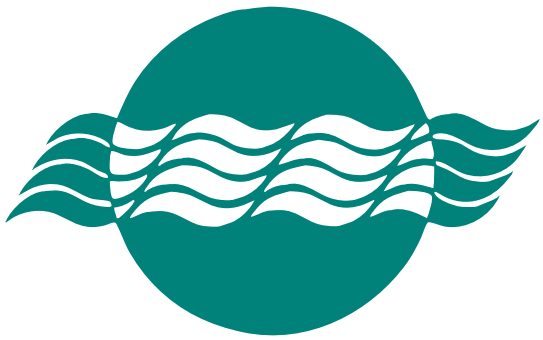
Annual Report 2002

INTERNATIONAL
OIL POLLUTION
COMPENSATION FUNDS

REPORT ON THE ACTIVITIES OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS IN 2002



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Prestige - Spain

Acknowledgements

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IMPACT Communications, 125 Blean Common, Blean, Canterbury, Kent CT2 9JH
Telephone: +44 (0)1227 450022 Web site: www.theCommunications.biz

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 2002.

The 1971 Fund Convention ceased to be in force on 24 May 2002 when the number of Member States fell below 25, and as a result the 1971 Fund Convention does not apply to incidents occurring after that date. However, all pending incidents must be settled before the 1971 Fund can be wound up and this may take several years.

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

The *Prestige* incident, which occurred off Spain in November 2002 caused serious pollution damage and will give rise to significant compensation claims by those affected by the spill. The *Erika* incident in France in 1999 has resulted in over 6 500 claims for compensation. Although most of these claims have been assessed, there are still a considerable number of outstanding claims. During 2002 global settlements were concluded in respect of all outstanding issues arising out of the *Aegean Sea* and *Nakhodka* incidents. Significant progress has also been made towards resolving a number of other cases involving the IOPC Funds.

The 1992 Fund Working Group set up to consider whether the international compensation system should be improved to ensure that it meets the needs of society has continued its work. The draft Protocol prepared by the Working Group, which would establish a Supplementary Fund to provide additional compensation for pollution damage in States parties to it, will be considered by a Diplomatic Conference to be held under the auspices of the International Maritime Organization in May 2003. The Working Group will continue its deliberations during the coming year.

Måns Jacobsson

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

The year 2002 has once again shown a considerable increase in the membership of the International Oil Pollution Compensation Fund 1992, which demonstrates the attractiveness of the global regime for compensation for oil pollution damage. Paradoxically, the Funds' success might turn out to be its weakness as well. The provisions governing the Funds rightly lay down the principle of equal treatment as regards claims and victims of oil pollution damage, and there is a strong commitment among Member States to this basic feature of the regime. But every coin has two sides: the same principle of equality applies as regards the obligations of Member States enjoying protection by the Fund. The rules laid down in the Convention on, *inter alia*, reporting of oil receipts and attendance of meetings, therefore presuppose a continuous commitment by all Member States to the proper functioning of the compensation regime as a whole. I take this opportunity to encourage all Member States to participate fully in all activities of the Fund.

This matter takes on even greater importance when seen in the light of the ongoing work in the 1992 Fund Working Group on the review of the international compensation regime. This work has been in a consolidation phase during 2002 after having reached, in a very short time, an excellent initial result in the form of a draft Protocol on the Establishment of a Supplementary Fund, as well as an important clarification in respect of the admissibility of claims for reinstatement of the environment. It is my view that work will have to continue in the coming year, with a view to maintaining a global compensation regime that serves the international community well. In doing so, we can build on the Funds' success, without stepping into the pitfall of complacency about what has already been achieved. We must not forget, however, that the main function the IOPC Funds can and should fulfil in any regime is to provide victims with prompt and adequate compensation. If the Member States manage to continue this work in the usual spirit of co-operation I am convinced that the IOPC Funds will have many more years of success.

Willem Oosterveen

The very unfortunate events in respect of the oil tanker *Prestige* in November 2002, resulting in the pollution of long stretches of coastline and far-reaching consequences for the lives of thousands of victims, again illustrate both the need to find innovative ways of trying to prevent such incidents, and the value of a well-functioning international compensation regime. As may be expected, the 1992 Fund will do its utmost to provide compensation to the victims of this incident as rapidly as possible within the framework of the Conventions, as agreed upon by Member States.

Finally, I trust I can speak on behalf of all Member States in expressing my sincere gratitude to the Director and the other members of the IOPC Funds' Secretariat for their excellent work during 2002, as well as to all other persons who have in any way contributed to the valuable activities of the IOPC Funds this year. This Annual Report provides a comprehensive, yet accessible overview of these activities.

Willem Oosterveen
Chairman of the 1992 Fund Assembly

PART 1

1 INTRODUCTION

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

The International Oil Pollution Compensation Fund 1971 (1971 Fund) was established in October 1978. It operates within the framework of two international Conventions: the 1969 International Convention on Civil Liability for Oil Pollution Damage (1969 Civil Liability Convention) and the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (1971 Fund Convention).

This 'old' regime was amended in 1992 by two Protocols. The amended Conventions, known as the 1992 Civil Liability Convention and the 1992 Fund Convention, entered into force on 30 May 1996. The International Oil Pollution Compensation Fund 1992 (1992 Fund) was set up under the 1992 Fund Convention.

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

It should be noted that the 1969 Civil Liability Convention remains in force and 49 States are still parties to that Convention. Some of these States are also parties to the 1992 Civil Liability Convention 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 function of the IOPC Funds is to provide supplementary compensation to victims of oil pollution damage in Member States who cannot obtain full compensation for the damage under the applicable Civil Liability Convention. The compensation payable by the 1971 Fund for any one incident is limited to 60 million Special Drawing Rights (SDR) (about £51 million or US$82 million)[1]. The maximum amount of compensation payable by the 1992 Fund for any one incident is 135 million SDR (about £114 million or US$183 million). For each Fund this amount includes the sum actually paid by the shipowner or his insurer. This maximum amount will be increased to 203 million SDR (approximately £171 million or US$276 million) for incidents occurring on or after 1 November 2003.

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 approve settlements of claims for compensation, when the IOPC Funds' Director is not authorised to make such settlements. The 1971 Fund has an Administrative Council which deals with both administrative and incident-related matters.

[1] *Conversion of currencies in this Report has been made on the basis of the rates at 31 December 2002, ie 1 SDR = £0.84438 or US$1.35925.*

2 THE LEGAL FRAMEWORK

2.1 The 'old' and 'new' regimes

Scope of application

The 1969 Civil Liability Convention and 1971 Fund Convention apply to pollution damage suffered in the territory (including the territorial sea) of a State Party to the respective Convention by spills of persistent oil from oil tankers. Under the 1992 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 original Conventions as loss or damage caused by contamination. The definition of 'pollution damage' in the 1992 Conventions has the same basic wording as the definition in the original Conventions, but with the addition of a phrase to clarify that, for environmental damage (other than loss of profit from impairment of the environment), compensation is limited to costs incurred for reasonable measures actually undertaken or to be undertaken to reinstate the contaminated environment. 'Pollution damage' includes the costs of reasonable preventive measures, ie measures to prevent or minimise pollution damage.

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

The 1969 and 1971 Conventions apply only to ships which actually carry oil in bulk as cargo, ie generally laden tankers. Spills from tankers during ballast voyages are therefore not covered by these Conventions. The 1992 Conventions, however, apply also to spills of bunker oil from unladen tankers provided they have onboard residues of a persistent oil cargo. 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 or insurrection or a grave natural disaster, or
- the damage was wholly caused by an intentional act or omission with the intent to cause damage by a third party, or
- the damage was wholly caused by the negligence of public authorities in maintaining lights or other navigational aids.

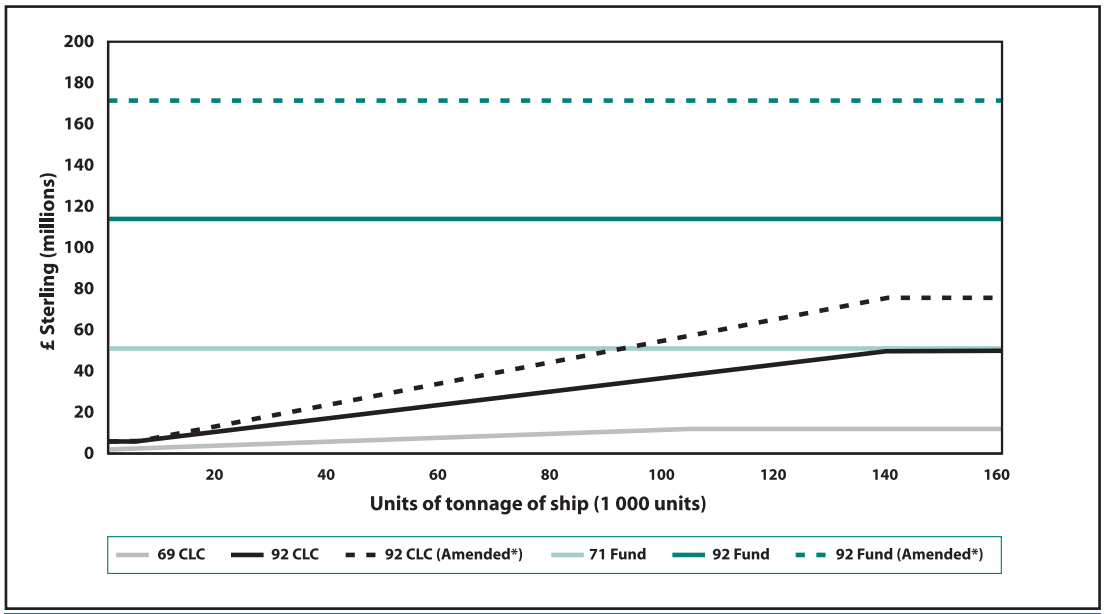
The shipowner is normally entitled to limit his liability to an amount determined by the size of the ship. The limit of the shipowner's liability under the 1969 Civil Liability Convention is the lower of 133 Special Drawing Rights (SDR) (£112 or US$181) per ton of the ship's tonnage or 14 million SDR (£12 million or US$19 million). Under the 1992 Civil Liability Convention the limits are:

(a) for a ship not exceeding 5 000 units of gross tonnage, 3 million SDR (£2.5 million or US$4.1 million);

(b) for a ship with a tonnage between 5 000 and 140 000 units of tonnage, 3 million SDR (£2.5 million or US$4.1 million) plus 420 SDR (£355 or US$571) for each additional unit of tonnage; and

(c) for a ship of 140 000 units of tonnage or over, 59.7 million SDR (£50 million or US$81 million).

There is a simplified procedure under the 1992 Civil Liability Convention for increasing these limits (cf Section 2.2).



Limits laid down in the Conventions

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 obligation does not apply to ships carrying less 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 (eg the master and the crew). The 1992 Civil Liability Convention prohibits not only claims against the servants or agents of the shipowner, but also claims against the pilot, the charterer (including a bareboat charterer), manager or operator of the ship, or any person carrying out salvage operations or taking preventive measures. This protection does not apply if the pollution damage resulted from the personal act or omission of the person concerned, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

The IOPC Funds' obligations

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

- the damage exceeds the limit of the shipowner's liability under the applicable Civil Liability Convention
- the shipowner is financially incapable of meeting his obligations under the applicable Civil Liability Convention in full, and the insurance is insufficient to satisfy the claims for compensation

* *From 1 November 2003 - see Section 2.2.*

- the shipowner is exempt from liability under the applicable Civil Liability Convention because the damage was caused by a grave natural disaster, or wholly caused by an intentional act or omission with the intent to cause damage by a third party or the negligence of public authorities in maintaining lights or other navigational aids.

The compensation payable by the 1971 Fund in respect of an incident is limited to an aggregate amount of 60 million SDR (£51 million or US$82 million). The maximum amount payable by the 1992 Fund in respect of an incident is 135 million SDR (£114 million or US$183 million). In both cases this maximum amount includes the sum actually paid by the shipowner (or his insurer) under the applicable Civil Liability Convention. The 1992 Fund Convention provides a simplified procedure for increasing the maximum amount payable by the 1992 Fund (cf Section 2.2).

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

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

Structure and financing

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

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

At its session in October 2000, the Legal Committee of the International Maritime Organization (IMO) considered a proposal by a number of States to increase the limits of liability and compensation under the 1992 Civil Liability Convention and the 1992 Fund Convention by using the special procedure laid down in the Conventions, the 'tacit amendment procedure'. The Committee adopted two Resolutions increasing the limits contained in the Conventions by some 50.37%. The amendments will enter into force on 1 November 2003.

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

(a) for a ship not exceeding 5 000 units of gross tonnage, 4 510 000 SDR (£3.8 million or US$6.1 million);

(b) for a ship with a tonnage between 5 000 and 140 000 units of tonnage, 4 510 000 SDR (£3.8 million or US$6.1 million) plus 631 SDR (£533 or US$858) for each additional unit of tonnage; and

(c) for a ship of 140 000 units of tonnage or over, 89 770 000 SDR (£76 million or US$122 million).

The amendment to the 1992 Fund Convention will bring the total amount available under the 1992 Conventions to 203 million SDR (£171 million or US$276 million).

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 2002, 74 States had become Members of the 1992 Fund. A further 10 States have acceded to the 1992 Fund Protocol, bringing the number of Member States to 84 by the end of 2003, as set out below.

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

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

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

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

Brunei Darussalam	31 January 2003	Gabon	31 May 2003
Samoa	1 February 2003	Congo	7 August 2003
Mozambique	26 April 2003	Guinea	2 October 2003
Madagascar	21 May 2003	Tanzania	19 November 2003
Nigeria	24 May 2003	Namibia	18 December 2003

3.2 1971 Fund

As mentioned above, 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 this 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 24 States which were members of the 1971 Fund on 24 May 2002, nine have acceded to the 1992 Fund Convention. However, there are still 15 States which have not yet done so, namely: Albania, Benin, Côte d'Ivoire, Estonia, Gambia, Ghana, Guyana, Kuwait, Malaysia, Maldives, Mauritania, Saint Kitts and Nevis, Syrian Arab Republic, Tuvalu and Yugoslavia. It is hoped that these States will ratify the 1992 Fund Convention in the near future.

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 have also participated in seminars, conferences and workshops in a number of countries and given lectures on liability and compensation for oil pollution damage and on the operation of the 1992 Fund. The Director has valued the opportunity to lecture to students of the World Maritime University in Malmö (Sweden), enabling him to provide information on the 1992 Fund and its activities which will be spread throughout the world when the students return to their national maritime administrations. Lectures have also been given at the IMO International Maritime Law Institute (IMLI) in Malta.

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 2002 for discussions with government officials on the 1992 Fund Convention and the operations 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.

All 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 2002 the non-Member States set out in the table below had observer status with the 1992 Fund.

4.2 Relations with international organisations and interested bodies

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

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

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

NON-MEMBER STATES WITH OBSERVER STATUS

Brazil
Chile
Congo
Democratic People's Republic of Korea
Ecuador
Egypt
Guinea
Iran, Islamic Republic of
Lebanon
Madagascar
Namibia
Peru
Samoa
Saudi Arabia
Tanzania
United States

The IOPC Funds have particularly close links with IMO and co-operation agreements have been concluded between the Funds and IMO. During 2002 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:

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

In addition, the Conference of Peripheral Maritime Regions (CPMR) and the European Chemical Industry Council (CEFIC) have been granted observer status with the 1992 Fund.

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 approve settlements of claims for compensation when the IOPC Funds' Director is not authorised to make such settlements.

In 1998 it became evident that there was a risk that the governing bodies of the 1971 Fund established pursuant to the 1971 Fund Convention, ie the Assembly and the Executive Committee, would in the near future 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 1992 Fund Assembly held sessions from 30 April to 3 May 2002 and from 15 to 18 October 2002 under the chairmanship of Mr Willem Oosterveen (Netherlands).

The 1992 Fund Executive Committee held four sessions during 2002. The first three sessions were held under the chairmanship of Mr Gaute Sivertsen (Norway) from 29 April to 3 May, on 2 and 3 July and on 14 and 18 October 2002. The fourth session was held on 18 October 2002 under the chairmanship of Mr Jerry Rysanek (Canada). 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.

Gaute Sivertsen

The Administrative Council held sessions from 29 April to 3 May 2002, on 2 and 3 July 2002 and from 14 to 18 October 2002. These sessions were chaired by Captain Raja Malik (Malaysia). Except for the October 2002 sessions, the main decisions taken by the 1971 Fund Administrative Council at these sessions were regarding incidents involving the 1971 Fund. These decisions are reflected in Section 13 in the context of the particular incidents.

Decisions relating to both Organisations

At the October 2002 sessions, the 1992 Fund Assembly and the 1971 Fund Administrative Council took the following main decisions.

- The Assembly and the Administrative Council noted with appreciation the External Auditor's Report and his Opinion on the Financial Statements of the 1992 Fund and the 1971 Fund and that the Auditor had carried out a rigorous examination of the financial operations and accounts in conformity with audit standards and best practice. The 1992 Fund Assembly also noted with particular satisfaction the External Auditor's thorough review of the allegations of fraud which had been made against the Claims Handling Office and the 1992 Fund in connection with the *Erika* incident and the Auditor's assurance that the allegations were unfounded. The governing bodies approved the accounts for the financial period 1 January - 31 December 2001 (cf Section 7.2).
- The Comptroller and Auditor General of the United Kingdom was reappointed as External Auditor of the 1992 and 1971

Funds for a term of four years from the financial period 2003.

- The budget appropriations for 2003 were adopted, with an administrative expenditure for the joint Secretariat totalling £3 012 857.
- The governing bodies considered again the situation in respect of the non-submission of oil reports by a number of States which continued to be a matter of serious concern, since without oil reports the Secretariat cannot issue invoices for contributions to contributors in the non-reporting State (cf Section 8.1).
- At their October 2001 sessions the governing bodies had decided to create a joint Audit Body for the two Funds. At their April/May 2002 sessions the governing bodies decided that the Audit Body should be composed of seven members elected by the governing bodies: one named Chairman nominated by Member States, five named individuals nominated by Member States and one named individual not related to the Organisations with expertise and experience in audit matters nominated by the Chairmen of the respective governing bodies.
- At their October 2002 sessions the governing bodies elected the following members of the joint Audit Body for a period of three years: 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) and Mr Nigel Macdonald as the member not related to the Organisations.

Decisions relating to the 1992 Fund only

- In April/May, the Assembly considered the financing of a Diplomatic Conference to be held by IMO to adopt a Protocol to supplement the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992. This Protocol would establish a Supplementary Fund for compensation (cf Section 9). The Assembly decided to make available to IMO the funds necessary to finance the Diplomatic Conference, estimated by IMO at £56 500, on the understanding that the amount paid to IMO would be reimbursed, with

Assembly chaired by Willem Oosterveen

interest, to the 1992 Fund by the Supplementary Fund when the Protocol establishing that Fund had entered into force. The Diplomatic Conference will be held from 12 to 16 May 2003.

- In October 2002, the 1992 Fund Assembly elected the following States as members of the 1992 Fund Executive Committee:

Cameroon	Philippines
Canada	Poland
France	Republic of Korea
Greece	Singapore
Italy	Spain
Liberia	Sweden
Marshall Islands	United Kingdom
Mexico	

- The Assembly decided in October 2002 to levy 2002 annual contributions of £3 million in respect of the General Fund and £28 million in respect of the *Erika* Major Claims Fund, to be paid by 1 March 2003 (cf Section 8.3).
- The Assembly approved a revised text of the section of the 1992 Fund's Claims Manual regarding environmental damage in relation to compensation for the costs of post-spill studies and reinstatement measures, which had been proposed by the Intersessional Working Group referred to in Section 9.1. A new version of the Claims Manual incorporating the amended section was published in November 2002.
- The Assembly adopted a Resolution pursuant to which an Administrative Council would be established should the Assembly be unable to achieve a quorum at a future session, so as to ensure that the 1992 Fund would continue to operate.
- The Assembly noted the developments in respect of the ratification and implementation of the 1996 International Convention on liability and compensation for damage in connection with the carriage of hazardous and noxious substances by sea (HNS Convention). It was noted that the Secretariat was carrying out the final phase of the development of a system to assist in identifying and reporting contributing cargo under the HNS Convention and that the database would include all substances qualifying as hazardous and noxious substances. The Director was instructed to prepare a document on the administrative preparations that would be necessary for the setting up of the HNS Fund for the Assembly's October 2003 session.

