courts have rendered important judgements in respect of claims for pure economic losses in the fishery sector which had been rejected by the 1971 Fund. The Courts rejected those claims on the ground that they were claims for relational economic loss which was not admissible. In October 1999 the Executive Committee authorised the Director to make partial payments to those claimants whose claims have 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.

As regards the *Sea Empress* incident (United Kingdom, 1996) claims have been approved for a total of £16.3 million. Payments of £6.9 million have been made by the shipowner's insurer and of £9.4 million by the 1971 Fund. Further claims are being examined. The shipowner has commenced limitation proceedings. A criminal prosecution was taken against the Milford Haven Port Authority. The Port Authority pleaded guilty to one charge and no trial was held. The Port Authority was fined £4 million. The Executive Committee decided in October 1999 that the 1971 Fund should take recourse action against the Port Authority to recover the amounts paid by it in compensation.

The *Nakhodka* incident (Japan, 1997) was the first incident involving both the 1971 Fund and the 1992 Fund. Claims totalling £213 million have been received. This amount exceeds the maximum amount available from the 1971 and 1992 Funds (135 million SDR or £115 million), as a consequence of which the payments by the 1971 Fund and the 1992 Fund are currently limited to

60% of the damage suffered by each claimant. The total payments made by the 1971 Fund to claimants amount to £43.3 million and the 1992 Fund has paid £4.9 million. The shipowner and his insurer have made payments totalling £940 000. Reports published by the Japanese and Russian authorities on the cause of the incident have been analysed by the Director with the assistance of legal and technical experts. The Executive Committee has 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.

Claims totalling £7.4 million have been presented out of court in respect of the *Nissos Amorgos* incident (Venezuela, 1997). Claims have so far been approved for £3.6 million, and the settlement amounts have been paid in full by the shipowner's insurer. Claims for significant amounts, including £37 million by the Republic of Venezuela, £81 million by a fishermen's union and £75 million by fish processors, have been lodged in court. Further claims are expected.

Incidents in 1999 involving the 1992 Fund

During 1999 the 1992 Fund became involved in three incidents which have given or may give rise to claims against the 1992 Fund.

The barge *Mary Anne* carrying 711 tonnes of intermediate fuel oil sank on 22 July 1999 at the entrance to Manila Bay (the Philippines). The wreck leaked oil for several days and some oil reached the shoreline. It is unlikely that the total amount of the established claims will exceed the amount of compensation available under the 1992 Civil Liability Convention, some £2.6 million. However, the insurer has informed the 1992 Fund that it is investigating a number of apparent anomalies which, if substantiated, could put the shipowner in breach of the insurance policy. It is not known whether the shipowner is financially capable of meeting his obligations under the 1992 Civil Liability Convention.

The *Dolly*, registered in Dominica, sank in a port in Martinique on 5 November 1999, carrying some 200 tonnes of bitumen. So far, no cargo has escaped. There are fears that fishing and mariculture would be affected if bitumen escapes. The French authorities are considering what measures should be taken to prevent such an escape. The 1992 Fund has reserved its position as to whether the 1992 Fund Convention is applicable to this incident.

On 12 December 1999 the tanker *Erika*, carrying 30 000 tonnes of heavy fuel oil, broke in two in a storm in the Bay of Biscay, some 50 kilometres south of Brittany (France). The two parts of the wreck sank to a depth of some 100 metres. It is estimated that some 14 000 tonnes of oil escaped from the ship polluting over 400 kilometres of coastline, and that as much as 16 000 tonnes of oil remain in the two parts of the wreck. It is expected that the incident will give rise to claims for significant amounts for clean-up operations and operations to remove the oil from the wreck, as well as for losses in the fishery, mariculture and tourism sectors.

Incidents in previous years with outstanding claims against the 1992 Fund

As at 31 December 1999 there were three incidents (an incident in Germany (1996), the *Nakhodka* (Japan, 1997) and the *Milad 1* (Bahrain, 1998)) which occurred before 1999 which have or might give rise to claims against the 1992 Fund.

10.2 Incidents dealt with by the 1971 Fund during 1999

The following section of this Report details incidents with which the 1971 Fund has been involved in 1999. The Report sets out the developments of the various cases during 1999 and the position taken by the 1971 Fund in respect of claims. The Report is not intended to reflect in full the discussions of the Executive Committee.

Claim amounts have been rounded in this Report. The conversion of foreign currencies into Pounds Sterling is as at 30 December 1999, except in the case of claims paid by the 1971 Fund where conversions have been made at the rate of exchange on the date of payment.

VISTABELLA

(Caribbean, 7 March 1991)

While being towed, the sea-going barge *Vistabella* (1 090 GRT), registered in Trinidad and Tobago and carrying approximately 2 000 tonnes of heavy fuel oil, sank to a depth of over 600 metres, 15 miles south-east of Nevis. An unknown quantity of oil was spilled as a result of the incident, and the quantity which remained in the barge is not known.

The *Vistabella* was not entered in any P & I Club but was covered by a third party liability insurance with a Trinidad insurance company. The insurer argued that the insurance did not cover this incident. The limitation amount applicable to the ship was estimated at FFr2 354 000 (£223 000). 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 which has yet to decide on the merits of the case as regards the direct action taken by the 1971 Fund against the insurer.

HAVEN

(Italy, 11 April 1991)

The incident

The Cypriot tanker *Haven* (109 977 GRT) caught fire and suffered a series of explosions on 11 April 1991 while at anchor seven miles off Genoa. The vessel, which was carrying approximately 144 000 tonnes of crude oil, broke into three parts. A large section of the deck separated from the main structure and sank to a depth of about 80 metres. The bow section became detached and sank to a depth of about 500 metres. The remaining main part of the ship was towed into shallower water, and on 14 April, after a further series of explosions, it sank in 90 metres of water, some 1.5 miles off the coast.

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

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

Limitation proceedings

After legal action had been taken against the shipowner, the Court of first instance in Genoa opened limitation proceedings in May 1991. The Court fixed the limitation amount at LIt 23 950 220 000 (£7.7 million), which corresponded to 14 million SDR. The shipowner's P & I insurer, the United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Limited (UK Club), provided a bank guarantee for LIt 24 002 million. The 1971 Fund intervened in the limitation proceedings, pursuant to Article 7.4 of the 1971 Fund Convention.

Haven – the burning tanker
(photograph: Studio Ing Mattarelli)

The 1971 Fund lodged opposition to the Court's decision to open the limitation proceedings, challenging the shipowner's right of limitation. Corresponding oppositions were lodged by the Italian Government and some other claimants.

A large number of claims were filed in the limitation proceedings against the shipowner.

Question of time bar

The question arose of whether the majority of the claims arising out of the *Haven* incident were time-barred *vis-à-vis* the 1971 Fund. According to Article 6.1 of the 1971 Fund Convention, claims for compensation against the 1971 Fund are time-barred three years after the date when the damage occurred, unless the claimants take certain legal steps. In the *Haven* case, the three-year period expired on or shortly after 11 April 1994. A claimant can avoid the time bar as regards the 1971 Fund by bringing legal action against the Fund or by making a notification to the Fund under Article 7.6 of the 1971 Fund Convention of an action against the shipowner and/or his insurer. Only a few claimants fulfilled the requirements of Article 6.1 by notifying the 1971 Fund under Article 7.6, namely the French State, the French communes, the Principality of Monaco, a few Italian claimants, the shipowner and the UK Club.

The 1971 Fund Assembly took the view that the claims in respect of which no formal notification was made to the 1971 Fund were time-barred, in the light of the provisions in Article 6.1 of the 1971 Fund Convention. The 1971 Fund therefore took the necessary steps to preserve its right to invoke the defence of time bar against those claimants who had not notified the Fund of the action

against the shipowner or who had not taken action against the Fund within the time limit of three years.

Claims for compensation

Some 1 350 Italian claimants presented claims relating mainly to the cost of clean-up operations, damage to property and loss of income. These claims totalled approximately LIt 765 000 million (£244 million), including a claim by the Italian Government for clean-up operations for LIt 261 000 million (£84 million).

The Italian Government also presented a claim relating to damage to the marine environment. The items of this claim which were quantified by the claimant totalled LIt 883 435 million (£284 million) and related to restoration of phanerogams and damage restored by the natural recovery of the resources (sea and atmosphere). The claim contained in addition several important items where the quantification was left to the Court to decide on the basis of equity, namely the consequences of beach erosion caused by damage to phanerogams, and irreparable damage to the sea and the atmosphere. Also, the Region of Liguria, two provinces and 14 municipalities included items relating to environmental damage in their respective claims.

List of established claims ('stato passivo')

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

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

The claims in respect of which agreement on quantum had been reached at that time between the claimants and the shipowner/UK Club were admitted for the agreed amounts, since these amounts had not been challenged. The list of admissible claims established by the judge included claims totalling LIt 186 000 million (£60 million) plus interest and compensation for inflation. The judge stated that the numerous claims which were not documented could not be admitted.

As regards the claims for environmental damage, the 1971 Fund maintained the position that claims relating to non-quantifiable elements of damage to the environment could not be admitted. In its interpretation of the 1969 Civil Liability Convention and the 1971 Fund Convention, the 1971 Fund Assembly has rejected the assessment of compensation for damage to the marine environment on the basis of an abstract quantification of damage calculated in accordance with theoretical models (1971 Fund Resolution N°3 adopted by the Assembly in 1980). The Assembly has also taken the view that compensation can be granted only if a claimant has suffered a quantifiable economic loss. The judge held that the 1969 Civil Liability Convention and the 1971 Fund Convention did not exclude environmental damage. He stated that only the State of Italy was entitled to compensation for environmental damage and that consequently the local authorities had no right to such compensation. He took the view that the environmental damage could not be quantified according to a commercial or economic evaluation. He assessed this damage as a proportion (approximately 1/3) (LIt 40 000 million or £13 million) of the cost of the clean-up operations. The amount arrived at by this assessment would, in his view, represent the damage which was not repaired by these operations.

Oppositions to the 'stato passivo'

Oppositions to the judge's decision were lodged by the 1971 Fund, the Italian Government, one Italian contractor, the shipowner and the UK Club. In its opposition the 1971 Fund maintained that the judge was wrong in rejecting the defence of time bar. The Fund also lodged opposition in respect of a number of other issues, in particular the claim relating to environmental damage. The State of Italy made opposition in respect of a number of items which were not accepted in full by the judge. In particular, the State requested that compensation for environmental damage should be increased from the amount awarded by the judge, LIt 40 000 million (£13 million), to LIt 883 435 million (£284 million).

The oppositions were to be considered by the Court of first instance, composed of three judges. It would have taken several years until the Court rendered its judgement.

Method of converting (gold) francs

The amounts in the 1969 Civil Liability Convention and the 1971 Fund Convention in their original versions were expressed in (gold) francs (Poincaré francs). Under the 1969 Civil Liability Convention, the amounts expressed in (gold) francs should be converted into the national currency of the State in which the shipowner establishes the limitation fund on the basis of the 'official' value of that currency by reference to the franc on the date of the establishment of the limitation fund. In 1976 Protocols were adopted to both Conventions. Under these Protocols, the (gold) franc was replaced as the monetary unit by the Special Drawing Right (SDR) of the International Monetary Fund (IMF). The 1976 Protocol to the 1969 Civil Liability Convention entered into force in 1981, whereas the 1976 Protocol to the 1971 Fund Convention came into force in 1994, ie after the *Haven* incident.

An important legal question arose in the limitation proceedings, namely the method to be applied for converting the maximum amount payable by the 1971 Fund (900 million (gold) francs) into Italian Lire. The 1971 Fund had taken it for granted that the conversion should be made on the basis of the SDR. It was maintained by some claimants, however, that the conversion should be made by using the free market value of gold, since there was no longer any official value of gold and the 1976 Protocol to the Fund Convention which replaced the (gold) franc with the SDR was not in force.

The 1971 Fund's main argument in support of its position was that the inclusion of the word 'official' in the definition of the unit of account laid down in the original text of the 1969 Civil Liability Convention was made deliberately to rule out the application of the free market value of gold. The Fund drew attention to the fact that the judge fixed the limit of the shipowner's liability by using the SDR. The unit of account in the 1971 Fund Convention is defined by a reference to the 1969 Civil Liability Convention, and in the 1971 Fund's view this reference must be considered to refer to the Civil Liability Convention as amended by the 1976 Protocol thereto. The 1971 Fund pointed out that the application of different units of account in the 1969 Civil Liability Convention and the 1971 Fund Convention would lead to unacceptable results, particularly as regards the relationship between the portion of liability to be borne by the shipowner and the 1971 Fund, respectively, on the basis of Article 5.1 of the Fund Convention.

The judge in charge of the limitation proceedings held that the maximum amount payable by the 1971 Fund should be calculated by the application of the free market value of gold, which gave an amount of LIt 771 397 947 400 (£248 million) (including the amount paid by the shipowner under the 1969 Civil Liability Convention), instead of LIt 102 643 800 000 (£33 million) as maintained by the 1971 Fund, calculated on the basis of the SDR. After the 1971 Fund had lodged opposition, the Court of first instance (which was composed of three judges) upheld the decision.

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

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

Settlements made by the shipowner/UK Club

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

Payments made by the 1971 Fund

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

Search for a solution

Being convinced of the legal validity of the 1971 Fund's position in respect of the time bar issue, the Executive Committee, nevertheless, recognised in October 1994 that the on-going legal proceedings in Italy gave rise to some uncertainty as regards the final outcome of this matter. For this reason, and conscious of the desirability of victims of pollution damage being compensated, the Committee instructed the Director to enter into negotiations with all the parties concerned for the purpose of arriving at a global solution of all outstanding claims and issues. The Committee emphasised that such a solution must respect *inter alia* the following conditions:

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

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

These conditions were endorsed by the Assembly.

Global settlement

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

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

In April 1998 the Assembly authorised the Director to sign an agreement on a global settlement once the Bill had been approved by the Italian Parliament, provided that the agreement fulfilled the conditions for a global settlement laid down by the Assembly. He was also authorised to pay the settlement amounts referred to in the table on page 48 to the State of Italy, the French State and the Principality of Monaco. The Assembly approved, as part of a global settlement, the

payment to the UK Club of £2.5 million in respect of indemnification of the shipowner under Article 5.1 of the 1971 Fund Convention.

The Bill was approved by Parliament after some amendments, and the Act in question was promulgated by the President of the Republic on 16 July 1998. Thereafter the text of an agreement for a global settlement (a tripartite agreement) between the Italian State, the shipowner/UK Club and the 1971 Fund was elaborated. The Italian Government considered it appropriate to obtain an opinion of the Consiglio di Stato confirming the conformity of the proposed agreement with the terms of the Act. This opinion was issued in November 1998 confirming that the proposed agreement did conform with the Act, but it was considered nevertheless that certain amendments should be made to the agreement. The draft agreement was revised in December 1998 in the light of this opinion.

The tripartite agreement was signed in Rome on 4 March 1999.

Under the tripartite agreement, the parties undertook to withdraw all legal actions in the Italian courts. As regards the 1971 Fund the agreement was based on a maximum amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention of 60 million SDR. The amount to be paid by the 1971 Fund did not relate to environmental damage. The agreement provided for a payment by the shipowner/UK Club to the Italian State on an *ex gratia* basis and without admission as to the liability of any party, to the extent that the payment exceeded the balance of the limitation amount under the 1969 Civil Liability Convention.

In order to become effective, the tripartite agreement had to be approved and registered by the Court of Accounts (Corte dei Conti), and this was done on 22 April 1999.

A separate agreement between the shipowner/UK Club and the 1971 Fund on the issue of indemnification was also signed in Rome on 4 March 1999.

The payments by the shipowner/UK Club and the 1971 Fund to the Italian State were effected by means of an irrevocable letter of credit for the benefit of the State issued by a bank in Genoa. The bank was authorised to release the funds to the Italian State when documents had been presented to the bank evidencing the withdrawal of the relevant legal actions.

The withdrawal of the legal actions took place on 19 May 1999, except for the 1971 Fund's withdrawal of its appeal before the Supreme Court, which took place on 28 May 1999.

The funds under the letter of credit were released to the Italian State on 27 May 1999.

The 1971 Fund made payments of FFr12 580 724 (£1.3 million) to the French State on 17 June 1999 and of FFr270 035 (£28 000) to the Principality of Monaco on 22 June 1999.

The 1971 Fund paid indemnification of £2.5 million to the UK Club on 7 May 1999.

Further claims

Further claims were submitted in 1997 in the limitation proceedings from fishery interests in the Province of Imperia. Under the tripartite agreement, the shipowner/UK Club undertook to defend these claims and resolve them at their own risk and expense, holding the 1971 Fund harmless in the event of an unfavourable outcome in these proceedings.

In a decision dated 16 April 1999, the judge in charge of the limitation proceedings rejected these claims for procedural reasons. One group of these claimants undertook not to lodge opposition to this decision. Another group of claimants has lodged an appeal, whereas the remaining claimants have not yet taken a decision in this regard.

Financial consequences of the global settlement

The financial consequences for the 1971 Fund of the global settlement are set out below:

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

The 1971 Fund paid thus a total amount of Llt 78 693 580 000 (£26.4 million) in compensation and £2.5 million in indemnification of the shipowner.

Under the tripartite agreement the UK Club paid to the Italian State a total of Llt 47 597 370 907 (£16.5 million). This amount includes an *ex gratia* payment made without admission as to the liability of any party, to the extent that the amount exceeds the balance of the shipowner's limitation pursuant to Article V.1 of the 1969 Civil Liability Convention.

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

Criminal proceedings

Criminal action was brought in the Court of Genoa against three individuals connected with the ownership and operation of the *Haven*. The accused were acquitted by a verdict delivered in November 1997. The prosecutor appealed against the verdict. The appeals proceedings have not been completed.

Assembly in session
(photograph: John Ross)

AEGEAN SEA
(Spain, 3 December 1992)

The incident

During heavy weather, the Greek OBO *Aegean Sea* (57 801 GRT) ran aground while approaching La Coruña harbour in north-west Spain. The ship, which was carrying approximately 80 000 tonnes of crude oil, broke in two and burnt fiercely for about 24 hours. The forward section sank some 50 metres from the coast. The stern section remained to a large extent intact. The oil remaining in the aft section was removed by salvors working from the shore. The quantity of oil spilled was not known, but most of the cargo was either consumed by the fire on board the vessel or dispersed in the sea.

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

Claims handling

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

Claims for compensation

As at 31 December 1999, 1 277 claims had been received by the Joint Claims Office, totalling Pts 24 809 million (£93 million). Compensation had been paid in respect of 838 claims for a total amount of Pts 1 712 million (£8.4 million). Out of this amount, the UK Club had paid Pts 782 million (£3.2 million) and the 1971 Fund Pts 930 million (£5.2 million).

Claims totalling some Pts 24 730 million (£92 million) were submitted to the Criminal Court of first instance in La Coruña. These claims correspond to a great extent to those presented to the Joint Claims Office.

It is understood that some 60 claims have been brought against the shipowner, the UK Club and the 1971 Fund in a Civil Court in La Coruña by a number of companies and individuals, principally in the mariculture sector, who did not submit any claims in the criminal proceedings but who indicated in those proceedings that they would present their claims at a later stage in civil proceedings. It is also understood that the total amount of these claims is Pts 22 000 million (£82 million). The 1971 Fund has not been notified of these claims.

Shipowner's right of limitation

In 1992 the Criminal Court ordered the shipowner to constitute a limitation fund and fixed the limitation amount at Pts 1 129 million (£4.2 million). The limitation fund was constituted by means of a bank guarantee provided by the UK Club for the amount set by the Court.

Level of provisional payments

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

Criminal proceedings in La Coruña

Criminal proceedings were initiated in the Criminal Court of first instance in La Coruña against the master of the *Aegean Sea* and the pilot in charge of the ship's entry into the port of La Coruña. The Court considered not only the criminal aspects of the case but also the claims for compensation which had been presented in the criminal proceedings against the shipowner, the master, the UK Club, the 1971 Fund, the owner of the cargo on board the *Aegean Sea* and the pilot.

In a judgement rendered in April 1996 the Criminal Court held that the master and the pilot were both liable for criminal negligence. They were each sentenced to pay a fine of Pts 300 000 (£1 120). The master, the pilot and the Spanish State appealed against the judgement, but the Court of Appeal upheld the judgement on 18 June 1997.

Distribution of liabilities and questions relating to recourse

The Criminal Court of first instance and the Court of Appeal held that the master of the *Aegean Sea* and the pilot were directly liable for the incident and that they were jointly and severally liable, each of them on a 50% basis, to compensate victims of the incident. It was also held that the UK Club and the 1971 Fund were directly liable for the damage caused by the incident and that this liability was joint and several. In addition, the Courts held that the owner of the *Aegean Sea* and the Spanish State were subsidiarily liable.

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

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

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

On 9 June 1999 the Spanish Ambassador in London and the Director signed a new agreement under which the Spanish State undertook not to invoke the time bar if the recourse action against the Spanish State was taken before 12 June 2000. In a letter to the Director, the Spanish Ambassador stated that Spain recognised that the agreement applied provisionally from the date of signature but that it would enter into force when Spain informed the 1971 Fund that all the procedures required under Spanish law had been complied with. In the letter it was stated that the provisional application of the agreement would terminate if Spain did not notify the Fund before 12 May 2000 that all these procedures had been complied with, or if Spain notified the Fund before that date that these procedures would not be complied with. In the letter it was further stated that

Spain undertook in case of termination of the provisional application not to invoke the time bar if the Fund took recourse action against Spain within 30 days of 12 May 2000 or, where applicable, of the receipt of such notification.

The Courts' decisions in respect of claims for compensation

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

The Courts found that six claims totalling Pts 840 million (£3.1 million) were substantiated by acceptable evidence. Four of these claims related to clean-up operations or preventive measures and two belonged to the fishery sector. All other claims in the fishery sector were referred to the procedure for the execution of the judgement.

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

Execution of the Court of Appeal's judgement

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

The 1971 Fund was notified in September 1997 of a decision, issued by the judge in charge of the execution of the judgement of the Court of Appeal, ordering the master of the *Aegean Sea* and the pilot to pay the fines in accordance with the judgement of the Court of first instance which had been upheld by the Court of Appeal. This decision also ordered the two defendants who had been held directly liable, namely the UK Club and the 1971 Fund, to pay the claimants the amounts of compensation awarded by the judgement as modified by the Court of Appeal.

Although the enforceability of judgements rendered by national courts was recognised in the 1971 Fund Convention, the Executive Committee considered at its session in October 1995 that, in view of the provisions of Article 8, the Convention also provided that such enforcement could be subject to a decision of the Assembly or of the Executive Committee under Article 18.7 concerning the distribution of the total amount available for compensation under the 1969 Civil Liability Convention and the 1971 Fund Convention. In view of the high degree of uncertainty as to the total amount of the established claims, both as regards many of the claims covered by the judgements and as regards the claims presented in the civil proceedings, the Executive Committee decided that payments to the claimants who had been awarded a specific amount in the judgements should be limited to 40% of the respective amounts so awarded. The Committee confirmed this decision in October 1999.

The UK Club appealed against the September 1997 decision on various grounds. The Court of Appeal rejected the UK Club's appeal on the ground that the judgement rendered by it on 18 June 1997 was final. Once the parties involved in the appeal proceedings have been notified of the Court of Appeal's decision, the judge will execute the judgement against those parties held liable by the judgement of the Court of Appeal.

On 5 October 1999 the Court in charge of the procedure for the execution of the judgement served the 1971 Fund with pleadings submitted by eight out of the ten groups of claimants concerned. In these pleadings the claimants indicated the evidence which they intended to submit to the Court at a later stage to prove their losses and the evidence which they requested the Court to obtain on their behalf. The Court gave the 1971 Fund ten days to notify the Court of any evidence it intended to rely upon during the execution of the judgement procedure.

The only evidence submitted with the pleadings was two reports, prepared by an expert appointed by the Court, on losses suffered by two fish wholesalers and a certificate issued by the Regional Government of Galicia (Xunta de Galicia) indicating the amount of the losses suffered by shellfish harvesters affected by the *Aegean Sea* incident. The experts engaged by the UK Club and the 1971 Fund are examining this documentation. The 1971 Fund requested the Court to suspend the proceedings since the evidence referred to in the pleadings was incomplete. On 11 October 1999 the judge issued an order extending the period for the Fund's submission of its pleadings until three months had elapsed from the date when the claimants had submitted the necessary evidence.

Determination of the maximum amount payable by the 1971 Fund

During the hearing in the Criminal Court of first instance, a number of claimants raised the issue of the method to be applied for converting into Spanish Pesetas the maximum amount payable under the 1969 Civil Liability Convention and the 1971 Fund Convention which was expressed in (gold) francs (Poincaré francs). Those claimants maintained that the amount should be converted using the free market value of gold, instead of on the basis of the Special Drawing Right (SDR), since the 1976 Protocol to the Fund Convention which replaced the franc as the unit of account by the SDR of the International Monetary Fund had not entered into force at the time of the *Aegean Sea* incident.

In the hearing the 1971 Fund maintained that the conversion should be made on the basis of the SDR, and invoked mainly the same reasons as it had used in the court proceedings in the *Haven* case (cf page 45).

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

The Executive Committee has expressed the view that it would be difficult to apply the Court of Appeal's judgement if some claimants were to choose to have the maximum amount converted into Pesetas on the basis of the Poincaré franc, while others chose conversion on the basis of the SDR. Conversion on the basis of the Poincaré franc would have to be done using the last official value of gold in Spain, ie that of 19 November 1967, since there is no longer an official value of gold. Converting 900 million (gold) francs into Pesetas on that basis would give Pts 4 179 105 000 (£15.6 million). A conversion based on the value of the SDR on the date of the constitution of the shipowner's limitation fund, on the other hand, would give Pts 9 513 473 400 (£35.6 million).

Question of time bar

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

A number of claimants in the fishery and aquaculture sectors filed criminal accusations against four individuals. These claimants did not submit claims for compensation in those proceedings, but only reserved their right to claim compensation in future proceedings (ie in civil proceedings to be brought at a later date after the completion of the criminal proceedings) without any indication of the amounts involved. These claimants neither brought legal action against the 1971 Fund within the prescribed time period, nor notified the 1971 Fund of an action for compensation against the shipowner or the UK Club. In December 1995 the Executive Committee, recalling that it had previously decided that the strict provisions on time bar in the 1969 Civil Liability Convention and the 1971 Fund Convention should be applied in every case, took the view that these claims should be considered time-barred *vis-à-vis* the 1971 Fund.

During 1998 and 1999 the Spanish Government and the 1971 Fund exchanged legal opinions on the issue.

The opinions presented by the Spanish Government were given by the Legal Department of the Ministry of Public Administrations, by a Spanish law firm and by four professors at the Universidad Carlos III in Madrid. The opinions obtained by the Spanish Government concluded that the actions brought against the 1971 Fund in the Civil Court were not time-barred. The main reason for this conclusion was that under Spanish law criminal proceedings suspended the running of prescription periods and that therefore the three-year periods of prescription established by the 1969 and 1971 Conventions must be calculated from the day when the final judgement in the criminal proceedings was rendered, ie from 18 June 1997. In the opinion by the four professors it was stated that the Spanish translation of the term 'shall be extinguished' in the 1969 Civil Liability Convention used the word 'prescribirán' and that the translation of the same term in the 1971 Fund Convention used the term 'caducarán'. They stated that in view of this contradictory terminology, it must be found that both Conventions contemplated periods of prescription ('prescripción'). In their view, the criminal proceedings had the effect of interrupting the period of prescription and that therefore this period had not started to run. The professors expressed the view that if not interrupted by the criminal proceedings, which in effect they were, these periods were interrupted by the contacts and negotiations which had taken place between claimants and the Joint Claims Office, which could be considered as recognition of debts.

