Annual Report 2004

INTERNATIONAL
OIL POLLUTION
COMPENSATION FUNDS

REPORT ON THE ACTIVITIES OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS IN 2004

Photograph on front cover:
Clean-up operations off Bahrain

Acknowledgements

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Impact PR & Design Limited, 125 Blean Common, Blean, Canterbury, Kent CT2 9JH
Telephone: +44 (0)1227 450022 Web site: www.impactprdesign.co.uk

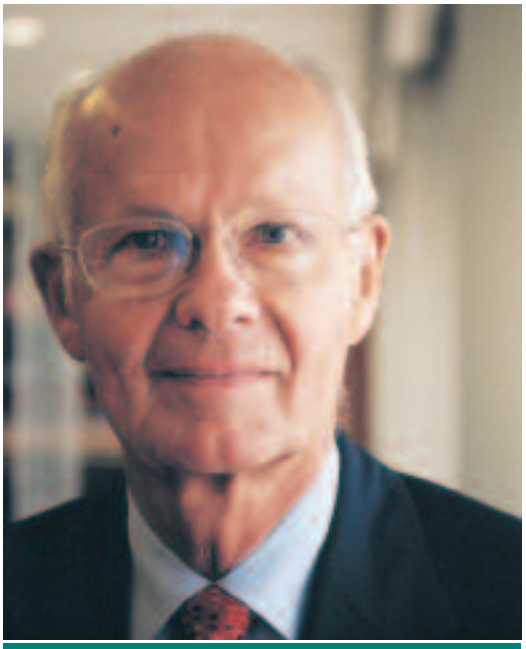
FOREWORD

As Director of the International Oil Pollution Compensation Funds 1971 and 1992 (IOPC Funds) I am pleased to present the Annual Report for the year 2004.

The end of 2004 has been marked by one of the world's worst natural disasters, the horrifying tsunami tragedy in South-East Asia. Many countries, including a number of Members of the 1992 Fund and former Members of the 1971 Fund, have suffered tragic loss of life and huge destruction. On behalf of the IOPC Funds' Secretariat, I would like to take this opportunity to express our greatest sympathy to all those who have suffered as a result.

Oil pollution does not normally involve loss of life but a major spill can have a serious impact both on people's livelihoods and on the environment. I am very pleased, therefore, that the conditions for the entry into force of the Supplementary Fund Protocol were met on 3 December 2004 and that, as a result, the Supplementary Fund will be established on 3 March 2005 when the Protocol enters into force. This new Fund, which will provide additional compensation over and above that available under the 1992 Civil Liability and Fund Conventions, should ensure that, in those States which ratify the Protocol, sufficient compensation is available for even the most serious of oil spills and also that accepted claims can be paid in full from the outset.

During 2004, six States ratified the 1992 Fund Convention bringing the total number of Members of the 1992 Fund to 92. This continued growth of the membership is an indication that governments recognise that the international compensation regime has, in general, worked well in most cases. In 2000, the 1992 Fund Assembly set up a Working Group to consider the need to improve the international compensation system to ensure that it continues to meet the needs of society in the 21st century and that Group was responsible for the preparation of the Supplementary Fund Protocol. During 2005, the Group will make final recommendations to the Assembly as to whether or not the 1992 Conventions themselves should be revised and, if so, which items require revision.



Måns Jacobsson

There have been a number of oil pollution incidents during 2004 but, since the majority concerned vessels other than tankers, the IOPC Funds have only been involved in a few new incidents during the year. However, significant efforts have again had to be devoted to making progress in respect of the *Erika* and *Prestige* incidents. Progress has also been made in respect of other incidents involving the 1992 Fund. A number of 1971 Fund incidents have also been resolved and I trust that in a few years time it will finally be possible to wind up the 1971 Fund.

I hope that readers will find this Report interesting and that it will help them understand the role of the IOPC Funds in the international oil pollution compensation regime.

Måns Jacobsson
Director

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PREFACE

I, too, would like to take this opportunity to express my profound sympathy to all those who have suffered grave personal loss, were faced with immense destruction or endured horrifying experiences as a result of the tsunami disaster in South-East Asia. Many countries have been severely affected by this unprecedented natural disaster, which cast a dark shadow over the end of 2004, and it is good to see that resources throughout the world have been mobilised to help them.

In the face of tragic loss of life on such a scale, oil pollution damage may appear to be a trivial subject. This should not lead us, though, to underestimate the extent to which a grave oil pollution incident can also have a severe impact on people's livelihoods. I mentioned in my Preface to last year's Annual Report that many changes had taken place since the early days of the IOPC Funds. Further development of the international regime and of the way in which the Funds operate will be important in the future as well in order to ensure that, in a changing world, the Funds can continue to play an effective role. It will be equally important, however, to remain focused on the primary purpose of the IOPC Funds, in the words of the Preamble to the 1992 Fund Convention, '…to ensure that adequate compensation is available to persons who suffer damage caused by pollution resulting from the escape or discharge of oil from ships'. I therefore hope that the Assembly will be able to balance these two aspects when it discusses in 2005 the results of the third intersessional Working Group, which continued its important work throughout 2004.

It became clear in early December 2004 that the Supplementary Fund Protocol, which was adopted in 2003, will enter into force on 3 March 2005. From that day forward, excellent protection against the financial consequences of even the worst oil spill disasters will be available in States Parties to the Protocol. I very much hope that with the Supplementary Fund we will be able to put an end to what is known as 'pro-rating', ie limiting payments of compensation to a certain percentage in order to avoid over-payment. This has unfortunately become unavoidable in too many cases under the present system, potentially giving rise to severe hardship for genuine claimants and thus undermining the primary purpose of the Funds.

Willem Oosterveen

By the end of 2004 Måns Jacobsson had served as Director of the IOPC Funds for 20 years. As is well known to all those who have been involved with the operation of the Funds during these two decades, his importance to the Funds has been unparalleled. On behalf of all Member States, I therefore thank him wholeheartedly and congratulate him for dedicating his great wisdom and expertise to the success of the Funds for so many years, as well as for his willingness to continue to serve the Funds for two more years, thus enabling a smooth transition to the next Director.

I conclude by wishing the next Chairman of the 1992 Fund Assembly every success in leading the supreme body of this important organisation and by expressing, on behalf of the Member States, my sincere gratitude to the Director and his Secretariat for their excellent work and dedication to the IOPC Funds during 2004. This Annual Report provides a meticulous overview of the collective efforts of all those who have contributed to the activities of the IOPC Funds and I am confident you will find it both instructive and informative.

Willem Oosterveen
Chairman of the 1992 Fund Assembly

PART 1

1 INTRODUCTION

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

The International Oil Pollution Compensation Fund 1971 (1971 Fund) was established in October 1978 and it operates within the framework of two international Conventions. These are 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 and 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 established under the 1992 Fund Convention.

The 1971 Fund Convention ceased to be in force on 24 May 2002 and does not apply to incidents taking place after that date. However, before the 1971 Fund can be wound up, all pending claims arising from incidents which occurred before that date in 1971 Fund Member States will have to be settled and any remaining assets distributed among contributors.

The 1969 Civil Liability Convention still remains in force in respect of 45 States. Although it was envisaged that States becoming Parties to the 1992 Civil Liability Convention would denounce the 1969 Convention, some States are still Parties to both, resulting in complex treaty relationships.

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 IOPC Funds provide supplementary compensation to the 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 £48 million or US$93 million).[1] The maximum amount of compensation payable by the 1992 Fund for any one incident is 203 million SDR (about £164 million or US$315 million) in respect of incidents occurring on or after 1 November 2003. For incidents which took place before that date, the maximum amount payable is 135 million SDR (about £109 million or US$210 million). For each Fund these amounts include the sum actually paid by the shipowner or his insurer.

The 1992 Fund is governed by an Assembly composed of all Member States and an Executive Committee comprising 15 Member States elected by the Assembly. The main function of the Executive Committee is to take policy decisions concerning the admissibility of compensation claims. The 1971 Fund has an Administrative Council which deals with both administrative and incident-related matters. The day to day operation of both Funds is the responsibility of the Secretariat, headed by the Director.

Whilst the international compensation regime established under the Civil Liability and Fund Conventions has, in general, worked well in most cases, the core features of the regime were shaped by events in the late 1960s and early 1970s. It is therefore not surprising that Contracting States have modified the regime in the light of experience, in order to adapt it to the

[1] *Conversion of currencies in this Report has been made on the basis of the rates at 31 December 2004, ie 1 SDR = £0.804085 or US$1.553010, except in respect of claims paid by the Funds where conversion has been made at the rate of exchange on the date of payment.*

changing needs of society. On 1 November 2003 the 50% increases in the limits of liability and compensation entered into force and May 2003 saw the adoption of the Protocol establishing a Supplementary Fund, which will create a third tier of compensation. The Protocol will enter into force on 3 March 2005 and the total amount of compensation available for pollution damage in States becoming Members of the Supplementary Fund will be 750 million SDR (£603 million or US$1 165 million), including the amounts payable under the 1992 Conventions.

Considerations are continuing through the intersessional Working Group set up by the 1992 Fund Assembly as to whether further modifications to the regime should be carried out (cf section 9).

2 THE LEGAL FRAMEWORK

Scope of application

The 1969 Civil Liability Convention and 1971 Fund Convention apply to spills of persistent oil from oil tankers that cause pollution damage in the territory (including the territorial sea) of a State Party to the respective Convention. Under the 1992 Civil Liability and Fund Conventions, however, the geographical scope is wider, with the cover extended to pollution damage caused in the exclusive economic zone (EEZ) or equivalent area of a State Party.

'Pollution damage' is defined in the 1969 and 1971 Conventions as loss or damage caused by contamination. The definition of 'pollution damage' in the 1992 Conventions has the same basic wording as the definition in the original Conventions, but with the addition of a phrase to clarify that compensation for impairment of the environment, other than loss of profit from such impairment, is limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken. 'Pollution damage' includes the costs of reasonable preventive measures, ie measures to prevent or minimise pollution damage.

The 1969 and 1971 Conventions only apply 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.

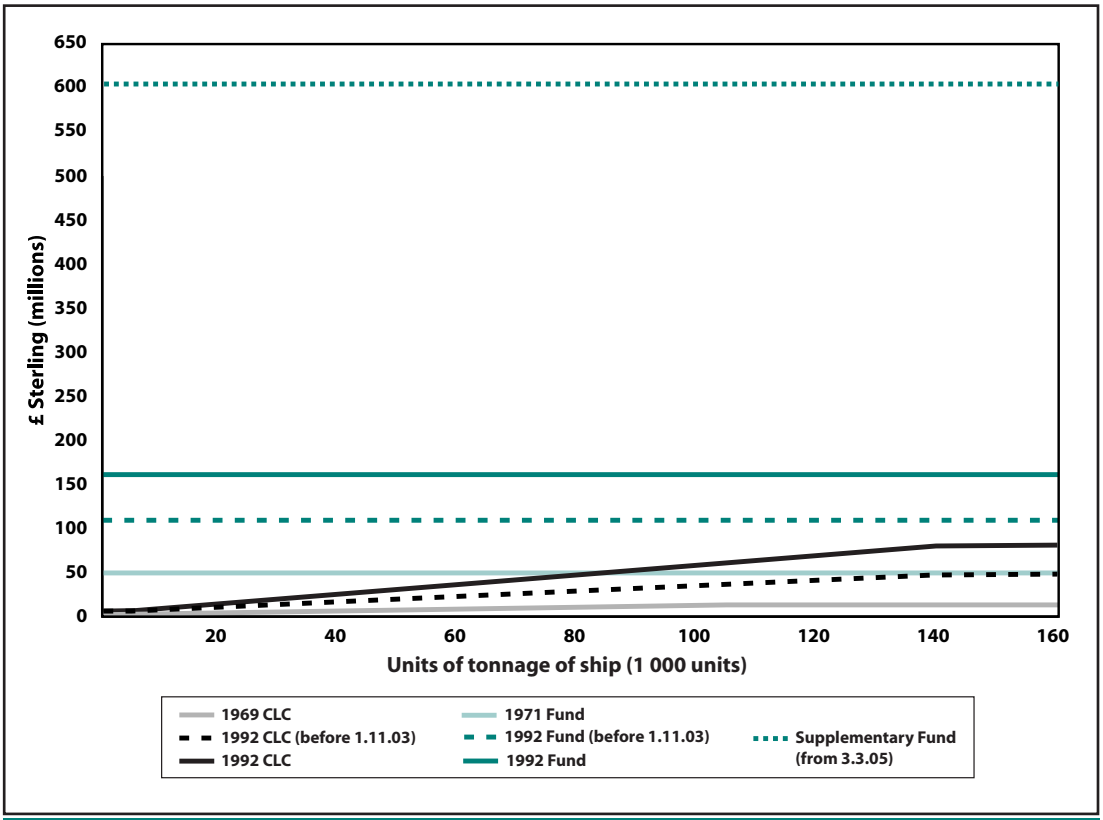
The 1969 and 1971 Conventions apply only to ships that actually carry oil in bulk as cargo, ie generally laden tankers. Spills from tankers during ballast voyages are therefore not covered by these Conventions. The 1992 Conventions, however, apply also to spills of bunker oil from unladen tankers provided they have residues of a persistent oil cargo aboard. Neither the 1969/1971 Conventions nor the 1992 Conventions apply to spills of bunker oil from ships other than tankers.

Shipowner's liability

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

- the damage resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character, or
- the damage was wholly caused by an act or omission done with the intent to cause damage by a third party, or
- the damage was wholly caused by the negligence or other wrongful act of public authorities in maintaining lights or other navigational aids.

Ship's tonnage	Incidents occurring before or on 31 October 2003	Incidents occurring on or after 1 November 2003
Ship not exceeding 5 000 units of gross tonnage	3 000 000 SDR (£2.4 million or US$4.7 million)	4 510 000 SDR (£3.6 million or US$7 million)
Ship between 5 000 and 140 000 units of gross tonnage	3 000 000 SDR (£2.4 million or US$4.7 million) plus 420 SDR (£339 or US$650) for each additional unit of tonnage	4 510 000 SDR (£3.6 million or US$7 million) plus 631 SDR (£507 or US$980) for each additional unit of tonnage
Ship of 140 000 units of gross tonnage or over	59 700 000 SDR (£48 million or US$93 million)	89 770 000 SDR (£72 million or US$139 million)



Limits laid down in the Conventions

The shipowner is normally entitled to limit his liability to an amount determined by the size of the ship. Under the 1969 Civil Liability Convention, the shipowner's liability is limited to 133 Special Drawing Rights (SDR) (£107 or US$207) per ton of the ship's tonnage or 14 million SDR (£11 million or US$22 million), whichever is less.

The original limits under the 1992 Civil Liability Convention, which were considerably higher than under the 1969 Convention, were further increased by 50.73% for incidents occurring on or after 1 November 2003. These increases were decided by the Legal Committee of the International Maritime Organization (IMO), using a special procedure laid down in the Convention (the 'tacit amendment procedure'). The limits under the 1992 Convention are set out in the table on page 15.

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.

Compulsory insurance

The shipowner is obliged to maintain insurance to cover his liability under the applicable Civil Liability Convention. This requirement only applies to ships carrying more than 2 000 tonnes of oil as cargo.

Channelling of liability

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 shipowner. 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 shipowner, but also claims against the members of the crew, the pilot, the charterer (including a bareboat charterer), manager or operator of the ship, or any person carrying out salvage operations or taking preventive measures. This prohibition does not apply if the pollution damage resulted from the personal act or omission of the person concerned, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

The IOPC Funds' obligations

The IOPC Funds pay compensation when those suffering oil pollution damage can not obtain full compensation from the shipowner or his insurer under the applicable Civil Liability Convention in the following cases:

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

The compensation payable by the 1971 Fund in respect of incidents is limited to an aggregate amount of 60 million SDR (£48 million or US$93 million). As for the 1992 Fund the maximum amount payable is 135 million SDR (£109 million or US$210 million) for incidents occurring before 1 November 2003. This maximum amount was increased using the 'tacit amendment procedure', to 203 million SDR (£164 million or US$315 million) for incidents occurring on or after that date. These maximum amounts include the sum actually paid by the shipowner (or his insurer) under the applicable Civil Liability Convention.

As regards the additional compensation which will be available from the Supplementary Fund reference is made to Section 10.

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

Time bar

Claims for compensation under the Civil Liability and Fund Conventions are time-barred (extinguished) unless legal action is brought against the shipowner and his insurer and against the 1971 or 1992 Fund within three years of the date when the damage occurred and in any event within six years of the date of the incident.

Jurisdiction and enforcement of judgements

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

Structure and financing

The structure and financing of the IOPC Funds are described in sections 7 and 8.

3 MEMBERSHIP OF THE IOPC FUNDS

3.1 1992 Fund

The 1992 Fund Convention entered into force on 30 May 1996 for nine States. By the end of 2004, 86 States had become Members of the 1992 Fund. A further six States have acceded to the 1992 Fund Convention during 2004, bringing the number of Member States to 92 by the end of 2005, as set out below.

It is likely that a number of other States will become Members of the 1992 Fund in the near future.

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

Algeria
Angola
Antigua and Barbuda
Argentina
Australia
Bahamas
Bahrain
Barbados
Belgium
Belize
Brunei Darussalam
Cambodia
Cameroon
Canada
Cape Verde
China (Hong Kong Special Administrative Region)
Colombia
Comoros
Congo
Croatia
Cyprus
Denmark
Djibouti
Dominica
Dominican Republic
Fiji
Finland
France
Gabon
Georgia
Germany
Ghana
Greece
Grenada
Guinea
Iceland
India
Ireland
Italy
Jamaica
Japan
Kenya
Latvia
Liberia
Lithuania
Madagascar
Malta
Marshall Islands
Mauritius
Mexico
Monaco
Morocco
Mozambique
Namibia
Netherlands
New Zealand
Nigeria
Norway
Oman
Panama
Papua New Guinea
Philippines
Poland
Portugal
Qatar
Republic of Korea
Russian Federation
Saint Vincent and the Grenadines
Samoa
Seychelles
Sierra Leone
Singapore
Slovenia
Spain
Sri Lanka
Sweden
Tonga
Trinidad and Tobago
Tunisia
Turkey
United Arab Emirates
United Kingdom
United Republic of Tanzania
Uruguay
Vanuatu
Venezuela

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

Saint Lucia	20 May 2005	Estonia	6 August 2005
Malaysia	9 June 2005	South Africa	1 October 2005
Tuvalu	30 June 2005	Israel	21 October 2005

3.2 1971 Fund

The 1971 Fund Convention ceased to be in force on 24 May 2002, when the number of Member States fell below 25, and does not apply to incidents occurring after that date. The 1971 Fund therefore has no Member States. As regards the winding up of the 1971 Fund reference is made to Section 6.

Of the 23 States which were Members of the 1971 Fund on 24 May 2002, 13 have acceded to the 1992 Fund Convention. However, there are still 10 States which have not yet done so, namely: Albania, Benin, Côte d'Ivoire, Gambia, Guyana, Kuwait, Maldives, Mauritania, Saint Kitts and Nevis and Syrian Arab Republic. It is hoped that these States will ratify the 1992 Fund Convention in the near future.

3.3 Supplementary Fund

As regards the membership of the Supplementary Fund, reference is made to Section 10.

Assembly in session

4 EXTERNAL RELATIONS

4.1 Promotion of 1992 Fund membership and information on Fund activities

The Secretariat has continued its efforts to increase the number of 1992 Fund Member States. To this end, the Director and other members of the Secretariat visited several non-Member States. They also participated in seminars, conferences and workshops in a number of countries and gave lectures on liability and compensation for oil pollution damage and on the operation of the 1992 Fund. As in previous years, the Director lectured to students at the World Maritime University in Malmö (Sweden), providing the opportunity to disseminate information on the 1992 Fund and the international compensation regime to students who eventually return to their administrations throughout the world. Lectures have also been given at the IMO International Maritime Law Institute in Malta and the IMO International Maritime Academy in Trieste (Italy).

In order to establish and maintain personal contacts between the Secretariat and officials within the national administrations dealing with Fund matters, the Director and other members of the Secretariat have visited a number of 1992 Fund Member States during 2004 for discussions with government officials on the international compensation regime and the operations of the 1992 Fund.

For the purpose of promoting membership of the 1992 Fund, the Director and other members of the Secretariat have had discussions with government representatives of non-Member States in connection with meetings within IMO, in particular during the sessions of the IMO Council and Legal Committee.

Former Member States of the 1971 Fund have observer status with the 1992 Fund. In addition, the 1992 Fund Assembly has granted observer status to a number of non-Member States. At the end of 2004 the non-Member States set out in the table below had observer status with the 1992 Fund (former 1971 Fund Member States are indicated with an asterisk).

4.2 Relations with international organisations and interested bodies

The IOPC Funds co-operate closely 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 the IOPC Funds:

- United Nations
- International Maritime Organization (IMO)
- United Nations Environment Programme (UNEP)
- Baltic Marine Environment Protection Commission (Helsinki Commission)
- Central Commission for Navigation on the Rhine (CCNR) (1992 Fund only)
- European Commission

NON-MEMBER STATES WITH OBSERVER STATUS

Albania*	Egypt	Mauritania*
Brazil	Gambia*	Pakistan
Benin*	Guyana*	Peru
Chile	Indonesia*	Saint Kitts and Nevis*
Côte d'Ivoire*	Iran, Islamic Republic of	Saudi Arabia
Democratic People's Republic of Korea	Kuwait*	Switzerland*
Ecuador	Lebanon	Syrian Arab Republic*
	Maldives*	United States

- International Institute for the Unification of Private Law (UNIDROIT)
- Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea (REMPEC)

The IOPC Funds have particularly close links with IMO and co-operation agreements have been concluded between the Funds and IMO. During 2004 the Secretariat represented the IOPC Funds at meetings of the IMO Council and Legal Committee and other IMO bodies dealing with issues of interest to the Funds.

The following international non-governmental organisations have observer status with the IOPC Funds:

- BIMCO
- Comité Maritime International (CMI)
- Conference of Peripheral Maritime Regions (CPMR) (1992 Fund only)
- Cristal Limited
- European Chemical Industry Council (CEFIC) (1992 Fund only)
- 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)

4.3 The IOPC Funds' website

The IOPC Funds have a website (www.iopcfund.org) containing information on the Organisations and their activities. During 2004, the website, which previously had been available in English only, became available also in French and Spanish. The website was also expanded to include significantly more information.

5 1992 FUND AND 1971 FUND GOVERNING BODIES

The 1992 Fund has an Assembly composed of all Member States and an Executive Committee of 15 Member States elected by the Assembly. The main function of the Executive Committee is to take policy decisions concerning the admissibility of compensation claims.

Under the 1971 Fund Convention, the 1971 Fund had an Assembly and an Executive Committee. However, in 1998 it became evident that there was an imminent risk that those bodies would be unable to achieve a quorum. The Assembly therefore adopted a Resolution establishing an Administrative Council which would act on behalf of the Assembly when the latter did not achieve a quorum. Since October 1998 the Administrative Council (which does not have any quorum requirement) has fulfilled the roles of the Assembly and the Executive Committee and deals therefore with both administrative and incident-related matters. The Council also focuses on the winding up of the 1971 Fund.

In 2002 the 1992 Fund Assembly recognised that, because of the growth in the number of Member States it might be unable to achieve a quorum at future sessions. The Assembly therefore adopted a similar Resolution establishing an Administrative Council for the 1992 Fund. The quorum requirement for this Administrative Council was set at 25 Member States.

Jerry Rysanek

The 1992 Fund Assembly held an extraordinary session in May 2004 and its ordinary autumn session in October 2004. Both sessions were held under the chairmanship of Mr Willem Oosterveen (Netherlands).

The 1992 Fund Executive Committee held four sessions during 2004. The first three, held in February, May and October were chaired by Mr Jerry Rysanek (Canada). The last session, also in October 2004, was chaired by Mrs Lolan Margaretha Eriksson (Finland). The main decisions taken by the 1992 Fund Executive Committee at these sessions are reflected in Section 14 in the context of the particular incidents.

The 1971 Fund Administrative Council held sessions in February, May and October 2004. The February and May sessions were chaired by Mr John Wren (United Kingdom), whereas the October session was chaired by Captain Raja Malik (Malaysia). The main decisions taken by the Administrative Council at these sessions regarding incidents involving the 1971 Fund are reflected in Section 13 in the context of the particular incidents.

Decisions relating to both Organisations

At the October 2004 sessions, the 1992 Fund Assembly and the 1971 Fund Administrative Council took the following main decisions.

- The present Director, Mr Måns Jacobsson, who took up his post on 1 January 1985 and whose contract was due to expire on 31 December 2004, informed the governing bodies that he would be available for an extension of his contract for a period of two years. The 1992 Fund Assembly decided to extend his contract for a further term of office of two years, as from 1 January 2005, to include any period for the smooth transition to his successor as the Assembly would decide.
- In view of the decision it had taken in April/May 1998 that the Director of the 1971 Fund should *ex officio* be the person

who holds the post of Director of the 1992 Fund, the 1971 Fund Administrative Council noted the decision of the 1992 Fund Assembly to extend the present Director's contract.

- With regard to the procedures for recruitment of future Directors, the governing bodies requested the Audit Body to prepare a detailed job description and competency requirements for the post of Director and to propose a timetable for the various stages of the selection process.
- In line with the normal practice within the United Nations agencies and subsidiary bodies and especially the International Maritime Organization, the 1992 Fund Assembly adopted a Resolution setting a limit of five years for the term of office of the Director, renewable for one additional period of up to five years but allowing the Assembly to decide on a further extension of the Director's term of office in exceptional circumstances. The 1971 Fund Administrative Council took note of this Resolution.
- The Assembly and the Administrative Council noted with appreciation the External Auditor's Reports and his Opinions on the Financial Statements of the 1992 Fund and the 1971 Fund and noted that the Auditor had provided an unqualified audit opinion following a rigorous examination of the financial operations and accounts in conformity with audit standards and best practice. The governing bodies approved the accounts for the financial period 1 January - 31 December 2003 (cf Section 7.3), as recommended by the Organisations' joint Audit body.
- The budget appropriations for 2005 were adopted, with an administrative expenditure for the joint Secretariat totalling £3 372 600.
- The governing bodies considered that the situation in respect of the non-submission of oil reports by a number of States continued to be a matter of serious concern, since without such reports the Secretariat cannot levy contributions in respect of oil receivers in those States (cf Section 8.1).

Lolan Margaretha Eriksson

Decisions relating to the 1992 Fund only

- In October 2004 the 1992 Fund Assembly elected the following States as members of the 1992 Fund Executive Committee:

Algeria	Japan
Australia	Netherlands
China (Hong Kong Special Administrative Region)	Portugal
	Republic of Korea
Finland	Russian Federation
Germany	United Arab Emirates
India	United Kingdom
Italy	Uruguay

- The Assembly decided to increase the 1992 Fund's working capital from £20 million to £22 million.
- The Assembly decided to levy contributions in respect of the General Fund and the *Prestige* Major Claims Fund, and to reimburse a surplus on the *Nakhodka* Major Claims Fund to contributors (cf Section 8.3).
- The Assembly noted the developments in respect of the ratification and implementation of the 1996 International

Captain Raja Malik

Convention on liability and compensation for damage in connection with the carriage of hazardous and noxious substances by sea (HNS Convention). It was noted that the Secretariat had completed the development of a database system to assist in identifying and reporting contributing cargo under the HNS Convention and that the database included all substances qualifying as hazardous and noxious substances. It was also noted that the final system would be circulated in the form of a CD-ROM containing software for installation on a user's personal computer, and that the Secretariat would set up a dedicated website for the system.

- In October 2004, the Assembly approved a revised text of the 1992 Fund's Claims Manual, which is a guide to presenting compensation claims against the Funds. The revised Claims Manual is easier to read and gives further assistance to claimants (cf Section 11.2).
- The Assembly's attention was drawn to the possibility that the failure of some States to submit oil reports or of contributors in some States to pay contributions might, in some cases, be due to a lack of legislation implementing the Conventions into their national law. It was pointed out that such failures to implement the Conventions could have other serious repercussions in the future, particularly in view of the increase in the financial limit of the 1992 Fund Convention. The Assembly instructed the Director to write to all Member States to enquire whether the 1992 Conventions had been fully implemented into their national law.

Decisions relating to the Supplementary Fund

- At its May 2004 session, the 1992 Fund Assembly considered a number of proposals by the Director relating to the preparations for the setting up of the Supplementary Fund and made recommendations on a number of issues to the Assembly of the Supplementary Fund (cf Section 10).

Decisions relating to the 1971 Fund only

- In October 2004 the 1971 Fund Administrative Council decided not to levy any 2004 annual contributions but decided to reimburse surpluses on various Major Claims Funds to contributors, as set out in Section 8.3.

The Administrative Council approved a special budget appropriation of £250 000 to cover fees of lawyers and other experts and travel pertaining to the winding up of the 1971 Fund.

6 WINDING UP OF THE 1971 FUND

6.1 Termination of the 1971 Fund Convention

As mentioned in Section 3.2, the 1971 Fund Convention ceased to be in force on 24 May 2002 and does not apply to incidents occurring after that date.

The termination of the 1971 Fund Convention does not result in the immediate liquidation of the 1971 Fund as the Organisation has to meet its obligations in respect of pending incidents. During 2004 significant progress was made towards the winding up of the 1971 Fund in that a number of pending incidents were settled. It is expected that by the end of 2005 compensation claims will be outstanding only in respect of a very small number of incidents. Steps will be taken to ensure that the 1971 Fund is liquidated and wound up in a proper manner as soon as possible.

6.2 Insurance of the 1971 Fund's liabilities

In October 2000 the 1971 Fund purchased insurance covering any liabilities of the 1971 Fund for compensation and indemnification up to 60 million SDR (£48 million) per incident (as well as legal and experts' fees) in respect of incidents occurring during the period 25 October 2000 – 24 May 2002, subject to a deductible of 250 000 SDR (£220 000) per incident. This insurance was called upon in respect of two incidents which occurred in 2001, namely the *Zeinab* (United Arab Emirates) and the *Singapura Timur* (Malaysia).

6.3 Procedure for winding up the 1971 Fund

In October 2004 the Administrative Council considered certain issues which will have to be addressed during the winding-up period, namely the timescale for the settlement of all remaining claims in respect of pending incidents and for the recourse actions taken by the 1971 Fund in respect of certain incidents. The Council decided how any surpluses on the General Fund should be distributed to contributors. The Council considered what action should be taken in respect of the contributors in arrears and the problem caused by a number of States not having fulfilled their treaty obligation under the 1971 Fund Convention to submit reports on contributing oil receipts. These issues will be considered further in 2005.

As regards the reimbursements to contributors due on 1 March 2005 (cf Section 8.3), the Director decided, in conformity with the position taken by the Administrative Council in 2003, that reimbursements of surpluses on Major Claims Funds (after any arrears have been offset) to contributors in those States which have any oil reports outstanding should be postponed until all such reports have been submitted.

The Council noted the considerable improvement in the situation as regards contributors in arrears with the number decreasing from 27 to 17 during the last two years. The Council instructed the Director to continue his efforts to make these contributors who were in arrears pay the amounts due and consider, on a case-by-case basis, whether legal action should be taken against any particular contributor.

7 ADMINISTRATION OF THE IOPC FUNDS

7.1 Secretariat

The 1971 Fund and 1992 Fund have a joint Secretariat headed by one Director. Throughout 2004 the Secretariat continued to face considerable challenges. The strong commitment of the staff to their work, as well as their knowledge and expertise, are important assets to the IOPC Funds and are crucial to the efficient functioning of the Secretariat.

The IOPC Funds continue to use external consultants to obtain advice on legal and technical matters as well as on matters relating to management. In connection with a number of major incidents the Funds and the shipowner's liability insurer involved have jointly established local claims offices to facilitate the efficient handling of the great numbers of claims submitted and, in general, to assist claimants.

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

7.2 Risk Management

During 2004 the Director undertook a general review of the IOPC Funds' risk management. In close co-operation with the Audit Body and with the assistance of consultants and the External Auditor, the Director identified five areas of risk, in no particular order of priority, namely: reputation risk, claims handling process, financial risk, human resource management and business continuity. Under these five areas the sub-risks are to be mapped and assessed, following which the process and procedures for management of these risks will be documented. The Audit Body and the External Auditors have made valuable contributions to the work in this field. Further work will be carried out during 2005.

7.3 Financial statements for 2003

The financial statements of the 1971 Fund and the 1992 Fund for the period 1 January to 31 December 2003 were approved by the respective governing bodies during their sessions in October 2004.

As in previous years the accounts of both the 1971 Fund and the 1992 Fund were audited by the Comptroller and Auditor General of the United Kingdom. The Auditor's reports on the two Organisations are reproduced in full in Annexes III and IX respectively and his opinions on each financial statement are reproduced in Annexes IV and X. Summaries of the information contained in the audited statements for this period are given in Annexes V to VIII for the 1971 Fund and in Annexes XI to XIV for the 1992 Fund.

There are separate income and expenditure accounts for the General Fund and for each Major Claims Fund. Separate Major Claims Funds are established for incidents for which the total amounts payable exceed 1 million Special Drawing Rights (SDR) (£807 000) for the 1971 Fund or 4 million SDR (£3.2 million) for the 1992 Fund; conversion from SDR to Pounds Sterling is to be made at the rate applicable at the date of the incident in question.

The administrative expenses for the joint Secretariat totalled £2 543 795 in 2003, compared to a budgetary appropriation of £3 012 857.

1971 Fund

No annual contributions were due in respect of the General Fund during 2003.

Claims expenditure for the period amounted to £10.7 million. The majority of this expenditure related to two cases, namely the *Aegean Sea* and *Nissos Amorgos* incidents.

The balance sheet of the 1971 Fund as at 31 December 2003 is reproduced in Annex VII. The balances of the various Major Claims Funds are also given. The contingent liabilities were estimated at over £95 million in respect of claims arising from 12 incidents.

1992 Fund

Contributions of £3 million in respect of the General Fund and £28 million for the *Erika* Major Claims Fund were due during 2003.

Claims expenditure during 2003 was £69.8 million. The payments related mainly to the *Erika* and *Prestige* incidents.

The balance sheet of the 1992 Fund as at 31 December 2003 is reproduced in Annex XIII. The balances of the various Major Claims Funds are also given. The contingent liabilities were estimated at £147 million in respect of claims arising from 16 incidents.

7.4 Financial statements for 2004

The financial statements of the 1971 Fund and 1992 Fund for the period 1 January to 31 December 2004 will be submitted to the External Auditor in the spring of 2005 and will be presented to the respective governing bodies for approval at their sessions in October 2005. These accounts will be reproduced in the IOPC Funds' 2005 Annual Report.

The following preliminary information is given on the financial operations during 2004. The figures, which have been rounded, have not yet been audited by the External Auditor.

The administrative expenses for operating the joint Secretariat in 2004 are some £2.6 million, compared to a budget appropriation of £3 292 250.

With respect to the 1971 Fund, no annual contributions were due in 2004 to the General Fund whereas £600 000 was due to the *Vistabella* Major Claims Fund, £11.5 million to the *Nissos Amorgos* Major Claims Fund, £1.7 million to *Osung N° 3* Major Claims Fund and £3 million to the *Pontoon 300* Major Claims Fund.

As for the 1992 Fund, contributions of £7 million to the General Fund and £75 million to the *Prestige* Major Claims Fund were due.

Reimbursements of significant amounts were made to contributors to four Major Claims Funds in respect of the 1971 Fund and to contributors to one Major Claims Fund in respect of the 1992 Fund, as detailed in the table on page 32.

The total claims expenditure incurred by the 1971 Fund during 2004 was approximately £6.1 million, out of which some £4.9 million related to the *Nissos Amorgos* incident. The 1992 Fund's claims payments during 2004 totalled some £14.5 million, out of which some £9.5 million related to the *Erika* incident and £2.7 million to the *Prestige* incident. Further details are given in Annexes XV and XVI respectively.

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

Investments

Investments were made by the IOPC Funds during 2004 with a number of banks and one building society in the United Kingdom. As at 31 December 2004 the portfolios of investments totalled some £21 million for the 1971 Fund and £105 million for the 1992 Fund. Interest due in 2004 on the investments amounted to £1.9 million for the 1971 Fund and £4.6 million for the 1992 Fund.

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 elected annually by the governing bodies.

During 2004 the Investment Advisory Bodies monitored the relevant procedures for investment and cash management controls. They also monitored the credit ratings of financial institutions and reviewed on a continuing basis the list of such institutions which meet the Funds' investment criteria. In addition, they also regularly reviewed the Funds' investment and foreign exchange requirements and the quotations for investments in order to ensure that reasonable investment returns were achieved without compromising the Funds' assets.

The Investment Advisory Bodies report annually to the governing bodies.

7.6 Audit Body

In 2002, the 1992 Fund Assembly and 1971 Fund Administrative Council established a joint Audit Body for the two Funds with the following mandate:

(a) to review the effectiveness of the Organisations regarding key issues of financial reporting, internal controls, operational procedures and risk management;

(b) to promote the understanding and effectiveness of the audit function within the Organisations, and provide a forum to discuss internal control issues, operational procedures and matters raised by the external audit;

(c) to discuss with the External Auditor the nature and scope of each forthcoming audit;

(d) to review the Organisations' financial statements and reports;

(e) to consider all relevant reports by the External Auditor, including reports on the Organisations' financial statements; and

(f) to make appropriate recommendations to the governing bodies.

During 2004 the Audit Body considered procedures to ensure that the Annual Report continued to address the need of an increasing number of users for comprehensive and accurate financial and other information covering the full range of the Funds' activities. It also considered the relationship between the Audit Body and the External Auditor and with the Investment Advisory Bodies.

The Audit Body met with representatives of the External Auditor and received a detailed report of the work carried out by the auditor and the auditor's findings, all of which were considered satisfactory. The Audit Body was satisfied that the extent of the audit examination was appropriate. A meeting with the Investment Advisory Bodies was also held. The Audit Body recommended that the governing bodies should approve the accounts of the 1971 and 1992 Funds for the financial year 2003.

Members of the Audit Body visited the Claims Handling Offices in La Coruña (Spain) and Bordeaux (France) set up to deal with claims arising from the *Prestige* incident. Positive conclusions were drawn from these visits, both as regards the appropriateness of setting up these offices and as regards the claims handling procedures which had been put in place.

The Audit Body also addressed the issue of risk management, advised the Funds on adopting a balanced policy towards managing risk and noted with satisfaction that progress had been made by the Secretariat in the definition of risks and the putting into place of procedures to meet them. The Audit Body intends to continue its work in this field.

8 CONTRIBUTIONS

8.1 The contribution system

Basis for levy of contributions

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

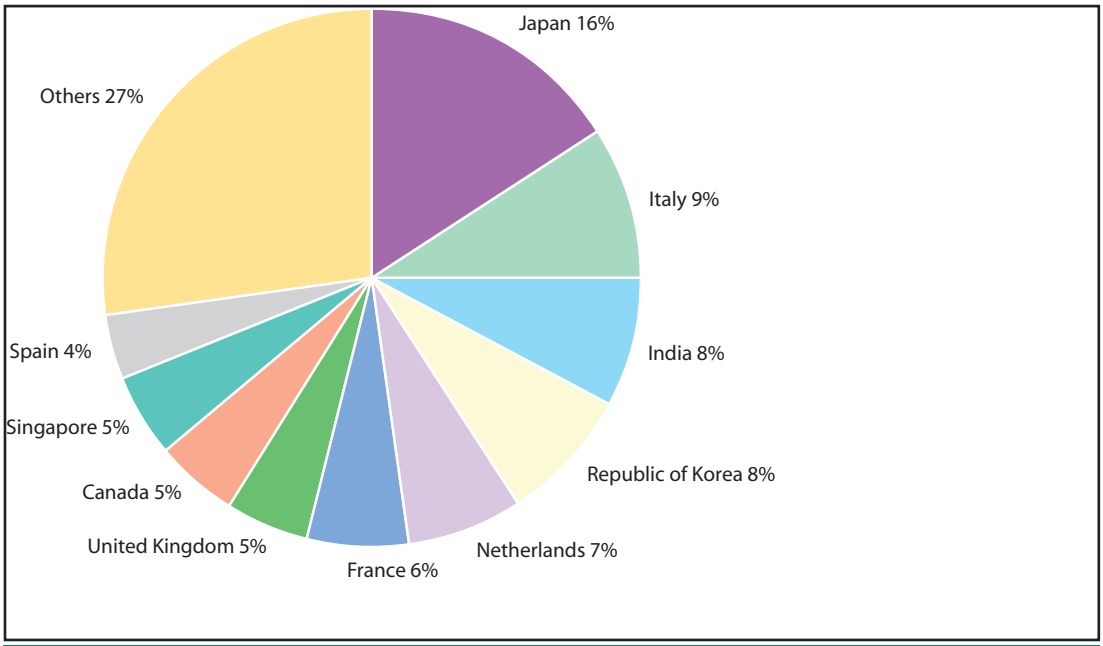
Non-submission of oil reports

The non-submission of oil reports by a number of States was considered at the October 2004 sessions of the governing bodies of both Funds. At that time 23 Member States of the 1992 Fund and 12 former Member States of the 1971 Fund had not submitted their reports on contributing oil in 2003 and/or previous years. For seven of the former 1971 Fund Member States reports were outstanding for between four and 15 years. Four of these States are also Members of the 1992 Fund.

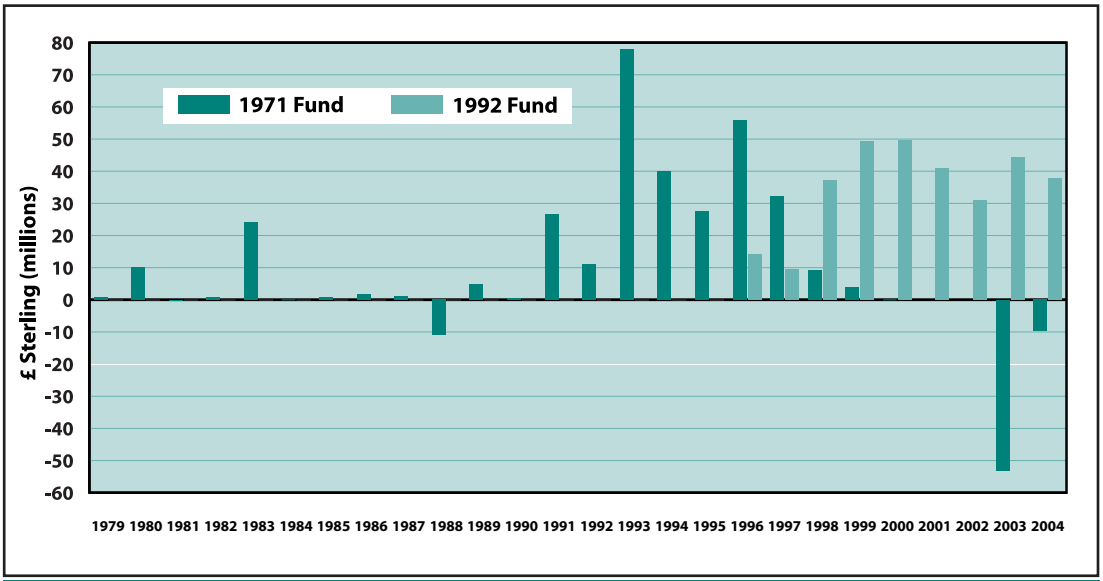
Many delegations expressed their very serious concerns as regards the number of Member States which still had failed to submit oil reports since the submission of these reports was crucial to the functioning of the IOPC Funds. It was emphasised that the non-submission of oil reports was a violation of States' treaty obligations under the 1992 and 1971 Fund Conventions. It was suggested that States that did not fulfil their duties had no rights.

The governing bodies noted that the failure of a number of Member States to submit oil reports had been a very serious issue for a number of years and that, whilst the situation might be slightly better than in previous years, it was still very unsatisfactory.

The Director was instructed to pursue his efforts to obtain the outstanding oil reports and urged all delegations to co-operate with the Secretariat in order to ensure that States fulfilled their obligations in this regard.



1992 Fund: General Fund contributions 2004



1971 Fund and 1992 Fund: annual contributions over the years

It was noted that a real solution for the future could only come from a revision of the 1992 Conventions being considered by the Intersessional Working Group referred to in Section 9.