Raja Malik

Decisions relating to the 1971 Fund only

- In October 2002, the 1971 Fund Administrative Council decided to levy 2002 annual contributions for a total amount of £21 million, the entire levy to be deferred and invoiced, to the extent necessary, during the second half of 2003 (cf Section 8.3).
- The Administrative Council approved a budget appropriation of £250 000 for expenditure relating only 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 liquidation of the 1971 Fund as it has to meet its obligations in respect of pending incidents, and it is likely that this will take several years. Steps will be taken to ensure that the 1971 Fund is liquidated and wound up in a proper manner.

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

In October 2000 the 1971 Fund purchased insurance covering any liabilities of the 1971 Fund for compensation and indemnification up to 60 million SDR (£51 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 (£211 000) per incident. During the period 1 January to 24 May 2002 no incidents occurred where the insurance cover was called upon.

6.3 Procedure for winding up the 1971 Fund

The Administrative Council decided in October 2000 that it would not be appropriate to appoint a liquidator in the normal sense to deal with the liquidation of the 1971 Fund but that the liquidation should be dealt with by the organs of the 1971 Fund.

At its April/May 2002 session the Administrative Council decided that it should continue to administer the 1971 Fund after 24 May 2002. The Council further decided that all States having at any time been Members of the 1971 Fund should be entitled to vote in the Council, except that in respect of issues relating to incidents, States would have the right to vote only as regards incidents which occurred when the State in question was a Member of the 1971 Fund.

In October 2002 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. It also considered the distribution to contributors of the surpluses on the General Fund, if any, and on certain Major Claims Funds. It was decided to consider these issues further at the Council's October 2003 session.

The Administrative Council also 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 obligations under the 1971 Fund Convention to submit reports on contributing oil receipts. The Director was instructed to investigate, on the basis of a cost benefit analysis, which of the defaulting contributors should be pursued in court for arrears and to take legal action against defaulters where appropriate.

7 ADMINISTRATION OF THE IOPC FUNDS

7.1 Secretariat

The 1971 Fund and 1992 Fund have a joint Secretariat headed by one Director. During 2002 the Secretariat has continued to face a very heavy workload. The strong commitment of the staff to their work, as well as their knowledge and expertise, are great assets to the IOPC Funds and are crucial to the efficient functioning of the Secretariat.

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

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

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

7.2 Financial statements for 2001

The financial statements of the 1971 Fund and the 1992 Fund for the period 1 January to 31 December 2001 were approved by the respective governing bodies at their sessions in October 2002.

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

There are separate income and expenditure accounts for the General Fund and for each Major Claims Fund. Separate Major Claims Funds are established for incidents for which the total amount payable by the 1971 Fund exceeds 1 million Special Drawing Rights (SDR) (£850 000) or, payable by the 1992 Fund, exceeds 4 million SDR (£3.4 million).

1971 Fund

No annual contributions were receivable in respect of the General Fund or any Major Claims Fund during 2001.

Claims expenditure for the period amounted to £20.5 million. The majority of this expenditure related to three cases, namely the *Braer*, *Sea Prince* and *Sea Empress* incidents.

The balance sheet of the 1971 Fund as at 31 December 2001 is reproduced in Annex VII. The balances of the various Major Claims Funds are also given. The contingent liabilities were estimated at £168 million in respect of claims arising from 19 incidents.

1992 Fund

Contributions were receivable in respect of the General Fund for £7.5 million during 2001. Contributions receivable in 2001 with respect to the *Nakhodka* and *Erika* Major Claims Funds were £17 million and £25 million respectively.

Claims expenditure during 2001 was £34.7 million. The payments related mainly to the *Nakhodka* and *Erika* incidents.

The balance sheet of the 1992 Fund as at 31 December 2001 is reproduced in Annex XIII. The balances of the various Major Claims Funds are also given. The contingent liabilities were estimated at £142 million in respect of claims arising from 11 incidents.

7.3 Financial statements for 2002

The financial statements of the 1971 Fund and 1992 Fund for the period 1 January to 31 December 2002 will be submitted to the External Auditor in the spring of 2003, and will be presented to the respective governing bodies for approval at their sessions in October 2003. These accounts will be reproduced in the IOPC Funds' 2003 Annual Report.

7.4 Investment of funds

Investment policy

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

Investments

Investments were made by the IOPC Funds during 2002 with a number of banks and one building society in the United Kingdom. As at 31 December 2002 the portfolios of investments totalled some £63 million for the 1971 Fund and £123 million for the 1992 Fund. These balances have yet to be audited. Interest due in 2002 on the investments amounted to £3.2 million on an average capital of £75 million for the 1971 Fund and £4.2 million on an average capital of £108 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 the same and are elected annually by the governing bodies.

7.5 Audit Body

As mentioned in Section 5, the 1992 Fund Assembly and 1971 Fund Administrative Council established a joint Audit Body for the two Funds with the following mandate.

The Audit Body shall:

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

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

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

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

(f) make appropriate recommendations to the Assemblies.

The Audit Body held its first meeting in October 2002 and took certain decisions as to its procedures and programme of work.

8 CONTRIBUTIONS

8.1 The contribution system

Basis for levy of contributions

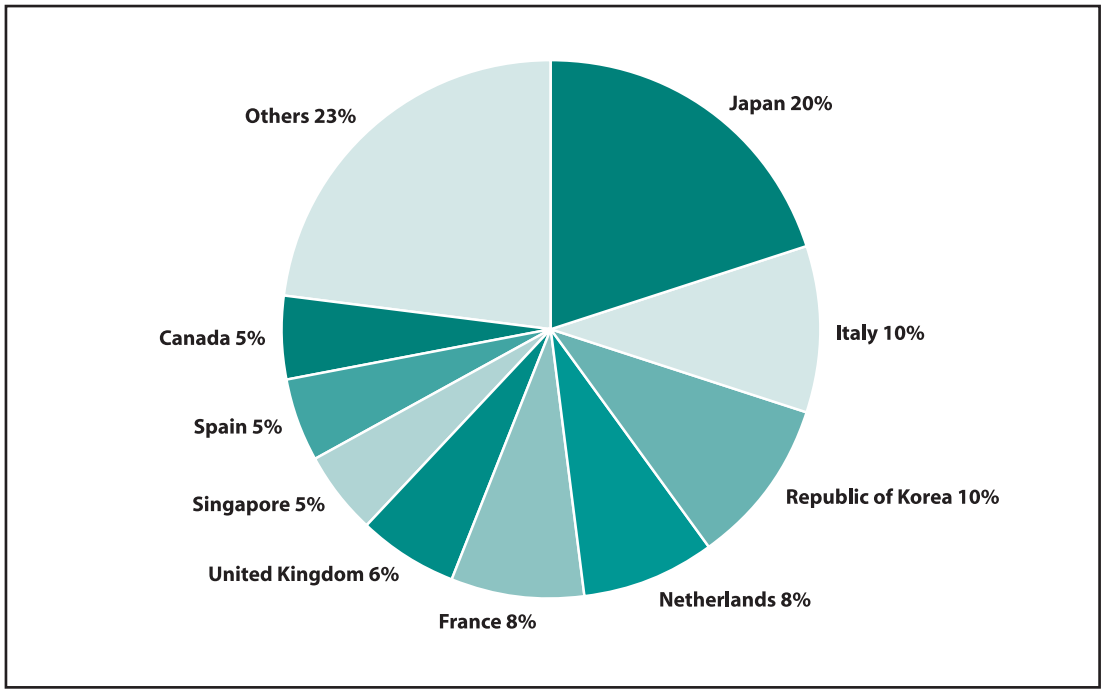
The IOPC Funds are financed by contributions paid by any person who has received in the relevant calendar year in excess of 150 000 tonnes of crude oil or heavy fuel oil (contributing oil) in ports or terminal installations in a State which is a Member of the relevant Fund, after carriage by sea. The 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

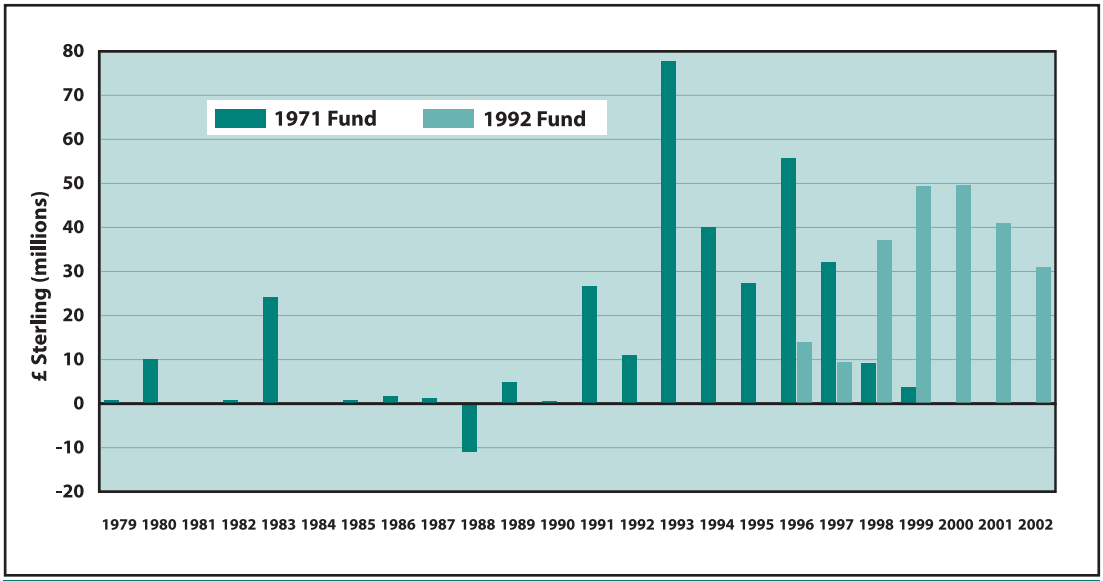
The non-submission of oil reports by a number of States was considered at the October 2002 sessions of the governing bodies of both Funds. At that time 19 Member States of the 1992 Fund and 16 former Member States of the 1971 Fund had not submitted their reports on contributing oil received in 2001. For 12 of the former 1971 Fund Member States reports were outstanding for between four and 14 years. Two of these States are already Members of the 1992 Fund and three further States will become Members during 2003.

The governing bodies repeated their serious concern as regards the number of Member States which had failed to fulfil their treaty obligations to submit oil reports. They also emphasised that it was crucial for the functioning of the regime of compensation established by the Fund Conventions that States submitted the reports on oil receipts.

The governing bodies recognised that it was their responsibility to find creative solutions to the problem within the constraints of the Fund Conventions and then to support the Secretariat in the implementation of these solutions. It was recalled that the non-submission of oil reports had been included in the list of issues for consideration by the intersessional Working Group set up by the 1992 Fund Assembly (cf Section 9), and States were requested to submit concrete proposals on this issue.



1992 Fund: General Fund contributions 2002



1971 Fund and 1992 Fund: annual contributions over the years

Annual contributions

Annual contributions are levied by each Organisation 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 2001 annual contributions

In October 2001 the 1971 Fund Administrative Council decided to levy annual contributions to the General Fund for £3.2 million and to the *Nissos Amorgos* Major Claims Fund for £21 million, the entire levies to be deferred.

The 1992 Fund Assembly decided to levy 2001 contributions to the General Fund for a total of £5 million, due for payment by 1 March 2002. In addition, the Assembly decided to levy contributions of £11 million to the *Nakhodka* Major Claims Fund and £46 million to the *Erika* Major Claims Fund. It was also decided that the entire levy to the former and £25 million of the levy to the latter Major Claims Fund should be due for payment by 1 March 2002, with the remainder of the levy (£21 million) to the *Erika* Major Claims Fund deferred.

The Director was authorised to decide whether to invoice all or part of the deferred levies for payment during the second half of 2002. In June 2002, the Director decided not to invoice any deferred levies to either Fund.

8.3 2002 annual contributions

In October 2002 the Administrative Council decided not to levy contributions to the General Fund. The Council further decided to levy annual contributions to the *Nissos Amorgos* Major Claims Fund for a total amount of £21 million, the entire levy to be deferred. The Director was authorised to decide whether to invoice all or part of the deferred levy for payment during the second half of 2003.

The 1992 Fund Assembly decided to levy 2002 contributions of £3 million to the General Fund and £28 million to the *Erika* Major Claims Fund, the entire levies due for payment by

1 March 2003. The 2002 contributions to the General Fund were based on the quantities of contributing oil received in 2001 in Member States. The shares of the 2002 contributions to that Fund in respect of Member States are illustrated by the chart on page 27.

8.4 1971 and 1992 Funds: Annual contributions over the years

Details of the 1971 and 1992 Funds' 2001 and 2002 annual contributions are set out in the table below.

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

With respect to contributions levied by the 1971 Fund over the years, £895 600 was outstanding as at 31 December 2002. As for contributions levied by the 1992 Fund since its establishment in 1996, £190 500 was outstanding as at that date. The total amount levied over the years is £331 million for the 1971 Fund and £201 million for the 1992 Fund. The arrears thus represent 0.27% and 0.095% respectively of the amounts levied.

In October 2002 the governing bodies of the 1971 and 1992 Funds expressed their satisfaction with the situation regarding the payment of contributions.

1971 AND 1992 FUNDS' 2001 AND 2002 ANNUAL CONTRIBUTIONS

Organisation	Annual contribution year	Decision of governing body		General Fund/Major Claims Fund	Total amount due £	Oil year	Levy per tonne £
1971 FUND	2001	October 2001	1st levy	No levy made			
			2nd levy	No levy made			
	2002	October 2002	1st levy	No levy made			
			2nd levy	*Nissos Amorgos* Venezuela	21 000 000 Maximum[2]	1996	0.0170871
1992 FUND	2001	October 2001	1st levy	General Fund	5 000 000	2000	0.0039182
				Nakhodka Japan	11 000 000	1996	0.0165271
				Erika France	25 000 000	1998	0.0223985
			2nd levy	No levy made			
	2002	October 2002	1st levy	General Fund	3 000 000	2001	0.0023192
				Erika France	28 000 000	1998	0.0250863
			2nd levy	No levy made			

[2] *To be invoiced to the extent required for payment in the second half of 2003.*

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.

9.2 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 which would provide compensation over and above the compensation available under the 1992 Fund Convention for pollution damage in States which became parties to the Procotol. The Supplementary Fund would be financed by contributions from oil receivers in those States. In October 2001, the Assembly approved the text of the draft Protocol which was submitted to the Secretary-General of IMO with the request that IMO convene a Diplomatic Conference to consider the draft Protocol at the earliest opportunity. After the IMO Legal Committee had approved the text of the draft Protocol, the IMO Council decided at its June 2002 session to instruct the Secretary-General to convene such a Conference. The Conference will be held from 12 to 16 May 2003.

9.3 Work carried out during 2002

At its October 2001 session the Assembly had given 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 may deem appropriate.

At its meeting in April/May 2002, the Working Group's discussions focused on two issues: environmental damage and shipowners' liability. It also discussed alternative dispute settlement procedures and uniform application of the Conventions.

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 was approved by the Assembly at its October 2002 session. The revised text 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.

Alfred Popp QC

Shipowners' liability

When, in April/May 2002, the Working Group discussed whether amendments should be made to the provisions in the 1992 Civil Liability Convention regarding shipowners' liability and related issues, it became clear that there was a fundamental divergence of opinion on this subject.

Representatives of shipowners and their insurers took the view that the issues relating to shipowners' liability should not be reopened since to do so would be detrimental to the position of victims of oil pollution. It was suggested that the 1992 Conventions were intended to create an efficient compensation regime and were not aimed at the quality of shipping or punishing the guilty party. It was further suggested that any amendments to the provisions relating to shipowners' liability would give rise to serious treaty law problems. It was emphasised that it was of paramount importance to maintain the equitable balance between the burdens imposed on the two industries involved, ie those of the shipping and cargo interests. It was mentioned that, according to an analysis of oil spills in the period 1990-1999, the present regime had resulted in an equitable sharing of burden between these two interests. They maintained that a proposal made by the shipping industry to increase, on a voluntary basis, the limitation amount applicable to small ships to around 20 million SDR (£17 million) would preserve this balance and that the matter should be re-examined in the light of experience three to five years after the entry into force of the proposed Protocol establishing a Supplementary Fund.

Representatives of the oil industry maintained that the international compensation regime should ensure that persons suffering oil pollution damage were compensated promptly but also be consistent with the general objective to improve maritime safety and reduce the number of oil spills. It was emphasised that it was the sole responsibility of the shipowner to maintain a safe and seaworthy ship. It was suggested that the latter objective might be compromised by the establishment of the Supplementary Fund, in so far as it was funded only by oil receivers. In addition, the point was made that a Supplementary Fund financed permanently by oil receivers would only distort the balance between the shipowners' and oil receivers' contributions to the regime. It was the oil industry's view that such a Supplementary Fund would also shield low quality shipowners from the consequences of their actions and would therefore not provide any incentive to improve the quality of their ships or the standards of their operations. In order to preserve the balance, it was suggested that this could be achieved **either** by an increase in the shipowner's limitation amount **or** by shipowners' participation in the third tier compensation provided by the Supplementary Fund.

Several Member States considered that after the increases in the limits of the shipowners' liability adopted by the IMO Legal Committee in October 2000, there was no need to amend the provisions in the 1992 Civil Liability Convention relating to shipowners' liability. A number of other Member States expressed the view that it was premature to consider any amendments relating to shipowners' liability and that it would therefore be appropriate to defer consideration of this issue until experience had been gained from the effects of the increased limits adopted by the IMO Legal Committee and the operation of the proposed Supplementary Fund.

A number of other Member States took the view that it was necessary to examine at an early stage issues relating to shipowners' liability. The point was made that the international compensation regime was over 30 years old and that it was imperative to adapt the regime to today's needs. Several Member States stated that voluntary increases in the limits of liability were not sufficient.

It was generally recognised that amendments to the provisions in the 1992 Civil Liability Convention relating to shipowners' liability would give rise to difficult treaty law issues. The point was made, however, that those difficulties should not prevent in-depth consideration of the

issues relating to shipowners' liability. It was stated that if there was a need to amend these provisions, solutions had to be found to any treaty law problems that might arise.

Alternative dispute settlement procedures

There was general agreement in the Working Group on the importance of claims being settled out of court. It was noted that the 1992 Fund already made strenuous efforts to this effect and that the Fund should continue this policy. It was suggested that the Funds' obligations to give equal treatment to all claimants and to respect the principles for admissibility of claims laid down by the Assemblies restricted the scope for alternative dispute settlement procedures.

Uniform application of the Conventions

The Working Group considered that uniformity of implementation and application of the Conventions was crucial to the equitable functioning of the international compensation regime. It was recognised, however, that this was a difficult issue, since national courts were sovereign in their interpretation of the Conventions, although they often lacked relevant experience. It was suggested that if more information were made available to Member States and national courts on decisions by the IOPC Funds' governing bodies relating to the criteria for admissibility of claims and on other aspects relating to the interpretation of the Conventions, this might contribute to a uniform interpretation and application.

9.4 Continuation of work

At its October 2002 session, the Assembly decided that the Working Group should continue its work and that the next meeting of the Group should be held during the week commencing 3 February 2003.

The issues retained for further consideration include:

- shipowners' liability and related issues
- environmental damage
- alternative dispute settlement procedures
- non-submission of oil reports
- clarification of the definition of 'ship' as regards offshore craft and unladen tankers
- fixed costs for deploying and maintaining craft and equipment for responding to oil spills
- application of the contribution system in respect of entities providing storage services
- uniformity of application of the Conventions
- various issues of a treaty law nature.

The Assembly endorsed a statement by the Chairman of the Working Group that, in order to enable the Working Group to make progress on any issues, delegations should produce written concrete proposals, preferably in the form of draft treaty texts.

10 SETTLEMENT OF CLAIMS

10.1 General

The Assemblies of the 1971 and 1992 Funds have given general authority to the Director to settle claims and pay compensation if it is unlikely that the total payments by the respective Fund with regard to the incident in question will exceed 2.5 million SDR (£2.1 million or US$3.4 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.

If the aggregate amount of the established claims exceeds the total amount of compensation available, ie 60 million SDR (£51 million or US$82 million) for the 1971 Fund and 135 million SDR (£114 million or US$183 million) for the 1992 Fund, claimants will only receive a percentage of the approved amount of their claim. Certain difficulties have arisen in cases where the total amount of the claims arising from a given incident exceeds the total amount available for compensation or where there is a risk that this might occur. Under the Conventions, the Funds are obliged to ensure that all claimants are given equal treatment. The Funds will therefore have to strike a balance between the importance of the Funds paying compensation to victims as promptly as possible and the need to avoid an over-payment situation. In a number of cases the Funds have therefore had to pro-rate payments to victims provisionally until the total amount of the approved claims became clear.