The 1971 Fund obtained opinions by a former Spanish Supreme Court judge and by two law professors and practising lawyers. The conclusion in these opinions was that the claims in question were extinguished and thus time-barred. The two professors made the point that the actions for compensation referred to in the time bar provision were individual actions and that these actions had to be brought within three years from the date when the damage occurred. In their view the time bar provisions were provisions of substantive law and not procedural, and provisions of substantive law took precedence over procedural law. All three authors stated that under the Spanish Constitution and the jurisprudence of the Spanish Supreme Court international treaties took precedence over domestic law and that for this reason the conflict must be resolved in accordance with the provisions of the Conventions. They expressed the view that claimants who had only reserved their right to

claim compensation in future proceedings (ie civil proceedings to be brought at a later date after completion of the criminal proceedings) were time-barred because the reservation of the right to bring an action at a later date could not be considered as an individual legal action in accordance with Article 6.1 of the 1971 Fund Convention.

In the light of the differing views expressed in the various legal opinions, the Committee agreed with the Director in October 1999 that the very complex issues relating to time bar should be discussed further with the Spanish Government and instructed him to continue those discussions.

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 (£9.3 million) for shellfish harvesters and fishermen. This credit facility was set up through a Spanish State-owned bank. In October 1998 the Committee was informed that the Spanish Government had decided to increase the credit facility to a maximum of Pts 22 500 million (£84 million).

Search for a mechanism for progress towards solving the outstanding issues

In February 1998 the Executive Committee considered that it was necessary to find a mechanism which would enable progress to be made towards solving the outstanding issues so that claimants could be paid as soon as possible, respecting the basic principles of the Conventions and the principles of the admissibility of claims laid down by the Assembly and the Executive Committee, including the requirement for a claimant to submit evidence to substantiate his losses. To this end, and within the framework of these principles, a Consultation Group composed of representatives of six delegations to the Executive Committee was set up to assist the Director in his search for solutions.

On the Director's initiative, several meetings were held in Madrid with representatives of the Spanish Government, at which there was a constructive exchange of views concerning the main problems which had prevented progress from being made.

In September 1999 the Spanish Government presented a study carried out by the Instituto Español de Oceanografía containing an assessment of the losses suffered by fishermen and shellfish harvesters and by claimants in the mariculture sector. Extensive documentation containing evidence of the losses suffered by companies in the mariculture sector was submitted. The Institute had assessed the losses by fishermen and shellfish harvesters at between Pts 4 110 million (£15 million) and Pts 4 731 million (£18 million) and the losses in the mariculture sector at Pts 8 329 million (£31 million).

In October 1999 the Executive Committee considered that the 1971 Fund should focus its efforts on an examination of the documentation presented by the Spanish Government in support of the claims in the fishery and aquaculture sectors, the distribution of liabilities between the Spanish State and the shipowner/UK Club/1971 Fund and the legal issue relating to time bar. The Committee instructed the Director to pursue his discussions with the Spanish Government with the objective of reaching a global agreement which would settle all outstanding issues. It was noted that any such agreement would have to cover all parties involved, including the shipowner and the UK Club.

A meeting was held in Madrid in December 1999 for a first discussion of the technical assessment in the Institute's report. The 1971 Fund thereafter made written observations on the report. It is expected that further meetings will be held early in 2000.

Possible suspension of the legal proceedings

Discussions were held between the various parties involved on a provisional suspension of the legal proceedings before the courts in order to facilitate the negotiations between the Spanish Government and the 1971 Fund.

In April 1999 the Executive Committee authorised the Director to agree with the claimants to request the courts to suspend the legal proceedings, provided that the Director, after consultation with the 1971 Fund's lawyer, was of the view that such a suspension would not prejudice the Fund's position. No agreement has been reached between the claimants and the 1971 Fund on this point.

BRAER

(United Kingdom, 5 January 1993)

The incident

The Liberian tanker *Braer* (44 989 GRT) grounded south of the Shetland Islands (United Kingdom). The ship eventually broke up, and both the cargo and bunkers spilled into the sea. Due to the prevailing heavy weather, most of the spilt oil dispersed naturally, and the impact on the shoreline was limited. Oil spray blown ashore by strong winds affected farmland and houses close to the coast.

The United Kingdom Government imposed a fishing exclusion zone covering an area along the west coast of Shetland which was affected by the oil, prohibiting the capture, harvest and sale of all fish and shellfish species from within the zone. The ban was lifted in stages for various species, with the exception of mussels and Norway lobsters, for which the ban remains in force.

Claims settled out of court

As at 31 December 1999 some 2 000 claims for compensation had been paid, wholly or partly, for a total amount of approximately £44.9 million. Out of this amount the 1971 Fund had paid some £40.6 million and the shipowner's P & I insurer, Assuranceföreningen Skuld (Skuld Club), some £4.3 million. In addition, claims amounting to £5.7 million had been accepted as admissible but had not yet been paid.

Court proceedings

General situation

Claims against the 1971 Fund became time-barred on or shortly after 5 January 1996. By that date some 270 claimants had taken action in the Court of Session in Edinburgh against the shipowner, the Skuld Club and the 1971 Fund. The total amount claimed was approximately £80 million.

By the end of 1999 a number of claims had been withdrawn from the legal proceedings. A number of the claims in court had been settled for a total amount of £4.3 million. The 101 claims remaining in the legal proceedings total £27.6 million.

The court actions relate mainly to claims for reduction in the price of salmon, loss of income in the fishing and fish processing sector, personal injury and damage to asbestos cement roof coverings. The majority of these claims were rejected by the 1971 Fund on the basis of decisions taken by the Executive Committee, or because the claimants had not presented sufficient supporting evidence. Some claimants, eg the United Kingdom Government and a number of fishermen, took legal action to preserve their right to make it possible to continue discussions for the purpose of arriving at out-of-court settlements.

Most of the claimants did not include in their original court action sufficient details of the alleged losses to enable the 1971 Fund to assess the validity of their claims.

Smolt supplier

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

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

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

In a decision reached in November 1997 the Court of Session agreed with the position of the shipowner, the Skuld Club and the 1971 Fund that, although the statutory provisions imposed liability for pure economic loss, there was nothing in the provisions to suggest that the limitations upon the recoverability of economic loss in general law were to be displaced. The Court stated that Landcatch's primary argument would extend the scope of statutory liabilities in the case beyond any reasonable limit and beyond any limit which Parliament could have contemplated. It was also stated that although the purpose of the 1971 Fund was to provide full compensation to victims, the Fund's liability was limited. The Court stated that this suggested that the 1971 Fund was to compensate proximate claimants and not remote claimants. In conclusion the Court held that the liability for pure economic loss could be satisfactorily interpreted to mean a liability for such loss where it was directly caused by the contamination in accordance with the established principles of Scots law.

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

Landcatch's main argument in the appeal proceedings was that common law principles of remoteness could not be applied, that the Merchant Shipping Acts did not place any restriction on the liability of the shipowner, and that it was therefore enough for Landcatch to establish that if the incident had not occurred, Landcatch would not have suffered the losses (the 'but for' argument). Landcatch also argued that the Court should take the 1971 Fund's practice into consideration and that the Court should arrive at an interpretation consistent with the Fund's criteria for admissibility under which the claim was admissible. In addition Landcatch maintained that there was such a close relationship between Landcatch and the Shetland salmon farming industry that Landcatch would necessarily be affected by the oil spill.

The Appeal Court unanimously rejected all these arguments. The Court took the view that the 'but for' argument, if accepted, would open up a limitless chain of even more remote claims. The Court held that the Merchant Shipping Acts did not cover secondary or relational claims. One of the three judges stated that accepting the 'but for' argument would cause a dramatic change in the law both in the United Kingdom and in many other Contracting States. The Court did not consider it proper to treat the criteria and decisions of the Fund as an aid to interpreting United Kingdom

legislation. Finally the Court rejected Landcatch's argument that there was a close relationship between Landcatch and the Shetland economy which would entitle Landcatch to recover relational economic loss.

Although Landcatch was entitled to appeal to the House of Lords, Landcatch decided not to do so.

Salmon price damage claims

A number of salmon farmers have maintained that the price of Shetland farmed salmon sold from outside the exclusion zone was depressed for a period of at least 30 months as a result of the incident and claimed compensation for the losses from such price depression. The shipowner, the Skuld Club and the 1971 Fund concluded, on the basis of advice from their experts, that there was a fall in the relative price of Shetland salmon for six months following the *Braer* incident, and the Fund - with the agreement of the shipowner and the Skuld Club - paid compensation totalling £311 600 to a number of claimants on that basis, but further compensation for the period thereafter was rejected.

Further claims in this category amounting to £11.3 million became the subject of legal proceedings.

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

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

In a judgement rendered in December 1998 the Court of Session took the view that the factors advanced by the claimant did not provide any material ground for distinction between the case under consideration and the Landcatch case. The Court pointed out that all that had happened was that damage to other parties' property had caused the claimant to suffer economic loss. The Court held that the salmon farmer's claim was no more than one for relational economic loss, similar to that of Landcatch which had been rejected by the Court in a previous judgement. The fact that the 1971 Fund had made interim payments to the claimant was in the Court's view irrelevant. Accordingly, the claim was dismissed.

The claimant appealed against the judgement but has recently indicated that the appeal will be withdrawn.

Claim by P & O Scottish Ferries Ltd

In 1995 the Executive Committee considered a claim for £900 000 submitted by P & O Scottish Ferries Ltd for alleged loss of income from its ferry service between Aberdeen and Shetland as a result of a reduction in the number of tourists visiting the Shetland Islands and a reduction in the volume of freight. P & O Scottish Ferries Ltd, whose main office is in Aberdeen, is the only operator of passenger ferries between Shetland and the United Kingdom mainland (Aberdeen).

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

The company took legal action against the shipowner and the Skuld Club, and notified the 1971 Fund of the actions, claiming compensation for an amount of £900 000, subsequently reduced to £680 000. The company argued that the Court had been mistaken in the decision in the Landcatch case, where it was held that claims for relational economic loss were not admissible. The company further maintained that this case was distinguishable from the Landcatch case and salmon price damage case in that there was sufficient proximity between the company and the contamination to establish liability. The shipowner, the Skuld Club and the 1971 Fund maintained that this case was one concerning relational economic loss, that the damage covered by the claim was too remote and that the action should therefore be dismissed.

In a judgement rendered on 7 January 1999 the Court of Session accepted the arguments advanced by the shipowner, the Skuld Club and the 1971 Fund and dismissed the actions. The Court considered *inter alia* that the losses were not a direct consequence of the oil spill but were no more than an indirect consequence of the adverse publicity affecting the image of Shetland as a source of fish and fish products and as a holiday destination, and that the adverse publicity was in its turn a consequence of the contamination of other parties' property.

The company appealed against the Court of Session's decision but has recently indicated that the appeal will be withdrawn.

Fish processors' claims

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

Six claims submitted by fish processors totalling £7.7 million are pending in court. The claims relate to losses allegedly suffered as a result of a reduction in the processing of certain types of fish and shellfish during the period 1993 - 1995.

A meeting took place in early December 1998 with representatives of some of the claimants and a representative of the 1971 Fund, together with their respective legal advisers and experts. The purpose of this meeting was to determine whether the claimants had any more evidence to substantiate their claims in order to allow the Fund to review its assessment of these claims. The claimants and their advisers indicated that they did have evidence to support the claims, but that they had so far only presented the minimum amount of information, since preparation of all of the evidence would be time consuming. They stated that this work would not be done until after there had been a debate and an ensuing court decision as to the admissibility of the claims.

A hearing was scheduled in the Court of Session during May 1999 for a legal debate on the admissibility of these claims. At the request of the claimants, however, the hearing was postponed pending Landcatch's decision on whether or not to appeal to the House of Lords. The hearing is scheduled to take place in June 2000.

Smolt purchaser

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

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

In September 1998 the Court rejected the argument of the shipowner, the Skuld Club and the 1971 Fund and decided that the matter could not be resolved purely as a matter of law and that evidence had to be presented as to whether the company was entitled to compensation and, if so, to what extent. After a detailed examination of the judgement, the shipowner, the Skuld Club and the 1971 Fund decided not to pursue an appeal against the Court's decision. This claim is to be the subject of a hearing on the facts in September 2000.

Adverse health effects

A claimant took legal action against the shipowner, the Skuld Club and the 1971 Fund for £250 000 alleging that he had suffered adverse health effects as a result of contamination following the grounding of the *Braer*. He maintained that he had suffered stress, anxiety and depression as a result of pollution damage to livestock, fields and crops owned by a partnership of which he was a partner. At a preliminary hearing on admissibility, it was argued by the shipowner, the Skuld Club and the Fund that the alleged stress and depression were not damage caused by contamination or pollution damage in terms of the statutory provisions which implement the 1969 Civil Liability Convention and the 1971 Fund Convention into United Kingdom law. It was accepted by the shipowner, the Skuld Club and the Fund that damage for the purposes of the legislation could include physical injury.

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

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

that he no longer wished to proceed with his claim. The appeal hearing therefore did not take place, and the legal action was withdrawn.

Legal action by a fish sales company

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

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

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 34 claims totalling £5.1 million were withdrawn. No satisfactory technical evidence has been presented in support of these claims which were originally based on the assumption that the alleged damage was caused by oil. The claimants' expert now hypothesises, however, that the active component present in the dispersants used to treat the oil was the cause. The 1971 Fund's experts do not consider that the report of the claimants' expert provides satisfactory evidence that the dispersants caused the alleged damage.

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

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

At the conclusion of the hearing the Court indicated that it wished to receive written submissions from the lawyers for the parties on the issues raised in the evidence. Following receipt of the submissions an oral hearing was held in December 1999. The final hearing will take place in January 2000.

Right of limitation of the shipowner and his insurer

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

In 1996 the Executive Committee decided that the 1971 Fund should not challenge the shipowner's right of limitation or take legal action against him or any other person to recover the amounts paid by the 1971 Fund in compensation.

Suspension of payments

In October 1995 the Executive Committee took note of the total amount of the claims presented so far and noted that a number of claimants intended to bring legal actions against the shipowner, the Skuld Club and the 1971 Fund. The Committee decided to suspend any further payments of compensation until the Committee had re-examined the question of whether the total amount of the established claims would exceed the maximum amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention, *viz* 60 million SDR. The suspension of payments is still in operation.

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.

So far, the total amount paid in compensation is £44 959 834 out of which the 1971 Fund has paid £40 640 278 and the Skuld Club has paid £4 319 556. There is, therefore, £5.6 million available for payments in respect of the remaining claims. As mentioned above claims totalling £5.7 million have been approved but not paid.

The claims pending in court total £27.6 million.

At the Executive Committee's October 1999 session the United Kingdom delegation reminded the Executive Committee that many claims had been approved since the suspension of payments and that some of these claims had remained unpaid for some four years. This delegation stated that as the uncertainties surrounding the claims which were the subject of legal proceedings became clarified, and once the maximum amount of the 1971 Fund's exposure could be established, then a partial payment of the approved claims should be made.

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.

Erika – clean-up at sea
(photograph: Marine Nationale)

KEUMDONG N°5

(Republic of Korea, 27 September 1993)

The incident

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

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

Claims for compensation

Claims relating to the cost of clean-up operations were settled at an aggregate amount of Won 5 600 million (£2.5 million) and were paid by the shipowner's P & I insurer, the Standard Steamship Owners' Protection and Indemnity Association (Bermuda) Ltd (Standard Club), by September 1994. The total amount paid by the insurer by far exceeds the limitation amount applicable to the *Keumdong N°5*, Won 77 million (£53 000). The 1971 Fund made advance payments to the insurer totalling US$6 million (£4 million) in respect of these subrogated claims.

The incident affected fishing activities and the aquaculture industry in the area. Claims for compensation were submitted by the Kwang Yang Bay Oil Pollution Accident Compensation Federation, representing 11 fishery co-operatives with some 6 000 members in all. The total amount of the claims presented was Won 93 132 million (£51 million).

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

Legal actions

Claims by Yosu Fishery Co-operative

The Yosu Fishery Co-operative left the Kwang Yang Bay Federation and took legal action against the 1971 Fund in May 1996. Claims for damage to the common fishery grounds totalling Won 17 162 million (£9.4 million) were filed in court. In addition, claims totalling Won 1 641 million (£900 000) were submitted by over 900 individual members of this co-operative (fishing boat owners, set net fishing licence holders or onshore fish culture facility operators).

The experts engaged by the 1971 Fund and the Standard Club assessed the losses allegedly suffered by all the claimants of the Yosu Co-operative at Won 810 million (£440 000). The experts considered that the alleged productivity of the common fishery grounds was exaggerated and inconsistent with official records and field observations, and that the interruption of business was significantly shorter than that alleged by the claimants. The loss of earnings claimed by the fishing boat and set net operators was considered too high in the light of an analysis of information provided by the claimants concerning their normal fishing activity, and certain claims related to losses suffered outside the area affected by the oil. The operators of the fish culture facilities did not provide evidence that the alleged losses were caused by the oil spill.

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

The Court rendered a compulsory mediation decision in early December 1998. The Court accepted most of the 1971 Fund's arguments, but decided that the compensation for unregistered and unlicensed fishing boat claimants should be calculated in the same way as for registered and licensed claimants. Although the Court did not give a detailed explanation for its decision, it stated that income from business prohibited by law was not necessarily an illegal income which was inadmissible for compensation. The Court stated that when deciding on the admissibility of claims the Court should take into account, on a case by case basis, the original purpose of the law in question, the degree of blameworthiness of the claimant and the degree of illegality of the act. In the Court's view the income of unlicensed fishermen in this case did not appear to be illegal income. The Court awarded the unlicensed fishing boat claimants Won 65 million (£35 600).

The position taken by the Court in the mediation decision was at variance with the policy adopted by the 1971 Fund, ie that claims for loss of income by fishermen operating without a required licence were inadmissible. The 1971 Fund therefore lodged an opposition to the Court's mediation decision.

In a judgement rendered in January 1999 the 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 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 both loss of earnings and pain and suffering (condolence money) in respect of common fishing grounds and intertidal culture farms, for loss of earnings only in respect of fishing vessels and for pain and suffering only in respect of cage culture farms, one onshore aquarium and one onshore hatchery.

In the case of common fishing grounds and intertidal culture farms, the Court awarded damages for loss of earnings as a result of business interruption caused by the clean-up operations and by the smell of oil. In calculating the losses the Court applied the same business models and used the same annual productivity data as the 1971 Fund's experts had applied in assessing the claims in respect of common fishing grounds and intertidal culture farms. Consequently, the amount assessed by the Court in respect of loss of earnings (Won 546 million (£300 000)) is very close to the amount assessed by the 1971 Fund's experts (Won 521 million (£285 000)).

In the case of the unlicensed fishing vessels the Court applied the same business models and profit per day per ton of vessel that the 1971 Fund's experts had used to assess claims in respect of licensed vessels.

The Court held that the common fishing grounds and intertidal culture farms must also have suffered damage due to mortality, growth retardation, migration of stock and decreased sales. However, due to insufficient evidence of the quantum of the damage, the Court was unable to assess the amount of the damage. The Court therefore awarded compensation for pain and suffering. In determining the compensation for pain and suffering the Court again used the same annual productivity data as had been used by the 1971 Fund's experts to determine business interruption losses in respect of common fishing grounds and intertidal culture farms. The Court took into account all the evidence presented, including the assessments of other claims made by the 1971 Fund, and the degree of evidence of the damage, although no details were given in the judgement of how these factors were taken into account. The Court specified amounts of compensation for pain and suffering (condolence money) which corresponded to about 10% of the annual production of common fishing grounds and about 8.4% of the annual production of intertidal culture farms.

The Court held that a number of caged culture farms, one onshore aquarium and one onshore hatchery must also have suffered damage due to mortality of stock, retardation in growth and decreased sales. In the absence of any supporting evidence or any fixed standard to determine such losses, the Court awarded compensation for pain and suffering varying from Won 1 million (£548) to Won 5 million (£2 740). No details were given in the judgement as to how these sums were determined.

In addition, the Court decided that the 1971 Fund should pay interest on the awarded amounts, calculated at 5% per annum from 27 September 1993 to 26 January 1999 and at 25% per annum from 27 January 1999 to the date of payment. The Court decided that the claimants should bear 9/10 and the 1971 Fund 1/10 of the legal costs that were incurred by the plaintiffs and the 1971 Fund.

Claims by an arkshell fishery co-operative

An arkshell fishery co-operative brought legal action against the 1971 Fund in respect of a claim for Won 4 160 million (£2.3 million). The claim related to damage allegedly caused during 1994 to the arkshell cultivation farms of its members. This claim was rejected by the 1971 Fund and

the Standard Club because there was no evidence that the alleged damage was caused by oil pollution.

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

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

As for the arkshell hatcheries, the Court accepted that the oil spill had a negative effect on seedlings but rejected the claims as presented due to lack of supporting evidence. The Court held that the clean-up costs accepted by the 1971 Fund for these facilities should be regarded as property losses and that compensation for pain and suffering should be awarded instead of compensation for unquantifiable losses due to mortalities and growth retardation.

The Court determined the amount of compensation for pain and suffering in respect of arkshell culture farms and hatcheries on the basis of statistics provided to the Court by the 1971 Fund on the national average arkshell production between 1988 and 1992 and the average price of arkshell between April and June 1994. The amounts of compensation for pain and suffering were calculated on the basis of the distance between the culture farms and the incident site, with the amounts ranging between 5% and 10% of the average annual production. The two arkshell hatcheries were awarded Won 10 million (£5 480) each plus the clean-up costs admitted by the 1971 Fund, Won 6.3 million (£3 450). The Court made the same decision in respect of interest and costs as for the claims by the Yosu Fishery Co-operative.

Appeals by the claimants and the 1971 Fund

All the claimants belonging to the Yosu Fishery Co-operative, with the exception of one Village Fishery Association, have appealed against the judgement. Their total claimed amount is indicated in the appeal at Won 13 868 million (£7.6 million).

Although all the arkshell culture farms accepted the judgement, two arkshell hatcheries appealed against it and the total amount claimed in the appeal is Won 359 million (£197 000).

The 1971 Fund has lodged appeals against the Court's judgements in respect of the Yosu Fishery Co-operative and the arkshell fishery co-operative on the question of facts, since the Fund's experts had expressed the view that, apart from business interruptions to the activities of common fishing grounds, intertidal culture farms and fishing vessels, there was no evidence that the oil or the dispersants used to combat the spill had caused any damage.

The 1971 Fund has also appealed against the decisions to allow compensation for 'pain and suffering' or 'condolence money', since it has consistently taken the position that compensation is payable under the 1969 Civil Liability Convention and the 1971 Fund Convention only for economic losses actually suffered.

The Court granted provisional enforcement of the judgement. In connection with its appeals the 1971 Fund requested a stay of the provisional enforcement. Under Korean law the Court has the discretion to grant such a stay, but in order for a request for stay to be granted, the defendant has to make a deposit with the Court of the amount awarded to the plaintiff.

In accordance with requirements under Korean law, the Fund deposited with the Court Won 1 571 million (£795 000) in respect of the Yosu Fishery Co-operative claims and Won 474 million (£240 000) in respect of the arkshell fishery co-operative claims, corresponding to the amounts awarded by the first instance Court. The Court subsequently granted a stay of the provisional enforcement.

Several hearings have been held in the Seoul Appellate Court. It is expected that the hearings will continue at approximately monthly intervals until the parties have presented all their evidence. The Appellate Court granted a request by the 1971 Fund for the claimants to produce various sales records in respect of the arkshell fishery co-operative and common fishing grounds within the area of the Yosu Fishery Co-operative.

The 1971 Fund has presented technical opinions on the first instance Court's judgement and further evidence in support of the Fund's opposition to the claims.

Limitation proceedings

The shipowner made an application to the competent district court that limitation proceedings should be opened. The Standard Club paid the limitation amount plus interest, corresponding to Won 77 million (£33 000), in cash to the Court in December 1994. The limitation fund was distributed to the claimants and the limitation proceedings were concluded in August 1995.

ILIAD

(Greece, 9 October 1993)

The Greek tanker *Iliad* (33 837 GRT) grounded on rocks close to Sfaktiria island after leaving the port of Pylos (Greece). The *Iliad* was carrying about 80 000 tonnes of Syrian light crude oil, and some 200 tonnes was spilled. The Greek national contingency plan was activated and the spill was cleaned up relatively rapidly.

In March 1994 the shipowner's P & I insurer established a limitation fund amounting to Drs 1 496 533 000 (£2.8 million) with the competent court by the deposit of a bank guarantee. One claimant took legal action to challenge the shipowner's right to limit his liability. The Court of first instance rejected this action. The claimant appealed against that decision but the appeal was rejected.

The Court decided that claims should be lodged by 20 January 1995. By that date, 527 claims had been presented, totalling Drs 3 071 million (£5.8 million) plus Drs 378 million (£712 000) for compensation of 'moral damage'.

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

Claims against the 1971 Fund in respect of this incident became time-barred on or shortly after 9 October 1996. With the exception of an owner of a fish farm, the shipowner and the P & I

insurer who have claims totalling Drs 1 339 million (£2.5 million), the claimants failed to take action against the 1971 Fund or to notify the Fund formally of an action brought against the shipowner and his insurer.

The shipowner and his insurer have taken 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.

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

Level of the 1971 Fund's payments

In view of the fact that the aggregate amount of the claims presented or indicated greatly exceeded the maximum amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention, the Executive Committee decided in December 1995 that the 1971 Fund's payments should be limited to 25% of the established damage suffered by each claimant. In June 1997 the level of the 1971 Fund's payments was increased to 50%.

By the beginning of March 1998 nearly all the outstanding claims in the fishery sector and tourism sector had been settled on the basis of the method of assessment used by the 1971 Fund's experts, and the amount of the shipowner's claim for the costs of the measures to remove the ship and related operations had been clarified. In view of these developments, and as authorised by the Executive Committee, the Director decided that the 1971 Fund should pay all settled claims in full (to the extent that they had not already been paid).

Claims for compensation

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

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

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

In April 1998 the shipowner filed two additional claims with the limitation court, one for the cost of post-spill environmental studies for Won 1 140 million (£624 000) and the other for costs totalling Won 135 million (£73 900) associated with additional clean-up undertaken by the shipowner in early 1998. Both the studies and the clean-up related to the spills from both the *Sea Prince* and the *Honam Sapphire* incidents (see page 75).

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

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

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

All claims in the tourist sector have been settled for Won 538 million (£276 000) and paid in full.

Almost all of the claims in the fisheries sector have also been settled and paid in full in the amount of Won 17 000 million (£9.4 million). The most important fishery claims for which settlement agreements have not been reached are those relating to caged fish submitted by members of a Fishery Co-operative Association, for a total of Won 1 181 million (£650 000). These claims were assessed by the 1971 Fund's experts for a total of Won 148 million (£81 000).