Levy of contributions

Contributions are levied annually by each Fund to meet the anticipated payments of compensation and the estimated administrative expenses during the forthcoming year.

Deferred invoicing

In June 1996 the Assemblies introduced a system of deferred invoicing for the two Organisations. Under this system the Assembly fixes the total amount to be levied in contributions for a given calendar year, but may decide that only a specific lower amount should be invoiced for payment by 1 March in the following year, the remaining amount, or a part thereof, to be invoiced later in the year if it should prove to be necessary.

8.2 2003 contributions

Since the 1971 Fund Convention was no longer in force, the 1971 Fund Administrative Council decided in October 2003 not to levy contributions to the General Fund. However, the Council decided to levy contributions totalling £16.8 million to four Major Claims Funds, the entire levies due for payment by 1 March 2004.

The Administrative Council decided to reimburse to the contributors on 1 March 2004 the surpluses totalling £69.8 million on four other Major Claims Funds. As mentioned in Section 6.3, it was decided that reimbursements to contributors in those States which have any oil reports outstanding should be deferred until all such reports have been submitted.

The 1992 Fund Assembly decided to levy contributions of £7 million to the General Fund, with the entire levy due for payment by 1 March 2004. The Assembly also decided to raise contributions of £5.5 million to the *Erika* Major Claims Fund and of £110 million to the *Prestige* Major Claims Fund. It was further decided that £75 million of the levy to the *Prestige* Major Claims Fund should be due for payment by 1 March 2004, and that the entire levy to the *Erika* Major Claims Fund and the balance of the levy to the *Prestige* Major Claims Fund (£35 million) should be deferred. The Director was authorised to decide whether to invoice all or part of the deferred levy for payment during the second half of 2004. In July 2004, the

Director decided not to invoice any deferred levy as part of the 2003 annual contributions.

The 1992 Fund Assembly also decided that a surplus of £37.7 million on the *Nakhodka* Major Claims Fund should be reimbursed to contributors on 1 March 2004.

8.3 2004 contributions

In October 2004 the 1971 Fund Administrative Council decided not to levy contributions to any Major Claims Fund.

The Administrative Council decided to reimburse to the contributors on 1 March 2005 the surpluses totalling £9.65 million on four Major Claims Funds. As mentioned in Section 6.3, it was also decided that reimbursements to contributors in those States which have any oil reports outstanding should be deferred until all such reports have been submitted.

The 1992 Fund Assembly decided to levy contributions of £5.4 million to the General Fund, with the entire levy due for payment by 1 March 2005. The Assembly also decided to raise contributions of £33 million to the *Prestige* Major Claims Fund, the entire levy payable by 1 March 2005. It was decided that a further reimbursement should be made to contributors to the *Nakhodka* Major Claims Fund of £600 000.

The 2004 contributions to the 1992 Fund General Fund are levied on the basis of the quantities of contributing oil received in 2003 in 1992 Fund Member States. The shares of the 2004 contributions to that Fund in respect of Member States are illustrated by the chart on page 29.

8.4 1971 and 1992 Funds: Contributions over the years

Details of the 1971 and 1992 Funds' 2003 and 2004 contributions are set out in the table on page 32.

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 contributions to the Funds has fluctuated from one year to another, as illustrated in the graph on page 30.

The total amount levied over the years (excluding 2004 contributions which are due in 2005) is £386 million for the 1971 Fund and £317 million for the 1992 Fund. Reimbursements totalling £107 million and £41 million have been made to contributors to the 1971 Fund and 1992 Fund respectively. With regard to contributions levied by the 1971 Fund over the years, £374 738 was outstanding as at 31 December 2004. As for contributions levied by the 1992 Fund since its establishment in 1996, £656 728 was outstanding as at 31 December 2004. The arrears thus represent 0.13% and 0.24% respectively of the net amounts levied.

1971 AND 1992 FUNDS' 2003 AND 2004 ANNUAL CONTRIBUTIONS

Organisation	Annual contribution year	Decision of governing body		General Fund/Major Claims Fund	Total amount due/credited £	Oil year	Levy/credit per tonne £
1971 FUND	2003	October 2003	1st levy/ reimburse-ments	*Vistabella* Caribbean	600 000	1990	0.0006354
			Due 1 March 2004	*Nissos Amorgos* Venezuela	11 500 000	1996	0.0093784
				Osung N° 3 Republic of Korea	1 700 000	1996	0.0013864
				Pontoon 300 United Arab Emirates	3 000 000	1997	0.0023845
				Aegean Sea Spain	-17 700 000	1991	-0.0182394
				Sea Prince/ Yeo Myung/ Yuil N° 1 Republic of Korea	-19 000 000	1994	-0.0158863
				Sea Empress United Kingdom	-18 400 000	1995	-0.0155784
				Nakhodka Japan	-14 700 000	1996	-0.0120313
			2nd levy deferred	No levy invoiced by the Director			
	2004	October 2004	reimburse-ments	*Aegean Sea* Spain	-800 000	1991	-0.0008305
			Due 1 March 2005	*Keumdong N° 5* Republic of Korea	-8 100 000	1992	-0.0075540
				Sea Empress United Kingdom	-350 000	1995	-0.0002965
				Nakhodka Japan	-400 000	1996	-0.0003275
1992 FUND	2003	October 2003	1st levy/ reimburse-ments	General Fund	7 000 000	2002	0.0052817
				Nakhodka Japan	-37 700 000	1996	-0.0568302
				Prestige Spain	75 000 000	2001	0.0552221
			2nd levy deferred	No levy invoiced by the Director			
	2004	October 2004	levy/ reimburse-ments	General Fund	5 400 000	2003	0.0039297
				Prestige Spain	33 000 000	2001	0.0243113
			Due 1 March 2005	*Nakhodka* Japan	-600 000	1996	-0.0009048

9 CONSIDERATION OF THE ADEQUACY OF THE INTERNATIONAL COMPENSATION REGIME

9.1 Intersessional Working Group

In April 2000 the 1992 Fund Assembly established an intersessional Working Group to assess the adequacy of the international compensation system created by the 1992 Civil Liability Convention and the 1992 Fund Convention. The Working Group elected Mr Alfred Popp QC (Canada) as its Chairman.

In October 2001 the Assembly gave the Working Group the following revised mandate:

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

9.2 Work carried out by the Working Group in the period 2000-2003

Supplementary Fund Protocol

The initial task of the Working Group was the elaboration of a draft Protocol to establish an optional third tier of compensation by means of a Supplementary Fund that would provide compensation over and above the compensation available under the 1992 Fund Convention for pollution damage in States which became Parties to the Protocol. In this regard reference is made to Section 10.

Environmental damage

In April/May 2002 the Working Group considered the criteria to be applied with regard to the admissibility of claims for costs of post-spill environmental studies and for costs of measures of reinstatement of the polluted environment. The Working Group prepared a revised text of the relevant section of the Claims Manual. The revised text, which was approved by the Assembly at its October 2002 session, clarifies the criteria to be applied in respect of such claims within the legal framework of the definition of 'pollution damage' in the 1992 Conventions. The revised version of the Claims Manual was published in November 2002.

Shipowners' liability and related issues

Concerns were expressed that the adoption of the Supplementary Fund Protocol would distort the balance between shipping and cargo interests, since it was the intention that only oil receivers would finance the Supplementary Fund.

The observer delegations representing shipowners and P&I Clubs referred to a proposal made by

Alfred Popp QC

the shipping industry to increase, on a voluntary basis, the limitation amount applicable to small ships to 20 million SDR (£17.3 million) and maintained that this would preserve this balance, even after the entry into force of the Protocol establishing a Supplementary Fund.

The Working Group decided that, in view of the apparent disagreement between the shipping industry and the oil industry on the extent to which the financial burden of oil spills had been shared in the past and would be shared in the future, the Director should undertake an independent study of the costs of past spills in relation to the past, current and future limitation amounts of the 1992 Conventions. The Working Group considered that it was important that the study reflected the costs of past spills and the apportionment of those costs between the shipping and oil industries on the basis of values in 2003 and likely values in the future, taking into account inflation indices for individual States.

Other issues

During the period 2000–2003 the Working Group also considered a number of other issues without coming to any conclusions. As regards these discussions reference is made to the Annual Report 2003, pages 34-36.

9.3 Work carried out in 2004

The Working Group met in February and May 2004 to consider a number of outstanding issues.

Study of the costs of spills in relation to past, current and future limitation amounts of the 1992 Conventions

As mentioned in Section 9.2, the Working Group had requested the Director to undertake an independent study of the costs of past oil spills in relation to past, current and future limitation amounts of the relevant Conventions (1969 Civil Liability Convention and 1971 Fund Convention and 1992 Civil Liability and Fund Conventions) and the voluntary industry schemes (TOVALOP and CRISTAL). The voluntary schemes, which operated between 1969 and 1997, were broadly similar in scope to the Conventions, applied worldwide and for some years interacted with the international Conventions. The study was presented to the Working Group at its May 2004 meeting.

The study showed that on the basis of the financial limits of the applicable compensation regime the shipping industry had contributed 45% and oil cargo interests 55% of the total costs of 5 802 incidents that had occurred world-wide (except in the United States of America) in the 25-year period 1978 – 2002. The study also showed that the sharing of the financial burden varied considerably with different size ranges of ships, with oil cargo interests contributing considerably more to the costs of incidents involving ships up to 20 000 gross tonnes, an equal sharing of the costs between oil cargo interests and the shipping industry in respect of incidents involving ships between 20 000 and 80 000 gross tonnes, and the shipping industry contributing considerably more to the costs of incidents involving ships greater than 80 000 gross tonnes. When the costs of past incidents were inflated to 2002 and predicted 2012 monetary values the relative contribution of oil cargo interests to the costs of oil spills increased considerably.

General discussion as to whether or not the 1992 Conventions should be revised

The Working Group remained divided on the need for a revision of the 1992 Conventions, although there was overwhelming support for protecting the system and maintaining its fundamental objectives. Some delegations expressed the view that the current weaknesses in the system could be addressed through voluntary industry arrangements. Other delegations, however, were reluctant to accept voluntary arrangements as a permanent solution and noted, further, that there were other issues that could only be resolved through changes to the Conventions.

Shipowners' liability and related issues

Level of shipowners' limitation amount and its relationship with the compensation funded by oil receivers

The Working Group considered two options for

revising the level of the shipowners' limitation amount. The first option envisaged an increase in the level of shipowner liability for smaller ships as well as shipowner liability to contribute to the Supplementary Fund. The second option envisaged shipowners paying compensation up to a fixed amount irrespective of the size of the ship, beyond which there would be a shared liability between shipowners and oil cargo interests up to the maximum amount available under the 1992 Fund Convention, but with no financial involvement of the shipowner in the Supplementary Fund.

The Working Group appeared to be evenly divided on the two options.

Substandard transportation of oil and the right of the shipowner to limit liability

From the beginning of the deliberations in the Working Group, some delegations were concerned that the current regime should be made responsive to the substandard transportation of oil. Several proposals were made to address this issue.

In one proposal two options were put forward, one which provided a disincentive to registered owners, and the other a disincentive to both registered owners and oil receivers, to use 'a certain category of ship', which would be defined on the basis of objective criteria, for example, a ship over a particular age, except a ship which was double hulled or certified as level 1 or 2 in the Condition Assessment Programme. The first option envisaged increasing the limit of liability of an owner of such a ship whilst the second option, in addition to increasing the limit of the shipowner's liability, would introduce a new financial burden on those involved in the transportation of oil in such ships, ie individual cargo owners, who would be required to pay contributions to the 1992 Fund and the Supplementary Fund.

An alternative proposal was also put forward as a way of providing disincentives for the operation of ships that should no longer be trading by means of extra layers of compensation payable by those using such ships. Again, two options were put forward, both of which involved an increase in the shipowner's limit of liability when pollution damage arose as a result of an oil tanker 'defect' or 'deficiency', and that above this, an amount equal to the extra liability of the shipowner would be levied against the individual cargo receiver in the Contracting State in addition to his normal contributions to the 1992 Fund. Both options also envisaged contributions by the shipowner and the individual cargo receiver to the Supplementary Fund.

A number of delegations reiterated their opposition to the idea of using the compensation Conventions as a means of promoting quality shipping and drew attention to the potential difficulties that would arise if a ship was categorised as substandard according to criteria laid down in the Conventions, but was at the same time in full compliance with standards laid down in MARPOL.

Another proposal approached the issue of promoting quality shipping by focusing on incidents that had resulted from structural defects of ships, defined as a 'defect due to decay or lack of maintenance of a ship, which in part or in whole had contributed to an incident'. Two options were presented regarding the application of Article V.2 of the 1992 Civil Liability Convention governing the shipowner's right to limit liability, one based on the current text of the Convention whereby the burden of proof that an incident was due to a structural defect lay with the claimant, and an alternative text in which the burden of proof that an incident was not due to a structural defect was placed on the shipowner. The proposal also envisaged an amendment to Article VII.8 of the 1992 Civil Liability Convention, which would prevent an insurer from limiting his liability when an incident was caused by a structural defect of the insured vessel.

A number of delegations expressed doubts about the viability of the proposal on the grounds of the legal difficulties that would be faced in proving that an incident was caused by a structural defect, lack of compatibility with other

liability Conventions that might apply to the same incident and lack of incentive to promote quality shipping if insurers continued to spread the financial risks.

Some delegations considered that the proposal deserved further consideration since it was important that all options be considered that might lead to an effective means of holding shipowners accountable for inappropriate behaviour.

Definition of 'ship'

The Working Group considered a proposal to amend the definition of 'ship' in the 1992 Civil Liability Convention. Under that proposal the Conventions would apply to pollution damage caused by bunker fuel from dedicated tankers irrespective of whether or not they had residues of cargo onboard. As regards other vessels the Conventions would, under the proposal, only apply to pollution damage caused by bunker fuel if the vessels were carrying 'oil' as defined by Article I.5 of the 1992 Civil Liability Convention by sea as cargo or during subsequent voyages by sea, provided that they had residues of such oil onboard.

All delegations that intervened in the discussion agreed that there was a need to amend the definition of 'ship' in order to remove the ambiguity in the current definition. However, most delegations could not agree to the text proposed by the co-sponsors, largely due to the fact that there remained disagreement as to what the scope of the definition should be, some delegations preferring a wide definition with the proviso relating to unladen vessels applying only to combination carriers, and other delegations favouring a restrictive definition with the proviso applying to all vessels, including dedicated oil tankers.

Tacit amendment procedure in respect of the financial limits

The Working Group considered whether changes should be made to the tacit amendment procedure whereby any amendment of the financial limits adopted by the Legal Committee of the International Maritime Organization (IMO) shall be deemed to be accepted within 18 months of notification of all Contracting States unless within that period not less than a quarter of the States that were Contracting States at the time of the adoption of the amendment by the Legal Committee have communicated to IMO that they do not accept the amendment, in which case the amendment is rejected.

The Working Group considered two options. The first option was based on the 1999 Montreal Convention for the Unification of Certain Rules for International Carriage by Air, which provided for modest but regular increases of the limits of liability in the form of a five-yearly review on the basis of inflation in those States whose currencies comprised the Special Drawing Right. The second option was to adopt the same provisions as contained in the Supplementary Fund Protocol, whereby the overall time period which would elapse before any proposal to amend the limits could enter into force was reduced from 11 years, currently provided under the 1992 Conventions, to eight years.

Most delegations that intervened considered that the tacit amendment procedure should be amended if the 1992 Conventions were to be revised. Some delegations preferred the first option on the grounds that it provided for regular and automatic increases and was therefore more predictable. Other delegations indicated a preference for the second option since it would be compatible with the provisions of the Supplementary Fund Protocol, whilst one delegation suggested that there might be merit in considering a third option based on the procedure under the 1999 Montreal Convention, but adapted to suit the particular needs of the 1992 Fund.

Refinement of the contribution system

The problems faced by oil storage companies

The Working Group considered a proposal to incorporate into a revised version of the 1992 Convention two provisions contained in the 1996 Convention on liability and compensation for damage in connection with

the carriage of hazardous and noxious substances by sea (HNS Convention), one relating to the concept of 'receiver' and the other relating to the definition of 'contributing oil'. The former would give storage companies, under certain conditions, the possibility to pass levies for contributions on to their principals. The latter would result in oil which was transferred directly, or through a port or terminal, from one ship to another, in the course of carriage from the port or terminal of original loading to the port or terminal of final destination being considered as contributing oil only in respect of receipt at the final destination.

A number of delegations supported in principle the proposal to amend the definition of receiver in line with the HNS Convention, which in their view was more equitable. Other delegations were opposed to the proposal, arguing that the HNS Convention was a special case and that the contribution system under the HNS Convention had yet to be proven to be workable compared with the simpler and well tried and tested system operated by the 1971 and 1992 Funds. The point was made that a commercial solution between the storage companies and their principals was the ideal solution, although it was recognised that there were practical obstacles to such a solution due to the long time period between the oil being passed on from the storage company to the principal and the Fund levying contributions.

There was little support for amending the definition of 'contributing oil' so as to exempt oil received after transfer directly or via shore-based terminals from one ship to another from the contribution system.

Minimum annual contribution to the 1992 Fund

The Working Group considered a proposal that all Member States should be required to pay a minimum annual contribution to the 1992 Fund based either on a minimum deemed quantity of contributing oil (ie on the same basis as such a fee would be payable to the Supplementary Fund) or on a fixed percentage of the total financial burden on the Fund.

A number of delegations expressed reservations about burdening small countries with such contributions, but stated that they could accept the proposal provided that the amounts involved were very small. Other delegations were opposed to the proposal, arguing that small countries contributed indirectly to the 1992 Fund as a result of major contributors passing on the costs of their contributions through sales of oil products in those countries.

Non-submission of oil reports

The Working Group considered a proposal to include in a revised 1992 Fund Convention provisions corresponding to Article 15 of the Supplementary Fund Protocol, which required States to report in cases where there were no persons liable to pay contributions and also provided that compensation would not be payable in respect of a Member State until all oil reports had been submitted. Article 15 also provided that if States did not submit the reports within one year of notification of failure to report, then no compensation would be paid in respect of that incident.

The majority of delegations supported the proposal in principle, although some questioned whether the text of Article 15 was sufficiently firm in dealing with Member States that had never submitted oil reports, pointing out that it did not preclude a Member State waiting until it had suffered an incident before submitting all its reports.

Reservations were expressed about the proposals on the grounds that the sanctions envisaged would largely affect innocent victims rather than those responsible for submitting oil reports. Alternative sanctions were proposed such as the suspension of Member States' rights to participate in Fund meetings, levying fines and denying compensation to government agencies that had undertaken clean-up and preventive measures.

Compulsory insurance

The Working Group considered a proposal that all vessels that carried oil in bulk as cargo should be required to maintain insurance or other financial security in accordance with Article

VII.1 of the 1992 Civil Liability, ie that the exemption for ships carrying less than 2 000 tonnes of oil should no longer apply.

There was considerable support for widening the compulsory insurance obligation to include all vessels carrying oil in bulk as cargo, since experience had shown that vessels carrying less than 2 000 tonnes of oil were capable of causing serious pollution damage and that the IOPC Funds had on a number of occasions been the only source of compensation as a result of the shipowner having had neither the insurance cover nor the financial capability to pay claims.

Quorum for meetings of the 1992 Fund Assembly

The Working Group considered a proposal to amend Article 20 of the 1992 Fund Convention to address the problem faced by the Assembly in obtaining a quorum. The proposal sought to ensure that there was an element of balance by requiring the active participation of those States with large and those with small contributions, with neither group being able to achieve a quorum on its own.

A number of delegations supported the proposal in principle, but expressed reservations about the precise wording of the proposed provisions. Opinion was divided on whether, for the purpose of achieving a quorum, it was appropriate to create different categories of Member States based on quantities of contributing oil received. The point was made that the proposed criteria could make it possible for groups of countries to hold an Assembly in a particular region of the world without the participation of others.

Future work

The Chairman stated that in view of the divided opinion on whether or not the 1992 Conventions should be revised, he believed that more time was needed to enable new proposals to be put forward and for consultations to take place between those States in favour of a revision and those that were not in favour of revision. He noted that the issue of redressing the balance between the shipowning interests and cargo owner interests was central to the debate regarding any revision and that there was general agreement in the Working Group that it would not be worth re-opening the Conventions to address the other items that had been identified if there was no agreement on this key issue.

It was decided that the next meeting of the Working Group would take place in early 2005.

9.4 Consideration of the Working Group's reports by the Assembly

The 1992 Fund Assembly considered in October 2004 the Working Group's reports on its February and May 2004 meetings.

In summing up the work of the Working Group the Working Group's Chairman stated that the Member States remained divided on the question of whether or not to re-open the 1992 Conventions in order to carry out a revision. He mentioned that some delegations felt that it was premature to re-open the Conventions at this stage and that it should be left to the industries to address the problem of the sharing of the financial burden through voluntary schemes and that the issue of substandard shipping was already being intensively addressed by measures agreed by the technical bodies of IMO. He also mentioned that other delegations felt strongly that a revision was needed urgently to address the balance of the financial burden between the two sectors of industry and that reliance on voluntary schemes was not a satisfactory solution in the long term. He noted that those delegations considered that there were also other shortcomings in the Conventions that it would be essential to correct.

A number of delegations re-stated their opposition to any revision of the 1992 Conventions. Some delegations considered that the Working Group should be terminated. Some delegations considered that the Working Group, in addressing the issue of substandard shipping, had strayed into an area that was outside its remit, since the issue of substandard shipping was not within the field of competence

of the 1992 Fund but fell within the exclusive competence of the IMO.

A number of other delegations expressed a contrary view, stating that whilst the Working Group should not continue to meet indefinitely, it had yet to complete its mandate with regard to a number of issues. Some delegations pointed out that, to the extent that substandard shipping had an impact on the international compensation regime, the Working Group had every right to address the issue, recognising that any recommendations of the Group would be referred to the Assembly, which in turn would refer these matters to the appropriate bodies of the IMO for final decision.

In his summing up of the discussion the Chairman of the Assembly noted that the Working Group was divided into two large groups, one of which was against any revision of the 1992 Conventions and the continuation of the Working Group whilst the other considered that there were a number of outstanding issues that needed to be addressed by the Working Group which could result in the revision of the 1992 Conventions. He also noted that some of those delegations that did not support a revision of the Conventions were, nevertheless, flexible on whether or not the Working Group should continue its work provided that a definite time limit for its work was set. He further noted that most delegations that had supported the continuation of the Working Group had recognised that it should not continue indefinitely and that it should be in a position to make a final recommendation to the 1992 Fund Assembly in October 2005.

The Assembly decided that the Working Group should meet in early 2005 as planned and make final recommendations to the October 2005 session of the Assembly on whether or not the Conventions should be revised, and if so, which items required revision.

10 SUPPLEMENTARY FUND

The Working Group set up by the 1992 Fund Assembly had elaborated a Protocol to the 1992 Fund Convention to establish an optional third tier of compensation by means of a Supplementary Fund. In October 2001 the Assembly approved the draft Protocol and submitted it to the Secretary-General of IMO with the request that IMO convene a Diplomatic Conference to consider the draft Protocol at the earliest opportunity.

The Diplomatic Conference, which was held in May 2003, adopted the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (the Supplementary Fund Protocol).

The Protocol will enter into force three months after it has been ratified by at least eight States which have received a combined total of 450 million tonnes of contributing oil in a calendar year.

As at 31 December 2004 the following States had ratified the Supplementary Fund Protocol:

Denmark	25 February 2004
Finland	27 May 2004
France	29 June 2004
Germany	24 November 2004
Ireland	5 July 2004
Japan	13 July 2004
Norway	31 March 2004
Spain	3 December 2004

With the ratification of the Supplementary Fund Protocol by Spain on 3 December 2004 the conditions for the entry into force were met and the Protocol will therefore enter into force on 3 March 2005. The first session of the Supplementary Fund Assembly will be held in March 2005.

The main elements of the Protocol are as follows:

- The Protocol will establish a new intergovernmental organisation, the International Oil Pollution Compensation Supplementary Fund, 2003.
- Any State which is Party to the 1992 Fund Convention may become Party to the Protocol and thereby become a Member of the Supplementary Fund.
- The Protocol will apply to damage in the territory, including the territorial sea, of a State which is a Party to the Protocol and in the exclusive economic zone (EEZ) or equivalent area of such a State.
- The total amount of compensation payable for any one incident will be 750 million SDR (£603 million or US$1 165 million), including the amount payable under the 1992 Civil Liability and Fund Conventions, ie 203 million SDR (£164 million or US$315 million).
- Annual contributions to the Supplementary Fund will be made in respect of each Member State by any person who, in any calendar year, has received total quantities of oil exceeding 150 000 tonnes after sea transport in ports and terminal installations in that State. However, the contribution system for the Supplementary Fund differs from that of the 1992 Fund in that, for the purpose of paying contributions, at least 1 million tonnes of contributing oil will be deemed to have been received each year in each Member State.
- The Protocol contains a provision for so-called 'capping', ie that the aggregate amount of contributions payable in respect of contributing oil received in a particular State during a calendar year should not exceed 20% of the total amount of contributions levied. The capping provisions apply until the total amount of contributing oil received in the States which are Members of the Supplementary Fund has reached 1 000 million tonnes or for a period of 10 years from the date of the entry into force of the Protocol, whichever is the earlier.
- The Supplementary Fund will only pay compensation for incidents which occur after the Protocol has entered into force.

The Conference also adopted a Resolution on the Establishment of the International Oil Pollution Compensation Supplementary Fund which requested the 1992 Fund Assembly to authorise and instruct the Director, on the basis that all costs and expenses that may be incurred will be reimbursed by the Supplementary Fund:

(a) to perform, in addition to the Director's functions under the 1992 Fund Convention, the administrative tasks necessary for setting up the Supplementary Fund in accordance with the provisions of the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992, provided that the interests of Contracting States to the 1992 Fund Convention were not unduly affected;

(b) to provide all necessary assistance for the setting up of the Supplementary Fund;

(c) to make the necessary preparations for the first session of the Assembly of the Supplementary Fund, which will be convened by the Secretary-General of IMO;

(d) to enter into negotiations with IMO with a view to enabling the Supplementary Fund to reach agreements, as soon as possible, regarding appropriate administrative arrangements;

(e) to enter into negotiations with the Supplementary Fund at the appropriate time with a view to reaching a mutually advantageous arrangement enabling the 1992 Fund and the Supplementary Fund to share a single Secretariat, headed, if appropriate, by the same Director.

One important effect of the 2003 Protocol will be that, in practically all cases, it will be possible from the outset to pay compensation for claims in States parties to the Protocol at 100% of the amount of the damage agreed between the Fund and the victim. There will therefore be no need to pro-rate payments during the early stages of an incident.

At its session in May 2004 the 1992 Fund Assembly considered certain proposals made by the Director relating to the establishment of the Supplementary Fund. The Assembly made a number of recommendations to the Supplementary Fund Assembly in respect of the structure and operation of the Supplementary Fund, for example that the Supplementary Fund would have its Headquarters in London and that the 1992 Fund and the Supplementary Fund would be administered by a joint Secretariat headed by a single Director.

Decisions on these issues will be taken by the Supplementary Fund Assembly at its first session.

11 SETTLEMENT OF CLAIMS

11.1 General

The Assemblies of the 1971 and 1992 Funds have given general authority to the Director to settle claims and pay compensation if it is unlikely that the total payments by the respective Fund with regard to the incident in question will exceed 2.5 million SDR (£2 million or US$3.9 million). For incidents leading to larger claims, the Director needs in principle approval of the settlement by the governing body of the Fund in question (ie the Administrative Council of the 1971 Fund or the Executive Committee of the 1992 Fund). However, the governing bodies normally give the Director very extensive authority to settle claims by authorising him to make binding settlement of all claims arising from a particular incident, except where a specific claim gives rise to a question of principle which has not previously been decided by the governing bodies. The Director is permitted, in certain circumstances and within certain limits, to make provisional payment of compensation before a claim is settled, if this is necessary to mitigate undue financial hardship to victims of pollution incidents. These procedures are designed to expedite the payment of compensation.

Difficulties have arisen in some incidents involving the 1971 Fund and the 1992 Fund where the total amount of the claims arising from a given incident has exceeded the total amount available for compensation or where there was a risk that this might occur. Under the Conventions, the Funds are obliged to ensure that all claimants are given equal treatment. The Funds have to strike a balance between the importance of paying compensation to victims as promptly as possible and the need to avoid an over-payment situation. In a number of cases the Funds therefore have had to limit payments to victims to a percentage of the agreed amount of their claims. In most cases it eventually became possible to increase the level of payments to 100% once it was established that the total amount of admissible claims would not exceed the amount available for compensation.

11.2 Admissibility of claims for compensation

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

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

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

The 1971 and 1992 Fund Assemblies have expressed the opinion that a uniform interpretation of the definition of 'pollution damage' is essential for the functioning of the compensation regime established by the Conventions. The IOPC Funds' position in this regard applies not only to questions of principle relating to the admissibility of claims but also to the assessment of the actual loss or damage where the claims do not give rise to any question of principle. At its May 2003 session the Administrative Council, acting on behalf of the

Assembly, adopted a Resolution on the interpretation and application of the 1992 Civil Liability Convention and the 1992 Fund Convention (1992 Fund Resolution N°8). The Resolution drew attention to the importance for the proper and equitable functioning of the regime established by the 1992 Conventions of these Conventions being implemented and applied uniformly in all States Parties, and of claimants for oil pollution damage being given equal treatment as regards compensation in all States Parties. The Resolution also emphasized the importance of national courts in States Parties giving due consideration to the decisions by the governing bodies of the 1971 and 1992 Funds on the interpretation and application of the 1992 Conventions.

The Funds consider each claim on the basis of its own merits, in the light of the particular circumstances of the case. Whilst criteria for the admissibility of claims have been adopted, a certain flexibility is nevertheless allowed, enabling the Funds to take into account new situations and new types of claims. Generally the Funds follow a pragmatic approach, so as to facilitate out-of-court settlements.

The IOPC Funds have published Claims Manuals which contain general information on how claims should be presented and set out the general criteria for the admissibility of various types of claims. The most recent version was published in November 2002. The Claims Manual is available on the Funds' website (www.iopcfund.org).

A revised version adopted by the 1992 Fund Assembly will be published in the Spring of 2005. The revised Manual largely follows in substance the previous version and does not amend the 1992 Fund's policy as regards the handling or admissibility of claims. The main difference between the old version and the revised text is that each of the main categories of claims covered by the Conventions (ie cost of clean-up and preventive measures, property damage, economic loss in the fisheries, mariculture and fish processing sectors, economic loss in the tourism sector and environmental damage and post-spill studies) has its own section in the Manual. This has made it possible to provide specific examples to explain the admissibility criteria in the context of different types of claims and to list the different types of supporting documents appropriate for different categories of claims.

11.3 Incidents involving the 1971 Fund

1971 Fund claims settlements 1978 - 2004
Since its establishment in October 1978, the 1971 Fund has, up to 31 December 2004, been involved in the settlement of claims arising out of 100 incidents. The total compensation paid by the 1971 Fund amounts to £329 million (US$631 million).

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

There has been a considerable increase in the amounts of compensation claimed from the 1971 Fund over the years. In several recent cases the total amount of the claims submitted greatly exceeded the maximum amount available under the 1971 Fund Convention. In some cases claims have been presented which in the 1971 Fund's view do not fall within the definition of pollution damage laid down in the Conventions. There have also been many claims which, although admissible in principle, were for amounts which the Fund considered greatly exaggerated. As a result, the 1971 Fund and claimants have become involved in lengthy legal proceedings in respect of some incidents.

Listed on page 44 are the incidents in respect of which the 1971 Fund has made payments of compensation and indemnification of over £2 million.

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
Aegean Sea	Spain	1992	£34.1 million
Braer	United Kingdom	1993	£45.7 million
Taiko Maru	Japan	1993	£7.2 million
Keumdong N°5	Republic of Korea	1993	£11.0 million
Toyotaka Maru	Japan	1994	£5.1 million
Sea Prince	Republic of Korea	1995	£21.1 million
Yuil N°1	Republic of Korea	1995	£15.9 million
Senyo Maru	Japan	1995	£2.3 million
Sea Empress	United Kingdom	1996	£31.2 million
Nakhodka[2]	Japan	1997	£49.6 million
Nissos Amorgos[3]	Venezuela	1997	£11.0 million
Osung N°3	Republic of Korea/Japan	1997	£8.2 million

Incidents with outstanding claims against the 1971 Fund

As at 31 December 2004 there were outstanding third party claims in respect of five incidents involving the 1971 Fund which had occurred before 24 May 2002, the date when the 1971 Fund Convention ceased to be in force. The situation in respect of the two major incidents is summarised below.

In respect of the *Nissos Amorgos* incident (Venezuela, 1997), claims have so far been agreed for a total of US$24.4 million. Claims for significant amounts have been lodged in the Venezuelan courts.

As regards the *Pontoon 300* incident (United Arab Emirates, 1998), claims totalling £28.2 million, including a claim for £21.9 million in respect of environmental damage, are the subject of legal proceedings. The 1971 Fund has made payments of £817 000 corresponding to 75% of the agreed amounts of the claims which have been settled.

11.4 Incidents involving the 1992 Fund

1992 Fund claims settlements 1996 – 2004

Since its creation in May 1996 there have been 28 incidents that have involved the 1992 Fund, or may involve it in the future. The total compensation paid by the 1992 Fund amounts to £159 million (US$305 million).

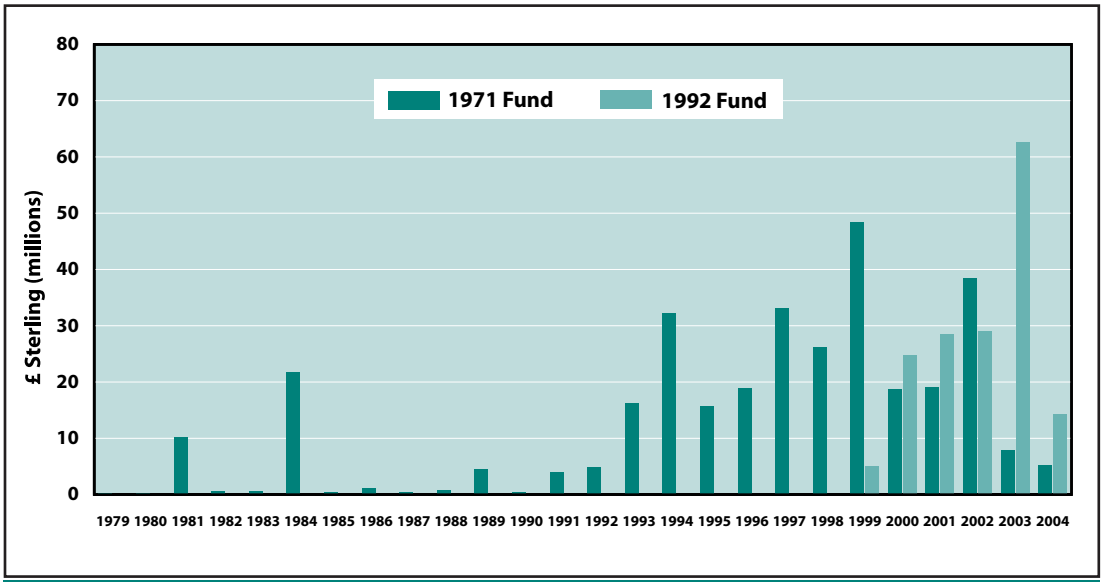
Listed below are the incidents in respect of which the 1992 Fund has made compensation payments of over £2 million:

Ship	Place of incident	Year	1992 Fund payments
Nakhodka[4]	Japan	1997	£61.1 million
Erika	France	1999	£56.2 million
Prestige	Spain	2002	£40 million

[2] *The 1992 Fund has paid a further £61.1 million in compensation in respect of the* Nakhodka *incident.*

[3] *Some third party claims are pending.*

[4] *As mentioned above, the 1971 Fund has paid a further £49.6 million in compensation in respect of the* Nakhodka *incident.*



1971 Fund and 1992 Fund: payment of claims

Incidents in previous years with outstanding claims against the 1992 Fund

As at 31 December 2004 there were 11 incidents which occurred before 2004 and which have given or may give rise to claims against the 1992 Fund. The most important of these are the *Erika* (France, 1999) and *Prestige* (Spain, 2002) incidents, both of which resulted in claims for compensation greatly exceeding the maximum amount available under the 1992 Conventions.

The French Government and the French oil company TotalFinaElf SA have undertaken to pursue claims for compensation in respect of the *Erika* incident only if and to the extent that all other claims have been paid in full. Compensation payments totalling £64.4 million have been made in respect of 5 574 claims arising from this incident.

The *Prestige* incident has given rise to claims for compensation for very high amounts in Spain. Claims for substantial amounts have been submitted in France. The Portuguese authorities have also submitted claims. Compensation totalling £40 million has been paid to the Spanish Government. A further £123 000 has been paid to private claimants in Spain and France.

Incidents in 2004 involving the 1992 Fund

During 2004 the 1992 Fund became involved in a new incident that may give rise to claims against the 1992 Fund in the Republic of Korea. The 1992 Fund also became involved in an incident that occurred in Bahrain in March 2003 where the identity of the ship from which the oil originated has not been established. Although serious for those affected by the spills, these incidents did not cause large-scale pollution damage.

PART 2

12 INCIDENTS DEALT WITH BY THE 1971 AND 1992 FUNDS DURING 2004

This part of the Report provides information on incidents in which the 1971 Fund and the 1992 Fund have been involved in 2004. The Report sets out the developments in the various cases during 2004 and the position taken by the governing bodies in respect of claims. The Report is not intended to reflect in full the discussions of the governing bodies. These discussions are reflected in the Records of Decisions of the meetings of these bodies, which are available on the IOPC Funds' website (www.iopcfund.org).

Claim amounts have been rounded in this Report. The conversion of foreign currencies into Pounds Sterling is as at 31 December 2004, except in the case of claims paid by the 1971 Fund or the 1992 Fund where conversions have been made at the rate of exchange on the date when the currency was purchased.

Figures in the Report relating to claims, settlements and payments are given for the purpose of providing an overview of the situation for various incidents and may not correspond exactly to the figures given in the Funds' financial statements.

The Prestige incident: the manual clean-up of beaches minimises disposal costs

13 1971 FUND INCIDENTS

13.1 VISTABELLA

(Caribbean, 7 March 1991)

The incident

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

The *Vistabella* was not entered in any P&I Club but was covered by a third party liability insurance with a Trinidad insurance company. The insurer argued that the insurance did not cover this incident. The limitation amount applicable to the ship was estimated at FFr2 354 000 or €359 000 (£254 000). 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.

Claims for compensation

The 1971 Fund paid compensation amounting to FFr8.2 million or €1.3 million (£890 000) 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.

Legal proceedings

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 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 and awarded the Fund the right to recover the total amount which it had paid for damage caused in the French territories. The insurer appealed against the judgement.

The Court of Appeal rendered its judgement in March 1998. The Court of Appeal held that the 1969 Civil Liability Convention applied to the incident and that the Convention applied to the direct action by the 1971 Fund against the insurer even though in this particular case the shipowner had not been obliged to take out insurance since the ship was carrying less than 2 000 tonnes of oil in bulk as cargo. The insurer did not appeal to the Court of Cassation.

The 1971 Fund is considering what steps should be taken to enforce the judgement.

13.2 BRAER

(United Kingdom, 5 January 1993)

The incident

The Liberian tanker *Braer* (44 989 GRT) grounded south of the Shetland Islands (United Kingdom). The ship eventually broke up, and both the cargo and bunkers spilled into the sea. Due to the prevailing heavy weather, most of the spilt oil dispersed naturally, and the impact on the shoreline was limited. Oil spray blown ashore by strong winds affected farmland and houses close to the coast. The United Kingdom Government imposed a fishing exclusion zone covering an area along the west coast of Shetland which was affected by the oil, prohibiting the capture, harvest and sale of all fish and shellfish species from within the zone.

Claims for compensation

All claims but one have been settled and the total compensation paid amounted to some £51.9 million, of which the 1971 Fund paid £45.7 million and the shipowner's insurer, Assuranceföreningen Skuld (Skuld Club), £6.2 million.

The only remaining claim, by Shetland Sea Farms Ltd, a Shetland-based company, related to a contract to purchase smolt from a company on the mainland. The Executive Committee decided that in the assessment of the claim account should be taken of any benefits derived by other companies in the same group. Attempts to settle the claim out of court failed.

The company took legal action against the shipowner, the Skuld Club and the 1971 Fund. The question arose as to whether certain of the documents relied upon by the claimant were genuine.

The Court of first instance rendered its decision in July 2001. Having heard the evidence the Court concluded that responsible officers of the claimant had knowingly presented copies of fake letters in support of Shetland Sea Farms' claim for compensation. The Court held that these documents had been put forward with the intent to deceive the Claims Office established by the 1971 Fund and the Skuld Club into believing that the Shetland Sea Farms' alleged contractual commitments were based on correspondence setting out the terms of the contracts. The Court also held that they did so as part of a scheme to further a substantial claim for compensation.

The Court then addressed the issue of whether as a result of this finding the claim should be refused without any further procedure. The Court acknowledged that it had an inherent power to dismiss the claim where a party was guilty of an abuse of process but stated that that was a drastic power. The Court resolved, however, that as Shetland Sea Farms no longer was going to base its claim on the false letters, the company should be given the opportunity to present a revised case that should not depend on the false letters and that not allowing the claim to proceed in its revised version would be an excessive punishment.

The Court decided that the case should proceed to a hearing restricted to the question of whether Shetland Sea Farms could prove that a contract existed before the *Braer* incident occurred for the supply of smolt to Shetland Sea Farms without reference to false letters and invoices. Hearings were held in April and September 2002 and the Court rendered its decision in May 2003. The Court did not accept Shetland Sea Farms' evidence that there was a contract for the supply of smolt for which the company was legally obliged to pay independent of the false letters. The Court considered that the evidence disclosed that the management of the company had been involved in a fraudulent scheme and reported the matter to the Chief Prosecutor in Scotland to consider whether criminal proceedings should be brought against three of Shetland Sea Farms' witnesses. The Court allowed the case to proceed, however, restricting it to a claim for loss of profit by Shetland Sea Farms to the extent that the company could establish the probable number of smolt that would have been introduced to Shetland but for the *Braer* incident.

The shipowner, the Skuld Club and the 1971 Fund appealed against that part of the Court's decision on the grounds that the loss of profit claim was based on the numbers and the cost of smolt as set out in the claim which was based on the alleged contracts which had been shown to be false. The appeal will be heard in January 2005.

The Skuld Club has undertaken to pay any amount awarded by a final court decision.

13.3 KEUMDONG N°5

(Republic of Korea, 27 September 1993)

The incident

The Korean barge *Keumdong N°5* (481 GRT) collided with another vessel near Yeosu on the southern coast of the Republic of Korea, resulting in an estimated loss of 1 280 tonnes of heavy fuel oil.

Claims for compensation

Claims relating to the cost of clean-up operations were settled for a total of Won 5 602 million (£4.3 million) and the majority of claims from the fishing and aquaculture sectors were settled at Won 8 500 million (£6.5 million).

Legal proceedings

The Yeosu Fishery Co-operative and some 900 of its members took legal action against the 1971 Fund in May 1996, the total amount claimed being Won 18 803 million (£14.4 million). The 1971 Fund's experts considered that the claims were exaggerated and poorly documented. A number of claims by owners of fishing boats were rejected by the 1971 Fund due to the fact that they were not in possession of valid fishing licences at the time of the incident. The Fund maintained that the income from unlicensed or unregistered fishing was illegal income and that claims in respect of such fishing were inadmissible.

The Court of first instance rendered a judgement in January 1999 and found that the claimants, including those who were unregistered and unlicensed, had suffered damage due to oil pollution, but rejected their calculations of the losses due to lack of information, the unreliability of the evidence they had presented 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. The total amount awarded by the Court was Won 1 571 million (£740 000).