10.2 Admissibility of claims for compensation

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

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

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

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

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

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

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

10.3 Incidents involving the 1971 Fund

1971 Fund claims settlements 1978-2002

Since its establishment in October 1978, the 1971 Fund has, up to 31 December 2002, been involved in the settlement of claims arising out of 100 incidents. The total compensation paid by the 1971 Fund amounts to £315 million (US$507 million).

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

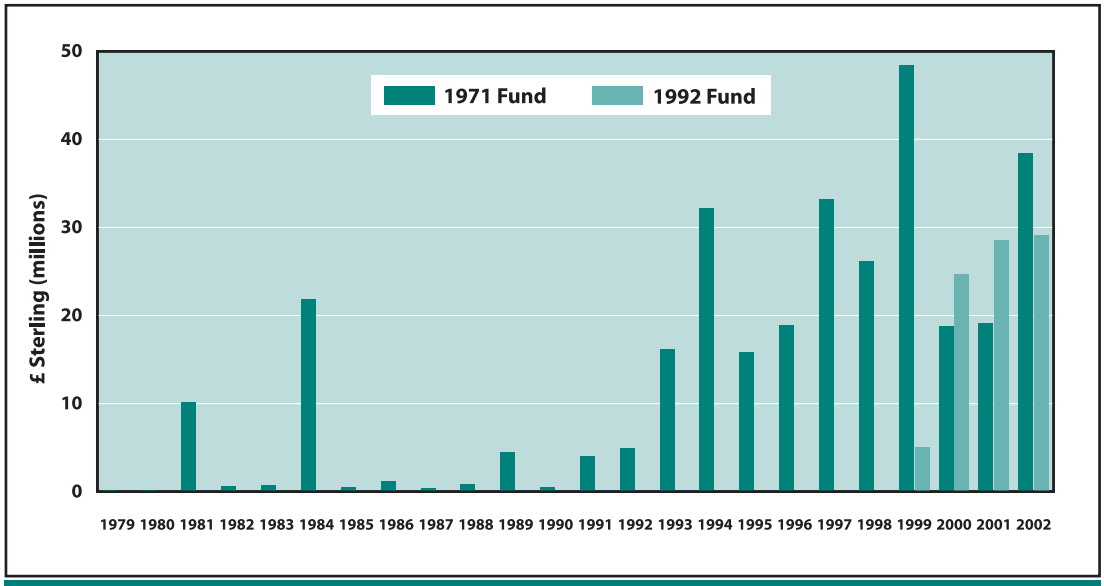
There has been a considerable increase in the amounts of compensation claimed from the 1971 Fund over the years. In several recent cases the total amount of the claims submitted greatly exceeded the maximum amount available under the 1971 Fund Convention. In some cases claims have been presented which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

The 1971 Fund has made payments of compensation and indemnification of over £2 million as a result of each of the incidents detailed below.

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	£30.2 million
Braer	United Kingdom	1993	£46.9 million
Taiko Maru	Japan	1993	£7.2 million
Keumdong N°5[3]	Republic of Korea	1993	£10.9 million
Toyotaka Maru	Japan	1994	£5.1 million
Sea Prince[3]	Republic of Korea	1995	£21 million
Yuil N°1[3]	Republic of Korea	1995	£14.6 million
Senyo Maru	Japan	1995	£2.3 million
Sea Empress[3]	United Kingdom	1996	£29.4 million
Nakhodka[4]	Japan	1997	£49.6 million
Nissos Amorgos	Venezuela	1997	£2.6 million
Osung N°3	Republic of Korea/Japan	1997	£8.2 million

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

[4] *The 1992 Fund has paid a further £61 million in compensation in respect of the Nakhodka incident.*



1971 Fund and 1992 Fund: payment of claims

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

Incidents in 2002 involving the 1971 Fund

The 1971 Fund has not been notified of any incidents occurring up to 24 May 2002 which will give rise to claims against it.

Incidents in previous years with outstanding claims against the 1971 Fund

As at 31 December 2002 there were outstanding third party claims in respect of 17 incidents involving the 1971 Fund which had occurred before 2002. The situation in respect of some of these incidents is summarised below.

The *Aegean Sea* incident (Spain, 1992) had resulted in claims totalling £184 million being presented in the Spanish courts. In October 2002 an agreement on a global settlement of all pending claims and other outstanding issues was concluded between the Spanish State, the 1971 Fund, the shipowner and his insurer. As a result of this agreement, the 1971 Fund paid £24.4 million to the Spanish State in addition to the payments previously made to claimants by the 1971 Fund and the insurer, £5.2 million and £3.3 million, respectively. The 1971 Fund also paid a further £1.7 million in compensation and indemnification.

As regards the *Sea Empress* incident (United Kingdom, 1996), compensation payments totalling £36.3 million have been made to some 800 claimants, of which £6.9 million has been paid by the shipowner's insurer and £29.4 million by the 1971 Fund. A number of claimants pursued their claims in court, but all but two of these claims have since been settled or withdrawn. The two remaining claims are being pursued in court. The 1971 Fund has taken recourse action against the Milford Haven Port Authority to recover the amounts paid by it in compensation.

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

As regards the *Pontoon 300* incident, claims totalling £39 million, including a claim for £37 million in respect of environmental damage, are the subject of legal proceedings. The 1971 Fund has made payments of £800 000 corresponding to 75% of the settlement amounts.

10.4 Incidents involving the 1992 Fund

1992 Fund claims settlements 1996–2002

Since its creation in May 1996 there have been 19 incidents which have involved, or may involve in the future, the 1992 Fund. The total compensation paid by the 1992 Fund amounts to £87 million, out of which £61 million relates to the *Nakhodka* incident[5] and £25.5 million to the *Erika* incident.

Incidents in 2002 involving the 1992 Fund

During 2002 the 1992 Fund became involved in one major incident which will give rise to claims against the 1992 Fund, namely the *Prestige* incident.

The *Prestige*, laden with 77 000 tonnes of heavy fuel oil, broke in two off the coast of Galicia (Spain) spilling an unknown but substantial quantity of heavy fuel oil. It is estimated that both the bow and stern sections, which are lying in some 3 500 metres of water, still contain significant quantities of oil. A major offshore clean-up operation was carried out using vessels from Spain and nine other European countries. By the end of 2002, clean-up operations continued along some 800 kilometres of shoreline. In December 2002, the shipowner's P & I insurer and the 1992 Fund established a claims office in La Coruña. The oil also affected the French Atlantic coast. Oil entered Portuguese waters but none had gone ashore as at 31 December 2002. Claims for compensation for very high amounts are expected.

In addition, claims for compensation for modest amounts have been presented to the 1992 Fund in respect of pollution incidents in Spain, Guadeloupe and the United Kingdom where the ships from which the oil originated have not been identified.

Incidents in previous years with outstanding claims against the 1992 Fund

As at 31 December 2002 there were ten incidents which occurred before 2002 and which have given or may give rise to claims against the 1992 Fund, the most important of these being the *Erika* incident.

The *Erika* incident (France, 1999) is one of the most serious incidents in which the IOPC Funds have been involved. The *Erika*, carrying 30 000 tonnes of heavy fuel oil, broke in two in a storm in the Bay of Biscay some 50 kilometres off the coast of Brittany. The two parts of the wreck sank to a depth of some 100 metres. Approximately 16 000 tonnes of heavy fuel oil was spilled from the ship polluting some 400 kilometres of coastline. The oil remaining in the two parts of the wreck was removed during the summer of 2000. Claims for compensation for significant amounts have been presented. The total amount of the claims exceeds the maximum amount of compensation available under the 1992 Conventions. The French Government and the French oil company Total Fina SA have undertaken to pursue claims for compensation only if and to the extent all other claims have been paid in full. In view of the uncertainty as to the total amount of the established claims, especially those in the tourism sector, the 1992 Fund's payments are for the time being limited to 80% of the amount of the actual loss or damage suffered by the individual claimant. Some 6 500 claims for compensation have been received. Compensation payments totalling £33.3 million have been made in respect of 4 900 claims. Of this sum the shipowner's insurer has paid £7.8 million and the 1992 Fund £25.5 million.

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

11 LOOKING AHEAD

The year 2003 will be a significant one for the international oil pollution compensation regime.

In May 2003 a Diplomatic Conference will be held to consider a draft Protocol establishing a Supplementary Fund for compensation. If established, the Supplementary Fund will provide additional compensation over and above that available under the 1992 Convention for pollution damage in States which accede to the Protocol.

The Working Group which prepared the draft Protocol for the Supplementary Fund will continue, during 2003, its deliberations on the need to improve the international compensation regime, as mentioned in Section 9.

The *Prestige* incident, which occurred off the northwest coast of Spain in November 2002 is one of the most serious incidents which the Funds have dealt with over the years, and it will result in a significant amount of work for the 1992 Fund during 2003 and beyond. The 1992 Fund is still dealing with several incidents which occurred in previous years, in particular the *Erika* incident. The Secretariat will endeavour to settle claims arising out of these and other incidents as promptly as possible.

The 1971 Fund Convention ceased to be in force on 24 May 2002 and does not apply to incidents occurring after that date. However, the termination of the 1971 Fund Convention does not result in the liquidation of the 1971 Fund, which has to meet its obligations in respect of pending incidents before it can be liquidated and wound up. The winding up will require a significant amount of work over the next few years. The Secretariat will continue its efforts to resolve all outstanding incidents involving the 1971 Fund as soon as possible, and it is likely that a number of these incidents will be resolved during 2003.

It is expected that the 1992 Fund's membership will continue to increase in 2003, as most of the former 1971 Fund Member States which have not already done so ratify the 1992 Fund Convention and more States which were not previously Members of the 1971 Fund join the 1992 Fund. The Secretariat will continue to promote 1992 Fund membership and assist States in the preparation of the legislation necessary for ratification of the 1992 Conventions.

The Secretariat will, as in the past, make strenuous efforts to convince the Member States which have not submitted their reports on receipts of contributing oil of the importance of presenting these reports.

The Secretariat will continue to strengthen the IOPC Funds' use of information technology to facilitate the settlement of claims and enhance further its activities in the field of public relations. The IOPC Funds' entire website will be available in French and Spanish during 2003.

The working methods of the Secretariat will be kept under constant review to ensure that the Organisations are operating in the most cost-effective and transparent way. The establishment of the Funds' joint Audit Body should contribute to achieving this objective (cf Section 7.5).

The Secretariat will pursue the preparations for the entry into force of the International Convention on liability and compensation for damage in connection with the carriage of hazardous and noxious substances by sea (HNS Convention). During 2003 the Secretariat will consider in particular the administrative preparations that will be necessary for the setting up of the HNS Fund.

PART 2

12 INCIDENTS DEALT WITH BY THE 1971 AND 1992 FUNDS DURING 2002

This part of the Report details incidents with which the 1971 Fund and the 1992 Fund have been involved in 2002. The Report sets out the developments of the various cases during 2002 and the position taken by the governing bodies in respect of claims. The Report is not intended to reflect in full the discussions of the governing bodies.

Claim amounts have been rounded in this Report. The conversion of foreign currencies into Pounds Sterling is as at 31 December 2002, except in the case of claims paid by the 1971 Fund or the 1992 Fund where conversions have been made at the rate of exchange on the date of payment.

Prestige: oiled vegetation and debris add to the disposal problems

13 1971 FUND INCIDENTS

13.1 VISTABELLA

(Caribbean, 7 March 1991)

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

The *Vistabella* was not entered in any P & I Club but was covered by a third party liability insurance with a Trinidad insurance company. The insurer argued that the insurance did not cover this incident. The limitation amount applicable to the ship was estimated at FFr2 354 000 or €359 000 (£235 000). No limitation fund was established. It was unlikely that the shipowner would be able to meet his obligations under the 1969 Civil Liability Convention without effective insurance cover. The shipowner and his insurer did not respond to invitations to co-operate in the claim settlement procedure.

The 1971 Fund paid compensation amounting to FFr8.1 million or €1.2 million (£990 000) 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.

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 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 shipowner and 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 case was referred back to the Court of first instance. In a judgement rendered in March 2000 the Court of first instance ordered the insurer to pay to the 1971 Fund FFr8 239 858 or €1 256 160 (£820 000) plus interest.

The insurer appealed against the judgement. The 1971 Fund filed pleadings in the Court of Appeal of Basse Terre in February 2002. A court hearing was held in November 2002 and a further hearing will take place in May 2003.

13.2 AEGEAN SEA

(Spain, 3 December 1992)

The incident

During heavy weather, the Greek OBO *Aegean Sea* (56 801 GRT) ran aground while approaching La Coruña harbour in north-west Spain. The ship, which was carrying approximately 80 000 tonnes of crude oil, broke in two and burnt fiercely for about 24 hours. The forward section sank some 50 metres from the coast. The stern section remained to a large extent intact. The oil remaining in the aft section was removed by salvors working from the shore. The quantity of oil spilled was not known, but most of the cargo was either consumed by the fire on board the vessel or dispersed in the sea. Several stretches of coastline east and north-east of La Coruña were contaminated, as well as the sheltered Ria de

Ferrol. Extensive clean-up operations were carried out at sea and on shore.

Claims for compensation

The 1971 Fund, the shipowner and the shipowner's P & I insurer, the United Kingdom Mutual Steamship Assurance Association (Bermuda) Limited (UK Club), established a joint claims office in La Coruña.

Claims totalling some Pts 22 750 million (£89 million) were presented before the Criminal Court of La Coruña in respect of losses suffered by fishermen and shellfish harvesters and the costs of clean-up operations. Claims totalling Pts 24 255 million (£95 million) were presented in the Civil Court of La Coruña by a number of companies and individuals, principally in the mariculture sector, who had not submitted any claims in the criminal proceedings but who had indicated in those proceedings that they would present their claims at a later stage in civil proceedings.

The UK Club also presented claims in the Civil Court of La Coruña in respect of clean-up and preventive measures associated with salvage operations for Pts 1 182 million (£4.6 million). These claims were settled in October 2000 for Pts 661 million (£2.6 million).

The total amount of all the claims submitted before the criminal and civil courts was Pts 48 187 million (£184 million).

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

By 30 September 2002 compensation had been paid in respect of 838 claims for a total amount of Pts 1 905 million (£8.5 million). Out of this amount, the UK Club had paid Pts 814 million (£3.3 million) and the 1971 Fund Pts 1 091 million (£5.2 million).

Criminal proceedings

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

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

The Courts' decisions in respect of claims for compensation

If a claimant has not proved the quantum of the damage suffered, the quantification may, under Spanish law, be deferred to the procedure for the execution of the judgement. In such a case, the court is obliged to determine the criteria to be applied for the assessment of the quantum of the damage suffered. In the *Aegean Sea* case, the Criminal Court of first instance and the Court of Appeal considered the evidence presented by many claimants to be insufficient to substantiate the amount of the losses suffered. The Courts found that only six claims were substantiated by acceptable evidence, totalling Pts 815 million (£3.2 million). All the other claims for about Pts 16 110 million (£63 million) were referred to the procedure for the execution of the judgement.

Loans to claimants

In 1997 the Spanish Government decided to provide a credit facility of Pts 10 000 million (£39 million) for aquaculture companies and of Pts 2 500 million (£9.8 million) for shellfish harvesters and fishermen. This credit facility was set up through a Spanish State-owned bank.

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

Maximum amount payable under the 1971 Fund Convention

In December 1992 the Criminal Court of La Coruña ordered the shipowner to constitute a limitation fund, fixing the limitation amount at Pts 1 121 219 450 (£4.4 million). The limitation fund was constituted by means of a bank guarantee provided by the UK Club on behalf of the shipowner for the amount set by the Court.

The conversion of the maximum amount payable under the 1971 Fund Convention, 60 million SDR, should be made using the same rate as that applied for the conversion of the shipowner's limitation amount. The value of the SDR in pesetas on the date of the constitution of the limitation fund was 1 SDR = Pts 158.55789. Accordingly, the maximum amount of compensation payable in respect of the *Aegean Sea* incident under the 1969 Civil Liability Convention and the 1971 Fund Convention (60 million SDR) converted into pesetas using the rate on that date gave Pts 9 513 473 400 (£37 million).

Obstacles to settling outstanding claims

There were three main outstanding issues which prevented the settlement of outstanding claims:

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

The quantification of the losses

In September 1999 the Spanish Government presented to the 1971 Fund a study carried out by the Instituto Español de Oceanografía (IEO) containing an assessment of the losses suffered by fishermen and shellfish harvesters and by claimants in the mariculture sector. The IEO had assessed the losses at between Pts 4 110 million (£16 million) and Pts 4 731 million (£19 million) as regards fishermen and shellfish harvesters and at Pts 8 329 million (£33 million) as regards the mariculture sector. Documentation relating to the losses suffered by companies in the mariculture sector was submitted. The assessment made by the IEO did not cover all claims in the fishery, mariculture and other sectors.

In October 2000 a provisional agreement was reached between the Spanish Government and the Autonomous Government of Galicia (the Xunta de Galicia), on the one hand, and the 1971 Fund, the shipowner and the UK Club on the other, as to the admissible quantum of all claims for compensation arising out of the incident. Claims totalling Pts 48 700 million (£190 million) were agreed for a total of Pts 12 000 million (£47 million).

At a meeting held in March 2001 consideration was given to the question of how to take into account the fact that the major part of the compensation would only be paid some nine years after the incident, ie by adding interest or by an increase to take into account the depreciation of the Spanish Peseta.

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

The forward section of the Aegean Sea some 50 metres offshore

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

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

The distribution of liabilities

As mentioned above, criminal proceedings were initiated against the master of the *Aegean Sea* and the pilot in charge of the ship's entry into the port of La Coruña. The Criminal Court of first instance and the Court of Appeal held that the master of the *Aegean Sea* and the pilot were directly liable for the incident and that they were jointly and severally liable, each of them on a 50% basis, to compensate victims of the incident. It was also held that the UK Club and the 1971 Fund were directly liable for the damage caused by the incident and that this liability was joint and several. In addition, the Courts held that the owner of the *Aegean Sea* and the Spanish State were subsidiarily liable.

Differences of opinion existed between the Spanish State and the 1971 Fund as to the interpretation of the judgements. The Spanish Government maintained that the UK Club and the 1971 Fund should pay up to the maximum amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention (60 million SDR), and that the Spanish State would pay compensation only if and to the extent that the total amount of the established claims exceeded 60 million SDR. The Fund maintained that the final distribution of the compensation payments between the various parties declared civilly liable should be: the UK Club and the 1971 Fund 50% of the total compensation for the damage (within their respective limits laid down in the Conventions),

the State the remaining 50%. The shipowner and the UK Club shared the 1971 Fund's interpretation of the judgement.

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

The issue of time bar

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

A number of claimants in the fishery and aquaculture sectors filed criminal accusations against four individuals. These claimants did not submit claims for compensation in those proceedings, but only reserved their right to claim compensation in future proceedings (ie in civil proceedings to be brought at a later date after the completion of the criminal proceedings) without any indication of the amounts involved. These claimants neither brought legal action against the 1971 Fund within the prescribed time period, nor notified the 1971 Fund of an action for compensation against the shipowner or the UK Club. In December 1995 the Executive Committee, recalling that it had previously decided that the strict provisions on time bar in the 1969 Civil Liability Convention and the 1971 Fund Convention should be applied in every case, took the view that these claims should be considered time-barred *vis-à-vis* the 1971 Fund. The Spanish Government and the 1971 Fund exchanged legal opinions on the issue. The opinions presented by the Spanish Government concluded that the claims in question were not time-barred, whereas the opinions obtained by the 1971 Fund concluded that the claims were time-barred. As regards these opinions reference is made to the 1999 Annual Report, pages 54 - 55.

Global settlement

In June 2001 the Administrative Council authorised the Director to conclude and sign on behalf of the 1971 Fund an agreement with the Spanish State, the shipowner and the UK Club on a global solution of all outstanding issues in the *Aegean Sea* case, provided the agreement contained certain elements and to make payments in accordance with such an agreement. The basic element was that in the light of the Court of Appeal's judgements in respect of the distribution of liabilities and the assessment of the losses the total amount payable by the shipowner, the UK Club and the 1971 Fund would be set at Pts 9 000 million (£34 million).