In February 1999 a Village Fishery Association and 506 other individual claimants filed claims against the 1971 Fund demanding Won 500 000 (£275) for each fisherman. The basis of the claims was not made clear by the plaintiffs, since many of them had already settled before the action was commenced. However, some of the plaintiffs are those whose claims were rejected by the 1971 Fund and the limitation Court.

The UK Club presented a claim on the basis of subrogation for US$8.3 million (£5.1 million) relating to the cost of measures associated with the work carried out under the contracts related to salvage, maintenance of the wreck and wreck removal and pollution prevention. The UK Club provided various documents relating to these operations, including a report by its experts on the apportionment of costs between salvage/wreck removal and pollution prevention. After the 1971 Fund's expert had examined the supporting documents, the claim was settled at US$6.6 million (£4.1 million). This claim has not yet been paid.

Limitation proceedings

The limitation amount applicable to the *Sea Prince* is 14 million SDR, corresponding to Won 24 000 million (£13.0 million) at the exchange rate applicable on 30 December 1999. The limitation fund has not yet been constituted and the limitation amount in Won has therefore not yet been fixed.

The competent district court issued an order for the commencement of limitation proceedings and decided that all claims should be filed by 28 August 1996. By that date claims totalling Won 120 000 million (£66 million) had been submitted. These included clean-up claims totalling Won 44 500 million (£24 million), fishery claims totalling Won 70 700 million (£39 million) and claims relating to tourism and agriculture for Won 4 600 million (£2.5 million). The 1971 Fund submitted claims subrogated from the UK Club in the amount of £2 million. The shipowner filed a claim for the cost of the measures associated with the work carried out under contract to remove the oil and the vessel and related operations for US$24.8 million (£15.4 million).

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

At a hearing in February 1997 the administrator appointed by the Court submitted an opinion together with a list of the claims accepted by him. The administrator stated that, due to the lack of objective supporting material, he had experienced difficulties in assessing the claims. The administrator accepted most of the amounts claimed without any significant modification, however, and did not take into account the above-mentioned ITOPF report. The judge requested that the UK

Club and the 1971 Fund should submit comments on the administrator's opinion, whereupon the Court would request the claimants to provide supporting documents.

In June 1998 the Court delivered a decision accepting the assessments made by the 1971 Fund's experts for the unsettled fishery and non-fishery claims. The Court rejected the claims filed by the shipowner for post-spill environmental studies and additional clean-up. The shipowner lodged opposition against the decision. The legal action taken by 19 owners of caged fish facilities for Won 95 million (£52 000) was part of the limitation proceedings, but the claimants have filed a separate action against the 1971 Fund.

Outstanding issues in the limitation proceedings are the subrogated claims by the UK Club in respect of salvage operations and clean-up operations. These claims were assessed by the Court at a total of US$27.8 million (£17.2 million) and ¥4 million (£24 200). The 1971 Fund has lodged objection to the Court's decision on the grounds of lack of supporting documentation.

Time bar

The question arose as to whether the UK Club's subrogated claim for payments to various contractors (including the companies engaged to salvage and remove the ship), the Club's claim for indemnification and claims by three Village Fishery Associations had become time-barred.

Pursuant to Article 6.1 of the 1971 Fund Convention, there are two ways in which a claimant can prevent his claim from becoming time-barred as regards the 1971 Fund, namely by bringing an action against the 1971 Fund or by making a notification to the Fund of the proceedings in respect of that claim brought against the shipowner or his insurer.

The incident occurred on 23 July 1995 and the shipowner commenced limitation proceedings on 30 May 1996. On 22 August 1996 the Court served notice of those proceedings on the 1971 Fund at the request of the shipowner, and the Fund intervened in those proceedings on 24 August 1996.

Under Article 7.6 each party to proceedings brought against the shipowner or his insurer shall be entitled under the national law to notify the 1971 Fund of the proceedings. The notification should be made 'in accordance with the formalities required by the law of the court seized'. The notification should be made in such time and in such a manner that the 1971 Fund has in fact been in a position to intervene effectively in the proceedings.

The 1971 Fund's Korean lawyer had expressed the view that under Korean law the notification of the limitation proceedings to the 1971 Fund made by the shipowner through the Court on 22 August 1996 was sufficient to satisfy the requirements of Articles 6.1 and 7.6 and that the UK Club's claim was not time-barred. After some discussion, the Executive Committee decided in April 1999 that the UK Club's subrogated claim should be considered as not being time-barred.

Three Village Fishery Associations had presented claims for loss of income in the limitation proceedings on behalf of their members. They had not brought a legal action against the 1971 Fund, nor notified the Fund of the action against the shipowner. The 1971 Fund's Korean lawyer had expressed the view that although the three Associations had not themselves made a notification to the 1971 Fund, the fact that the shipowner had notified the Fund of the limitation proceedings and that the Fund had actually intervened in these proceedings would result in the Korean Courts considering that the Associations had fulfilled the requirements under Article 6.1 and that therefore the claims were not time-barred. He also pointed out that, as a result of the 1971 Fund's intervention, the Court accepted the claims for the amounts offered by the 1971 Fund and the

shipowner/UK Club. The Executive Committee decided that these claims should be treated as not being time-barred.

Under Article 5.1 of the 1971 Fund Convention, the shipowner/his insurer is entitled to indemnification of a portion of the limitation amount under certain conditions. In the *Sea Prince* case the indemnification amounts to 6.7 million SDR (£5.7 million).

Whereas claims for compensation can be brought in the limitation proceedings pursuant to the 1969 Civil Liability Convention, claims for indemnification do not fall under that Convention and can only be brought against the 1971 Fund under the 1971 Fund Convention. The UK Club could not therefore have notified the 1971 Fund of proceedings against the shipowner and his insurer concerning the claim for indemnification. However, Article 6.1 of the 1971 Fund Convention refers also in respect of indemnification to the possibility of making a notification under Article 7.6 that in its turn refers to actions under the 1969 Civil Liability Convention. The Director had taken the view that, on the basis of a reasonable interpretation of Article 6.1 and Article 7.6, the notification made by the UK Club through the Court had prevented the claim from becoming time-barred, since this notification had made it possible for the 1971 Fund to intervene in the proceedings and had enabled the Fund to protect its interests in respect of claims paid by the shipowner/UK Club which formed the basis of the Club's claim for indemnification. The 1971 Fund's Korean lawyer had agreed with the Director's view. The Executive Committee decided that the UK Club's claim for indemnification should be treated as not being time-barred.

YEO MYUNG

(Republic of Korea, 3 August 1995)

The incident

The Korean tanker *Yeo Myung* (138 GRT), laden with some 440 tonnes of heavy fuel oil, collided with a tug which was towing a sand barge near Koeje island (Republic of Korea). Two of the tanker's cargo tanks were breached and about 40 tonnes of oil was spilled.

The Marine Police initiated clean-up at sea. Shoreline clean-up was initially organised by the local authorities. After a week the clean-up was taken over by a specialised contractor. As a result of the clean-up operations, large quantities of oily waste were collected and disposed of.

Claims for compensation

Claims for clean-up operations totalling Won 760 million (£530 000) were settled at Won 684 million (£476 000). The claims were paid partly by the shipowner's P & I insurer, partly by the 1971 Fund.

Local businesses in the tourism sector along the affected beaches presented claims totalling Won 2 592 million (£1.4 million). All claims in the tourism sector were settled for Won 270 million (£139 000) and paid in full.

All but one claim in the fisheries sector were settled and paid in full in the amount of Won 600 million (£330 000). The outstanding claim for Won 335 million (£183 000) is in respect of an owner of a caged fish facility. The claim has been assessed by the 1971 Fund's expert at Won 459 000 (£250).

Limitation proceedings and investigation into the cause of the incident

The shipowner commenced limitation proceedings at the competent district court. The limitation fund was established by the shipowner's insurer by payment of the limitation amount of Won 21 million (£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.

YUIL N°1

(Republic of Korea, 21 September 1995)

The incident

The Korean coastal tanker *Yuil N°1* (1 591 GRT), carrying approximately 2 870 tonnes of heavy fuel oil, ran aground on the island of Namhyeongjedo off Pusan (Republic of Korea). The tanker was refloated by a tug and a naval vessel some six hours after the grounding. While being towed towards the port of Pusan, the tanker sank in 70 metres of water, ten kilometres from the mainland. Three cargo tanks and the engine room were reported to have been breached as a result of the grounding.

Removal of oil from the wreck

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

At the request of the Korean Government, an expert from a London firm of marine surveyors engaged by the 1971 Fund participated in discussions concerning the most appropriate method to be used to remove the oil from the *Yuil N°1* and the *Osung N°3* (see also page 97). The Director informed the Korean authorities that the 1971 Fund agreed that the oil should be removed from both wrecks as soon as possible.

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

The operation to recover the oil from the *Yuil N°1* commenced in June 1998 and was completed in August 1998. Some 670 m^3 of oil was recovered from the tanks of the *Yuil N°1*. The experts engaged by the 1971 Fund attended throughout the operation as observers.

Level of payments

In view of the uncertainty concerning the total amount of the claims arising out of the *Yuil N°1* incident, the Executive Committee had decided in 1995 that the 1971 Fund's payments should for the time being be limited to 60% of the established damage suffered by each claimant. In September 1998 the 1971 Fund's payments were increased to 100% of each established claim.

Claims for compensation

Oil removal operation

KMPRC submitted 11 claims for a total of Won 13 765 million (£7.5 million), in respect of the operations to remove the oil from the *Yuil N°1* and *Osung N°3* (see page 97). These claims related to the amounts paid under the oil removal contract to the salvor carrying out the operations and to the costs incurred by KMPRC for its involvement in the operations in terms of personnel, barges, tugs, other craft, engineering services and general support. The costs relating to both operations, such as those of mobilising craft and equipment, were apportioned on a 50:50 basis between the two cases.

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

Other claims

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

Fishery claims totalling Won 22 359 million (£12.2 million) have been settled at Won 5 391 million (£2.8 million). Fishing claims totalling Won 25 031 million (£13.7 million), which have been assessed by the Fund's experts at Won 272 million (£149 000), have not yet been settled. These claims have been filed in court for a reduced amount of Won 11 881 million (£6.5 million). Further claims totalling Won 2 448 million (£1.3 million) have also been filed in court, but these have not yet been assessed 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 (£137 000).

Fishery co-operatives presented claims totalling Won 60 000 million (£33 million) to the Court.

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

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

Investigation into the cause of the incident and recourse action

The Korean Maritime Accident Inquiry Agency (MAIA) carried out an investigation into the cause of the incident. The investigation revealed that the initial grounding was caused by the master of the *Yuil N°1* having chosen to navigate through a narrow and dangerous passage between two islands that resulted in the vessel grounding on a small rocky island.

The hull insurer of the *Yuil N°1* took legal action in the Republic of Korea against the Korean Government and the owner of the tug in respect of negligence during the refloating and towing operation for the purpose of recovering the amount it had paid for the damage to the hull (Won 1 173 million or £642 000). The Court of first instance rendered its judgement in August 1997, rejecting the hull insurer's action. The hull insurer appealed against the judgement, but the Court of Appeal endorsed the position of the Court of first instance that there was no negligence on the part of the tug or naval vessel during the operations and confirmed the rejection of the hull insurer's claim.

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

HONAM SAPPHIRE

(Republic of Korea, 17 November 1995)

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

The offshore clean-up operations were led by the Marine Police. The onshore impact was in most areas comparatively light and the onshore clean-up operations were completed in many areas by early January 1996, although in the most heavily polluted areas the operations continued until March 1996.

Claims for clean-up costs were presented by various local authorities and contractors for a total amount of Won 9 727 million (£5.3 million). Fishery-related claims were submitted totalling Won 49 115 million (£27 million).

All claims but one have been settled by the shipowner/insurer for a total of US$13.5 million (£8.4 million). The outstanding claim is for costs of US$1 million (£620 000) for post-spill environmental studies relating to both the *Honam Sapphire* and *Sea Prince* incidents.

The limitation amount applicable to the *Honam Sapphire* is 14 million SDR (£12 million). The 1971 Fund will not therefore be called upon to make any payments in respect of this incident.

SEA EMPRESS

(United Kingdom, 15 February 1996)

The incident

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

where the remaining 58 000 tonnes of cargo was discharged. It was estimated that in all approximately 72 000 tonnes of crude oil and 360 tonnes of heavy fuel oil were released as a result of the incident.

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

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

Claims handling

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

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

Claims for compensation

General situation

As at 31 December 1999, 1 034 claimants had presented claims for compensation totalling £46 million. Payments have been made to 779 claimants, totalling £16.3 million, of which £6.9 million was paid by the Skuld Club and £9.4 million by the 1971 Fund. Claims have been approved for a further £950 000, but the assessments have not been accepted by the claimants.

A number of the major claims in respect of which assessments have not been finalised relate to clean-up operations, ie claims by the Marine Pollution Control Unit (MPCU) of the United Kingdom Department of Transport, the Environment Agency, the Milford Haven Standing Conference, Elf UK Oil Ltd and Texaco. Progress is being made in respect of the majority of these claims, and it is expected that most of them will be settled out of court.

During 1999 the Executive Committee took decisions on the admissibility of certain claims.

Claim by angling clubs and associations and private owners of fishing rights

Legal proceedings in respect of six angling associations, two angling clubs and two private owners of fishing rights were commenced on 11 February 1999 against the shipowner and the Skuld Club, but the 1971 Fund was not notified of the actions until 2 March 1999, ie well after the third anniversary of the incident. The Executive Committee decided that these claims were not time-barred since the claimants had not suffered pollution damage until the closure of river fishery by a Parliamentary Order of 19 March 1996, which took effect on 20 March 1996.

Claim by county fire brigade

A claim for £150 000 was presented by a county fire brigade for expenses incurred in providing fire fighting services during the operations to salve the *Sea Empress*. The fire brigade's intervention in the operation related to two distinct phases, the first whilst the *Sea Empress* was aground outside the entrance of Milford Haven Port and the second whilst she was alongside the jetty inside the port of Milford Haven.

The Executive Committee decided that the fire brigade's operations had had a dual purpose, ie both to prevent pollution damage and to protect the life of personnel involved in salvage operations. For this reason the Committee took the view that the costs of these operations should be

apportioned between pollution prevention and other activities and that, since there was no precise basis on which to make such an apportionment, the costs should apportioned equally on a 50:50 basis.

The Executive Committee emphasised that the extent to which claims with a dual purpose would be admissible would have to be decided on a case by case basis, taking into account the particular circumstances of each operation.

Claims relating to losses linked to the closure of the port or restriction of ship movements

The Executive Committee considered five claims for losses allegedly suffered as a result of the closure of the port or restrictions on ship movements. These included claims by voyage charterers for demurrage paid to shipowners, a claim by a shipowner who had only been able to recover demurrage from his charterer at one half of the normal rate and a claim by a time charterer for recovery of hire paid for time lost due to the delayed departure of the vessel on charter to him. The Committee took the view that the alleged losses were not caused by contamination, nor were they caused by preventive measures, since they were a result of a decision by the Port Authority taken for the safety of navigation. For this reason the Committee rejected these claims.

The Committee stated that although these particular claims were rejected because the closure of the port and the traffic restrictions were based on safety considerations, claims of that type might be admissible in other cases if the closure or traffic restrictions were necessitated by clean-up operations, provided that there was a reasonable degree of proximity between the loss and the contamination arising out of the incident.

Sea Empress – skimmer in operation
(photograph: IOPC Fund)

The Executive Committee also considered a claim by Elf UK Oil Ltd ('Elf') composed of various elements. The Committee took the view that the items in Elf's claim relating to demurrage, sub-chartering and chartering of vessels, delays to deliveries of crude oil and reduction in refinery throughput were losses due to the closure of the port and traffic restrictions. The Committee decided therefore to reject these items for the same reasons as the claims referred to above. With regard to the item relating to the additional cost of chartering a double-hulled vessel at a premium rate, the Executive Committee took the view that these costs could not be considered as falling within the definition of 'pollution damage' and rejected this item.

The Committee also considered Elf's claim for the cost of preparing the tanker *Star Bergen*, to enable it to be used for the emergency lightering of the *Sea Empress*. The Committee decided that this item related to operations with a dual purpose of salvage and pollution prevention and that 50% of the costs should be considered admissible in principle.

The Executive Committee emphasised that the cost of dual purpose operations should not automatically be apportioned between salvage and preventive measures on a 50:50 basis but that the apportionment should be based on a case by case examination.

Legal proceedings against the 1971 Fund

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

Writs were issued against the shipowner, the Skuld Club and the 1971 Fund in respect of 194 claimants. By 31 December 1999, agreements on the admissible amounts had been reached in respect of 25 claims.

One hundred and nineteen claimants, all of whom are represented by one firm of loss adjusters, have commenced legal action. The loss adjusters have provided a list outlining the nature of each of the claims, which indicates that 78 claims (totalling £415 000) relate only to fees for work carried out by the loss adjusters. Eight of these claims, totalling £29 000, have been agreed at a total of £3 240. The remaining 70 claims are being reassessed in the light of information recently provided by the loss adjusters.

Of the remaining 41 claimants, 40 either did not accept the amounts of compensation originally offered by the Skuld Club and the 1971 Fund, or have failed to provide sufficient information in support of their claims. One claimant, a shellfish marketing company in Cornwall, had its claim rejected by the Executive Committee on the ground that the claim did not fulfil the criterion of a reasonable degree of proximity.

Limitation proceedings

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

The 1971 Fund requested that the proceedings against it be stayed until the limitation proceedings were concluded.

Investigations into the cause of the incident and recourse action

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

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

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

At the opening of the criminal trial in January 1999, the Harbour Master pleaded not guilty, and the plea was accepted by the Environment Agency. The MHPA pleaded guilty to the charge under the Water Resources Act 1991 of causing or permitting polluting matter, namely oil and bunkers, to enter controlled waters, the penalty for which is imprisonment for a term not exceeding two years, or a fine, or both. The Port Authority pleaded not guilty to all other charges. The pleas were accepted by the Environment Agency. As a result of the pleas the full trial did not take place. The Court sentenced the MPHA to pay a fine of £4 million and to pay £825 000 towards the prosecution costs. The Port Authority has appealed against this sentence.

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. The 1971 Fund's policy in respect of recourse action as laid down by the Assembly and the Executive Committee can be summarised as follows. The 1971 Fund should take recourse action whenever appropriate and in each case consider whether it would be possible to recover any amounts paid by it to victims from the shipowner or from other parties on the basis of the applicable national law. Any decision by the 1971 Fund as to whether or not to take such action should be made on a case by case basis in the light of the prospect of success within the legal system in question.

The United Kingdom observer delegation stated that it was important to note that the charge to which the MHPA had pleaded guilty was a strict liability offence under the Water Resources Act

1991. The Committee noted the Director's statement that there had been some doubt expressed as to whether this offence was one of strict liability only.

The legal advice given to the 1971 Fund indicated that the basis of a recourse action against the MHPA would be that, as a harbour authority and a pilotage authority, MHPA was in breach of both common law and statutory duties (under the Milford Haven Conservancy Act 1983 and the Pilotage Act 1987). Having reviewed the MAIB's and the Commissioner of Maritime Affairs of Liberia's reports on the cause of the incident and the views of several technical experts, the 1971 Fund's legal advisers considered that the standards of training and authorisation of pilots at Milford Haven, as well as the system for classification of vessels for the purpose of allocation of pilots, were inadequate, and that it was likely that this particular pilot's limited experience in piloting tankers of this size led to his error, which in turn caused the grounding. In the opinion of the legal advisers, there appeared to be a realistic prospect of successfully arguing that the initial grounding would not have occurred if the radar system at Milford Haven - which had broken down some time before the grounding - had been fully operational, and if a reasonable vessel traffic system had been in operation. A claim brought by the 1971 Fund against the MHPA would be on the basis of the 1971 Fund having acquired by subrogation the rights of those victims of oil pollution to whom it has made payments of compensation. The 1971 Fund's legal advisers considered there to be good prospects of establishing that the MHPA was in negligent breach of duty in relation to safe navigation within the Haven and its approaches and that the necessary causative link between the breaches and the incident existed.

The Executive Committee decided that the 1971 Fund should take recourse action against the MPHA.

The Executive Committee also considered whether it would be appropriate to take recourse action against various persons involved in the incident, namely the pilot, his employer, MPCU, the Coastguard Agency and the salvors.

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

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 (£4.2 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 (£7.6 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 (£2.1 million).

The experts engaged by the UK Club and the 1971 Fund do not agree with a number of the assessments carried out by the administrator. Appeals have been lodged in court by the shipowner, the Club and the 1971 Fund in respect of those claims.

A number of claimants have appealed against the decision of the administrator and the amounts set out in the appeals total Drs 2 680 million (£5 million).

A hearing on the appeals was fixed for 16 December 1999 but the hearing was postponed.

In October 1999 the shipowner and his insurer served a writ on the 1971 Fund in respect of claims in excess of the shipowner's limitation fund as well as a claim for indemnification in the amount of Drs 556 million (£1 million).

N°1 YUNG JUNG

(Republic of Korea, 15 August 1996)

The incident

While the Korean sea-going barge *N°1 Yung Jung* (560 GRT) took shelter from an approaching typhoon at a wharf in the port of Pusan (Republic of Korea), the barge grounded on a submerged rock that did not appear on the chart. As a result, approximately 28 tonnes of medium fuel oil spilled into the sea. Clean-up operations were carried out by contractors engaged by the shipowner. The wreck of the *N°1 Yung Jung* was removed and the remaining oil was transhipped to another vessel.

The *N°1 Yung Jung* was not entered in any P & I Club, but had liability insurance of US$1 million (£620 000) per incident.

Claims for compensation

All claims for compensation arising out of the incident have been settled for a total amount of Won 743 million (£400 000).

Some of the claims were paid by the 1971 Fund and some by the shipowner's insurer. In September 1998 the 1971 Fund paid £262 373 (equivalent to Won 615 million) to the insurer, corresponding to the amount that the insurer had paid in excess of the limitation amount applicable to the *N°1 Yung Jung* (including interest). The 1971 Fund also paid indemnification of the shipowner under Article 5.1 of the 1971 Fund Convention of Won 28 million (£15 000).

Limitation proceedings

The shipowner commenced limitation proceedings in August 1997. The shipowner's insurer presented a letter of guarantee for the limitation amount to the Court. In May 1998 the Pusan District Court determined the limitation amount applicable to the *N°1 Yung Jung* at Won 122 million (£67 000).

Investigation into the cause of the incident

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

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

Question of recovery

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

The facts

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

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

1971 Fund's position

The 1971 Fund's Korean lawyer has informed the Fund that, according to a judgement by the Korean Supreme Court, the Republic of Korea has no liability *vis-à-vis* third parties for any damage caused as a result of a defective chart. However, if the rock was not a natural part of the seabed but had been placed there, the legal situation was in his view different, as it would be considered that there was a defect in 'public facilities or structures'. He has stated that if there was a defect in public facilities or structures owned or managed by the Republic of Korea, the Republic had, under Article 5 of the Korean State Compensation Act, strict liability for any damage resulting therefrom.

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

The position of the Korean Government

The Korean Government has considered that the 1971 Fund did not have a valid recourse claim against it on the ground that the cause of the incident was not a defect in the installation or maintenance of a public facility or structure owned by the Government, but the gross negligence of the shipowner who had used the facilities illegally in an area where oil tankers were not allowed, without giving notice to, or obtaining the permission of the Port Authority, and without giving full

consideration to the possible effects of the weather and tide. The Korean Government has further maintained that, since Article 4.3 of the 1971 Fund Convention precludes reduction of compensation to a claimant who has taken preventive measures on the grounds of contributory negligence, the 1971 Fund could not pursue a recourse claim against the Korean Government for any payments that the Fund has made in respect of preventive measures. The Korean Government has expressed the view that it could itself have carried out the preventive measures, that other persons carrying out the operations were only permitted to do so by the Government and that therefore the operations should be regarded as taken by the Korean Government. The Government also stated that a recourse action by the 1971 Fund was contrary to the spirit of the 1971 Fund Convention.

Procedure for claiming compensation

Under the Korean State Compensation Act, any claim against the Korean Government should first be submitted to the competent Regional Compensation Committee within three years of the date of the incident, ie by 15 August 1999. Submission of a claim to the Committee has the effect of preventing the claim from becoming time-barred. The 1971 Fund submitted its claim on 9 August 1999.

Consideration by the Executive Committee

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

The Executive Committee instructed the Director to explore with the Korean Government whether the Compensation Commission could postpone its consideration of the 1971 Fund's claim, in order to allow the Committee further time for consideration of the important issues at stake. The Committee further instructed the Director to pursue the 1971 Fund's claim against the Korean Government, if the Compensation Commission were not to agree to a postponement.

In November 1999 the Compensation Committee agreed to postpone its consideration of the 1971 Fund's claim.

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 stern section is lying at a depth of 2 500 metres, some 140 kilometres from the nearest coast, but is not considered to be a significant threat to coastal resources.

Claims situation as at 31 December 1999

Category of Claims			Claims submitted			Claims paid		
			Number	Amount		Number	Amount	
				US$[1]	Yen (million)		US$[1]	Yen (million)
Clean-up costs	(a)	JMDPC - Operations carried out by JMDPC	1		268	1		[2] 50
	(b)	- Contractors under JMDPC	55		8 047	55		[1] 3 974
	(c)	- Fishery Co-operative Associations	1		2 746	1		[2] 1 605
	(d)	Japanese Government Agencies	11		1 519	0		0
	(e)	Prefectures and Municipalities	10		7 135	9		[2] 1 443
	(f)	Electricity companies	7		2 727	6		[2] 1 046
	(g)	Other entities	7		192	3		[3] [4] 124
	(h)	EARL	1	542 593	56	1	542 593	[3] 56
	(i)	Russian authorities	2	3 284 322	336	1	325 000	[3] 33
	Sub-total		95		23 026	77		8 331
Loss of income: fishery [5]	(j)		9		5 290	5		[2] 711
Causeway construction and removal	(k)	JMDPC	1		2 397	0		0
Removal of oil from ship	(l)	JMDPC and three contractors	4		1 312	1		[2] 400
Aquarium	(m)		1		7	1		[2] 4
Tourism	(n)		347		3 036	162		[2] 338
TOTAL			457		35 068	246		0 784
					£213 million			£49 million

<1> Amounts in US$ converted into Yen on the basis of the rate of exchange at 30 December 1999
<2> Includes provisional payments
<3> Payments made by the shipowner/UK Club
<4> Includes a payment made by the shipowner/UK Club
<5> This category includes the claim for the cost of the publicity campaign by NFFCA

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. In May 1997 a salvage company engaged by the shipowner removed the bow section of the *Nakhodka* on to a barge and transported it to a scrapyard.

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, coastal booms and skimmers were provided by the Petroleum Association of Japan. A considerable number of vessels belonging to the Maritime Safety Agency of Japan and the Japan Self Defence Force, vessels owned or chartered by Prefectural Governments, fishing boats belonging to local fishermen, recovery systems from the East Asia Response Ltd (EARL) stockpile in Singapore and vessels belonging to the Russian Ministry of Merchant Marine.

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

Claims handling

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

Claims for compensation

General situation

Some 450 claims totalling ¥35 068 million (£213 million) have been received. The claims situation is summarised in the table reproduced opposite.

Further claims will be time-barred on 2 January 2000 or shortly thereafter.

A major part of the claims have been assessed, either finally or provisionally. There remain however some groups of claims which have not yet been assessed, mainly claims submitted by Government agencies and claims relating to the construction and removal of the causeway.