The 1971 Fund lodged an appeal against the decision to award compensation to unlicensed fishermen and to grant compensation for pain and suffering in lieu of economic losses. The Appellate Court overturned the judgement of the first instance Court. In considering whether the claims for pain and suffering were admissible, the Appellate Court took the view that there should not be a difference in the application of the 1969 and 1971 Conventions among Contracting States and that the Korean Oil Pollution Guarantee Act (implementing the Conventions) should include only losses in respect of economic losses and property damage. As regards the claims in respect of unregistered and unlicensed fishing activities, the Appellate Court also referred to the special position of the 1971 Fund and held that a restrictive interpretation of the concept of 'pollution damage' would be closer to international standards. It therefore decided that the incomes of claimants who did not have the licenses, permits or registrations required under the Korean Fisheries Act to carry out their activities should be regarded as illegal income, which could not be included in the calculation of compensation. The Appellate Court upheld the decision of the first instance Court in respect of loss of earnings due to business interruption caused by the clean-up of licensed fishing grounds and mariculture farms and ordered the Fund to pay Won 143 million (£67 000).

Since the Fund's position on matters of principle had been accepted, the Fund did not appeal against the decision of the Appellate Court. Although the individual members of the co-operative did not appeal against the decision, 36 village fishery associations appealed to the Supreme Court, claiming Won 2 756 million (£1.3 million).

In April 2004 the Supreme Court rendered its judgement rejecting the appeal. The Court held that, as a matter of Korean law, oil pollution damage under the 1969 Civil Liability Convention and the 1971 Fund Convention should be interpreted as including pain and suffering but that, in this particular case, the claims could not be accepted on the grounds that the claimants were not natural persons but a fishery association.

In September 2004 the Fund settled all outstanding issues with the shipowner's insurer in respect of compensation paid by the insurer in excess of the limitation amount applicable to the *Keumdong N°5*, indemnification and the apportionment of joint costs.

13.4 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), resulting in a spill of some 300 tonnes of Syrian light crude oil. 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 1 497 million or €4.4 million (£3.1 million) with the competent court by the deposit of a bank guarantee.

The Court decided that claims should be lodged by 20 January 1995. By that date, 527 claims had been presented in the limitation proceedings, totalling Drs 3 071 million or €9 million (£6.4 million) plus Drs 378 million or €1.1 million (£780 000) for compensation of 'moral damage'.

In March 1994, the Court appointed a liquidator to examine the claims in the limitation proceedings. Although the liquidator has submitted his report to the Court, it has not yet been made available to the Fund.

The shipowner and his insurer took legal action against the 1971 Fund in order to prevent their rights to reimbursement from the Fund for any compensation payments in excess of the shipowner's limitation amount and to indemnification under Article 5.1 of the 1971 Fund Convention from becoming time-barred. The owner of a fish farm, whose claim is for Drs 1 044 million or €3 million (£2.1 million), also interrupted the time bar period by taking legal action against the 1971 Fund. All other claims have become time-barred *vis à-vis* the Fund.

13.5 YEO MYUNG

(Republic of Korea, 3 August 1995)

The Korean tanker *Yeo Myung* (138 GRT) collided with a tug towing a sand barge near Geoje island (Republic of Korea), resulting in a spill of about 40 tonnes of heavy fuel oil.

Claims relating to clean-up costs and losses in the fishery and tourism sectors were settled for a total of Won 1 553 million (£990 000).

The only outstanding claim, which was for Won 335 million (£175 000), became time-barred since the claimant failed to take legal action against the 1971 Fund within six years of the date of the incident.

In March 2002 the 1971 Fund requested the Court in charge of the limitation proceedings to issue an Assessment Decision to enable the limitation fund to be distributed. It is hoped that the Court will issue such a decision in early 2005 and that this will be based on the Fund's assessment of the claims. The Fund's lawyers in Korea have indicated that in view of the expiry of the six-year time bar period the 1971 Fund will not be required to pay any further compensation in Korea.

Although the limitation proceedings have yet to be terminated, the 1971 Fund and the shipowner's insurer have resolved all outstanding issues in respect of compensation paid by the insurer in excess of the limitation amount applicable to the *Yeo Myung*, indemnification and the apportionment of joint costs.

13.6 YUIL N°1

(Republic of Korea, 21 September 1995)

The Korean coastal tanker *Yuil N°1* (1 591 GRT) ran aground on an island near Busan (Republic of Korea). The tanker was refloated, but while being towed towards the port of Busan it sank in 70 metres of water. About 2 000 tonnes of oil were spilled as a result of the initial grounding and subsequent sinking of the vessel. Some 670 tonnes of oil were later recovered from the sunken wreck.

All claims for the costs of clean-up operations and preventive measures, including the removal of oil from the wreck, were settled for a total of Won 19 218 million (£11.4 million). All fishery claims were settled for a total of Won 7 960 million (£4.7 million).

The 1971 Fund and the shipowner's insurer were subrogated to all the claims that were filed in the limitation proceedings. However, the limitation fund was not constituted.

At its October 2003 session the 1971 Fund Administrative Council authorised the Director to agree with the shipowner's insurer on an exchange rate between the SDR and the Korean Won to be applied to establish the limitation amount applicable to the *Yuil Nº1*. However, it subsequently transpired that the limitation amount had been set by the Court in charge of the limitation proceedings at Won 351 924 060 (£177 000).

In September 2004 the Fund settled all outstanding issues with the shipowner's insurer in respect of compensation paid by the insurer in excess of the limitation amount applicable to the *Yuil Nº1*, indemnification and the apportionment of the joint costs.

13.7 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, Greece. 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.

In December 1996 the shipowner established a limitation fund amounting to Drs 2 241 million or €6.6 million (£4.7 million) by means of a bank guarantee.

Most claims have been settled, but some are the subject of legal proceedings in the Greek Supreme Court. The aggregate amount of the settled claims and the amount claimed in the Supreme Court is below the level at which the 1971 Fund would be called upon to make any payments in respect of compensation or indemnification. However, as the Fund is a defendant in the proceedings in the Supreme Court, the Fund's lawyers have attended the hearings to protect the Fund's position.

13.8 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 on 28 February 1997. The Venezuelan authorities have maintained that the actual grounding occurred outside the Channel itself. An estimated 3 600 tonnes of crude oil were spilled.

The incident gave rise to legal proceedings in a Criminal Court in Cabimas, Civil Courts in Caracas and Maracaibo, the Criminal Court of Appeal in Maracaibo and the Supreme Court. A number of claims have been settled out of court and the corresponding legal actions have been withdrawn.

Criminal proceedings

Criminal proceedings were brought against the master. In his pleadings to the Criminal Court the master maintained that the damage was substantially caused by negligence imputable to the Republic of Venezuela.

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

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

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

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

appeal and to order the Court of Cabimas to send the file to the Supreme Court due to the fact that the Supreme Court was considering a request for 'avocamiento'.[5] The Court of Appeal's decision appears to imply that the judgement of the Criminal Court of Cabimas is null and void.

On 4 August 2004 the Supreme Court decided to remit the file on the criminal action against the master to the Criminal Court of Appeal. That Court has not yet rendered its decision.

The 1971 Fund's Venezuelan lawyers have advised the Fund that in accordance with Venezuelan procedural law the criminal action against the master is time barred, since under Venezuelan law a final sentence would have to be delivered within four and a half years from the date of the criminal act.

Claims for compensation in court

The situation in respect of the significant claims for compensation pending before the courts in Venezuela is set out in the table below.

At its July 2003 session the 1971 Fund Administrative Council reiterated the 1971 Fund's position that the components of the claims by the Republic of Venezuela did not relate to pollution damage falling within the scope of the 1969 Civil Liability Convention and the 1971 Fund Convention and that these claims should therefore be treated as not admissible. At that session the Administrative Council noted that the two claims presented by the Republic of Venezuela were duplications, since they were based on the same university report and related to the same items of damage. It was also noted that the Procuraduria General de la República (Attorney General) had accepted this duplication in a note submitted to the 1971 Fund's Venezuelan lawyers in August 2001.

Two claims submitted by the Instuto para el Control y la Conservación de la Cuenca del Lago de Maracaibo (ICLAM) for US$36 000 (£19 000) each have been settled but have not been withdrawn from the Courts.

Two claims, one by the Republic of Venezuela's former lawyers for Bs440 million (US$171 000) and the other by experts engaged by a fishermen's trade union (FETRAPESCA) for Bs100 million (US$39 000), have been submitted in the Supreme Court against parties other than the shipowner, his insurer (Assuranceföreningen Gard) and the 1971 Fund.

Claimant	Category	Settlement amount US$	Status of claim
Republic of Venezuela	Environmental damage	60 250 396	Pending in criminal court
Republic of Venezuela	Environmental damage	60 250 396	Pending in civil court
Three fish processors	Loss of income	30 000 000	Pending in civil court (no loss proven)
Total		**US$150 500 792 (£78.4 million)**	

[5] *Under Venezuelan law, in exceptional circumstances, the Supreme Court may assume jurisdiction, 'avocamiento', and decide on the merits of the 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 for 'avocamiento' is granted, the Supreme Court would act as a Court of first instance and its judgement would be final.*

Settled claims

The table at the foot of the page shows claims which have been settled out of court.

Maximum amount available for compensation

Immediately after the incident, the *Nissos Amorgos* was detained pursuant to an order rendered by the Criminal Court in Cabimas. The shipowner provided a guarantee to the Cabimas Court for Bs3 473 million (£680 000), being the limitation amount applicable to the *Nissos Amorgos* under the 1969 Civil Liability Convention. The Cabimas Court ordered the release of the ship on 27 June 1997. The Court also decided that the maximum amount payable under the 1969 Civil Liability Convention and the 1971 Fund Convention, namely 60 million SDR, corresponded to Bs39 738 million or US$83 221 800 (£43.3 million).

Level of payments

In view of the uncertainty as to the total amount of the claims arising from this incident, the Executive Committee and later the Administrative Council decided to limit payments to 25% of the loss or damage actually suffered by each claimant. In July 2003 the Administrative Council decided to increase the 1971 Fund's level of payments from 40% to 65%, since the claims by the Republic of Venezuela were duplicated. The Council stated that, in the unlikely event that the Venezuelan Courts were to accept both claims submitted by the Republic, the 1971 Fund would nevertheless disregard one of them. The Council noted that if both claims by the Republic of Venezuela were withdrawn or not pursued to the detriment of other claimants, the 1971 Fund would be able to increase its level of payments to 100%.

At the Council's May 2004 session the Venezuelan delegation stated that the Republic of Venezuela had proposed that any claim by the Republic be dealt with after the victims had been fully indemnified so that the pending and settled claims against the Fund were compensated to the benefit of the victims and that the Republic would stand 'last in the queue' and subject to the amount available for compensation from the Fund. The Council noted that the Vice-Minister of Foreign Affairs, in a letter to the Director, had stated that the Republic of Venezuela accepted that the claims by the Republic of Venezuela would be dealt with after the Fund had paid full compensation to claimants already recognised by it and those who would be recognised legally by a final court judgement, within the maximum amount available established by the Conventions.

The Director stated that in his opinion, and in view of the inter linkage between the 1969 Civil Liability Convention and the 1971 Fund Convention, and in accordance with long established practice within the 1971 and 1992 Funds, the expression 'standing last in the queue' meant that the government in question undertook not to pursue or seek payment for its claims for compensation under these Conventions, or under its national legislation implementing these Conventions, until all

Claimant	Category	Settlement amount Bs	Settlement amount US$
Petroleos de Venezuela S.A. (PDVSA)	Clean up		8 364 223
ICLAM	Preventive measures	15 268 867	
Shrimp fishermen and processors	Loss of income		16 033 389
Other claims[6]	Property damage and loss of income	289 000 000	
Total		**Bs304 268 867 (£85 000)**	**US$24 397 612 (£13.6 million)**

[6] *Paid in full by the shipowner's insurer with the exception of the claim by Corpozulia, the tourism authority of the Venezuelan State of Zulia.*

other admissible claims had been paid in full, either for the amount agreed in out-of-court settlement or decided by a competent court in a final judgement, or it was accepted by the Fund that all such claims would be paid in full.

The Council instructed the Director to seek the necessary assurance from the Republic of Venezuela as to whether its understanding of the meaning of the term 'standing last in the queue' coincided with his and authorised the Director to increase the level of payments to 100% of the established claims, when he had received the necessary assurance.

In June 2004 the Director wrote to the Republic of Venezuela asking whether Venezuela, by undertaking to stand last in the queue, also agreed with his interpretation of the notion of 'standing last in the queue' set out above. A letter from the Minister of Foreign Affairs of Venezuela received on 13 August 2004 gave, in the Director's opinion, the necessary assurance that the Republic agreed with his interpretation of that notion. As a result, the Director decided to increase the level of payments to 100%.

In August 2004 a payment of US$5.6 million (£3.1 million) was made to the shrimp fishermen and processors of Lake Maracaibo. With this payment, these claimants had received the full amount of their compensation.

In November and December 2004 the 1971 Fund paid US$2.9 million (£1.6 million) to PDVSA and Bs2 million (£400) to Corpozulia, representing the balance of the settlement amounts.

Letters have been written to ICLAM, the remaining claimant with settled claims, offering a further payment.

Possible recourse action against the Instituto Nacional de Canalizaciones

In May 2004 the Administrative Council considered the issue of whether the 1971 Fund should take recourse action against the Instituto Nacional de Canalizaciones (INC), the agency responsible for the maintenance of the Lake Maracaibo navigation channel.

The Council noted that, having taken into account all available information, the Director had considered on balance that it was unlikely that a recourse action by the 1971 Fund against INC would succeed and that for this reason he had proposed that the Fund should not pursue such an action.

In summing up the discussion that took place at the Council's May 2004 session, the Chairman stated that it was important that there should be a wide consensus for a decision not to take recourse action against INC and that, since a slight majority of those delegations that had expressed a view had been in favour of postponing a decision and that even some of those delegations supporting the Director's proposal had been very hesitant, such consensus did not exist.

The Administrative Council decided that the 1971 Fund should postpone taking a position as to whether or not the Fund should take recourse action against INC.

13.9 EVOIKOS

(Singapore, 15 October 1997)

The incident

The Cypriot tanker *Evoikos* (80 823 GRT) collided with the Thai tanker *Orapin Global* (138 037 GRT) whilst passing through the Strait of Singapore. The *Evoikos*, which was carrying approximately 130 000 tonnes of heavy fuel oil, suffered damage to three cargo tanks, and an estimated 29 000 tonnes of its cargo were subsequently spilled. The *Orapin Global*, which was in ballast, did not spill any oil. The spilt oil initially affected the waters and some southern islands of Singapore, but later oil slicks drifted into the Malaysian and Indonesian waters of the Strait of Malacca. In December 1997 oil came ashore in places along a 40 kilometre length of the Malaysian coast in the Province of Selangor.

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 Conventions, whereas Malaysia and Indonesia were Parties to the 1969 Civil Liability Convention and the 1971 Fund Convention, but not to the 1992 Conventions.

Claims for compensation

Claims for compensation in Malaysia and Singapore have been settled by the shipowner.

All known admissible claims for compensation in Malaysia, Singapore and Indonesia have been settled by the shipowner. The 1971 Fund is not aware of any outstanding claims.

In the limitation proceedings commenced by the shipowner in Singapore, the Court determined the limitation amount applicable to the *Evoikos* under the 1969 Civil Liability Convention at 8 846 942 SDR (£7.1 million).

The total compensation paid by the shipowner fell within the limitation amount applicable to the *Evoikos* under the 1969 Civil Liability Convention, and the 1971 Fund was not required to make any payments in respect of compensation or indemnification.

Legal proceedings

The shipowner's insurer commenced legal actions against the 1971 Fund in London, Indonesia and Malaysia to protect its rights against the Fund. The Indonesian Court, at the request of the insurer and the Fund, discontinued the action in Indonesia. The actions in London and in Malaysia were stayed by mutual consent. Although any further claims are time-barred under the Conventions, the insurer has informed the Fund that it is not prepared to withdraw its actions against the Fund in Malaysia and London until it has had the opportunity to establish that there are no outstanding claims against the shipowner which might result in the Fund being liable to pay compensation or indemnification.

13.10 PONTOON 300

(United Arab Emirates, 7 January 1998)

The incident

The Saint Vincent and Grenadines barge *Pontoon 300* (4 233 GRT), which was being towed by the tug *Falcon 1*, sank in a depth of 21 metres off Hamriyah, in Sharjah (United Arab Emirates, UAE). An estimated 8 000 tonnes of intermediate fuel oil were spilled, which spread over 40 kilometres of coastline, affecting four Emirates. The worst affected Emirate was Umm Al Quwain.

The *Pontoon 300*, which was owned by a Liberian company, was not covered by any insurance for oil pollution liability. The tug *Falcon 1* was registered in Abu Dhabi and owned by a citizen of that Emirate.

Claims for compensation

Settled claims

Claims totalling Dhs 7.4 million (£1.1 million) in respect of clean-up operations and preventive measures have been settled for a total of Dhs 6.3 million (£958 000). The 1971 Fund has paid a total of Dhs 4.8 million (£817 000), corresponding to 75% of the settlement amounts.

Pending claims

The Municipality of Umm Al Quwain presented claims against the 1971 Fund totalling Dhs 199 million (£28.2 million) on behalf of fishermen, tourist hotel owners, private property owners, a Marine Resource Research Centre (MRRC) and the Municipality itself (see table on page 59). Little or no documentation was provided in support of the claims, and the amounts involved appeared to be based upon estimates. The main claim by the Municipality was for environmental damage related to alleged losses of fish stocks and other marine resources, including mangroves. The estimation of the damage appeared to be based upon theoretical models.

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

Legal actions

In September 2000 the Umm Al Quwain Municipality brought legal action in the Umm Al Quwain Court against the tug owner and the owner of the cargo on board the *Pontoon 300* in respect of its claims. The 1971 Fund was not joined as a defendant in the proceedings, nor was it formally notified of the proceedings. However, the plaintiffs requested the Court to notify the 1971 Fund of the action through diplomatic channels in accordance with Article 7.6 of the 1971 Fund Convention and through the Ministry of Justice in accordance with United Arab Emirates law of Civil Procedure.

Claims against the 1971 Fund became time-barred on or around 8 January 2001 at which point the Umm Al Quwain Municipality had not taken the measures laid down in the 1971 Fund Convention to prevent the claims becoming time-barred. In the proceedings, the 1971 Fund therefore maintained that the claims submitted by the Municipality were time-barred. In December 2000 the Ministry of Agriculture and Fisheries in Umm Al Quwain joined the Umm Al Quwain Municipality's action as a co-plaintiff, claiming Dhs 6.4 million (£901 000), which corresponded to the claim by the MRRC included in the Municipality's claim. However, the Ministry also joined the 1971 Fund as a co-defendant in its action. Although the action had not been served on the 1971 Fund, the Administrative Council decided that this claim was not time-barred, since the Fund had been brought in as a defendant in the action before the expiry of the three-year time bar period.

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

The experts submitted their report to the Umm Al Quwain Court of First Instance in February 2003. The pending claims and the court experts' assessment of the claims are summarised in the table below:

Claim	Claimed amount (Dhs)	Assessed amount (Dhs)
Fishing		
- Loss of income	10 008 840	1 137 048
- Property damage	306 593	123 429
Tourism	765 389	122 570
Property damage	7 000 000	0
Marine Resource Research Centre	6 352 660	335 000
Environmental damage		
- Marine organisms	130 294 415	0
- Mangroves	24 280 000	1 500 000
Clean-up	19 744 600	0
Total	**Dhs 198 752 497 (£28.2 million)**	**Dhs 3 218 047 (£456 000)**

The 1971 Fund submitted to the Court its comments on the experts' report stating that, notwithstanding the Fund's position that the claims were time-barred, the assessments of the claims by the panel of experts was generally in line with the 1971 Fund's policy as regards the admissibility of claims for compensation.

The Umm Al Quwain Municipality and the Ministry of Agriculture and Fisheries objected to the experts' assessments of their losses and requested that the Court should refer the matter back to the experts with the instruction to reassess the claims in the light of their comments.

The owner of the tug *Falcon 1* submitted pleadings maintaining that the experts had failed to assess the claims in an objective manner. He stated that the report had been issued contrary to local law and jurisprudence and contained contradictions as regards facts and conclusions. He also stated that the report was faulty and incomplete and requested the Court to set aside the entire report.

In October 2003 the Court decided to refer the case back to the experts for them to respond to the objections raised by the various parties.

The Fund has held a number of meetings with the experts and the other parties with the aim of reaching agreement on the quantum of the losses, without prejudice to the issue of time bar in respect of the claims by Umm Al Quwain Municipality. As a result of these meetings an agreement in principle was reached on the claim by the Ministry of Agriculture and Fisheries in respect of the MRRC at Dhs 1.6 million (£227 000). Since this claim is not time-barred, it is expected that it will be settled in the near future. As regards the claims by the Municipality, no agreement has been reached on the quantum. At a hearing in October 2004 the Umm Al Quwain Court instructed the court experts to submit their response to the objections raised by the various parties. At the same hearing the owner of the tug *Falcon 1* applied to the Court to join three additional defendants to the proceedings. The Municipality's lawyers raised objection to the application and the Fund's lawyers reserved the Fund's position pending examination of the documents submitted to the Court in support of the application.

At a hearing in December 2004 the owner of the tug *Falcon 1* filed a memorandum seeking an amendment to the court experts' brief. The next hearing is set for February 2005.

Level of the 1971 Fund's payments

The maximum amount of compensation available under the 1969 Civil Liability Convention and the 1971 Fund Convention is 60 million SDR (£48 million).

In April 1998 the Executive Committee decided that, in view of the uncertainty regarding the total amount of claims for compensation, the 1971 Fund's payments should be limited to 75% of the loss or damage actually suffered by each claimant. Due to the uncertainty of the total amounts that would be awarded by the courts in relation to the legal actions in the UAE, the Administrative Council decided at several sessions, most recently October 2004, to maintain the Fund's level of payments at 75% of the total loss or damage suffered by each claimant.

Criminal proceedings

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

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

The master of the tug *Falcon 1* lodged an appeal in the Federal Court of Cassation, which sent the

case back to the Court of Appeal to consider the issues of the seaworthiness of the P*ontoon 300* and the master's defence of 'force majeure'. In October 2001 the Criminal Court of Appeal issued a preliminary judgement in which it appointed three experts from the UAE Ministry of Justice to provide a report to the Court of Appeal on the cause of the incident. The experts' report concluded that:

- the tug and barge were both unseaworthy;
- the barge was not fit to transport petroleum products;
- the storm encountered by the tug and barge was a serious risk to maritime safety which could have been avoided by the crew by employing sound marine principles; and
- the master of the tug was responsible for the sinking of the barge and the resultant pollution.

In May 2004 the Court of Appeal re-opened the proceedings at the request of the master of the tug *Falcon 1*.

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

In January 2000 the 1971 Fund took legal action against the owner of the tug *Falcon 1* maintaining that, since the sinking of the *Pontoon 300* had occurred due to its unseaworthiness and the negligence of the master and the owner of the *Falcon 1* during the towage, the tug owner was liable for the ensuing damage. The Fund claimed Dhs 4.5 million (£638 000), corresponding to the major part of the compensation it had paid for clean-up operations and preventive measures.

In December 2000 the Dubai Court rendered a judgement in which it rejected the 1971 Fund's claim against the owner of the tug *Falcon 1* but ordered the owner of the cargo on board the *Pontoon 300* to pay the Fund Dhs 4.5 million (£638 000).

The basis of the rejection of the claims against the owner of the *Falcon 1* was that under the terms of the charter party the master of the tug was under the control of the charterer. The 1971 Fund appealed against the judgement. At a hearing in November 2001 the Fund amended the claimed amount to Dhs 4.7 million (£677 000) to reflect the amounts actually paid by the Fund.

In February 2002 the Dubai Court of Appeal upheld the judgement of the Court of first instance against the same parties, but amended the judgement to the effect that the amount payable by the owner of the cargo on board the *Pontoon 300* was increased to Dhs 4.7 million (£677 000) on the basis of the Fund's revised claim.

The 1971 Fund appealed to the Dubai Court of Cassation against the Court of Appeal's judgement on the ground that under UAE maritime law, even if the cargo owner had chartered the tug, the management of the tug would remain under the control of the tug owner unless the charter party specified otherwise. The Fund also argued that a photocopy of the charter party submitted by the tug owner was not sufficient evidence to support an alleged charter arrangement between the owner of the tug and the cargo owner.

In his pleadings to the Court of Cassation, the tug owner maintained that the original charter party had been submitted in the criminal proceedings and that he could therefore only submit a photocopy thereof in connection with the recourse action. The tug owner further maintained that since the Criminal Court had accepted the validity of the original charter party, it should be deemed valid for the purpose of the recourse action.

In October 2002 the Court of Cassation allowed the Fund's appeal and referred the matter back to the Dubai Court of Appeal for it to reconsider the matter. Both parties submitted further pleadings in December 2002.

In April 2004, the Court of Appeal issued a judgement in favour of the 1971 Fund. The Court held that both the charterer and the owner of the *Falcon 1* were jointly and severally liable to pay the Fund an amount of Dhs 3.5 million

(£496 000). In the judgement the Court concluded *inter alia* that:

- the master of the tug and its owner were together responsible for the damage arising from this incident,
- the *Pontoon 300* was not seaworthy and the question of the tug's seaworthiness did not need to be ascertained as both the tug and tow formed one floating unit, and
- the liability provisions in the charter party were only effective between the owner and the charterer and did not extend to third parties.

The 1971 Fund has appealed against this judgement to the Court of Cassation on the question of the quantum. The owner of the *Falcon 1* has appealed against the judgement on procedural grounds, including, *inter alia*, that the civil case should have been suspended pending the final judgement in the criminal proceedings relating to the incident.

13.11 AL JAZIAH 1

(United Arab Emirates, 24 January 2000)

The incident

The tanker *Al Jaziah 1* (reportedly of 681 GRT) laden with fuel oil sank in about 10 metres of water five miles north-east of the port of Mina Zayed, Abu Dhabi (United Arab Emirates, UAE). It was estimated that approximately 100 - 200 tonnes of cargo escaped from the wreck. The oil drifted under the influence of strong winds towards the nearby shorelines polluting a number of small islands and sand banks. Some mangroves were also oiled. The sunken vessel was refloated by the salvors and taken into the Abu Dhabi Freeport.

The vessel was not entered with any classification society and did not hold any liability insurance.

Application of the Conventions and the distribution of liability between the 1971 and 1992 Funds

The 1992 Fund Executive Committee and the 1971 Fund Administrative Council decided in October 2000 that since the United Arab Emirates was at the time of the *Al Jaziah 1* incident a Party to both the 1969/1971 Conventions and the 1992 Conventions, both sets of Conventions applied to the incident, and that the liabilities should be distributed between the 1971 Fund and 1992 Fund on a 50:50 basis.

Claims for compensation

Claims in various currencies totalling £1.4 million were submitted in respect of the costs of clean-up operations and preventive measures. These claims were settled and paid at £1.1 million. The 1971 and 1992 Funds will not be required to make any further compensation payments.

Criminal proceedings

The Abu Dhabi Public Prosecutor brought criminal proceedings against the master of the *Al Jaziah 1*. In a statement given to the Public Prosecutor the master had stated that the vessel was designed as a water carrier and was in a dangerous condition and badly maintained.

The Court held, *inter alia*, that the vessel had caused damage to the environment and that it did not fulfil basic safety requirements, was not fit to sail, had many holes in the bottom and was not authorised by the UAE Ministry of Communications to carry oil. The Court concluded that the sinking of the vessel was due to these deficiencies.

The master was fined Dhs 5 000 (£750) for causing damage to the environment.

Recourse action

At their October 2002 sessions the governing bodies of the 1971 and 1992 Funds considered the question of whether to pursue recourse action against the owner of the *Al Jaziah 1*. The Funds' lawyers in the UAE expressed the view that the findings of the criminal court regarding the vessel's unseaworthiness would be persuasive in any civil action filed against the shipowner in the UAE. The Director concurred with the Funds' lawyers and also expressed the view that the shipowner must have known or ought to

have known that the ship was unseaworthy and that the sinking of the vessel was due to the fault or privity of the shipowner. The Director considered that pursuant to Article V.2 of the 1969 Civil Liability Convention the shipowner was therefore not entitled to limit his liability and that any attempt by the shipowner to limit his liability should be opposed by the Funds.

The Funds' lawyers further expressed the view that there were reasonably good prospects for the Funds to obtain a favourable judgement against the shipowner and that it was likely that he would not be entitled to limit his liability. They also advised, however, that the Funds might encounter considerable difficulties in enforcing a judgement against the assets of the defendant and that it was in any event uncertain whether the defendant would have sufficient assets to enable the Funds to recover any substantial amount.

During the discussion in the governing bodies, most delegations expressed the view that the question of whether or not to pursue a recourse action against the shipowner raised an important issue of principle and that the IOPC Funds should play a part in discouraging the operation of sub-standard ships and enforcing the 'polluter pays' principle. In recommending that the Funds should pursue a recourse action, those delegations recognised that the prospects of enforcing a favourable judgement were limited, but in their view it was nevertheless important for the Funds to take a stand. Some delegations considered, however, that the Funds should be realistic and not pursue a recourse action if the shipowner had no assets.

The governing bodies of the 1971 and 1992 Funds decided that the Funds should pursue recourse action against the shipowner. In so deciding it was recognised that the decision to pursue a recourse action in this particular case represented a deviation from the Funds' policy of basing their decisions in part on the prospects of recovery in the event of a favourable judgement.

In January 2003 the Funds commenced legal action in the Abu Dhabi Court of first instance against the shipowning company and its sole proprietor, requesting that the defendants should pay Dhs 6.4 million (£1.0 million) to the Funds, the amount to be distributed equally between the 1971 Fund and the 1992 Fund.

In May 2003 the defendants filed pleadings in which they argued that the Funds had not submitted admissible evidence in respect of the incident or details of the alleged losses suffered by the parties, and that the subrogation of the claimants' rights had not been done correctly under UAE law. They further argued that the persons who were alleged to have suffered losses had not exercised their right to claim against the shipowner under the Civil Liability Conventions. It was argued that under Articles 2, 4.1 and 5 of the Fund Conventions, the Funds should only pay compensation if the persons suffering pollution damage had been unable to obtain recovery from the shipowner under the Civil Liability Conventions.

The Funds submitted further pleadings in June 2003 arguing that the shipowner had failed to set up a limitation fund in accordance with the 1969 and 1992 Civil Liability Conventions, and that since there was no indication that the shipowner had any intention of paying compensation, the Funds had decided to pay compensation to those who had suffered pollution damage. The Funds further argued that the subrogation of the claimants' rights was based on Article 9 of the Fund Conventions and not on UAE law, which requires a court judgement for a party to acquire subrogated rights in order to be able to commence proceedings against a third party. The Funds also presented the Court with further evidence in relation to the incident and the losses caused, including documents issued by various government authorities.

In November 2003 the Abu Dhabi Court of first instance issued a preliminary judgement appointing an expert to investigate the nature of the incident and the payments made by the 1971 Fund. The Fund and its lawyers met with the expert on two occasions and provided supplementary information as requested by the expert. The expert is expected to submit his report to the Court in early 2005.

13.12 ALAMBRA

(Estonia, 17 September 2000)

The incident

The Maltese tanker *Alambra* (75 366 GT) was loading a cargo of heavy fuel oil in the Port of Muuga, Tallinn (Estonia), when an alleged 300 tonnes of cargo escaped from a crack in the vessel's bottom plating. The *Alambra* was detained by the Estonian authorities pending a decision by the Tallinn Port Authority to allow the remaining 80 000 tonnes of cargo on board to be removed. The cargo transfer was eventually undertaken in February 2001, and in May 2001 the vessel finally left Estonia for scrapping.

Limitation of liability

The limitation amount applicable to the *Alambra* under the 1969 Civil Liability Convention is estimated at 7.6 million SDR (£6.3 million).

Claims for compensation

The shipowner and the shipowner's insurer, the London Steam-Ship Owners Mutual Insurance Association Ltd (London Club), have settled claims for clean-up costs for a total of US$620 000 (£323 000). The Estonian Court of first instance approved this settlement in March 2004, and all court actions against the shipowner and the Club in relation to claims in respect of clean-up were terminated.

A claim by the Estonian State for EEK 45.1 million (£2 million), which had the character of a fine or charge, was settled by the shipowner and the London Club at US$655 000 (£340 000). The Court approved this settlement in March 2004, and the proceedings against the shipowner and the Club in relation to this claim were terminated.

A claim for US$100 000 (£52 000) has been presented to the shipowner and the London Club by a charterer of a vessel said to have been delayed whilst clean-up operations were being undertaken.

The owner of the berth in the Port of Muuga from which the *Alambra* was loading cargo at the time of the incident, and a company contracted by the owner of the berth to carry out oil-loading activities on its behalf, have submitted claims to the shipowner and the London Club for EEK 29.1 million (£1.3 million) and EEK 9.7 million (£439 000) respectively for loss of income due to the unavailability of the berth whilst clean-up operations were being undertaken. These claims are pending in the Court of first instance.

Legal actions

In November 2000 the owner of the berth in the Port of Muuga and the company it had contracted to carry out oil-loading operations took legal action in the Court of first instance in Tallinn against the shipowner and the London Club and requested the Court to notify the 1971 Fund of the proceedings in accordance with Article 7.6 of the 1971 Fund Convention. Having been notified of the actions, the 1971 Fund intervened in the proceedings.

In the context of these legal actions, the question has arisen as to whether the 1969 Civil Liability Convention and the 1971 Fund Convention have been correctly implemented into Estonian national law.

The constitutional issue

On 1 December 1992 Estonia deposited its instruments of ratification of the 1969 Civil Liability Convention and the 1971 Fund Convention with the International Maritime Organization. As a result, the Conventions entered into force for Estonia on 1 March 1993. However, the lawyers acting for the shipowner and the London Club, as well as the Estonian lawyers acting for the 1971 Fund, drew their clients' attention to the fact that, in their view, under the Estonian Constitution, ratification of the Conventions should not have taken place before the Estonian Parliament had given its approval and adopted the necessary amendments to the national legislation. The Conventions were not submitted to Parliament and the necessary amendments to national law were not made. The Conventions have not been published in the Official Gazette. For these reasons these Conventions did not, in the view

of these lawyers, form part of national law and could not be applied by the Estonian courts.

The shipowner and the London Club raised this issue in their pleadings in the Court of first instance, as did the 1971 Fund in order to protect its position.

In December 2003 the Court of first instance rendered its decision on the constitutional issue. The Court held that since the Government had ratified the 1969 Civil Liability Convention without prior approval by Parliament, the ratification procedure had been a breach of the Estonian Constitution. For this reason the Court decided that the Convention could not be applied in the case under consideration and should be declared in conflict with the Constitution. The Court therefore ordered that constitutional review proceedings should be initiated before the Supreme Court.

Constitutional review

In a decision issued on 1 April 2004, the Supreme Court held that it would not carry out the constitutional review requested by the Court of first instance. The reasons for the Supreme Court's decision can be summarised as follows:

> The Supreme Court referred to the fact that the Court of first instance had initiated constitutional review proceedings without making a substantial decision in the case. In earlier decisions the Supreme Court has held that when carrying out a constitutional review, it had first verified whether the provision declared contrary to the Constitution was relevant in resolving the case before the courts, because under the Code of Constitutional Review the Supreme Court should only declare provisions relevant in that sense contrary to the Constitution or invalid. The Supreme Court stated that the decisive factor in determining the issue of relevance was whether the provision in question was of decisive importance in the case, namely whether the case would be decided differently if the provision was considered contrary to the Constitution than if this were not to be the case. The Supreme Court noted that the Court of first instance had issued its decision without determining the facts of material importance to the case. The Supreme Court stated that the Court of first instance could not have been sure at the time of issuing its decision which regulation was applicable and of decisive importance in the case. The Supreme Court held that it could not assess which legal norm was relevant in solving the case and whether that norm was in accordance with the Constitution.

Other issues raised in the legal proceedings

In September 2002 the London Club filed pleadings in court in respect of the claims presented by the Port of Muuga and the contractor for the loading operations, maintaining that the shipowner had deliberately failed to make the necessary repairs to the *Alambra* resulting in the ship becoming unseaworthy, and that therefore under the insurance contract as well as under the Merchant Shipping Act, the Club was not liable to pay compensation for the damage resulting from the incident.

The 1971 Fund filed pleadings arguing that under Estonian law the concept of wilful misconduct was to be interpreted as an intentional act, not only in respect of the incident but also in respect of the effect thereof, ie that the shipowner deliberately caused pollution damage. The Fund maintained that the evidence presented regarding the condition of the Alambra did not establish that the shipowner was guilty of wilful misconduct and that the insurer was therefore not exonerated from its liability for pollution damage.

The Court of first instance held hearings in October and November 2004 and the Court is expected to render judgement in early 2005.

13.13 ZEINAB

(United Arab Emirates, 14 April 2001)

The incident

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

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

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

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

Applicability of the Conventions and the distribution of liabilities between the 1971 and 1992 Funds

The 1992 Fund Executive Committee and the 1971 Fund Administrative Council decided at their June 2001 sessions that, since the United Arab Emirates was at the time of the *Zeinab* incident a Party to both the 1969/71 Conventions and the 1992 Conventions, both sets of Conventions applied to the incident, and that the liabilities should be distributed between the 1992 Fund and the 1971 Fund on a 50:50 basis.

Claims for compensation

Claims in various currencies totalling £1.3 million were submitted in relation to clean-up and pollution prevention measures. These claims were settled and paid at £880 000. All further claims became time-barred on or about 14 April 2004, and therefore the Funds will not be required to make any further compensation payments.

Possible recourse action against the shipowner

At their February 2004 sessions, the governing bodies of the 1971 and 1992 Funds considered whether the Funds should pursue recourse action against the owner of the *Zeinab*. The Funds' lawyers in the UAE had expressed the view that the Funds had a reasonable prospect of obtaining a favourable judgement against the shipowner. However, they had stated that it would be extremely difficult to enforce any judgement against the shipowner since it had not been established that he was in the UAE and there was no evidence to suggest that he had any substantial assets there.

During the discussions in the governing bodies, most delegations expressed the view that since the prospects of pursuing a successful recourse action were poor, the Funds should not pursue recourse action against the owner of the *Zeinab*.

Emphasising that the IOPC Funds should in principle take recourse action in order to discourage the operation of substandard ships, the governing bodies decided not to pursue a recourse action against the owner of the *Zeinab* on the sole ground that it would be extremely difficult to pursue such an action for legal and practical reasons.

Recovery from the 1971 Fund's insurance policy

The 1971 Fund's liability for compensation and indemnification for incidents occurring between 25 October 2000 and 24 May 2002, the date when the 1971 Fund Convention ceased to be in force, was covered by insurance. The insurance policy covered the 1971 Fund's liabilities up to 60 million SDR (£53 million) per incident minus the amount actually paid by the shipowner or his insurer under the 1969 Civil Liability Convention as well as legal and other experts' fees, subject to a deductible of 250 000 SDR for each incident.

The Zeinab incident: breakwaters provide an effective means of oil containment

The Administrative Council decided that the relevant date for conversion of the amount of the deductible into Pounds Sterling should be the date of the incident, ie 14 April 2001. The Council decided that on the basis of the SDR: Pound Sterling exchange rate on 12 April 2001 (13, 14, 15 and 16 April being non-banking days), the deductible under the policy would be £220 325.

The 1971 Fund's payments exceeded the deductible and the Fund has recovered the excess payments totalling £220 000 from its insurer.

13.14 SINGAPURA TIMUR

(Malaysia, 28 May 2001)

The incident

The Panamanian chemical tanker *Singapura Timur* (1 369 GT), carrying some 1 550 tonnes of bitumen, collided with the unladen Bahamanian-registered tanker *Rowan* (24 731 GT) near Undan Island, in the Strait of Malacca, Malaysia. The collision caused several fractures to the shell plating of one of the *Singapura Timur*'s bunker fuel tanks. Damage to the forward and aft bulkheads of the tank is believed to have resulted in the ingress of cargo into the compartment and the flooding of the engine room. The vessel sank in some 47 metres of water later the same day.

A salvage company contracted by the *Singapura Timur*'s insurer, the Japan Ship Owners' Mutual Protection and Indemnity Association (Japan P&I Club), sealed all fractures and plugged the vents of the fuel oil tanks to prevent further escape of oil.

The cargo owner mobilised a tug with pollution response equipment, including equipment of the Malaysian oil industry co-operative (PIMMAG). The clean-up response primarily involved the application of chemical dispersants.

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

Removal of the remaining bunker fuel from the wreck and study to determine the environmental risk posed by the bitumen cargo

The wreck of the *Singapura Timur* is lying at a depth of 47 metres in the middle of the northbound shipping lane of the traffic separation scheme in the Malacca Straits, some eight nautical miles from the nearest coast and close to sensitive coastal resources, including coral reefs, mangroves and mariculture facilities. In view of the temporary nature of the measures that were undertaken to prevent the escape of bunker fuel from the vessel, the Malaysian Department of Environment (DOE) considered that the remaining bunkers posed a threat to these resources. The DOE therefore decided to engage a contractor to remove the bunker fuel oil. The 1971 Fund concurred with this decision by the DOE, and the Fund's expert in Singapore provided technical advice to the authorities during the planning of the bunker removal operation.

The DOE decided to undertake a study to ascertain whether the bitumen cargo remaining on board the wreck posed a threat to the environment and, if so, whether the cargo should be removed. Since this study required a detailed diving survey of the wreck and the collection of water and sediment samples in the vicinity of the wreck, the DOE agreed to the 1971 Fund's suggestion of combining the field work associated with the study with the operation to remove the bunker fuel in order to reduce costs.

The operations to remove the bunker fuel, inspect the condition of the wreck and collect samples of water, sediment and bitumen were carried out from 20 October to 8 November 2002. Some five tonnes of heavy fuel oil were pumped from the N°1 port and starboard fuel tanks together with a quantity of oily water from the engine room. Dispersant chemical was added to these spaces after completion of the pumping operation. The DOE issued a completion certificate confirming that to the extent practicable all remaining bunkers had been removed from the wreck.

Based on the findings of the study, the 1971 Fund and the DOE concluded that the bitumen, which was found to be solid, denser than seawater and showed no tendency to leach hydrocarbons into the sea, did not pose a threat to marine and coastal resources. For these reasons the Fund was of the view that the cargo of bitumen remaining in the wreck did not pose an environmental risk.

In July 2004, the DOE informed the Director that it had decided not to remove the cargo of bitumen remaining in the wreck.

Claims for compensation

The Japan P&I Club has paid claims totalling US$150 000 (£94 000) in respect of clean-up and preventive measures.

It was agreed between the 1971 Fund and the Japan P&I Club that the limitation amount applicable to the ship under the 1969 Civil Liability Convention was 82 327 SDR which, on the basis of the exchange rate between SDR and the US Dollar on the date of the incident (28 May 2001) was US$103 378 (£65 000). On the basis of this amount the Fund paid the Japan P&I Club a total of US$47 000 (£30 000), being the amount the Club had paid in compensation above the shipowner's limit. The Fund also paid indemnification of US$25 000 (£16 000) to the Japan P&I Club in accordance with Article 5.1 of the 1971 Fund Convention.

The principal contractor involved in the operations to remove the bunker fuel, inspect the condition of the wreck and collect samples of water, sediment and bitumen for the purpose of the environmental risk assessment submitted a claim for US$1 130 000 (£631 000) in respect of the costs of this phase of the operation and for the costs of the analyses of the water, sediment and bitumen samples. This claim has been settled and paid at US$781 000 (£491 000).

The claim for the cost of the report on the environmental risk posed by the cargo of bitumen was settled and paid at US$2 500 (£1 520).

There are no outstanding claims for compensation arising from this incident.

Recovery from the 1971 Fund's insurance policy

The 1971 Fund's liabilities for incidents occurring between 25 October 2000 and 24 May 2002, the date when the 1971 Fund Convention ceased to be in force, was covered by insurance. The insurance policy covered the 1971 Fund's liabilities up to 60 million SDR (£48 million) per incident minus the amount actually paid by the shipowner or his insurer under the 1969 Civil Liability Convention as well as legal and other experts' fees, subject to a deductible of 250 000 SDR for each incident.

The Administrative Council decided that the relevant date for the conversion of this amount into Pounds Sterling should be the date of the incident (28 May 2001), which gave a deductible of £221 283.