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

In a letter dated 27 July 2001, the Director made a formal offer on behalf of the 1971 Fund to the Spanish Government to conclude an agreement between the Spanish State, the Fund, the shipowner and the UK Club, which contained the following elements laid down by the Administrative Council:

1 The total amount due by the owner of the *Aegean Sea*, the UK Club and the 1971 Fund to the victims as a result of the distribution of liabilities determined by the Court of Appeal in La Coruña amounts to Pts 9 000 million (€51 million or £34 million).

2 The sum payable by the 1971 Fund to the Spanish State, after deduction of certain sums, amounted to Pts 6 386 921 613 (€38 million or £24 million).

3 In addition, the 1971 Fund undertook to pay to the victims whose claims had not been included in those agreed with the Spanish State and who were listed in an annex to the agreement, the difference between the total agreed amount of the loss or damage and the amount paid to date, amounting to Pts 121 512 031 (€730 000 or £460 000).

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

In the letter the 1971 Fund made it a condition for the conclusion of the agreement that the Spanish State presented to the 1971 Fund a copy of the withdrawals by the victims of their legal actions, representing at least 90% of the principal of the loss or damage claimed, except for the claim by the UK Club for preventive measures. It was stated in the letter that the shipowner, the UK Club and the 1971 Fund expressly reserved their rights to defend before the Spanish courts and tribunals their position with respect to the distribution of liabilities and with respect to a group of claims being time-barred.

On 4 October 2002 the Spanish State Council (Consejo de Estado) approved the proposed settlement agreement. On 17 October 2002 the Spanish Parliament adopted a decree ('Decreto-Ley') authorising the Minister of Finance to sign on behalf of the Spanish Government an agreement between Spain, the shipowner, the UK Club and the 1971 Fund. The Decree also authorised the Spanish Government to make out-of-court settlements with claimants in exchange for the withdrawal of their court actions. By 30 October 2002 the Spanish Government had reached agreements with claimants representing over 90% of the principal of the loss or damage claimed. The conditions laid down in the 1971 Fund's offer were therefore fulfilled.

The agreement between the Spanish State, the 1971 Fund, the shipowner and the UK Club was signed in Madrid on 30 October 2002. Pursuant to the agreement the 1971 Fund paid on 1 November 2002 €38 386 172 corresponding to Pts 6 386 921 613 (£24 411 208) to the Spanish Government.

During the period November - December 2002 the 1971 Fund made payments of €957 839 (Pts 159 370 962 or £602 431) in respect of 84 of the 95 claims which had been agreed with the claimants at an early stage but not included in the agreement with the Spanish State. As at 31 December 2002 the 1971 Fund had not been able to pay the remaining 11 claims with an outstanding balance of €50 469 (Pts 8 397 347 or £31 742) because it had not been possible to contact the claimants or because they had not signed the necessary documents.

The payments of compensation made by the 1971 Fund in respect of this incident total £30 198 442.

On 17 December 2002 the 1971 Fund paid €1 672 000 corresponding to Pts 278 197 307 (£1 068 767) to the UK Club in indemnification of the shipowner under Article 5.1 of the 1971 Fund Convention. The claim by the UK Club for preventive measures, €4 255 361 corresponding to Pts 708 032 614, will be paid in early 2003.

13.3 BRAER

(United Kingdom, 5 January 1993)

The incident

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

Government imposed a fishing exclusion zone covering an area along the west coast of Shetland which was affected by the oil, prohibiting the capture, harvest and sale of all fish and shellfish species from within the zone.

Claims for compensation

All claims but one have been settled and the total compensation paid amounts to £53 million, of which the 1971 Fund has paid £47 million and the shipowner's insurer £6 million.

Shetland Sea Farms Ltd

In 1995 the Executive Committee considered a claim for £2 million by a Shetland-based company, Shetland Sea Farms Ltd, in respect of a contract to purchase smolt from a related company on the mainland. The smolt had eventually been sold at 50% of its purchase price to another company in the same group. The Committee decided that in the assessment of the claim account should be taken of any benefits derived by other companies in the same group. The experts engaged by the 1971 Fund and the shipowner's insurer, Assuranceforeningen Skuld (Skuld Club), assessed the proven losses at £58 000. Attempts to settle the claim out of court failed.

The company took legal action against the shipowner, the Skuld Club and the 1971 Fund. During the proceedings the claim was reduced to £1.4 million. In October 2000 a hearing took place in order for the Court to consider whether certain of the documents relied upon by the claimant were genuine.

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

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

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

The Court decided that the case should proceed to a hearing restricted to the question of whether Shetland Sea Farms could prove that a contract existed before the *Braer* incident occurred for the supply of smolts to Shetland Sea Farms without reference to false letters and invoices. Hearings were held in April and September 2002 and the Court is expected to render its decision in early 2003. The Skuld Club will pay any amount awarded by a final judgement.

Right of limitation of the shipowner and his insurer

In September 1997 the Court of Session decided that the Skuld Club was entitled to limit its liability in the amount of 5 790 052.50 SDR (£4 883 839.80). The Court has not considered whether or not the shipowner is entitled to limit his liability. The Skuld Club is considering how the limitation proceedings are to be terminated.

Suspension of payments

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

Since a number of claimants intended to bring legal actions against the shipowner, the Skuld Club and the 1971 Fund, the Executive Committee decided in October 1995 to suspend any further payments of compensation until it had re-examined the question of whether the total amount of the established claims would exceed the maximum amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention.

Resumption of payments

In October 1999, the Executive Committee decided to authorise the Director to make partial payments to those claimants whose claims had been approved but not paid, if the claims pending in the court proceedings together with the claims that had been approved but not paid fell below £20 million. When this condition was met, the Director decided that the Fund should pay 40% of the agreed losses in respect of claims which had been approved but not paid. Payments totalling £2.3 million were made during 2000 and 2001.

In April 2000 the United Kingdom Government withdrew its claim for compensation for some £3.6 million. The Skuld Club informed the Director that the shipowner and the Club were prepared to make available the indemnification amount of £1.2 million to which they were entitled under Article 5.1 of the 1971 Fund Convention for payment to claimants. The Skuld Club also undertook to make additional funds available and to guarantee the payment of the amount, if any, which may be awarded by a final court judgement in respect of the claim by Shetland Sea Farms.

As a result of the undertakings by the Skuld Club the Director decided in October 2001 that all established claims could be paid in full. The payments of the outstanding balances were made during the period November 2001 – July 2002, amounting to £3.7 million.

The 1971 Fund has made compensation payments in respect of the *Braer* incident totalling £46 937 221.

13.4 KEUMDONG N°5

(Republic of Korea, 27 September 1993)

The incident

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

Claims for compensation

Claims relating to the cost of clean-up operations were settled at an aggregate amount of Won 5 430 million (£2.8 million) and were paid by the shipowner's P & I insurer by September 1994. The total amount paid by the insurer exceeded by far the limitation amount applicable to the *Keumdong N°5*, Won 77 million (£41 000). The 1971 Fund made advance payments to the insurer totalling US$6 million (£4 million), equivalent to Won 4 860 million in respect of these subrogated claims. In December 2002 the Fund paid the insurer a further Won 493 million (£433 247).

The majority of claims from the fishing and aquaculture sectors have been settled and paid at Won 6 575 million (£3.5 million).

Legal action by Yosu Fishery Co-operative

The Yosu Fishery Co-operative took legal action against the 1971 Fund in May 1996 in the Seoul District Court. Claims were filed in court for damage to common fishery grounds totalling Won 17 162 million (£9 million). In addition, claims totalling Won 1 641 million (£850 000) were submitted by over 900 individual members of the Co-operative (fishing boat owners, set net fishing licence holders or onshore fish culture facility operators).

The experts engaged by the 1971 Fund and the shipowner's insurer assessed the losses allegedly suffered by all the claimants of the Co-operative at Won 810 million (£420 000). The experts considered that the alleged productivity of the common fishery grounds was exaggerated and inconsistent with official records and field observations, and that the interruption of business was significantly shorter than that alleged by the claimants. The loss of earnings claimed by the fishing boat and set net operators was considered too high in the light of an analysis of information provided by the claimants concerning their normal fishing activity, and certain claims related to losses suffered outside the area affected by the oil. The operators of the fish culture facilities did not provide evidence that the alleged losses were caused by the oil spill.

The District Court rendered a compulsory mediation decision in December 1998. The Court accepted most of the 1971 Fund's arguments, but decided that the compensation for unregistered and unlicensed fishing boat claimants should be calculated in the same way as for registered and licensed claimants. In the Court's view the income of unlicensed fishermen in this case did not appear to be illegal income. The Court awarded the unlicensed fishing boat claimants Won 65 million (£34 000).

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

In a judgement rendered in January 1999 the District Court found that the claimants had suffered damage due to the oil pollution, but rejected their calculations of their losses due to the lack of information on the income of individual fishermen, the unreliability of the evidence they had presented, the unreliability of part of the testimony of the Chairman of the Co-operative and the lack of a direct causal relationship between the alleged losses of income and the incident. In determining the amount of the damages the Court awarded compensation for loss of earnings and in some cases for pain and suffering (condolence money). The total amount awarded by the Court was Won 1 571 million (£820 000).

All the claimants belonging to the Co-operative, with the exception of one village fishery association, appealed against the judgement. Their total claimed amount was indicated in the appeal at Won 13 868 million (£7.2 million).

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

The 1971 Fund lodged appeals against the District Court's judgement. The Court granted provisional enforcement of the judgement. In connection with its appeals the 1971 Fund had requested a stay of the provisional enforcement, and this request was granted on payment by the

Fund of a deposit with the Court of the amount awarded to the plaintiffs, Won 1 571 million (£820 000).

In May 2001 the Appellate Court rendered its judgement, which overturned the judgement of the District Court in respect of losses due to pain and suffering and losses in respect of unlicensed and unregistered fishing activities. The Appellate Court upheld the decision of the District Court in respect of loss of earnings due to business interruption caused by the clean-up of licensed common fishing grounds and intertidal culture farms. In the judgement the Appellate Court ordered the Fund to pay Won 143 million (£75 000) plus interest.

Since the 1971 Fund's position on matters of principle had been accepted, ie that compensation should not be granted for pain and suffering and for losses in respect of unlicensed and unregistered fishing activities, the Director decided that the Fund should not appeal against the decision by the Appellate Court in respect of the claims by Yosu Fishery Co-operative. Although the individual members of the Co-operative did not appeal against the decision, 36 village fishery associations appealed to the Korean Supreme Court. The amount claimed in the appeal is Won 2 756 million (£1.4 million). The Supreme Court is expected to render its judgement in early 2003.

13.5 ILIAD

(Greece, 9 October 1993)

The Greek tanker *Iliad* (33 837 GRT) grounded on rocks close to Sfaktiria island after leaving the port of Pylos (Greece). The *Iliad* was carrying about 80 000 tonnes of Syrian light crude oil and some 300 tonnes was spilled. The Greek national contingency plan was activated and the spill was cleaned up relatively rapidly.

In March 1994 the shipowner's P & I insurer established a limitation fund amounting to Drs 1 497 million or €4.4 million (£2.9 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 (£5.9 million) plus Drs 378 million or €1.1 million (£720 000) for compensation of 'moral damage'.

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

The shipowner and his insurer took legal action against the 1971 Fund in order to prevent their rights to reimbursement from the Fund for any compensation payments in excess of the shipowner's limitation amount and to indemnification under Article 5.1 of the 1971 Fund Convention from becoming time-barred. The owner of a fish farm, whose claim is for Drs 1 044 million or €3 million (£2.0 million), also interrupted the time bar period by taking legal action against the 1971 Fund. All other claims have become time-barred *vis-à-vis* the Fund.

13.6 SEA PRINCE

(Republic of Korea, 23 July 1995)

The incident

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

Claims for compensation

Claims for compensation for clean-up costs, fishery damage and losses in the tourism sector incurred in the Republic of Korea have been settled for a total of Won 50 000 million (£27 million) of which the 1971 Fund has paid

Won 31 700 million (£17 million) and the shipowner's insurer, the United Kingdom Mutual Steamship Assurance Association (Bermuda) Limited (UK Club), Won 18 300 million (£10 million). A claim for clean-up in Japan was settled at ¥360 000 (£1 800), and the claim was paid by the Fund.

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

Under Article V.9 of the 1969 Civil Liability Convention the limitation amount applicable to the *Sea Prince*, 14 million SDR, should be converted into the national currency of the State concerned on the basis of the value of that currency by reference to the SDR on the date of the constitution of the shipowner's limitation fund. In view of the considerable time that could elapse before the limitation amount was determined by the Court, as an exception, the 1971 Fund's Administrative Council authorised the Director to agree with the shipowner/insurer on an exchange rate between the SDR and Won to be applied to establish the limitation amount in respect of the *Sea Prince* and to determine the amount of indemnification payable by the Fund under Article 5.1 of the 1971 Fund Convention.

In April 2001 the shipowner/UK Club and the 1971 Fund agreed that the limitation amount applicable to the *Sea Prince* should be Won 18 308 million (£9.5 million). The UK Club and the 1971 Fund also agreed that the shipowner's indemnification in accordance with Article 5.1 of the 1971 Fund Convention should be Won 7 411 million (£3.9 million).

As a consequence of the limitation amount applicable to the *Sea Prince* having been agreed and all outstanding disputed claims in the limitation proceedings having been settled, the proceedings were discontinued in January 2002.

Legal action against the 1971 Fund

A total of 207 claims by 194 claimants belonging to the Yosu Fishery Co-operative Union (Yosu FCU) totalling Won 5 321 million (£2.8 million) were the subject of legal actions against the 1971 Fund.

In December 2001 the Sunchon District Court rendered judgements in respect of these claims, awarding 31 claimants a total of Won 1 438 million (£750 000) plus interest. The Court dismissed the remaining claims.

In April/May 2002 the Administrative Council of the 1971 Fund endorsed the decision of the Director to appeal against the judgements awarding compensation in respect of alleged mortality of caged fish and cultivated shellfish and in respect of unlicensed aquaculture farms and an unlicensed fishing boat owner. In order to stay the provisional execution of the judgement the 1971 Fund deposited a total sum of Won 2 060 million (£1.1 million) representing the amount awarded plus interest.

The Yosu FCU appealed against the judgement in respect of its claim of Won 1 426 million (£740 000) for lost sales commission, but not in respect of its other claims. None of the other claimants appealed against the judgements.

In July 2002 the judge in charge of the appeal, whilst reserving the Court's final position, expressed his preliminary opinion concerning a number of legal and factual issues. As regards the claims in respect of unlicensed fishing and aquaculture, the judge indicated that these claims should be dismissed. In respect of the claims for alleged mortality of caged fish and cultivated shellfish, the judge indicated that he was not inclined to accept the Fund's argument that the alleged mortality was most likely due to the effects of the typhoon or red tides that occurred at the time of the *Sea Prince* incident. As regards the claim for lost sales commission, the judge expressed the opinion that the claim was admissible in principle, since the Korean courts had established precedents in this respect. He further indicated that even though the 1971 Fund had argued that the payments it had made to fishermen had included the sales commission, this did not exonerate the Fund from its debts payable to the Co-operative since the former payments did not have the effect of payment to the Co-operative. The judge also indicated that he did not believe that the losses suffered by the Co-operative were anything like those claimed.

In September 2002 the 1971 Fund submitted further scientific evidence in support of its contention that the alleged mortality of caged fish and shellfish was unlikely to have been due to oil contamination.

In November 2002 the 1971 Fund held without prejudice discussions with the Yosu FCU for the purpose of agreeing on the quantum of the losses of sales commission. The Fund calculated the lost commission on the basis of the assessed losses of the individual fishery sectors under the jurisdiction of the Co-operative and after deducting losses in respect of sales that would have been made through private channels. The quantum of the losses was agreed at Won 72.3 million (£38 000).

On 10 December 2002 the Appellate Court rendered a mediation decision in which it accepted the claim for lost sales commission for the above amount. Having studied the mediation decision of the Appellate Court the Director considered that whilst it might be argued that the Co-operative had waived its claim by allowing the Fund to make full compensation payments to its members, he nevertheless recognised that the judge's view had merit from a legal point of view. The Director therefore decided not to lodge objection against the mediation decision. The Yosu FCU also decided not to object to that decision. On 26 December 2002 the 1971 Fund paid the Co-operative Won 99.2 million (£51 819) including interest.

A judgement in respect of the remaining claims that are the subject of appeal is expected in early 2003.

13.7 YEO MYUNG

(Republic of Korea, 3 August 1995)

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

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

The only outstanding claim is within the fisheries sector. The amount claimed is Won 335 million (£175 000), whereas the claim has been assessed by the 1971 Fund's experts at Won 459 000 (£240).

The shipowner commenced limitation proceedings at the competent District Court. The limitation fund was established by the shipowner's insurer by payment of the limitation amount of Won 21 million (£9 200) to the Court.

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

There has been no progress in the limitation proceedings during 2002.

Claimants lose their right to compensation under the 1971 Fund Convention unless they bring court action against the 1971 Fund within three years of the date on which the damage occurred, or make formal notification to the 1971 Fund of a court action against the shipowner or his insurer within that three-year period. Although damage may occur some time after an incident takes place, court action must in any event be brought within six years of the date of the incident. The sixth anniversary of the *Yeo Myung* incident was 3 August 2001. Since the claimant with the outstanding fishery claim failed to take legal action against the 1971 Fund by that date, his claim has become time-barred and he has lost his right to compensation.

13.8 YUIL N°1

(Republic of Korea, 21 September 1995)

The incident

The Korean coastal tanker *Yuil N°1* (1 591 GRT), carrying approximately 2 870 tonnes of heavy fuel oil, ran aground on the island of Namhyeongjedo off Pusan (Republic of Korea). The tanker was refloated, but while being towed towards the port of Pusan, the tanker sank in 70 metres of water, ten kilometres from the mainland.

Removal of oil from the wreck

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

Claims for compensation

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

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

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

Court proceedings

The shipowner commenced limitation proceedings at the Pusan District Court in April 1996. The limitation amount applicable to the *Yuil N°1* is estimated at Won 250 million (£130 000).

Fishery co-operatives presented claims totalling Won 60 000 million (£31 million) to the Court in charge of the limitation proceedings.

Fishery claims totalling Won 14 399 million (£7.5 million) have been filed in a separate court action. These claims have been assessed at Won 449 million (£235 000) by the Fund's experts.

At a court hearing held in October 1996 an administrator appointed by the limitation Court presented an opinion to the effect that there was not sufficient evidence to enable him to make an assessment of the fishery claims. However, he stated that since he was required to present an opinion on the assessment to the Court, he proposed that the Court should accept one third of the claimed amounts as reasonable. In November 1997 the Court decided to adopt the administrator's proposal to accept one third of the amounts claimed as fishery damage. The 1971 Fund lodged opposition to the Court's decision.

Recent developments

In October 2002 a number of village fishery associations and individual fishermen approached the 1971 Fund's Korean lawyers and indicated that they wished to settle their claims out of court. In November and December 2002 claims filed in the limitation court totalling Won 4 910 million (£2.6 million) were settled at Won 316 million (£165 000). These claims had also been presented in a separate action against the 1971 Fund for Won 2 354 million (£1.2 million). It is expected that most of the other pending claims will be settled early in 2003.

13.9 SEA EMPRESS

(United Kingdom, 15 February 1996)

The incident

The Liberian-registered tanker *Sea Empress* (77 356 GRT), which was laden with more than 130 000 tonnes of crude oil, ran aground in the

The Sea Empress being successfully refloated

entrance to Milford Haven in south-west Wales (United Kingdom) on 15 February 1996, resulting in an initial loss of around 2 500 tonnes of crude oil. Although quickly refloated, the tanker grounded a number of times during persistently bad weather. On 21 February, the vessel was refloated and taken alongside a jetty inside the Haven where the remaining 58 000 tonnes of cargo was discharged. It was estimated that in all approximately 72 000 tonnes of crude oil and 360 tonnes of heavy fuel oil were released as a result of the incident.

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

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

Claims for compensation

Claims for compensation totalling £49.3 million were presented by 1 034 claimants. By 31 December 2002, payments totalling £36.3 million had been made to 797 claimants, of which £6.9 million had been paid by the shipowner's P & I insurer, Assuranceforeningen Skuld (the Skuld Club), and £29.4 million by the 1971 Fund.