The total payments made by the IOPC Funds to claimants amounted to ¥9 629 million (£48.2 million) as at 31 December 1999. Of this amount ¥8 558 million (£43.3 million) has been paid by the 1971 Fund and ¥1 071 million (£4.9 million) by the 1992 Fund. The shipowner/UK Club have made payments totalling US$868 000 and ¥66 million (£930 000).

Details of claims submitted

Details of the claims submitted and the settlement amounts are contained in the table opposite. As shown in the table, the main group of claims relates to the clean-up operations carried out by the Japanese authorities or by contractors acting under the authorities, claims from electricity

companies for the cost of clean-up operations and preventive measures in respect of their power stations, and loss of income suffered by fishermen and by businesses in the tourism industry.

Publicity campaign

In April 1999 the Executive Committees accepted as admissible in principle a claim for ¥48 million (£290 000) by the National Federation of Fishery Co-operative Associations (NFFCA) in respect of the cost of a major publicity campaign aimed at preventing and mitigating losses in sales of fish from the area affected by the spill as a result of bad publicity arising from the *Nakhodka* incident. The Committees considered that the cost of the measures was reasonable and not disproportionate to the losses which could have been sustained if the measures had not been taken. The Committees also took the view that the measures were appropriate in the circumstances and offered a reasonable prospect of success. The Committees noted that the measures related to targeted markets and that they were in addition to NFFCA's normal marketing activities. This claim was settled at ¥41 million (£248 000).

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 follows:

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

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

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

Level of payments

In view of the 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 decided that the payments to be made by the two organisations should, for the time being, be limited to 60% of the amount of the

damage actually suffered by the respective claimants as assessed by the experts engaged by the Funds and the shipowner/UK Club at the time when the payment was made.

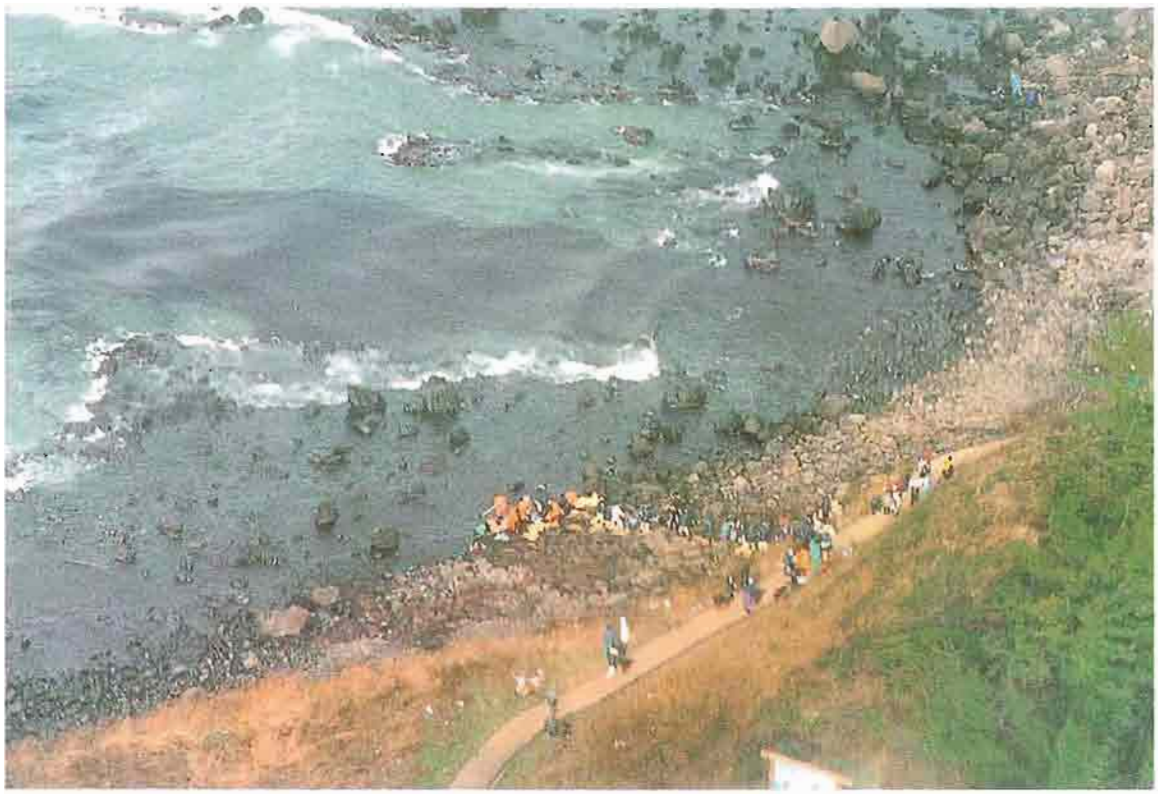
Conversion of maximum amount available for compensation

The Assembly of the 1992 Fund decided that the conversion of the total amount available under the 1971 and 1992 Fund Conventions, ie 135 million SDR, into national currency should be made on the basis of the value of that currency *vis-à-vis* the SDR on the date of the 1992 Fund Assembly's (or the Executive Committee's) adoption of the Record of Decisions of the session at which the Assembly (or the Executive Committee) took the decision which made payments of claims possible, which for the *Nakhodka* incident was 17 April 1997. Using the rate of exchange on that date, 135 million SDR equals ¥23 164 515 000 (£140 million).

Investigation into the cause of the incident

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

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



Nakhodka – heavily oiled beach
(photograph: General Marine Surveyors)

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 condition and contact with an alleged submerged object, when added together, caused overloading and failure of the ship's structure.

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

The shipowner has commented on the views expressed by the IOPC Funds' experts. He has stated that the Russian report cannot be totally discounted in the manner which has been suggested by the IOPC Funds' experts. He has made the point that if the foresection of the *Nakhodka* had come close to but not in contact with the submerged object, one would not have expected to see signs of physical contact. Attention has been drawn to the fact that the vessel had been built to Russian class standard. The shipowner has mentioned that the vessel was classed by the Russian Register and that the vessel was fully in class without any outstanding recommendations at the time of the incident. The shipowner has also criticised the method used in the Japanese report to survey and measure the structure of the bow section. Reference has been made to the fact that the Japanese report implies that the ship was loaded in an unsatisfactory manner with an unusual distribution of cargo. The shipowner has stated that although not loaded in one of the conditions given by way of example in the stability book, the vessel was loaded in a manner which was well within the loading criteria therein. The shipowner has maintained that whatever caused the loss of the vessel, it was not due to the actual fault or privity of the shipowner, even if the 1969 Civil Liability Convention were to apply.

In May 1997 the Director requested the shipowner to allow access to all classification records, repair and maintenance records, statutory certificates, port state surveys and reports, P & I condition survey reports and all documents concerning the voyage when the incident occurred, including crew statements and communications between the ship and the office. Some documentation was received from the shipowner in October 1998 and additional documentation was received in April 1999. Unfortunately the documents provided by the shipowner were incomplete. In particular they did not include a full set of drawings, historical classification records or the repair history of the *Nakhodka*. It is known that the *Nakhodka* underwent significant repairs in 1993 at a shipyard in Singapore. However details of these repairs have not been made available to the Funds.

The IOPC Fund's experts re-examined the Japanese and Russian investigation reports and considered the documents provided by the shipowner. They also considered the observations made

by the shipowner. In conclusion the IOPC Funds' experts have expressed the opinion that the *Nakhodka* was in a seriously dilapidated condition. In their view there is evidence of serious wastage of hull strength members and inadequate repairs. They state that it is 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 consider that there is 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 supports the experts' view that the ship was unseaworthy. The *Nakhodka* did experience bad weather but in their view such bad weather is not exceptional in the area in January. The experts are also of the opinion that the shipowner was or should have been aware of the actual condition of the hull structure.

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 Committees confirmed that it was the 1969 Civil Liability Convention and not the 1992 Civil Liability Convention that applied in this case.

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

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

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

The UK Club's Rules contain a 'pay to be paid' clause (ie that the Club is under an obligation to indemnify the shipowner only for compensation actually paid by him to third parties), and this clause has been upheld by the United Kingdom courts. The legal advice given to the Fund 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 were carried out on the *Nakhodka* in 1993 at a shipyard in Singapore. The IOPC Fund's technical experts are investigating the extent of these repairs. 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 November and December 1999 the 1971 and 1992 Funds brought legal actions in the Court of Fukui against Prisco Traffic Ltd, Primorsk Shipping Corporation, the UK Club and the Russian Register of Shipping.

The shipowner and the UK Club brought legal actions in the same Court against the 1971 and 1992 Funds in respect of their subrogated rights relating to the payments made by them.

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.

The tanker was refloated six hours after the grounding and proceeded under its own power towards Punta Cardon in the eastern part of the Gulf of Venezuela. Apart from the initial spill of oil at the grounding position, further small releases occurred over a period of several days at the anchorage off Punta Cardon, until temporary repair work on the damaged hull was completed. After a short delay, the remaining cargo on board the *Nissos Amorgos* was transhipped to another tanker.

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.

During the clean-up operations an estimated 48 000 m^3 of contaminated sand was collected. The oily sand has been provisionally stored immediately inland of the affected beach. Following an investigation into various options for disposing of the oily sand, the Gard Club and the 1971 Fund agreed that land farming in the dunes adjacent to the beach was the most appropriate method. The estimated cost is Bs1 500 million (£1.4 million).

Claims presented in the Claims Agency

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

As at 31 December 1999, 202 claims for compensation totalling Bs25 934 million (£24 million) had been presented to the Claims Agency. These claims relate to the cost of clean-up operations, damage to property (nets, boats and outboard motors), losses suffered by fishermen, fish transporters, fish processors and businesses in the tourism sector. One hundred and seven claims have been approved for a total of Bs3 697 million (£3.6 million). The Gard Club has paid Bs169 million (£162 000) corresponding to the settlement amounts of 97 claims and Bs1 046 million (£1 million) as part payment of two claims. The 1971 Fund has paid Bs15.3 million (£15 000) as part payment of one claim. It is expected that the remaining settled claims will be paid in the near future.

In respect of those claims which have been presented to the Claims Agency which are outstanding, only relatively few claimants have provided evidence indicating that the claims are admissible for compensation under the 1969 Civil Liability Convention and the 1971 Fund Convention. Since the Claims Agency in Maracaibo closed on 30 April 1998, the remaining claims are being dealt with either by the 1971 Fund from London and the Gard Club from Norway or by occasional visits to Maracaibo by staff of the former Claims Agency.

Claim by Lagoven and Maraven

The claims relating to clean-up operations undertaken by Lagoven and Maraven have been resolved. The total admissible amount of both claims was agreed at Bs 3 462 million (£3.7 million) plus US$35 850 (£22 400). The Gard Club has made interim payments to PDVSA totalling Bs1 046 million (£1.2 million).

Claim by ICLAM

The Instituto para el Control y la Conservación de la Cuenca del Lago de Maracaibo (ICLAM) presented a claim for Bs69 million (£74 000) relating to expenses incurred in monitoring the clean-up operations, including the sampling and analysis of water, sediment and marine life. This claim has been assessed at Bs61 million (£65 000) by the experts engaged by the Gard Club and the 1971 Fund.

The shipowner and the Gard Club agreed with the amount assessed by the Club's and the 1971 Fund's experts as regards ICLAM's claim. However, they disputed liability towards ICLAM on the grounds that it was an agency of the Republic of Venezuela (being part of the Venezuelan Ministry of Environment and Renewable Natural Resources) and that the incident was substantially caused by negligence imputable to the Republic of Venezuela. For this reason they have stated that they are not prepared to make any payment to ICLAM in respect of this claim.

The Executive Committee considered that since ICLAM's claim fell within the definition of 'preventive measures', the 1971 Fund was not entitled to invoke contributory negligence in respect of that claim. The Committee decided that, except for scientific studies of shellfish, mangroves and migratory birds which did not contribute to the clean-up operations, the work of ICLAM formed an important part of prudent and reasonable preventive measures. The claim was therefore admissible in the amount assessed by the experts. The 1971 Fund paid 25% of this amount in September 1999.

Claims presented by shrimp processors

Six companies processing shrimp from Lake Maracaibo presented a claim for US$25 million (£15.5 million) to the Gard Club and the 1971 Fund in October 1999. This claim is being examined by the experts of the Club and the Fund.

Payment against a bank guarantee

PDVSA requested that the 1971 Fund should pay the balance of the assessed amount of its claim for clean-up costs against a bank guarantee, even though payments for the time being were pro-rated at 25% of the assessed amounts. In its consideration of the request the Executive Committee recognised that in the *Haven* and *Aegean Sea* cases the 1971 Fund had made payments of the balance of certain claims against bank guarantees. The Committee took the view, however, that such payments could be seen as giving preferential treatment to claimants who had the financial resources to provide bank guarantees. It was noted that if the 1971 Fund were in general to agree to making payments against bank guarantees, considerable practical difficulties might arise if a large number of claimants offered such guarantees in cases where payments were pro-rated. For these reasons, the Committee decided not to accept PDVSA's request for full payment against a bank guarantee.

Court proceedings

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

Criminal Court of Cabimas

The shipowner has presented a guarantee to the Criminal Court for Bs3 473 million (£3.3 million), being the limitation amount applicable under the 1969 Civil Liability Convention.

A fishermen's trade union (FETRAPESCA) presented a claim for compensation for pollution damage for an estimated amount of US$130 million (£81 million) plus legal costs. In addition, eight fish and shellfish processors presented a claim for compensation for an estimated amount of US$100 million (£62 million) plus legal costs. However, in September 1998 this latter claim was declared inadmissible because it had not been filed within the period laid down in the Venezuelan Criminal Procedural Code.

In October 1997 the Republic of Venezuela presented a claim for pollution damage against the master, the shipowner and the Gard Club (in the Criminal Court) for US$60 million (£37 million). The claim is based on a letter to the Attorney General from the Venezuelan Ministry of Environment and Renewable Natural Resources, which gave details of the amount of compensation allegedly payable to the Republic of Venezuela in respect of oil pollution. Compensation is claimed for damage to the communities of clams living in the intertidal zone affected by the spill, for the cost of restoring the quality of the water in the vicinity of the affected coasts, for the cost of replacing sand removed from the beach during the clean-up operations and for damage to the beach as a tourist resort.

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

At the request of the shipowner, the Gard Club and the 1971 Fund, the Criminal Court appointed a panel of three experts to advise the Court on the technical merits of the claim presented

by the Republic of Venezuela. In its report presented on 15 July 1999, the panel unanimously agreed with the findings of the 1971 Fund's experts that the claim had no merit.

The Gard Club and the 1971 Fund are preparing pleadings in respect of this claim. The pleadings will deal with *inter alia* the criteria adopted by the 1971 Fund in respect of the admissibility of claims for compensation.

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

Civil Court of Caracas

The Republic of Venezuela has presented a claim against the shipowner, the master of the *Nissos Amorgos* and the Gard Club for an estimated amount of US$20 million (£12 million), later increased to US$60 million (£37 million), before the Civil Court in Caracas. It appears that this claim relates to the same four items of damage as the claim in the Criminal Court.

FETRAPESCA has presented a claim against the shipowner, the Gard Club and the master of the *Nissos Amorgos* for an estimated amount of US$130 million (£81 million) plus legal costs.

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

Eleven fish and shellfish processors have presented a claim against the shipowner, the Gard Club and the master of the *Nissos Amorgos* for an estimated amount of US$100 million (£62 million) plus legal costs. This claim corresponds to the one filed in the Criminal Court, except that there is a difference in respect of the number of claimants.

Conflict of jurisdiction

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

Supreme Court

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

of the great importance of the case. If the request of 'avocamiento' is granted, the Supreme Court would act as a court of first instance and its judgement would be final.

The shipowner and the Gard Club opposed this request. The 1971 Fund also opposed the request on the grounds that the circumstances upon which the request was based were not exceptional and that the reason for the request was not the reinstatement of the environment but a private interest 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 be to deprive the parties of the right of appeal.

In a judgement dated 29 July 1999 the Venezuelan Supreme Court rejected the request of 'avocamiento' filed by the two fish processors. The Supreme Court has not yet taken decisions on the request of 'avocamiento' filed by FETRAPESCA.

In December 1999 two fish processors presented a claim for US$20 million (£13 million) in the Supreme Court against the 1971 Fund and, subsidiarily, against the Instituto Nacional de Canalisaciones (INC). The Fund has not been notified of the action. The Supreme Court would in this case act as court of first and last instance.

Level of payments

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

Cause of the incident and related issues

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

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

The shipowner and the Gard Club have provided the 1971 Fund with a substantial quantity of documentary evidence concerning the cause of the incident, together with a detailed analysis of this evidence.

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 which could cause damage to shipping. They have maintained that the escape of oil from the *Nissos Amorgos* was the result of holes punctured in the vessel's bottom plating sustained by contact with a sharp metal object. They have referred to other vessels which

encountered difficulties in the same part of the channel and, in particular, to the vessel *Olympic Sponsor*, which grounded ten days after, and at almost the same place as the *Nissos Amorgos*, and suffered similar bottom damage, with a metal object later retrieved from her bottom plating.

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 is exonerated, the claims will 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.

Nissos Amorgos – oiled beach
(photograph: ITOPF)

The Director, with the assistance of the 1971 Fund's lawyers and its technical experts, has examined the documentation supplied by the shipowner and the Gard Club. In the Director's view, the documentation appears to support the shipowner's/Gard Club's position 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.

In the Director's view, the documents made available to the 1971 Fund indicate that negligence on the part of INC might have been a factor which contributed to the incident and the ensuing pollution damage and that therefore the shipowner/Gard Club might be partially exonerated from liability to the Venezuelan Government and to other government bodies. In that event, the 1971 Fund would, in the Director's view, also be partially exonerated in respect of claims by the Venezuelan Government, except to the extent that the claims related to the cost of preventive measures. However, on the basis of the evidence made available to the 1971 Fund so far, the Director 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.

When considering these issues in October 1999, the Executive Committee noted the views expressed by the Director. Since not all the evidence on the cause of the incident had been made available to the 1971 Fund, the Committee considered it premature to take a decision on the issues relating to the cause of the incident and contributory negligence.

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

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

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

OSUNG N°3

(Republic of Korea, 3 April 1997)

The incident

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

Removal of oil from the wreck

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

At the request of the Korean Government, an expert from a London firm of marine surveyors engaged by the 1971 Fund participated in discussions concerning the most appropriate method to be used for removing the oil from the *Yuil N°1* and the *Osung N°3* (see page 73). The Director informed the Korean authorities that the 1971 Fund agreed that the oil should be removed from both wrecks as soon as possible.

As mentioned above (page 73) a contract was concluded between the Korean Marine Pollution Response Corporation (KMPRC) and a Dutch salvage company (Smit Tak BV) for the removal of the oil from both ships.

The operations to remove the oil from the *Osung N°3* commenced in September 1998 after the completion of the oil removal from the *Yuil N°1*. The operations, which were interrupted occasionally by typhoons, were completed in November 1998. Some 27 m^3 of oil was recovered. During the operation, there was no release of oil from the wreck into the sea.

Level of payments

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

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

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

In October 1997 the Assembly of the 1992 Fund authorised the Director to pay the balance of the established claims relating to damage in Japan.

In November 1998 the 1971 Fund's payments were increased to 100% of each established claim.

As a consequence of the decision to increase the 1971 Fund's payments in respect of the *Osung N°3* incident to 100%, the Director decided that the 1971 Fund should reimburse the 1992 Fund the amounts it had paid to cover the balance of the Japanese claims. The 1992 Fund will therefore ultimately not be liable in respect of this incident. In December 1998 the 1971 Fund paid the above-mentioned amount to the 1992 Fund, plus interest thereon amounting to £29 000.

Claims for compensation

Oil removal operation

Claims arising out of the *Osung N°3* oil removal operation were settled at a total of Won 6 739 million (£3.2 million). These claims were paid in full by the 1971 Fund.

Other claims

As regards the Republic of Korea, claims for compensation have been presented by the Korean Marine Police, some local authorities, the charterer of the *Osung N°3* and a number of contractors for participation in the clean-up operations and the inspection of the sunken vessel, and by two fishery co-operative associations for loss of income. Claims totalling Won 1 219 million (£668 000) were settled at Won 848 million (£410 000) and were paid in full.

Only one claim is pending in respect of the Republic of Korea, namely a clean-up claim for Won 93 million (£50 000). The claim was assessed by the 1971 Fund's experts at Won 64 million (£35 000), but this assessment was rejected by the claimant.

Six claims totalling ¥681 million (£4.0 million) were submitted for clean-up operations carried out in Japan. Three of these claims, for ¥477 million (£2.9 million), were settled at ¥453 million (£2.7 million). The remaining three claims are being examined. 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 (£1.1 million) and was paid in full.

A further claim of some ¥60 million (£360 000) for clean-up operations is expected from the Japanese Self Defence Force.

Limitation proceedings

The *Osung N°3* was not entered in any P & I Club, but had liability insurance up to a limit of US$1 million (£620 000) per incident. The limitation amount applicable to the vessel under the 1969 Civil Liability Convention is estimated at 104 500 SDR (£89 000).

The shipowner applied to the competent court for the commencement of limitation proceedings, which was granted in October 1997. In January 1998 the 1971 Fund and the 1992 Fund notified the Court that they would have to pay compensation to claimants who had suffered damage in Japan, and indicated provisionally that those claims would total ¥1 003 million (£6.0 million).

Investigation into the cause of the incident

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

The Executive Committee decided that, in the light of the findings of the Criminal Court, there were no grounds on which the 1971 Fund could oppose the shipowner's right to limit his liability, or refuse to pay indemnification under Article 5.1 of the 1971 Fund Convention.

PLATE PRINCESS

(Venezuela, 27 May 1997)

The incident

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

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

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

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

The limitation amount applicable to the *Plate Princess* under the 1969 Civil Liability Convention is estimated at 3.6 million SDR (£3.1 million).

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

Court proceedings

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

A fishermen's trade union (FETRAPESCA) presented a petition in the Criminal Court on behalf of 1 692 fishing boat owners, claiming an estimated US$10 060 per boat (£6 200), ie a total of US$17 million (£10.5 million). The claim is for alleged damage to fishing boats and nets and for loss of earnings.

FETRAPESCA also presented a claim against the shipowner and the master of the *Plate Princess* before the Civil Court of Caracas for an estimated amount of US$10 million (£6.2 million). The claim is for the fishermen's loss of income as a result of the spill.

A local fishermen's union has presented a claim in the Civil Court in Caracas against the shipowner and the master of the *Plate Princess* for an estimated amount of US$20 million (£12.4 million) plus legal costs.

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

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

There has been no progress in the court proceedings during 1998 and 1999.

DIAMOND GRACE

(Japan, 2 July 1997)

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

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

Claims totalling ¥2 152 million (£13.0 million) have been presented. Out of this amount, ¥1 249 million (£7.6 million) related to clean-up operations and ¥592 million (£3.6 million) to fishery damage. Claims have been settled for a total of ¥1 390 million (£8.4 million). The outstanding claims total some ¥40 million (£240 000).

The limitation amount applicable to the *Diamond Grace* under the 1969 Civil Liability Convention is 14 million SDR, corresponding to approximately ¥1 960 million (£11.9 million). The 1971 Fund will therefore not be called upon to make any payments in respect of this incident.

KATJA

(France, 7 August 1997)

The Bahamas tanker *Katja* (52 079 GRT) struck a quay while manoeuvring into a berth at the Port of Le Havre (France). The contact with the quay caused a hole in a fuel oil tank, and 190 tonnes of heavy fuel oil was spilled. Booms were placed around the berth, but oil escaped from

the port and affected beaches both to the north and to the south of Le Havre. Approximately 15 kilometres of quay and other structures within the port were contaminated. Oil entered a marina at the entrance to the port and many pleasure boats were polluted. Oil was also found in the area of the port where a new harbour for inshore fishing boats was being constructed.

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

At the time of the incident, the Bahamas was not Party to the 1992 Civil Liability Convention. The limitation amount applicable to the *Katja* is therefore to be determined in accordance with the 1969 Civil Liability Convention and is estimated at FFr48 million (£4.6 million).

Claims for compensation have been presented for the cost of clean-up operations incurred by the regional and local authorities in the amount of FFr17.3 million (£1.6 million).

A number of claims have been presented for damage to property in the amount of FFr7.8 million (£740 000) and for loss of income in the amount of FFr1.2 million (£110 000).

It is expected that all claims will be settled for an amount significantly lower than the limitation amount which applies to the *Katja* under the 1969 Civil Liability Convention. It is not expected, therefore, that the 1971 Fund will be called upon to make any payments in this case.

EVOIKOS

(Singapore, 15 October 1997)

The incident

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

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

The Singapore and Cypriot authorities are investigating the cause of the incident.

Impact of the spill

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

Response and clean-up operations

Singapore

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

Malaysia

After the first few days natural weathering processes had rendered the oil no longer amenable to chemical dispersants. The oil slicks were nearly solid and had spread over a wide area in the Malacca Strait, making at-sea recovery operations impractical. The Malaysian Marine Department undertook aerial and boat surveillance and placed equipment on stand-by so as to make it possible to take preventive measures to protect sensitive resources if required. The clean-up was carried out by the Malaysian Department of the Environment with support from the Marine Department. District authorities within the Province of Selangor organised manual removal of oil and oily material from sandy shores. Oiled mangroves were left to recover naturally.

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

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

Indonesia

There is no information on any clean-up operations in Indonesia.

Claims for compensation

Singapore

Claims relating to clean-up operations and preventive measures have been submitted by Singapore Government agencies for a total amount of S$4.5 million (£1.7 million). Third party contractors have presented claims for a total of S$11.8 million (£4.4 million). These claims are being examined. The shipowner's insurer has made a provisional payment to the Singapore authorities of S$500 000 (£190 000).

Claims for property damage total S$1.8 million (£670 000). These include claims for the cleaning of a number of ships' hulls which were contaminated by oil escaping from the *Evoikos*. A company involved in the development of an island has submitted a claim in the amount of S$1 230 000 (£460 000) for the cost of clean-up operations on the island.

The shipowner and his insurer have indicated that they might maintain that the operations carried out in Singaporean waters (or at least part thereof) were undertaken to prevent or minimise pollution damage in Malaysia or Indonesia and that the costs thereof 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.

Evoikos – fish farms under threat of oil pollution
(photograph: ITOPF)

At its session in October 1999 the Executive Committee maintained its view that it was premature for the Committee to take any position on these issues.

Malaysia

Claims for clean-up costs have been submitted by the Department of the Environment and the regional Marine Departments for a total of RM740 000 (£120 000). A Malaysian oil industry co-operative (PIMMAG) which carried out clean-up operations at the request of the authorities has presented a claim for RM996 000 (£160 000). It is understood that PIMMAG's claim has been paid by the Malaysian authorities. Assessments have been made of these claims on the basis of additional information provided by the Malaysian authorities. Further information is awaited from the authorities in respect of the clean-up costs incurred by the Department of the Environment.

Claims relating to fisheries total RM1.9 million (£310 000). A preliminary assessment has been made by the technical experts engaged by the shipowner's insurer and the 1971 Fund. Further information is expected from the Malaysian authorities in the near future.