The total amount paid by the Fund in compensation and indemnification is US$846 500 (£538 600). The Fund also incurred costs totalling £150 000. The Fund's total payment arising from this incident including costs exceeded its deductible by some £465 000. The insurer has reimbursed the Fund for this excess amount.

Recourse action

Any action by the 1992 Fund or its insurer against the *Rowan* interests to recover amounts paid in compensation would, as regards the right of limitation, be governed by the conventions dealing with this matter in general, namely the 1957 Convention relating to the Limitation of the Liability of Owners of Sea-going Ships or the 1976 Convention on Limitation of Liability for Maritime Claims. The limitation amount under the 1976 Convention is significantly higher than that under the 1957 Convention. The limit applicable to the *Rowan* under the 1976 Convention is estimated at £3.7 million whereas the limit under the 1957 Convention is estimated at £768 000. The test for breaking the shipowner's right to limitation is much stricter under the 1976 Convention than under the 1957 Convention.

The total costs incurred by the *Singapura Timur*'s interests (Japan P&I Club and the hull insurers) were in the region of US$4.8 million (£3 million), which is less than the limitation amount applicable to the *Rowan* under the 1976 Convention. In November 2003, the Japan P&I Club informed the 1971 Fund that the *Singapura Timur* interests had reached an out-of-court settlement with the *Rowan* interests. The Fund was not informed of the settlement amount.

The information available on the cause of the incident, ie the collision, gave no indication of facts which would make it possible to deprive the owner of the *Rowan* his right to limitation, neither under the 1957 Convention nor under the 1976 Convention.

Documentary evidence suggested that the owner of the *Rowan* resided in Belgium at the time of the incident. Malaysia is a party to the 1957 Convention, whereas Japan and Belgium are parties to the 1976 Convention. In order to prevent a recovery claim against the *Rowan*'s interests from becoming time-barred, the 1971 Fund took legal action against the shipowner in Malaysia and Belgium. As mentioned above, all costs incurred in relation to recourse actions were payable by the Fund's insurer under the insurance policy. If a recourse action had been pursued, it would have been an action on behalf of the 1971 Fund only as regards the deductible and on behalf of the insurer as regards the more substantial excess amount.

In order to avoid a protracted litigation and in the absence of realistic prospects to breach the right of limitation of the owner of the *Rowan* and in the interests of making progress towards the winding up of the 1971 Fund, the Fund in co-operation with its insurer held discussions with the *Rowan* interests for the purpose of settling the issue of recovery out-of-court, and in July 2004, an out-of-court settlement was reached. Under the settlement agreement, the

Rowan interests paid US$340 000 (£185 000) in settlement of the recovery claim. Under the insurance policy, the insurer acquired by subrogation the rights against the *Rowan* interests. The insurer was therefore entitled to any amount recovered up to the total amount of his payments (£465 000), and the 1971 Fund would only be entitled to retain a recovery in excess of that amount, if any. Since there was no such excess, the recovered amount was transferred to the insurer.

As a result of the out-of-court settlement, all legal actions commenced by the 1971 Fund against the *Rowan* interests in Malaysia and Belgium were terminated in August 2004.

14 1992 FUND INCIDENTS

14.1 INCIDENT IN GERMANY

(Germany, June 1996)

The incident

From 20 June to 10 July 1996 crude oil polluted the German coastline and a number of German islands close to the border with Denmark in the North Sea. The German authorities undertook clean-up operations at sea and on shore and some 1 574 tonnes of oil and sand mixture were removed from the beaches.

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

1992 Fund's involvement

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

The limitation amount applicable to the *Kuzbass* under the 1992 Civil Liability Convention is estimated at approximately 38 million SDR (£31 million).

Legal actions

In July 1998 the Federal Republic of Germany brought legal actions in the Court of first instance in Flensburg against the owner of the *Kuzbass* and the West of England Club, claiming compensation for the cost of the clean-up operations for an amount of DM2.6 million or €1.3 million (£920 000). The claim was subsequently increased to €1.4 million (£990 000) plus interest.

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

In order to prevent their claims against the Fund becoming time-barred at the expiry of the six-year period from the date of the incident, the German Government took legal action against the 1992 Fund in June 2002. The 1992 Fund applied to the Court to stay the proceedings in respect of this action, pending the outcome of the action by the German Government against the shipowner and the West of England Club. The stay was granted by the Court.

The owner of the *Kuzbass* and the West of England Club presented pleadings to the Court maintaining that their own chemical analyses had demonstrated that the oil carried by the *Kuzbass* was not identical to the oil found ashore. They pointed out that the oil carried by the *Kuzbass* was Libyan El Brega crude oil whereas the polluting oil was not. The shipowner and the West of England Club also referred to the results of the investigation of the German police and of the Italian public prosecutor,[6] both of which, according to the owner and the Club, had not found any valid evidence to support the accusation against the *Kuzbass*.

In their reply to the Court, the German Government maintained that there was *prima facie* evidence that the pollution could only have been caused by the *Kuzbass* and that the analysis carried out on behalf of the shipowner and the Club did not rebut this *prima facie* evidence.

For summaries of the pleadings see the Annual Report 2001, pages 102 and 103.

The Court appointed an expert to consider the evidence as to the origin of the oil, and in

[6] *A subsequent port of discharge of cargo was in Italy.*

particular whether the samples of oil and sand mixture contained residues of tank washing and/or residues of slops and whether the residues originated from Libyan El Brega crude oil. The expert concluded that the samples in question contained, without any doubt, residues of crude oil typical of those found in tank washings (slops) from oil tankers. On the basis of the examination carried out by the Federal Maritime and Hydrographic Agency the oil in question was, in his view, without any doubt Libyan crude oil, but it was not possible to relate this oil to a particular well. The expert also stated that it was not possible to establish whether the pollution was caused by the cargo carried by the *Kuzbass* without having access to samples taken from its slops tank.

The Director concurred with the findings of the court expert. However, after studying the analytical data submitted by the Federal Maritime and Hydrography Agency, in particular the mass spectrograms of the pollution samples, he noted that there was a remarkable match with Libyan Es Sider crude as opposed to Libyan El Brega crude, the latter being the oil transported by the *Kuzbass* on the voyage immediately prior to the alleged pollution offence. According to the schedule of Libyan crude exports produced by Lloyd's Maritime Information Services, prior to carrying the cargo of El Brega crude to Wilhelmshaven, the *Kuzbass* had carried two cargoes of Es Sider crude (loaded on 14 February and 28 March 1996) and one cargo of Ras Lanuf crude (loaded on 22 February 1996). If the *Kuzbass* had been the source of the pollution, and if this had resulted from the overboard discharge of slops accumulated over several voyages, this might, in the Director's view, explain why the mass spectrograms of the pollution samples most resembled mass spectrograms of Es Sider crude. On the basis of the evidence presented by the German authorities the Director considered that the pollution was caused by a discharge of crude oil closely resembling Es Sider crude from a tanker and that the *Kuzbass* was the most likely source of the contamination.

In December 2002 the Court of first instance rendered a part-judgement in which it held that the owner of the *Kuzbass* and the West of England Club were jointly and severally liable for the pollution damage. The Court acknowledged that the German Government had failed to provide conclusive evidence that the *Kuzbass* was the vessel responsible, but that the circumstantial evidence pointed overwhelmingly to that conclusion. The Court did not deal with the quantum of the losses suffered by the German authorities and stated that this issue would be considered at the request of one of the parties, but not until the judgement on the liability issue had become final.

The shipowner and the West of England Club appealed against the judgement. In the appeal they have argued that the Court of first instance followed incorrect and irregular procedures in that essential parts of the records of the hearing in December 2002 did not properly reflect the statements made at the hearing. The appellants have further maintained that the Court took evidence from the public prosecutor's office in relation to the criminal investigation without a court order and without giving them the opportunity to comment on the evidence.

The main grounds for the appeal as regards the substantive issues were that the *Kuzbass* could not have reached the alleged dumping area in the time available, that the chemical analyses of the pollution samples did not provide conclusive proof that the oil originated from the *Kuzbass* and that there were three other vessels in the southern North Sea at the relevant time that had previously carried cargoes of Libyan crude oil and which could therefore have caused the pollution.

In September 2003 the German Government submitted a response to the appellants' grounds for appeal, which reiterated the circumstantial evidence that had led the Court of first instance to conclude that the *Kuzbass* was the source of the pollution and also addressed the points raised by the appellants in their appeal. In January 2004 the Fund also submitted a response, which was largely along the same lines as that of the German Government.

At a hearing in December 2004, the Schleswig-Holstein Appeal Court indicated that on the basis of the evidence submitted to date, it was far from convinced that the *Kuzbass* was the source of the pollution, and in particular drew attention to other potential ship sources that the German authorities had failed to investigate. The Court also raised doubts regarding the correctness of the circumstantial evidence and the Court of first instance's interpretation of that evidence. The Appeal Court stated that on the basis of the documentation submitted to date, the prospects of the shipowner/West of England Club succeeding in the appeal were significantly better than those of the German Government. The Court strongly recommended that the parties reach an out-of-court settlement to the effect that the shipowner and the West of England Club would pay the German Government €120 000 (£85 000) and that the recoverable costs would be shared between the German Government and the shipowner/West of England Club on a 92%-8% basis. This recommendation would imply that the 1992 Fund should pay the balance of the admissible amount of the German Government's claim. However, the Court also granted the parties the possibility of submitting further briefs and presenting witnesses.

The next Court hearing will be held in April 2005.

The Director, in consultation with the German Government, has held without prejudice discussions with the West of England Club with a view to reaching an out-of-court settlement. These discussions will continue in the early part of 2005.

14.2 DOLLY

(Caribbean, 5 November 1999)

The incident

The *Dolly* (289 GT), registered in Dominica, was carrying some 200 tonnes of bitumen when it sank at 20 metres depth in Robert Bay, Martinique. So far no cargo has escaped.

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

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

The shipowner was ordered by the authorities to remove the wreck but did not comply with the order, probably due to lack of financial resources.

Definition of 'ship'

In January 2001 the Executive Committee considered the question of whether the *Dolly* fell within the definition of 'ship' in the light of information which the French authorities had provided to the 1992 Fund, including the original drawings and a sketch showing modifications that were subsequently made to the vessel. The 1992 Fund's experts expressed the opinion that although the *Dolly* had been originally designed as a general cargo vessel, it had subsequently been adapted for the carriage of oil in bulk as cargo, and that it therefore fell within the definition of 'ship' laid down in the 1992 Civil Liability Convention. The Committee decided that the *Dolly* fell within that definition.

Measures to prevent pollution

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

In July 2001 the Executive Committee concurred with the Director's opinion that, in view of the location of the wreck in an environmentally sensitive area, an operation to

remove the threat of pollution by the bitumen would in principle constitute 'preventive measures' as defined in the 1992 Conventions. The Committee instructed the Director to examine with the 1992 Fund's experts and the French authorities the proposed measures to remove the bitumen. The Committee also instructed the Director to investigate the financial position of the shipowner.

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

In September 2002 the French Government informed the 1992 Fund that in view of the anticipated costs of undertaking the operations, tenders were being sought through the Official Journal of the European Communities.

In August 2004 the French authorities informed the Fund that a contract had been awarded to a consortium comprising a French diving company and the managers of a yacht marina in Martinique. The original intention had been to right the vessel on the seabed before removing the three cargo tanks containing the bitumen from the ship's hold, following which the tanks would be towed to a dry dock in Fort de France for the bitumen to be removed. The total cost of the operation was estimated at around €1.1 million (£780 000).

Operations commenced in October 2004. Attempts to right the vessel on the seabed were unsuccessful, and the contractors therefore decided to cut through the side and deck plating of the wreck in order to gain access to the three tanks containing the bitumen. As a result of heavy sea conditions and a number of unforeseen practical problems, removal of the tanks took longer than planned and proved more difficult than anticipated. By mid-December 2004, the contractors had removed the tanks from the hold with the aid of floatation bags and laid them on the seabed near to the wreck. The contractors decided to leave the tanks on the seabed until March 2005 when the weather will be more conducive to towing the tanks to the dry dock.

Legal action

In October 2002 the French Government took legal action against the shipowner and the 1992 Fund claiming provisionally FFr1.2 million or €232 000 (£164 000) in respect of the costs of removing the bunker oil from the *Dolly*. It is stated in the writ of summons that further costs in excess of €2 million (£1.4 million) will be claimed in respect of the removal of the wreck and cargo.

The limitation amount applicable to the *Dolly* under the 1992 Civil Liability Convention is 3 million SDR (£2.4 million).

14.3 ERIKA

(France, 12 December 1999)

The incident

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

The tanker was carrying a cargo of 31 000 tonnes of heavy fuel oil of which some 19 800 tonnes were spilled at the time of the incident. The bow section sank in about 100 metres of water. The stern section sank to a depth of 130 metres about 10 nautical miles from the bow section. Some 6 400 tonnes of cargo remained in the bow section and a further 4 700 tonnes in the stern section.

Clean-up operations

Some 400 kilometres of shoreline were affected by oil. Although the removal of the bulk of the oil from shorelines was completed quite rapidly, considerable secondary cleaning was still required in many areas in 2000. Operations to

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

More than 250 000 tonnes of oily waste was collected from shorelines and temporarily stockpiled. Total Fina SA, the French oil company (now TotalFinaElf SA), engaged a contractor to deal with the disposal of the recovered waste and the operation was completed in December 2003. The cost of the waste disposal was estimated at some €46 million (£33 million).

Removal of the oil remaining in the wreck

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

Shipowner's limitation fund

At the request of the shipowner, the Commercial Court in Nantes issued an order on 14 March 2000 opening limitation proceedings. The Court determined the limitation amount applicable to the *Erika* at FFr84 247 733 corresponding to €12 843 484 (£9.1 million) and declared that the shipowner had constituted the limitation fund by means of a letter of guarantee issued by the shipowner's P&I insurer, the Steamship Mutual Underwriting Association (Bermuda) Ltd (Steamship Mutual).

In 2002 the limitation fund was transferred from the Commercial Court in Nantes to the Commercial Court in Rennes.

Maximum amount available for compensation

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

Applying the principles laid down by the Assembly in the *Nakhodka* case, the Executive Committee decided in February 2000 that the conversion should be made using the rate of the SDR as at 15 February 2000 and instructed the Director to make the necessary calculations. The Director's calculations gave 135 million SDR = FFr1 211 966 811 corresponding to €184 763 149 (£131 million).

Undertakings by TotalFinaElf and the French Government

TotalFinaElf undertook not to pursue against the 1992 Fund or against the limitation fund constituted by the shipowner or his insurer claims relating to its costs arising from operations in respect of the wreck, the clean-up of shorelines and the disposal of oily waste and from a publicity campaign to restore the image of the Atlantic coast if and to the extent that the presentation of such claims would result in the total amount of all claims arising out of this incident exceeding the maximum amount of compensation available under the 1992 Conventions, ie 135 million SDR.

The French Government also undertook not to pursue claims for compensation against the 1992 Fund or the limitation fund established by the shipowner or his insurer if and to the extent that the presentation of such claims would result in the maximum amount available under the 1992 Conventions being exceeded. However the French Government's claims would rank before any claims by TotalFinaElf if funds were available after all other claims had been paid in full.

Other sources of funds

The French Government introduced a scheme to provide emergency payments in the fishery

sector, administered by OFIMER (Office national interprofessionnel des produits de la mer et de l'aquaculture), a government agency attached to the French Ministry of Agriculture and Fisheries. OFIMER stated that it based its payments on assessments made by Steamship Mutual and the 1992 Fund. OFIMER paid €4.2 million (£3 million) to claimants in the fishery sector and €2.1 million (£1.5 million) to salt producers.

The French Government also introduced a scheme to provide supplementary payments in the tourism sector. Payments totalling €10.1 million (£7.1 million) were made under that scheme.

Level of the 1992 Fund's payments

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

In view of the uncertainty as to the total amount of claims arising from the *Erika* incident, the Executive Committee decided in July 2000 that the payments by the 1992 Fund should be limited to 50% of the amount of the loss or damage actually suffered by the respective claimants, as assessed by the 1992 Fund's experts. The Committee decided in January 2001 to increase the level of the 1992 Fund's payments from 50% to 60% and in June 2001 to 80%.

In February 2003 the Executive Committee authorised the Director to increase the level of payments to 100% when he considered it safe to do so. After a careful assessment, the Director considered in April 2003 that there was a sufficient safety margin, in spite of the remaining uncertainties as to the total level of admissible claims, and decided to increase the level of payments to 100%.

At the Executive Committee's October 2003 session the Director stated that although there remained considerable uncertainties as to the total amount of the established claims, this uncertainty had been reduced since April 2003 and that it might therefore be possible in the near future to make payments in respect of the French Government's claim. The Committee authorised the Director to make such payments to the extent that he considered there was a sufficient margin between the total amount of compensation available and the Fund's exposure in respect of other claims.

After having reviewed his earlier assessment of the total level of admissible claims, the Director decided in December 2003 that there was a sufficient margin to enable the 1992 Fund to commence payments to the French State. The 1992 Fund initially paid €10.1 million (£7 million) to the French State, corresponding to the French Government's subrogated claim in respect of the supplementary payments to claimants in the tourism sector. In October 2004 the 1992 Fund paid a further €6 million (£4.2 million) to the French State relating to the French Government's supplementary payments made under the scheme to provide emergency payments to claimants in the fishery, mariculture and salt producing sectors administered by OFIMER.

Claims handling

The Steamship Mutual and the 1992 Fund established a Claims Handling Office in Lorient to serve as a focal point for the claimants and the technical experts engaged to examine the claims for compensation.

Some 50 experts have been involved in the examination of the claims relating to clean-up, fishing, mariculture and tourism.

The Claims Handling Office was closed on 31 July 2004, although the office manager continues to deal with outstanding issues from his office in Lorient.

Claims situation

As at 31 December 2004, over 6 900 claims for compensation had been submitted for a total of €206 million (£146 million). By that date 95% of the claims had been assessed. Some 800 claims, totalling €23 million (£16 million), had been rejected.

CLAIMS SUBMITTED BY 31 DECEMBER 2004					
Category	Claims submitted	Claims assessed	Claims rejected	Payments made	
				Number of claims	Amounts €
Mariculture and oyster farming	1 003	998	89	837	7 754 627
Shellfish gathering	529	526	98	365	887 016
Fishing boats	319	318	29	280	1 099 551
Fish and shellfish processors	51	50	6	43	976 831
Tourism	3 680	3 648	445	3169	73 858 227
Property damage	708	435	98	328	2 040 406
Clean-up operations	146	135	12	116	6 331 699
Miscellaneous	523	472	29	438	6 310 434
Total	**6 959**	**6 582**	**806**	**5 576**	**99 258 794**

Payments for compensation had been made in respect of some 5 500 claims for a total of €99.2 million (£65.3 million), out of which Steamship Mutual had paid €12.8 million (£9.1 million) and the 1992 Fund €86.4 million (£56.2 million).

The above table gives details of the situation in respect of claims in various categories.

Cause of the incident

Since the *Erika* was registered in Malta, the Malta Maritime Authority conducted a Flag State investigation into this incident. The Authority issued its report in September 2000. An investigation was also carried out by the French Permanent Commission of Enquiry into Accidents at Sea (La Commission permanente d'enquête sur les événements de mer, CPEM). The report of this investigation was published in December 2000. The conclusions of these investigations are summarised in the Annual Report 2001, pages 118 and 119.

A criminal investigation into the cause of the incident is being carried out by an examining magistrate in Paris. During 2000 charges were brought against the master of the *Erika*, the representative of the registered owner (Tevere Shipping), the president of the management company (Panship Management and Services Srl), the management company itself, the deputy manager of Centre Régional Opérationnel de Surveillance et de Sauvetage (CROSS), three officers of the French Navy who were responsible for controlling the traffic off the coast of Brittany, the classification society (RINA) and one of RINA's managers. In December 2001 charges were brought against Total Fina SA and some of its senior staff on the basis of a report by an expert appointed by the magistrate. In June 2003 charges were brought against the Malta Maritime Authority and against its Director. The investigation has not yet been completed.

At the request of a number of parties, the Commercial Court (Tribunal de Commerce) in Dunkirk appointed experts to investigate the cause of the incident ('expertise judiciaire'). The 1992 Fund is following the investigations through its French lawyers and technical experts.

Recourse actions by the 1992 Fund

Although it is not possible for the 1992 Fund to take a final position as to whether the Fund should take recourse actions to recover the amounts paid by it in compensation and, if so, against which parties, until the investigations into the cause of the incident have been completed, the Executive Committee considered in October 2000 whether the Fund should take such actions as were necessary to prevent its rights becoming time-barred. The Committee decided to authorise the Director to challenge

The French coast was heavily impacted by oil from the Erika

the shipowner's right to limit his liability under the 1992 Civil Liability Convention and to take recourse actions, as a protective measure before the expiry of the three-year time bar period, against the following parties:

- Tevere Shipping Co Ltd (the registered owner of the *Erika*)
- Steamship Mutual (P&I insurer of the *Erika*)
- Panship Management and Services Srl (manager of the *Erika*)
- Selmont International Inc (time charterer of the *Erika*)
- TotalFinaElf SA (holding company)
- Total Raffinage Distribution SA (shipper)
- Total International Ltd (seller of cargo)
- Total Transport Corporation (voyage charterer of the *Erika*)
- RINA Spa/Registro Italiano Navale (classification society)

The Committee noted that the results of the investigations into the cause of the incident might give grounds for the 1992 Fund to take recourse action against parties other than those referred to above, but that the Director had considered that no decision was required in this regard at this stage, since the three-year time bar period did not apply to such other parties.

On 11 December 2002 the 1992 Fund brought actions in the Civil Court (Tribunal de Grande Instance) in Lorient against the parties listed above.

After the Committee's October 2002 session the Director was made aware of the fact that the classification society Bureau Veritas had inspected the *Erika* prior to the transfer of class to RINA. He decided that the 1992 Fund should take recourse action, as a protective measure, against Bureau Veritas, and this action was also brought in the Civil Court in Lorient on 11 December 2002.

There have been no developments in respect of these actions during 2004.

As mentioned above, criminal charges have been brought against *inter alia* the deputy manager of CROSS and three officers of the French Navy. If

they were found guilty there might be grounds for the 1992 Fund to take recourse action against the French State, but it is not possible for the 1992 Fund to decide whether there are grounds for such an action until the investigations into the cause of the incident have been completed.

Under French law the general time-bar period in commercial matters is – subject to many exceptions – ten years. In matters involving the liability of public bodies, in order to prevent a claim for compensation becoming time-barred, the French Administration should be notified of such a claim by 31 December of the fourth year after the event that gave rise to a claim, ie in the case of the *Erika* incident by 31 December 2003. The 1992 Fund made such a notification in December 2003 and the French State accepted that this notification had the effect of interrupting the time bar.

Court surveys for evaluation of the damage

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

At the request of a number of regional bodies and communes, the Courts in Sables d'Olonne, Nantes and Poitiers appointed court experts to make an evaluation of the damage suffered by the respective claimants. The court experts have held several meetings. It is expected that the experts will present their reports during 2005.

Efforts were made to minimise the impact of the spill on coastal salt production in marshes in Loire Atlantique and Vendée, and a number of monitoring and analytical programmes were implemented. Salt production resumed in Noirmoutier (Vendée) in mid-May 2000 as a result of an improvement in sea water quality, and bans which had been imposed to prevent the intake of sea water in Guérande (Loire Atlantique) were lifted on 23 May 2000. A group of independent producers in Guérande tried to resume salt production but were unable to take in sufficient sea water to produce salt. Members of a co-operative who account for some 70% of the salt production in Guérande decided not to produce salt in 2000 on the grounds of protecting market confidence in the product.

Claims for lost salt production due to delays to the start of the 2000 season caused by the imposed ban on water intake were received from producers (both independent and members of the co-operative) in Guérande and Noirmoutier. Claims were also presented for costs of restoration of salt ponds in Guérande in 2001.

At the request of the 1992 Fund and Steamship Mutual, a court expert was appointed to examine whether it was feasible to produce salt in 2000 in Guérande that would meet the criteria relating to quality and the protection of human health. The court expert presented a very voluminous report in late December 2004. The experts engaged by the 1992 Fund and Steamship Mutual are examining the report.

Time bar

Under the 1992 Civil Liability Convention rights to compensation from the shipowner and his insurer are extinguished unless legal action is brought within three years of the date when the damage occurred (Article VIII). As regards the 1992 Fund Convention, rights to compensation from the 1992 Fund are extinguished unless the claimant either brings legal action against the Fund within this three-year period or notifies the Fund within that period, in accordance with the formalities required by the law of the court seized, of an action against the shipowner or his insurer (Article 6). Both Conventions also provide that in no case should legal actions be brought after six years from the date of the incident.

During September 2002 the 1992 Fund wrote individually to all those who had submitted claims to the Claims Handling Office and with whom settlements had not been reached by that time informing them about the time bar issue. In addition, the 1992 Fund organised a series of presentations to the Chambers of Commerce and Industry in Quimper, St Nazaire and La Roche sur Yon to bring the time bar issue to the attention of a wider audience. Advertisements were also placed in the local press.

Since it may be uncertain from which date the three-year time-bar period starts to run for an individual claimant (ie the date when the respective claimant's damage or loss occurred), the Director suggested that claimants should assume that the time bar period commenced on the date of the incident (ie 12 December 1999), in order to avoid any risk of the claims becoming time-barred. He also made it clear that even if a claimant took legal action, this would not prevent further discussions concerning his claim for the purpose of reaching an out-of-court settlement.

Despite these warnings a number of claimants who had presented claims to the Claims Handling Office and whose claims had not been settled had not taken legal action against the shipowner, Steamship Mutual and the 1992 Fund by 12 December 2002. A number of claimants commenced legal actions late in December 2002 or in the first half of 2003. The question arose whether these claims or some of them were time-barred.

In February 2003 the Executive Committee decided that the three-year time bar period should be considered to start to run at the earliest from the beginning of the period of the loss suffered by the individual claimant. The Committee recognised that there could be claims in respect of which the starting point for the time-bar period might be some time after the beginning of the period of the loss and that such claims would have to be considered in the light of the particular circumstances in each case.

As a result of this decision, some 160 claims which had not been the subject of legal actions, and for which the time-bar period ended after the Committee's February 2003 session, were subsequently settled out-of-court.

Actions in France against Total Fina, the shipowner and others

The Conseil Général of Vendée and a number of other public and private bodies have brought actions in various courts against the shipowner, his insurer, companies in the Group TotalFinaElf and others requesting that the defendants should be held jointly and severally liable for any claims not covered by the 1992 Civil Liability Convention.

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

Legal actions taken by the French State

The French State brought actions in the Civil Court in Lorient against Tevere Shipping Co Ltd, Panship Management and Services Srl, Steamship Mutual, Total Transport Corporation, Selmont International Inc, the limitation fund referred to above and the 1992 Fund, claiming €190.5 million (£135 million).

The French State requested the Court to order the defendants, except the limitation fund and the 1992 Fund, to pay the above amount and further requested that the Court should declare that the limitation fund and the 1992 Fund should execute the judgement within the respective limits laid down in the 1992 Civil Liability Convention and the 1992 Fund Convention.

Legal action taken by the Group TotalFinaElf

Four companies in the Group TotalFinaElf have taken legal actions in the Commercial Court in Rennes against the shipowner, his insurer, the 1992 Fund and others claiming €143 million (£101 million).

Legal action taken by Steamship Mutual

Steamship Mutual brought action in the Commercial Court in Rennes against the 1992 Fund, requesting the Court *inter alia* to note that, in the fulfilment of its obligations under the 1992 Civil Liability Convention, Steamship Mutual had paid €12 843 484 (£9.1 million) corresponding to the limitation amount applicable to the shipowner, in agreement with the 1992 Fund and its Executive Committee. Steamship Mutual further requested the Court to declare that it had fulfilled all its obligations under the 1992 Civil Liability Convention, that the limitation amount had been paid and that the shipowner was exonerated from his liability under the Convention.

Steamship Mutual also requested the Court to order the 1992 Fund to reimburse it any amount the shipowner's insurer will have paid in excess of the limitation amount.

Actions by other claimants

Claims totalling €484 million (£343 million) have been lodged against the shipowner's limitation fund constituted by Steamship Mutual. This amount includes the claims by the French Government and TotalFinaElf. However, most of these claims, other than those of the French Government and TotalFinaElf, have been settled and it appears therefore that these claims should be withdrawn against the limitation fund to the extent that they relate to the same loss or damage. The 1992 Fund has received from the liquidator of the limitation fund formal notifications of the claims lodged against that fund.

Legal actions against the shipowner, Steamship Mutual and the 1992 Fund were taken by 795 claimants. By 31 December 2004 out-of-court settlements had been reached with 407 of these claimants. Actions by the remaining 388 claimants (including 212 salt producers) were pending. The total amount claimed in the pending actions, excluding the claims by the French State and TotalFinaElf, was €66 million (£47 million).

The 1992 Fund will continue the discussions with the claimants whose claims are not time-barred for the purpose of arriving at out-of-court settlements if appropriate.

Court judgements in respect of claims against the 1992 Fund

A number of judgements have been rendered in the French Courts against the 1992 Fund. These judgements related mainly to claims for loss of earnings suffered by persons whose property has not been polluted (so called pure economic loss).

As mentioned in Section 11.2 the governing bodies of the 1971 and 1992 Funds have adopted criteria for the admissibility of claims. As regards claims for pure economic loss these criteria can be summarised as follows.

Claims for pure economic loss are admissible only if they are for loss or damage caused by contamination. The starting point is the pollution, not the incident itself.

To qualify for compensation for pure economic loss, there must be a reasonable degree of proximity (ie a sufficiently close link of causation) between the contamination and the loss or damage sustained by the claimant. A claim is not admissible for the sole reason that the loss or damage would not have occurred had the oil spill not happened. When considering whether the criterion of reasonable proximity is fulfilled, the following elements are taken into account:

- the geographic proximity between the claimant's activity and the contamination
- the degree to which a claimant was economically dependent on an affected resource
- the extent to which a claimant had alternative sources of supply or business opportunities
- the extent to which a claimant's business formed an integral part of the economic activity within the area affected by the spill

The 1992 Fund also takes into account the extent to which a claimant was able to mitigate his loss.

As regards the tourism sector, a distinction is made between a) claimants who sell goods or services directly to tourists and whose businesses are directly affected by a reduction in visitors to the area affected by an oil spill, and b) those who provide goods or services to other businesses in the tourist industry, but not directly to tourists. It is considered that in this second category there is generally not a sufficient degree of proximity between the contamination and the losses allegedly suffered by claimants.

Claims of this type will therefore normally not be admissible in principle.

The assessment of a claim for pure economic loss is based on the actual financial results of the individual claimant for appropriate periods during the years before the incident. The assessment is not based on budgeted figures. The particular circumstances of the claimant are taken into account and any evidence presented is considered. The criterion is whether the claimant's business as a whole has suffered economic loss as a result of the contamination.

Any saved overheads or other normal expenses not incurred as a result of the incident should be subtracted from the loss suffered by the claimant.

The judgements are summarised below.

Judgements by the Commercial Court in Lorient and the Court of Appeal in Rennes

In December 2003 the Commercial Court in Lorient rendered judgements in respect of four claims in the tourism and fisheries sectors that had been rejected by the shipowner, Steamship Mutual and the 1992 Fund.

One of these claims, for €10 671 (£7 600), related to loss of income allegedly suffered by the owner of a property in the affected area which was to be let to other businesses (and not directly to tourists) but, according to the claimant, could not be let due to the negative effects of the *Erika* incident. The 1992 Fund had rejected the claim on the ground that it did not fulfil the Fund's admissibility criteria, since it was a 'second degree tourism claim'.

In its judgement the Commercial Court stated that its function was to establish whether there was damage and, if so, to assess it in accordance with the criteria of French law. The Court held that, under French law, a claim for compensation was admissible if there was a sufficient link of causation between the event and the damage, and if it was shown that the damage would not have occurred if the event had not taken place. In the Court's view, the *Erika* incident was the sole cause of the pollution and its economic consequences. The Court stated that it was not bound by the criteria for admissibility laid down by the 1992 Fund. The Court ordered the shipowner, Steamship Mutual and the 1992 Fund to pay compensation to the claimant for loss of rental income at the amount claimed.

The three other judgements related to claims by a person selling and letting machines for the production of ice cream, by a hotel situated in Carnac and by an oyster grower in Morbihan. These claims had been rejected by the 1992 Fund on the grounds that the claimants had not shown that there was a sufficient link of causation between the alleged loss and the contamination caused by the *Erika* oil spill. After having made the same statement in respect of the criteria to be applied and stating that it was not bound by the Fund's criteria, the Court appointed an expert to investigate whether there was a link of causation between the alleged loss and the oil pollution and, if so, to assess the loss.

The 1992 Fund appealed against the four judgements.

In its pleadings to the Court of Appeal in Rennes in respect of the claim by the owner of the property in the affected area, the Fund maintained that in addition to being a 'second degree tourism claim', the claimant derived the majority of his income from activities other than letting the property and that the claimant therefore did not have a sufficient dependency on the affected resource. Further, the Fund maintained that the claimant had failed to show that he would have been able to let the property for the period covered by the claim.

In a judgement rendered in May 2004 the Court of Appeal rejected the claim. In its judgement the Court stated that although the 1992 Fund's criteria were not binding on national courts, the claimant had not shown that there was a sufficient link of causation between the event in question and the alleged damage, nor had the claimant proven that any damage existed. The

claimant has not appealed against the Court of Appeal's judgement

The appeals relating to the other three claims have not yet been heard by the Court of Appeal.

Judgement by the Civil Court in Nantes
In January 2004 the Civil Court (Tribunal de Grande Instance) in Nantes rendered a judgement in respect of claims by the owners of two hotels in Nantes for pure economic loss. These claims had been rejected by the 1992 Fund since, in the Fund's view, they did not fulfil the criteria for admissibility laid down by the Fund's governing bodies in that there was not a reasonable degree of proximity between the alleged losses and the pollution.

The Court rejected the claims in the light of the Fund's criteria, which in the Court's view were dictated by common sense, on the grounds that the claimants had not shown a link of causation between the alleged losses and the oil pollution caused by the *Erika* incident. The claimants did not appeal against the judgement.

Judgement by the Commercial Court in Rennes
In April 2004 the Commercial Court in Rennes rendered a judgement in respect of a claim for €86 350 (£61 000) by a company in Rennes which carried out activities both as a tour operator selling hiking tours in Brittany, Ireland and the Channel Islands and as a traditional travel agency. The company claimed compensation for losses allegedly suffered during 2000 as a result of a reduction of sales due to the *Erika* incident.

This claim had been rejected by the 1992 Fund. The Fund considered that as regards sales through other tour operators ('second degree tourism claims'), there was not a reasonable degree of proximity between the contamination and the alleged losses. As for sales direct to tourists, the Fund considered that no loss had been proven.

The Court referred in its judgement to the requirement under the French Constitution that international treaties ratified by France took precedence over French laws, thus precluding claims being made against the shipowner and his insurer otherwise than in accordance with the Convention. For this reason, contrary to what the claimant had argued, he could not base his claim on certain provisions of the Civil Code. The Court also pointed out that the criteria for admissibility had been adopted by the Fund in order to achieve uniformity so as to ensure equal treatment of victims. The Court rejected the claim on the grounds that it had not been established that there was a sufficient link of causation between the contamination and the damage suffered in that the claimant's activities were not carried out only in the area affected by the *Erika* oil spill, but also in other parts of France and abroad, and that the claimant was not greatly dependent on the affected area.

The claimant appealed against the judgement. A further review by the Fund's experts showed that the claimant had proven a loss for an amount of €30 000 (£20 000) as regards sales direct to tourists, and an out-of court settlement was reached for that amount, as a result of which the claimant withdrew the appeal.

Judgement by the Commercial Court in Saint Brieuc
In September 2004 the Commercial Court in Saint Brieuc rendered a judgement in respect of a claim for €33 265 (£24 000) by a person operating a campsite in Côtes d'Armor, which is located in the northern part of Brittany, in respect of losses allegedly suffered in 2001 as a result of the *Erika* incident.

The operator of this campsite had previously submitted a claim in respect of losses suffered during 2000. This earlier claim was settled at €15 883 (£11 000) and that amount was paid by the 1992 Fund to the claimant in December 2002. The Fund had considered that, although this campsite was located in northern Brittany, ie outside the area directly affected by the *Erika* oil spill, the spill had resulted in loss of business for the season of 2000. However, with a few exceptions, there was no remaining contamination on the beaches in Brittany after the end of the season of 2000. For this reason,

the 1992 Fund had rejected the claim for losses during the 2001 season on the ground that any loss of business suffered by the operator of this campsite during that period did not result from the contamination of the beaches caused by the *Erika*.

The Court nevertheless held that the claim was admissible, since it considered that the reduction in turnover in 2001 compared to 1999 was caused by the *Erika* incident, and ordered the shipowner, Steamship Mutual and the 1992 Fund to pay compensation for an amount of €26 719 (£18 000).

The 1992 Fund has appealed against the judgement.

Judgement by the Civil Court of first instance in Saintes

The owner of a restaurant in Barzan in the Department of Charente-Maritime had presented a claim for €30 425 (£22 000) relating to losses allegedly suffered in 2000 as a result of the *Erika* incident. The claim had been rejected by the Fund on the grounds that it did not fulfil the criteria for admissibility of claims relating to pure economic loss, in particular that of geographic proximity between the claimant's activity and the contamination, the restaurant being located more than 130 kilometres from the nearest polluted beach in Charente-Maritime.

The claimant brought action in the Civil Court of first instance in Saintes. The claimant maintained that the contamination of some beaches in Charente-Maritime had had the consequence of discouraging tourists from visiting any destinations in the department and that therefore the claim fulfilled the Fund's criteria of geographic proximity.

In its judgement in October 2004, the Court stated that it was appropriate to apply the 1992 Fund's admissibility criteria for the interpretation of the 1992 Conventions, and that this had not been contested by the claimant.

The Court made the point that the polluted beaches nearest to the claimant's restaurant were more than 100 kilometres away and the fact that these beaches were located in the same department was not sufficient for fulfilling the criterion of geographic proximity. The Court stated that there could not be any confusion in the minds of tourists between the polluted beaches and the part of the coast where the restaurant was located. In addition, the Court considered that the claimant could not be considered economically dependent on the affected resource. Furthermore, the Court stated that the claimant had not provided any evidence supporting the allegation that there was a link of causation between the contamination resulting from the *Erika* incident and a reduction in the number of tourists visiting the area where the restaurant was located or the reduction in the restaurant's turnover. For these reasons, the Court held that the claim did not fulfil the criteria adopted by the Fund's governing bodies and that there was not therefore a sufficient link of causation between the incident and the alleged loss. The claim was therefore rejected.

At the time of editing the Annual Report the claimant had not appealed against the judgement.

Judgement by the Commercial Court in Nantes

The owner of a hotel with service apartments on the outskirts of Nantes submitted a claim for losses suffered due to a reduction in the number of hotel guests allegedly as a result of the *Erika* incident. The 1992 Fund had rejected the claim on the grounds that the service apartments were located near a big city more than 50 kilometres from the nearest beach resort, that they were traditionally let all year round to employees of various businesses in Nantes and its surroundings, and that as the rooms were not primarily used by tourists, there was not a sufficient link of causation between the losses claimed and the *Erika* oil spill.

In a judgement rendered in November 2004 the Commercial Court in Nantes upheld the Fund's rejection of this claim on the ground that it did not meet the Fund's criteria, in particular as to the distance between the alleged losses and the *Erika* oil spill.

At the time of editing the Annual Report the claimant had not appealed against this judgment.

Judgements by the Commercial Court in Saint-Nazaire

An oyster grower in the Department of Loire Atlantique had claimed compensation for losses allegedly suffered in 2000 and 2001, and these claims had been settled and paid. The claimant had also presented a claim for €28 110 (£20 000) for losses allegedly suffered in 2002, but this claim had been rejected by the 1992 Fund on the ground that there was not a link of causation between the losses allegedly suffered in 2002 and the *Erika* incident. In a judgement rendered in December 2004 the Court agreed with the Fund and rejected the claim.

The owners of a property located directly on the beach in the Department of Loire Atlantique had sought compensation for damage to their property. The claim had been assessed by the 1992 Fund for an amount that was disputed by the claimants. In a judgement rendered in December 2004 the Court arrived at an assessment that was close to that made by the Fund.

A small company operating a bar-restaurant in the Department of Loire Atlantique had sought compensation for loss of business in 2000. The claim had been assessed by the 1992 Fund at about half the claimed amount. The claimant did not accept this assessment and pursued the claim in court. In a judgement rendered in December 2004 the Court accepted the valuation by the 1992 Fund. The manager of the company presented a claim for loss of salary. The Court dismissed this claim, since the claimant had not provided any evidence of the alleged loss.

At the time of editing the Annual Report, no appeals had been lodged against any of the above three judgements.

A company in Le Croisic in the Department of Loire Atlantique that let and sold pleasure boats and motors, had claimed compensation for reduction in sales in 2000 allegedly caused by the *Erika* incident. Whereas the Fund had accepted that part of the claim relating to the letting of boats, it had rejected the alleged losses relating to sales, on the ground that the sales related to durable goods which, in particular as regards boats, could be deferred following an occurrence like the *Erika* oil spill and that for this reason there was not a sufficient link of causation between the incident and the alleged losses.

In a judgement rendered in December 2004 the Court stated that the losses in respect of the sales would not have occurred if the *Erika* incident had not taken place and that the link between the event that resulted in the losses and the losses had been sufficiently established. The Court expressed the view that the Fund's criteria could contribute to the Court's analysis but were not binding on the Court. The Court appointed an expert with the mandate to assess the losses suffered by the claimant as a result of the incident, taking into account the normal developments in the market. The 1992 Fund will not appeal against the judgement but will follow the work of the expert.

An insurer had made a subrogated claim against the 1992 Fund for €630 000 (£447 000) in respect of a claim it had paid to a group of hotels in La Baule for losses incurred as a result of the cancellation of a major millennium party which was to have taken place on the local beach. This payment had been made pursuant to an insurance policy covering costs incurred in organising the cancelled party. The Municipal Council of La Baule had issued a decree on 27 December 1999 prohibiting all access to the beaches in La Baule, as a result of which the party had to be cancelled. Although the 1992 Fund had considered that the claim was admissible in principle, it had been rejected on the ground that the claimant had not submitted sufficient information enabling the Fund to assess the losses and that the insurer had not taken into account the income received by the hotels for the period of the millennium festivities, which should have been deducted from the losses due to the cancellation of the event.

In a judgement rendered in December 2004 the Court estimated the income over the period of

the millennium festivities at €200 000 (£142 000). The Court ordered the shipowner, Steamship Mutual and the 1992 Fund to pay the insurer the balance of €430 000 (£305 000). The 1992 Fund will appeal against this judgement.

Judgements by the Commercial Court in Vannes

A wholesale business operating from various locations in Brittany supplying bottled drinks to cafés, hotels and campsites (but not directly to tourists), not only in the area affected by the *Erika* oil spill but also in other areas, submitted a claim for loss of revenue. The Fund rejected the claim on the ground that it was a 'second degree tourism claim'. In a judgement rendered in November 2004 the Court upheld the Fund's position, holding that the claimant had failed to show that the reduced turnover was due to the pollution resulting from the *Erika* incident. The claimant has appealed against this judgement.

The owner of a grocery store located 200 metres from the shore in the Department of Morbihan had submitted a claim for loss of revenue and moral damages in respect of stress suffered as a result of the incident. The 1992 Fund had accepted that the claim for loss of revenue was admissible in principle, but for a considerably lower amount than that claimed. The Fund had rejected the claim for moral damages since such claims were not admissible under the Conventions. In a judgement rendered in November 2004 the Court upheld the Fund's assessment of the loss of turnover and agreed with the Fund that the claim for moral damages fell outside the scope of the 1992 Conventions.

The owner of a hotel located in the centre of Vannes had presented a claim for €59 830 (£42 000) for loss of income in 2000. The 1992 Fund had approved the claim for €16 427 (£12 000) and had made a provisional payment to the claimant. The claimant pursued the claim in court for an increased amount of €65 100 (£46 000). In a judgment rendered in December 2004 the Court assessed the loss at €25 546 (£18 000) and ordered the Fund, the shipowner and Steamship Mutual to pay this sum, minus the amount already paid to the claimant. The Fund will not appeal against this judgement.