Elf UK Oil Ltd (Elf) and Texaco, which operate oil terminals in Milford Haven, presented claims in respect of their involvement in the clean-up operations. Both companies also presented claims for demurrage payments made in respect of ships which were delayed in entering the port of Milford Haven, prior to the *Sea Empress* being refloated and taken into the port. Elf also claimed for the cost of chartering alternative vessels and for increased refining costs as a result of an interruption in crude oil supplies. The claims for demurrage, chartering alternative vessels and extra refining costs were rejected by the 1971 Fund on the grounds that the alleged losses were not caused by contamination or by preventive measures, but were caused as a result of a decision by the Port Authority taken for the safety of navigation. In April 2002 the claims by Texaco and Elf in respect of clean-up response costs were settled for £871 000 and £115 000

respectively. Both companies withdrew the parts of their claims that had been rejected by the 1971 Fund.

Legal proceedings against the 1971 Fund

Procedural matters
Legal proceedings were commenced against the shipowner, the Skuld Club and the 1971 Fund in respect of the majority of those claims where agreement had not been reached prior to the expiry of the three-year time bar period, ie on or shortly after 15 February 1999.

In April 1999, the Admiralty Court granted the shipowner and the Skuld Club a decree limiting their liability under the relevant provisions of United Kingdom law to 8 825 686 SDR (approximately £7.4 million). The decree required all claims to be filed in the limitation proceedings by 18 November 1999 and stayed all other proceedings against the shipowner and the Skuld Club.

In June 2000 the Admiralty Court granted a temporary stay of proceedings against the 1971 Fund until all claims against the shipowner and the Skuld Club in the limitation proceedings had been determined. In addition, the Court ruled that the 1971 Fund, as well as those claimants whose claims against the 1971 Fund had been stayed, should be bound by any findings of fact made by the Admiralty Court in any judgement given in respect of claims filed in the limitation proceedings.

Developments during 2002 regarding pending claims
Fifty-nine writs were issued against the shipowner, the Skuld Club and the 1971 Fund in respect of 194 claimants prior to the expiry of the three-year time bar period, 51 of which were served. As at 31 December 2002, claims by 180 of these claimants had been settled, discontinued or withdrawn.

Of the 14 claimants still pursuing their claims in the limitation proceedings, 12 are pursuing only claims for legal and professional fees, which have not been quantified, or in respect of which the amounts offered by the Skuld Club and the 1971 Fund to the claimants have not been accepted. It is hoped that the outstanding claims for legal and professional fees will be settled early in 2003.

There are two remaining claims for compensation totalling approximately £900 000 that are the subject of legal actions. Details of the status of these claims are given below.

Claim by a whelk processor based in Devon
A claim for £645 000 presented by a whelk processor based in Devon had been rejected by the 1971 Fund and the Skuld Club on the grounds of lack of reasonable proximity between the oil pollution and the alleged loss.

In May 2002 the High Court (Court of first instance) considered the preliminary issue of whether the claim for loss of profits constituted pollution damage within the meaning of the United Kingdom Merchant Shipping Act 1995 (which implements the 1969 Civil Liability Convention and the 1971 Fund Convention). The Court found that the claim was inadmissible for substantially the same reasons as those given in the decision by the Scottish Inner House (Appeal Court) in the Landcatch case, ie that the claim was secondary, derivative, relational and/or indirect and that this lack of proximity rendered the processor's claim too remote.

At the claimant's request the High Court granted permission to appeal on the grounds that the case raised issues of principle of general importance in the development of substantive law. The claimant lodged an appeal, which will be heard in January 2003.

Claim by the owner of a windsurfing and watersports school
A claim for £226 196 was presented for loss of earnings suffered by a windsurfing and watersports school during 1996, 1997 and 1998. The 1971 Fund and the Skuld Club paid compensation totalling £134 970 for losses suffered in 1996 and for the cancellation of a

training instructor course in 1997. The Club and the Fund maintained that there was no causative link between the contamination and any other losses suffered by the business after 1996.

The claimant agreed that no further action should be taken in respect of his claim pending the decision of the Court of Appeal in respect of the claim by the whelk processor.

Recourse action

In October 1999 the Executive Committee decided that the 1971 Fund should take recourse action against the Milford Haven Port Authority (MHPA). On 14 February 2002 the 1971 Fund and the Skuld Club commenced proceedings against MHPA in the Admiralty Court in London. The action was brought by the 1971 Fund and the Skuld Club in their own names as well as on behalf of – and in the names of – 786 claimants to whom compensation totalling £34.1 million had been paid, and on behalf of – and in the names of – 32 claimants who at that time were pursuing claims totalling £3.9 million. Since then a further £2.2 million has been paid to 25 claimants in the latter category. A few claimants, whose claims for principal and interest had been settled in full, but who had taken legal action against the 1971 Fund and the Skuld Club to recover their legal costs did not give such authorisation. The 1971 Fund and the Skuld Club have also claimed administrative and legal expenses in the region of £2.6 million arising from the incident.

The 1971 Fund maintains that MHPA failed to take reasonable care to avoid the risk of a laden tanker grounding and spilling oil and that, in particular, MHPA failed to give proper consideration to the risk of a laden tanker going aground and causing serious oil pollution and failed to put in place procedures to control or reduce the risk as much as possible. The 1971 Fund has set out a detailed claim against MHPA, which includes the following allegations of negligence and/or breach of duty:

(a) MHPA failed to put in place a proper system to satisfy itself that the proposed entry of a particular vessel into Milford Haven at a particular time was safe and/or for refusing permission for a vessel to enter the port at such time unless MHPA was so satisfied;

(b) MHPA failed to have in place an effective and fully operational Vessel Traffic Services facility using radar to enable the duty marine officer to give advice and information to vessels and to assist them to remain within the relevant channel boundaries;

(c) MHPA failed properly to mark the entrance to the West Channel;

(d) MHPA's system of pilot allocation was negligent; and

(e) MHPA's system of pilot training was defective.

It is also alleged that MHPA's response to the grounding of the vessel was *ad hoc*, improvised and negligent and resulted in the unnecessary escape into the Haven of some 69 300 tonnes of crude oil.

MHPA has indicated in press reports that it is covered by insurance and that the insurers will be vigorously defending the claim.

MHPA submitted a lengthy and detailed defence denying any liability for the incident and the ensuing oil pollution. The defence was served on the 1971 Fund on 31 May 2002. MHPA's position can be summarised as follows.

MHPA has argued that it did not owe any duty of care and/or statutory duty to claimants in respect of the economic loss suffered. MHPA has also denied owing any duty of care to the 1971 Fund. It has further maintained that under the Pilotage Act 1987, MHPA is not liable for any loss or damage caused by an act or omission of a pilot authorised by it by virtue solely of that authorisation and that in any event the pilot in question was not employed by MHPA but by another (wholly-owned) company for whose acts MHPA is not liable.

MHPA has in its defence also invoked the provisions in the Merchant Shipping (Oil Pollution) Act on channelling of liability and the Milford Haven Conservancy Act 1983 relating to salvage operations, and has maintained that by reason of these Acts MHPA is not liable for any pollution damage resulting from the *Sea Empress* incident. MHPA has further invoked Section 22 of the Pilotage Act 1987 which, in its view, would entitle it to limit its liability to £12 000 in respect of the *Sea Empress* incident.

MHPA has in particular made the following points:

(a) MHPA had given full and proper consideration to the risk of a laden tanker grounding and as a result thereof put in place appropriate and sufficient aids, guidelines and procedures to control and reduce that risk.

(b) MHPA had in place a proper and sufficient system for satisfying itself that the proposed entry of a particular vessel into the port at a particular time was safe and/or for refusing permission to enter until MHPA was so satisfied. The proposed entry of the *Sea Empress* was safe.

(c) The radar system was never intended to be used to give direct navigational instructions or advice to a ship and in any event, even if such a radar system had been in place, it would not have prevented the grounding.

(d) The system of pilot allocation was appropriate.

(e) The pilots working in Milford Haven had received adequate training and had extensive, detailed and hands-on experience of the port and of the West Channel.

(f) The grounding of the *Sea Empress* was not caused by lack of training or experience of the pilot but by his failure on the day in question to adopt a course appropriate for the prevailing tidal conditions.

(g) MHPA had an Emergency Plan and an Anti-Oil Pollution Plan, which were effective and sufficient to deal with the grounding of a laden tanker.

(h) The escape of a further 69 300 tonnes of crude oil and substantially all of the alleged pollution damage were not caused by the initial grounding but by events which occurred and decisions taken thereafter and MHPA is not liable for the consequences thereof.

MHPA has not admitted that any of the loss or damage covered by the claims by the 1971 Fund and the Skuld Club was caused by the grounding of the *Sea Empress*. No admissions have been made as to the nature of the alleged loss or damage nor as to whether the alleged loss or damage (or any of it) is sufficiently proximate to be recoverable from MHPA.

In their reply the 1971 Fund and the Skuld Club made the following points:

(a) MHPA cannot bring itself within Section 22(8) of the Pilotage Act 1987 to the effect that there is no liability for any loss or damage caused by an act or omission of a pilot authorised by MHPA "by virtue solely of that authorisation".

(b) MHPA cannot avoid liability for pollution damage by relying upon the Milford Haven Conservancy Act 1983 relating to salvage.

(c) The 1971 Fund contests MHPA's allegation that substantially all of the alleged pollution damage was caused, not by the initial grounding, but by events which occurred and decisions taken thereafter.

(d) Having chosen to arrange its affairs so that the pilots were employed by a subsidiary company (thereby enabling MHPA to avoid vicarious liability for any negligence on the part of the pilots), MHPA cannot then contend that the pilots were

"employed" by it for the purpose of Section 22(3) of the Pilotage Act 1987, so as to obtain the benefit of the limitation of liability contained within that section.

At an initial Case Management Conference in February 2003 the Court will make any appropriate procedural orders. Such orders are likely to include orders relating to disclosure of documents and the future conduct of the Texaco proceedings (see below). They may also include orders in relation to the use of alternative dispute resolution, such as mediation and conciliation.

Action by Texaco

On 14 February 2002, Texaco, which operates an oil terminal in Milford Haven, commenced legal action against MHPA and Milford Haven Pilotage Limited (MHPL), the company which employed the pilots working in the port of Milford Haven. In its action against both defendants, Texaco claimed compensation as follows:

(a) US$10.5 million (£6.8 million) for loss or damage to cargo

(b) US$272 500 (£176 000) for the loss of benefit of the freight paid by Texaco

(c) US$5.3 million (£3.4 million) for payment of a claim in contract for salvage

(d) £18 000 for payment of a claim in salvage at common law

(e) £53 000 for liabilities incurred by Texaco in demurrage

(f) £23 600 for additional costs incurred for lightering operations and diverting cargo.

Texaco has based its claim against MHPA on similar legal grounds as the 1971 Fund has invoked in its action against the same defendant. However, as regards the Fund's arguments against MHPA dealing with pilotage allocation and pilot training, Texaco has also raised these arguments against MHPL. Texaco has also argued that MHPA and MHPL created or caused a public nuisance resulting in the said losses.

Agreement with the Skuld Club

The Skuld Club authorised the 1971 Fund to pursue the recourse action in the Club's name and after consultation to take all decisions relating to the conduct of the proceedings.

An agreement was reached between the 1971 Fund and the Skuld Club as to the distribution between them of any amount recovered as a result of the recourse action. Under that agreement the 1971 Fund will be entitled to retain any sums recovered up to a level at which the Fund has been reimbursed in full for all sums paid by the 1971 Fund to claimants as well as the costs incurred by the 1971 Fund in relation to the claims handling and the costs of pursuing the recourse action. Any balance will be passed to the Skuld Club. The 1971 Fund will indemnify the Skuld Club in respect of certain specified legal costs that the Club may incur in connection with and after commencement of the recourse action.

In April 2002 the 1971 Fund paid the Skuld Club the amount due to it by way of indemnification of the shipowner under Article 5.1 of the 1971 Fund Convention, 2 189 832 SDR or £1 835 035, less a deduction in respect of the Club's share of joint costs.

13.10 KRITI SEA

(Greece, 9 August 1996)

The Greek tanker *Kriti Sea* (62 678 GRT) spilled 20 - 50 tonnes of Arabian light crude while discharging at an oil terminal in the port of Agioi Theodori (Greece) some 40 kilometres west of Piraeus. Rocky shores and stretches of beach were oiled, seven fish farms were affected and the hulls of pleasure craft and fishing vessels in the area sustained oiling.

The limitation amount applicable to the *Kriti Sea* is estimated at Drs 2 241 million or €6.6 million (£4.3 million). The shipowner

established the limitation fund in December 1996 by means of a bank guarantee.

The shipowner and his P & I insurer and the administrator appointed by the Court to examine claims against the limitation fund were notified of claims totalling Drs 4 054 million or €11.9 million (£7.8 million). The administrator reported on his examination of the claims in March 1999. The total amount of the claims accepted by the administrator was Drs 1 153 million or €3.4 million (£2.2 million).

The experts engaged by the insurer and the 1971 Fund did not agree with a number of the assessments carried out by the administrator. Objections were lodged in court by the shipowner, the insurer and the 1971 Fund in respect of those claims. A number of claimants also filed objections against the decision of the administrator, and the amounts set out in the appeals totalled Drs 2 680 million or €7.9 million (£5.1 million). Upon hearing these objections, the Court accepted claims amounting to Drs 1 153 million or €3.4 million (£2.2 million). A number of claimants whose claims were either rejected or not accepted in full by the Court lodged appeals. The appeals were heard in September 2002, and it is expected that the judgement will be rendered in early 2003.

In order to prevent their rights becoming time-barred the shipowner and the insurer served a writ on the 1971 Fund in August 1999 in respect of claims in excess of the shipowner's limitation fund as well as a claim for indemnification under Article 5.1 of the 1971 Fund Convention for Drs 556 million or €1.6 million (£1 million). However, pending the judgement of the Court of Appeal referred to above, it will not be known whether the total amount of established claims will exceed the total amount payable by the shipowner/his insurer, taking into account also the amount payable by the 1971 Fund in respect of indemnification.

13.11 NAKHODKA

(Japan, 2 January 1997)

The incident

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

Although much of the oil which was lost when the ship broke up dispersed naturally at sea, several hundred tonnes of emulsion stranded at various locations over a distance of more than 1 000 kilometres covering ten prefectures. Extensive clean-up operations were carried out both at sea and on the shoreline, generating an estimated 40 000 tonnes of oily waste.

Claims handling

The 1971 and 1992 Funds, together with the shipowner and his P & I insurer, the United Kingdom Mutual Steamship Assurance Association (Bermuda) Ltd (UK Club), established a Claims Handling Office in Kobe. The Office was closed in December 2002 when all the claims had been settled.

Claims for compensation

General situation

At 1 January 2002 the only pending claims of any importance were those presented by the Japan Marine Disaster Prevention Centre (JMDPC) and Government agencies. All claims had been settled by November 2002 at a total of ¥26 090 million (£137 million).

Claims relating to the construction and removal of the causeway

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

Due to concerns that the on-water operations might fail as a result of the adverse conditions, the Japanese authorities ordered the construction of a temporary causeway to the grounded bow section. The causeway was intended to allow road tankers to be brought close to the wreck, thereby facilitating the removal of the oil. The causeway extended 175 metres from the shore. A large crane was assembled at its seaward end with a sufficiently long arm to reach the bow section. Despite the prevailing conditions, the on-water operations were successful and only the last 380 m^3 of oil/water mixture was removed via the causeway. The causeway was then dismantled and the construction material removed from the site.

JMDPC submitted claims totalling ¥3 336 million (£17.5 million) for the costs incurred relating mainly to the construction and removal of the causeway itself.

Several meetings were held in 2001 and 2002 between the Japanese Government, on the one hand, and the IOPC Funds and the UK Club, on the other. At these meetings the technical aspects of the causeway claims were discussed in detail. The meetings also addressed the issue of whether the claims fulfilled the criteria for admissibility laid down by the governing bodies of the IOPC Funds.

The decision by JMDPC to proceed with the construction of the causeway was taken after examining historical records of sea conditions between 1985 and 1993 off the coast of Fukui Prefecture. JMDPC was advised that salvage operations at sea could only take place in wave conditions of less than one metre, and that during the months of January and February such conditions could only be expected for about three days per month. JMDPC was also advised that the oil removal operations via the causeway could be carried out in wave conditions of less than two metres, and that these conditions could be expected for about 20 days per month during January and February. The construction companies estimated that the causeway would require 15 working days to complete at a cost of ¥1 000 million (£5 million). In the event it took 27 days to complete the work.

During the IOPC Funds' examination of the claims it was noted that on occasions both the at-sea operations and the causeway operations required the assistance of divers who were only able to work when waves were less than one metre. Both operations were therefore subjected to the same restrictions with regard to sea conditions and the extra potential days said to have been available for causeway operations were not as great as indicated by JMDPC. However, the Funds acknowledged that down time due to bad weather was greater for the at-sea operations due to the fact that the salvage vessels had to return to Fukui port on these occasions which involved demobilisation/remobilisation times of several hours, compared with the causeway operations which could be suspended and resumed very quickly.

It was also noted from the chronology of events that the construction of the causeway proved less straightforward than had been anticipated, and that significant sections were washed away on 22, 26 and 29 January 1997. The Director considered that JMDPC should have reappraised its decision to construct the causeway in light of these setbacks, since it should have become apparent that the construction companies had underestimated both the time to complete the causeway and the costs involved.

The Funds further noted that following the damage to the causeway on 26 January only 709 m^3 out of a total of 2 830 m^3 had been

Operation to remove oil from the grounded bow section of the Nakhodka

removed from the bow section by the at-sea operation. JMDPC decided to modify the causeway design following the damage on 26 January. However, the Director considered that following the damage to the causeway on 29 January the construction work should have been terminated, and the claim was therefore assessed on the basis of the construction costs that would have been incurred up to that date and the subsequent removal costs.

The Funds engaged Japanese civil engineering experts to estimate the costs of construction up to and including 29 January 1997 and the subsequent removal costs after that date. The experts estimated the costs on the basis of information recorded in the daily work reports on the quantities of foundation stones, wave-absorbing blocks and other materials used in the construction of the causeway up to that date. On the basis of the experts' reports, the Director considered that the claims should be accepted for ¥2 043 million (£10.7 million), including interest, compared with the claimed amount of ¥3 336 million (£17.7 million).

When these claims were considered by the governing bodies in April/May 2002, several delegations noted with satisfaction the detailed technical explanation setting out the basis of the assessment of the claim in respect of the causeway. They stated that it was sometimes necessary for governments and public bodies to undertake innovative and expensive measures to deal with serious pollution, and that it was important for the IOPC Funds and their experts to consider claims for the costs of such measures at an early stage, particularly where the question of admissibility was an issue.

The governing bodies took the view that the serious risk of pollution from the bow section justified the Japanese authorities' decision to commence the construction of the causeway, but that the decision should have been reappraised in the light of the difficulties faced as a result of the adverse weather encountered. The governing bodies decided to approve the causeway claims for a total of ¥2 043 million (£10.7 million) as proposed by the Director.

Category of claims	Claimed amount (thousand Yen)	Settled amount (thousand yen)
JMDPC	15 421 160	12 450 268
Japanese Government agencies	1 519 466	1 886 896
Local authorities	7 142 567	5 637 552
Shipowner/UK Club and their contractors	1 129 322	734 195
Fishery	5 013 257	1 769 172
Tourism	2 849 500	1 344 157
Others	2 748 391	2 267 653
Total	**35 823 663 (£188 million)**	**26 089 893 (£137 million)**

Government agencies' claims
Claims by 11 Japanese Government agencies in respect of clean-up operations totalling ¥1 519 million (£7.9 million) were assessed by the IOPC Funds at a total of ¥1 488 million (£7.8 million). These claims were settled at that amount plus interest, ie at ¥1 887 million (£9.9 million).

Summary of claims
A summary of the claims submitted and the settlement amounts is contained in the table above.

Applicability of the Conventions

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

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

Level of payments

The total amount available under the 1971 and 1992 Fund Conventions in respect of the *Nakhodka* incident is ¥23 164 515 000 (£122 million).

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

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

should be limited to 60% of the amount of the damage actually suffered by the respective claimants as assessed by the experts engaged by the Funds and the shipowner/UK Club.

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

As a result of developments and as authorised by the governing bodies, the Director decided in January 2001 to increase the level of payments from 70% to 80% of the amount of the damage actually suffered by the individual claimants.

Investigation into the cause of the incident

The Japanese and Russian authorities decided to co-operate in the investigation into the cause of the incident.