Indonesia

The Indonesian authorities have submitted a claim to the shipowner and his insurer for US$3.4 million (£2.1 million). The claim, which is not supported by detailed documentation, relates to pollution of mangroves (US$2 million), pollution of sand (US$1.2 million), fishermen's loss of income (US$11 000) and the cost of clean-up operations (US$152 000). The Indonesian authorities have been invited by the insurer to provide further documentation. This claim has been presented in the limitation proceedings in Singapore.

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

Payments by the 1971 Fund

In view of the uncertainty as to the total amount of the claims in October 1999, the Committee confirmed its decisions at previous sessions that the Director was not authorised to make any payments of claims for the time being.

Criminal proceedings

Following the collision criminal charges were brought against the masters of both ships. The master of the *Evoikos* was sentenced to three months' imprisonment and fines totalling S$60 000 (£22 000). The master of the *Orapin Global* was sentenced to two months' imprisonment and a fine of S$11 000 (£4 000).

Limitation proceedings

The shipowner has commenced limitation proceedings with the competent Singapore court. The court has determined the limitation amount applicable to the *Evoikos* at 8 846 941 SDR (£7.5 million).

KYUNGNAM N°1

(Republic of Korea, 7 November 1997)

The incident

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

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

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

Claims for compensation

So far 31 claims totalling Won 971 million (£532 000) have been submitted. Twenty-eight of these claims totalling Won 963 million (£527 000) have been assessed by the 1971 Fund at Won 228 million (£125 000). The three remaining claims are being examined.

The shipowner made payments of compensation to six claimants at amounts higher than those assessed by the 1971 Fund. As a result, the shipowner has waived his right of subrogation against the limitation fund in respect of the six claims.

In February 1999 the Executive Committee decided that, in view of the relatively small amounts involved, the 1971 Fund should pay all established claims in full and present subrogated claims against the shipowner's limitation fund.

As a result of that decision, the 1971 Fund paid Won 225 million (£116 000) to 11 claimants in June 1999. One assessment in respect of a clean-up claim has not been accepted by the claimant.

Limitation proceedings

The Ulsan District Court fixed the limitation amount applicable to the *Kyungnam N°1* at Won 43 543 015 (£22 000). The shipowner deposited this amount in court.

The Court decided that claims in the limitation proceedings should be filed by 17 August 1998. In August 1998 the 1971 Fund filed subrogated claims with the limitation court for Won 449 million (£250 000), comprising Won 207 million (£115 000) for clean-up costs and Won 242 million (£130 000) for fishery claims. These claims were those known to the 1971 Fund at that time. Six other claimants also filed claims for clean-up costs totalling Won 212 million (£115 000), and one fishery association presented a claim for Won 752 million (£410 000). The claims filed in court total Won 965 million (£530 000).

The limitation court is waiting for the 1971 Fund's experts to finalise their assessments of the outstanding claims before closing the limitation proceedings.

PONTOON 300

(United Arab Emirates, 7 January 1998)

The incident

Intermediate fuel oil was spilled from the barge *Pontoon 300* (4 233 GRT), which was being towed by the tug *Falcon 1* off Hamriyah in Sharjah, United Arab Emirates. The barge had reportedly become swamped during high seas and strong north-westerly winds on 7 January 1998 and had taken on water whilst losing oil. During the course of the night of 8 January, the barge sank and settled on the seabed at a depth of 21 metres, six nautical miles off Hamriyah. It is estimated that some 4 000 - 4 500 tonnes of oil was spilled.

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

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

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

Clean-up operations

The spilt oil spread over 40 kilometres of coastline, affecting four Emirates. The worst affected Emirate was Umm Al Quwain.

The Federal Environment Agency (FEA) co-ordinated spill response activity, with support from the Frontier and Coast Guard Service and municipal authorities. Onshore clean-up operations were carried out by an oil company and a number of local contractors. Collected oily waste was transported to an inland disposal site. The work was completed in June 1998.

Applicability of the 1969 and 1971 Conventions

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

Level of the 1971 Fund's payments

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

Claims for compensation

As at 31 December 1999, 11 claims for compensation for clean-up operations had been received, totalling Dhs 7.4 million (£1.3 million). Eight of these claims, totalling Dhs 5.3 million (£895 000), have been presented by the FEA. Preliminary assessments of the FEA claims have been made at Dhs 2.8 million (£470 000), and clarification has been requested in respect of certain items relating to some of these claims. Interim payments totalling Dhs 224 359 (£38 000) have been made.

A local contractor submitted claims totalling Dhs 2.2 million (£370 000) in respect of clean-up work. These claims have been settled at Dhs 2 153 000 (£365 000), and the 1971 Fund has paid 75% of the settlement amount.

It is expected that the Umm Al Quwain municipality will submit a claim in the near future. It appears that the claim will relate to losses suffered by some 200 fishermen following the spill, beach-cleaning costs, damage to facilities of the Marine Resources Research Centre, costs of studies undertaken by Al Ain University and the FEA and damage to mangroves.

Investigation into the cause of the incident

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

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

In October 1999 the Executive Committee considered the possibility of taking recourse action against the owner of the tug *Falcon 1*. Such a claim in tort would under the Law of the United Arab Emirates be time-barred when three years have lapsed from the date when the person who suffered the damage became aware of the act which caused the damage. However, it might be argued that the pollution damage in this case arose out of a towage operation, and the time bar period would then be two years from the date of termination of the operation.

The Committee therefore decided that, as a precaution, the 1971 Fund should commence legal action against the owner of the *Falcon 1* within the two year time bar period (6 January 2000). The 1971 Fund's lawyers have been instructed accordingly.

Criminal proceedings

In November 1999 a Criminal Court of first instance found three individual and two corporate defendants guilty of two charges: misuse of the barge *Pontoon 300* which was not in a seaworthy condition and thus in violation of UAE law; and causing harm to the people and the environment by use of the unseaworthy barge. The defendants have appealed against the judgement.

Pontoon 300 – oil accumulation in harbour
(photograph: ITOPF)

MARITZA SAYALERO

(Venezuela, 8 June 1998)

The incident

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

A diver checked the hoses and found two ruptures on the submarine hose used to discharge the medium diesel. This hose, which belonged to the oil terminal, consisted of six pieces of flexible hose of about 9 metres each, hooked together by bolts. One end of this set of hoses was connected to the shore submarine pipeline and the other to the vessel's manifold. The ruptures were located in the second and third hoses from the end which 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. PDVSA instructed three Venezuelan bodies to assess the damage caused to the environment.

Impact on fishing and tourism

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

Court proceedings

The town of Brion presented a claim for compensation against the terminal operator, PDVSA, the shipowner and his P & I insurer before the Supreme Court for an estimated amount of Bs10 000 million (£9.6 million) plus legal costs. The town of Brion requested that the Court should notify the 1971 Fund of the proceedings. The 1971 Fund has not yet been notified of this action.

Applicability of the Conventions

At its October 1998 session the Executive Committee noted that the spill emanated from a hose belonging to the oil terminal 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 1971 Fund has elaborated a non-technical guide to the nature and definition of persistent oil, which was considered by the Assembly in 1981. Under this guide an oil is considered non-persistent if at the time of shipment at least 50% of the hydrocarbon fractions, by volume, distil at a temperature of 340°C and at least 95% of the hydrocarbon fractions, by volume, distil at a temperature of 370°C. The Committee noted in October 1998 that the analysis of a sample of the medium diesel oil taken from one of the ship's cargo tanks had shown that the oil was non-persistent. The Committee therefore decided that, for this reason also, the incident fell outside the scope of application of the Conventions.

Limitation proceedings

The shipowner has not yet commenced limitation proceedings.

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

Investigations into the cause of the incident

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

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

10.3 Incidents dealt with by the 1992 Fund during 1999

As in Section 10.2 of this Report, claim amounts have been rounded. The conversion of foreign currencies into Pounds Sterling is as at 30 December 1999.

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 there was Libyan crude oil in the samples.

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

Investigations by the German authorities revealed that the Russian tanker *Kuzbass* (88 692 GT) had discharged Libyan crude in the port of Wilhelmshaven on 11 June 1996. According to the German authorities there remained on board some 46 m^3 of oil which could not be discharged by the ship's pumps.

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

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

1992 Fund's involvement

The German authorities informed the 1992 Fund that, if their attempts to recover the cost of the clean-up operations from the owner of the *Kuzbass* and his insurer were to be unsuccessful, they would claim against the 1992 Fund.

If the German authorities were to pursue a claim against the 1992 Fund, the question arises as to whether they have proved that the damage resulted from an incident involving one or more

ships as defined in the 1992 Civil Liability Convention (cf Article 4.2(b) of the 1992 Fund Convention).

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

Legal actions

In July 1998 the Federal Republic of Germany brought legal 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 (£830 000).

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

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

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

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.

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

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

The shipowner and the West of England Club have also referred to the results of the investigation of the German police and of the Italian public prosecutor[2], 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 have made the following points:

> The Kuzbass had carried Libyan crude oil. The analysis 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 the pollution was caused by the discharge of slops. It must be assumed, therefore, that already on a previous laden voyage pure cargo had seeped through the leak into the slop tank, and that the slop tank had, in part, been filled with slops originating from previous washings and that the leakage created a slop highly enriched with crude oil. The *Kuzbass* had then discharged this mixture on the voyage from Cuxhaven to the Mediterranean.

It appears that the Court will appoint an expert to consider the evidence as to the origins of the oil.

NAKHODKA
(Japan, 2 January 1997)

See pages 83 - 90 above.

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

See pages 96 - 99 above.

INCIDENT IN THE UNITED KINGDOM
(United Kingdom, 28 September 1997)

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

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

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

In order for this spill to fall within the scope of application of the 1992 Fund Convention, the claimant must show that the oil originated from a ship as defined in Article I.1 of the 1992 Civil Liability Convention which by reference is included in the 1992 Fund Convention, ie a laden or - in certain circumstances - unladen tanker.

Analyses of the pollutant oil indicated that it was bunker fuel, but in view of the small quantity which reached the beaches, it was impossible to establish whether or not it originated from a tanker. For this reason the 1992 Fund rejected the claim.

The local authority informed the 1992 Fund in August 1999 that it would not pursue its claim against the Fund.

SANTA ANNA

(United Kingdom, 1 January 1998)

Sequence of events

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

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

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

Claim for compensation

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

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

It is estimated that the liability limit of the *Santa Anna* under the 1992 Civil Liability Convention, if applicable, would be approximately 10.2 million SDR (£8.7 million).

Applicability of the 1992 Conventions

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

Applicability of the 1992 Civil Liability Convention

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

Definition of 'incident'

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

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

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

Definition of 'ship'

The final question was whether the *Santa Anna* fell within the definition of 'ship' laid down in Article I.1 of the 1992 Civil Liability Convention.

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

As a result of the Committee's consideration of this issue, the Assembly established an intersessional Working Group to study the interpretation of the definition of 'ship'. The results of the Working Group's study are set out in Section 9.

At its October 1999 session the Executive Committee noted that the United Kingdom Government was still pursuing its claim against the shipowner on the basis of strict liability and that the amount claimed fell well below the limitation amount applicable to the vessel. The Committee considered therefore that there was no need to decide whether the *Santa Anna* fell within the definition of 'ship'. It was noted, however, that the issue would be reviewed at the request of the United Kingdom delegation if the United Kingdom Government was unable to recover its costs from the shipowner.

MILAD 1

(Bahrain, 5 March 1998)

The incident

On 5 March 1998 the coastal tanker *Milad 1* (801 GT) was intercepted by a United States Coast Guard (USCG) contingent of the Multinational Maritime Interception Forces in international waters some 25 nautical miles north-east of Bahrain.

The tanker, which was carrying 1 500 tonnes of mixed diesel/crude oil, was found by the USCG to have a crack in the hull approximately 20 cm long, allowing sea water to enter a ballast tank. The USCG considered that the *Milad 1* was in danger of sinking and that it posed a grave threat of pollution to the coast of Bahrain. The USCG placed crew on board to try and stabilise the tanker using pumps to counteract the flooding. The master of the *Milad 1* requested permission to off-load part of the cargo to bring the crack above the water line.

The Marine Emergency Mutual Aid Centre (MEMAC) contacted a ship repair company based in Bahrain, which agreed to provide a salvage tug and repair team to investigate the damage and undertake temporary emergency repairs.

On 8 March the ship repair company inspected the *Milad 1* and found that the crack had increased to 45 cm in length and was continuing to propagate, necessitating additional repair equipment. MEMAC made contact with a representative of the owner of the *Milad 1*, who was based in the United Arab Emirates at the time of the incident. The owner's representative agreed to the emergency repairs being undertaken and also offered to provide another tanker, the *Al-Mtama*, for lightering the *Milad 1*.

On 11 March the USCG reported that the crack in the hull of the *Milad 1* had increased to more than 3 metres. On 12 March, after consultation with the Bahrain Government and MEMAC, the USCG decided to tow the *Milad 1* to a more central location in the Persian Gulf, some 50 nautical miles to the north-east of Bahrain. The ship repair company was requested to escort the *Milad 1* and remain on standby during the lightering operation in case emergency repairs became necessary.

On 15 March the cargo on board the *Milad 1* was transferred to the *Al-Mtama*, and both vessels were allowed to sail. No oil was spilled at any time during the operations, and no emergency repairs were carried out at sea.

Although MEMAC received a hand written telefax from a representative of the shipowner agreeing to pay for any repair costs, MEMAC was unable to recover any costs for the provision of the salvage vessel and a repair team. MEMAC has not been able to establish whether the *Milad 1* was insured for pollution liabilities.

Claims for compensation

In July 1998 the 1992 Fund received a claim for BD21 168 (£35 000) from MEMAC for the cost of providing a salvage tug and a repair team to attend the *Milad 1*.

In February 1999 the Executive Committee instructed the Director to discuss with MEMAC what course of action might be available to it to recover the costs incurred from the registered owner. The various options were reported to the Committee at its April 1999 session. The Committee considered the steps that MEMAC could in principle take to trace the owner, with a view to recovering the costs incurred. The Committee decided that, taking all factors into account,

MEMAC had taken all reasonable steps to pursue the legal remedies available to it and that MEMAC's claim was therefore admissible.

Following that decision by the Executive Committee, the Director approved MEMAC's claim in full, and payment was made in June 1999.

Possibilities for the 1992 Fund of taking recourse action against the shipowner

At the Committee's April 1999 session, the Director was instructed to investigate the possibilities for the 1992 Fund of taking recourse action against the shipowner.

The Director received helpful advice from a number of delegations.

The *Milad 1* had on board at the time of the incident an expired Provisional Patent of Navigation issued by the International Merchant Marine Registry of Belize (IMMARBE). The Director contacted IMMARBE and was informed that on learning that the *Milad 1* had been intercepted by the Multinational Interception Force, it had immediately taken steps to initiate punitive action in the form of a Resolution by the Deputy Registrar for Belize based in Dubai (United Arab Emirates) fining the shipowner US$30 000 (£19 000). IMMARBE reported having had no contact with the owner or any knowledge of the ship since passing the Resolution.

The Director engaged an investigator to locate the vessel, commencing his enquiries in Qatar, which was where the vessel was last sighted. The investigation revealed that the *Milad 1* was laid up in Sharjah (United Arab Emirates) for about one month after the incident, and then sailed in a damaged condition to Basra (Iraq), the homeport of the ship and crew. The information available indicated that the vessel was laid up in Iraq due to lack of funds to undertake the necessary repairs to make it seaworthy. It was understood that repairs to the ship would cost some US$25 000 (£15 500) and that its scrap value was about US$65 000 (£40 000). It had not been possible to contact the shipowner. In view of the time that had elapsed since the incident, it is possible that the shipowner had already scrapped the vessel.

In October 1999 the Executive Committee considered the results of the investigations. The Committee agreed with the Director that it would be very costly and difficult to pursue the investigation further, as would any recovery action. The Committee concluded that the likelihood of recovering the amount paid by the 1992 Fund in compensation to MEMAC was extremely small and therefore decided that further efforts to this end were not justified.

MARY ANNE

(Philippines, 22 July 1999)

The incident

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

The *Mary Anne* was entered with the Terra Nova Insurance Company Limited (Terra Nova).

Most ships are traditionally entered in Protection and Indemnity Associations (P & I Clubs) which are mutual insurers. Terra Nova is not such an insurer but a conventional insurance company which covers P & I risks at fixed premiums.

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. Although these services included the provision of oil recovery equipment, rough sea conditions precluded its use and the offshore response was based upon dispersant spraying from tugs. Shoreline clean-up involved the manual collection of oil and oily debris by local labour recruited by the municipalities.

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

Claims for compensation

As at 31 December 1999 Terra Nova had incurred expenditure of approximately US$1 million (£620 000) in respect of the oil removal contract and the clean-up operations.

It has been indicated that some 4 000 fishermen operate out of the Mariveles district. It is not known whether the incident will give rise to claims for losses in the fishery sector.

The limitation amount applicable to the *Mary Anne* is 3 million SDR (£2.5 million). It is unlikely that the total amount of the established claims will exceed the amount of compensation available under the 1992 Civil Liability Convention. However, Terra Nova has informed the 1992 Fund that it is investigating a number of apparent anomalies surrounding the incident which, if substantiated, could, in Terra Nova's view, put the shipowner in breach of the insurance policy in respect of the vessel. Although it is understood that the investigations have not yet been completed, Terra Nova has informed the 1992 Fund of its intention to direct further claims arising from the incident to the shipowner, and that it may request the shipowner and/or the 1992 Fund to reimburse Terra Nova the amounts it has paid to claimants. It is not known whether the shipowner is financially capable of meeting his obligations under the 1992 Civil Liability Convention.

Mary Anne – oil slick at sea
(photograph: ITOPF)

DOLLY

(Caribbean, 5 November 1999)

The *Dolly* (289 GT), registered in Dominica, was carrying some 200 tonnes of bitumen when it sank at 25 metres depth in a port in Martinique. As at 31 December 1999 no cargo had escaped.

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

The *Dolly* was originally a general cargo vessel, but special tanks for carrying bitumen had been fitted, together with a cargo heating system. The ship probably did not have any liability insurance. The cargo tonnage of the ship is not known. 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, and he had probably no financial resources to do so. The French authorities are considering what measures should be taken.

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.

ERIKA

(France, 12 December 1999)

The incident

On 12 December 1999 the Maltese 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 30 000 tonnes of heavy fuel oil of which some 14 000 tonnes was spilled at the time of the incident. The bow section floated vertically for several hours before sinking during the night of 12 December in about 100 metres of water. A French salvage company succeeded in attaching a line from a tug to the stern section and attempted to tow it further off shore. However, during the morning of 13 December the stern section sank to a depth of 130 metres about 10 nautical miles from the bow section. It is estimated that about 10 000 tonnes of cargo remains in the bow section and a further 6 000 tonnes in the stern section. The French navy has begun an underwater survey of the two parts of the wreck. The 1992 Fund will follow the investigations through its technical experts.

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'. A number of vessels were mobilised 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. The Steamship Mutual chartered an asphalt carrier to receive recovered oil. Although the oil recovery operations were hampered by the severe weather conditions and the very high viscosity of the oil, it was reported that some 1 100 tonnes of oil was collected at sea by 31 December 1999.

On 25 December 1999 heavy oiling of shorelines was caused in certain areas. Widespread but intermittent oiling subsequently occurred over some 400 kilometres of shoreline. The Préfets of the five affected Départements took charge of shoreline clean-up with assistance from the coastal local authorities, the Civil Defence Corps, local fire brigades and the Army. Eight operational centres were established. A total of some 5 000 people were engaged in shoreline clean-up. The clean-up which involved mainly manual/mechanical collection of the oil will continue for some time in 2000.

The 1992 Fund has monitored the clean-up operations through experts from the International Tanker Owners Pollution Federation Ltd (ITOPF), who arrived on site on 12 December 1999, assisted by a number of local surveyors.

Two administrative courts appointed experts to carry out investigations into the condition of the beaches before the incident and the type and extent of the pollution caused. The 1992 Fund is following these investigations through its technical experts.

Erika – beach clean-up
(photograph: Agence Maritime Vigneron)

Impact of the spill

Over 30 000 oiled birds (mainly guillemots) had been collected by 31 December 1999, the majority of which were dead. Attempts were made to clean the remaining collected birds, half at various centres in France and the rest in Belgium, the Netherlands and the United Kingdom.

Oil entered a number of coastal marinas contaminating many pleasure boats and moorings as well as an area that supports an important oyster and mussel fishery. Large quantities of shellfish were harvested for the Christmas market before the oil reached the coast. The affected coastline supports an important tourist industry during the summer months.

Claims for compensation

As at 31 December 1999 it was not possible to estimate the total amount of the claims that will arise from this incident. However, the clean-up operations and any operations to remove oil from the wreck or to prevent further oil from escaping from the wreck will result in substantial claims. It is expected that there will be significant claims from the fishery, mariculture and tourism industries.

The Steamship Mutual and the 1992 Fund decided to establish a Claims Handling Office in the affected area but by 31 December 1999 had not determined the location of the office.

Investigation into the cause of the incident

A criminal investigation into the cause of the incident is being carried out at the Tribunal de Grande Instance in Paris.

At the request of a number of parties, the Tribunal de Commerce in Dunkirk appointed experts to investigate the cause of the incident ('expertise judiciaire'). The Tribunal de Grande Instance in Sables d'Olonne has also appointed experts to investigate the cause of the incident and to assess the extent of the damage caused. Attempts have been made to convince all parties to agree that only one investigation should be made into the cause of the incident, ie that in Dunkirk, but the party having made the request to the Court in Sables d'Olonne has not accepted this solution.

The 1992 Fund is following the investigations through its French lawyers and technical experts.

Shipowner's limitation amount

The limitation amount applicable to the *Erika* under the 1992 Civil Liability Convention is approximately 9.2 million SDR (£7.8 million).

11 LOOKING AHEAD

The past 12 months have again seen a considerable growth in 1992 Fund membership. During 1999, 11 more States have ratified the 1992 Fund Convention, bringing the number of Member States to 50 by the end of 2000. It is interesting to note that some of the 1992 Fund Member States were not previously Members of the 1971 Fund. By the end of 2000, the number of 1992 Fund Member States will be greater than the number of 1971 Fund Member States.

With its decreasing membership, the 1971 Fund has entered a new phase. The 1971 Fund Convention will continue to be in force until the number of Member States is reduced to two. It is hoped that Governments of 1971 Fund Member States will, as a matter of great urgency, accede to the 1992 Protocols and denounce the 1971 Fund Convention. Before the 1971 Fund can be wound up, however, it will have to meet its obligations in respect of all incidents which occurred before the Convention ceased to be in force.

The Secretariat will pursue its efforts to bring the pollution cases which the Funds are now handling to satisfactory conclusions as soon as possible. In particular, the Secretariat will endeavour to build on the considerable progress made during 1999 towards the settlement of claims with regard to a number of incidents involving the 1971 Fund.

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

As a result of the review of the Secretariat's working methods carried out in 1998, the joint Secretariat has been given a new structure and increased resources. The Secretariat is therefore in a better position to provide services to Member States and victims of oil pollution incidents. The Director hopes that the Secretariat will soon be able to relocate to new offices which will contribute to further increased efficiency.

ANNEX I

Structure of the IOPC Funds

1971 FUND GOVERNING BODIES

ASSEMBLY

Composed of all Member States

Acting Chairman:	Ms K Jedral (Poland)
Vice-Chairman:	Mrs I Barinova (Russian Federation)

EXECUTIVE COMMITTEE

60th and 61st sessions

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

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

62nd session

Chairman:	Dr M Baradà (Italy)
Vice-Chairman:	Captain E A Cely-Nuñez (Colombia)

Colombia	Italy	Poland
Côte d'Ivoire	Malaysia	Russian Federation
Fiji	Nigeria	United Arab Emirates
India		

1992 FUND GOVERNING BODIES

ASSEMBLY

Composed of all Member States

4th session

Chairman:	Mr C Coppolani (France)
Vice-Chairmen:	Professor H Tanikawa (Japan)
	Captain A Saùl Bandala (Mexico)

Elected to hold office from the end of the 4th session

Chairman:	Mr W Oosterveen (Netherlands)

EXECUTIVE COMMITTEE

2nd - 5th sessions

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

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

JOINT SECRETARIAT

Officers

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

AUDITORS OF THE 1971 FUND AND THE 1992 FUND

Comptroller and Auditor General
United Kingdom

ANNEX II

Note on 1971 and 1992 Funds' Published Financial Statements

The financial statements reproduced in Annexes V to XIII, and XV to XVIII 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 1998, approved by the Executive Committee of the 1971 Fund at its 62nd session acting on behalf of the 1971 Fund Assembly and by the Assembly of the 1992 Fund at its 4th session.

EXTERNAL AUDITOR'S STATEMENT

The extracts of the financial statements set out in Annexes V to XIII and XV to XVIII are consistent with the audited financial statements of the International Oil Pollution Compensation Funds 1971 and 1992 for the year ended 31 December 1998.

R Maggs
Director
for the Comptroller and Auditor General
National Audit Office, United Kingdom
31 January 2000

ANNEX III

REPORT OF THE EXTERNAL AUDITOR ON THE AUDIT OF THE ACCOUNTS OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS 1971 AND 1992 FOR THE FINANCIAL PERIOD 1 JANUARY TO 31 DECEMBER 1998

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') and the International Oil Pollution Compensation Fund 1992 ('the 1992 Fund') for the financial period 1 January to 31 December 1998. My examination was carried out with due regard to the provisions of the 1971 Fund Convention and the 1992 Protocol to the 1971 Fund Convention, and to Regulation 13 of the Funds' respective 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 financial statements are free of material misstatement. The Funds' joint Secretariat, comprising of the Director and his appointed staff, were responsible for preparing the financial statements, and I am responsible for expressing an opinion on them, based on evidence obtained in my audit.

2 In addition to my audit of the Funds' accounts, I have carried out reviews under the Funds' Financial Regulation 13.3 whereby I may make observations with respect to the administration and management of the Funds. In the circumstances of the eventual winding up of the 1971 Fund, and in the light of the continued interests of past members of this Fund who are now members of the 1992 Fund, I have issued a joint report that covers my observations on both Funds.

Structure of this Report

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

Part 2 - Follow up on my previous year's Recommendations and Observations on the 1971 Fund

4 This section (paragraphs 10 to 27) sets out my comments on action taken by the Secretariat in response to my 1997 audit recommendations and observations on the 1971 Fund.

Part 3 - Audit Findings

5 This section details my findings in 1998 relating to:

- 1998 Claims expenditure (paragraphs 28 to 34);
- Winding up of the 1971 Fund (paragraphs 35 to 55); and
- Other financial matters (paragraphs 56 to 61).

Audit Objectives

6 The main purpose of the audit was to enable me to form an opinion as to whether the income and expenditure recorded in 1998 had been received and incurred for the purposes approved by the 1971 and 1992 Fund Assemblies; whether income and expenditure were properly classified and recorded in accordance with the Funds' Financial Regulations; and whether the financial statements presented fairly the Funds' financial positions as at 31 December 1998.

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 and 1992 Funds' 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 Funds' financial statements. Consequently, my work did not involve a detailed review of all aspects of the 1971 and 1992 Funds' budgetary and financial information systems, and the results should not be regarded as a comprehensive statement on them.

Overall Results

9 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 Funds' respective financial statements as a whole. Accordingly, I have placed unqualified opinions on the 1971 and 1992 Funds' financial statements for 1998.