In December 2004 the Court rendered a judgement in respect of claims for losses suffered in 2000, 2001 and 2002 by the owner of a property in Sarzeau in the Department of Morbihan, located one kilometre from the beach, relating to losses allegedly suffered as a result of the reduction in income from letting the property to tourists.

The 1992 Fund had accepted as admissible in principle the claim relating to the year 2000, but the amount of the losses assessed by the Fund, which was lower than the claimed amount, was not accepted by the claimant. The Court agreed with the Fund's assessment. As regards the claims relating to the years 2001 and 2002, the Fund had rejected the claims on the ground that there was not any reduction in income from letting the property during these years due to the *Erika* incident. Having referred to the Fund's criteria and in particular the requirement of a sufficient link of causation between the contamination and the claimant's losses, the Court stated that the claimant had not demonstrated such a link and rejected the claims.

At the time of editing the Annual Report, the claimant had not appealed against the judgment.

14.4 AL JAZIAH 1

(United Arab Emirates, 24 January 2000)

See pages 62-63.

14.5 SLOPS

(Greece, 15 June 2000)

The incident

The Greek-registered waste oil reception facility *Slops* (10 815 GT) laden with some 5 000 m^3 of oily water, of which 1 000–2 000 m^3 was believed to be oil, suffered an explosion and caught fire at an anchorage in the port of Piraeus

(Greece). An unknown but substantial quantity of oil was spilled from the *Slops*, some of which burned in the ensuing fire.

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

Port berths, dry docks and repair yards to the north of the anchorage were impacted before the oil moved southwards out of the port area and stranded on a number of islands. A local contractor carried out clean-up operations at sea and on shore.

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

The *Slops*, which was registered with the Piraeus Ships' Registry in 1994, was originally designed and constructed for the carriage of oil in bulk as cargo. In 1995 it underwent a major conversion in the course of which its propeller was removed and its engine was deactivated and officially sealed. It was indicated that the purpose of the sealing of the engine and the removal of the propeller was to convert the status of the craft from a ship to a floating oily waste receiving and processing facility. Since the conversion the *Slops* appeared to have remained permanently at anchor at its present location and had been used exclusively as a waste oil storage and processing unit. The local Port Authority confirmed that the *Slops* had been permanently at anchor since May 1995 without propulsive equipment. It was understood that the oil residues recovered from the processed slops were sold as low-grade fuel oil.

In July 2000 the Executive Committee considered the question of whether the *Slops* fell within the definition of 'ship' under the 1992 Civil Liability Convention and the 1992 Fund Convention. The Committee recalled that the 1992 Fund Assembly had decided that offshore craft, namely floating storage units (FSUs) and floating production, storage and offloading units (FPSOs), should be regarded as ships only when they carry oil as cargo on a voyage to or from a port or terminal outside the oil field in which they normally operate. The Committee noted that this decision had been taken on the basis of the conclusions of an Intersessional Working Group that had been set up by the Assembly to study this issue. The Committee also noted that although the Working Group had mainly considered the applicability of the 1992 Conventions in respect of craft in the offshore oil industry, there was no significant difference between the storage and processing of crude oil in the offshore industry and the storage and processing of waste oils derived from shipping. It was further noted that the Working Group had taken the view that in order to be regarded as a 'ship' under the 1992 Conventions, an offshore craft should *inter alia* have persistent oil on board as cargo or as bunkers.

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

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

Legal actions

Proceedings before the Court of first instance

In February 2002 two Greek companies took legal actions in the Court of first instance in Piraeus against the registered owner of the *Slops* and the 1992 Fund claiming compensation for costs of clean-up operations and preventive measures for €1.5 million (£1.1 million) and €787 000 (£557 000) (plus interest), respectively. The companies alleged that they had been instructed by the owner of the *Slops* to carry out clean-up operations and to take preventive

measures in response to the oil spill. The companies stated that they had requested the owner of the *Slops* to pay the above-mentioned costs but that he had failed to do so.

In their pleadings the companies stated that the *Slops* was constructed exclusively to carry oil by sea (ie was constructed as a tanker), that it had a nationality certificate as a vessel and that it was still registered as a tanker with the Piraeus Ships' Registry. They also maintained that even when the *Slops* operated as an oil separation unit (a slops handling unit), it floated at sea and that its only purpose was to carry oil in its hull. They mentioned that the *Slops* did not have any liability insurance under the 1992 Civil Liability Convention. The companies stated that the registered owner had no assets apart from the *Slops*, which had been destroyed by fire and did not even have scrap value. They argued that they had taken all reasonable measures against the owner of the *Slops*, namely legal action against the owner, investigation into the owner's financial situation, requesting the Court to arrest the assets belonging to the owner and that the owner should be declared bankrupt. They maintained that, since the owner was manifestly incapable of satisfying their claims, they were entitled to compensation for their costs from the 1992 Fund.

The Court rendered its judgements on the actions in December 2002.

As regards the actions against the registered owner of the *Slops*, who did not appear at the court hearing, the Court rendered a default judgement against him for the amounts claimed plus interest.

Concerning the actions against the 1992 Fund, the Court held in its judgement that the *Slops* fell within the definition of 'ship' laid down in the 1992 Civil Liability Convention and the 1992 Fund Convention. In the Court's opinion, any type of floating unit originally constructed as a sea-going vessel for the purpose of carrying oil was and remained a ship, although it might subsequently be converted into another type of floating unit, such as a floating oil waste receiving and processing facility, and notwithstanding that it might be stationary or that the engine might have been temporarily sealed or the propeller removed. The Court ordered the 1992 Fund to pay the companies €1.5 million (£1.1 million) and €787 000 (£557 000) respectively, ie the amounts claimed, plus legal interest from the date of service of the writ (12 February 2002) to the date of payment, and costs of €93 000 (£66 000).

Proceedings before the Court of Appeal

In February 2003 the 1992 Fund Executive Committee considered the question of whether to appeal against the judgement. During the discussion a number of delegations pointed out that the decision by the Executive Committee that the *Slops* should not be considered a 'ship' for the purposes of the 1992 Conventions was based on a policy decision by the 1992 Fund Assembly regarding the conditions under which floating storage units should be considered a 'ship' for the purpose of the Conventions, namely only when they were carrying oil in bulk, which implied that they were on a voyage. Those delegations referred to the preamble to the Conventions, which specifically referred to the transportation of oil. The Executive Committee decided that the 1992 Fund should appeal against the judgement.

In its appeal the 1992 Fund argued that the Court of first instance had erroneously considered that the *Slops* was carrying oil at the time of the incident, regarding the mere existence on board of oil residues as 'carriage', ie transportation. It also argued that although the Court had considered that the 2 000 m^3 of oil on board was carried in the sense that it was intended to be transported to the oil refineries, there was no evidence that this would be the case. The Fund drew attention to a document issued by the Ministry of Merchant Marine proving beyond doubt that the *Slops*, which constituted a floating industrial unit for the processing of oil residues and separating them from water, had operated continuously as such a unit from 2 May 1995 and had been permanently anchored since that date without any propulsion equipment. The Fund maintained that the *Slops* had not been intended

to carry oil residues by sea to oil refineries and had never carried out such operations during the time it served as a floating oil residue processing facility, such carriage having been performed by the use of barges owned by third parties, which went alongside the *Slops* to receive the oil residues and transported them to the refineries for further processing. The Fund further argued that the *Slops* did not have the liability insurance required under Article VII.1 of the 1992 Civil Liability Convention and that this requirement had never been imposed by the Greek authorities upon the *Slops*. It was pointed out that the Greek authorities were obliged under Article VII.10 not to permit a vessel flying the Greek flag to carry out commercial activities without such a certificate of insurance. The Fund concluded that in view of these facts, the *Slops* could not be considered to fall within the definition of 'ship' in the 1992 Conventions.

At a hearing in November 2003 the claimants argued that any type of marine craft which by construction was intended to carry oil was considered to be a ship, notwithstanding that it had subsequently undergone conversion, that temporarily its engine had been sealed and its propeller removed. They also argued that the fact that *Slops* was registered at the Piraeus Ships' Registry proved that it was a ship. The claimants maintained that the word 'cargo' was not indicative of the alleged requirement for the ship to be actually carrying oil, as the word was used to distinguish between oil carried as cargo and oil in the ship's tanks. The claimants argued that at the time of the incident the *Slops* actually had waste residue remaining on board from its last journey as a tanker in 1995. The point was made that the existence of insurance was not a condition for the *Slops* to be considered a ship. It was further stated that the United Nations Law of the Sea Convention, the principal objective of which was the protection of the marine environment, provided a framework for the 1969 Civil Liability Convention calling for an interpretation compatible with this principal objective. It was argued by the claimants that they had become aware of the registered owner's poor financial state after the clean-up work had progressed considerably and that in any case they could have been accused of contributing to the damage to the environment had they not completed the clean-up operations. The claimants also argued that the fact that the 1992 Fund had arranged for two technical experts to travel to Greece and to report on the incident had led them to believe that the 1992 Fund was prepared to grant compensation.

The 1992 Fund drew the Court's attention to Resolution N°8 adopted in May 2003 by the Administrative Council in which the Council expressed the view that the courts of States Parties to the 1992 Conventions should take into account the decisions of the governing bodies of the 1992 Fund and the 1971 Fund relating to the interpretation and application of the Conventions.

The Court of Appeal rendered its judgement in February 2004. The Court held that the *Slops* did not meet the criteria required by the 1992 Civil Liability Convention and the 1992 Fund Convention and rejected the claims. The Court interpreted the word 'ship' as defined in Article I.1 of the 1992 Civil Liability Convention as a seaborne unit which carries oil from place A to place B.

The Court of Appeal took into consideration evidence submitted by the Fund, which clearly showed that, at the time of the incident, the *Slops* did not operate as a seagoing vessel or a floating unit for the purpose of transporting persistent oil in its tanks. The Court accepted the Fund's position that the *Slops*, which had originally been built as a tanker, had performed its last voyage as an oil-carrying vessel in 1994. The Court also noted that the *Slops* had been subsequently sold to Greek interests, who had converted it into a floating waste oil storage and processing unit and to this effect had removed its propeller and sealed its engine and that the Piraeus Central Port Authority had confirmed that the *Slops* had remained permanently at anchor since May 1995 without propulsive equipment. The Court also referred to the fact that the relevant Greek authorities had not required that the *Slops* be insured in accordance with Article VII.1 of the 1992 Civil Liability

Convention and that this also indicated that the *Slops* could not be considered as a 'ship' under the 1992 Conventions.

Proceedings before the Supreme Court
The claimants appealed to the Supreme Court.

In the pleadings before the Supreme Court, the claimants have argued that the *Slops*, which by its construction had all the characteristics of a vessel carrying oil, was anchored and used as a floating receiving and separating unit of oil products transferred from other vessels. They have also stated that as a result of fire, a large quantity of oil loaded in bulk as cargo in the vessel's cargo tanks was spilled. The claimants have maintained that the Court of Appeal made an incorrect interpretation of the definition of 'ship' in the 1992 Civil Liability Convention. In the claimant's view, it was clear that the wording of the definition and its purpose was not only to prevent pollution but also to compensate victims of oil pollution and those who contribute to prevention of such pollution.

The claimants have further maintained that the definition of 'ship' covered also a craft which by its construction was designed to carry oil and which at the time of the incident did not perform voyages and (for a brief or longer period of time) was stationary, operating as a receiving and separating unit for oil or oily residues and carrying oil in its cargo tanks. This was in the claimant's view particularly so when the craft had oily residues from the carriage on board and constituted a high risk of causing pollution in vital areas such as ports. The claimants have also maintained that the Court of Appeal had considered an issue that was not pleaded, holding that it could not support the view that there were oil residues from the *Slops*' last voyage at the time of the incident. They have also argued that the definition of 'ship' introduced a rebuttable presumption that there were residues on board, but that the Fund had not rebutted this presumption.

In their pleadings to the Supreme Court, the claimants suggested that the Court of Appeal judgement lacked proper legal foundation and contained insufficient reasoning.

The Fund's lawyers in Greece advised that the claimants' objections as to the Court of Appeal's evaluation of the evidence was not a question of law and that under the Greek Code of Civil Procedure, the Supreme Court does not re-consider the evaluation of evidence unless the Court of Appeal's finding is vague or unclear which was not the case in respect of the *Slops* incident.

The 1992 Fund intends to submit pleadings to the Supreme Court in early 2005 maintaining that the Court of Appeal had interpreted the definition of 'ship' correctly and that the appeal should be dismissed. The Fund will reiterate the point made to the Court of Appeal that it was not possible that the residues from previous voyages had remained onboard in view of the fact that the *Slops* had been converted to a floating oil recovery facility. The Fund will also maintain that in any event the alleged rebuttable presumption would not apply in this case. In addition, the Fund will draw the Supreme Court's attention to the above-mentioned Resolution N°8.

14.6 INCIDENT IN SWEDEN

(Sweden, 23 September 2000)

The incident

Between 23 September and early October 2000 persistent oil landed on the shores of Fårö and Gotska sandön, two islands to the north of Gotland in the Baltic Sea, and thereafter on several islands in the Stockholm archipelago. The Swedish Coastguard, the Swedish Rescue Service Agency and local authorities undertook clean-up operations, which resulted in the collection of some 20 m^3 of oil from the sea and from the shore.

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

Coastguard, analyses of oil samples from the polluted islands matched those of samples taken from the *Alambra*.

The *Alambra* was entered in the London Steam-Ship Owners' Mutual Insurance Association Ltd (London Club). The shipowner and the insurer have maintained that the oil did not originate from the *Alambra*.

Limitation of liability

The limitation amount applicable to the *Alambra* under the 1992 Civil Liability Convention is 32 684 760 SDR (£26.4 million).

Claims for compensation

The Coastguard incurred costs in respect of clean-up operations totalling SEK 1.1 million (£86 000). The Rescue Service Agency, together with local authorities, incurred clean-up costs totalling SEK 4.1 million (£321 000). The aggregate amount of the claims would therefore fall well below the limitation amount applicable to the *Alambra*.

The Swedish authorities informed the 1992 Fund that they intended to submit their claims for compensation to the shipowner. The authorities further indicated that if they were to be unsuccessful in obtaining compensation from the shipowner, they would consider claiming against the Fund. However, in order to be able to obtain compensation from the 1992 Fund, the authorities would have to prove that the damage resulted from an incident involving a ship as defined in the 1992 Civil Liability Convention.

The Swedish authorities have made available to the 1992 Fund the results of analyses carried out by the Swedish Forensic Laboratory of samples of oil carried on board the *Alambra* and of samples of oil found on several Swedish islands. The Fund examined the results of the analyses and concurs with the conclusion of the authorities that the pollution samples match closely those taken from the *Alambra*.

Imposition of fine on the shipowner

The Swedish Coastguard imposed a water pollution fine of SEK 439 000 (£34 000) on the owner of the *Alambra* under the 1980 Act on Measures Against Pollution from Ships.

The shipowner appealed against this decision to the Stockholm District Court. The owner requested that the District Court should annul the Coastguard's decision on the grounds that the Swedish authorities did not have jurisdiction to impose a water fine in this case, since the alleged discharge was made by a foreign vessel and took place in the Swedish Exclusive Economic Zone (EEZ) and the fine was imposed after the *Alambra* had left that zone. The owner requested subsidiarily that the case should be dismissed since there had been no discharge of oil from the *Alambra*.

In a decision rendered in July 2002 the District Court considered the first ground invoked by the shipowner, namely that the case should be dismissed on the grounds that the Swedish authorities did not have jurisdiction to impose a water fine in respect of the discharge in question. The Court rejected the shipowner's request for dismissal on this ground.

In September 2002 the Stockholm Court of Appeal upheld the District Court's decision. The shipowner lodged an appeal against this decision and in May 2003 the Supreme Court granted the shipowner the right to bring the matter before it.

The Supreme Court ruled that the Swedish Coastguard had jurisdiction to impose a water pollution fine on a foreign flag vessel causing pollution in the Swedish EEZ, and that this would be the case even if the vessel in question had not been boarded or detained in the Swedish EEZ or Swedish territorial waters. The Supreme Court further ruled that the exercise of such jurisdiction was not in conflict with Sweden's international obligations.

Legal actions against the shipowner/Club and the Fund

In September 2003 the Swedish Government took legal action in the Stockholm District Court against the shipowner and the London Club maintaining that the oil in question

originated from the *Alambra* and claiming compensation of SEK 5 260 364 (£412 000) for clean-up costs. The Government also took legal action against the 1992 Fund as a protective measure to prevent its claim against the Fund becoming time-barred. The Government invoked the liability of the 1992 Fund to compensate the Government if neither the shipowner nor the London Club were to be held liable to pay compensation.

The 1992 Fund submitted its response to the Court in October 2003 requesting that the action against the Fund should be suspended until the final judgement had been rendered in respect of the action against the shipowner and his insurer. The Fund informed the Court that it shared the Swedish Government's view that the *Alambra* was the most likely source of the pollution.

The District Court decided that the action against the Fund should be suspended until the action against the shipowner/London Club had been heard.

In February 2004, the shipowner and the London Club submitted pleadings in which they rejected the Government's claim, maintaining that no evidence had been provided showing that the oil that polluted the islands originated from the *Alambra*. They submitted evidence from experts from Heriot Watt University and AEA Technology in the United Kingdom who had carried out a comparative analysis of the oil samples taken from the Swedish coast and from the *Alambra*. The experts expressed the view that the conclusion by the Swedish Forensic Laboratory that the samples taken from the vessel corresponded to those taken from the Swedish Court was erroneous. The experts argued that the pollution and ship samples showed differences in the relative distribution of a group of polynuclear aromatic hydrocarbons (PAHs) and that the ship samples contained a group of PAHs characteristic of fuel oil, which was not found in the pollution samples. The experts concluded that the pollution samples had the characteristics of crude oil whereas the ship samples were more typical of a mixture of crude oil and fuel oil.

In October 2004 the Swedish authorities submitted its response to the pleadings by the shipowner and the London Club. The authorities argued that the pollution samples and the ship samples were very similar as regards the distribution of PAHs and that the absence of the PAHs characteristic of fuel oil in the pollution samples could be explained by weathering of the oil after it had been discharged. The authorities further pointed out that if the pollution samples had been crude oil and the ship samples had been a mixture of both crude oil and fuel oil, there would have been many more, and marked, differences between the oils than those demonstrated by the analysis.

The 1992 Fund examined the evidence presented by the shipowner/London Club and the Swedish authorities. The Fund considered that the differences in the hydrocarbon profiles of the pollution and ship samples were very slight and were probably due to methodological and instrumental fluctuations rather than being indicative of differences in the samples. The Fund also considered that the hydrocarbon profiles of both the pollution and ship samples strongly suggested that they were crude oil rather than fuel oil. The Fund therefore concluded that there were no grounds for disagreeing with the findings of the Swedish authorities that the pollution samples originated from the *Alambra*.

The Court is expected to render its judgement in early 2005.

14.7 ZEINAB

(United Arab Emirates, 14 April 2001)

See pages 66-67.

14.8 PRESTIGE

(Spain, 13 November 2002)

The incident

On 13 November 2002 the Bahamas registered tanker *Prestige* (42 820 GT), carrying 76 972

Coastlines of Spain, France and the United Kingdom were affected to varying degrees by the Prestige incident

tonnes of heavy fuel oil, began listing and leaking oil while some 30 kilometres off Cabo Finisterre (Galicia, Spain). On 19 November, whilst under tow away from the coast, the vessel broke in two and sank some 260 kilometres west of Vigo (Spain), the bow section to a depth of 3 500 metres and the stern section to a depth of 3 830 metres. The break-up and sinking released an estimated 25 000 tonnes of cargo. Over the following weeks oil continued to leak from the wreck at a declining rate. It was subsequently estimated by the Spanish Government that approximately 13 800 tonnes of cargo remained in the wreck.

Due to the highly persistent nature of the *Prestige*'s cargo, released oil drifted for extended periods with winds and currents, travelling great distances. The west coast of Galicia (Spain) was heavily contaminated and oil eventually moved into the Bay of Biscay affecting the north coast of Spain and France. Traces of oil were detected in the United Kingdom (the Channel Islands, Isle of Wight and Kent).

Major clean-up operations were carried out at sea and on shore in Spain. Significant clean-up operations were also undertaken in France. Clean-up operations at sea were undertaken off Portugal.

For details of the clean-up operations and the impact of the spill reference is made to the Annual Report 2003, pages 105-109.

The *Prestige* was entered with the London Steamship Owners' Mutual Insurance Association (London Club).

Removal of the oil from the wreck

An International Technical Committee was set up by the Spanish Government under the co-ordination of the Spanish oil company Repsol YPF to consider possible methods of removing the oil from the wreck.

In December 2003, following trials in the Mediterranean and subsequently on the wreck site, the Spanish Government decided that the cargo remaining in the wreck should be removed using aluminium shuttle containers filled by gravity through holes cut in the tanks. A contract to remove the remaining oil from the *Prestige* was signed between the Spanish Government and

Repsol YPF. The removal of the oil, which commenced in May 2004, was finalised in September 2004. Some 13 000 tonnes of cargo were removed from the forepart of the wreck. Approximately 700 tonnes were left in the aft section, which was treated with biological agents aimed at accelerating the degradation of the oil.

The Spanish Government has estimated that the cost of the work was some €100 million (£71 million).

Claims Handling Offices

In anticipation of a large number of claims, and after consultation with the Spanish and French Authorities, the London Club and the 1992 Fund established Claims Handling Offices in La Coruña (Spain) and Bordeaux (France).

Shipowner's liability

The limitation amount applicable to the *Prestige* under the 1992 Civil Liability Convention is approximately 18.9 million SDR or €22 777 986 (£16 million). On 28 May 2003 the shipowner deposited €22 777 986 with the Criminal Court in Corcubión (Spain) for the purpose of constituting the limitation fund.

Maximum amount available under the 1992 Fund Convention

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

Applying the principles laid down in the *Nakhodka* case, the Executive Committee decided in February 2003 that the conversion in the *Prestige* case should be made on the basis of the value of that currency *vis-à-vis* the SDR on the date of the adoption of the Committee's Record of Decisions of that session, ie 7 February 2003. As a result 135 million SDR corresponds to €171 520 703 (£121.4 million).

Level of payments

Consideration by the Executive Committee in May 2003

Unlike in previous cases, the insurer of the *Prestige* (the London Club) decided not to make individual compensation payments up to the shipowner's limitation amount following legal advice that if the Club were to make payments to claimants in line with past practice, it was likely that these payments would not be taken into account by the Spanish courts when the shipowner set up the limitation fund, with the result that the Club could end up paying twice the limitation amount.

At its May 2003 session the Executive Committee decided that the 1992 Fund's payments should for the time being be limited to 15% of the loss or damage actually suffered by the respective claimants as assessed by the experts engaged by the Fund and the London Club. The Committee further decided that the 1992 Fund should, in view of the particular circumstances of the *Prestige* case, make payments to claimants, although the London Club would not pay compensation directly to them.

Consideration by the Executive Committee in October 2003 and February 2004

At its October 2003 and February 2004 sessions the Executive Committee decided that, in view of the remaining uncertainties as to the level of admissible claims, the level of payments should be maintained at 15%.

Consideration by the Executive Committee in May 2004

At the Executive Committee's May 2004 session, the Spanish Government estimated the total damage in Spain to be €834.8 million (£591 million). The overall losses in France were estimated by the French Government to be in the range of €145.2 to €202.3 million (£103 to £143 million), although the maximum losses were expected to be around €176 million

(£125 million). The Portuguese delegation indicated that the total amount of the damage in Portugal was some €3.3 million (£2.3 million).

In view of the figures provided by the Governments of the three States concerned and the remaining uncertainties as to the level of admissible claims, the Executive Committee decided to maintain the current level of payments at 15% of the loss or damage suffered by the respective claimants.

Review by the Executive Committee of the level of payments at the October 2004 session

At the October 2004 session of the Executive Committee the delegations of Spain and France reported that they had held consultation meetings on the handling of the *Prestige* case in order to explore the possibilities of improving the settlement of claims. Those delegations expressed the view that the compensation level of 15% had left the victims in an unsatisfactory situation.

The Spanish delegation stated that, as a result of the arrangement put in place to compensate victims, the Spanish administration had been directly affected by the low level of payments since it had incurred very considerable expenditure to combat the effects of the incident and provide compensation to the victims.

The French delegation stated that in France the announcement of the 15% level, which was the lowest in the history of the 1971 and 1992 Funds, had triggered reactions of incomprehension and hostility towards the international system. In the French delegation's view, despite the losses observed, the small number of claims submitted could be explained by the fact that, for many businesses, a 15% compensation level did not cover the extra cost of submitting a claim for compensation and the time spent answering subsequent queries from the experts.

It was stated that both Governments considered that increasing the compensation level should be a priority for the 1992 Fund for the coming year, particularly with the approaching three-year time bar on claims. In these Governments' view, in order to enable the victims who had not yet done so to submit a claim in time, it was necessary to send them a clear message so that they could judge, by reference to the financial loss they considered they had suffered and to what might be recovered, whether or not to take legal action before November 2005. Both delegations stated that the claimants should be made aware as soon as possible of the possibility of being compensated, for it would be particularly damaging for the image of the Fund if any significant increases in the level of payments were to be decided after the expiry of the time bar period, leaving a number of victims without any possibility of taking appropriate action.

The Spanish and the French delegations urged the Fund to take all necessary steps for the expeditious handling of the claims received (which represented a significant proportion of each State's estimated losses) in order to be able to determine realistically the possibility of increasing the level of compensation payments at the next session of the Committee and that to this end, they had renewed their undertaking to provide the Fund's experts with such explanations as they may need.

The Director stated that on the basis of the figures presented by the Governments of the three countries affected by the incident, the potential total claims exposure was some €1 038 million (£735 million) and that it was therefore, in his view, not possible to increase the level of payments beyond 15% at this stage. He pointed out that, in accordance with the position taken by the IOPC Funds' governing bodies, the level of payments would have to be determined in the light of the potential exposure of the 1992 Fund and not on the basis of the Fund's assessment of the claims.

A number of delegations stated that whilst they agreed that the current level of payment of 15%, the lowest in the Funds' history, was most unfortunate for claimants, the 1992 Fund had

no option but to maintain it at this level for the time being, but that it should be kept under review at every available opportunity.

In view of the remaining uncertainties as to the level of admissible claims, the Executive Committee decided to maintain the current level of payments at 15% of the loss or damage suffered by the respective claimants.

Claims for compensation

Spain
As at 31 December 2004 the Claims Handling Office in La Coruña had received 700 claims totalling €711 million (£501 million). These include a claim for €132 million (£93.5 million) from a group of 58 associations from Galicia, Asturias and Cantabria representing 13 600 fishermen and shellfish harvesters and four claims from the Spanish Government. The first claim from the Spanish Government was for €383.7 million (£272 million), submitted in October 2003, the second for €44.6 million (£32 million), submitted in January 2004, and the third for €85.5 million (£60.5 million), submitted in April 2004. A fourth claim was submitted in December 2004 for €46.5 million (£33 million). The claims by the Spanish Government relate to costs incurred until the end of April 2004 in respect of at sea and onshore clean-up operations, compensation payments to fishermen and shellfish harvesters, tax relief for businesses affected by the spill, administration costs and costs relating to publicity campaigns. One of the items claimed related to clean-up operations in the Atlantic National Park, amounting to €11.9 million (£8.4 million). This item has been withdrawn since funding for these operations has been obtained from another source.

The table below provides a breakdown of the different categories of claims received by the Claims Handling Office in La Coruña.

The first claim received from the Spanish Government was assessed on an interim basis by the Director in December 2003 at €107 million (£76 million). As regards payments to the Spanish Government, see below.

Since December 2003, a number of meetings have been held with representatives of the Spanish Government and a considerable amount of further information has been provided in support of its claims. Cooperation with representatives of the Spanish Government is continuing and progress is being made on the assessment of all four of the claims submitted by the Government. Discussions are being held to explore ways of speeding up the examination of the large volume of documents relating to the onshore clean-up operations.

Three hundred and fifty-three other claims totalling €18 million (£12.6 million) have been assessed at €2 million (£1.4 million). Many of the remaining claims lack sufficient supporting documentation and such documentation has

Category of claim (Spain)	No. of claims	Amount claimed €
Property damage	224	2 414 473
Clean-up	16	4 161 279
Mariculture	12	8 026 408
Fishing and shellfish gathering	145	134 263 917
Tourism	10	612 472
Fish processors/vendors	247	12 173 669
Miscellaneous	42	1 202 436
Spanish Government	4	548 392 876
Total	**700**	**711 274 529**

been requested from the claimants. Interim payments totalling €18 081 (£12 820) have been made at 15% of the assessed amounts in respect of 38 of the assessed claims[7]. One hundred and twenty claims have been rejected, the majority because the claimant has not demonstrated that a loss had been suffered. The remaining claims await a response from the claimants or are being reexamined following claimants' disagreement with the assessed amount.

France

By 31 December 2004, 377 claims totalling €92.1 million (£65.2 million) had been received by the Claims Handling Office in Bordeaux. The table below provides a breakdown of the different types of claims.

Of the 377 claims submitted to the Claims Handling Office, 233 (62%) had been assessed by 31 December 2004. Payments totalling €160 000 (£110 000) had been made corresponding to 15% of the approved amount in respect of 43 claims.

One hundred and fourteen oyster farmers based in the Arcachon basin near Bordeaux submitted claims totalling €1 million (£848 000) for losses allegedly suffered as a result of market resistance due to the pollution. The experts engaged by the London Club and the 1992 Fund have examined these claims. Eighty-four of these claims totalling €539 000 (£380 000) have been assessed at €179 000 (£126 000). The experts appointed by the London Club and 1992 Fund are examining the remaining 30 claims.

The Claims Handling Office has received 149 tourism-related claims totalling €15.4 million (£10.9 million). Eighty-six of these claims have been assessed at a total of €3.8 million (£2.7 million).

In May 2004, the French Government submitted a claim for €67.5 million (£48 million) in relation to the costs incurred for clean-up and preventive measures. Experts appointed by the 1992 Fund and the London Club are assessing this claim. In October 2004 representatives of the Fund and the Fund's experts met with representatives of the French Government to discuss the assessment process and what further information was required for the assessment to be completed.

A further 31 claims, totalling €6.1 million (£4.3 million), have been submitted by local authorities for costs of clean-up operations. Ten of these claims have been assessed at €116 000 (£82 000).

Portugal

The Portuguese Government has submitted a claim for €3.3 million (£2.3 million) in respect of clean-up and preventive measures. A meeting was held in July 2004 between representatives of the 1992 Fund and representatives of the

Category of claim (France)	No. of claims	Amount claimed €
Property damage	9	87 772
Clean-up	31	6 100 456
Mariculture	118	1 638 646
Shellfish gathering	3	116 810
Fishing boats	51	780 302
Tourism	149	15 403 598
Fish processors/vendors	6	276 200
Miscellaneous	9	236 947
French Government	1	67 499 154
Total	**377**	**92 139 885**

[7] *Compensation payments made by the Spanish Government to claimants have been deducted when calculating the interim payments.*

Government departments involved. As a result of that meeting, the Portuguese Government has undertaken to provide additional information in support of its claim.

Payments and other financial assistance by the Spanish Authorities

The Spanish Government and regional authorities made payments of €40 (£28) per day to all those directly affected by the fishing bans. These included shellfish harvesters, inshore fishermen and associated onshore workers with a high dependence on the closed fisheries, such as fish vendors, fishing net repairers and employees of fishing co-operatives, fish markets and ice factories. Some of these payments have been included in subrogated claims by the Spanish authorities pursuant to Article 9.3 of the 1992 Fund Convention, and it is expected that further subrogated claims will be presented.

The Spanish Government has also provided aid to other individuals and businesses affected by the oil spill in the form of loans, tax relief and waivers of social security payments.

In June 2003 the Spanish Government adopted legislation in the form of a Royal Decree (Real Decreto-Ley) making available €160 million (£113 million) to compensate in full the victims of the pollution. To receive compensation the claimants had to submit their claims by 31 December 2003, had to renounce the right to claim compensation in any other way in relation to the *Prestige* incident and transfer their rights of compensation to the Spanish Government. The Decree provides that the assessment of claims will be made following the criteria used to apply the 1992 Civil Liability and Fund Conventions.

In July 2004 another Royal Decree increased the funds available for compensation to €249.5 million (£177 million). In addition, the Decree extended the period in which persons in the fishing, shellfish harvesting and aquaculture sectors could claim for losses suffered directly as a result of the incident to include 2004. The funds available for compensation of losses occurring during 2004 are limited by the Decree to €3 million (£2.1 million). Claimants are required to submit claims for such losses by 31 March 2005.

At the February 2004 session of the Executive Committee the Spanish delegation mentioned that the Spanish Government had received almost 29 000 claims for compensation from victims of the *Prestige* incident who wished to use the payment mechanism set out in the first Royal Decree. It was also mentioned that of those claims, some 22 800 related to groups of workers in the fisheries sector which would be assessed by means of a system using either objective estimates or a scale. It was stated that some 5 000 claims of other groups would be subject to individual assessments.

The Spanish Government has informed the 1992 Fund that under the system for dealing with the claims in the fisheries sector the assessment was made by applying formulas which took into account factors such as size of fishing vessels, the number of crew and the duration of the fishing ban. According to information provided by the Spanish Government in August 2004, agreements had been reached with the great majority of the workers in that sector and payments totalling some €75 million (£51 million) had been made to them under the Royal Decrees.

The 1992 Fund has been informed that claims by 3 638 persons made under the Decrees will be subject to individual assessment by the Consorcio de Compensación de Seguros (the Consorcio), a state-owned insurance organisation set up to pay claims for damage not normally covered by commercial insurance policies, such as damage due to terrorist activity or natural disasters.

Since the Royal Decrees provide that the assessment of claims will be made following the criteria used to apply the 1992 Civil Liability and Fund Conventions, meetings have been held between representatives of the Consorcio and of the 1992 Fund to discuss the criteria. The

Category of claim to be assessed by the Consorcio	No. of claims	No. of claimants
Mariculture (property damage and loss of income)	30	1 910
Fishing (property damage and loss of income)	55	737
Fish & shellfish vendors (loss of income)	366	412
Fish & shellfish processors (loss of income)	62	86
Other business (loss of income)	143	157
Employees fisheries sector (loss of income)	76	214
Tourism (loss of income)	18	18
Land (damage and loss of income during clean-up operations)	71	71
Property damage	10	13
Miscellaneous	18	20
Total	**849**	**3 638**

Consorcio has provided details of the claims submitted, as detailed in the table above.

Experts appointed by the Consorcio and the experts appointed by the London Club and the 1992 Fund will carry out joint assessments of these claims.

Payments and other financial assistance by the French Authorities

The French Government has introduced a scheme to provide payments in excess of the amounts paid by the 1992 Fund to claimants in the fishery and shellfish harvesting sectors who made a request to that effect by 13 December 2004. The Government will subrogate the rights of the claimants against the London Club and the 1992 Fund up to the amounts paid.

The Government set up a Commission to administer the scheme and determine the amount to be paid to each claimant. The Commission decided that as regards claims where an agreement as to the quantum had been reached between the claimant and the London Club and the 1992 Fund, the Commission would pay 85% of the agreed amount. In cases where no agreement as to the quantum has been reached, the Commission determines the losses and the amount to be paid.

The Government has approved payments to 175 claimants for a total amount of €1.15 million (£800 000) and the payments will be made in early 2005.

Payments to the Spanish Government

At the Executive Committee's October 2003 session the Spanish delegation proposed that the 1992 Fund should, subject to certain safeguards, make advance payments on account to the Spanish Government and the Governments of other affected States which wished to receive such advance payments. In view of importance of the issue and the ramifications involved, the Executive Committee decided to refer the matter to the Assembly.

Taking into account the exceptional circumstances of the *Prestige* incident, the Assembly decided as follows:

- The Assembly authorised the Director, subject to a general assessment by the Director of the total of the admissible damage in Spain arising from the *Prestige* incident, to make a payment of the balance between 15% of the assessed amount of the claim submitted on 2 October 2003 and 15% of that claim as submitted (15% of €383.7 million = €57 555 000), subject also to the Spanish Government providing

a guarantee from a financial institution, not from the Spanish State, which would have the financial standing laid down in the 1992 Fund's Internal Investment Guidelines so as to protect the 1992 Fund against an overpayment situation.

- The Assembly decided that such a guarantee should cover the difference between 15% of the assessed amount of the claim submitted on 2 October 2003 and 15% of that claim as submitted (15% of €383.7 million = €57 555 000). Further, it was decided that the terms and conditions of the guarantee should be to the satisfaction of the Director.

The Assembly decided that the Executive Committee should review, at its next session, the payments made. It was also decided that if the payment amount was reduced by the Committee, the difference should be repaid by the Spanish Government.

It was further decided that if any other State having suffered losses relating to the *Prestige* incident were to seek the same solution for payments on the same terms, such a request should be submitted to the Executive Committee.

With the assistance of a number of experts, the Director made an interim assessment of the Spanish Government's claim. On the basis of the documentation provided, he arrived at a preliminary assessment of €107 million and on that basis the 1992 Fund made a payment of €16 050 000 (£11.1 million), corresponding to 15% of the interim assessment.

In addition, the Director, with the assistance of a number of experts, also carried out a general assessment of the total of the admissible damage in Spain, and concluded that the admissible damage would be at least €303 million.

On that basis, and as authorised by the Assembly, the Director made an additional payment of €41 505 000 (£28.8 million), corresponding to the difference between 15% of €383.7 million or €57 555 000 and 15% of the preliminarily assessed amount of the Government's claim, €16 050 000. That payment was made against the provision by the Spanish Government of a bank guarantee covering the above-mentioned difference (ie €41 505 000) from the Instituto de Credito Oficial, a Spanish bank with high standing in the financial market, and an undertaking by the Spanish Government to repay any amount of the payment decided by the Executive Committee or the Assembly.

The payment to the Spanish State totalling €57 555 000 (£39 914 906) was made on 17 December 2003.

Investigations into the cause of the incident

An investigation into the cause of the incident has been carried out by the Bahamas Maritime Authority (ie the authority of flag State). The report of the investigation was published in November 2004 and is being examined by the 1992 Fund.

The Criminal Court in Corcubión in Spain is carrying out an investigation into the cause of the incident in the context of criminal proceedings. The Court is investigating the role of the master of the *Prestige*, of a civil servant who was involved in the decision not to allow the ship into a port of refuge in Spain and a manager of the ship's management company.

The Permanent Commission of Investigation of Maritime Incidents, under the authority of the Spanish Ministry of Infrastructure and Public Works, is gathering the necessary information to be able to issue a report on the *Prestige* accident.

As regards France, an examining magistrate in Brest is carrying out a criminal investigation into the cause of the incident.

The 1992 Fund continues to follow the ongoing investigations through its Spanish and French lawyers.

Following the Prestige incident, rocky cliffs presented access problems for oil removal

Court actions

Spain

Some 2 000 claimants have joined the legal proceedings before the Criminal Court in Corcubión (Spain). No details of the losses have been provided to the Court. One hundred and forty-nine of these claimants have submitted claims to the Claims Handling Office in La Coruña. It is expected that some of these claimants who have settled with the Spanish Government under the Royal Decrees will withdraw their claims from the court proceedings.

In July 2004 the Spanish Government submitted a request to the Court in Corcubión for the release to it of the €22 777 986 (£16.1 million) deposited with the Court for the purpose of constituting the limitation fund. In its request the Spanish Government argued that the Court should release this amount to it since it was paying compensation to the victims of the spill.

The 1992 Fund and other parties in the legal proceedings before the Court in Corcubión submitted pleadings opposing the request. In its pleadings the 1992 Fund argued that, in accordance with the 1992 Civil Liability Convention, the limitation fund should be distributed by the Court between all claimants who were entitled to obtain compensation for pollution damage in proportion to their established claims. The Fund pointed out that the incident also impacted France and Portugal and that victims of pollution damage in those countries were entitled to a proportion of the limitation fund.

In July 2004 the Court in Corcubión rejected the Spanish Government's request on procedural grounds. The Spanish Government appealed against this decision but on 4 October 2004 the appeal was withdrawn.

France

At the request of a number of communes, the Administrative Court in Bordeaux appointed experts to establish the extent of the pollution at various locations in the affected area.

In July 2003 five oyster farmers commenced summary proceedings against the shipowner, the

London Club and the 1992 Fund before the Commercial Court in Marennes d'Oleron requesting provisional payments of amounts totalling approximately €400 000 (£283 000). In July 2004, the Court rendered a summary judgement in which it rejected the request on the grounds that the claimants had not provided sufficient evidence to justify summary proceedings. In its judgement, the Court invited the claimants to submit their claims to the Claims Handling Office in Bordeaux.

United States

The Spanish State has taken legal action against the American Bureau of Shipping (ABS), the classification society of the *Prestige*, before the Federal Court of first instance in New York (the New York Court) requesting compensation for all damage caused by the incident, estimated initially to exceed US$700 million (£365 million) and estimated later to exceed US$1 000 million (£520 million). The Spanish State has maintained *inter alia* that ABS had been negligent in the inspection of the *Prestige* and had failed to detect corrosion, permanent deformation, defective materials and fatigue in the vessel and had been negligent in granting classification.

ABS denied the allegation made by the Spanish State and in its turn took action against the State, arguing that if the State suffered damage this was caused in whole or in part by its own negligence. ABS made a counterclaim and requested that the State should be ordered to indemnify ABS for any amount that ABS may be obliged to pay pursuant to any judgement against it in relation to the *Prestige* incident. The New York Court dismissed the counterclaim by ABS on the ground that the Spanish State was entitled to sovereign immunity. ABS is seeking reconsideration by the Court or permission to appeal.

Regional authorities of the Basque Region (Spain) took legal action against ABS in the Federal Court of first instance in Houston, Texas, claiming compensation for clean-up costs and payments made to individuals and businesses for US$50 million (£26 million). The authorities argued *inter alia* that ABS had been in breach of its duty to inspect the *Prestige* adequately and had classified the vessel as seaworthy when it was not. This legal action has been transferred to the New York Court dealing with the claim by the Spanish State referred to above.

Recourse action by the 1992 Fund against ABS

At its October 2004 session the Executive Committee considered whether the 1992 Fund should take recourse action against the American Bureau of Shipping (ABS).

The policy of the IOPC Funds in respect of recourse actions as laid down by the Assemblies can be summarised as follows:

> The policy of the Funds is to take recourse action whenever appropriate. The Funds should in each case consider whether it would be possible to recover any amounts paid by them to victims from the shipowner or from other parties on the basis of the applicable national law. If matters of principle are involved, the question of costs should not be the decisive factor for the Funds when considering whether to take legal action. The Funds' decision 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.

In previous cases the IOPC Funds had normally not taken decisions as to whether to pursue recourse actions until the investigations into the cause of the incident by the competent authorities had been completed or the Funds had been able to receive sufficient information in this respect by other means. In some cases, eg the *Erika* incident, the Fund had taken action at an early stage to prevent a recourse action becoming time-barred.

In the case of the *Prestige* incident the 1992 Fund had so far not been able to obtain any detailed information as to the cause of the incident and the investigations carried out in Spain and France had not been completed. The Director had therefore not been able to take a final view

as to whether the 1992 Fund should pursue recourse actions in relation to the incident and, if so, against which parties. Since the Spanish State and the Basque Region had taken action against ABS, he considered that it would be advisable for the Executive Committee to consider at this stage whether the 1992 Fund should also take action against ABS.

In the Director's view there were two main options for the 1992 Fund in respect of choice of jurisdiction, namely the United States, where the defendant was incorporated, and Spain where the major part of the pollution damage occurred. Although it might be possible to take such action in France, Portugal or the United Kingdom, which had also been affected by the incident, the Director did not consider it appropriate or worthwhile for the Fund to take action in these jurisdictions.

The Director had submitted to the Executive Committee a document in which he had made a thorough analysis of both procedural and substantive issues that had to be considered in this context. The Director made the point that in considering whether to take recourse action against ABS, the Executive Committee might wish to address what was the main purpose of the 1992 Fund's taking such an action, ie to make a recovery of a significant part of the amount paid (and to be paid) by the Fund in compensation or to demonstrate that it wished to contribute to the safety of navigation.