The IOPC Funds' experts studied the reports on the Japanese and Russian investigations and expressed the opinion that the *Nakhodka* was in a seriously dilapidated condition. In their view there was evidence of serious wastage of hull strength members and inadequate repairs. They stated that it was clear that the hull strength was seriously reduced. While the actual loading of the ship was not in accordance with the loading manual which increased the stress in the ship, this would not in their view have affected a well-maintained ship. They considered that there was no evidence of a collision or near collision with a low buoyancy object nor of any other contact or any explosion. The fact that the ship had failed in these circumstances supported the experts' view that the ship was unseaworthy. The *Nakhodka* did experience bad weather but in their view such bad weather was not exceptional in the area in January. The experts were also of the opinion that the shipowner was or should have been aware of the actual condition of the hull structure.

Executive Committees' consideration of whether to take recourse actions

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

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

The Committees also decided that the Funds should take recourse action against Prisco and its parent company Primorsk Shipping Corporation ('Primorsk').

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

The *Nakhodka* was subject to classification under the rules of the Russian Maritime Register of Shipping. The Committees concluded that the Russian Register had failed to ensure that the *Nakhodka* met its requirements and that this failure was causative of the incident, and therefore decided that the 1971 Fund should initiate recovery action against the Russian Register.

Recourse actions taken by the IOPC Funds

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

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

Prisco denied liability under the Oil Pollution Damage Compensation Law on the grounds that the incident was caused mainly by an extraordinary natural phenomenon. The UK Club took the same position as Prisco as regards the liability issue. In addition, the Club referred to an arbitration clause in the Club Rules which provided for disputes to be decided by arbitration in London. Primorsk denied any liability on the grounds that Prisco was not in any way its subsidiary.

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

Legal actions by claimants

Prefectures, fishermen belonging to nine Prefectural Fisheries Co-operative Associations, one fish farm, 318 claimants in the tourism sector, six oil dispersant manufacturers, seven electricity power plants and three other claimants took actions in the Fukui District Court against the shipowner, the UK Club and the IOPC Funds for claims totalling ¥11 267 million (£59 million).

The Japanese Ministry of Justice acting on behalf of four Governmental ministries and agencies and JMDPC took actions in the Tokyo District Court against the shipowner and the UK Club for ¥9 042 million (£48 million). The IOPC Funds were notified of these actions.

Legal actions by the shipowner/UK Club

The shipowner and the UK Club brought legal actions in the Tokyo District Court against the 1971 and 1992 Funds for ¥537 million (£2.8 million) in respect of their subrogated rights relating to the payments made by them.

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

Global solution

At their June 2001 sessions, the governing bodies instructed the Director to pursue discussions with the Japanese Government, the shipowner and the UK Club on outstanding claims and issues and to explore the possibilities of reaching a global settlement of all outstanding issues.

In April/May 2002, the governing bodies considered the following proposal for a global settlement made by the UK Club.

1 The compensation payments would be shared between the UK Club and the IOPC Funds on a 42:58 basis in respect of all settled claims.

2 The IOPC Funds would continue to make payments at a level of 80% in respect of all settled claims.

3 The UK Club would pay the 20% balance due to all claimants.

4 The UK Club would reimburse the IOPC Funds approximately ¥5 200 million (£26.7 million), this being the amount payable by the Club to the Funds after payment by the Club of the 20% balance due to claimants.

5 The joint costs incurred by the UK Club and the IOPC Funds would also be apportioned between them on a 42:58 basis.

6 All legal actions arising from the incident would cease.

7 The IOPC Funds, Prisco Traffic Limited, Primorsk Shipping Corporation and the UK Club should each bear their own legal costs.

The governing bodies noted that the proposed global settlement would result in the IOPC Funds recovering approximately ¥5 203 million (£27 million) and making a saving of around ¥2 500 million (£13 million) as a result of not having to increase their payments over 80% of the settlement amounts, and that the Funds would get a contribution to joint costs of some £3.9 million.

All members of the governing bodies present and a large number of observer delegations unanimously supported the Director's proposal for a global settlement. It was considered that the proposed global settlement represented a balanced compromise with the main advantages that all claimants would be paid in full, that the IOPC Funds would not have to be involved in protracted legal proceedings and that the Funds would recover a significant portion of the amounts paid in compensation which would benefit the contributors to the Funds. The point was also made that the proposed settlement would facilitate the winding up of the 1971 Fund.

The governing bodies approved the proposed global settlement and authorised the Director to conclude a settlement agreement provided it contained the elements set out above. It also authorised the Director to agree with the other parties on the details of such an agreement. The governing bodies emphasised that the acceptance of the proposed settlement should not be interpreted to mean that the IOPC Funds had any doubts as to the strength of their position in the proceedings.

The governing bodies further decided that the IOPC Funds should withdraw their actions against the Russian Register of Shipping. They stated that the acceptance of the proposed settlement and the withdrawal of the action against the Russian Register should not be interpreted in any way as a change in the IOPC Funds' policy in respect of recourse actions, namely that the Funds should take recourse action whenever appropriate to recover any amounts paid by it from shipowners or other parties on the basis of the applicable national law.

The settlement agreement between the IOPC Funds, on the one hand, and Prisco and the UK Club, on the other, was signed on 28 October 2002. In accordance with the agreement, on 31 October 2002 the UK Club reimbursed the IOPC Funds ¥5 229 812 901 (£27.3 million) in respect of the compensation payments made by the Funds and £3.6 million in respect of the Club's share of the joint costs.

The UK Club has also paid the 20% balance of the settlement amounts to all claimants, and all claimants have therefore been fully compensated. As a result, all claimants withdrew their court actions.

The legal actions taken in the Fukui District Court by the IOPC Funds, Prisco and the UK Club, as well as the IOPC Funds' actions against Primorsk and the Russian Register of Shipping, were withdrawn on 9 December 2002. Whilst Primorsk and the Russian Maritime Register of Shipping were not parties to the agreement, they undertook not to pursue any claims for legal costs against the IOPC Funds.

Conversion of the maximum amount payable by the 1971 Fund from SDR to Yen

The maximum amount payable by the 1971 Fund in compensation in respect of the *Nakhodka* incident under the 1971 Fund Convention is 60 million SDR minus the limitation amount applicable to the shipowner, ie 1 588 000 SDR, which gives 58 412 000 SDR. Under the 1971 Fund Convention, the conversion of the SDR into national currency should be made on the basis of the rate of exchange applicable on the date when the shipowner establishes his limitation fund (Article 1.4 of the 1971 Fund Convention as amended by the 1976 Protocol thereto read in conjunction with Article V.9 of the 1969 Civil

Liability Convention as amended by the 1976 Protocol thereto). However, as a result of the global settlement, the shipowner's limitation fund would not be constituted in the *Nakhodka* case.

The 1971 Fund Administrative Council considered in July 2002 which date should be used for the conversion of the amount payable by the 1971 Fund into Japanese Yen. The Council decided that the conversion should be made using the rate of exchange between the SDR and Japanese Yen on 19 February 1997, the date on which the 1971 Fund Executive Committee adopted the Record of Decisions of the session at which the Committee took the decision to authorise the Director to make final settlements of claims. Using this conversion date, the amount payable by the 1971 Fund (58 412 000 SDR) equals ¥10 022 856 668.

Distribution between the 1971 and 1992 Funds of the financial benefits of the global settlement

In October 2002 the governing bodies considered the question as to the basis on which the financial benefits of the global settlement should be shared between the 1992 Fund and the 1971 Fund. The Director had proposed that the financial benefits should be shared between the two Funds in proportion to their maximum liabilities under the respective Conventions.

The Japanese delegation took the view that any amount recovered in relation to an incident occurring during the transitional period when both the 1969/1971 Conventions and the 1992 Conventions were applicable should be reimbursed to the 1992 Fund first, in accordance with Article 36 bis of the 1992 Fund Convention. In that delegation's view the word 'distribution' was inappropriate since the 1992 Fund should be considered as a Fund of last resort in respect of compensation payments, the 1992 Fund being required to make payments only if and to the extent that there was insufficient money available from the 1971 Fund to meet all claims.

The point was made by another delegation, however, that Article 36 bis referred only to compensation payments as opposed to the distribution between the two Funds of any amount recovered as a result of a successful recourse action and that in its view there were no provisions in the Fund Conventions that were applicable to the question under consideration.

A number of delegations expressed the view that since the Conventions gave no guidance on how any recovered money should be distributed between the two Funds, it was the governing bodies' duty to choose the most equitable solution. Those delegations agreed with the Director's proposal on the grounds that all creditors should be treated equally on the basis of the liabilities discharged. However, those delegations also expressed the view that any decision taken in respect of the *Nakhodka* incident should not be taken as a precedent and that future cases would have to be considered on their individual merits.

The governing bodies decided that the financial benefits of the global settlement should be distributed in proportion to the respective liabilities of the 1971 and 1992 Funds in Yen, namely ¥10 022 856 668 and ¥13 141 658 332, resulting in the 1971 Fund receiving 43.268% and the 1992 Fund 56.732% of these benefits. They also decided that all costs borne by the Funds should be apportioned between the two Funds on the same basis.

The distribution of the amount recovered from the UK Club, ¥5 229 812 901 (£27 288 353), was made accordingly, resulting in the 1992 Fund recovering ¥2 966 977 455 (£15 481 228) and the 1971 Fund ¥2 262 835 446 (£11 807 125). The UK Club's contribution to joint costs, £3 617 526, was distributed on the same basis.

13.12 NISSOS AMORGOS

(Venezuela, 28 February 1997)

The incident

The Greek tanker *Nissos Amorgos* (50 563 GRT), carrying approximately 75 000 tonnes of Venezuelan crude oil, ran aground whilst passing

through the Maracaibo Channel in the Gulf of Venezuela. The Venezuelan Government has maintained that the actual grounding occurred outside the Maracaibo Channel itself. The tanker sustained damage to three cargo tanks, and an estimated 3 600 tonnes of crude oil was spilled.

Claims for compensation

As at 31 December 2002, 214 claims for compensation totalling Bs15 000 million (£6.9 million) and US$25 million (£15.6 million) had been presented to the shipowner's insurer, Assuranceföreningen Gard (Gard Club), and the 1971 Fund. These claims relate to the cost of clean-up operations, disposal of oily sand, damage to property (nets, boats and outboard motors), and losses suffered by fishermen, fish transporters, shrimp processors and businesses in the tourism sector. Claims have been approved for a total of Bs3 751 million (£1.7 million) plus US$16 million (£10 million). The Gard Club has paid Bs1 261 million (£1.8 million) plus US$4 million (£2.7 million). The 1971 Fund has paid US$2.4 million (£1.6 million) to fishermen and fish processors and US$1.2 million (£800 000) to the Venezuelan oil company, Petroleos de Venezuela SA (PDVSA), for costs incurred in clean-up operations and the disposal of the oily sand.

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

Court proceedings

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

Criminal proceedings

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

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

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

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

In a decision rendered in September 2000 the Court of Appeal decided not to consider the appeal and to order the Court of Cabimas to send the file to the Supreme Court due to the fact that the Supreme Court was considering a request for 'avocamiento' (see below). The Court of Appeal's decision appears to imply that the judgement of the Criminal Court of Cabimas is null and void.

Civil proceedings

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

Republic of Venezuela

The Republic of Venezuela presented a claim for pollution damage for US$60 million (£37.5 million) against the master, the shipowner and the Gard Club in the Criminal Court of Cabimas. Compensation is claimed for damage to the communities of clams living in the inter tidal zone affected by the spill, for the cost of restoring the quality of the water in the

vicinity of the affected coasts, for the cost of replacing sand removed from the beach during the clean-up operations and for damage to the beach as a tourist resort.

In March 1999 the 1971 Fund, the shipowner and the Gard Club presented to the Court a report prepared by their experts on the various items of the claim by the Republic of Venezuela which concluded that the claim had no merit.

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

The Republic of Venezuela has also presented a claim against the shipowner, the master of the *Nissos Amorgos* and the Gard Club before the Civil Court of Caracas for an estimated amount of US$20 million (£12.6 million), later increased to US$60 million (£37.5 million). It appears that this claim relates to the same four items of damage as the claim in the Criminal Court of Cabimas.

At the Administrative Council's session in June 2001 the Venezuelan delegation stated that the Republic of Venezuela had decided to withdraw its claim in the Civil Court of Caracas for US$60 million (£37.5 million), and that the withdrawal would take place as soon as the necessary documents had been signed by the shipowner and his insurer. It was stated that the withdrawal of that claim had been decided for the purpose of contributing to the resolution of the *Nissos Amorgos* case and to assist victims, especially the fishermen, who had suffered and were still suffering the economic consequences of the incident. However, the claim has not yet been withdrawn.

Republic of Venezuela's former lawyers

Three lawyers previously engaged by the Republic of Venezuela to present its claim in the Civil Court of Caracas have submitted a claim against the Republic before the Supreme Court requesting payment of their fees in the amount of Bs440 million (£200 000). The powers of attorney granted by the Republic to these three lawyers were cancelled on 9 June 1997. In the pleadings the Republic of Venezuela's former lawyers stated that the Supreme Court should not accept the withdrawal of the claim by the Republic until their fees and expenses had been paid by the plaintiffs or the defendants in that claim.

ICLAM

A claim by the Instituto para el Control y la Conservación de la Cuenca del Lago de Maracaibo (ICLAM) in the Criminal Court of Cabimas and the Civil Court of Maracaibo relating to the cost of monitoring the clean-up operations was approved by the Gard Club and the 1971 Fund at Bs61.1 million (£64 000). In September 1999, the 1971 Fund paid ICLAM Bs15 268 867 (£16 000), ie 25% of the settlement amount. In April 2001 the 1971 Fund offered to make ICLAM a further payment as a result of the increase in the level of payments to 40% mentioned below. This offer is being considered by ICLAM.

Fish and shellfish processors

Two fish and shellfish processing companies presented a claim for US$20 million (£12.5 million) in the Supreme Court against the 1971 Fund and, subsidiarily, against the Instituto Nacional de Canalizaciones (INC). The claim relates *inter alia* to loss of income from the national and export markets. No evidence was submitted in support of the claim. The Supreme Court would in this case act as court of first and last instance.

In January 2002 the claimants submitted some documentation in support of their claim. The experts engaged by the 1971 Fund have examined this documentation and found that the evidence presented does not establish that the claimants have suffered any loss as a result of the *Nissos Amorgos* incident. Since the information provided is not complete, the claimants have been invited to present additional documentation in support of their claim.

A third fish and shellfish processing company presented a claim for US$10 million (£6.3 million) in the Supreme Court requesting that the company should be allowed to join as a third party in the proceedings brought by the first two processing companies before the Supreme Court.

The 1971 Fund has presented pleadings to the Supreme Court maintaining that this Court should not accept jurisdiction in respect of these claims and should not act as a court of first instance since that would deprive the parties of the right to appeal. The Fund has argued that the Civil Court of first instance in Caracas should have jurisdiction in respect of these claims.

FETRAPESCA

In November 2000 a fishermen's union, FETRAPESCA, withdrew its claims from the Cabimas and Caracas Courts. Four experts engaged by the Civil Court of Caracas at the request of FETRAPESCA have opposed the withdrawal of the action on the grounds that their fees and expenses have not been paid. These experts have also submitted a third party application in which they requested the Supreme Court to declare that the 1971 Fund should pay their fees and expenses of Bs100 million (£45 000).

PDVSA

PDVSA presented a claim for Bs3 814 million (£1.7 million) in the Civil Court in Maracaibo to recover costs incurred during the clean-up operations and the disposal of the oily sand over and above those already agreed through the Claims Agency in Maracaibo. The total claim for the cost of clean-up operations has been agreed at US$7.1 million (£4.5 million) and for disposal of the oily sand at US$1.3 million (£817 000). In January 2002 the 1971 Fund paid US$1.2 million (£800 000) to PDVSA, which together with earlier payments made by the shipowner/Gard Club and the 1971 Fund constitutes 40% of the settlement amount of all PDVSA's claims. As a result of these payments PDVSA has withdrawn its court action against the shipowner/Gard Club and the 1971 Fund.

Shipowner and Gard Club

The shipowner and the Gard Club took legal action against the 1971 Fund before the Criminal Court in respect of two claims. The first claim for an amount of Bs1 219 million (£550 000) is in subrogation of the rights of the claimants to whom the shipowner and the Club have paid compensation. The second claim is for an amount of Bs3 473 million (£1.6 million) to recover the amounts paid as a result of the incident if the shipowner were to be wholly exonerated from liability under Article III.2(c) of the 1969 Civil Liability Convention or, alternatively, for an amount of Bs862 million (£390 000) for indemnification under Article 5.1 of the 1971 Fund Convention.

Supreme Court: request of 'avocamiento'

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

In May 1999 two independent requests of 'avocamiento' were filed by two fish processors and by FETRAPESCA before the Supreme Court. The shipowner and the Gard Club opposed these two requests. The 1971 Fund also opposed the requests on the grounds that the circumstances upon which the requests were based were not exceptional and that the reason for the requests was not the reinstatement of the environment but the private interests of the plaintiffs. The 1971 Fund's opposition was also based on the grounds that public interest and social order had not been threatened by the *Nissos Amorgos* incident nor had it become necessary to re-establish order in the legal proceedings. In addition, the 1971 Fund maintained that justice had not been denied to the plaintiffs to whom the normal legal channels were open. The 1971 Fund also argued that to

transfer proceedings to the Supreme Court would deprive the parties of the right of appeal.

In July 1999 the Supreme Court rejected the requests of 'avocamiento' made by the two fish processors.

As regards the request of 'avocamiento' filed by FETRAPESCA, in February 2000 the Supreme Court ordered the Criminal Court of Cabimas and the Civil Court of Caracas to send to the Supreme Court the entire court files. Since the 'avocamiento' proceedings have two phases, namely the delivery of the court files to the Supreme Court and thereafter the decision to grant or to deny the 'avocamiento', the shipowner, the Gard Club and the 1971 Fund requested the Supreme Court to clarify whether the Supreme Court had in fact granted the 'avocamiento' in respect of FETRAPESCA's request. In a decision in February 2000 the Supreme Court stated that in its previous decision the Court had considered FETRAPESCA's request admissible only from a procedural point of view and that the decision on the 'avocamiento' itself would be taken once the court files had been considered. The Court has not rendered a decision in this regard. On 30 November 2000 FETRAPESCA withdrew the request of 'avocamiento' filed before the Supreme Court. The Court has, however, not yet accepted the withdrawal.

Summary of claims pending before the Venezuelan Courts

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

(a) Republic of Venezuela;
  (i) in the Criminal Court of Cabimas for US$60 million (£37.5 million);
  (ii) in the Civil Court of Caracas for the same amount;
(b) three fish and shellfish processing companies in the Supreme Court for US$30 million (£18.8 million);
(c) four experts engaged by FETRAPESCA in the Supreme Court for fees for Bs100 million (£45 000);
(d) three lawyers against the Republic of Venezuela for fees for Bs440 million (£200 000);
(e) ICLAM;
  (i) in the Criminal Court of Cabimas for Bs57.7 million (£26 000);
  (ii) in the Civil Court of Maracaibo for the same amount;
(f) the shipowner and the Gard Club for Bs1 219 million (£550 000) and Bs3 473 million (£1.6 million).

Level of payments

In October 1997 the Executive Committee noted that there was great uncertainty as to the total amount of the claims arising out of the *Nissos Amorgos* incident. It therefore decided that the 1971 Fund's payments should be limited to 25% of the loss or damage actually suffered by each claimant, as assessed by the experts of the Gard Club and the Fund. In March 2001 the Administrative Council increased the level of payments to 40%. It also authorised the Director to increase the level of the 1971 Fund's payments to 70% when the 1971 Fund's total exposure in respect of the incident fell below US$100 million (£63 million). The Council further authorised the Director to increase the payments to between 40% and 70% if and to the extent that actions withdrawn from the courts would allow it.

In April 2002 representatives of the 1971 Fund visited Venezuela and attended various meetings with representatives of the Venezuelan Government to explore the possibilities of a withdrawal of the two court actions presented by the Republic of Venezuela. The Government representatives stated that the Government was examining the possibility of withdrawing at least one of these actions. No further developments have taken place since then.

In view of this situation, the Director has not been able to increase the level of payments.

Cause of the incident and related issues

As regards the position taken by the Venezuelan authorities, the shipowner, the Gard Club and 1971 Fund in respect of the cause of the incident and related issues reference is made to the Annual Report 2001, pages 79 - 81.

13.13 KATJA

(France, 7 August, 1997)

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

The limitation amount applicable to the *Katja* in accordance with the 1969 Civil Liability Convention is estimated at FFr48 million or €7.3 million (£4.7 million).