PART TWO - ACTION TAKEN BY THE SECRETARIAT IN RESPONSE TO MY PREVIOUS YEAR'S AUDIT RECOMMENDATIONS IN MY REPORT ON THE 1971 FUND

Introduction

10 For the 1997 financial year I reported on the findings arising from my review of claims and related expenditure. In particular, those issues arising from my staff's visits to the Milford Haven claims handling office for the *Sea Empress* incident and the Kobe claims handling office for the *Nakhodka* incident. I also commented on a number of other financial matters, including progress towards resolving the potential contingent liability relating to the *Haven* incident. I have followed up the main findings and recommendations made in last year's report in order to determine what action has been taken by the Secretariat in response.

Claims and Related Expenditure

11 The main issues underlying a number of my recommendations in this area were the need to ensure consistency in the treatment of claims and to support the transfer of best practice in claims handling between existing and future incidents. With this in mind, my recommendations sought to strengthen the guidance given to local claims handling offices and to enhance their overall management by the Secretariat.

12 On the need to strengthen the existing guidance provided to claims offices, I am pleased to note that an informal Working Group has been established on this matter. This has been set up

between the Secretariat and members of the pollution sub-committee of the International Group of P & I Clubs and of the International Tanker Owners Pollution Federation in order to develop more formal guidelines, possibly in the form of a Claims Handling Office Manual.

13 I recommend that the Funds should review its criteria and procedures for making provisional payments, as well as incorporating guidance on this area in the proposed manual. In response, the Director has commented that he sees a great advantage if the process for making provisional payments could be simplified, so as to speed up these payments. However, he is concerned over the possibility that provisional payments might exceed the amount due for final payment and, for this reason, emphasises the need to obtain a fairly extensive report on assessments before provisional payments can be made. He also believes that the key element to complete the provisional assessment of clean-up claims speedily is to have sufficient surveyors and experts on site during clean-up operations. On the question of whether guidelines on provisional payments should be incorporated into the proposed manual, the Director has told me that the Working Group will consider this.

14 On the recommendation I made for improvement in the filing and documentation of claims expenditure at both the local claims offices and the Funds' headquarters, the Director has informed me that the requested improvements have been largely actioned.

15 The Director has told me that consideration will be given in the future to implementing my recommendation that the Fund should establish guidelines covering the structure and general content of assessment reports. However, with regard to my suggestion that these guidelines should also be incorporated in the proposed claims handling office manual, he feels that this may not be appropriate since claims handling staff are not the only persons engaged in the assessment of claims and would, therefore, prefer these guidelines to be separately documented.

16 With regard to the *Nakhodka* incident, I recommended that there was a need to resolve speedily the key issues of principle relating to the cost of the clean-up operations so that claim payments could be made without further delay. I also made more general recommendations concerning the need for early determination and resolution of key matters of principle in future claims. The Director has informed me that most of the outstanding issues of principle in relation to the clean-up operation of the *Nakhodka* incident have now been resolved. He also acknowledges that there would be an advantage if key principles could be identified at the initial stage of assessment. Although he will examine whether, for future major incidents, such matters could be identified and put before the Executive Committee at an earlier stage, the 1971 Fund's experience showed that this was not always possible in practice. For example, in many cases these issues of principle are not identified until after the related claim has been examined in some depth, and the timetable for laying down principles is largely dictated by the rate at which claims are generated and the frequency of Executive Committee sessions.

17 Concerning the management of local claims handling offices, I recommended that the Secretariat should be more fully involved in their administrative arrangements. In particular, by taking a lead in the establishment of the office, including the recruitment of staff employed; by providing day to day advice on management issues; and through actively reviewing operations. In response, the Director has informed me that it is an important task of the recently established post of Head of the Claims Department to strengthen the Secretariat's management of local claims offices and that the Secretariat have taken a more active role in their management, including regular visits by Secretariat staff. However, the Director wishes to give further thought to the extent of the Funds' managerial involvement, given that such offices are currently operated jointly with the P & I Club involved with the related incident.

18 In respect to my specific recommendation that the Fund should carry out a review of the heavy workload of the Kobe claims office, the Director has told me that the assessment completion

timetable and staffing levels are kept under regular review. Since my staff's visit to the office in August 1998, two additional surveyors and two more support staff were employed in October 1998 and a further surveyor, two more support staff and an accountant were recruited in January 1999.

19 With regard to my review of claims related expenditure, I made a number of recommendations concerning the use of experts by the Fund, including further detailing their terms of engagement, the level of information provided in support of their charges and the establishment of an expert and fees database.

20 I am pleased to note that the Director has initiated a database, which is expected to assist the Secretariat in its future selection of experts. The Director has also informed me that steps are being taken to agree contractual terms with experts and lawyers who are engaged on a more regular basis. Although the Director believes that, given the limited number of experts available with the appropriate experience and the immediacy with which their assistance is required, it may not always be possible to enter into detailed contractual negotiations with all experts and lawyers before they are appointed. However, they are now required to give a more detailed breakdown of the work carried out when submitting their invoices.

21 Despite the relatively short time since I made my report on the Fund's 1997 accounts, I welcome the very positive steps that the Secretariat has already taken to implement my recommendations on claims and related expenditure. My staff will continue to monitor this area of the Secretariat's work, including the outcome of the Working Group.

Other Financial Matters

Contingent Liabilities - *Haven* Incident

22 The 1971 Fund's contingent liabilities are disclosed in Schedule III to the financial statements and relate mostly to compensation claims for oil pollution damage. Under the 1971 Fund Convention, those liabilities which mature, will be met by contributions assessed by the 1971 Fund Assembly.

23 As disclosed in Schedule III to the financial statements, the 1971 Fund has assessed contingent liabilities of £306 909 000 as at 31 December 1998, compared with £390 555 000 in 1997. Of the total for 1998, £29 737 000 relates to the *Haven* incident, and represents payments in respect of the *Haven* incident, to the Italian State, the French State and the principality of Monaco of the balance of the maximum amount available under the 1971 Convention of 60 million Special Drawing Rights (SDR).

24 In my previous audits of the 1971 Fund, I have qualified my audit opinion on the Fund's financial statements as a result of the uncertainty surrounding the outcome of the court proceedings relating to the claims in respect of the *Haven* incident, which occurred in April 1991.

25 In the court proceedings a dispute arose as to the total amount available for compensation under the two applicable treaties - the 1969 Civil Liability Convention and the 1971 Fund Convention. Although the Italian Courts in Genoa were initially called upon to rule on the 1971 Fund's liability under the 1971 Fund Convention, in July 1998, the Italian Parliament adopted an Act authorising the Italian Government to conclude an agreement on a global settlement with the Fund, the ship owner and his insurer. The agreement required the parties to withdraw their legal actions in the Italian Courts and fixed the maximum amount available under the Conventions at 60 million SDR. This agreement, which was signed by all parties concerned in Rome on 4 March 1999, removed the uncertainty surrounding these proceedings and the need for me to continue to qualify my audit opinion in respect of the contingent liability for the *Haven* incident.

Recovery of VAT

26 As I noted in my previous report on the 1971 Fund's financial statements, a number of invoices received from Italian law firms, dating back to 1991, have been paid inclusive of Italian value added tax. The Italian authorities have agreed in principle that some £321 626 of value added tax should be repaid to the 1971 Fund. Although the financial statements do not record the amounts due for repayment, and to date no money has been repaid, the 1971 Fund still expects to receive a full refund.

Contributors in Liquidation

27 In my report on the 1971 Fund, I observed that £9 945 was due from a Dutch contributor that had gone into liquidation. The Director has informed me that there will be no payment made to the 1971 Fund from this contributor.

PART THREE - AUDIT FINDINGS

1998 Claims Expenditure

Introduction

28 In my previous year's audit of the 1971 Fund, I undertook an enhanced examination of the payment of claims and related expenditure. The objective of this examination was to test whether the Fund's claims handling procedures ensured that claims were treated equally and in accordance with the Fund's regulations and established procedures, and that claims and related expenditure are incurred in a cost-effective manner.

29 In Part two of my report, I have indicated the progress that the Secretariat have made to date in respect of the recommendations that I made following my review of 1997 expenditure. In their review of claims expenditure incurred in 1998, my staff took due account of the limited time that the Secretariat have had to consider and implement my earlier recommendations.

Background

30 Although the 1992 Fund continued to have no claims expenditure, the total of such expenditure for the 1971 Fund was £30 838 205 in 1998. The majority of this expenditure, some 79 percent, related to four major incidents, as detailed in the Table below.

Table - 1971 Fund claims expenditure (1 January to 31 December 1998)

	Total Claims Expenditure £	**Percentage** (of total)
Yuil N°1 (21/9/95)	7 041 971	23%
Nakhodka (2/1/97)	6 961 849	23%
Osung N°3 (3//4/97)	5 656 528	18%
Sea Prince (23/7/95)	4 651 325	15%
Other incidents	6 526 532	21%
TOTAL	**30 838 205**	**100%**

Audit Approach

31 My staff selected and examined a sample of claims made in 1998; covering all incidents for which payments had been made in the year. They reviewed the associated files and related documents held at the Funds' headquarters in London and interviewed key Secretariat staff, including the Legal Counsel and the Head of the Claims Department. They also undertook an overall examination of the expenditure that has been incurred on the four major incidents, as detailed in the Table.

32 Further to the observations that arose from my 1997 review, I have detailed below some additional comments arising from my 1998 examination concerning supporting documentation and reconciliation of claims payments.

Supporting Documentation

33 In their review of the documentation supporting claims payments in respect of the four major incidents, my staff observed that, for the majority of claims paid out in 1998, the original claims documentation is not held by the Secretariat in London. I understand that, in accordance with established practice, this documentation is retained on location because the original claims documents in many cases are presented in languages which cannot be read by the Secretariat and claims officers do not need to regularly refer to them but make their review on the basis of the assessments made by the experts and surveyors who in turn have examined the original documents. The original documentation is therefore normally held at the local claims office (where one has been established) or at the offices of the local experts involved in processing the claims. However, the major part of the original documentation relating to the operation to remove the oil from the *Yuil N°1* and *Osung N°3*, which had been prepared in English, is held by the Secretariat and these operations gave rise to the major part of the claims paid in 1998 for these incidents.

34 On the basis of: their test examination of the available original claims documentation and experts' assessments held by the Secretariat; their review of procedures followed by the Secretariat; and their observation of local claims processing during their 1998 visit to the *Nakhodka* incident local claims handling office, my staff are satisfied that claims expenditure properly reflects the original supporting documentation. Nevertheless, for future audits, my staff have agreed with the Secretariat that an early decision should be taken on whether an audit visit is required to the local claims handling office, or local expert, to examine the original supporting documentation and to discuss the procedures being followed locally in the processing of the documentation.

Winding up of the 1971 Fund

Introduction

35 The Secretariat have expressed their concern to me about the legal and logistical difficulties relating to the continued operation of the 1971 Fund, and have asked for my advice on what further measures could be taken to facilitate the winding up of the Fund. Accordingly, I have undertaken a review of the consequences for the Fund of its reducing membership, in particular, on the financial management and stewardship of its net assets.

Background

36 Following the establishment of the 1992 Fund, the membership of the 1971 Fund has fallen from 75 State Parties as at 31 December 1997 to 52 as at 31 December 1998; with a further eight Members due to leave the Fund during 1999, and at least four Member States will leave during 2000.

37 As a result of this reduction in membership there has been a fall in the total reported oil quantities received in Member States, upon which contributions to the Fund are based, from 1 213 million tonnes for 1997 to 317 million tonnes for 1998. Furthermore, the Secretariat predict that this figure is likely to fall to 80 million tonnes for 2000 and may fall to as little as 35 million tonnes for 2001.

38 The Secretariat have pointed out to Member States that a consequence of this reduction in the contribution base is the considerably increased financial burden which might fall on the contributors in those States which remain Members of the 1971 Fund. In this regard, it should be emphasised that, unlike many other international bodies, the 1971 and 1992 Funds are neither funded nor guaranteed by their Member States. Instead, funding is from levies on those entities (state and privately owned enterprises) receiving oil after sea transport in the territories of the Member States.

Going Concern

39 The 1971 Fund Convention requires oil receivers in former Member States to continue contributing to Major Claims Funds' (established for each incident where the total amount payable exceeds one million Special Drawing Rights - approximately £850 000) expenditure arising from incidents that occurred at the time of their membership. However, as the contribution base of the 1971 Fund diminishes there becomes an increased risk that the remaining contributors will be unable to fund potential claims arising from future incidents. To the extent that this situation could undermine the Fund's ability to pay compensation against valid claims as they fall due, I have examined whether the going concern assumption remains appropriate for the Fund's accounts.

40 The going concern concept is the assumption made when valuing the assets and liabilities of an accounting entity that the entity will continue to carry on its activities for the foreseeable future.

41 The International Standard on Auditing relating to going concern provides guidance on the auditor's responsibilities in the audit of financial statements regarding the appropriateness of the going concern assumption as a basis for the preparation of those statements. On this, the standard states that the entity's continuance as a going concern for the foreseeable future, generally a period not to exceed one year after the period end, is assumed in the preparation of financial statements in the absence of information to the contrary.

42 In considering whether the 1971 Fund will continue to meet its financial obligation up to 31 December 1999, I have taken into account the fact that:

- claims for past incidents continue to be adequately funded; and
- although reducing membership during 1999 will cause the contributing oil base to fall, it will still remain at some 77 percent of the level it was as at 31 December 1998.

43 On this basis I consider the 1971 Fund will remain a going concern for the period to 31 December 1999, and I have therefore not seen it necessary to qualify my opinion on the 1971 Fund's financial statements with regard to this matter. Nevertheless, there remain some significant financial management issues that I would like to bring to the attention of the Member States of the two Funds at this stage of the winding up of the 1971 Fund, which are detailed below.

Resources Management

44 I note that the Secretariat have always sought to ensure that sufficient resources are available for the payment of claims as they fall due. Resourcing of the Fund ultimately relies on the income from the annual contributions levied by the Assembly. However, on a day to day basis, individual claims payments may be funded through internal loans between the Major Claims Funds and through

the availability of the Fund's working capital. The governing bodies of the Funds have chosen not to resort to external borrowing.

45 As the contributing base further diminishes beyond 31 December 1999, any further major incidents may have consequences for the 1971 Fund's continuing ability to successfully raise sufficient overall resources from contributions. Member States' contributors are liable to fund compensation claims arising from those incidents which occur while they remain members. Accordingly, future incidents will be funded by a smaller and differing composition of contributors from past incidents. Amounts already held, or to be advanced, against past incidents should be recognised and protected as belonging to those contributors and not used for funding across all incidents.

46 In these circumstances, it may become necessary for the Secretariat to consider such action that would "ring-fence" or specifically allocate funds to major incidents which are funded by the same group of contributors. For example, this would mean the need to:

- restrict inter-fund borrowing between Major Claims Funds to those incidents where the same contributors are involved; and

- allocate the extensive cash holding of the 1971 Fund to named bank accounts, which are designated to funding only claims for specific incidents where the same contributors are responsible for the payment of these claims.

47 I recognise the Secretariat's concern that such measures would cause considerable practical and operational difficulties for the Fund. For example, that the current pooling of all of the 1971 Fund's existing investments allows for a better rate of return, and that separate investments for each Major Claims Fund and for the General Fund would be difficult to carry out since it is necessary that each Fund is liquid to pay claims at very short notice. However, the proposed measures are designed to preserve the internal financial integrity of the Fund in a winding up situation and are issues that a Liquidator, if appointed (see paragraph 55), would also need to resolve. Accordingly, I **recommend** that the Secretariat give early consideration to how best to overcome these difficulties should it become necessary to take such action.

Working Capital

48 The working capital of the 1971 Fund is part of the General Fund balance of £8.6 million carried forward to 1999 (Statement IX), which represents the Fund's total net assets, and is a source of internal funding for claims payments, as indicated in paragraph 44 above. In the calculation of contributions needed for 1998, the Secretariat set aside from the available General Fund balance a working capital fixed previously at £5 million by the Assembly.

49 However, identifying the extent of the 1971 Fund's actual realisable net assets and therefore its readily available resources, as represented by the General Fund balance, is complicated by the nature of the 1971 Fund's established accounting practices and procedures. For example, not all potential assets are included in the financial statements. In particular, it is not possible for the Fund to record amounts due from contributors until it has received from Member States concerned oil reports on the quantities of contributing oil received in the year in question nor is it possible for the Fund to quantify the potential recovery of claims payments from third parties. On the other hand, assets included in financial statements may not be immediately and fully realisable. For example, the Fund makes no provision against the possible non-payment of outstanding contributions.

50 In a winding up situation, the General Fund balance carried forward may have to be recalculated to take into account these considerations, for example, a possible reduction to reflect the risk of non-collection of outstanding contributions. This could result in a revised balance that was

insufficient to cover the level of the Fund's working capital fixed by the Assembly. As the size of the available working capital is included in the calculation of the level of future contributions, I **recommend** that the Secretariat closely monitor these potential adjustments to the General Fund balance.

51 Resolution 11 of the 1971 Assembly meeting in April 1997, re-affirmed the principle laid down in Article 44(2) of the 1971 Convention by stating that persons in former State Parties who have contributed to the 1971 Fund shall be entitled to participate in an equitable manner in the distribution of the assets which remain when the winding up of the 1971 Fund has been completed. In this regard I would note that previous changes to the size of the working capital of the Fund have been made a part of the annual calculation of the amount of contributions due for the next financial year.

52 Where the Assembly have in the past decided a reduction in the working capital, no attempt was made to apportion this back over past contributions. The Assembly have previously decided not to do so as it would be logistically burdensome to make the necessary calculations and due to the possibility that past contributors may no longer exist. It is also recognised that contributions to the General Fund have been made over the years without any separation of the amounts used for payments of claims in respect of a great number of incidents and for administrative expenses. However, in a winding up situation, a more equitable method of further reducing and ultimately distributing all of the working capital would need to be found. Accordingly, I **recommend** that the Secretariat seek the Assembly's early decision on what practical methods are available for this purpose. This would also be a matter for consideration by the Liquidator, if appointed (see paragraph 55).

Liquidation of the 1971 Fund

53 Although the 1971 Fund Convention specifies that it shall cease to be in force when it has less than three State Parties, the Secretariat are already aware of the difficulties of maintaining the Fund as a going concern well before that stage is reached. Even when this stage is reached, consideration will have to be given to the management of any remaining assets held by any residue body and their eventual distribution. The final winding-up of such a residue body may itself be delayed so long as there remain unsettled claims, including unresolved litigation, relating to past incidents involving the 1971 Fund.

54 I am also aware of the difficulties being experienced in the governing of the 1971 Fund as a result of its reducing membership. In particular, the likely failure to obtain a quorum for the meetings of its existing governing bodies, the Assembly and Executive Committee, has already resulted in the establishment of a newly created body, the Administrative Council. The Administrative Council has no quorum requirements and is made up of the remaining and former 1971 Fund Members, although former members have a right to vote only in respect of issues relating to incidents which occurred while they were Members.

55 The Secretariat have been very active in encouraging 1971 Fund members to denounce the 1971 Convention and accede to the 1992 Protocols. However, in the circumstances outlined above, and in the light of the issues that I have raised concerning the resourcing of the Fund, I **strongly recommend** that the Assembly, the Executive Committee or the Administrative Council - as the case may be - consider the need ultimately to appoint a Liquidator to take over the administration of the 1971 Fund, including its and any resulting bodies' eventual liquidation. In particular, thought should now be given to the Liquidator's role, mandate and relationship with the Director. I understand that the Director is already seeking expert legal advice on whether, in the eventuality of the 1971 Fund becoming non-tenable, it could legally cease operations before its membership falls below three, as required by the Convention. Further clarification on this should aid the Member States in deciding on a Liquidator's appointment and his terms of reference.

Other Financial Matters

Year 2000 Compliance

56 The Secretariat utilise a variety of computer systems and software in its administration of the 1971 and 1992 Funds. They have been aware for some time that their current computer systems may not be able to cope with the year 2000 date change.

57 The Secretariat have acknowledged responsibility for properly assessing the business and financial statement impacts that may potentially arise from systems failures to cope with the year 2000 date change within the Funds. They therefore commissioned a report in May 1999 by an IT specialist on the current condition and future strategy for their systems.

58 The IT specialist recommended that the Secretariat: appoint a member of their management team to oversee the year 2000 project; examine their computer hardware to ensure that the internal clocks would deal with the date roll-over correctly; and examine their software capabilities, seeking assurances from the manufacturers as necessary. The Secretariat have assured me that they would implement the recommendations in respect of the year 2000 date change by October 1999.

Control of Supplies and Equipment

59 As recorded in Note 8b to the 1992 Fund's financial statements, the 1971 Fund's supplies and equipment were transferred to the 1992 Fund. In accordance with the 1992 Fund's stated accounting policies, purchases of equipment, furniture, office machines, supplies and library books are not included in the 1992 Fund's balance sheet. The Note also shows that the value of these assets held by the 1992 Fund as at 31 December 1998 amounted to £104 576.

60 My staff carried out a test examination of the 1992 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 1998 properly reflect the assets held by the 1992 Fund. No losses were reported by the 1992 Fund during the year.

Amounts Written Off and Fraud

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

Acknowledgement

62 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

1 July 1999

ANNEX IV

FINANCIAL STATEMENTS OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1971 FOR THE YEAR ENDED 31 DECEMBER 1998

OPINION OF THE EXTERNAL AUDITOR

To: the Assembly of the International Oil Pollution Compensation Fund 1971

I have examined the appended financial statements, comprising Statements I to X, Schedules I to III and Notes, of the International Oil Pollution Compensation Fund 1971 for the year ended 31 December 1998 in accordance with the Common Auditing Standards of the Panel of External Auditors of the United Nations and the International Atomic Energy Agency, as appropriate. My examination included a general review of the accounting procedures and such tests of the accounting records and other supporting evidence as I considered necessary in the circumstances.

In my opinion the financial statements present fairly the financial position as at 31 December 1998 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; and the transactions were 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 KCB
Comptroller and Auditor General, United Kingdom
External Auditor

1 July 1999

ANNEX V

General Fund

1971 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 1998

	1998		1997	
INCOME	£	£	£	£
Contributions (Schedule I)				
Initial contributions		-		*70 136*
Annual contributions/(Refund working capital)		(1 972 491)		*(4 971 115)*
Adjustment to prior years' assessment		366 977		*412 253*
		(1 605 514)		*(4 488 726)*
Miscellaneous				
Miscellaneous income	5 353		*5 571*	
Income from 1992 Fund	60 000		-	
Transfer from *Senyo Maru* MCF	201 533		-	
Transfer from *Taiko Maru* MCF	-		*112 567*	
Transfer from *Toyotaka Maru* MCF	-		*104 237*	
Interest on loan to *Vistabella* MCF	23 353		*20 459*	
Interest on overdue contributions	3 719		*48 947*	
Interest on investments	576 220		*1 154 983*	
		870 178		*1 446 764*
		(735 336)		*(3 041 962)*
EXPENDITURE				
Secretariat expenses (Statement I)				
Obligations incurred		954 789		*1 067 942*
Claims (Schedule II)				
Compensation		1 455 954		*70 528*
Claims related expenses (Schedule II)				
Fees	881 903		*1 226 620*	
Travel	14 951		*9 346*	
Miscellaneous	1 506		*1 521*	
		898 360		*1 237 487*
		3 309 103		*2 375 957*
Income less expenditure		(4 044 439)		*(5 417 919)*
Exchange adjustment		10 797		*(405 164)*
(Shortfall)/Excess of income over expenditure		**(4 033 642)**		*(5 823 083)*

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

1971 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 1998

	Haven Major Claims Fund				*Aegean Sea* Major Claims Fund			
	1998		*1997*		1998		*1997*	
INCOME	£	£	*£*	*£*	£	£	*£*	*£*
Contributions (Schedule I)								
Adjustment to prior years' assessment	-	-	*30 258*		-		*263 006*	
		-		*30 258*		-		*263 006*
Miscellaneous								
Interest on overdue contributions	-		*71 680*		1 049		*52 298*	
Interest on investments	1 785 994		*1 722 285*		2 546 378		*2 165 995*	
Interest on loans to *Osung N°3* MCF	-		-		2 729		-	
Interest on loans to *Nakhodka* MCF	-		-		50 639		*158 724*	
		1 785 994		*1 793 965*		2 600 795		*2 377 017*
		1 785 994		*1 824 223*		2 600 795		*2 640 023*
EXPENDITURE (Schedule II)								
Compensation	-		-		1 052 359		-	
Fees	218 943		*523 655*		239 593		*297 031*	
Travel	1 667		*2 927*		9 851		*2 969*	
Miscellaneous	262		*303*		757		*462*	
		220 872		*526 885*		1 302 560		*300 462*
Excess/(shortfall) of income over expenditure		1 565 122		*1 297 338*		1 298 235		*2 339 561*
Exchange adjustment		928 102		-		-		-
Balance b/f: 1 January		29 305 321		*28 007 983*		37 735 195		*35 395 634*
Balance as at 31 December		31 798 545		*29 305 321*		39 033 430		*37 735 195*

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

1971 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 1998

	Braer Major Claims Fund				*Keumdong N°5* Major Claims Fund			
	1998		*1997*		1998		*1997*	
INCOME	£	£	*£*	*£*	£	£	*£*	*£*
Contributions (Schedule I)								
Adjustment to prior years' assessment	19 829		*393 504*		5 539		*133 320*	
		19 829		*393 504*		5 539		*133 320*
Miscellaneous								
Interest on overdue contributions	-		*9 776*		-		*5 762*	
Interest on investments	430 918		*374 583*		493 456		*424 834*	
Miscellaneous income	-		-		-		-	
		430 918		*384 259*		493 456		*430 596*
		450 747		*777 763*		498 995		*563 916*
EXPENDITURE (Schedule II)								
Compensation	(3 697)		-		-		-	
Fees	245 149		*241 379*		101 513		*57 437*	
Travel	7 399		*11 586*		-		-	
Miscellaneous	945		*427*		49		*70*	
		249 796		*253 392*		101 562		*57 507*
Excess/(shortfall) of income over expenditure		200 951		*524 371*		397 433		*506 409*
Balance b/f. 1 January		6 361 028		*5 836 657*		7 206 202		*6 699 793*
Balance as at 31 December		6 561 979		*6 361 028*		7 603 635		*7 206 202*

1971 FUND: INCOME AND EXPENDITURE ACCOUNT
FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 1998

	Sea Prince Major Claims Fund				*Yeo Myung* Major Claims Fund			
	1998		*1997*		1998		*1997*	
INCOME	£	£	*£*	*£*	£	£	*£*	*£*
Contributions (Schedule I)								
Annual contributions (fourth levy)	2 974 310		*-*		-		*-*	
Annual contributions (third levy)	-		*4 816 324*		-		*-*	
Annual contributions (second levy)	-		*6 747 898*		-		*963 986*	
Adjustment to prior years' assessment	715 996		*243 899*		98 639		*44 345*	
		3 690 306		*11 808 121*		98 639		*1 008 331*
Miscellaneous								
Interest on overdue contributions	7 999		*5 799*		923		*704*	
Interest on investments	1 232 251		*961 098*		195 067		*173 075*	
		1 240 250		*966 897*		195 990		*173 779*
		4 930 556		*12 775 018*		294 629		*1 182 110*
EXPENDITURE (Schedule II)								
Compensation	4 086 510		*4 315 189*		147 141		*317 850*	
Fees	562 847		*237 500*		14 536		*64 557*	
Travel	1 880		*5 255*		-		*-*	
Miscellaneous	88		*75*		48		*56*	
		4 651 325		*4 558 019*		161 725		*382 463*
Excess/(shortfall) of income over expenditure		279 231		*8 216 999*		132 904		*799 647*
Balance b/f: 1 January		18 058 023		*9 841 024*		2 837 067		*2 037 420*
Balance as at 31 December		18 337 254		*18 058 023*		2 969 971		*2 837 067*