Executive Committee's considerations

As regards the United States, the 1992 Fund would be pursuing an action in a jurisdiction of a non-Member State where litigation was very expensive and where there would be considerable uncertainty as to the likelihood of success. The Committee noted, however, that the Fund would, through the discovery process, have access to documents which might provide crucial evidence on which to base the action and that it would be relatively easy to enforce a judgement against ABS's assets.

According to the advice of the Fund's American lawyers, it was unlikely that an action by the 1992 Fund against ABS in the United States could be suspended pending the results of the investigations into the cause of the incident or the outcome of the action by the Spanish State against ABS and that, therefore, if the Fund were to commence action in the United States, it would incur considerable legal costs from the outset. Once an action had been taken by the 1992 Fund against ABS in the United States it would, according to the advice of the Fund's American and Spanish lawyers, not normally be possible for the Fund to withdraw that action and commence new proceedings in Spain.

With respect to an action in Spain, the Fund's Spanish lawyers had advised that it was likely that such an action would be suspended until the criminal proceedings were terminated by a final judgement, that in Spain there were only limited possibilities of getting access to documents in the possession of the defendant and that it might be more difficult to enforce a favourable Spanish court judgement against ABS's assets in the United States.

As regards the likelihood of the courts holding ABS liable to the Fund, the jurisprudence in respect of compensation actions outside contractual or quasi-contractual relations was not favourable to the 1992 Fund, neither in the United States nor in Spain, and an action by the Fund would clearly relate to an extra-contractual situation.

However, in recent years the question of safety of navigation had become a major issue and that it was therefore possible that the courts, in particular European courts, would be more inclined to impose liability also in extra-contractual situations on those who by negligence had caused or contributed to pollution incidents. Further, the evidence that emerged during any legal proceedings might show that ABS had been negligent in its inspections of the *Prestige*.

In view of the extent of the pollution damage caused by the *Prestige* incident in Spain, France and Portugal in relation to the total amount available under the 1992 Conventions, the Spanish State (like all other claimants) would

be far from fully compensated under the Conventions for the pollution damage suffered by that State and that even if the 1992 Fund's action against ABS – be it in the United States or in Spain – were to be successful, it was doubtful whether the Fund would be able to recover any significant amount. The claim by the Spanish State against ABS was already for such a high amount that, even if the State's action were only partially successful, it was unlikely that ABS's insurance cover would be sufficient or that ABS itself would be able to pay the balance and that a successful recourse action by the 1992 Fund against ABS would result in the Fund competing with the Spanish State and the Basque Region in respect of the funds which might be available to meet judgements against ABS.

In view of the very high legal costs which the 1992 Fund would incur if it were to take recourse action against ABS in the United States, the considerable risk that such an action would be unsuccessful and the difficulty for the Fund to recover payments in respect of pure economic loss, the Director considered that, if recourse action should be pursued, it would be preferable to pursue such an action in Spain. He had expressed the view, however, that there was no certainty that an action in Spain would be successful and that there would be procedural difficulties, including issues of time bar.

As for the timing of a recourse action, in the Director's view, if a recourse action was to be taken in Spain, such an action should not be taken until the results of the investigations into the cause of the incident were known but that if a recourse action was to be taken in the United States, such an action should be taken as soon as possible.

All delegations reaffirmed their support for the Fund's policy of pursuing recourse actions against third parties whenever it was appropriate to do so. However, a number of delegations expressed the view that it was premature to take a decision at this stage on whether or not to pursue a recourse action against ABS given the lack of evidence.

Most delegations expressed the view that the 1992 Fund should not pursue any recourse action in the United States since the costs would be very considerable and there was a small likelihood of success. Those delegations stated that if it were to be decided that recourse action was appropriate in the light of further facts obtained from ongoing investigations into the cause of the incident, it would be preferable to take such action in Spain. Those delegations also noted that commencing legal action in Spain was not constrained by imminent time bar considerations and that any decision should be deferred pending the outcome of those investigations.

The Executive Committee decided that the 1992 Fund should not take recourse action against ABS in the United States. It further decided to defer any decision on recourse action against ABS in Spain until further details surrounding the cause of the *Prestige* incident came to light. The Director was instructed to follow the ongoing litigation in the United States, monitor the ongoing investigations into the cause of the incident and take any steps necessary to protect the 1992 Fund's interests in any relevant jurisdiction.

The Committee stated that this decision was without prejudice to the Fund's position *vis-à-vis* legal actions against other parties.

14.9 INCIDENT IN BAHRAIN

(Kingdom of Bahrain, March 2003)

The incident

On 15 March 2003 the Air Wing of the Bahrain Ministry of Interior reported an oil slick 20 miles off the north coast of Bahrain. On 17 March the oil started stranding on shorelines on the north coast of the Kingdom of Bahrain and over a period of three days further oil stranding occurred on the east and west coasts of Muharraq Island. Some oil entered the port of Mina Sulman, and a fishing harbour was impacted causing damage to fishing vessels and gear.

Oil approached the seawater intakes of two power stations/desalination units and a further desalination unit. Some 18 kilometres of shoreline were polluted with an estimated 100 tonnes of oil. Some oil reportedly affected the coastline of the Kingdom of Saudi Arabia in the vicinity of the causeway linking Bahrain with the mainland.

Clean-up operations

The Bahrain Coast Guard assisted the Public Commission for the Protection of Marine Resources, Environment and Wildlife in clean-up operations at sea between 15 and 24 March 2003. On 22 March the Presidency of Meteorology and Environment of Saudi Arabia provided the Bahrain authorities with some 2 000 metres of oil containment boom and a skimming vessel. This equipment was returned to Saudi Arabia on 28 March.

The Ministry of Electricity and Water deployed booms in the vicinity of the intakes of the Sitra and Hidd power/desalination plants and the Addur desalination plant. The Ministry also organised shoreline clean-up operations to prevent the oil contaminating the cooling systems and desalination feedstock of these facilities.

The Ministry of Municipalities and Agriculture and the Bahrain Petroleum Company (BAPCO) undertook extensive shoreline clean-up operations and disposed of the oily waste. These operations were commenced on 19 March and were terminated on 18 April 2003.

Investigations into the source of the pollution

Chemical analyses

The Bahrain authorities collected pollution samples and sent them to laboratories in Bahrain and Saudi Arabia for analysis. The Marine Emergency Aid Centre (MEMAC) in Bahrain also obtained pollution samples and sent them to the 1992 Fund for analysis. The analyses in Bahrain were inconclusive, although it was reported that the sulphur content of the oil closely matched Iraq (Basrah) crude. The laboratory in Saudi Arabia concluded that the oil was Iraq crude.

The samples submitted to the 1992 Fund were sent to a laboratory in Scotland specialising in the analysis and fingerprinting of petroleum oil. That laboratory concluded, in the absence of any reference oils for comparison, based on its experience, that the oil could have originated from Saudi Arabia, Kuwait or southern Iraq.

In February 2004 MEMAC obtained a sample of Iraq (Basrah) crude oil from an export tank of the Al-Baker oil terminal in Iraq and submitted the sample to the 1992 Fund. This sample was subsequently analysed by the laboratory in Scotland, which found that the 'fingerprints' of the pollution samples gave a very good match with the sample of Iraq (Basrah) crude. The laboratory concluded that the oil residues collected from the north coast of Bahrain were consistent with what would be expected for Basrah crude which had been exposed to natural weathering processes for a period of several days.

Satellite imagery

MEMAC obtained satellite imagery (visible waveband) from the United States National Oceanic and Atmospheric Agency. The imagery for 14 March 2003 showed the oil to the north of Bahrain covering an area of some 50 square miles indicating that the oil had been spilled some days prior to 14 March. The area was covered in cloud between 6 and 13 March 2003 and so no satellite imagery was available for that period. Although 5 March was cloud free, there was no evidence of any oil on the water at that time. MEMAC concluded that the oil must have been released after 5 March and a few days before 14 March 2003.

Slick trajectory hind casting

MEMAC ran its oil slick trajectory model in reverse from the reported position of the oil on 15 March from an overflying aircraft using local wind and current data. This gave a good correlation with the observed position of the oil from the satellite image on 15 March. Further hind casting of the slick trajectory indicated that the oil was most probably spilled on or around

Emulsified crude oil from an unknown source polluted the coast of Bahrain and impacted subsistence fishing

8 March 2003 in the vicinity of the anchorage of the Al Ju'aymah oil terminal off the coast of Saudi Arabia.

Despite intensive enquiries, MEMAC was unable to identify any particular vessel as the source of the oil. The operators of the Al Ju'aymah oil terminal stated that no tanker had visited the terminal with a part load of Iraq oil under the United Nations 'Oil for Food' programme during the relevant period.

MEMAC conducted further trajectory analyses for potential fixed sources of oil to the north of Bahrain to establish whether oil spills emanating from any of these sources could have impacted the coast of Bahrain under the prevailing wind and current conditions. Potential sources were identified as the Al Ju'aymah and Ras Tannurah oil terminals in Saudi Arabia, the Saudi-Bahrain oil pipeline, the Abu Saafah offshore oil field and pipeline, the Zuluf, Houyt and Marjan offshore oil fields and the Al-Baker oil terminal in Iraq. The trajectory analyses indicated that oil spilled from the two oil terminals in Saudi Arabia or the Zuluf, Houyt and Marjan offshore oil fields would have only impacted that country's coastline and that oil from the Saudi-Bahrain pipeline would have only impacted the west coast of Bahrain. The predicted trajectories showed that oil spilled from the Abu Saafah oil field would not have reached Bahrain, although oil released from the pipeline could have impacted its coast. However, the satellite image obtained for 14 March 2003 showed the oil to the north of the pipeline, and since the winds were constantly blowing from the north during the period of concern, MEMAC concluded that the pipeline could not have been the source. Trajectory analyses also indicated that oil released from the Al-Baker terminal would have stranded on the coast of Kuwait.

Applicability of the 1992 Fund Convention

At its October 2002 session the Executive Committee confirmed its interpretation of the 1992 Fund Convention that the Convention applied to spills of persistent oil even if the ship from which the oil came could not be identified, provided that it was shown to the satisfaction of the 1992 Fund, or in the case of dispute, to the

satisfaction of a competent court, that the oil originated from a ship as defined in the 1992 Fund Convention.

In May 2004 the Executive Committee considered whether claims for pollution damage arising from the incident in Bahrain were covered by the 1992 Conventions.

On the basis of the chemical analyses undertaken by the laboratory in Scotland of the pollution samples collected from the coast of Bahrain and the reference sample obtained from the export terminal at Al-Baker, Iraq, the Director took the view that it was highly likely that the polluting oil was Iraq (Basrah) crude oil. Furthermore, on the basis of the satellite imagery and the trajectory analyses carried out by MEMAC, the Director considered it unlikely that the source of the pollution was an offshore oil field, sub sea pipeline or oil terminal. Although the Al-Baker oil terminal was a potential source of pollution by Iraq (Basrah) crude oil, the trajectory analyses indicated that oil released from the terminal would have impacted the coast of Kuwait. The distance between the Al-Baker terminal and the north coast of Bahrain was some 500 kilometres, and if the prevailing winds had prevented the oil going ashore on the coast of Kuwait, trajectory analyses indicate that the oil would have taken some 13 days to reach the north coast of Bahrain. However, the chemical analyses of the pollution samples indicated that the oil was relatively un-weathered, such that it could not have been exposed to the elements for such a long period of time.

In light of the above evidence the Director was satisfied that the source of the pollution was a ship carrying oil in bulk as cargo engaged either in the transport of Iraq crude oil under the United Nations 'Oil for Food' programme or illegal oil-smuggling operations. The Director therefore considered that claims for pollution damage arising from this incident were covered by the 1992 Conventions, and that in the absence of the identity of a specific vessel as the source, the 1992 Fund was liable to pay compensation.

A large number of delegations expressed the view that the evidence pointed overwhelmingly to the source of the pollution having been a 'ship' as defined in the 1992 Conventions and expressed their appreciation for the systematic way in which the authorities in Bahrain had carried out their investigations.

The Executive Committee decided that the claims arising from the incident were covered by the 1992 Fund Convention and that the claims by the Bahrain authorities were admissible in principle.

Claims for compensation

Claims totalling US$1.1 million (£573 000) were submitted by five government agencies, MEMAC and BAPCO for the costs of preventive measures and clean-up operations. These claims have been assessed for a total of US$689 000 (£359 000). As at 31 December 2004 six of these claims, totalling US$858 000 (£445 000), had been settled for a total of US$674 000 (£351 000). One claim, for US$283 000 (£148 000), in respect of measures to protect the seawater intakes of two power/desalination plants, and which has been assessed at US$15 000 (£8 000), has not been settled.

Claims totalling US$1.6 million (£830 000) were submitted by the Directorate of Marine Resources on behalf of 434 fishermen who suffered property damage and economic losses. These claims have been settled at US$542 000 (£282 000).

14.10 BUYANG

(Republic of Korea, 22 April 2003)

The incident

The Korean tanker *Buyang* (187 GT) struck a submerged rock under the Geoje Grand Bridge between Tongyeong City and Geoje Island (Republic of Korea). An estimated 35-45 tonnes of heavy fuel oil were subsequently lost from a holed cargo tank.

The *Buyang* was insured for pollution liabilities with the Korea Shipping Association (KSA) which is not a member of the International Group of P&I Clubs. The Association agreed with the 1992 Fund's proposal to apply the Memorandum of Understanding signed by the 1992 Fund and the International Group whereby the two parties would jointly instruct surveyors and experts to monitor the clean-up and assist with the assessment of claims for compensation for pollution damage. A team of Korean surveyors and experts was appointed to undertake this work on behalf of the KSA and the 1992 Fund.

The oil impacted a number of islands between Geoje Island and Tongyeong polluting a number of sand and pebble beaches. Some of the oil encountered rafts of floating seaweed before stranding, which increased the volume of oily waste to be collected for disposal.

A large number of fish cage culture and other mariculture facilities were impacted by the oil. The oil also affected a number of village fishing grounds. The hulls of a substantial fleet of fishing vessels were contaminated, which interrupted fishing until they had been cleaned.

Clean-up operations

Offshore clean-up was undertaken by the Marine Police, the Korean Marine Pollution Response Corporation and the local fishing community. These operations were terminated after four days.

The owner of the *Buyang* engaged an oil spill clean-up contractor to organise shoreline clean-up, which was undertaken by a hired work force of 65 local labourers and three fishing vessels from the village fishing associations. Shoreline clean-up operations took one month to complete.

Claims for compensation

The limitation amount applicable to the *Buyang* under the 1992 Civil Liability Convention is 3 million SDR (£2.4 million).

Claims totalling Won 1 162 million (£585 000) in respect of costs of clean-up and preventive measures were settled for Won 1 007 million (£507 000). All claims in the fisheries and mariculture sectors, totalling Won 3 621 million (£1.8 million), were settled for a total of Won 328 million (£165 000).

There are no outstanding claims arising from this incident. In view of the fact that the total amount of settled claims is well below the limitation amount applicable to the *Buyang*, the 1992 Fund will not be required to make any compensation payments.

14.11 HANA

(Republic of Korea, 13 May 2003)

The incident

The Korean coastal tanker *Hana* (196 GT), whilst moored alongside a landing on Youngdo Island, Busan (Republic of Korea), was struck by the *Haedong*, another coastal tanker (699 GT). As a result of the collision the shell plating of one of the *Hana*'s cargo tanks was breached and around 34 tonnes of medium fuel oil were spilled.

The *Hana* was insured for pollution liabilities with the Korea Shipping Association (KSA), which is not a member of the International Group of P&I Clubs. The Association and the 1992 Fund decided to co-operate on the same basis as that agreed in respect of the *Buyang* incident.

Several hundred vessels, including coastal tankers, oil barges, tugs, ships under construction at local shipyards and fishing boats had their hulls contaminated with oil.

Oil entered the onshore tanks of a major exporter of live fish to Japan, which at the time were stocked with fish. The company undertook a number of measures to minimise pollution damage to the stocks and it is understood that a consignment was despatched overseas shortly afterwards.

The quay of one of Busan's major fish markets was heavily contaminated with oil, although fishing vessels were able to land catches at other markets in Busan.

Clean-up operations

Vessels of the Busan Marine Police, Korean Marine Pollution Response Corporation, the Busan Metropolitan Government and the Korean Navy participated in offshore clean-up operations. These operations were terminated after three days.

Six local clean-up contractors organised shoreline clean-up operations and undertook cleaning of quay walls, breakwaters and the hulls of ships and fishing vessels all of which was completed within one month.

Claims for compensation

The limitation amount applicable to the *Hana* under the 1992 Civil Liability Convention is 3 million SDR (£2.4 million).

Claims for the costs of clean-up and preventive measures, totalling Won 1 702 million (£856 000), were settled for a total of Won 1 242 million (£625 000). Property damage claims totalling Won 19.2 million (£10 000) were settled for the amount claimed.

All fishery claims, totalling Won 71.8 million (£36 000), were settled for a total of Won 22.5 million (£11 000).

Since the total amount of settled claims is well below the limitation amount applicable to the *Hana* under the 1992 Civil Liability Convention, the 1992 Fund will not be required to make any compensation payments.

14.12 VICTORIYA

(Russian Federation, 30 August 2003)

The incident

The Russian tanker *Victoriya* (2 003 GT) suffered a fire and explosion at the Octyabyrsk terminal near Syzran on the Volga River (Russian Federation). The tanker was loading crude oil at the time, a significant but unknown quantity of which was spilled into the river. One member of the crew was killed.

The *Victoriya* was insured for pollution liabilities with Terra Nova Protection and Indemnity (Terra Nova). Although Terra Nova is not a member of the International Group of P&I Clubs, it agreed to follow the spirit of the Memorandum of Understanding signed by the 1992 Fund and the International Group whereby the two parties would jointly instruct surveyors and experts to monitor the clean-up and assist with the assessment of claims for compensation for pollution damage.

An expert from the International Tanker Owners Pollution Federation Limited (ITOPF) visited the spill location in September and December 2003 and also attended a number of meetings in Moscow with representatives of the State Maritime and State River Administrations of the Ministry of Transport of the Russian Federation.

Clean-up operations

The shipowner engaged a number of contractors to undertake clean-up operations and prevent the further escape of oil from the vessel, including the transfer of all remaining cargo on board the vessel.

By the time of the arrival on site of the ITOPF expert there was little free oil remaining on the river, although no secondary clean-up of stranded oil along the river banks and shores of islands had commenced. The expert made a number of recommendations to the authorities on how to address clean-up in those areas that, in his view, merited further measures. Clean-up was completed in early December 2003 before the river had frozen over.

Impact of the spill

One bank of the river Volga, which is some 10 kilometres wide at the incident location, and a number of islands were oiled intermittently over a length of some 55 kilometres downstream of the terminal. The level of contamination decreased with distance from the source with the

The burnt-out wreck of the Victoriya on the river Volga in Russia

heaviest oiling occurring within a distance of 15 kilometres of the terminal. There are many charted and uncharted islands over this length of river which are surrounded by marshes. Most of the marshes were not polluted by oil, although light staining of vegetation had occurred in some places. A few marsh areas were more severely impacted such that, one month after the incident, there remained traces of free oil floating between the plants.

A number of amenity areas in the vicinity of Syzran, including public and private beaches, slipways and piers of recreational boat clubs, were oiled either as a direct result of the spill or during the clean-up operations.

A local fishing and fish processing company that has exclusive commercial fishing rights in the waters downstream of the incident location may have suffered some interruption to its activities during the period that free oil was present on the river. There are also a number of full-time subsistence fishermen who operate in the affected area, although it is understood that they are not allowed to sell their catches.

Applicability of the Conventions

In October 2003 the 1992 Fund Executive Committee considered the questions of whether the Victoriya was a 'ship' for the purpose of the 1992 Civil Liability Convention and whether the 1992 Conventions applied to pollution damage in the inland, non-tidal reaches of rivers.

The *Victoriya* was registered by the Russian Maritime Register of Shipping for river and sea navigation and traded regularly in the Mediterranean, Black Sea and Baltic Sea areas. Since October 2002 it had been trading in Turkey, Greece and the Ukraine and at the time of the incident the *Victoriya* had been enroute to a non-Russian port in the Black Sea. The Committee considered that the *Victoriya* was therefore a 'ship' for the purpose of the 1992 Civil Liability Convention.

The incident took place on the Volga River some 1 300 kilometres inland from the Caspian Sea and the Sea of Azov. Article II(a)(i) of the 1992 Civil Liability Convention and Article 3(a)(i) of the 1992 Fund Convention provide that the Conventions shall apply

exclusively to pollution damage caused in the territory, including the territorial sea, of a Contracting State. Under general principles of public international law, the concept of 'territory' of a State covers inland waters, including rivers.

During the discussion in the Executive Committee, some delegations expressed reservations about the applicability of the 1992 Conventions, drawing attention to the preamble of the 1992 Civil Liability Conventions, which referred specifically to pollution posed by the worldwide maritime carriage of oil, and to the exclusion of inland waters from the scope of application of United Nations Convention on the Law of the Sea. Most delegations, whilst noting the unusual nature of the incident with respect to its location in the upper reaches of a river, nevertheless considered that the 1992 Conventions were applicable, since the *Victoriya* was a sea-going vessel and the pollution damage had been caused in the territory of a Contracting State.

The Committee decided that the 1992 Civil Liability Convention and the 1992 Fund Convention applied to the *Victoriya* incident.

Claims for compensation

The limitation amount applicable to the vessel under the 1992 Civil Liability Convention is 3 million SDR (£2.4 million).

In February 2004 the shipowner's insurer informed the Fund that claims totalling about US$500 000 (£260 000) were anticipated for the costs of clean-up and preventive measures. A local fish processing company may claim for economic loss due to interruption of its activities.

In October 2004 the insurer reported that there had been little progress as regards the settlement of claims, but that no new claims had been submitted. Since the total amount claimed is well below the limitation amount applicable to the *Victoriya* under the 1992 Civil Liability Convention, the 1992 Fund will not be required to make any compensation payments.

14.13 DUCK YANG

(Republic of Korea, 12 September 2003)

The incident

The mooring ropes of the Korean tanker *Duck Yang* (149 GT) parted in the port of Busan (Republic of Korea), as a result of strong winds and heavy seas created by the typhoon 'Maemi'. The vessel struck a barge and the quay wall of the port's central pier before turning on its side and sinking. The ship's master and chief engineer were reported missing. An estimated 300 tonnes of heavy fuel oil were lost from two cargo tanks whose manhole covers were open and another cargo tank whose shell plating had punctured.

The shipowner engaged a local salvage company, which successfully lifted the vessel out of the water by means of floating cranes. The remaining oil on board was then transferred to another tanker.

The *Duck Yang* was insured for pollution liabilities with the Korea Shipping Association (KSA), which is not a member of the International Group of P&I Clubs. The Association and the 1992 Fund decided to co-operate on the same basis as that agreed in respect of the *Buyang* and *Hana* incidents.

The oil became widely scattered throughout the port of Busan as a result of which the hulls of over 100 vessels were contaminated. Cleaning the hulls of some vessels proved difficult due to restricted accessibility between vessels and quay walls and changes in vessels' freeboards as cargo was loaded or discharged.

A number of piers were so heavily contaminated that vessels were prevented from going alongside until they had been cleaned.

As a result of the confinement of the oil within the port areas, impact on fisheries was minimal. However, a number of raw seafood restaurants that abstract seawater into their holding tanks suffered business interruption due to the presence of oil.

Floating debris associated with oil hampers on-water recovery following the Duck Yang incident in the Republic of Korea

Clean-up operations

The Marine Police, the Navy and several commercial contractors mobilised a fleet of 27 pollution response vessels to combat the oil that had escaped.

On water clean-up operations were completed by 20 September 2003, but cleaning of piers, breakwaters and other man-made structures was not completed until mid-October.

Claims for compensation

The limitation amount applicable to the *Duck Yang* under the 1992 Civil Liability Convention is 3 million SDR (£2.4 million).

Claims in respect of the costs of preventive measures and clean-up, including the cleaning of the hulls of over 100 vessels, totalling Won 3 695 million (£1.9 million) have been settled for Won 2 883 million (£1.5 million). Claims totalling Won 46 million (£23 000) for property damage and economic losses resulting from disruption of vessel operations in the port of Busan have been settled for Won 43 million (£22 000).

There are no outstanding claims arising from this incident. In view of the fact that the total amount of settled claims is well below the limitation amount applicable to the *Duck Yang*, the 1992 Fund will not be required to make any compensation payments.

14.14 KYUNG WON

(Republic of Korea, 12 September 2003)

The incident

The Korean tank barge *Kyung Won* (144 GT), whilst moored near the port of Gwangyang, Namhae Island (Republic of Korea), stranded on the breakwater of the village of Yu Po during the passing of the typhoon 'Maemi'. Approximately 100 tonnes of heavy fuel oil escaped from a cracked cargo tank before a contractor was able to seal the cracks and transfer the remaining oil. The barge was then towed to a shipyard in Busan for repairs.

The 1992 Fund appointed a team of Korean surveyors and experts to monitor the clean-up

operations and investigate the potential impact of the pollution on fisheries and mariculture.

Clean-up operations

The Marine Police, a private clean-up contractor and the Korean Marine Pollution Response Corporation (KMPRC) deployed 31 response vessels to undertake clean-up operations at sea. These operations were terminated on 17 September 2003, the remaining oil having stranded on shorelines.

Two private clean-up contractors, working under the direction of KMPRC, organised shoreline clean-up operations, which were carried out by local labour drawn from the affected fishing communities. These operations were completed in mid-December 2003.

Impact of the spill

Approximately 14 kilometres of shoreline, along which 17 fishing villages were located, were polluted by oil of which six kilometres were heavily impacted. Shorelines consisted of a mixture of sand, pebbles and rocks as well as breakwaters and sea walls.

Fishing and mariculture activities undertaken along the affected coast of Namhae Island included intertidal harvesting of marine products, inshore fishing with vessels and set nets, shellfish culture farms and onshore hatcheries producing a range of marine products. Many of these activities also suffered the direct effects of the typhoon.

In consequence of the oil spill coinciding with the typhoon some oil became trapped in intertidal mud supporting important clam fisheries at two locations. The Namhae Fisheries Co-operative Union was faced with the choice of either excavating the mud to remove the oil, which would have caused long-term damage to the clam fishery, or to allow the oil to degrade naturally. The Co-operative decided to take the second option, recognising that the lack of oxygen in the subsurface layers of mud would slow down the rate of biodegradation resulting in the prolonged closure of the clam fisheries.

The Fund agreed to fund a study by the Korea Ocean Research and Development Institute to monitor the oil concentrations in the sediment and in the clams over time in order to be able to determine the point at which the levels were sufficiently low to enable the fisheries to be reopened. Samples of sediment and clams collected in April 2004 at one location were found to contain similar hydrocarbons levels to background levels found in control samples collected outside the affected area and this clam fishery was re-opened. However, samples collected from the second location were found to contain elevated hydrocarbons levels compared with background levels and this fishery remained closed. Further samples of clams and sediment were collected from the latter location in August 2004, by which time the hydrocarbon levels in the clams had fallen to background levels, although the sediments still retained quite high levels in places. The Namhae Fisheries Co-operative therefore decided to reopen the fishery in September 2004.

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

The *Kyung Won*, which was built in 1986, was an un-powered sea-going barge comprising six cargo tanks, one of which was fitted with heating coils, an aft deck house, two generators and a boiler. Each cargo tank had a separate manhole and cargo line.

At the time of the incident the *Kyung Won* was not entered with any classification society and did not carry any liability insurance. It appears that liability insurance had been terminated in May 2002 when the shipowner became bankrupt, and since then the former employees of the shipowner had continued to operate the vessel as a bunkering barge.

In October 2003 the 1992 Fund Executive Committee decided that, since the *Kyung Won* was not insured for pollution liabilities and the shipowner was unlikely to have the financial resources to make any significant compensation payments, the 1992 Fund should pay settled claims even if the shipowner did not make any payments.

A post-spill study to monitor hydrocarbon levels in sediment and clams was undertaken following the Kyung Won incident in the Republic of Korea

Claims for compensation

Claims totalling Won 3 117 million (£1.6 million) in respect of the costs of clean-up and preventive measures were settled at Won 2 921 million (£1.5 million).

Fishery and mariculture claims totalling Won 3 672 million (£1.9 million) were settled for a total of Won 407 million (£205 000).

No further claims are anticipated in respect of this incident.

Consideration of possible recourse action against the shipowner

In November 2003 the Director considered whether the Fund should register the arrest of the *Kyung Won*, with a view to recovering the proceeds from public auction of the vessel in the event that the Fund were to obtain a judgement against the shipowner in respect of its subrogated claims. Such a registration of arrest would have prevented the owner from selling the vessel, whilst at the same time allowing it to continue trading.

Before deciding whether to proceed with the registration of arrest the Director instructed the Fund's Korean lawyers to estimate the value of the *Kyung Won*. The Fund's lawyers advised the Director that the value of the *Kyung Won* was in the region of Won 70 – 80 million (£35 000 – £40 000) and that the owner had mortgaged the vessel for Won 50 million (£25 000). In view of the likely costs involved in pursuing a recourse claim and the limited value of the *Kyung Won* in relation to the total claims exposure of the 1992 Fund, the Director decided that there was no merit in the Fund attaching the vessel for a potential subrogation claim.

14.15 JEONG YANG

(Republic of Korea, 23 December 2003)

The incident

Shortly after departure from the LG-Caltex terminal in Yeosu (Republic of Korea), the laden Korean tanker *Jeong Yang* (4 061 GT) collided with the un-laden Korean tanker *Sung Hae*

(5 914 GT). As a result of the collision two of the *Jeong Yang*'s cargo tanks were holed which led to the spillage of some 700 tonnes of heavy fuel oil. In its attempt to avoid the collision the *Jeong Yang* stranded on a muddy shore, but was refloated with the aid of a tug.

The cargo remaining on board the *Jeong Yang* was offloaded on 24 December 2003.

Due to the high pour point of the oil and the ambient sea temperature, the spilt oil solidified into mats up to 10 centimetres thick. The oil drifted on the flood tide back towards the terminal from where the vessel had sailed, which enabled the terminal personnel to contain most of the oil using a permanently deployed boom.

Tar balls up to 20 centimetres in diameter stranded over a four-kilometre stretch of shoreline on the island of Myodo to the north of the terminal and over a 22-kilometre stretch of coastline on Namhaedo to the east of the terminal.

The *Jeong Yang* was entered with the Sveriges Ångfartygs Assurans Förening (Swedish Club) and the *Sung Hae* with the United Kingdom Mutual Steamship Assurance Association (Bermuda) Limited.

The Swedish Club and the 1992 Fund jointly appointed Korean experts to monitor the clean-up operations and assist with the assessment of claims for compensation for pollution damage. A representative from the International Tanker Owners Pollution Federation Limited (ITOPF) travelled to Korea on 23 December 2003.

Clean-up operations

Some 60 vessels, including specialised pollution craft and fishing vessels, were mobilised to combat the oil on the water. Due to the nature of the oil, mechanical collection methods were employed using grab buckets and front-end loaders mounted on barges. By 31 December 2003 all of the oil contained in the boom at the terminal and other floating oil had been recovered and the cleaning and demobilisation of equipment had commenced.

Booms were deployed around the seawater intakes of three power stations and a steel plant to the north of the terminal. Manual cleaning of shorelines was carried out rapidly and efficiently largely due to the solid nature of the oil, which prevented spreading on surfaces and penetration in beach sediments.

In March 2004 new deposits of oil were found on shorelines on Namhae Island and in the vicinity of Yeosu, which were subsequently confirmed as having originated from the *Jeong Yang*. As a consequence, the authorities ordered a resumption of clean-up. This secondary clean-up was completed in April 2004. However, during the summer months some oil that had been trapped within the structures of breakwaters and seawalls began to escape as a result of high ambient temperatures posing a threat to nearby amenity beaches. This necessitated further clean-up, which lasted until the end of July 2004.

Impact of the spill

As a consequence of the successful containment of the bulk of the oil at the terminal, the impact of the spill on fisheries and mariculture was limited. The booming of the seawater intakes was successful and it was therefore not necessary to close any of the power plants and the steel plant.

In January 2004 the Korean authorities ordered the shipowner to carry out post-spill environmental impact studies within three months of the date of the incident. The legal basis of the order was the Korean Marine Pollution Prevention Act, which requires such studies to be undertaken whenever the spill volume exceeds 50 m^3 and has, or is likely to, spread out to an area of 100 000 square metres or more. The Act sets out the subjects to be covered by such studies, namely the description of the natural environment and the impact of the oil on marine ecosystems, marine products and the socioeconomic environment. In issuing the order the Korean authorities provided the shipowner with the names of four research institutes from which to choose to carry out the required studies.

The Swedish Club and the 1992 Fund made representations to the Korean authorities expressing the view that any decision to undertake studies should be decided on a case-by-case basis rather than on the basis of a specific spill quantity and surface coverage. The Club and the Fund drew attention to the Fund's Claims Manual and its admissibility criteria relating to post-spill studies. The point was made that most of the oil spilled from the *Jeong Yang* had been contained and recovered within a designated port located in a heavily industrialised area and as a result no major impacts on the marine environment were likely. The authorities noted the concerns of the Club and the Fund but stated that they had no alternative but to comply with the above-mentioned Act.

In March 2004 two of the nominated research institutes submitted detailed proposals for undertaking studies covering the subject areas referred to above. The Fund submitted comments on the two proposals, as a result of which one of the institutes submitted a revised proposal, which addressed most of the Fund's concerns regarding the nature and extent of the sampling and analytical regime to be followed and the examination of the socioeconomic impact of the spill. On the basis of the revised submission the Swedish Club and the 1992 Fund agreed that the costs of the study, which were set at Won 140 million (£70 000), were admissible in principle.

In December 2004 the selected research institute submitted its final report in which it concluded that the oil spill had had no adverse impact on any of the sectors that were studied.

Claims for compensation

All claims in respect of costs of clean-up and preventive measures, which totalled Won 4 917 million (£2.5 million), were settled at a total of Won 3 992 million (£2.0 million).

Fishery claims, which totalled Won 1 065 million (£536 000), were settled and paid for a total of Won 78.4 million (£40 000).

Claims totalling Won 115 million (£58 000) in respect of alleged losses due to interruption of vessel operations in the port of Yeosu are being assessed.

The limitation amount applicable to the *Jeong Yang* under the 1992 Civil Liability Convention is 4.51 million SDR (£3.6 million). In view of the fact that the total amount of settled and outstanding claims is well below this amount, the 1992 Fund will not be required to pay any compensation in respect of this incident.

14.16 N°11 HAE WOON

(Republic of Korea, 22 July 2004)

The incident

The Korean tanker *N°11 Hae Woon* (110 GT) collided with the Korean fishing vessel *N°5 Dae Woon* (94 GT) off Geoje Island, Republic of Korea. It was estimated that some 12 tonnes of heavy fuel oil escaped from a cargo tank into the sea.

The shipowner arranged for the remaining cargo on board the tanker to be transferred to two other vessels. After temporary repairs to the damaged hull were completed the vessel proceeded to Yeosu on 23 July for permanent repairs.

The spilt oil drifted towards a number of amenity beaches in and around Busan, which at the time were reportedly being used by over one million people. As a result of a concerted effort to recover the oil at sea and a shift in the wind direction no shorelines were affected.

The *N°11 Hae Woon* was insured for pollution liabilities with the Korean Shipping Association (KSA). The Association and the 1992 Fund decided to co-operate on the same basis as that agreed in respect of the *Buyang*, *Hana* and *Duck Yang* incidents.

Clean-up operations

Busan Marine Police, together with seven clean-up contractors, mounted a major oil recovery

Following the N°11 Hae Woon incident in the Republic of Korea, amenity beaches narrowly escaped oiling

operation at sea involving 32 response vessels and 14 fishing boats. In addition some 2 000 metres of boom were deployed to deflect oil away from amenity beaches.

Clean-up operations were terminated on 24 July when it was established that the small quantity of oil remaining at sea no longer posed a threat to the Korean coast.

Claims for compensation

The limitation amount applicable to the *N°11 Hae Woon* under the 1992 Civil Liability Convention is 4.51 million SDR (£3.6 million). Claims totalling Won 487 million (£245 000) in respect of the costs of clean-up and preventive measures were settled at Won 354 million (£178 000).

In view of the fact that there was no shoreline contamination or impact on fisheries and mariculture, the total cost of the incident is well below the limitation amount applicable to the vessel. The 1992 Fund will therefore not be called upon to make any compensation payments.

ANNEXES

ANNEX I

STRUCTURE OF THE IOPC FUNDS

1992 FUND GOVERNING BODIES

ASSEMBLY

Composed of all Member States

8th extraordinary session

Chairman:	Mr Willem Oosterveen (Netherlands)
Vice-Chairmen:	Mr José Aguilar Salazar (Mexico)
	Mr Zafrul Alam (Singapore)

9th session

Chairman:	Mr Willem Oosterveen (Netherlands)
Vice-Chairmen:	Mr José Aguilar Salazar (Mexico)
	Professor Seiichi Ochiai (Japan)

EXECUTIVE COMMITTEE

24th - 26th sessions

Chairman:	Mr Jerry Rysanek (Canada)
Vice-Chairman:	Mr Volker Schöfisch (Germany)

Australia
Cameroon
Canada
France
Germany
Greece
Grenada
India
Japan
Marshall Islands
Netherlands
Poland
Singapore
Sweden
United Arab Emirates

27th session

Chairman:	Mrs Lolan Margaretha Eriksson (Finland)
Vice-Chairman:	Mr Volker Schöfisch (Germany)

Algeria
Australia
China (Hong Kong Special Administrative Region)
Finland
Germany
India
Italy
Japan
Netherlands
Portugal
Republic of Korea
Russian Federation
United Arab Emirates
United Kingdom
Uruguay

1971 FUND ADMINISTRATIVE COUNCIL

Composed of all States having at any time been Members of the 1971 Fund

13th and 14th sessions

Acting Chairman:	Mr John Wren (United Kingdom)

15th session

Chairman:	Captain Raja Malik (Malaysia)
Vice-Chairman:	Mr John Wren (United Kingdom)

JOINT SECRETARIAT

Officers

Director:	Mr Måns Jacobsson
Deputy Director/Technical Adviser:	Mr Joe Nichols
Legal Counsel:	Mr Masamichi Hasebe
Personal Assistant to the Director:	Mrs Jill Martinez
Head, Claims Department:	Mr José Maura
Claims Manager:	Mr Patrick Joseph
Claims Manager:	Ms Chiara Della Mea
Head, Finance & Administration Department:	Mr Ranjit Pillai
IT Manager:	Mr Robert Owen
HR Manager:	Mrs Rachel Dockerill
Finance Manager:	Mrs Latha Srinivasan
Office Manager:	Mr Modesto Zotti
Head, External Relations & Conference Department:	Ms Catherine Grey
Information Officer:	Ms Stephanie Mulot

AUDITORS OF THE 1992 FUND AND THE 1971 FUND

Sir John Bourn
Comptroller and Auditor General
United Kingdom

JOINT AUDIT BODY

Mr Charles Coppolani (France) (Chairman)
Professor Eugenio Conte (Italy)
Mr Maurice Jaques (Canada)
Mr Heikki Muttilainen (Finland)
Dr Reinhard Renger (Germany)
Professor Hisashi Tanikawa (Japan)
Mr Nigel Macdonald (Outside expert)

INVESTMENT ADVISORY BODIES

Mr David Jude
Mr Brian Turner
Mr Simon Whitney-Long

ANNEX II

NOTE ON 1971 AND 1992 FUNDS' PUBLISHED FINANCIAL STATEMENTS FOR 2003

The financial statements reproduced in Annexes V to VIII and XI to XIV are an extract of information contained in the audited financial statements of the International Oil Pollution Compensation Funds 1971 and 1992 for the year ended 31 December 2003, approved by the Administrative Council of the 1971 Fund at its 15th session and by the Assembly of the 1992 Fund at its 9th session.

EXTERNAL AUDITOR'S STATEMENT

The extracts of the financial statements set out in Annexes V to VIII and XI to XIV are consistent with the audited financial statements of the International Oil Pollution Compensation Funds 1971 and 1992 for the year ended 31 December 2003.

G Miller
Director
for the Comptroller and Auditor General
National Audit Office, United Kingdom
31 January 2005

ANNEX III

REPORT OF THE EXTERNAL AUDITOR ON THE FINANCIAL STATEMENTS OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1971 FOR THE FINANCIAL PERIOD 1 JANUARY TO 31 DECEMBER 2003

Comprising:

EXECUTIVE SUMMARY

Overall results of the audit

1 I have audited the financial statements of the International Oil Pollution Compensation Fund 1971 ("the 1971 Fund") in accordance with the Financial Regulations and in conformity with Auditing Standards of the International Organisation of Supreme Audit Institutions, (INTOSAI)/Common Auditing Standards of the Panel of External Auditors of the United Nations, the Specialized Agencies and the International Atomic Energy Agency.

2 **My examination revealed no weaknesses or errors which I considered material to the accuracy, completeness and validity of the financial statements as a whole and I have placed an unqualified opinion on the 1971 Fund's financial statements for the financial period ended 31 December 2003.**

3 Observations arising from the audit are set out below and in the section of this report entitled Detailed Findings. My audit of the 1971 Fund is integrated with my audit of the 1992 Fund. In consequence a number of observations and assurances are common to both; and are reflected in my audit reports on both Funds.

On claims expenditure

4 Total claims and claims related payments for the 1971 Fund in 2003 amounted to £10.7 million. My staff reviewed a sample of these claim payments and found them to be properly supported, and in accordance with the Fund's Regulations and established procedures. They also confirmed that the claims had been verified and settled as promptly as possible, while taking into account the due interests of the Fund and of the claimant.

On the operation of financial controls at the Fund's Secretariat

5 In addition to their review of claims and claims-related payments, my staff carried out an annual review of the overall financial control systems operating at the Fund's Secretariat. Their review covered procedures relating to:

- contributions and other income;
- claims and claims-related payments;
- Secretariat expenses (personnel and other administrative expenditure);
- cash and investments; and
- balances on Major Claims Funds.

6 My staff found that satisfactory controls continued to be in place over these systems; and that control procedures had been adhered to. Concerning the controls relating to the investment of cash held pending settlement of claims, my staff confirmed that the Secretariat had adhered the Fund's declared investment policy, covering the suitability and extent of investment with individual financial institutions.

On the settlement of the Sea Empress recourse action

7 Following the Executive Committee's decision that the 1971 Fund should take legal action against the Milford Haven Port Authority (MHPA) in relation to the Sea Empress incident, the 1971 Fund and MPHA agreed in February 2003 that they should explore the possibility of settlement by mediation. This mediation took place in October 2003 and as a result the Administrative Council was able to approve a proposed settlement by means of a payment by MPHA's insurers of £20 million to the Fund.

8 My staff inspected the agreement with the MPHA, to verify the amount of the settlement and confirm that the payment had been received in full.

On the work of the Audit Body

9 As noted in my last Report, an audit committee (referred to by the Funds as the "Audit Body") was established in 2002. My staff attended the four meetings of the Audit Body held in 2003. These meetings considered a number of matters, including the progress and findings of the audit and risk management.

10 Although risk management is the responsibility of the IOPC Funds' Secretariat, the Audit Body agreed that it would be useful for it to review the risks facing the IOPC Funds. My staff provided advice and assisted in the drawing up of a risk map and in the preparation of a strategic risk statement. The Secretariat have categorised the Funds' key strategic risks in the areas of business continuity, claims handling processes, financial risk, human resources management and reputational risk. Work is now under way to identify specific risks for each of these five areas.

11 The effective and productive work of the Audit Body, and the evolution of its coverage to embrace business and operational risk, represents a significant contribution to the Fund's governance arrangements and to the management of the Fund's operations and resources.

On the cessation of the 1971 Fund Convention and going concern issues

12 The 1971 Fund Convention ceased to be in force on 24 May 2002 when the number of States who are members of the 1971 Fund fell to 24; and the Convention does not apply to incidents occurring after that date.

13 The 1971 Fund financial statements have been prepared and audited on a going concern basis for the period ending 31 December 2003, since the 1971 Fund's operations will continue for the foreseeable future, until such time as all payments in relation to outstanding claims have been made.