A claim presented by the French Government for clean-up costs was settled in July 2000 at FFr1.4 million or €207 000 (£135 000). Other claims relating to clean-up, property damage and loss of income in the fisheries sector were settled at a total of FFr15.1 million or €2.3 million (£1.5 million).

Legal actions were taken against the shipowner, his P & I insurer and the 1971 Fund relating to claims for the cost of clean-up operations incurred by the regional and local authorities, property damage and loss of income in the fisheries sector totalling FFr9 million or €1.4 million (£910 000). In December 2002 one of the outstanding claims for clean-up costs was settled out of court for FFr32 798 or €5 000 (£3 260).

Only three claims totalling FFr6.4 million or €976 000 (£650 000) remain pending in court, the largest of which is a claim by the Port Autonome du Havre (PAH) totalling FFr6 million or €915 000 (£607 000) in respect of clean-up costs.

It is virtually certain that all claims will be settled for an amount lower than the limitation amount applicable to the *Katja* under the 1969 Civil Liability Convention and that the 1971 Fund will not be called upon to make any payments in respect of this incident.

The shipowner and his insurer filed proceedings against the PAH on 29 July 2002. The grounds for the action were that a) the port had sent the *Katja* to an unsuitable berth and had thereby been wholly or partially responsible for the incident and b) the port's inadequate counter-pollution response to the incident had increased the extent of the pollution damage caused. As the 1971 Fund is unlikely to be called upon to make payments in respect of this incident, the 1971 Fund has not intervened in these proceedings.

13.14 EVOIKOS

(Singapore, 15 October 1997)

The incident

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

Singapore
Claims relating to clean-up operations and preventive measures were submitted by the Maritime and Port Authority of Singapore (MPA) for a total amount of S$4.5 million (£1.6 million), but the claims were later reduced to S$3.1 million (£1.1 million). Contractors appointed by MPA presented claims for a total of S$12.8 million (£4.6 million). The shipowner's insurer, the United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Ltd (UK Club), has informed the 1971 Fund that MPA's claim was settled at S$2.2 million (£790 000) and the claims by the contractors appointed by MPA at S$3.3 million (£1.2 million).

The UK Club has settled claims by clean-up contractors appointed by the Club on behalf of the shipowner for a total of S$4.5 million (£1.6 million).

Claims for property damage have been settled at S$1.5 million (£550 000). These include claims for the cleaning of a number of ships' hulls contaminated by oil escaping from the *Evoikos*. A claim for the clean-up of a ship's hull is outstanding. The Club has offered US$15 000 (£9 700) as settlement and is awaiting acceptance of the offer.

Malaysia
The UK Club has settled and paid all clean-up claims in respect of Malaysia at a total of RM1.4 million (£230 000). The Club has also settled and paid all fisheries claims at a total of RM1.2 million (£200 000).

Indonesia
The Indonesian authorities submitted claims to the shipowner and the UK Club totalling US$3.4 million (£2.1 million). The claims, which were not supported by any documentation, related to alleged pollution of mangroves (US$2 million), pollution of sand (US$1.2 million), loss of income from fishing (US$11 000) and the cost of clean-up operations (US$152 000). The Indonesian authorities were invited by the UK Club to provide further documentation but no such information was provided. This claim, which was presented in the limitation proceedings in Singapore, was dismissed since the claimants ceased pursuing the matter.

Legal proceedings

The shipowner and the UK Club commenced proceedings against the 1971 Fund in October 2000 in Malaysia to prevent potential claims against the 1971 Fund (including a claim for indemnification in accordance with Article 5.1 of the 1971 Fund Convention) becoming time-barred. This action was stayed in July 2001 by mutual consent.

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

The shipowner and the UK Club also commenced proceedings against the 1971 Fund in Indonesia in October 2000, claiming £50 000 each from the Fund. In December 2001, at the request of the shipowner and the UK Club, the Court decided that the proceedings should be discontinued.

The total amount of the established claims arising from this incident will not exceed S$11.5 million (£4.1 million) and RM2.6 million (£430 000).

In the limitation proceedings commenced by the shipowner in Singapore, the Court determined the limitation amount applicable to the *Evoikos* at 8 846 948 SDR (£7.5 million). As the admissible claims total £4.5 million, the Director considers that the 1971 Fund will not be required to make any payments of compensation nor pay any indemnification under Article 5.1 of the 1971 Fund Convention.

13.15 PONTOON 300

(United Arab Emirates, 7 January 1998)

The incident

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

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

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

Claims for compensation

Settled claims

As at 31 December 2002 claims totalling Dhs 7.4 million (£1.3 million) in respect of clean-up operations and preventive measures had been settled for a total of Dhs 6.3 million (£1.2 million). The 1971 Fund had paid a total of Dhs 4.8 million (£900 000), corresponding to 75% of the settlement amounts.

Pending claims

In May 2000 the Municipality of Umm Al Quwain presented claims against the 1971 Fund totalling Dhs 199 million (£34 million) on behalf of fishermen, tourist hotel owners, private property owners, a marine research centre and the municipality itself. These claims are in respect of economic losses in the fishery and tourism sectors (Dhs 11.1 million (£1.9 million)), property damage (Dhs 7.0 million (£1.2 million)), clean-up costs (Dhs 19.7 million (£3.3 million)) and environmental damage (Dhs 161 million (£27 million)). Little or no documentation has been provided in support of the claims, and the amounts involved appeared to be based upon estimates. The claim for environmental damage related to alleged losses of fish stocks and other marine resources, including mangroves. The estimation of the damage appears to be based upon theoretical models.

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

Legal actions

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

In June 2001 the Administrative Council considered the question of whether the claims by the Umm Al Quwain Municipality had become time-barred. Under Article 6 of the 1971 Fund Convention, rights to compensation from the 1971 Fund are extinguished unless an action is brought under the Convention against the Fund, or notification has been made to the Fund under Article 7.6 of the Convention of an action against the shipowner or his insurer under the 1969 Civil Liability Convention, within three years of the date when the damage occurred. However, notification under Article 7.6 can be made only in respect of actions against the shipowner liable under the 1969 Civil Liability

Convention or his insurer. Actions against other parties would fall outside that Convention. Since none of the defendants listed in the Municipality's writ was the owner of the *Pontoon 300* or his insurer, the 1971 Fund considered that the action could not be based on the 1969 Civil Liability Convention and that Article 7.6 of the Fund Convention was not applicable.

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

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

In December 2000 the Ministry of Agriculture and Fisheries in Umm Al Quwain joined the Umm Al Quwain Municipality's action as a co-plaintiff, claiming Dhs 6.4 million (£1.1 million), which corresponded to the claim by the marine resource research centre included in the Municipality's claim. However, the Ministry also joined the 1971 Fund as a co-defendant in its action. Although the action had not been served on the 1971 Fund, the Administrative Council decided that this claim was not time-barred, since the Fund had been brought in as a defendant in the action before the expiry of the three-year time bar period.

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

The 1971 Fund submitted a memorandum to the Umm Al Quwain Court denying the validity of the assignment of rights authorising the Umm Al Quwain Municipality and the Ministry of Agriculture and Fisheries to act on behalf of the various parties alleged to have suffered losses. The Fund also maintained that the claims submitted by the Umm Al Quwain Municipality were time-barred.

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

In May 2002 the three experts appointed by the Ministry of Justice invited the 1971 Fund to attend a meeting in the UAE together with representatives of the claimants to discuss the technical merits of the claims. The Fund participated in the meetings, but in doing so the Fund made it clear to the experts and the other participants that the discussions were without

prejudice to the Fund's position on the legal issues referred to above. Following the meeting the Fund wrote to the experts setting out its position and providing a detailed explanation as to why some claim items were deemed inadmissible and what further documentary evidence was required in support of those claim items that were admissible in principle.

The experts are expected to submit their report to the Court in early 2003.

Level of the 1971 Fund's payments

The maximum amount of compensation available under the 1969 Civil Liability Convention and the 1971 Fund Convention is 60 million SDR (£51 million).

The Executive Committee had previously 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.

The total amount claimed against the 1971 Fund as at 31 December 2002 was Dhs 206 million (£35 million), although Dhs 6.4 million (£1.1 million) was claimed both by the Umm Al Quwain Municipality and the Ministry of Agriculture and Fisheries for the same alleged damage. As mentioned above the 1971 Fund considers that the claims by the Umm Al Quwain Municipality, which represent Dhs 195 million (£33 million), are time-barred. However, the Fund's lawyers have indicated that the UAE courts might not agree with the Fund on this point. The UAE law is also unclear as to whether claimants can increase the amount of their claims in court, but in any event they would be entitled to interest at 9% per annum on any amounts awarded, either from the date of filing the claims in court or from the date of judgement. The Administrative Council therefore decided to maintain the Fund's level of payments at 75% of the total loss or damage suffered by each claimant.

Criminal proceedings

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

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

The master of the tug *Falcon 1* lodged an appeal in the Federal Court of Cassation, which sent the case back to the Court of Appeal to consider the issues of seaworthiness of the *Pontoon 300* and the master's defence of 'force majeure'. In October 2001 the Criminal Court of Appeal issued a preliminary judgement in which it appointed three experts from the UAE Ministry of Justice to provide a report to the Court of Appeal on the cause of the incident. In June 2002 the experts submitted their report to the Ajman Criminal Court of Appeal. The 1971 Fund has not been allowed access to that report since it is not a party to these proceedings. In November 2002 the Court delivered a preliminary decision in which it referred the matter back to the same group of experts for further consideration.

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

The 1971 Fund took legal action against the owner of the tug *Falcon 1* maintaining that, since the sinking of the *Pontoon 300* occurred due to its unseaworthiness and the negligence of the master and the owner of the *Falcon 1* during the towage, the tug owner was liable for the ensuing damage. The Fund claimed Dhs 4.5 million (£760 000), corresponding to the major part of the compensation it had paid for clean-up operations and preventive measures.

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

The 1971 Fund's lawyers advised the Fund that the Dubai Court had jurisdiction since one of the defendants has a place of business in Dubai and that the Fund had the right to take recourse action based on Article 9 of the 1971 Fund Convention which forms part of the law of the United Arab Emirates. The Fund's lawyers maintained that the tug *Falcon 1* was in control of the *Pontoon 300* and therefore legally responsible for the *Pontoon 300* in accordance with the principles of law on towage. They stated that under the Maritime Code of the Emirates the towing vessel and the vessel being towed were jointly liable for any loss suffered by third parties arising out of the towage operation.

In December 2000 the Dubai Court rendered a judgement in which it rejected the 1971 Fund's claim against the owner of the tug *Falcon 1* but ordered the owner of the cargo on board the *Pontoon 300* to pay the Fund Dhs 4.5 million (£760 000).

The basis of the rejection of the claims against the owner of the *Falcon 1* was that under the terms of the charter party the master of the tug was under the control of the charterer. The 1971 Fund appealed against the judgement, contesting the validity of the charter party, and maintaining that in any event the charter party was only binding upon the parties thereto and not upon the Fund. At a hearing in November 2001 the Fund amended the claimed amount to Dhs 4.7 million (£800 000) 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 (£800 000) 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 further maintained that since the tug had relied on an illegible photocopy of the charter party it was impossible to verify whether the cargo owner had assumed responsibility for the management and operation of the tug and tow.

In his pleadings to the Court of Cassation, the tug owner maintained that the original charter party was 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, and the Court is expected to render its judgement in early 2003.

13.16 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).

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 on 11 February 2000 and taken into the Abu Dhabi Freeport.

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

Previous considerations by the governing bodies of the 1971 and 1992 Funds

Definition of 'ship'

In July 2000 the 1992 Fund Executive Committee and the 1971 Fund Administrative Council decided that although the *Al Jaziah 1* was of a design intended as an inland waters motor tankship, it fell within the concept of 'seagoing ship or other seaborne craft' since it was actually operating at sea. They took the view therefore that the *Al Jaziah 1* fell within the definitions of 'ship' laid down in the 1969 Civil Liability Convention and the 1992 Civil Liability Convention.

Applicability of the 1971 and the 1992 Fund Conventions

The United Arab Emirates was Party to the 1969 Civil Liability Convention and the 1971 Fund Convention as well as to the 1992 Civil Liability Convention and the 1992 Fund Convention. The 1992 Fund Executive Committee and the 1971 Fund Administrative Council decided that therefore both the 1971 and 1992 Fund Conventions applied to the *Al Jaziah 1* incident.

Distribution of liabilities between the 1971 Fund and the 1992 Fund

Since both Fund Conventions applied to the *Al Jaziah 1* incident, the question arose as to how the liabilities should be distributed between the 1971 Fund and the 1992 Fund. The Administrative Council and the Executive Committee considered that, since there were neither provisions in the Fund Conventions nor any rules under general treaty law governing the issue under consideration, a practical and equitable solution should be agreed between the two Funds. They decided that the liabilities should be distributed between the 1971 Fund and 1992 Fund on a 50:50 basis.

Claims for compensation

The Federal Environmental Agency (FEA) of the United Arab Emirates submitted a claim for Dhs 2 million (£370 000) in respect of operations undertaken by a local salvage company to stem leaks and remove oil from the sunken wreck, and to refloat the wreck and tow it into the Abu Dhabi Freeport. This claim was settled for the amount claimed in May 2001.

The FEA also submitted claims for US$40 000 (£25 000) and Dhs 47 500 (£8 000) in respect of operations to remove the oil residues remaining in the wreck after it had been refloated. These claims were settled in May 2001 for US$29 000 (£18 000) and Dhs 47 000 (£8 000) respectively.

Three local affiliated oil companies submitted claims in respect of clean-up costs. The claim by one of these companies, for US$45 000 (£28 000) and £136 000, included the costs of mobilising equipment from an oil industry stockpile in Southampton (United Kingdom). That claim was settled in December 2002 for US$38 400 (£24 000) and £127 400. The claim by the second company has been provisionally assessed at US$783 000 (£490 000). A third affiliated oil company submitted a claim for US$98 000 (£60 000), which was settled for US$81 500 (£51 000).

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

Oil from the Al Jaziah 1 threatened industrial plants that relied on sea water

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 (£850) 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 had 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 not therefore entitled to limit his liability and that any attempt by the shipowner to limit his liability should be opposed by the Funds.

The governing bodies had earlier decided that if investigations by the Funds' lawyers revealed that the entity registered as the owner of the *Al Jaziah 1* or the individual (a UAE national) owning that entity at the time of the incident had significant assets, the Funds should take recourse action against them.

The registered owner, who worked for the Abu Dhabi National Oil Co in its Administration Department, had ownership of or substantial shares in four separate companies. Three of these companies either did not have valid trading licences or their trading records were unreliable. The fourth company was a limited liability company engaged in the storage and transportation of oil and the person was reported to hold 50% of the shares. The Funds' lawyers had indicated that in the event of the IOPC Funds obtaining a judgement against the person in question, the Funds might be able to execute it against the dividends payable from his 50%

share holding in the company or by obtaining a judicial sale of the shares under the UAE Commercial Companies Law. However, the Funds' lawyers had been unable to establish whether these assets would be sufficient to satisfy the amount that the Funds may be awarded in a final judgement. In their view the value of the shares in the company in question was uncertain and it would not be possible to prevent the disposal of the company's assets during the litigation period.

The Funds' lawyers considered that there were reasonably good prospects for the Funds to obtain a favourable judgement against the person in question and that it was likely that he would not be entitled to limit his liability. They had also advised, however, that the Fund 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.

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 IOPC Funds should pursue a recourse action those delegations recognised that the prospects of enforcing a favourable judgement were limited, but that it was in their view 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.

13.17 ALAMBRA

(Estonia, 17 September 2000)

The incident

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

The *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.

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

Limitation of liability

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

The limitation amount applicable to the Alambra is estimated at 7.6 million SDR (£6.4 million).

Claims for compensation

Claims for clean-up costs were submitted to the shipowner and the London Club by the Tallinn Port Authority for EEK 6.5 million (£270 800) and by the Estonian State (Ministry of Environment) for EEK 4 million (£166 700).

A claim for EEK 45.1 million (£1 880 000) is being pursued against the shipowner by the Estonian State (Environment Inspectorate). The claim, which appears to have the character of a fine or charge, appears to have been calculated on the basis of theoretical models and cannot therefore be considered a claim for compensation under the 1969 Civil Liability Convention and the 1971 Fund Convention.

A claim for US$100 000 (£63 000) is being pursued against 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 (£1 212 500) and EEK 9.7 million (£404 170) respectively for loss of income due to the unavailability of the berth whilst clean-up operations were being undertaken.

Legal actions

In November 2001 the owner of the berth in the Port of Muuga and the company it had contracted to carry out oil loading operations took legal action against the shipowner and the London Club and requested the Court to notify the 1971 Fund of the proceedings in accordance with Article 7.6 of the 1971 Fund Convention. Having been notified of the actions in February 2002, 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.

On 1 December 1992 Estonia deposited its instruments of ratification of the 1969 Civil Liability Convention and the 1971 Fund Convention with the Secretary-General of the International Maritime Organization (IMO). As a result, the Conventions entered into force for Estonia on 1 March 1993. The lawyers acting for the shipowner and the London Club, as well as the Estonian lawyers acting for the 1971 Fund have, however, drawn 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.

In a Bill submitted to the Estonian Parliament in 2002, containing a proposal for a new Maritime Act, the Government deals with the constitutional issue referred to above. It is stated in the Bill that the 1969 Civil Liability Convention is a treaty which needs parliamentary approval, since it requires amendments to Estonian national law. The point is made that accession to the Convention was made in contradiction to the Constitution. It is mentioned, however, that on the international level, Estonia is deemed to be a Party to the 1969 Civil Liability Convention. It is stated in the Bill that the same problem arises in respect of the 1971 Fund Convention which requires ratification by Parliament although it does not require amendments to national law.

The shipowner and the London Club have raised this issue in their pleadings in the court, as did the 1971 Fund in its submission to the court in order to protect its position, pending the Administrative Council's consideration of this matter. The Director discussed the situation with the Estonian Ministries concerned on the occasion of a visit to Estonia in April 2002.

At the July 2002 session of the Administrative Council the Director expressed the view that it appeared that the procedure for ratification of international treaties laid down in the Estonian Constitution, which entered into force on 3 July 1992, had not been observed. He stated that it was possible, therefore, that the 1969 and 1971 Conventions would be considered by the Estonian courts as not forming part of Estonian law. He mentioned that it could not be ruled out, however, that the courts might find that the Conventions were nevertheless applicable. The Director also expressed the view that, since the purpose of the 1971 Fund was to compensate victims of oil pollution damage, the Fund should normally not take a formalistic approach in dealing with claims for compensation. For this

reason he considered that, if the claims in the *Alambra* case were settled out of court, the issue of the non-applicability of the Conventions should not be raised by the Fund. However, in this case this issue had been raised by the shipowner and the London Club and by the 1971 Fund in the legal proceedings. If the courts were to hold that the claims against the shipowner and the Club could not be pursued under the Conventions but only under other provisions in Estonian national law, the question would arise as to the basis of the 1971 Fund's obligation to pay compensation. The Director mentioned that he was pursuing discussions with the London Club for the purpose of reaching out-of-court settlements in respect of those claims that fell within the scope of application of the Conventions.

In his pleadings to the Court, the shipowner has maintained, *inter alia*, that although the Estonian Merchant Shipping Act provides that the shipowner is liable for pollution damage, the Act's definition of pollution damage does not provide for civil liability for further loss or damage caused by preventive measures. The shipowner has also argued that the Estonian Constitution requires that in order for international agreements to be applicable under national law, such agreements must be passed by Parliament. The shipowner has further maintained that the relevant provisions in the Act are in conflict with the provisions of the 1969 Civil Liability Convention.

The claimants have, in their pleadings, argued that a provision in the Merchant Shipping Act stipulates that if both an international agreement to which Estonia is a party and the Act apply different legal standards, the standard of the international agreement should be applied. In the claimant's view, the Estonian courts would therefore apply the Convention rather than the Act and the courts should not take into account the restrictions placed by the Constitution as regards the ratification of treaties.

The claims for compensation filed in court fall well below the limitation amount applicable to the *Alambra* under the 1969 Civil Liability Convention and also below the amount at which the 1971 Fund may be called upon to pay indemnification to the shipowner. For this reason, the Director took the view that it was very unlikely that the 1971 Fund would be called upon to pay compensation or indemnification, that the constitutional issue referred to above was mainly of academic interest and that the Fund did not need to take an active part in the ongoing proceedings.

However, in September 2002 the London Club filed pleadings in court 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.