1971 FUND: INCOME AND EXPENDITURE ACCOUNT
FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 1998

	Yuil N°1 Major Claims Fund				*Senyo Maru* Major Claims Fund			
	1998		*1997*		1998		*1997*	
INCOME	£	£	*£*	*£*	£	£	*£*	*£*
Contributions (Schedule I)								
Annual contributions (third levy)	-		*5 779 589*		-		-	
Annual contributions (second levy)	-		*4 819 928*		-		-	
Adjustment to prior years' assessment	543 726		*155 208*		-		*66 518*	
		543 726		*10 754 725*		-		*66 518*
Miscellaneous								
Interest on overdue contributions	6 208		*4 663*		-		*432*	
Interest on investments	692 948		*364 599*		-		*104 757*	
Recovery from shipowner's insurer	-		-		-		*1 418 575*	
		699 156		*369 262*		-		*1 523 564*
		1 242 882		*11 123 987*		-		*1 590 082*
EXPENDITURE (Schedule II)								
Compensation	6 798 140		*41 546*		-		*26 184*	
Fees	233 936		*123 840*		-		*19 337*	
Travel	9 702		-		-		-	
Miscellaneous	193		*1 605*		-		*51*	
		7 041 971		*169 291*		-		*45 572*
Excess/(shortfall) of income over expenditure		(5 799 089)		*10 954 696*		-		*1 544 510*
Balance b/f: 1 January		11 061 954		*107 258*		2 977 695		*1 433 185*
Credit to Contributors' Account	-		-		2 776 162		-	
Transfer to General Fund	-		-		201 533		-	
		-		-		2 977 695		-
Balance as at 31 December		5 262 865		*11 061 954*		NIL		*2 977 695*

ANNEX X

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

1971 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 1998

	Sea Empress Major Claims Fund				*Nakhodka* Major Claims Fund			
	1998		*1997*		1998		*1997*	
INCOME	£	£	*£*	*£*	£	£	*£*	*£*
Contributions (Schedule I)								
Annual contributions (second levy)	-		*19 862 302*		29 810 924		-	
Annual contributions (first levy)	-		*9 942 231*		-		*14 717 793*	
Adjustment to prior years' assessment	(139 070)		-		56 693		-	
		(139 070)		*29 804 533*		29 867 617		*14 717 793*
Miscellaneous								
Interest on overdue contributions	21 480		*14 834*		53 238		*5 309*	
Interest on investments	1 481 151		*757 303*		246 571		-	
Miscellaneous income	557		-		-		-	
		1 503 188		*772 137*		299 809		*5 309*
		1 364 118		*30 576 670*		30 167 426		*14 723 102*
EXPENDITURE (Schedule II)								
Compensation	2 350 654		*6 045 226*		5 463 564		*22 583 161*	
Fees	480 353		*952 762*		1 424 910		*1 545 877*	
Interest on loan from *Aegean Sea* MCF	-		-		50 639		*158 724*	
Travel	2 513		*5 700*		20 809		*23 537*	
Miscellaneous	937		*12 440*		1 927		*7 144*	
		2 834 457		*7 016 128*		6 961 849		*24 318 443*
Excess/(shortfall) of income over expenditure		(1 470 339)		*23 560 542*		23 205 577		*(9 595 341)*
Amount due to General Fund		-		*(58 257)*		-		-
Exchange adjustment		-		-		1 765 318		-
Prior year's exchange adjustment		-		-		(384 100)		-
Balance b/f: 1 January		23 502 285		-		(9 595 341)		-
Balance as at 31 December		**22 031 946**		*23 502 285*		**(14 991 454)**		*(9 595 341)*

ANNEX XI

Major Claims Funds – *Nissos Amorgos* and *Osung N°3*

1971 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 1998

	Nissos Amorgos Major Claims Fund 1998		*Osung N°3* Major Claims Fund 1998	
INCOME	£	£	£	£
Contributions (Schedule I)				
Annual contributions (first levy)	1 983 912		1 983 912	
		1 983 912		1 983 912
Miscellaneous				
Interest on overdue contributions	2 697		2 697	
Interest on investments	124 842		112 204	
		127 539		114 901
		2 111 451		2 098 813
EXPENDITURE (Schedule II)				
Compensation	-		4 832 713	
Fees	-		62 271	
Interest on loan from *Aegean Sea* MCF	-		2 729	
Interest on loan from 1992 Fund	-		29 294	
Travel	-		4 019	
Miscellaneous	-		82	
		-		4 931 108
Excess/(shortfall) of income over expenditure		2 111 451		(2 832 295)
Balance as at 31 December		**2 111 451**		
Amount due to *Aegean Sea* MCF				(2 832 295)

ANNEX XII

1971 FUND: BALANCE SHEET AS AT 31 DECEMBER 1998

	1998	*1997*
ASSETS	£	*£*
Cash at banks and in hand	154 999 522	*139 738 751*
Contributions outstanding	1 850 517	*2 610 543*
Due from 1992 Fund	-	*355 320*
Due from *Vistabella* MCF	412 722	*386 056*
Due from *Nakhodka* MCF to *Aegean Sea* MCF	-	*9 595 341*
Due from *Osung N°3* MCF to *Aegean Sea* MCF	2 832 295	-
Tax recoverable	98 917	*41 607*
Miscellaneous receivable	1 834	*14 259*
Interest on overdue contributions	85 966	*26 898*
TOTAL ASSETS	160 281 773	*152 768 775*
LIABILITIES		
Staff Provident Fund	-	*905 366*
Accounts payable	14 556	*31 213*
Unliquidated obligations	123 077	*143 222*
Prepaid contributions	122 967	*245 053*
Contributors' account	157 913	*135 917*
Due to 1992 Fund	547 038	-
Due to *Haven* MCF	31 798 545	*29 305 321*
Due to *Aegean Sea* MCF	39 033 430	*37 735 195*
Due to *Braer* MCF	6 561 979	*6 361 028*
Due to *Keumdong N°5* MCF	7 603 635	*7 206 202*
Due to *Sea Prince* MCF	18 337 254	*18 058 023*
Due to *Yeo Myung* MCF	2 969 971	*2 837 067*
Due to *Yuil N°1* MCF	5 262 865	*11 061 954*
Due to *Senyo Maru* MCF	-	*2 977 695*
Due to *Sea Empress* MCF	22 031 946	*23 502 285*
Due to *Nakhodka* MCF	14 991 454	-
Due to *Nissos Amorgos* MCF	2 111 451	-
TOTAL LIABILITIES	151 668 081	*140 505 541*
GENERAL FUND BALANCE	8 613 692	*12 263 234*
TOTAL LIABILITIES AND GENERAL FUND BALANCE	160 281 773	*152 768 775*

ANNEX XIII

1971 FUND: CASH FLOW STATEMENT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 1998

	1998 £	1998 £	*1997 £*	*1997 £*
Cash as at 1 January		139 738 751		*115 793 967*
OPERATING ACTIVITIES				
Initial contributions	14 760		*55 084*	
Previous year's contributions received	34 107 897		*60 961 984*	
Prior years' contributions received	3 086 265		*2 218 580*	
Recovery *Senyo Maru*	-		*1 418 375*	
1992 Fund income	218 906		*124 128*	
Interest received on overdue contributions	40 942		*218 598*	
Other sources of income	376 773		*443 768*	
Receipts from contributors	76 843		*21 019*	
Exchange adjustment	2 704 217		*(405 164)*	
Administrative expenditure (1971/1992 Funds)	(586 802)		*(1 539 495)*	
Claims expenditure	(30 761 484)		*(38 795 242)*	
Repayment to contributors	(2 844 218)		*(8 601 141)*	
Other cash payments	(992 736)		*(341 225)*	
Net cash from operating activities before net current asset changes	5 441 363		*15 779 269*	
Increase (Decrease) in net current liabilities	(138 743)		*(130 618)*	
Net cash flow from operating activities		5 302 620		*15 648 651*
RETURNS ON INVESTMENTS				
Interest on investments	9 958 151		*8 296 133*	
Net cash inflow from returns on investments		9 958 151		*8 296 133*
Cash as at 31 December		**154 999 522**		*139 738 751*

ANNEX XIV

FINANCIAL STATEMENTS OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1992 FOR THE YEAR ENDED 31 DECEMBER 1998

OPINION OF THE EXTERNAL AUDITOR

To: the Assembly of the International Oil Pollution Compensation Fund 1992

I have examined the appended financial statements, comprising Statements I to VII, Schedules I to II and Notes, of the International Oil Pollution Compensation Fund 1992 for the year ended 31 December 1998 in accordance with the Common Auditing Standards of the Panel of External Auditors of the United Nations and the International Atomic Energy Agency, as appropriate. My examination included a general review of the accounting procedures and such tests of the accounting records and other supporting evidence as I considered necessary in the circumstances.

In my opinion the financial statements present fairly the financial position as at 31 December 1998 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; and the transactions were 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 KCB
Comptroller and Auditor General, United Kingdom
External Auditor

1 July 1999

ANNEX XV

General Fund

1992 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 1998

	1998		*1997*	
INCOME	£	£	*£*	*£*
Contributions (Schedule 1)				
Contributions	5 935 786		*6 996 681*	
Adjustment to prior years' assessment	(1 395)		-	
		5 934 391		*6 996 681*
Miscellaneous				
Miscellaneous Income	236		-	
Repayment from 1971 Fund re: *Osung N°3*	1 640 751		-	
Interest on loan to 1971 Fund re: *Osung N°3*	29 294		-	
Interest on overdue contributions	14 802		*5 543*	
Interest on investments	758 454		*245 659*	
		2 443 537		*251 202*
		8 377 928		*7 247 883*
EXPENDITURE				
Secretariat expenses (Statement 1)				
Obligations incurred		678 425		*479 648*
Claims				
Compensation		1 640 739		-
Claims related expenses				
Miscellaneous		63		-
		2 319 227		*479 648*
Excess/(shortfall) of income over expenditure		6 058 701		*6 768 235*

ANNEX XVI

Major Claims Funds – *Nakhodka* and *Osung N°3* (Interim)

1992 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 1998

	Nakhodka Major Claims Fund				*Osung N°3* Interim Major Claims Fund	
	1998		*1997*		1998	
INCOME	£	£	£	£	£	£
Contributions (Schedule 1)						
Contributions	-		*6 897 108*		3 461 413	
Adjustment to prior years' assessment	(1 110)		-		-	
		(1 110)		*6 897 108*		3 461 413
Miscellaneous						
Interest on overdue contributions	2 740		*3 048*		7 628	
Interest on investments	445 302		*128 540*		209 279	
		448 042		*131 588*		216 907
		446 932		*7 028 696*		3 678 320
Excess/(shortfall) of income over expenditure		446 932		*7 028 696*		3 678 320
Balance b/f 1 January		7 028 696		-		-
Balance as at 31 December		7 475 628		*7 028 696*		3 678 320

ANNEX XVII

1992 FUND: BALANCE SHEET AS AT 31 DECEMBER 1998

	1998	*1997*
ASSETS	£	*£*
Cash at banks and in hand	24 323 173	*13 715 350*
Contributions outstanding	14 557	*301 524*
Due from 1971 Fund	547 038	-
Tax recoverable	21 507	*35*
Miscellaneous receivable	6 985	*482*
Interest on overdue contributions	24 761	*3 625*
TOTAL ASSETS	24 938 021	***14 021 016***
LIABILITIES		
Staff Provident Fund	851 876	-
Accounts payable	19 207	-
Unliquidated obligations	107 185	-
Due to 1971 Fund	-	*355 320*
Prepaid contributions	220 992	*110 888*
Due to *Nakhodka* MCF	7 475 628	*7 028 696*
Due to *Osung N°3* MCF	3 678 320	-
TOTAL LIABILITIES	12 353 208	***7 494 904***
GENERAL FUND BALANCE	12 584 813	***6 526 112***
TOTAL LIABILITIES AND GENERAL FUND BALANCE	**24 938 021**	***14 021 016***

ANNEX XVIII

1992 FUND: CASH FLOW STATEMENT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 1998

	1998 £	1998 £	*1997* £	*1997* £
Cash as at 1 January		13 715 350		
OPERATING ACTIVITIES				
Previous year's contributions received	9 388 699		*13 592 265*	
Prior year's contributions received	292 962		-	
Interest received on overdue contributions	4 034		*4 966*	
Other sources of income	81 838		-	
Receipts from contributors	2 953		-	
Receipts from 1971 Fund re *Osung N°3* MCF	1 670 045		-	
Receipt from 1971 Fund re Provident Fund	716 083		-	
Repayment of 1997 Administrative cost to 1971 Fund	(355 320)		*(237 898)*	
Administrative Expenditure (1971/1992 Funds)	(959 372)		-	
Claims expenditure	(1 640 802)		-	
Repayment to contributors	(2 953)		-	
Other cash payments	(11 774)		*(717)*	
Income held by 1971 Fund	(158 906)		*(124 128)*	
Net cash from operating activities before net current asset changes	9 027 487		*13 234 488*	
Increase (Decrease) in net current liabilities	129 311		*106 663*	
Net cash flow from operating activities		9 156 798		*13 341 151*
RETURNS ON INVESTMENTS				
Interest on investments	1 451 025		*374 199*	
Net cash inflow from returns on investments		1 451 025		*374 199*
Cash as at 31 December		24 323 173		*13 715 350*

ANNEX XIX

1971 Fund: Contributing oil received in the calendar year 1998 in the territories of States which were Members of the 1971 Fund on 31 December 1999

As reported by 31 December 1999

Member State	Contributing Oil (tonnes)	% of Total
Italy	148 018 442	84.25%
Malaysia	14 830 768	8.44%
China (Hong Kong Special Administrative Region)	3 906 009	2.22%
Poland	3 074 965	1.75%
Sri Lanka	2 092 592	1.19%
Ghana	1 750 787	1.00%
Malta	1 237 514	0.70%
Russian Federation	774 172	0.44%
Brunei Darussalam	0	0.00%
Djibouti	0	0.00%
Estonia	0	0.00%
Fiji	0	0.00%
Iceland	0	0.00%
Mauritius	0	0.00%
Slovenia	0	0.00%
United Arab Emirates	0	0.00%
Vanuatu	0	0.00%
	175 685 249	100.00%

Note: No report from Albania, Antigua and Barbuda, Benin, Cameroon, Colombia, Côte d'Ivoire, Gabon, Gambia, Guyana, India, Kenya, Kuwait, Maldives, Mauritania, Morocco, Mozambique, Nigeria, Panama, Papua New Guinea, Portugal, Qatar, Saint Kitts and Nevis, Seychelles, Sierra Leone, Syrian Arab Republic, Tonga, Tuvalu and Yugoslavia.

ANNEX XX

1992 Fund: Contributing oil received in the calendar year 1998 in the territories of States which were Members of the 1992 Fund on 31 December 1999

As reported by 31 December 1999

Member State	Contributing Oil (tonnes)	% of Total
Japan	262 216 075	23.73%
Republic of Korea	119 462 262	10.81%
Netherlands	106 000 621	9.59%
France	102 733 798	9.30%
United Kingdom	79 861 625	7.23%
Singapore	74 583 738	6.75%
Germany	67 869 018	6.14%
Spain	62 896 817	5.69%
Canada	46 266 818	4.19%
Australia	30 597 745	2.77%
Norway	29 597 411	2.68%
Greece	21 980 311	1.99%
Sweden	20 919 612	1.89%
Mexico	14 839 864	1.34%
Finland	10 868 323	0.98%
Belgium	7 743 402	0.70%
Venezuela	7 603 000	0.69%
Denmark	6 603 754	0.60%
Philippines	5 916 807	0.54%
New Zealand	4 937 322	0.45%
Bahamas	4 681 503	0.42%
Ireland	4 597 784	0.42%
Croatia	3 322 643	0.30%
Tunisia	2 691 313	0.24%
Jamaica	2 505 872	0.23%
Cyprus	1 863 730	0.17%
Uruguay	1 779 839	0.16%
Barbados	157 492	0.01%
Iceland	0	0.00%
Latvia	0	0.00%
Liberia	0	0.00%
Marshall Islands	0	0.00%
Monaco	0	0.00%
Oman	0	0.00%
United Arab Emirates	0	0.00%
	1 105 098 499	100.00%

Notes: No report from Algeria, Bahrain, Belize and Grenada.
Report received from the Philippines incomplete.

ANNEX

SUMMARY OF

(31 December

For this table, damage has been grouped into the following categories:

	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC	Cause of incident
1	*Irving Whale*	7.9.70	Gulf of St Lawrence, Canada	Canada	2 261	*(unknown)*	Sinking
2	*Antonio Gramsci*	27.2.79	Ventspils, USSR	USSR	27 694	Rbls 2 431 584	Grounding
3	*Miya Maru N°8*	22.3.79	Bisan Seto, Japan	Japan	997	¥37 710 340	Collision
4	*Tarpenbek*	21.6.79	Selsey Bill, United Kingdom	Federal Republic of Germany	999	£64 356	Collision
5	*Mebaruzaki Maru N°5*	8.12.79	Mebaru, Japan	Japan	19	¥845 480	Sinking
6	*Showa Maru*	9.1.80	Naruto Strait, Japan	Japan	199	¥8 123 140	Collision
7	*Unsei Maru*	9.1.80	Akune, Japan	Japan	99	¥3 143 180	Collision
8	*Tanio*	7.3.80	Brittany, France	Madagascar	18 048	FFr11 833 718	Breaking
9	*Furenas*	3.6.80	Oresund, Sweden	Sweden	999	SKr612 443	Collision
10	*Hosei Maru*	21.8.80	Miyagi, Japan	Japan	983	¥35 765 920	Collision

XXI

INCIDENTS: 1971 FUND

1999)

- Clean-up (including preventive measures)
- Fishery-related
- Tourism-related
- Farming-related
- Other loss of income
- Other damage to property
- Environmental damage

Quantity of oil spilled (tonnes)	Compensation (Amounts paid by 1971 Fund, unless indicated to the contrary)		Notes	
(unknown)			*Irving Whale* refloated in 1996. Canadian Court dismissed action against 1971 Fund as Fund could not be held liable for events which occurred prior to entry into force of 1971 Fund Convention for Canada.	1
5 500	Clean-up	SKr95 707 157		2
540	Clean-up Fishery-related Indemnification	¥108 589 104 ¥31 521 478 ¥9 427 585 ¥149 538 167	¥5 438 909 recovered by way of recourse.	3
(unknown)	Clean-up	£363 550		4
10	Clean-up Fishery-related Indemnification	¥7 477 481 ¥2 710 854 ¥211 370 ¥10 399 705		5
100	Clean-up Fishery-related Indemnification	¥10 408 369 ¥92 696 505 ¥2 030 785 ¥105 135 659	¥9 893 496 recovered by way of recourse.	6
<140			Because of the distribution of liability between the two colliding ships, 1971 Fund not called upon to pay any compensation.	7
13 500	Clean-up Tourism-related Fishery-related Other loss of income	FFr219 164 465 FFr2 429 338 FFr52 024 FFr494 816 FFr222 140 643	Total payment equalled limit of compensation available under 1971 Fund Convention; payments by 1971 Fund represented 63.85% of accepted amounts. US$17 480 028 recovered by way of recourse.	8
200	Clean-up Clean-up Indemnification	SKr3 187 687 DKr418 589 SKr153 111	SKr449 961 recovered by way of recourse.	9
270	Clean-up Fishery-related Indemnification	¥163 051 598 ¥50 271 267 ¥8 941 480 ¥222 264 345	¥18 221 905 recovered by way of recourse.	10

	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC	Cause of incident
11	*Jose Marti*	7.1.81	Dalarö, Sweden	USSR	27 706	SKr23 844 593	Grounding
12	*Suma Maru N°11*	21.11.81	Karatsu, Japan	Japan	199	¥7 396 340	Grounding
13	*Globe Asimi*	22.11.81	Klaipeda, USSR	Gibraltar	12 404	Rbls 1 350 324	Grounding
14	*Ondina*	3.3.82	Hamburg, Federal Republic of Germany	Netherlands	31 030	DM10 080 383	Discharge
15	*Shiota Maru N°2*	31.3.82	Takashima island, Japan	Japan	161	¥6 304 300	Grounding
16	*Fukutoko Maru N°8*	3.4.82	Tachibana Bay, Japan	Japan	499	¥20 844 440	Collision
17	*Kifuku Maru N°35*	1.12.82	Ishinomaki, Japan	Japan	107	¥4 271 560	Sinking
18	*Shinkai Maru N°3*	21.6.83	Ichikawa, Japan	Japan	48	¥1 880 940	Discharge
19	*Eiko Maru N°1*	13.8.83	Karakuwazaki, Japan	Japan	999	¥39 445 920	Collision
20	*Koei Maru N°3*	22.12.83	Nagoya, Japan	Japan	82	¥3 091 660	Collision
21	*Tsunehisa Maru N°8*	26.8.84	Osaka, Japan	Japan	38	¥964 800	Sinking
22	*Koho Maru N°3*	5.11.84	Hiroshima, Japan	Japan	199	¥5 385 920	Grounding
23	*Koshun Maru N°1*	5.3.85	Tokyo Bay, Japan	Japan	68	¥1 896 320	Collision
24	*Patmos*	21.3.85	Straits of Messina, Italy	Greece	51 627	Lit 13 263 703 650	Collision
25	*Jan*	2.8.85	Aalborg, Denmark	Federal Republic of Germany	1 400	DKr1 576 170	Grounding

Quantity of oil spilled (tonnes)	Compensation (Amounts paid by 1971 Fund, unless indicated to the contrary)		Notes	
1 000			Total damage less than shipowner's liability (clean-up SKr20 361 000 claimed). Shipowner's defence that he should be exonerated from liability rejected in final court judgement.	11
10	Clean-up Indemnification	¥6 426 857 ¥1 849 085 ¥8 275 942		12
>16 000	Indemnification	US$467 953	No damage in 1971 Fund Member State.	13
200-300	Clean-up	DM11 345 174		14
20	Clean-up Fishery-related Indemnification	¥46 524 524 ¥24 571 190 ¥1 576 075 ¥72 671 789		15
85	Clean-up Fishery-related Indemnification	¥200 476 274 ¥163 255 481 ¥5 211 110 ¥368 942 865		16
33	Indemnification	¥598 181	Total damage less than shipowner's liability.	17
3.5	Clean-up Indemnification	¥1 005 160 ¥470 235 ¥1 475 395		18
357	Clean-up Fishery-related Indemnification	¥23 193 525 ¥1 541 584 ¥9 861 480 ¥34 596 589	¥14 843 746 recovered by way of recourse.	19
49	Clean-up Fishery-related Indemnification	¥18 010 269 ¥8 971 979 ¥772 915 ¥27 755 163	¥8 994 083 recovered by way of recourse.	20
30	Clean-up Indemnification	¥16 610 200 ¥241 200 ¥16 851 400		21
20	Clean-up Fishery-related Indemnification	¥68 609 674 ¥25 502 144 ¥1 346 480 ¥95 458 298		22
80	Clean-up Indemnification	¥26 124 589 ¥474 080 ¥26 598 669	¥8 866 222 recovered by way of recourse.	23
700			Total damage agreed out of court or decided by court (LR 11 583 298 650) less than shipowner's liability.	24
300	Clean-up Indemnification	DKr9 455 661 DKr394 043 DKr9 849 704		25

	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC	Cause of incident
26	*Rose Garden Maru*	26.12.85	Umm Al Qaiwain, United Arab Emirates	Panama	2 621	US$364 182 *(estimate)*	Discharge of oil
27	*Brady Maria*	3.1.86	Elbe Estuary, Federal Republic of Germany	Panama	996	DM324 629	Collision
28	*Take Maru N°6*	9.1.86	Sakai-Senboku, Japan	Japan	83	¥3 876 800	Discharge of oil
29	*Oued Gueterini*	18.12.86	Algiers, Algeria	Algeria	1 576	Din1 175 064	Discharge
30	*Thuntank 5*	21.12.86	Gävle, Sweden	Sweden	2 866	SKr2 741 746	Grounding
31	*Antonio Gramsci*	6.2.87	Borgå, Finland	USSR	27 706	Rbls 2 431 854	Grounding
32	*Southern Eagle*	15.6.87	Sada Misaki, Japan	Panama	4 461	¥93 874 528	Collision
33	*El Hani*	22 7 87	Indonesia	Libya	81 412	£7 900 000 *(estimate)*	Grounding
34	*Akari*	25.8.87	Dubai, United Arab Emirates	Panama	1 345	£92 800 *(estimate)*	Fire
35	*Tolmiros*	11.9.87	West coast, Sweden	Greece	48 914	SKr50 000 000 *(estimate)*	*Unknown*
36	*Hinode Maru N°1*	18.12.87	Yawatahama, Japan	Japan	19	¥608 000	Mishandling of cargo
37	*Amazzone*	31.1.88	Brittany, France	Italy	18 325	FFr13 860 369	Storm damage to tanks
38	*Taiyo Maru N°13*	12.3.88	Yokohama, Japan	Japan	86	¥2 476 800	Discharge
39	*Czantoria*	8.5.88	St Romuald, Canada	Canada	81 197	*(unknown)*	Collision with berth
40	*Kasuga Maru N°1*	10.12.88	Kyoga Misaki, Japan	Japan	480	¥17 015 040	Sinking

Quantity of oil spilled (tonnes)	Compensation (Amounts paid by 1971 Fund, unless indicated to the contrary)		Notes	
(unknown)			Claim against 1971 Fund (US$44 204) withdrawn.	26
200	Clean-up	DM3 220 511	DM333 027 recovered by way of recourse.	27
0.1	Indemnification	¥104 987	Total damage less than shipowner's liability.	28
15	Clean-up Clean-up Clean-up Other loss of income Indemnification	US$1 133 FFr708 824 Din5 650 £126 120 Din293 766		29
150-200	Clean-up Fishery-related Indemnification	SKr23 168 271 SKr49 361 SKr685 437 SKr23 903 069		30
600-700	Clean-up	FM1 849 924	USSR clean-up claims (Rbls 1 417 448) not paid by 1971 Fund since USSR not Member of 1971 Fund at time of incident.	31
15			Total damage less than shipowner's liability (¥35 346 679 clean-up and ¥51 521 183 fishery-related agreed).	32
3 000			Clean-up claim (US$242 800) not pursued.	33
1 000	Clean-up Clean-up	Dhr 864 293 US$187 165	US$160 000 refunded by shipowner's insurer.	34
200			Clean-up claim (SKr100 639 999) not pursued, since legal action by Swedish Government against shipowner and 1971 Fund withdrawn.	35
25	Clean-up Indemnification	¥1 847 225 ¥152 000 ¥1 999 225		36
2 000	Clean-up Fishery-related	FFr1 141 185 FFr145 792 FFr1 286 977	FFr1 000 000 recovered from shipowner's insurer.	37
6	Clean-up Indemnification	¥6 134 885 ¥619 200 ¥6 754 085		38
(unknown)			1971 Fund Convention not applicable, as incident occurred before entry into force of Convention for Canada. Clean-up claim (Can$1 787 771) not pursued.	39
1 100	Clean-up Fishery-related Indemnification	¥371 865 167 ¥53 500 000 ¥4 253 760 ¥429 618 927		40