In Summary

14 The Fund's Secretariat is not large and provides a responsible and very effective standard of financial control and management. The results of our work for 2003 were wholly satisfactory; and my staff's audit examination serves to provide the Administrative Council with a high degree of assurance over the adequacy of the governance and financial management of the IOPC Funds.

SCOPE AND AUDIT APPROACH

Scope of the audit

15 I have audited the financial statements of the International Oil Pollution Compensation Fund 1971 for the financial period ended 31 December 2003. My examination was carried out with due regard to the provisions of the 1971 Fund Convention and to Regulation 13 of the 1971 Fund's Financial Regulations. The 1971 Fund's Secretariat, comprising 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.

Audit objective

16 The main objective of the audit was to enable me to form an opinion as to whether the income and expenditure recorded against both the General and Major Claims Funds in 2003 had been received and incurred for the purposes approved by the 1971 Fund Administrative Council; whether income and expenditure were properly classified and recorded in accordance with the 1971 Fund's Financial Regulations; and whether the financial statements fairly presented the financial position as at 31 December 2003.

Audit standards

17 My audit of the 1971 Fund's 2003 financial statements was carried out in accordance with the Auditing Standards of the International Organisation of Supreme Audit Institutions, (INTOSAI)/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 the audit so as to obtain reasonable assurance that the 1971 Fund's financial statements are free of material misstatement.

Audit approach

18 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. A further examination was carried out to ensure that the financial statements accurately reflected the 1971 Fund's accounting records and were fairly presented.

19 In accordance with the relevant Auditing Standards, my audit involved examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. This included:

- a general review of the 1971 Fund's accounting procedures;
- an assessment of the internal controls for income, expenditure, bank balances and Major Claims Fund balances;
- substantive testing of transactions of all types;
- substantive testing of year end balances; and
- a final examination to ensure that the financial statements accurately reflected the 1971 Fund's accounting records and were fairly presented.

20 These audit procedures are designed primarily for the purpose of forming an opinion on the Fund's financial statements. Consequently, my work did not involve a detailed review of all aspects of the Fund's budgetary and financial information systems and the results should not be regarded as a comprehensive statement on them.

Reporting

21 During the audit my staff sought such explanations as they considered necessary in the circumstances on matters arising from their examination of the internal controls, accounting

records and financial statements. Observations on matters which I consider should be brought to the attention of the Administrative Council are set out in this present report. In accordance with normal practice, my staff record additional findings in a management letter to the Director.

Audit conclusion

22 My examination revealed no weaknesses or errors which I considered material to the accuracy, completeness and validity of the financial statements as a whole. Accordingly, I have placed an unqualified audit opinion on the 1971 Fund's financial statements for the financial period ended 31 December 2003.

DETAILED FINDINGS

Claims expenditure

23 Total claims and claims related payments for the 1971 Fund in 2003 amounted to £10.7 million compared with £41.2 million for 2002; and were mainly in respect of the *Aegean Sea* (35 per cent), *Nissos Amorgos* (35 per cent) and *Sea Empress* (15 per cent) incidents.

24 My staff examined a sample of these payments to supporting documentation held at the Secretariat's headquarters in London; and discussed the underlying claims with the Secretariat, including the Director, the Deputy Director, the Head of the Claims Department and the Claims Managers.

25 Furthermore, my staff carried out a review of the claims to ensure that all had been treated in accordance with the 1971 Fund's Regulations and established procedures. They also confirmed that the claims had been verified and settled as promptly as possible, while taking into account the due interests of the Fund and of the claimant.

26 Overall, my staff found that payments had been properly supported; and that related claims had been processed in accordance with Regulations and settled promptly.

Financial controls at the Fund's Secretariat

27 As part of the 2003 audit, my staff reviewed the main financial control systems at the Fund Secretariat relating to:

- contributions and other income;
- claims and claims-related payments;
- Secretariat expenses (personnel and other administrative expenditure);
- cash and investments; and
- the balances on Major Claims Funds.

28 My staff confirmed that satisfactory controls were in place for these systems; and audit testing indicated that the control procedures had been adhered to during the financial period.

29 Concerning controls relating to the investment of cash held pending claims settlement, the 1971 Fund has an investment policy which sets out the types of financial institutions, and required credit ratings for these institutions, in which the Fund may invest. The policy is subject to review by the standing Investment Advisory Body, which advises the Director on institutions suitable for holding the Fund's investments.

30 My staff reviewed recommendations made by the Investment Advisory Body and tested a sample of the investments held by the 1971 Fund. They confirmed that the investments had been handled in accordance with the declared investment policy.

Settlement of the Sea Empress recourse action

31 In October 1999 the Executive Committee decided that the 1971 Fund should take legal action against the Milford Haven Port Authority (MHPA) in relation to the *Sea Empress* incident. In February 2003 the 1971 Fund and MHPA agreed that they should explore the possibility of settlement by mediation. The mediation took place in October 2003. The Administrative Council approved a proposed settlement by means of a payment by the MHPA's insurers of £20 million to the Fund by 31 December 2003.

32 My staff inspected the agreement with the MPHA to verify the amount of the settlement and checked the payment had been received in full by the 31 December 2003.

The work of the Audit Body

33 As I noted in my previous Report, an audit committee (referred to by the Funds as the "Audit Body") was created in 2002. Seven members were elected to the Audit Body at the joint session of the 1971 Fund Administrative Council and the 1992 Fund Assembly in October 2002. The Audit Body submitted its first report to the governing bodies in October 2003.

34 The setting up of the Audit Body represented a significant initiative in the good governance and financial management of the Funds' operations. My staff attended the four Audit Body meetings held in 2003. These meetings considered a number of matters including the progress and findings of the audit and risk management.

35 Although risk management is the responsibility of the IOPC Funds' Secretariat, the Audit Body agreed that it would be useful for it to review the risks facing the IOPC Funds and to provide some input to the development of systematic risk management arrangements.

36 The Secretariat has been working with an external consultant and with advice and assistance from my staff to draw up a risk "map" for the IOPC Funds. In the first place, the Secretariat have taken forward the articulation of a strategic risk statement and have categorised the Funds' key strategic risks into five areas:

- Business continuity
- Claims handling process
- Financial risk
- Human resource management
- Reputational risk

37 Work is now under way to identify specific risks for each of these five areas. My staff will continue to support and contribute to the development of the risk management arrangements in consultation with the Secretariat and the Audit Body.

Cessation of the 1971 Fund Convention and going concern issues

38 The 1971 Fund Convention ceased to be in force on 24 May 2002 when the number of States who are members of the Fund fell to 24. The Convention does not apply to incidents occurring after that date.

39 The cessation of the 1971 Fund Convention does not, in itself, result in the winding up of the Fund. Winding up can only take place once all pending claims arising from incidents covered by the Convention have been settled and all expenses have been paid.

40 The 1971 Fund insured against the cost of incidents occurring between 25 October 2000 and 25 October 2002 in order that, should a major incident occur, the liability for contributors in the declining number of the Fund's remaining member states would be limited. The policy covers the payments on two incidents: *Singapura Timur* and *Zeinab*.

41 The 1971 Fund's financial statements have been prepared and audited on a going concern basis for the period ending 31 December 2003, since the Fund's operations will continue for the foreseeable future until such time as all payments in relation to outstanding claims have been made.

42 My staff noted that a number of Major Claims Funds are to be closed in 2004; and surpluses on these accounts are to be repaid to contributors to the respective Major Claims Funds in 2004.

Other financial matters

Amounts Written Off and Fraud

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

FOLLOW UP TO THE PREVIOUS YEAR'S AUDIT ISSUES

44 In my 2002 Report, I reported on my staff's audit of claims expenditure, the operation of financial controls, global settlements, the new Audit Body, and cessation of the Fund and going concern. There are no matters arising that are not covered in my present report.

ACKNOWLEDGEMENT

45 I am pleased to record my appreciation of the 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
30 June 2004

ANNEX IV

FINANCIAL STATEMENTS OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1971 FOR THE YEAR ENDED 31 DECEMBER 2003 OPINION OF THE EXTERNAL AUDITOR

To: the Assembly of the International Oil Pollution Compensation Fund 1971

I have audited the appended financial statements, comprising Statements I to VI, Schedules I to III and Notes, of the International Oil Pollution Compensation Fund 1971 for the year ended 31 December 2003. These financial statements are the responsibility of the Director. My responsibility is to express an opinion on these financial statements based on my audit.

I conducted my audit in accordance with the Auditing Standards of the International Organisation of Supreme Audit Institutions, INTOSAI, and the Common Auditing Standards of the Panel of External Auditors of the United Nations, the Specialized Agencies and the International Atomic Energy Agency as appropriate. Those standards require that I plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining on a test basis evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by the Director, as well as evaluating the overall financial statement presentation.

In my opinion the financial statements present fairly the financial position as at 31 December 2003 and the results of the year then ended; and were prepared in accordance with the 1971 Fund's stated accounting policies which were applied on a basis consistent with that of the preceding financial year.

Further, in my opinion, the transactions of the 1971 Fund, which I have tested as part of my audit, have, in all material respects, been in accordance with the Financial Regulations and legislative authority.

In accordance with Financial Regulation 13, I have also issued a long-form Report on my audit of the Fund's financial statements.

Sir John Bourn
Comptroller and Auditor General, United Kingdom
External Auditor
London, 30 June 2004

ANNEX V

GENERAL FUND
1971 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 2003

	2003		2002	
	£	£	£	£
INCOME				
Contributions				
Adjustment to prior years' assessment	(5 056)		1 725	
Total contributions		**(5 056)**		**1 725**
Miscellaneous				
Interest on loan to *Vistabella* MCF	13 170		14 358	
Interest on loan to *Pontoon 300* MCF	16 522		14 154	
Interest on loan to *Nissos Amorgos* MCF	13 303		12 402	
Interest on loan to *Braer* MCF	4 816		879	
Interest on loan to *Sea Empress* MCF	21 485		-	
Interest on overdue contributions	2 090		2 221	
Less interest on overdue contributions waived	(21)		-	
Interest on investments	88 389		209 027	
Total miscellaneous		**159 754**		**253 041**
TOTAL INCOME		**154 698**		**254 766**
EXPENDITURE				
Secretariat expenses				
Obligations incurred		**533 140**		**737 150**
Claims				
Compensation	951 906		444 012	
Recovery from insurer	(518 528)	**433 378**	(218 107)	**225 905**
Claims-related expenses				
Fees	190 678		205 765	
Travel	17 323		26 808	
Miscellaneous	531		391	
Recovery from insurer	(25 286)		(2 293)	
Total claims-related expenses		**183 246**		**230 671**
TOTAL EXPENDITURE		**1 149 764**		**1 193 726**
(Shortfall)/excess of income over expenditure		(995 066)		(938 960)
Exchange adjustment		-		(1 115)
Balance b/f: 1 January		5 508 941		6 449 016
Balance as at 31 December		**4 513 875**		**5 508 941**

ANNEX VI

MAJOR CLAIMS FUNDS
1971 FUND: INCOME AND EXPENDITURE ACCOUNT
FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 2003

	Aegean Sea		*Braer*	
	2003	**2002**	**2003**	**2002**
	£	**£**	**£**	**£**
INCOME				
Contributions				
Adjustment to prior years' assessment	(8 392)	-	(8 232)	-
Total contributions	(8 392)	-	(8 232)	-
Miscellaneous				
Interest on overdue contributions	-	-	-	-
Less interest on overdue contributions waived	-	-	-	-
Interest on investments	669 752	1 578 562	-	26 826
Interest on loans to *Osung N°3* MCF	44 198	48 495	-	-
Interest on loan to *Nissos Amorgos* MCF	-	-	-	-
Miscellaneous income	-	-	-	-
Recovery as a result of global settlement	-	-	-	-
Total miscellaneous	**713 950**	**1 627 057**	**-**	**26 826**
TOTAL INCOME	**705 558**	**1 627 057**	**(8 232)**	**26 826**
EXPENDITURE				
Compensation/Indemnification	2 895 274	26 088 477	-	669 610
Fees	897 279	21 663	5 484	517 737
Interest on loan from General Fund	-	-	4 816	879
Travel	-	4 352	-	-
Miscellaneous	(952)	38 563	-	38
TOTAL EXPENDITURE	**3 791 601**	**26 153 055**	**10 300**	**1 188 264**
(Shortfall)/excess of income over expenditure	(3 086 043)	(24 525 998)	(18 532)	(1 161 438)
Exchange adjustment	4 094	4 161	-	-
Balance b/f: 1 January	21 275 306	45 797 143	(53 448)	1 107 990
Balance as at 31 December	**18 193 357**	**21 275 306**	**(71 980)**	**(53 448)**

Keumdong N°5		*Sea Empress*		*Nakhodka*	
2003 £	**2002 £**	**2003 £**	**2002 £**	**2003 £**	**2002 £**
(2 299)	-	-	-	-	-
(2 299)	**-**	**-**	**-**	**-**	**-**
-	1 366	-	3 708	19 954	4 561
-	-	-	(70)	-	-
263 177	283 827	450	63 085	508 767	270 797
-	-	-	-	-	-
-	-	-	-	48 432	-
-	-	-	-	-	-
-	-	20 000 000	-	-	14 632 127
263 177	**285 193**	**20 000 450**	**66 723**	**577 153**	**14 907 485**
260 878	**285 193**	**20 000 450**	**66 723**	**577 153**	**14 907 485**
-	433 247	324 172	3 596 244	-	6 283 689
2 554	-	1 241 708	489 434	14 076	-
-	-	21 485	-	-	-
-	-	-	-	-	-
3	-	182	400	12	8
2 557	**433 247**	**1 587 547**	**4 086 078**	**14 088**	**6 283 697**
258 321	(148 054)	18 412 903	(4 019 355)	563 065	8 623 788
-	-	-	-	(365)	(1 297)
6 814 510	6 962 564	86 184	4 105 539	14 413 356	5 790 865
7 072 831	**6 814 510**	**18 499 087**	**86 184**	**14 976 056**	**14 413 356**

MAJOR CLAIMS FUNDS
1971 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 2003

	Sea Prince		*Yeo Myung*	
	2003	**2002**	**2003**	**2002**
	£	**£**	**£**	**£**
INCOME				
Contributions				
Adjustment to prior years' assessment	(3 902)	-	(453)	-
Total contributions	**(3 902)**	**-**	**(453)**	**-**
Miscellaneous				
Interest on overdue contributions	259	1 881	-	247
Interest on investments	399 324	392 647	139 987	141 906
Interest on Court Deposit	24 228	-	-	-
Refund of Court Deposit	1 112 894	-	-	-
Total miscellaneous	**1 536 705**	**394 528**	**139 987**	**142 153**
TOTAL INCOME	**1 532 803**	**394 528**	**139 534**	**142 153**
EXPENDITURE				
Compensation/Indemnification	9 324	51 818	-	-
Fees	55 733	171 545	-	-
Interest on loan from *Aegean Sea* MCF	-	-	-	-
Interest on loan from General Fund	-	-	-	-
Interest on loan from *Nakhodka* MCF	-	-	-	-
Travel	-	3 548	199	-
Miscellaneous	22	1 112 938	-	-
TOTAL EXPENDITURE	**65 079**	**1 339 849**	**199**	**-**
(Shortfall)/excess of income over expenditure	1 467 724	(945 321)	139 335	142 153
Exchange adjustment	(76 677)	-	-	-
Balance b/f: 1 January	9 783 210	10 728 531	3 618 948	3 476 795
Balance as at 31 December	**11 174 257**	**9 783 210**	**3 758 283**	**3 618 948**

Yuil N°1		*Nissos Amorgos*		*Osung N°3*	
2003	**2002**	**2003**	**2002**	**2003**	**2002**
£	**£**	**£**	**£**	**£**	**£**
(2 697)	-	-	-	-	-
(2 697)	**-**	**-**	**-**	**-**	**-**
297	1 468	745	180	3 218	2 015
200 352	226 476	-	-	-	-
-	-	-	-	-	-
-	-	-	-	-	-
200 649	**227 944**	**745**	**180**	**3 218**	**2 015**
197 952	**227 944**	**745**	**180**	**3 218**	**2 015**
567 455	175 601	3 686 244	861 953	-	-
128 834	10 443	40 336	58 006	-	-
-	-	-	-	44 198	48 495
-	-	13 303	12 402	-	-
-	-	48 432	-	-	-
-	3 548	-	5 320	-	-
19	6	266	83	-	-
696 308	**189 598**	**3 788 581**	**937 764**	**44 198**	**48 495**
(498 356)	38 346	(3 787 836)	(937 584)	(40 980)	(46 480)
-	-	(23)	-	-	-
5 634 008	5 595 662	(333 299)	604 285	(1 513 153)	(1 466 673)
5 135 652	**5 634 008**	**(4 121 158)**	**(333 299)**	**(1 554 133)**	**(1 513 153)**

ANNEX VII

BALANCE SHEET OF THE 1971 FUND AS AT 31 DECEMBER 2003

	2003 £	2002 £
ASSETS		
Cash at banks and in hand	75 867 272	63 299 787
Contributions outstanding	781 543	895 637
Interest on overdue contributions	60 653	57 691
Due from *Vistabella* MCF	515 835	490 762
Due from *Pontoon 300* MCF	498 809	413 076
Due from *Nissos Amorgos* MCF to General Fund and *Nakhodka* MCF	4 121 158	333 299
Due from *Braer* MCF	71 980	53 448
Due from *Osung N°3* MCF to *Aegean Sea* MCF	1 554 133	1 513 153
Due from 1992 Fund	-	48 072
Tax recoverable	81 887	36 765
Miscellaneous receivable	20 237	139 890
TOTAL ASSETS	**83 573 507**	**67 281 580**
LIABILITIES		
Accounts payable	168	1 641
Contributors' account	133 416	145 476
Due to 1992 Fund	116 525	-
Due to *Aegean Sea* MCF	18 193 357	21 275 306
Due to *Keumdong N°5* MCF	7 072 831	6 814 510
Due to *Sea Empress* MCF	18 499 087	86 184
Due to *Nakhodka* MCF	14 976 056	14 413 356
Due to *Sea Prince* MCF	11 174 257	9 783 210
Due to *Yeo Myung* MCF	3 758 283	3 618 948
Due to *Yuil N°1* MCF	5 135 652	5 634 008
TOTAL LIABILITIES	**79 059 632**	**61 772 639**
GENERAL FUND BALANCE	**4 513 875**	**5 508 941**
TOTAL LIABILITIES AND GENERAL FUND BALANCE	**83 573 507**	**67 281 580**

ANNEX VIII

CASH FLOW STATEMENT OF THE 1971 FUND FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 2003

	2003		2002	
	£	£	£	£
Cash as at 1 January		63 299 787		88 126 932
OPERATING ACTIVITIES				
Operating Surplus	9 960 560		(27 238 529)	
(Increase)/Decrease in Debtors	233 735		(104 231)	
Increase/(Decrease) in Creditors	98 118		(683 169)	
Net cash flow from operating activities		10 292 413		(28 025 929)
RETURNS ON INVESTMENTS				
Interest on investments	2 275 072		3 198 784	
Net cash inflow from returns on investments		2 275 072		3 198 784
Cash as at 31 December		**75 867 272**		**63 299 787**

ANNEX IX

REPORT OF THE EXTERNAL AUDITOR ON THE FINANCIAL STATEMENTS OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1992 FOR THE FINANCIAL PERIOD 1 JANUARY TO 31 DECEMBER 2003

Comprising:

EXECUTIVE SUMMARY

Overall results of the audit

1 I have audited the financial statements of the International Oil Pollution Compensation Fund 1992 ("the 1992 Fund") in accordance with the Financial Regulations and in conformity with the Auditing Standards of the International Organisation of Supreme Audit Institutions, INTOSAI, and the Common Auditing Standards of the Panel of External Auditors of the United Nations, the Specialized Agencies and the International Atomic Energy Agency.

2 My examination revealed no weaknesses or errors which I considered material to the accuracy, completeness and validity of the financial statements as a whole and I have placed an unqualified opinion on the 1992 Fund's financial statements for the financial period ended 31 December 2003.

3 Observations arising from the audit are set out below and in the section of this report entitled Detailed Findings.

On claims expenditure

4 Total claims and claims related payments for the 1992 Fund in 2003 amounted to £69.8 million. My staff reviewed a sample of these claim payments and found them to be properly supported and in accordance with the Fund's Regulations and established procedures. They also confirmed that the claims had been verified and settled as promptly as possible, while taking into account the due interests of the Fund and of the claimant.

On Claims Handling Offices

5 Claims Handling Offices were set up in La Coruna, Spain in 2002 and in Bordeaux, France in 2003 to deal with claims for compensation arising from the *Prestige* incident which occurred in November 2002.

6 By the end of 2003, combined claims payments through these offices totalled only £511. My staff intend to visit these offices in late 2004 to review the operational effectiveness of local procedures and controls over the processing and payment of claims.

On the operation of financial controls at the Fund's Secretariat

7 In addition to the substantive audit work on claims and claims related payments mentioned above, my staff carried out an annual review of the overall financial control systems operating at the Fund's Secretariat. Their review covered procedures relating to:

- contributions and other income;
- claims and claims-related payments;
- Secretariat expenses (personnel and other administrative expenditure);
- cash and investments; and
- balances on Major Claims Funds.

8 They found that satisfactory controls continued to be in place over these systems; and that control procedures had been adhered to in the course of the financial period. Concerning the controls relating to the investment of cash held pending the settlement of claims, my staff confirmed that the Secretariat had adhered to the Fund's declared investment policy, covering the suitability and extent of investment with individual financial institutions.

On the work of the Audit Body

9 As noted in my last Report, an audit committee (referred to by the Funds as the "Audit Body") was established in 2002. My staff attended the four meetings of the Audit Body held in 2003. These meetings considered a number of matters including the progress and findings of the audit and risk management.

10 Although risk management is the responsibility of the IOPC Funds' Secretariat, the Audit Body agreed that it would be useful for it to review the risks facing the IOPC Funds. My staff provided advice and assisted in the drawing up of a risk map and in the preparation of a strategic risk statement. The Secretariat have categorised the Funds' key strategic risks in the areas of business continuity, claims handling processes, financial risk, human resource management and reputational risk. Work is now under way to identify specific risks within each of these five areas
.

11 The effective and productive work of the Audit Body, and the evolution of its coverage to embrace business and organisational risk, represents a significant contribution to the Funds' governance arrangements and to the management of the Funds' operations and resources.

In Summary

12 The Fund's Secretariat is not large and provides a responsible and very effective standard of financial control and management. The results of our audit work for 2003 were wholly satisfactory; and my staff's audit examination serves to provide the Assembly with a high degree of assurance over the adequacy of the governance and financial management of the IOPC Funds.

SCOPE AND AUDIT APPROACH

Scope of the audit

13 I have audited the financial statements of the International Oil Pollution Compensation Fund 1992 for the financial period ended 31 December 2003. My examination was carried out with due regard to the provisions of the 1992 Protocol to the 1971 Fund Convention and to Regulation 13 of the 1992 Fund's Financial Regulations. The 1992 Fund's Secretariat, comprising 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.

Audit objective

14 The main objective of the audit was to enable me to form an opinion as to whether the income and expenditure recorded against both the General and Major Claims Funds in 2003 had been received and incurred for the purposes approved by the 1992 Fund Assembly; whether income and expenditure were properly classified and recorded in accordance with the 1992 Fund's Financial Regulations; and whether the financial statements fairly presented the financial position as at 31 December 2003.

Audit standards

15 My audit of the 1992 Fund's 2003 financial statements was carried out in accordance with the Auditing Standards of the International Organisation of Supreme Audit Institutions, INTOSAI, and 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 the audit so as to obtain reasonable assurance that the 1992 Fund's financial statements are free of material misstatement.

Audit approach

16 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. A further examination was carried out to ensure that the financial statements accurately reflected the 1992 Fund's accounting records and were fairly presented.

17 In accordance with the relevant Auditing Standards, my audit involved examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. This included:

- a general review of the 1992 Fund's accounting procedures;
- an assessment of the internal controls for income, expenditure, bank balances and Major Claims Fund balances;
- substantive testing of transactions of all types;
- substantive testing of year end balances; and
- a final examination to ensure that the financial statements accurately reflected the 1992 Fund's accounting records and were fairly presented.

18 These audit procedures are designed primarily for the purpose of forming an opinion on the 1992 Fund's financial statements. Consequently, my work did not involve a detailed review of all aspects of the 1992 Fund's budgetary and financial information systems and the results should not be regarded as a comprehensive statement on them.

Reporting

19 During the audit my staff sought such explanations as they considered necessary in the circumstances on matters arising from their examination of the internal controls, accounting records and financial statements. Observations on matters which I consider should be brought to the attention of the Assembly are set out in this present report. In accordance with normal practice, my staff record additional findings in a management letter to the Director.

Audit conclusion

20 My examination revealed no weaknesses or errors which I considered material to the accuracy, completeness and validity of the financial statements as a whole. Accordingly, I have placed an unqualified audit opinion on the 1992 Fund's financial statements for the financial period ended 31 December 2003.

DETAILED FINDINGS

Claims expenditure

21 Total claims and claims-related payments for the 1992 Fund in 2003 amounted to £69.8 million (£34.7 million in 2002) and were almost entirely in respect of the *Prestige* and *Erika* incidents (62 per cent and 37 per cent respectively).

22 My staff examined a sample of these payments to supporting documentation held at the Secretariat's headquarters in London and discussed the underlying claims with the Secretariat, including the Director, the Deputy Director, the Head of the Claims Department and the Claims Managers.

23 Furthermore, my staff carried out a review of the claims to ensure that all had been treated in accordance with the 1992 Fund's Regulations and established procedures. They also confirmed that the claims had been verified and settled as promptly as possible, while taking into account the due interests of the Fund and of the claimant.

24 Overall, my staff found that payments had been properly supported; and that related claims had been processed in accordance with Regulations and settled promptly.

Claims Handling Offices

25 Claims Handling Offices were set up in La Coruna, Spain in 2002 and in Bordeaux, France in 2003 to deal with claims for compensation arising from the *Prestige* incident which occurred in November 2002.

26 By the end of 2003 claims totalling £379 million and £5.1 million respectively had been submitted. However, combined payments of just £511 had been made through these offices as those payments that had been required up to then had been made via the Fund's London office. My staff plan to visit these Offices in late 2004 to review whether satisfactory local procedures and controls have been established for the processing and payment of claims and to review their operational effectiveness.

Financial controls at the Fund's Secretariat

27 As part of the 2003 audit, my staff reviewed the main financial control systems at the 1992 Fund Secretariat relating to:

- contributions and other income;
- claims and claims-related payments;
- Secretariat expenses (personnel and other administrative expenditure);
- cash and investments; and
- the balances on Major Claims Funds.

28 My staff confirmed that satisfactory controls were in place for these systems; and audit testing indicated that the control procedures had been adhered to during the financial period.

29 Concerning controls relating to the investment of cash held pending the settlement of claims, the 1992 Fund has an investment policy which sets out the types of financial institutions, and required credit ratings for these institutions, in which the Fund may invest. The policy is subject to review by the standing Investment Advisory Body, which advises the Director on institutions suitable to hold the Fund's investments.

30 My staff reviewed recommendations made by the Investment Advisory Body to the Fund and tested a sample of the investments held by the 1992 Fund. They confirmed that the investments had been handled in accordance with the declared investment policy.

New Major Claims Fund

31 During 2003, expenditure on the *Prestige* incident exceeded 4 million in Special Drawing Rights and a Major Claims Fund was initiated.

32 My staff verified that a Major Claims Fund account had been properly established; and also verified the payment of £39,914,906 to the Spanish Government authorised by the 8th Session of the Assembly.

The work of the Audit Body

33 As noted in my last Report an audit committee (referred to by the Funds as the "Audit Body") was created in 2002. Seven members were elected to the Audit Body at the joint session of the 1971 Fund Administrative Council and the 1992 Fund Assembly in October 2002. The Audit Body submitted its first report to the governing bodies in October 2003.

34 The setting up of the Audit Body represented a significant initiative in the good governance and financial management of the Funds' operations. My staff attended the four Audit Body meetings held in 2003. These meetings considered a number of matters including the progress and findings of the audit and risk management.

35 Although risk management is the responsibility of the IOPC Funds' Secretariat the Audit Body agreed that it would be useful for it to review the risks facing the IOPC Funds and to provide some input to the development of systematic risk management arrangements.

36 The Secretariat has been working with an external consultant and with advice and assistance from my staff to draw up a risk "map" for the IOPC Funds. In the first place, the Secretariat have taken forward the articulation of a strategic risk statement and have categorised the Funds' key strategic risks into five areas:

- Business continuity
- Claims handling process
- Financial risk
- Human resource management
- Reputational risk

37 Work is now under way to identify specific risks for each of these five areas. My staff will continue to support and contribute to the development of the risk management arrangements in consultation with the Secretariat and the Audit Body.

Other financial matters

Control of Supplies and Equipment

38 Note 14 (b) to the financial statements reports the value of supplies and equipment as £372,589 at 31 December 2003. In accordance with the stated accounting policies, purchases of equipment, furniture, office machines, supplies and library books are not included in the 1992 Fund's balance sheet but are charged as expenses when purchased.

39 My staff carried out a test examination of the existence and valuation of supplies and equipment under Financial Regulation 13.16(d). As a result of this review, I am satisfied that the supplies and equipment records as at 31 December 2003 properly reflected the assets held by the 1992 Fund. No losses were reported by the Fund during the year.

Amounts Written Off and Fraud

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

FOLLOW UP TO THE PREVIOUS YEAR'S AUDIT ISSUES

41 In my 2002 Report, I reported on my staff's audit of claims expenditure; their audit visit to the Lorient claims handling office; the operation of financial controls; global settlements; and the new Audit Body. There are no matters arising that are not covered in my present report.

ACKNOWLEDGEMENT

42 I am pleased to record my appreciation for the 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
30 June 2004

ANNEX X

FINANCIAL STATEMENTS OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1992 FOR THE YEAR ENDED 31 DECEMBER 2003 OPINION OF THE EXTERNAL AUDITOR

To: the Assembly of the International Oil Pollution Compensation Fund 1992

I have audited the appended financial statements, comprising Statements I to VII, Schedules I to III and Notes, of the International Oil Pollution Compensation Fund 1992 for the year ended 31 December 2003. These financial statements are the responsibility of the Director. My responsibility is to express an opinion on these financial statements based on my audit.

I conducted my audit in accordance with the Auditing Standards of the International Organisation of Supreme Audit Institutions, INTOSAI, and the Common Auditing Standards of the Panel of External Auditors of the United Nations, the Specialized Agencies and the International Atomic Energy Agency as appropriate. Those standards require that I plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining on a test basis evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by the Director, as well as evaluating the overall financial statement presentation.

In my opinion the financial statements present fairly the financial position as at 31 December 2003 and the results of the year then ended; and were prepared in accordance with the 1992 Fund's stated accounting policies which were applied on a basis consistent with that of the preceding financial year.

Further, in my opinion, the transactions of the 1992 Fund, which I have tested as part of my audit, have, in all material respects, been in accordance with the Financial Regulations and legislative authority.

In accordance with Financial Regulations 13, I have also issued a long-form Report on my audit of the Fund's financial statements.

Sir John Bourn
Comptroller and Auditor General, United Kingdom
External Auditor
London, 30 June 2004

ANNEX XI

GENERAL FUND
1992 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 2003

	2003		2002	
	£	£	£	£
INCOME				
Contributions				
Contributions	2 828 982		4 874 981	
Adjustment to prior years' assessment	11 148		1 034	
Total contributions		**2 840 130**		**4 876 015**
Miscellaneous				
Sundry income	680		8 842	
Interest on loan to HNS Fund	1 230		611	
Interest on loan to Supplementary Fund	723		-	
Interest on loan top Prestige MCF	4 932		-	
Interest on overdue contributions	10 136		6 874	
Interest on investments	925 862		888 964	
Total miscellaneous		**943 563**		**905 291**
TOTAL INCOME		**3 783 693**		**5 781 306**
EXPENDITURE				
Secretariat expenses				
Obligations incurred		2 010 655		1 662 701
Claims				
Compensation		419 882		444 012
Claims-related expenses				
Fees	3 381 479		101 718	
Travel	41 915		17 771	
Miscellaneous	11 033		638	
Total claims-related expenses		**3 434 427**		**120 127**
TOTAL EXPENDITURE		**5 864 964**		**2 226 840**
(Shortfall)/excess of income over expenditure		(2 081 271)		3 554 466
Exchange adjustment		6 802		(7)
Balance b/f: 1 January		23 640 071		20 085 612
Balance as at 31 December		**21 565 602**		**23 640 071**

ANNEX XII

MAJOR CLAIMS FUNDS
1992 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 2003

	Nakhodka		*Erika*		*Prestige*	
	2003 £	**2002** £	**2003** £	**2002** £	**2003** £	**2002** £
INCOME						
Contributions						
Contributions (sixth levy)	-	10 963 750	-	-	-	-
Contribution (fourth levy)	-	-	27 999 938	-	-	-
Contributions (third levy)	-	-	-	24 999 978	-	-
Total contributions	**-**	**10 963 750**	**27 999 938**	**24 999 978**	**-**	**-**
Miscellaneous						
Interest on loan to *Prestige* MCF	60 631	-	-	-	-	-
Interest on overdue contributions	134	13 155	22 077	19 918	-	-
Less interest on overdue contributions waived	-	(29)	-	(578)	-	-
Interest on investments	1 278 706	950 056	3 010 374	2 407 587	-	-
Recovery as a result of global settlement	-	16 272 186	-	-	-	-
Total miscellaneous	**1 339 471**	**17 235 368**	**3 032 451**	**2 426 927**	**-**	**-**
TOTAL INCOME	**1 339 471**	**28 199 118**	**31 032 389**	**27 426 905**	**-**	**-**
EXPENDITURE						
Compensation	-	12 952 288	23 218 618	15 730 700	39 914 906	-
Fees	18 456	618 896	2 659 213	4 693 769	19 385	-
Interest on loan for General Fund	-	-	-	-	4 932	-
Interest on loan for *Nakhodka* MCF	-	-	-	-	60 631	-
Travel	-	92 111	5 787	21 943	4 309	-
Miscellaneous	19	10 975	1 395	12 754	2 498	-
TOTAL EXPENDITURE	**18 475**	**13 674 270**	**25 885 013**	**20 459 166**	**40 006 661**	**-**
(Shortfall)/Excess of income over expenditure	1 320 996	14 524 848	5 147 376	6 967 739	(40 006 661)	-
Exchange adjustment	-	(58 288)	(11 120)	135 001	(383)	-
Balance b/f: 1 January	36 799 343	22 332 783	62 363 760	55 261 020	-	-
Balance as at 31 December	**38 120 339**	**36 799 343**	**67 500 016**	**62 363 760**	**40 007 044**	**-**

ANNEX XIII

BALANCE SHEET OF THE 1992 FUND AS AT 31 DECEMBER 2003

	2003 £	2002 £
ASSETS		
Cash at banks and in hand	88 672 665	124 145 243
Contributions outstanding	71 578	190 472
Interest on overdue contributions outstanding	11 250	20 629
Due from *Prestige* MCF to General Fund and *Nakhodka* MCF	40 007 044	-
Due from HNS Fund	37 511	26 793
Due from Supplementary Fund	38 506	-
Due from 1971 Fund	116 525	-
Tax recoverable	181 313	298 563
Miscellaneous receivable	170 086	111 405
TOTAL ASSETS	**129 306 478**	**124 793 105**
LIABILITIES		
Staff Provident Fund	1 779 825	1 519 143
Due to 1971 Fund	-	48 072
Accounts payable	18 109	8 691
Unliquidated obligations	98 261	50 294
Prepaid contributions	220 938	351 912
Contributors' account	3 388	11 819
Due to *Nakhodka* MCF	38 120 339	36 799 343
Due to *Erika* MCF	67 500 016	62 363 760
TOTAL LIABILITIES	**107 740 876**	**101 153 034**
GENERAL FUND BALANCE	**21 565 602**	**23 640 071**
TOTAL LIABILITIES AND GENERAL FUND BALANCE	**129 306 478**	**124 793 105**

ANNEX XIV

CASH FLOW STATEMENT OF THE 1992 FUND FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 2003

	2003		2002	
	£	£	£	£
Cash as at 1 January		124 145 243		97 863 543
OPERATING ACTIVITIES				
Operating Surplus/(Deficit)	(40 839 203)		20 877 152	
(Increase)/Decrease in Debtors	21 093		702 717	
Increase/(Decrease) in Creditors	36 693		373 648	
Net cash flow from operating activities		(40 781 417)		21 953 517
RETURNS ON INVESTMENTS				
Interest on investments	5 308 839		4 328 183	
Net cash inflow from returns on investments		5 308 839		4 328 183
Cash as at 31 December		**88 672 665**		**124 145 243**

ANNEX XV

1971 FUND: KEY FINANCIAL FIGURES FOR 2004

(2004 INCOME/EXPENDITURE FIGURES ROUNDED AND SUBJECT TO AUDIT BY THE EXTERNAL AUDITOR)

INCOME

	2004 £
2003 Annual Contributions received in 2004	16 788 000
Other income:	
Interest on investments	1 990 000
Reimbursement of court deposit (*Keumdong N° 5* incident)	795 000
TOTAL INCOME	**19 573 000**
Reimbursement to contributors of Major Claims Funds	**(69 576 000)**

1971 FUND AND 1992 FUND JOINT SECRETARIAT COSTS

	2004 £	2003 £
Budget	3 292 250	3 012 857
Expenditure	2 635 000	2 543 795
Only 1971 Fund		
Winding up:		
Budget	250 000	250 000
Expenditure	17 145	-

CLAIMS EXPENDITURE

Incident	2004 £ Compensation/ indemnification	2004 £ Claims related expenditure	2004 £ Total
Nissos Amorgos	4 716 000	149 000	4 865 000
Yuil N° 1	706 000	202 000	908 000
Keumdong N° 5	85 000	-	85 000
Pontoon 300	-	87 000	87 000
Other incidents	4 000	139 000	143 000
TOTAL CLAIMS EXPENDITURE	**5 511 000**	**577 000**	**6 088 000**

ANNEX XVI

1992 FUND: KEY FINANCIAL FIGURES FOR 2004

(2004 INCOME/EXPENDITURE FIGURES ROUNDED AND SUBJECT TO AUDIT BY THE EXTERNAL AUDITOR)

INCOME

	2004 £
2003 Annual Contributions received in 2004:	
General Fund	6 894 000
Prestige Major Claims Fund	73 797 000
Other income:	
Interest on investments	4 690 000
TOTAL INCOME	**85 381 000**
Reimbursement to contributors of surpluses on Major Claims Funds	**(37 700 000)**

1992 FUND AND 1971 FUND JOINT SECRETARIAT COSTS

	2004 £	2003 £
Budget	3 292 250	3 012 857
Expenditure	2 635 000	2 543 795

CLAIMS EXPENDITURE

Incident	2004 £ Compensation	2004 £ Claims related expenditure	2004 £ Total
Erika	7 503 000	2 009 000	9 512 000
Prestige	123 000	2 614 000	2 737 000
Kyung Won	1 567 000	149 000	1 716 000
Incident in Bahrain	363 000	9 000	372 000
Other incidents	0	209 000	209 000
TOTAL CLAIMS EXPENDITURE	**9 556 000**	**4 990 000**	**14 546 000**

ANNEX XVII

1992 FUND: CONTRIBUTING OIL RECEIVED IN THE CALENDAR YEAR 2003 IN THE TERRITORIES OF STATES WHICH WERE MEMBERS OF THE 1992 FUND ON 31 DECEMBER 2004

As reported by 31 December 2004

Member State	Contributing Oil (Tonnes)	% of Total
Japan	252 748 856	18.70%
Italy	133 602 437	9.89%
Republic of Korea	114 418 021	8.47%
Netherlands	107 776 492	7.97%
France	98 979 302	7.32%
India	97 394 756	7.21%
Canada	77 913 816	5.77%
United Kingdom	69 153 635	5.12%
Singapore	68 357 194	5.06%
Spain	62 067 283	4.59%
Germany	36 907 138	2.73%
Australia	29 942 181	2.22%
Turkey	25 383 329	1.88%
Greece	21 474 916	1.59%
Sweden	21 124 350	1.56%
Norway	19 300 287	1.43%
Portugal	14 572 880	1.08%
Mexico	12 420 610	0.92%
Philippines	11 621 983	0.86%
Finland	11 411 489	0.84%
Belgium	7 505 022	0.56%
Venezuela	6 561 334	0.49%
Denmark	5 329 791	0.39%
New Zealand	5 121 914	0.38%
Morocco	4 607 100	0.34%
Ireland	4 186 385	0.31%
China (Hong Kong Special Adminstrative Region)	3 938 735	0.29%
Tunisia	3 844 545	0.28%
Croatia	3 697 498	0.27%
Russian Federation	3 440 569	0.25%
Jamaica	2 235 272	0.17%
Sri Lanka	2 045 118	0.15%
Cyprus	1 997 228	0.15%
Ghana	1 910 086	0.14%
Cameroon	1 748 305	0.13%
Angola	1 717 793	0.13%
Uruguay	1 637 280	0.12%
Malta	1 398 551	0.10%
Algeria	613 950	0.05%
Madagascar	454 157	0.03%
Mauritius	373 088	0.03%
Kenya	341 055	0.03%
Barbados	176 620	0.01%
	1 351 452 351	**100.00%**

Notes

Nil return from Antigua and Barbuda, Belize, Brunei Darussalam, Fiji, Iceland, Latvia, Liberia, Lithuania, Marshall Islands, Monaco, Mozambique, Namibia, Oman, Papua New Guinea, Poland, Qatar, Seychelles, Slovenia, Tonga, United Arab Emirates and Vanuatu.

No report from Argentina, Bahamas, Bahrain, Cambodia, Cape Verde, Colombia, Comoros, Congo, Djibouti, Dominica, Dominican Republic, Gabon, Georgia, Grenada, Guinea, Nigeria, Panama, Saint Vincent and the Grenadines, Samoa, Sierra Leone, Trinidad and Tobago and United Republic of Tanzania.

ANNEX XVIII

1971 FUND: SUMMARY OF INCIDENTS (31 DECEMBER 2004)

For this table, damage has been grouped into the following categories:

- Clean-up
- Preventive measures
- Fishery-related
- Tourism-related
- Farming-related
- Other loss of income
- Other damage to property
- Environmental damage/studies

Where claims are shown in the table as settled this means that the amounts have been agreed with the claimants, but not necessarily that the claims have been paid or paid in full.

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
1	*Irving Whale*	7.9.70	Gulf of St Lawrence, Canada	Canada	2 261	Unknown
2	*Antonio Gramsci*	27.2.79	Ventspils, USSR	USSR	27 694	Rbls 2 431 584
3	*Miya Maru N°8*	22.3.79	Bisan Seto, Japan	Japan	997	¥37 710 340
4	*Tarpenbek*	21.6.79	Selsey Bill, United Kingdom	Federal Republic of Germany	999	£64 356
5	*Mebaruzaki Maru N°5*	8.12.79	Mebaru, Japan	Japan	19	¥845 480
6	*Showa Maru*	9.1.80	Naruto Strait, Japan	Japan	199	¥8 123 140
7	*Unsei Maru*	9.1.80	Akune, Japan	Japan	99	¥3 143 180
8	*Tanio*	7.3.80	Brittany, France	Madagascar	18 048	FFr11 833 718

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1971 Fund, unless indicated to the contrary)		Notes
Sinking	Unknown			*Irving Whale* refloated in 1996. Canadian Court dismissed action against 1971 Fund as Fund could not be held liable for events which occurred prior to entry into force of 1971 Fund Convention for Canada.
Grounding	5 500	Clean-up	SKr95 707 157	
Collision	540	Clean-up Fishery-related Indemnification	¥108 589 104 ¥31 521 478 ¥9 427 585 **¥149 538 167**	¥5 438 909 recovered by way of recourse.
Collision	Unknown	Clean-up	£363 550	
Sinking	10	Clean-up Fishery-related Indemnification	¥7 477 481 ¥2 710 854 ¥211 370 **¥10 399 705**	
Collision	100	Clean-up Fishery-related Indemnification	¥10 408 369 ¥92 696 505 ¥2 030 785 **¥105 135 659**	¥9 893 496 recovered by way of recourse.
Collision	<140			Because of the distribution of liability between the two colliding ships, 1971 Fund not called upon to pay any compensation.
Breaking	13 500	Clean-up Tourism-related Fishery-related Other loss of income	FFr219 164 465 FFr2 429 338 FFr52 024 FFr494 816 **FFr222 140 643**	Total payment equalled limit of compensation available under 1971 Fund Convention; payments by 1971 Fund represented 63.85% of accepted amounts. US$17 480 028 recovered by way of recourse.