	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC	Cause of incident
41	*Nestucca*	23.12.88	Vancouver island, Canada	United States of America	1 612	*(unknown)*	Collision
42	*Fukkol Maru N°12*	15.5.89	Shiogama, Japan	Japan	94	¥2 198 400	Overflow from supply pipe
43	*Tsubame Maru N°58*	18.5.89	Shiogama, Japan	Japan	74	¥2 971 520	Mishandling of oil transfer
44	*Tsubame Maru N°16*	15.6.89	Kushiro, Japan	Japan	56	¥1 613 120	Discharge
45	*Kifuku Maru N°103*	28.6.89	Otsuji, Japan	Japan	59	¥1 727 040	Mishandling of cargo
46	*Nancy Orr Gaucher*	25.7.89	Hamilton, Canada	Liberia	2 829	CanS473 766	Overflow during discharge
47	*Dainichi Maru N°5*	28.10.89	Yaizu, Japan	Japan	174	¥4 199 680	Mishandling of cargo
48	*Daito Maru N°3*	5.4.90	Yokohama, Japan	Japan	93	¥2 495 360	Mishandling of cargo
49	*Kazuei Maru N°10*	11.4.90	Osaka, Japan	Japan	121	¥3 476 160	Collision
50	*Fuji Maru N°3*	12.4.90	Yokohama, Japan	Japan	199	¥5 352 000	Overflow during supply operation
51	*Volgoneft 263*	14.5.90	Karlskrona, Sweden	USSR	3 566	SKr3 205 204	Collision
52	*Hato Maru N°2*	27.7.90	Kobe, Japan	Japan	31	¥803 200	Mishandling of cargo
53	*Bonito*	12.10.90	River Thames, United Kingdom	Sweden	2 866	£241 000 *(estimate)*	Mishandling of cargo
54	*Rio Orinoco*	16.10.90	Anticosti island, Canada	Cayman Islands	5 999	CanS1 182 617	Grounding
55	*Portfield*	5.11.90	Pembroke, Wales, United Kingdom	United Kingdom	481	£69 141	Sinking
56	*Vistabella*	7.3.91	Caribbean	Trinidad and Tobago	1 090	FFr2 354 000 *(estimate)*	Sinking

Quantity of oil spilled (tonnes)	Compensation (Amounts paid by 1971 Fund, unless indicated to the contrary)		Notes	
(unknown)			1971 Fund Convention not applicable, as incident occurred before entry into force of Convention for Canada. Clean-up claims (Can$10 475) not pursued.	41
0.5	Clean-up Indemnification	¥492 635 ¥549 600 ¥1 042 235		42
7	Other damage to property Indemnification	¥19 159 905 ¥742 880 ¥19 902 785		43
(unknown)	Other damage to property Indemnification	¥273 580 ¥403 280 ¥676 860		44
(unknown)	Clean-up Indemnification	¥8 285 960 ¥431 761 ¥8 717 721		45
250			Total damage less than shipowner's liability (clean-up Can$292 110 agreed).	46
0.2	Fishery-related Clean-up Indemnification	¥1 792 100 ¥368 510 ¥1 049 920 ¥3 210 530		47
3	Clean-up Indemnification	¥5 490 570 ¥623 840 ¥6 114 410		48
30	Clean-up Fishery-related Indemnification	¥48 883 038 ¥560 588 ¥869 040 ¥50 312 666	¥45 038 833 recovered by way of recourse.	49
(unknown)	Clean-up Indemnification	¥96 431 ¥1 338 000 ¥1 434 431	¥430 329 recovered by way of recourse.	50
800	Clean-up Fishery-related Indemnification	SKr15 523 813 SKr530 239 SKr795 276 SKr16 849 328		51
(unknown)	Other damage to property Indemnification	¥1 087 700 ¥200 800 ¥1 288 500		52
20			Total damage less than shipowner's liability (clean-up £130 000 agreed).	53
185	Clean-up	Can$12 831 892		54
110	Clean-up Fishery-related Indemnification	£249 630 £9 879 £17 155 £276 663		55
(unknown)	Clean-up Clean-up	FFr8 237 529 US$8 068		56

	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC	Cause of incident
57	*Hokunan Maru N°12*	5.4.91	Okushiri island, Japan	Japan	209	¥3 523 520	Grounding
58	*Agip Abruzzo*	10.4.91	Livorno, Italy	Italy	98 544	Lit 21 800 000 000 *(estimate)*	Collision
59	*Haven*	11.4.91	Genoa, Italy	Cyprus	109 977	Lit 23 950 220 000	Fire and explosion
60	*Kaiko Maru N°86*	12.4.91	Nomazaki, Japan	Japan	499	¥14 660 480	Collision
61	*Kumi Maru N°12*	27.12.91	Tokyo Bay, Japan	Japan	113	¥3 058 560	Collision
62	*Fukkol Maru N°12*	9.6.92	Ishinomaki, Japan	Japan	94	¥2 198 400	Mishandling of oil supply
63	*Aegean Sea*	3.12.92	La Coruña, Spain	Greece	57 801	Pts 1 121 219 450	Grounding
64	*Braer*	5.1.93	Shetland, United Kingdom	Liberia	44 989	£5 790 052	Grounding
65	*Kilnu*	16.1.93	Tallinn, Estonia	Estonia	949	113 000 SDR *(estimate)*	Grounding
66	*Sambo N°11*	12.4.93	Seoul, Republic of Korea	Republic of Korea	520	Won 77 786 224 *(estimate)*	Grounding
67	*Taiko Maru*	31.5.93	Shioyazaki, Japan	Japan	699	¥29 205 120	Collision
68	*Ryoyo Maru*	23.7.93	Izu peninsula, Japan	Japan	699	¥28 105 920	Collision

Quantity of oil spilled (tonnes)	Compensation (Amounts paid by 1971 Fund, unless indicated to the contrary)		Notes	
(unknown)	Clean-up Fishery-related Indemnification	¥2 119 966 ¥4 024 863 ¥880 880 ¥7 025 709		57
2 000	Indemnification	Llt 1 666 031 931	Total damage less than shipowner's liability.	58
(unknown)	Italian State Two Italian contractors French State Other French public bodies Principality of Monaco Indemnification	Llt 70 002 629 093 Llt 1 582 341 690 Llt 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 Llt 47 597 370 907 to the Italian State. The shipowner and his insurer paid all accepted claims by other Italian public bodies and private claimants.	59
25	Clean-up Fishery-related Indemnification	¥53 513 992 ¥39 553 821 ¥3 665 120 ¥96 732 933		60
5	Clean-up Indemnification	¥1 056 519 ¥764 640 ¥1 821 159	¥650 522 recovered by way of recourse.	61
(unknown)	Other damage to property Indemnification	¥4 243 997 ¥549 600 ¥4 793 597		62
73 500	*Figures as in criminal court judgement:* ∘ Spanish Government *(claimed)* ∘ Public Bodies *(awarded)* ∘ Private claimant *(claimed)* Fishery-related: ∘ Private claimants *(awarded)* ∘ Private claimants *(claimed)*	 Pts 1 154 500 000 Pts 303 263 261 Pts 184 216 423 Pts 327 027 638 Pts 14 955 486 084 Pts 16 924 493 406	Amounts indicated as claimed relate to claims referred to the procedure for the execution of judgement. Pts 930 million paid by 1971 Fund. Pts 782 million paid by shipowner's insurer. Further claims brought in civil court for Pts 22 000 million.	63
84 000	Clean-up Fishery-related Tourism-related Farming-related Other damage to property Other loss of income	£200 285 £33 269 350 £77 375 £3 533 504 £8 259 156 £186 985 £45 526 655	Further claims amounting to £5.7 million agreed. Claims amounting to £27.6 subject of court proceedings. £4 807 323 paid by shipowner's insurer.	64
140	Clean-up	FM543 618		65
4	Clean-up Fishery-related	Won 176 866 632 Won 42 848 123 Won 219 714 755	US$22 504 recovered from shipowner's insurer.	66
520	Clean-up Fishery-related Indemnification	¥756 780 796 ¥336 404 259 ¥7 301 280 ¥1 100 486 335	¥49 104 248 recovered by way of recourse.	67
500	Clean-up Indemnification	¥8 433 001 ¥7 026 480 ¥15 459 481	¥10 455 440 recovered by way of recourse.	68

	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC	Cause of incident
69	*Keumdong N°5*	27.9.93	Yosu, Republic of Korea	Republic of Korea	481	Won 77 417 210	Collision
70	*Iliad*	9.10.93	Pylos, Greece	Greece	33 837	Drs 1 496 533 000	Grounding
71	*Seki*	30.3.94	Fujairah, United Arab Emirates, and Oman	Panama	153 506	14 million SDR	Collision
72	*Daito Maru N°5*	11.6.94	Yokohama, Japan	Japan	116	¥3 386 560	Overflow during loading operation
73	*Toyotaka Maru*	17.10.94	Kainan, Japan	Japan	2 960	¥81 823 680	Collision
74	*Hoyu Maru N°53*	31.10.94	Monbetsu, Japan	Japan	43	¥1 089 280	Mishandling of oil supply
75	*Sung Il N°1*	8.11.94	Onsan, Republic of Korea	Republic of Korea	150	Won 23 000 000 *(estimate)*	Grounding
76	Spill from unknown source	30.11.94	Mohammédia, Morocco	-	-	-	*(Unknown)*
77	*Boyang N°51*	25.5.95	Sandbaeg Do, Republic of Korea	Republic of Korea	149	19 817 SDR	Collision
78	*Dae Woong*	27.6.95	Kojung, Republic of Korea	Republic of Korea	642	Won 95 000 000 *(estimate)*	Grounding
79	*Sea Prince*	23.7.95	Yosu, Republic of Korea	Cyprus	144 567	14 million SDR	Grounding

Quantity of oil spilled (tonnes)	Compensation (Amounts paid by 1971 Fund, unless indicated to the contrary)		Notes	
1 280	Clean-up *(paid)* Fishery-related *(paid)* Other damage to property *(paid)* Claims pending in Court: Fishery-related	Won 5 587 815 812 Won 6 947 755 270 Won 14 206 046 Won 12 549 777 128 Won 18 452 000 000	Won 5 587 815 812 paid by shipowner's insurer, of which US$6 million reimbursed by 1971 Fund.	69
200	Clean-up *(paid)* Clean-up *(paid)* Fishery-related *(claimed)* Other loss of income *(claimed)* Moral damages *(claimed)*	Drs 356 204 011 US$565 000 Drs 1 099 000 000 Drs 1 547 000 000 Drs 3 002 204 011 Drs 378 000 000	Drs 356 204 011 and US$565 000 paid by shipowner's insurer.	70
16 000			Settlement outside the Conventions concluded between the Government of Fujairah and the shipowner. Terms of settlement not known to 1971 Fund. The 1971 Fund will not be called upon to pay any compensation.	71
0.5	Clean-up Indemnification	¥1 187 304 ¥846 640 ¥2 033 944		72
560	Clean-up Fishery-related Other loss of income Indemnification	¥629 516 429 ¥50 730 359 ¥15 490 030 ¥20 455 920 ¥716 192 738	¥31 021 717 recovered by way of recourse.	73
(unknown)	Other damage to property Clean-up Indemnification	¥3 954 861 ¥202 854 ¥272 320 ¥4 430 035		74
18	Clean-up Fishery-related	Won 9 401 293 Won 28 378 819 Won 37 780 112	Shipowner lost right to limit his liability because proceedings not commenced within period specified under Korean law.	75
(unknown)	Clean-up *(claimed)*	Mor Dhr 2 600 000	Not established that oil originated from a ship as defined in 1971 Fund Convention.	76
160			Clean-up claim (Won 142 million) time-barred as necessary legal action not taken.	77
1	Clean-up	Won 43 517 127		78
5 035	Clean-up *(paid)* Fishery-related *(paid)* Tourism-related *(paid)* Clean-up *(paid)* *Claims pending in Court:* Fishery-related Post spill environmental studies Clean-up Removal of oil and vessel	Won 19 919 000 000 Won 19 500 000 000 Won 538 000 000 Won 39 957 000 000 ¥357 214 Won 253 500 000 Won 1 140 000 000 Won 135 000 000 Won 1 528 500 000 US$8 827 729 ¥4 342 967		79

	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC	Cause of incident
80	*Yeo Myung*	3.8.95	Yosu, Republic of Korea	Republic of Korea	138	Won 21 465 434	Collision
81	*Shinryu Maru N°8*	4.8.95	Chita, Japan	Japan	198	¥3 967 138	Mishandling of oil supply
82	*Senyo Maru*	3.9.95	Ube, Japan	Japan	895	¥20 203 325	Collision
83	*Yuil N°1*	21.9.95	Pusan, Republic of Korea	Republic of Korea	1 591	Won 250 million *(estimate)*	Sinking
84	*Honam Sapphire*	17.11.95	Yosu, Republic of Korea	Panama	142 488	14 million SDR	Contact with fender
85	*Toko Maru*	23.1.96	Anegasaki, Japan	Japan	699	¥18 769 567 *(estimate)*	Collision
86	*Sea Empress*	15.2.96	Milford Haven, Wales, United Kingdom	Liberia	77 356	€7 395 748	Grounding
87	*Kugenuma Maru*	6.3.96	Kawasaki, Japan	Japan	57	¥1 175 055 *(estimate)*	Mishandling of oil supply
88	*Kriti Sea*	9.8.96	Agioi Theodoroi, Greece	Greece	62 678	Drs 2 241 million	Mishandling of oil supply

Quantity of oil spilled (tonnes)	Compensation (Amounts paid by 1971 Fund, unless indicated to the contrary)		Notes	
40	Clean-up *(paid)*	Won 684 000 000	Won 560 945 437 paid by shipowner's insurer.	80
	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		
0.5	Clean-up *(paid)*	¥8 650 249	¥3 718 455 paid by shipowner's insurer.	81
	Indemnification *(paid)*	¥984 327		
		¥9 634 576		
	Other damage to property *(agreed)*	US$3 103		
	Other loss of income *(agreed)*	US$2 560		
		US$5 663		
94	Clean-up	¥314 838 937	¥279 973 101 recovered by way of recourse action.	82
	Fishery-related	¥46 726 661		
	Indemnification	¥5 012 855		
		¥366 578 453		
(unknown)	Clean-up *(paid)*	Won 12 393 000 000	Won 1 654 million paid by shipowner's insurer.	83
	Fishery-related *(paid)*	Won 5 391 000 000		
		Won 17 784 000 000		
	Claims pending in Court:			
	Fishery-related *(claimed)*	Won 14 329 000 000		
1 800	Clean-up *(paid)*	Won 9 033 000 000	US$13.5 million paid by shipowner's insurer.	84
	Fishery-related *(paid)*	Won 1 112 000 000		
	Environmental studies *(claimed)*	Won 114 000 000		
		Won 10 259 000 000		
4			Total damage less than owner's liability. Indemnification not requested.	85
72 360	Clean-up (paid)	£5 922 074	£6 866 899 paid by shipowner's insurer.	86
	Other damage to property (paid)	£315 456		
	Fishery-related (paid)	£7 744 340		
	Tourism-related (paid)	£ 2 017 477		
	Other loss of income (paid)	£273 865		
		£16 272 342		
	Claims pending in Court:			
	Clean-up	£14 820 000		
	Other damage to property	£350 000		
	Fishery-related	£5 675 000		
	Tourism-related	£1 693 000		
	Other loss of income	£2 313 000		
		£24 849 000		
0.3	Clean-up	¥1 981 403	¥1 197 267 recovered by way of recourse action.	87
	Indemnification	¥297 066		
		¥2 278 469		
30	Clean-up *(paid)*	Drs 199 492 557	Drs 342 131 123 paid by shipowner's insurer. Further claims being examined.	88
	Clean-up *(agreed)*	Drs 2 098 624 280		
	Fishery-related *(paid)*	Drs 83 464 212		
	Fishery-related *(claimed)*	Drs 813 391 187		
	Tourism-related *(paid)*	Drs 35 375 000		
	Tourism-related *(claimed)*	Drs 10 715 500		
	Other loss of income *(paid)*	Drs 23 799 354		
	Other loss of income *(claimed)*	Drs 241 353 652		
		Drs3 506 215 742		

	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC	Cause of incident
89	*N°1 Yung Jung*	15.8.96	Pusan, Republic of Korea	Republic of Korea	560	Won 122 million	Grounding
90	*Nakhodka*	2.1.97	Oki island, Japan	Russian Federation	13 159	1 588 000 SDR	Breaking
91	*Tsubame Maru N°31*	25.1.97	Otaru, Japan	Japan	89	¥1 843 849	Overflow during loading operation
92	*Nissos Amorgos*	28.2.97	Maracaibo, Venezuela	Greece	50 563	Bs3 473 million *(estimate)*	Grounding
93	*Daiwa Maru N°18*	27.3.97	Kawasaki, Japan	Japan	186	¥3 372 368 *(estimate)*	Mishandling of oil supply
94	*Jeong Jin N°101*	1.4.97	Pusan, Republic of Korea	Republic of Korea	896	Won 246 million	Overflow during loading operation
95	*Osung N°3*	3.4.97	Tunggado, Republic of Korea	Republic of Korea	786	104 500 SDR *(estimate)*	Grounding
96	*Plate Princess*	27.5.97	Puerto Miranda, Venezuela	Malta	30 423	3.6 million SDR *(estimate)*	Overflow during loading operation
97	*Diamond Grace*	2.7.97	Tokyo Bay, Japan	Panama	147 012	14 million SDR	Grounding
98	*Katja*	7.8.97	Le Havre, France	Bahamas	52 079	FFr 48 million *(estimate)*	Striking a quay

Quantity of oil spilled (tonnes)	Compensation (Amounts paid by 1971 Fund, unless indicated to the contrary)		Notes	
28	Clean-up *(paid)* Salvage *(paid)* Fishery-related *(paid)* Loss of income *(paid)* Cargo transhipment *(paid)* Indemnification *(paid)*	Won 689 829 037 Won 20 376 927 Won 16 769 424 Won 6 161 710 Won 10 000 000 Won 28 071 490 Won 771 208 588	Won 690 million paid by shipowner's insurer. 1971 Fund considering recourse action against the Republic of Korea.	89
6 200	Clean-up *(claimed)* Fishery-related *(claimed)* Oil removal *(claimed)* Tourism-related *(claimed)* Causeway construction *(claimed)*	¥23 026 000 000 ¥5 290 000 000 ¥1 312 000 000 ¥3 043 000 000 ¥2 397 000 000 ¥35 068 000 000	Provisional payments of ¥8 558 million made by 1971 Fund and ¥1 071 by the 1992 Fund. Payments of ¥66 million and US$867 593 made by shipowner's insurer.	90
0.6	Clean-up Indemnification	¥7 673 830 ¥457 497 ¥8 131 327	¥1 710 173 paid by shipowner's insurer.	91
3 600	Clean-up *(paid)* Other damage to property *(paid)* Fishery-related *(paid)* Tourism-related *(paid)*	Bs1 061 268 867 Bs12 230 431 Bs75 085 817 Bs20 827 150 Bs1 169 412 265	Bs1 154 143 398 paid by shipowner's insurer. Claims for significant amounts being examined. Further claims expected. Claims for Bs320 000 000 are the subject of legal proceedings.	92
1	Clean-up Indemnification	¥415 600 000 ¥ 865 406 ¥416 465 406		93
124	Clean-up Indemnification	Won 418 000 000 Won 58 000 000 Won 476 000 000		94
(unknown)	Clean-up *(paid)* Clean-up *(claimed)* Fishery-related *(paid)* Oil removal operation *(paid)* Clean-up *(paid)* Clean-up *(claimed)* Fishery-related *(paid)*	Won 779 250 048 Won 93 351 728 Won 77 371 635 Won 6 738 565 917 Won 7 688 539 348 ¥452 646 003 ¥204 134 673 ¥181 786 486 ¥838 567 162	Further claims expected.	95
3.2	Fishery-related *(claimed)*	US$47 000 000		96
1 500	Clean-up *(paid)* Fishery-related *(paid)* Tourism-related *(paid)* Other loss of income *(paid)*	¥1 074 000 000 ¥263 000 000 ¥23 000 000 ¥8 000 000 ¥1 680 000 000	Total amount of established claims will not exceed shipowner's liability.	97
190	Clean-up *(claimed)* Other damage to property *(claimed)* Loss of income *(claimed)*	FFr 17 300 000 FFr 7 800 000 FFr 1 200 000 FFr 26 300 000	FFr9 866 000 paid by shipowner's insurer. Probable that total of the established claims will be less than owner's liability.	98

	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC	Cause of incident
99	*Evoikos*	15.10.97	Strait of Singapore	Cyprus	80 823	8 846 941 SDR	Collision
100	*Kyungnam N°1*	7.11.97	Ulsan, Republic of Korea	Republic of Korea	168	Won 43 543 015	Grounding
101	*Pontoon 300*	7.1 98	Hamriyah, Sharjah, United Arab Emirates	Saint Vincent and the Grenadines	4 233	*Not available*	Sinking
102	*Maritza Sayalero*	8.6.98	Carenero Bay, Venezuela	Panama	28 338	3 million SDR *(estimate)*	Ruptured discharge pipe

NOTES

1 Amounts are given in national currencies. The relevant conversion rates as at 30 December 1999 are as follows:

£1 =	Algerian Dinar	Din	109.854	Moroccan Dirham	Mor Dhr	16.2387
	Canadian Dollar	Can$	2.3391	Omani Rial	OR	0.6206
	Danish Krone	DKr	11.9658	Republic of Korea Won	Won	1825.73
	Finnish Markka	FM	9.5603	Russian Rouble	Rbls	44.4024
	French Franc	FFr	10.5473	Singapore Dollar	S$	2.6851
	German Mark	DM	3.1448	Spanish Peseta	Pts	267.536
	Greek Drachma	Drs	531.071	Swedish Krona	SKr	13.7688
	Italian Lira	Llt	3113.37	UAE Dirham	UAE Dhr	5.9195
	Japanese Yen	¥	164.966	United States Dollar	US$	1.6117
	Malaysian Ringgit	RM	6.1245	Venezuelan Bolivar	Bs	1045.59

£1 = 1.178400 SDR or 1 SDR = £0.848610

Quantity of oil spilled (tonnes)	Compensation (Amounts paid by 1971 Fund, unless indicated to the contrary)		Notes	
29 000	*Singapore* Clean-up *(claimed)* Other damage to property *(claimed)* *Malaysia* Clean-up *(claimed)* Fishery-related *(claimed)* *Indonesia* Clean-up *(claimed)* Environmental damage *(claimed)* Fishery-related *(claimed)*	S$17 530 000 S$1 800 000 S$19 830 000 RM 1 736 000 RM 1 900 000 RM 3 636 000 US$152 000 US$3 200 000 US$11 000 US$3 363 000	Provisional payment of US$500 000 by shipowner in respect of clean-up claims.	99
-5	Clean-up *(paid)* Clean-up *(claimed)* Fishery-related *(paid)* Fishery-related *(claimed)*	Won 169 267 535 Won 44 035 053 Won 82 818 256 Won 79 200 000 Won 375 320 844	The shipowner has paid Won 26 622 030.	100
4000	Clean-up *(paid)* Clean-up *(claimed)*	Dhr 1 839 000 Dhr 4 943 728 Dhr 6 783 000	Further claims expected.	101
262	*Claims pending in Court*: Clean-up and environmental damage *(claimed)*	Bs10 000 000	Further claims expected. The 1971 Fund considers that the Conventions do not apply to this incident.	102

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

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

ANNEX

SUMMARY OF

(31 December

For this table, damage has been grouped into the following categories:

	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GT)	Limit of shipowner's liability under applicable CLC	Cause of incident
1	Unknown	20.6.96	North Sea coast, Germany	-	-	-	*Unknown*
2	*Nakhodka*	2.1.97	Oki island, Japan	Russian Federation	13 159	1 588 000 SDR	Breaking
3	*Osung N°3*	3.4.97	Tunggado, Republic of Korea	Republic of Korea	786	104 500 SDR *(estimate)*	Grounding
4	Unknown	28.9.97	Essex, United Kingdom	-	-	-	*Unknown*
5	*Santa Anna*	1.1.98	Devon, United Kingdom	Panama	17 134	10 196 280 SDR *(estimate)*	Grounding
6	*Milad I*	5.3.98	Bahrain	Belize	801	*Not available*	Damage to hull
7	*Mary Anne*	22.07.99	Philippines	Philippines	465	3 000 000 SDR	Sinking
8	*Dolly*	5.11.99	Martinique	Dominican Republic	289	*Not available*	Sinking
9	*Erika*	12.12.99	Brittany, France	Malta	19 666	9 200 000 SDR *(estimate)*	Breaking

NOTES

1 Amounts are given in national currencies. The relevant conversion rates as at 30 December 1999 are as follows:

£1 =	Bahrain Dinar	BD	0.6077
	German Mark	DM	3.1448
	Japanese Yen	¥	64.966
	Philippines Peso	Peso	64.9516
	Republic of Korea Won	Won	825.73
	United States Dollar	S$	1.6117

£1 = 1.178400 SDR or 1 SDR = £0.848610

XXII

INCIDENTS: 1992 FUND

1999)

- Clean-up (including preventive measures)
- Pre-spill preventive measures
- Fishery-related
- Tourism-related
- Other damage to property

Quantity of oil spilled (tonnes)	Compensation (Amounts paid by 1992 Fund, unless indicated to the contrary)		Notes	
Unknown	Clean-up *(claimed)*	DM2 610 226	German authorities have taken legal action against a shipowner whose ship is suspected of being responsible for the oil spill. If this action is unsuccessful, authorities will claim against 1992 Fund.	1
6 200	Clean-up *(claimed)* Fishery-related *(claimed)* Oil removal *(claimed)* Tourism-related *(claimed)* Causeway construction *(claimed)*	¥23 026 000 000 ¥5 290 000 000 ¥1 312 000 000 ¥3 043 000 000 ¥2 397 000 000 ¥35 068 000 000	Provisional payments of ¥8 558 million made by 1971 Fund and ¥1 071 million by the 1992 Fund. Payments of ¥66 million and US$867 593 made by shipowner's insurer.	2
Unknown			The 1992 Fund paid ¥340 million to claimants. This amount was later reimbursed by the 1971 Fund.	3
Unknown	Clean-up *(claimed)*	£10 000	Claim will not be pursued.	4
280	Clean-up *(claimed)*	£30 000	Questioned whether *Santa Anna* falls within definition of 'ship'.	5
0	Pre-spill preventive measures *(paid)*	BD 21 168		6
Unknown	Clean-up *(paid)*	US$ 1 000 000	The clean-up claims have been paid by the shipowner's insurer. Further claims are expected.	7
Unknown			No claims submitted so far.	8
14 000 *(estimate)*			Claims for substantial amounts are expected.	9

2 The inclusion of claimed amounts is not to be understood as indicating that either the claim or the amount is accepted by the 1992 Fund.

3 Where claims are indicated as paid, the figure given shows the actual amount paid by the 1992 Fund (ie excluding the shipowner's liability).

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