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
9	*Furenas*	3.6.80	Oresund, Sweden	Sweden	999	SKr612 443
10	*Hosei Maru*	21.8.80	Miyagi, Japan	Japan	983	¥35 765 920
11	*Jose Marti*	7.1.81	Dalarö, Sweden	USSR	27 706	SKr23 844 593
12	*Suma Maru N°11*	21.11.81	Karatsu, Japan	Japan	199	¥7 396 340
13	*Globe Asimi*	22.11.81	Klaipeda, USSR	Gibraltar	12 404	Rbls 1 350 324
14	*Ondina*	3.3.82	Hamburg, Federal Republic of Germany	Netherlands	31 030	DM10 080 383
15	*Shiota Maru N°2*	31.3.82	Takashima island, Japan	Japan	161	¥6 304 300
16	*Fukutoko Maru N°8*	3.4.82	Tachibana Bay, Japan	Japan	499	¥20 844 440
17	*Kifuku Maru N°35*	1.12.82	Ishinomaki, Japan	Japan	107	¥4 271 560
18	*Shinkai Maru N°3*	21.6.83	Ichikawa, Japan	Japan	48	¥1 880 940
19	*Eiko Maru N°1*	13.8.83	Karakuwazaki, Japan	Japan	999	¥39 445 920
20	*Koei Maru N°3*	22.12.83	Nagoya, Japan	Japan	82	¥3 091 660
21	*Tsunehisa Maru N°8*	26.8.84	Osaka, Japan	Japan	38	¥964 800

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1971 Fund, unless indicated to the contrary)		Notes
Collision	200	Clean-up Clean-up Indemnification	SKr3 187 687 DKr418 589 SKr153 111	SKr449 961 recovered by way of recourse.
Collision	270	Clean-up Fishery-related Indemnification	¥163 051 598 ¥50 271 267 ¥8 941 480 **¥222 264 345**	¥18 221 905 recovered by way of recourse.
Grounding	1 000			Total damage less than shipowner's liability (clean-up SKr20 361 000 claimed). Shipowner's defence that he should be exonerated from liability rejected in final court judgement.
Grounding	10	Clean-up Indemnification	¥6 426 857 ¥1 849 085 **¥8 275 942**	
Grounding	>16 000	Indemnification	US$467 953	No damage in 1971 Fund Member State.
Discharge	200-300	Clean-up	DM11 345 174	
Grounding	20	Clean-up Fishery-related Indemnification	¥46 524 524 ¥24 571 190 ¥1 576 075 **¥72 671 789**	
Collision	85	Clean-up Fishery-related Indemnification	¥200 476 274 ¥163 255 481 ¥5 211 110 **¥368 942 865**	
Sinking	33	Indemnification	¥598 181	Total damage less than shipowner's liability.
Discharge	3.5	Clean-up Indemnification	¥1 005 160 ¥470 235 **¥1 475 395**	
Collision	357	Clean-up Fishery-related Indemnification	¥23 193 525 ¥1 541 584 ¥9 861 480 **¥34 596 589**	¥14 843 746 recovered by way of recourse.
Collision	49	Clean-up Fishery-related Indemnification	¥18 010 269 ¥8 971 979 ¥772 915 **¥27 755 163**	¥8 994 083 recovered by way of recourse.
Sinking	30	Clean-up Indemnification	¥16 610 200 ¥241 200 **¥16 851 400**	

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
22	*Koho Maru N°3*	5.11.84	Hiroshima, Japan	Japan	199	¥5 385 920
23	*Koshun Maru N°1*	5.3.85	Tokyo Bay, Japan	Japan	68	¥1 896 320
24	*Patmos*	21.3.85	Straits of Messina, Italy	Greece	51 627	LIt 13 263 703 650
25	*Jan*	2.8.85	Aalborg, Denmark	Federal Republic of Germany	1 400	DKr1 576 170
26	*Rose Garden Maru*	26.12.85	Umm Al Qaiwain, United Arab Emirates	Panama	2 621	US$364 182 (estimate)
27	*Brady Maria*	3.1.86	Elbe Estuary, Federal Republic of Germany	Panama	996	DM324 629
28	*Take Maru N°6*	9.1.86	Sakai-Senboku, Japan	Japan	83	¥3 876 800
29	*Oued Gueterini*	18.12.86	Algiers, Algeria	Algeria	1 576	Din1 175 064
30	*Thuntank 5*	21.12.86	Gävle, Sweden	Sweden	2 866	SKr2 741 746
31	*Antonio Gramsci*	6.2.87	Borgå, Finland	USSR	27 706	Rbls 2 431 854
32	*Southern Eagle*	15.6.87	Sada Misaki, Japan	Panama	4 461	¥93 874 528
33	*El Hani*	22.7.87	Indonesia	Libya	81 412	£7 900 000 (estimate)
34	*Akari*	25.8.87	Dubai, United Arab Emirates	Panama	1 345	£92 800 (estimate)

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1971 Fund, unless indicated to the contrary)		Notes
Grounding	20	Clean-up Fishery-related Indemnification	¥68 609 674 ¥25 502 144 ¥1 346 480 **¥95 458 298**	
Collision	80	Clean-up Indemnification	¥26 124 589 ¥474 080 **¥26 598 669**	¥8 866 222 recovered by way of recourse.
Collision	700			Total damage agreed out of court or decided by court (LIt11 583 298 650) less than shipowner's liability.
Grounding	300	Clean-up Indemnification	DKr9 455 661 DKr394 043 **DKr9 849 704**	
Discharge of oil	Unknown			Claim against 1971 Fund (US$44 204) withdrawn.
Collision	200	Clean-up	DM3 220 511	DM333 027 recovered by way of recourse.
Discharge of oil	0.1	Indemnification	¥104 987	Total damage less than shipowner's liability.
Discharge	15	Clean-up Clean-up Clean-up Other loss of income Indemnification	US$1 133 FFr708 824 Din5 650 £126 120 Din293 766	
Grounding	150-200	Clean-up Fishery-related Indemnification	SKr23 168 271 SKr49 361 SKr685 437 **SKr23 903 069**	
Grounding	600-700	Clean-up	FM1 849 924	USSR clean-up claims (Rbls 1 417 448) not paid by 1971 Fund since USSR not Member of 1971 Fund at time of incident.
Collision	15			Total damage less than shipowner's liability (¥35 346 679 clean-up and ¥51 521 183 fishery-related agreed).
Grounding	3 000			Clean-up claim (US$242 800) not pursued.
Fire	1 000	Clean-up Clean-up	Dhs 864 293 US$187 165	US$160 000 refunded by shipowner's insurer.

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
35	*Tolmiros*	11.9.87	West coast, Sweden	Greece	48 914	SKr50 000 000 (estimate)
36	*Hinode Maru Nº1*	18.12.87	Yawatahama, Japan	Japan	19	¥608 000
37	*Amazzone*	31.1.88	Brittany, France	Italy	18 325	FFr13 860 369
38	*Taiyo Maru Nº13*	12.3.88	Yokohama, Japan	Japan	86	¥2 476 800
39	*Czantoria*	8.5.88	St Romuald, Canada	Canada	81 197	Unknown
40	*Kasuga Maru Nº1*	10.12.88	Kyoga Misaki, Japan	Japan	480	¥17 015 040
41	*Nestucca*	23.12.88	Vancouver island, Canada	United States of America	1 612	Unknown
42	*Fukkol Maru Nº12*	15.5.89	Shiogama, Japan	Japan	94	¥2 198 400
43	*Tsubame Maru Nº58*	18.5.89	Shiogama, Japan	Japan	74	¥2 971 520
44	*Tsubame Maru Nº16*	15.6.89	Kushiro, Japan	Japan	56	¥1 613 120
45	*Kifuku Maru Nº103*	28.6.89	Otsuji, Japan	Japan	59	¥1 727 040
46	*Nancy Orr Gaucher*	25.7.89	Hamilton, Canada	Liberia	2 829	Can$473 766

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1971 Fund, unless indicated to the contrary)		Notes
Unknown	200			Clean-up claim (SKr100 639 999) not pursued, since legal action by Swedish Government against shipowner and 1971 Fund withdrawn.
Mishandling of cargo	25	Clean-up Indemnification	¥1 847 225 ¥152 000 **¥1 999 225**	
Storm damage to tanks	2 000	Clean-up Fishery-related	FFr1 141 185 FFr145 792 **FFr1 286 977**	FFr1 000 000 recovered from shipowner's insurer.
Discharge	6	Clean-up Indemnification	¥6 134 885 ¥619 200 **¥6 754 085**	
Collision with berth	Unknown			1971 Fund Convention not applicable, as incident occurred before entry into force of Convention for Canada. Clean-up claims (Can$1 787 771) not pursued.
Sinking	1 100	Clean-up Fishery-related Indemnification	¥371 865 167 ¥53 500 000 ¥4 253 760 **¥429 618 927**	
Collision	Unknown			1971 Fund Convention not applicable, as incident occurred before entry into force of Convention for Canada. Clean-up claims (Can$10 475) not pursued.
Overflow from supply pipe	0.5	Clean-up Indemnification	¥492 635 ¥549 600 **¥1 042 235**	
Mishandling of oil transfer	7	Other damage to property Indemnification	¥19 159 905 ¥742 880 **¥19 902 785**	
Discharge	Unknown	Other damage to property Indemnification	¥273 580 ¥403 280 **¥676 860**	
Mishandling of cargo	Unknown	Clean-up Indemnification	¥8 285 960 ¥431 761 **¥8 717 721**	
Overflow during discharge	250			Total damage less than shipowner's liability (clean-up Can$292 110 agreed).

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
47	*Dainichi Maru N°5*	28.10.89	Yaizu, Japan	Japan	174	¥4 199 680
48	*Daito Maru N°3*	5.4.90	Yokohama, Japan	Japan	93	¥2 495 360
49	*Kazuei Maru N°10*	11.4.90	Osaka, Japan	Japan	121	¥3 476 160
50	*Fuji Maru N°3*	12.4.90	Yokohama, Japan	Japan	199	¥5 352 000
51	*Volgoneft 263*	14.5.90	Karlskrona, Sweden	USSR	3 566	SKr3 205 204
52	*Hato Maru N°2*	27.7.90	Kobe, Japan	Japan	31	¥803 200
53	*Bonito*	12.10.90	River Thames, United Kingdom	Sweden	2 866	£241 000 (estimate)
54	*Rio Orinoco*	16.10.90	Anticosti island, Canada	Cayman Islands	5 999	Can$1 182 617
55	*Portfield*	5.11.90	Pembroke, Wales, United Kingdom	United Kingdom	481	£69 141
56	*Vistabella*	7.3.91	Caribbean	Trinidad and Tobago	1 090	FFr2 354 000 (estimate)
57	*Hokunan Maru N°12*	5.4.91	Okushiri island, Japan	Japan	209	¥3 523 520
58	*Agip Abruzzo*	10.4.91	Livorno, Italy	Italy	98 544	LIt 21 800 000 000 (estimate)

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1971 Fund, unless indicated to the contrary)		Notes
Mishandling of cargo	0.2	Fishery-related Clean-up Indemnification	¥1 792 100 ¥368 510 ¥1 049 920 **¥3 210 530**	
Mishandling of cargo	3	Clean-up Indemnification	¥5 490 570 ¥623 840 **¥6 114 410**	
Collision	30	Clean-up Fishery-related Indemnification	¥48 883 038 ¥560 588 ¥869 040 **¥50 312 666**	¥45 038 833 recovered by way of recourse.
Overflow during supply operation	Unknown	Clean-up Indemnification	¥96 431 ¥1 338 000 **¥1 434 431**	¥430 329 recovered by way of recourse.
Collision	800	Clean-up Fishery-related Indemnification	SKr15 523 813 SKr530 239 SKr795 276 **SKr16 849 328**	
Mishandling of cargo	Unknown	Other damage to property Indemnification	¥1 087 700 ¥200 800 **¥1 288 500**	
Mishandling of cargo	20			Total damage less than shipowner's liability (clean-up £130 000 agreed).
Grounding	185	Clean-up	Can$12 831 892	
Sinking	110	Clean-up Fishery-related Indemnification	£249 630 £9 879 £17 155 **£276 663**	
Sinking	Unknown	Clean-up Clean-up	FFr8 237 529 £14 250	
Grounding	Unknown	Clean-up Fishery-related Indemnification	¥2 119 966 ¥4 024 863 ¥880 880 **¥7 025 709**	
Collision	2 000	Indemnification	LIt 1 666 031 931	Total damage less than shipowner's liability.

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
59	*Haven*	11.4.91	Genoa, Italy	Cyprus	109 977	LIt 23 950 220 000
60	*Kaiko Maru N°86*	12.4.91	Nomazaki, Japan	Japan	499	¥14 660 480
61	*Kumi Maru N°12*	27.12.91	Tokyo Bay, Japan	Japan	113	¥3 058 560
62	*Fukkol Maru N°12*	9.6.92	Ishinomaki, Japan	Japan	94	¥2 198 400
63	*Aegean Sea*	3.12.92	La Coruña, Spain	Greece	57 801	Pts 1 121 219 450
64	*Braer*	5.1.93	Shetland, United Kingdom	Liberia	44 989	£4 883 840
65	*Kihnu*	16.1.93	Tallinn, Estonia	Estonia	949	113 000 SDR (estimate)
66	*Sambo N°11*	12.4.93	Seoul, Republic of Korea	Republic of Korea	520	Won 77 786 224 (estimate)
67	*Taiko Maru*	31.5.93	Shioyazaki, Japan	Japan	699	¥29 205 120

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1971 Fund, unless indicated to the contrary)		Notes
Fire and explosion	Unknown	Italian State Two Italian contractors **LIt 71 584 970 783** French State Other French public bodies Principality of Monaco **FFr23 510 228** Indemnification	LIt 70 002 629 093 LIt 1 582 341 690 FFr12 580 724 FFr10 659 469 FFr270 035 £2 500 000	Agreement on a global settlement of all outstanding claims between the Italian State, the shipowner/ Club and the 1971 Fund was signed in Rome on 4 March 1999. The 1971 Fund's payments are set out in the previous column. The shipowner's insurer paid LIt47 597 370 907 to the Italian State. The shipowner and his insurer paid all accepted claims by other Italian public bodies and private claimants.
Collision	25	Clean-up Fishery-related Indemnification **¥96 732 933**	¥53 513 992 ¥39 553 821 ¥3 665 120	
Collision	5	Clean-up Indemnification **¥1 821 159**	¥1 056 519 ¥764 640	¥650 522 recovered by way of recourse.
Mishandling of oil supply	Unknown	Other damage to property Indemnification **¥4 793 597**	¥4 243 997 ¥549 600	
Grounding	73 500	Fishing related Clean-up Preventive measures Tourism Financial costs Amounts awarded by criminal court Previously settled claims Miscellaneous **Pts 13 928 783 000** Indemnification	Pts 8 696 000 000 Pts 1 729 240 000 Pts 708 033 000 Pts 13 810 000 Pts 371 680 000 Pts 893 880 000 Pts 1 263 150 000 Pts 252 990 000 Pts 278 197 307	Shipowner/insurer paid Pts 840 000 000. Pursuant to agreement between the Spanish State, the shipowner/insurer and the 1971 Fund, the Fund paid the Spanish State Pts 6 386 921 613. The Fund also paid Pts 1 263 150 000 to claimants that had settled their claims at an early stage and were not included in the above agreement.
Grounding	84 000	Clean-up Fishery-related Tourism-related Farming-related Other damage to property Other loss of income **£51 938 938**	£593 883 £38 538 451 £77 375 £3 572 392 £8 904 047 £252 790	£6 213 497 paid by shipowner's insurer. The 1971 Fund paid £45 725 441 in compensation. One claim for £1.4 million subject to court proceedings. The shipowner's insurer will pay any amount awarded.
Grounding	140	Clean-up	FM543 618	
Grounding	4	Clean-up Fishery-related **Won 219 714 755**	Won 176 866 632 Won 42 848 123	US$22 504 recovered from shipowner's insurer.
Collision	520	Clean-up Fishery-related Indemnification **¥1 100 486 335**	¥756 780 796 ¥336 404 259 ¥7 301 280	¥49 104 248 recovered by way of recourse.

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
68	*Ryoyo Maru*	23.7.93	Izu peninsula, Japan	Japan	699	¥28 105 920
69	*Keumdong N°5*	27.9.93	Yeosu, Republic of Korea	Republic of Korea	481	Won 77 417 210
70	*Iliad*	9.10.93	Pylos, Greece	Greece	33 837	Drs 1 496 533 000
71	*Seki*	30.3.94	Fujairah, United Arab Emirates, and Oman	Panama	153 506	14 million SDR
72	*Daito Maru N°5*	11.6.94	Yokohama, Japan	Japan	116	¥3 386 560
73	*Toyotaka Maru*	17.10.94	Kainan, Japan	Japan	2 960	¥81 823 680
74	*Hoyu Maru N°53*	31.10.94	Monbetsu, Japan	Japan	43	¥1 089 280
75	*Sung Il N°1*	8.11.94	Onsan, Republic of Korea	Republic of Korea	150	Won 23 000 000 (estimate)
76	Spill from unknown source	30.11.94	Mohammédia, Morocco	-	-	-
77	*Boyang N°51*	25.5.95	Sandbaeg Do, Republic of Korea	Republic of Korea	149	19 817 SDR

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1971 Fund, unless indicated to the contrary)		Notes
Collision	500	Clean-up Indemnification	¥8 433 001 ¥7 026 480 **¥15 459 481**	¥10 455 440 recovered by way of recourse.
Collision	1 280	Clean-up (paid) Fishery-related (paid)	Won 5 602 021 858 Won 10 530 130 111 **Won 16 146 358 015**	Won 64 560 080 paid by shipowner's insurer.
		Indemnification Fishery-related (claimed)	Won 12 857 130 Won 2 756 471 759	Fishing claims subject of appeal by claimants to the Supreme Court.
Grounding	200	Clean-up (paid) Fishery-related (claimed) Other loss of income (claimed) Moral damages (claimed)	Drs 356 204 011 Drs 1 044 000 000 Drs 1 671 000 000 Drs 378 000 000 **Drs 3 449 204 011**	Drs 356 204 011 paid by shipowner's insurer.
Collision	16 000			Settlement outside the Conventions concluded between the Government of Fujairah and the shipowner. Terms of settlement not known to 1971 Fund. The 1971 Fund will not be called upon to pay any compensation.
Overflow during loading operation	0.5	Clean-up Indemnification	¥1 187 304 ¥846 640 **¥2 033 944**	
Collision	560	Clean-up Fishery-related Other loss of income Indemnification	¥629 516 429 ¥50 730 359 ¥15 490 030 ¥20 455 920 **¥716 192 738**	¥31 021 717 recovered by way of recourse.
Mishandling of oil supply	Unknown	Other damage to property Clean-up Indemnification	¥3 954 861 ¥202 854 ¥272 320 **¥4 430 035**	
Grounding	18	Clean-up Fishery-related	Won 9 401 293 Won 28 378 819 **Won 37 780 112**	Shipowner lost right to limit his liability because proceedings not commenced within period specified under Korean law.
Unknown	Unknown	Clean-up (claimed)	Mor Dhr 2 600 000	Not established that oil originated from a ship as defined in 1971 Fund Convention.
Collision	160			Clean-up claim (Won 142 million) time-barred as necessary legal action not taken.

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
78	*Dae Woong*	27.6.95	Kojung, Republic of Korea	Republic of Korea	642	Won 95 000 000 (estimate)
79	*Sea Prince*	23.7.95	Yeosu, Republic of Korea	Cyprus	144 567	Won 18 308 275 906
80	*Yeo Myung*	3.8.95	Yeosu, Republic of Korea	Republic of Korea	138	Won 21 465 434
81	*Shinryu Maru N°8*	4.8.95	Chita, Japan	Japan	198	¥3 967 138
82	*Senyo Maru*	3.9.95	Ube, Japan	Japan	895	¥20 203 325
83	*Yuil N°1*	21.9.95	Busan, Republic of Korea	Republic of Korea	1 591	Won 351 924 060
84	*Honam Sapphire*	17.11.95	Yeosu, Republic of Korea	Panama	142 488	14 000 000 SDR
85	*Toko Maru*	23.1.96	Anegasaki, Japan	Japan	699	¥18 769 567 (estimate)

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1971 Fund, unless indicated to the contrary)		Notes
Grounding	1	Clean-up	Won 43 517 127	
Grounding	5 035	Clean-up (paid) Fishery-related (paid) Tourism-related (paid) Oil removal (paid) Environmental studies (paid) **Won 50 227 315 596** Clean-up (paid) Indemnification (paid)	Won 20 709 245 359 Won 19 836 456 445 Won 538 000 000 Won 8 420 123 382 Won 723 490 410 ¥357 214 Won 7 410 928 540	Won 18 308 275 906 paid by shipowner's insurer.
Collision	40	Clean-up (paid) Fishery-related (paid) Tourism-related (paid) **Won 1 553 029 739** *Claims pending in court:* Fishery-related	Won 684 000 000 Won 600 000 000 Won 269 029 739 Won 335 000 000	Won 560 945 437 paid by shipowner's insurer.
Mishandling of oil supply	0.5	Clean-up (paid) Indemnification (paid) **¥9 634 576** Other damage to property (agreed) Other loss of income (agreed) **US$5 663**	¥8 650 249 ¥984 327 US$3 103 US$2 560	¥3 718 455 paid by shipowner's insurer.
Collision	94	Clean-up Fishery-related Indemnification **¥366 578 453**	¥314 838 937 ¥46 726 661 ¥5 012 855	¥279 973 101 recovered by way of recourse action.
Sinking	Unknown	Clean-up (paid) Fishery-related (paid) Oil removal operation (paid) **Won 27 177 996 729**	Won 12 393 138 987 Won 7 960 494 932 Won 6 824 362 810	
Contact with fender	1 800	Clean-up (paid) Fishery-related (paid) Environmental studies (claimed) **Won 10 259 000 000**	Won 9 033 000 000 Won 1 112 000 000 Won 114 000 000	US$13.5 million paid by shipowner's insurer.
Collision	4			Total damage less than owner's liability. Indemnification not requested.

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
86	*Sea Empress*	15.2.96	Milford Haven, Wales, United Kingdom	Liberia	77 356	£7 395 748
87	*Kugenuma Maru*	6.3.96	Kawasaki, Japan	Japan	57	¥1 175 055 (estimate)
88	*Kriti Sea*	9.8.96	Agioi Theodoroi, Greece	Greece	62 678	€6 576 109 million (estimate)
89	*N° 1 Yung Jung*	15.8.96	Busan, Republic of Korea	Republic of Korea	560	Won 122 million
90	*Nakhodka*	2.1.97	Oki island, Japan	Russian Federation	13 159	1 588 000 SDR
91	*Tsubame Maru N° 31*	25.1.97	Otaru, Japan	Japan	89	¥1 843 849
92	*Nissos Amorgos*	28.2.97	Maracaibo, Venezuela	Greece	50 563	Bs3 473 million (estimate)
93	*Daiwa Maru N° 18*	27.3.97	Kawasaki, Japan	Japan	186	¥3 372 368 (estimate)
94	*Jeong Jin N° 101*	1.4.97	Busan, Republic of Korea	Republic of Korea	896	Won 246 million

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1971 Fund, unless indicated to the contrary)		Notes
Grounding	72 360	Clean-up (paid) Other damage to property (paid) Fishery-related (paid) Tourism-related (paid) Other loss of income (paid) **£36 806 484** Indemnification (paid)	£22 773 470 £443 972 £10 154 314 £ 2 389 943 £1 044 785 £1 835 035	£7 395 748 paid by shipowner's insurer.
Mishandling of oil supply	0.3	Clean-up Indemnification **¥2 278 469**	¥1 981 403 ¥297 066	¥1 197 267 recovered by way of recourse action.
Mishandling of oil supply	30	Clean-up and property damage (paid) Fishery-related (paid) Tourism (paid) Miscellaneous (paid) **€3 774 000**	€2 500 000 €1 100 000 €150 000 €24 000	All claims paid by the shipowner's insurer.
Grounding	28	Clean-up (paid) Salvage (paid) Fishery-related (paid) Loss of income (paid) Cargo transhipment (paid) Indemnification (paid) **Won 771 208 588**	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 690 million paid by shipowner's insurer.
Breaking	6 200	Clean-up (paid) Fishery-related (paid) Tourism-related (paid) Causeway (paid) **¥26 089 893 000**	¥20 928 412 000 ¥1 769 172 000 ¥1 344 157 000 ¥2 048 152 000	All claims have been settled and paid. A global settlement agreement was reached between the shipowner/insurer and the IOPC Funds whereby the insurer paid ¥10 956 930 000 and the Funds paid ¥15 130 970 000, of which the 1992 Fund paid ¥7 422 192 000 and the 1971 Fund paid ¥7 708 778 000.
Overflow during loading operation	0.6	Clean-up Indemnification **¥8 131 327**	¥7 673 830 ¥457 497	¥1 710 173 paid by shipowner's insurer.
Grounding	3 600	Clean-up (settled) Clean-up (settled) Clean-up (claimed) Fishery-related (settled) Fishery-related (settled) Fishery-related (claimed) Tourism-related (settled) Environmental damage (claimed) Miscellaneous (claimed)	Bs3 523 252 942 US$35 850 Bs78 906 071 Bs133 011 848 US$16 033 390 US$30 000 000 Bs8 188 078 US$60 250 396 Bs540 000 000	Bs1 254 619 385 and US$4 008 347 paid by shipowner's insurer. Bs17 501 083 and US$9 745 882 paid by 1971 Fund. Clean-up (claimed) settled for Bs70 675 468, but claim not withdrawn from Court.
Mishandling of oil supply	1	Clean-up Indemnification **¥416 465 406**	¥415 600 000 ¥865 406	
Overflow during loading operation	124	Clean-up Indemnification **Won 476 000 000**	Won 418 000 000 Won 58 000 000	

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
95	*Osung N° 3*	3.4.97	Tunggado, Republic of Korea	Republic of Korea	786	104 500 SDR (estimate)
96	*Plate Princess*	27.5.97	Puerto Miranda, Venezuela	Malta	30 423	3.6 million SDR (estimate)
97	*Diamond Grace*	2.7.97	Tokyo Bay, Japan	Panama	147 012	14 million SDR
98	*Katja*	7.8.97	Le Havre, France	Bahamas	52 079	FFr48 million (estimate)
99	*Evoikos*	15.10.97	Strait of Singapore	Cyprus	80 823	8 846 942 SDR
100	*Kyungnam N° 1*	7.11.97	Ulsan, Republic of Korea	Republic of Korea	168	Won 43 543 015
101	*Pontoon 300*	7.1.98	Hamriyah, Sharjah, United Arab Emirates	Saint Vincent and the Grenadines	4 233	Not available

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1971 Fund, unless indicated to the contrary)		Notes
Grounding	Unknown	Clean-up (paid) Fishery-related (paid) Oil removal operation (paid) **Won 7 674 268 001**	Won 866 906 355 Won 68 795 729 Won 6 738 565 917	The 1992 Fund paid ¥340 million to claimants. This amount was later reimbursed by the 1971 Fund.
		Clean-up (paid) Fishery-related (paid) **¥851 039 365**	¥669 252 879 ¥181 786 486	
		Indemnification	Won 37 963 635	
Overflow during loading operation	3.2	Fishery-related (claimed)	US$47 000 000	Claims against the 1971 Fund time-barred.
Grounding	1 500	Clean-up (paid) Fishery-related (paid) Tourism-related (paid) Other loss of income (paid) Miscellaneous (settled) **¥1 416 000 000**	¥1 100 000 000 ¥263 000 000 ¥23 000 000 ¥8 000 000 ¥22 000 000	Total amount of established claims did not exceed shipowner's liability.
Striking a quay	190	Clean-up (paid) Clean-up (claimed)	FFr16 192 738 FFr6 400 000	FFr16 781 984 paid by shipowner's insurer. Practically certain that total of the established claims will be less than shipowner's liability.
		Fishery-related (paid) Other damage to property (paid) **FFr23 181 894**	FFr328 000 FFr261 156	Claims pending in court.
Collision	29 000	*Singapore* Clean-up (paid) Other damage to property (paid) Other damage to property (claimed) **S$11 567 000**	 S$10 000 000 S$1 500 000 S$67 000	All settled claims in Singapore and Malaysia paid by shipowner.
		Malaysia Clean-up (paid) Fishery-related (paid) **RM2 624 000**	 RM1 424 000 RM1 200 000	
		Indonesia Clean-up (claimed) Environmental damage (claimed) Fishery-related (claimed) **US$3 363 000**	 US$152 000 US$3 200 000 US$11 000	All claims in Indonesia dismissed by limitation court in Singapore.
Grounding	15-20	Clean-up (paid) Fishery-related (paid) **Won 265 023 170**	Won 189 214 535 Won 82 818 635	The shipowner has paid Won 26 622 030.
Sinking	4 000	Clean-up (settled) Other damage (claimed) **Dhs 205 133 019**	Dhs 6 380 522 Dhs 198 752 497	Payments limited to 75% (Dhs 4 785 392).

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
102	*Maritza Sayalero*	8.6.98	Carenero Bay, Venezuela	Panama	28 338	3 000 000 SDR (estimate)
103	*Al Jaziah 1*	24.1.00	Abu Dhabi, United Arab Emirates	Honduras	681	3 000 000 SDR
104	*Alambra*	17.9.00	Estonia	Malta	75 366	7 600 000 SDR (estimate)
105	*Natuna Sea*	3.10.00	Indonesia	Panama	51 095	6 100 000 SDR (estimate)
106	*Zeinab*	14.4.01	United Arab Emirates	Georgia	2 178	3 000 000 SDR
107	*Singapura Timur*	28.5.01	Malaysia	Panama	1 369	102 000 SDR (estimate)

Notes

See page 180.

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1971 Fund, unless indicated to the contrary)		Notes
Ruptured discharge pipe	262	*Claims against shipowner pending in court:* Clean-up and environmental damage (claimed)	Bs10 000 000	The 1971 Fund considers that the Conventions do not apply to this incident. Claims against Fund time-barred.
Sinking	100-200	Clean-up/preventive measures (paid)	£1 112 000	The 1971 and 1992 Funds have each contributed 50% of the amounts paid.
Corrosion	300 (estimate)	Clean-up (settled) Economic loss (claimed) **US$720 000** Economic loss (claimed) **EEK38 800 000**	US$620 000 US$100 000 EEK38 800 000	All settled claims have been paid by the shipowner's insurer.
Grounding	7 000 (estimate)	*Singapore* Clean-up and fisheries (paid) **US$8 400 000** *Malaysia* Clean-up (paid) Fishery-related (paid) **RM2 205 000** *Indonesia* Clean-up and fisheries (paid) **US$2 800 000**	 US$8 400 000 RM1 300 000 RM905 000 US$2 800 000	All settled claims have been paid by the shipowner's insurer.
Sinking	400	Clean-up (paid) Clean-up (paid)	US$844 000 Dhs2 480 000	The 1971 and 1992 Funds have each contributed 50% of the amounts paid.
Collision	Unknown	Clean-up (paid) Preventive measures (paid) Preventive measures/environmental risk assessment (paid) Indemnification (paid)	US$62 896 ¥11 436 000 US$783 500 US$25 000	US$103 378 paid by the shipowner's insurer. The 1971 Fund has recovered £317 317 from its insurer in respect of compensation and indemnification. The insurer has recovered £185 000 from the colliding vessel interests.

ANNEX XIX

1992 FUND: SUMMARY OF INCIDENTS (31 DECEMBER 2004)

For this table, damage has been grouped into the following categories:

- Clean-up
- Preventive measures
- Fishery-related
- Tourism-related
- Farming-related
- Other loss of income
- Other damage to property
- Environmental damage/studies

Where claims are shown in the table as settled this means that the amounts have been agreed with the claimants, but not necessarily that the claims have been paid or paid in full.

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GT)	Limit of shipowner's liability under applicable CLC
1	Incident in Germany	20.6.96	North Sea coast, Germany	Unknown	Unknown	Unknown
2	*Nakhodka*	2.1.97	Oki island, Japan	Russian Federation	13 159	1 588 000 SDR
3	*Osung N°3*	3.4.97	Tunggado, Republic of Korea	Republic of Korea	786	104 500 SDR (estimate)
4	Incident in United Kingdom	28.9.97	Essex, United Kingdom	Unknown	Unknown	Unknown
5	*Santa Anna*	1.1.98	Devon, United Kingdom	Panama	17 134	10 196 280 SDR
6	*Milad 1*	5.3.98	Bahrain	Belize	801	Not available
7	*Mary Anne*	22.7.99	Philippines	Philippines	465	3 000 000 SDR

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1992 Fund, unless indicated to the contrary)		Notes
Unknown	Unknown	Clean-up (claimed)	€1 390 000	A German court has found the owner of the *Kuzbass* and his insurer liable for pollution damage. If the appeal by the shipowner/ insurer were to be successful the German authorities would claim against the 1992 Fund.
Breaking	6 200	Clean-up (paid) Fishery-related (paid) Tourism-related (paid) Causeway (paid)	¥20 928 412 000 ¥1 769 172 000 ¥1 344 157 000 ¥2 048 152 000 **¥26 089 893 000**	All claims have been settled and paid. A global settlement agreement was reached between the shipowner/insurer and the IOPC Funds whereby the insurer paid ¥10 956 930 000 and the Funds paid ¥15 130 970 000, of which the 1992 Fund paid ¥7 422 192 000 and the 1971 Fund paid ¥7 708 778 000.
Grounding	Unknown	Clean-up (paid) Fishery-related (paid) Oil removal operation (paid) Clean-up (paid) Fishery-related (paid)	Won 866 906 355 Won 68 795 729 Won 6 738 565 917 **Won 7 674 268 001** ¥669 252 879 ¥181 786 486 **¥851 039 365**	All claims have been settled and paid. The 1992 Fund paid ¥340 million to claimants. This amount was later reimbursed by the 1971 Fund.
Unknown	Unknown	Clean-up (claimed)	£10 000	Claim not pursued.
Grounding	280	Clean-up (settled)	£30 000	Claim paid by the shipowner's insurer.
Damage to hull	0	Pre-spill preventive measures (paid)	BD 21 168	The 1992 Fund did not pursue recourse action against the shipowner.
Sinking	Unknown	Clean-up (paid) Clean-up (paid)	US$2 500 000 PPs1 800 000	Claims settled by the shipowner's insurer without the 1992 Fund's involvement.

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GT)	Limit of shipowner's liability under applicable CLC
8	*Dolly*	5.11.99	Martinique	Dominican Republic	289	3 000 000 SDR
9	*Erika*	12.12.99	Brittany, France	Malta	19 666	FFr84 247 733
10	*Al Jaziah 1*	24.1.00	Abu Dhabi, United Arab Emirates	Honduras	681	3 000 000 SDR
11	*Slops*	15.6.00	Piraeus, Greece	Greece	10 815	None
12	Incident in Spain	5.9.00	Spain	Unknown	Unknown	Unknown
13	Incident in Sweden	23.9.00	Sweden	Unknown	Unknown	Unknown
14	*Natuna Sea*	3.10.00	Indonesia	Panama	51 095	22 400 000 SDR (estimate)
15	*Baltic Carrier*	29.3.01	Denmark	Marshall Islands	23 235	DKr118 million

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1992 Fund, unless indicated to the contrary)		Notes
Sinking	Unknown			No claims submitted so far.
Breaking	14 000 (estimate)	Clean-up (settled) Fishery-related (settled) Property damage (settled) Tourism (settled) Other loss of income (settled) Claims in court	€6 332 000 €10 718 000 €2 040 000 €73 858 000 €6 310 000 €65 883 000 **€165 141 000**	Payments made by the shipowner's insurer for €12 800 000 and by the 1992 Fund for €86 400 000. Further claims totalling €334 000 000 have been filed in court by the French State and TotalFinaElf SA, but these will only be pursued to the extent that all other claims are paid in full.
Sinking	100-200	Clean-up/preventive measures (paid)	Dhs6 400 000	The 1971 and 1992 Funds have each contributed 50% of the amounts paid. The Funds have taken recourse action against the shipowner.
Fire	Unknown	Clean-up (claimed)	€2 323 000	The 1992 Fund considers that the *Slops* does not fall within the definition of 'ship'. Two contractors took legal action against the 1992 Fund, which is now before the Supreme Court.
Unknown	Unknown	Clean-up (claimed)	€6 000	The Spanish authorities have recovered their costs from the alleged source of the pollution.
Unknown	Unknown	Clean-up (claimed)	SEK5 260 000	The Swedish State has brought legal action against the owner of the *Alambra* and his insurer. If the action were to be unsuccessful, the State would claim against the 1992 Fund.
Grounding	7 000 (estimate)	*Singapore* Clean-up and fisheries (paid) *Malaysia* Clean-up (paid) Fishery-related (paid) *Indonesia* Clean-up and fisheries (paid)	 US$8 400 000 RM1 300 000 RM905 000 **RM2 205 000** US$2 800 000	All claims have been paid by the shipowner's insurer.
Collision	2 500	Clean-up (paid) Oil disposal (paid) Property damage/economic loss (paid) Fishery-related (paid) Environmental monitoring (paid) Clean-up (claimed)	DKr15 900 000 DKr17 400 000 DKr1 600 000 DKr19 700 000 DKr258 000 **DKr54 858 000** DKr50 000 000	All claims paid by the shipowner's insurer. The 1992 Fund is unlikely to be called upon to make any compensation payments.

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GT)	Limit of shipowner's liability under applicable CLC
16	*Zeinab*	14.4.01	United Arab Emirates	Georgia	2 178	3 000 000 SDR
17	Incident in Guadeloupe	30.6.02	Guadeloupe	Unknown	Unknown	Unknown
18	Incident in United Kingdom	29.9.02	United Kingdom	Unknown	Unknown	Unknown
19	*Prestige*	13.11.02	Spain	Bahamas	42 820	€22 777 986
20	*Spabunker IV*	21.1.03	Spain	Spain	647	3 000 000 SDR
21	Incident in Bahrain	15.3.03	Bahrain	Unknown	Unknown	Unknown
22	*Buyang*	22.4.03	Geoje, Republic of Korea	Republic of Korea	187	3 000 000 SDR
23	*Hana*	13.5.03	Busan, Republic of Korea	Republic of Korea	196	3 000 000 SDR
24	*Victoriya*	30.8.03	Syzran, Russian Federation	Russian Federation	2 003	3 000 000 SDR

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1992 Fund, unless indicated to the contrary)		Notes
Sinking	400	Clean-up (paid) Clean-up (paid)	US$844 000 Dhs2 480 000	The 1971 and 1992 Funds have each contributed 50% of the amounts paid.
Unknown	Unknown	Clean-up (claimed)	€340 000	The source of the spill appears to have been a general cargo vessel. It is unlikely therefore that the 1992 Fund will be called upon to make any compensation payments.
Unknown	Unknown	Clean-up (paid)	£5 400	
Breaking	Unknown	*Spain* Clean-up/preventive measures (claimed) Property damage (claimed) Fisheries and mariculture (claimed) Tourism (claimed) Miscellaneous (claimed) **€711 274 000** *France* Clean-up (claimed) Property damage (claimed) Fisheries and mariculture (claimed) Tourism (claimed) Miscellaneous (claimed) **€92 141 000** *Portugal* Clean-up (claimed) **€3 305 000**	 €450 172 000 €2 441 000 €251 277 000 €6 043 000 €1 341 000 €73 600 000 €88 000 €2 812 000 €15 404 000 €237 000 €3 305 000	The shipowner has deposited the limitation amount (€22 777 986) with the Spanish Court. The 1992 Fund has paid €57 555 000 to the Spanish Government.
Sinking	Unknown	*Spain* Preventive measures and wreck removal Clean-up **€6 028 000** *Gibraltar* Clean-up	 €5 400 000 €628 000 £18 350	
Unknown	Unknown	Clean-up/preventive measures (settled) Clean-up/preventive measures (claimed) Fisheries (settled) **US$1 499 000**	US$674 000 US$283 000 US$542 000	All settled claims have been paid by the 1992 Fund.
Grounding	35-40	Clean-up/preventive measures (settled) Fisheries (settled) **Won 1 335 000 000**	Won 1 007 000 000 Won 328 000 000	All claims have been paid by the shipowner's insurer.
Collision	34	Clean-up/preventive measures (settled) Fisheries (settled) Property damage (settled) **Won 1 283 650 000**	Won 1 242 000 000 Won 22 500 000 Won 19 150 000	All claims have been paid by the shipowner's insurer.
Fire	Unknown	Clean-up/preventive measures (claimed) Fisheries (not yet claimed)	US$500 000	

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GT)	Limit of shipowner's liability under applicable CLC
25	*Duck Yang*	12.9.03	Busan, Republic of Korea	Republic of Korea	149	3 000 000 SDR
26	*Kyung Won*	12.9.03	Namhae, Republic of Korea	Republic of Korea	144	3 000 000 SDR
27	*Jeong Yang*	23.12.03	Yeosu, Republic of Korea	Republic of Korea	4 061	4 510 000 SDR
28	*N°11 Hae Woon*	22.7.04	Geoje, Republic of Korea	Republic of Korea	110	4 510 000 SDR

Notes to Annexes XVIII and XIX

1 Amounts are given in national currencies. The relevant conversion rates as at 31 December 2004 are as follows:

£1 =

Algerian Dinar	Din	138.415	Moroccan Dirham	Mor Dhr	15.819
Bahrain Dinar	BD	0.728	Philippines Peso	PPs	107.754
Cameroon	CFA Fr	926.52	Republic of Korea Won	Won	1987.48
Canadian Dollar	Can$	3.3003	Russian Rouble	Rbls	53.2197
Danish Krone	DKr	10.5068	Singapore Dollar	S$	3.134
Estonian Kroon	EEK	22.1002	Swedish Krona	SEK	12.7584
Euro	€	1.4125	UAE Dirham	UAE Dhs	7.0514
Indonesian Rupiah	Rp	17821.5	United States Dollar	US$	1.9199
Japanese Yen	¥	196.732	Venezuelan Bolivar	Bs	4950.05
Malaysian Ringgit	RM	7.2957			

£1 = 1.23910 SDR or 1 SDR = £0.80704

2 The following currencies were replaced by the Euro on 1 January 2002 at the following conversion rates. The equivalent values relative to the Pound Sterling, as at 31 December 2004, are also given.

		€1=	£1=
Finnish Markka	FM	5.9457	8.3983
French Franc	FFr	6.5595	9.2653
German Mark	DM	1.9558	2.7626
Greek Drachma	Drs	340.75	481.3094
Italian Lira	LIt	1936.27	2747.9814
Spanish Peseta	Pts	166.386	235.0202

3 The inclusion of claimed amounts is not to be understood as indicating that either the claim or the amount is accepted by the 1971 or 1992 Funds.

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1992 Fund, unless indicated to the contrary)		Notes
Sinking	300	Clean-up/preventive measures (settled) Property damage/economic losses (settled) **Won 2 926 000 000**	Won 2 883 000 000 Won 43 000 000	All claims have been paid by the shipowner's insurer.
Stranding	100	Clean-up/preventive measures (settled) Fisheries (settled) **Won 3 328 000 000**	Won 2 921 000 000 Won 407 000 000	
Collision	700	Clean-up/preventive measures (settled) Fisheries (settled) Post-spill studies (claimed) Economic loss (claimed) **Won 4 325 400 000**	Won 3 992 000 000 Won 78 400 000 Won 140 000 000 Won 115 000 000	All claims have been paid by the shipowner's insurer.
Collision	12	Clean-up/preventive measures (settled) **Won 354 000 000**	Won 354 000 000	All claims have been paid by the shipowner's insurer.

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