At a court hearing held on 17 September 2002, the 1971 Fund and the claimants requested the postponement of the proceedings to enable them to consider the position taken by the London Club as regards the alleged unseaworthiness of the *Alambra* and the legal consequences thereof.

The Director has examined the pleadings submitted by the London Club. The Club has stated that the *Alambra* had a history of corrosion problems both prior and subsequent to its purchase by its owner at the time of the incident in Estonia. It is further stated that in June 2000 the master of the *Alambra* reported a corrosion hole in the bottom plating of a cargo tank, in spite of which, and in contravention of the classification society's rules, the shipowner allowed the vessel to load a full cargo. It is also stated that during the laden voyage the vessel made a deviation to Kalamata (Greece) for repairs by divers, although this was not recorded in the vessel's engine or deck log books. It is mentioned that when the vessel arrived at Mohammédia (Morocco), its discharge port, there was a leakage of cargo from one of the cargo tanks, and that the vessel sailed to Algeciras (Spain) for further underwater repairs (but this was not reported in

the deck log book) before returning to Mohammédia to continue its cargo discharge. The London Club has maintained that the shipowner must have been aware of the condition of the vessel, and that in failing to report the holes in the cargo tanks to the classification society and allowing the vessel to continue trading in such a condition, the pollution in Estonia was a result of the shipowner's intentional wrongful act and that the Club therefore had no liability.

The 1971 Fund has filed further pleadings arguing that under Estonian law the concept of wilful misconduct is 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 has maintained that the evidence presented regarding the condition of the *Alambra* does not establish that the shipowner was guilty of wilful misconduct and that the insurer is therefore not exonerated from its liability for pollution damage.

Judgements in this case are expected in March 2003.

13.18 NATUNA SEA

(Indonesia, 3 October 2000)

The incident

The Panamanian tanker *Natuna Sea* (51 095 GT) grounded in the Singapore Strait off Batu Behanti, Indonesia. The vessel was carrying a cargo of 70 000 tonnes of Nile Blend crude oil and an estimated 7 000 tonnes was spilled as a result of the grounding.

On the Singapore side of the Strait a number of islands and the south-east coast of Singapore were polluted. A number of Indonesian islands in the Singapore Strait were affected by oil. Oil also impacted the south-east tip of the Johor Peninsula in Malaysia.

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

Applicability of the Conventions

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

Singapore is Party to the 1992 Civil Liability Convention and the 1992 Fund Convention. Indonesia is Party to the 1992 Civil Liability Convention only. Malaysia is Party to the 1969 Civil Liability Convention and the 1971 Fund Convention.

Since two different regimes are applicable to the incident, the shipowner may be required to establish two limitation funds, one in Malaysia and one in Singapore or Indonesia. The limitation amount applicable to the *Natuna Sea* under the 1992 Civil Liability Convention is approximately 22.4 million SDR (£18.9 million) and under the 1969 Civil Liability Convention approximately 6.1 million SDR (£5.2 million).

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

Claims for compensation

Singapore

A claim by East Asia Response Ltd (EARL), an oil spill response organisation, for US$1.4 million (£870 000) was provisionally assessed by ITOPF at US$400 000 (£250 000) pending further information in support of the claim. The claim was subsequently settled by the London Club for the amount claimed. The 1992 Fund was not party to the settlement. EARL submitted a further claim for US$16 000 (£10 000) in respect of damaged clean-up

Natuna Sea: successful oil containment operation

equipment. The London Club has argued that this claim should be met by the equipment insurers.

A claim for S$3.8 million (£1.4 million) by the Maritime and Port Authority (MPA) of Singapore in respect of its own personnel and resources and those of contractors engaged by MPA to assist in clean-up operations has been settled for S$2.8 million (£1.0 million). The IOPC Funds participated in the settlement negotiations.

A fish farm which was heavily impacted by the spill submitted a claim for S$140 000 (£50 000). This claim was settled by the London Club for S$95 000 (£35 000).

A claim by a Government Food and Veterinary Authority for S$56 000 (£20 000) in respect of oiled fish cages has been provisionally assessed by ITOPF at S$12 400 (£4 500).

The Sentosa Development Corporation submitted a claim for S$800 000 (£290 000) in respect of its involvement in shoreline clean-up operations, including the replacement of a damaged oil containment boom. The claim is being assessed.

The London Club has reimbursed the managers of the *Natuna Sea* US$8.7 million (£5.4 million) in respect of payments made to various clean-up contractors in Singapore and Indonesia. The 1992 Fund has not received any documentation in support of these payments.

Indonesia

Local government authorities have submitted claims totalling Rp 21 000 million (£1.5 million) in respect of the costs of clean-up operations, waste disposal and the collation of fishery claims. The claims were assessed by ITOPF at Rp 1 073 million (£75 000).

The Director General of Sea Communications has submitted a claim for US$700 000 (£440 000) in respect of clean-up operations at sea. This claim is being assessed.

A claim for Rp 811 million (£60 000) by an Indonesian oil company that participated in the

clean-up has been settled by the London Club at Rp 253 million (£18 000).

Fishery claims totalling US$12.3 million (£7.7 million) have been assessed by ITOPF at US$1.8 million (£1.1 million). In December 2000 the London Club made a partial payment of US$1.5 million (£940 000) in respect of these claims.

The Indonesian authorities have submitted claims totalling Rp 1 058 000 million (£74 million) for alleged damage to the coastal ecosystem including mangroves, corals and tourist beaches. These claims have been reduced to US$16.7 million (£10.4 million). No documentation has been provided in support of these claims, but they appear to be based upon a quantification of the area of each resource affected by oil and estimates of their monetary value. A claim has also been submitted for US$383 000 (£240 000) for the costs associated with determining these damages.

ITOPF conducted surveys of the affected areas in May 2002 and August 2002. During the second survey a small number of dead mangroves were observed. The London Club has engaged experts to advise on possible mangrove reinstatement projects in these areas.

Malaysia
Claims in respect of clean-up costs totalling RM 1.4 million (£230 000) were settled by the London Club for a total of RM 1.3 million (£210 000). Fishery claims totalling RM 905 000 (£150 000) were settled by the Club for the amount claimed. No further claims are anticipated.

Likelihood of involvement of the 1971 Fund and the 1992 Fund

All claims for pollution damage in Malaysia have been settled at a total of some £590 000. The limitation amount applicable to the *Natuna Sea* under the 1969 Civil Liability Convention is estimated at £5.2 million. The 1971 Fund will therefore not be called upon to make any payments in respect of compensation or indemnification under Article 5.1 of the 1971 Fund Convention.

Claims have been settled in Singapore for a total of US$10.1 million (£6.3 million) and S$2.9 million (£1.1 million). Further claims totalling S$856 000 (£308 000) are being assessed.

Claims in Indonesia total some Rp 21 800 million (£1.5 million) and US$30.1 million (£18.8 million), although they have been assessed at around Rp 1 412 million (£98 000) and US$1.8 million (£1.1 million).

There therefore remains a possibility that the total admissible claims for pollution damage in Singapore and Indonesia will exceed the limitation amount applicable to the *Natuna Sea* under the 1992 Civil Liability Convention. Since Indonesia was not a Party to the 1992 Fund Convention, the 1992 Fund will not be liable for pollution damage in Indonesia, but may be called upon to make payments in respect of pollution damage in Singapore.

13.19 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 and sank in 25 metres of water.

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

Some 1 100 tonnes of cargo remained in the unbreached tanks and this cargo was successfully

removed from the sunken vessel without further significant spillage of oil.

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

Previous considerations by the governing bodies

Definition of 'ship'
The 1992 Fund Executive Committee and the 1971 Fund Administrative Council decided in June 2001 that although the *Zeinab* had been built originally as a general cargo vessel, it had been converted to carry oil in bulk and had in fact carried oil in bulk as cargo at the time of the incident and that it therefore fell within the definitions of 'ship' laid down in the 1969 and 1992 Civil Liability Conventions.

Applicability of the Conventions
The governing bodies of the 1992 Fund and the 1971 Fund also decided that since the United Arab Emirates was at the time of the *Zeinab* incident Party to both the 1969/1971 Conventions and the 1992 Conventions, which had been implemented into national law, both sets of Conventions applied to the incident.

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

Claims for compensation

A claim by the Dubai Port Authority for US$480 000 (£330 000) in respect of costs of preventive measures and clean-up has been settled and paid at US$454 000 (£312 000).

A claim by the Federal Environment Agency (FEA) for Dhs 1.6 million (£280 000) in respect of the cost of removal of the remaining oil from the sunken wreck by a salvage company was settled and paid at the amount claimed.

A claim by the FEA on behalf of a local oil company for US$401 000 (£253 000) in respect of clean-up costs was settled and paid for US$390 000 (£246 000).

In July 2002 the FEA submitted a claim on behalf of the Dubai Municipality in respect of shoreline clean-up operations. The claim, which is for Dhs 2.5 million (£425 000), has been provisionally assessed at Dhs 735 000 (£125 000).

Recovery of compensation amounts paid by the 1971 Fund through its insurance policy

The 1971 Fund's liability for compensation and indemnification for incidents involving the 1971 Fund 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 purchased by the 1971 Fund. The insurance policy covers the 1971 Fund's liabilities up to 60 million SDR (£51 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. In July 2002 the Administrative Council decided that the relevant date for conversion of this amount into Pounds Sterling should be the date of the incident, ie 14 April 2001. The Council decided that on the basis of the SDR:Pounds Sterling exchange rate on 12 April 2001 (1 SDR=£0.88130), (13, 14, 15 and 16 April being non-banking days), the deductible under the policy would be £220 325 in respect of the *Zeinab* incident.

Since the 1971 Fund's payments have exceeded the deductible, the Fund has already made one recovery from the insurer amounting to £95 000. Further recoveries will be made as and when the 1971 Fund makes further compensation payments.

13.20 SINGAPURA TIMUR

(Malaysia, 28 May 2001)

The incident

On 28 May 2001 the chemical tanker *Singapura Timur* (1 369 GT), registered in Panama, carrying some 1 550 tonnes of 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.

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

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

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

Since 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.

Limitation of liability

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

The limitation amount applicable to the *Singapura Timur* has been estimated at 95 760 SDR (£81 000).

At the request of the Japan P & I Club, and in view of the low limitation amount applicable to the *Singapura Timur*, the Administrative Council waived the requirement under Article V.3 of the 1969 Civil Liability Convention that the shipowner should constitute a limitation fund.

Claims for compensation

The Japan P & I Club and the 1971 Fund have settled claims totalling US$157 000 (£98 000) in respect of clean-up operations. The Japan P & I Club paid the settlement amounts. Since the total payments by the Club therefore exceed the limitation amount applicable to the *Singapura Timur* under the 1969 Civil Liability Convention, the 1971 Fund will be liable for any further claims arising from the incident.

The 1971 Fund's liability in respect of the incident, as well as its legal and other experts' costs, are covered by insurance, less a deductible of 250 000 SDR. The Administrative Council decided in October 2002 that the relevant date for the conversion of this amount into Pounds Sterling should be the date of the incident (28 May 2001). The SDR:Pound Sterling exchange rate on 25 May 2001 (26, 27 and 28 May being non-banking days) was 1 SDR = £0.88513, giving a deductible of £221 283.

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 at the earliest opportunity. The Director

concurred with the decision by the DOE in this regard, and the 1971 Fund's expert in Singapore has provided technical advice to the authorities during the planning of the bunker removal operation.

The DOE also informed the 1971 Fund of its intention to conduct 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. The 1971 Fund was involved from the outset in the selection of the experts who would undertake the study and in the determination of the mandate of these experts.

Since this study would require 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.

In September 2002 the contractors engaged by the DOE submitted detailed technical and financial proposals in respect of the bunker removal operation and the environmental risk study. The Director informed the DOE that the 1971 Fund agreed in principle to the proposals, but reserved the right to consider the reports of the removal operation and the environmental risk study on their merits and to make its own assessment as to whether the two elements of the project had been completed satisfactorily. The Director also informed the DOE that claims for the costs of the oil removal operation and the environmental risk study would be assessed by the Fund in the usual way on the basis of the Fund's criteria.

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 2002 to 8 November 2002. Some 5 tonnes of heavy fuel oil was pumped from the N^{os}1 port and starboard fuel tanks together with a quantity of oil water from the engine room. Dispersant chemical was added to these spaces after completion of the pumping operation.

The principal contractor has submitted a claim for US$848 000 (£530 000) in respect of the costs of this phase of the operation and for the costs of analyses of the water, sediment and bitumen samples. This claim is being assessed by the Fund's expert in Singapore.

It is expected that the report on the environmental risk posed by the bitumen cargo will be presented in early 2003.

Recourse action

The question has arisen as to whether the 1971 Fund should take recourse action against the owner of the *Rowan* to recover the amounts paid by the 1971 Fund or by its insurer under the insurance policy.

Any action against the *Rowan* interests 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. Malaysia is a party to the 1957 Convention, whereas Japan is a party to the 1976 Convention. 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.

In December 2001, the *Singapura Timur*'s interests (P & I and hull insurers) commenced proceedings in Japan against the *Rowan* interests in order to recover the costs they had incurred and the costs they would incur as well as the costs that the Fund might incur as a result of this incident.

The Director informed the Japan P & I Club that the 1971 Fund reserved its position with regard to recourse action, as the extent of the liability of the Fund had not been established.

The *Rowan* interests have commenced proceedings in Malaysia against the *Singapura Timur* and its owner *in rem* and against the owner in person and in limitation. The Japan P & I Club has contested the action *in rem* on the ground that such an action can only be taken against a ship and not against a wreck. The Club has further contested the action against the owner in person and in limitation on the ground that Malaysian courts do not have jurisdiction in this case.

The total losses incurred by the *Singapura Timur*'s interests (Japan P & I Club and the hull insurers) are 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.

The Japan P & I Club and the hull underwriters of the *Singapura Timur* have sought the agreement of the 1971 Fund to their taking recourse action against the *Rowan* interests in Japan or any other State that is party to the 1976 Convention. The Director considered that the proposal had merit, since it would ensure that the 1971 Fund would recover at least part of any compensation payments made by it without having to incur any substantial litigation costs. In the Director's view, a condition of an agreement with the Club in this regard should be that any amount paid as a result of a judgement or settlement would be placed in an escrow account until the liabilities of the Japan P & I Club, the hull underwriters and the 1971 Fund had been established, and that once the liabilities of all the parties had been determined, the money in the escrow account would be distributed on a *pro rata* basis. The Japan P & I Club informed the Director that the hull underwriters of the *Singapura Timur* required the postponement of the discussion in relation to the terms of this agreement although the hull underwriter has understood the purpose and necessity of such an agreement. The Club also informed the Director that the hull underwriter wished to finalise the settlement agreement with the *Rowan* interests prior to concluding this agreement. The Director has continued discussions on the recourse action with the Club in order to arrive at a mutually acceptable solution.

14 1992 FUND INCIDENTS

14.1 INCIDENT IN GERMANY

(Germany, June 1996)

The incident

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

The German Federal Maritime and Hydrographic Agency took samples of the oil that was washed ashore. The German authorities have maintained that comparisons with an analytical chemical database on North Sea crude oils originally developed by the Federal Maritime and Hydrographic Agency showed that the pollution was not caused by crude oil from North Sea platforms. Chemical analysis showed that the oil in the samples was of Libyan origin.

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

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

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

1992 Fund's involvement

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

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

Legal actions

In July 1998 the Federal Republic of Germany brought legal actions in the Court of first instance in Flensburg against the shipowner and the West of England Club, claiming compensation for the cost of the clean-up operations for an amount of DM2.6 million or €1.3 million (£850 000).

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

The owner of the *Kuzbass* and the West of England Club presented pleadings to the Court 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 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 authorities maintained that there was *prima facie* evidence that the pollution could only have been caused by the *Kuzbass* and that the analysis

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

carried out on behalf of the shipowner and the Club did not rebut this *prima facie* evidence.

For summaries of the pleadings by the owner of the *Kuzbass*, the West of England Club and the German authorities 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 particular whether the samples of oil and sand mixture contained residues of tank washing and/or residues of slops and whether the residues originated from Libyan Brega crude oil. The expert concluded that the samples in question contained without any doubt residues of crude oil typical of those found in tank washings (slops) from oil tankers. He stated that there was no trace of sludge in the samples. The expert expressed the view that the quantity of oil recovered (ie several hundred tonnes) ruled out that sludge oil had contributed to the pollution. On the basis of the examination carried out by the Federal Maritime and Hydrographic Agency the oil in question was 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 January 2002 the 1992 Fund's lawyers in Germany contacted the German authorities and informed them of the Director's position.

In April 2002 the Court requested all parties to present summaries of their respective positions. The Fund's lawyers prepared a summary in consultation with the German authorities.

On 12 December 2002 the Court rendered a judgement on the issue of liability in which it found the owner of the *Kuzbass* and the West of England Club jointly and severally liable for the pollution damage. In doing so the Court acknowledged that the German authorities had failed to provide conclusive evidence that the *Kuzbass* was the vessel responsible, but that nevertheless 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 merits became final.

It is not known whether the shipowner and the West of England Club intend to appeal against the judgement.

Time bar

Claimants lose their right to compensation under the 1992 Fund Convention unless they bring court action within three years of the date on which the damage occurred or make formal notification to the 1992 Fund of a court action against the shipowner or his insurer within that three-year period. However, in no case shall a

court action be brought after six years from the date of the incident which caused the damage.

As indicated above the German authorities notified the 1992 Fund of their legal actions against the owner of the *Kuzbass* and the West of England Club in order to prevent their rights against the 1992 Fund becoming time-barred at the expiry of the three-year period. However, in order to prevent their claims against the Fund becoming time-barred at the expiry of the six-year period, the authorities took legal action against the 1992 Fund on 14 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 authorities against the shipowner and the West of England Club. The stay was granted by the Court on 12 November 2002.

14.2 NAKHODKA

(Japan, 2 January 1997)

See pages 60 to 67.

14.3 MARY ANNE

(Philippines, 22 July 1999)

The incident

The Philippines-registered sea-going self-propelled barge *Mary Anne* (465 GT), en route from Subic Bay to Manila (Philippines), became swamped during strong winds and heavy seas and sank in approximately 60 metres of water off the port of Mariveles at the entrance to Manila Bay. It was reported that the barge was carrying a cargo of 711 tonnes of intermediate fuel oil as well as some 2.5 tonnes of gas oil bunkers. The wreck leaked a small quantity of oil, some of which stranded on shorelines in the vicinity of Mariveles Harbour and on two islands in the entrance to Manila Bay.

The *Mary Anne* was entered with the Terra Nova Insurance Company Limited (Terra Nova), a conventional insurance company which covers P & I risks at fixed premiums.

Clean-up and other preventive measures

The clean-up operations were undertaken under the direction of the Philippines Coast Guard. The shipowner appointed a local salvage company to provide oil spill response services. The offshore response was based upon dispersant spraying from tugs. Shoreline clean-up involved the manual collection of oil and oily debris by local labour recruited by the municipalities.

Terra Nova contracted an international salvage company to work in collaboration with a local salvor to locate the wreck and plug any leaks prior to removing the oil remaining on board. The operations were initially hampered by bad weather, but diving surveys of the wreck and the sealing of vents and other openings were completed by the end of August 1999. Diving inspections showed that there was no remaining oil in any of the cargo tanks. The inspections also showed that the bunker tanks were free of oil.

Claims for compensation

As at 31 December 2002 Terra Nova had incurred expenditure of approximately US$2.5 million (£1.6 million) in respect of the oil removal contract and the clean-up operations.

Terra Nova did not consult the 1992 Fund on the settlement of the claims.

In September 2000 Terra Nova informed the 1992 Fund that the shipowner was in breach of the insurance policy in respect of the vessel on the grounds that the vessel was operated recklessly and that the crew was grossly incompetent. In particular, Terra Nova maintained that on the basis of diving surveys of the wreck there was no evidence of damage to the vessel's hull which could have caused the sinking, the engine room skylights were open and had no glass in them and the engine room and pump room had been modified in such a way that there was no watertight bulkhead between the two spaces. Terra Nova informed the 1992 Fund that it might request the shipowner and the 1992 Fund to reimburse Terra Nova the amounts it has paid to claimants.

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

In October 2000 the Executive Committee endorsed the Director's opinion that any claim by Terra Nova for reimbursement on the grounds of the shipowner having been in breach of the insurance policy had to be made against the shipowner, since the total amount of the claims paid fell well below the limitation amount applicable to the ship.

In October 2001 the 1992 Fund received a claim for PPs1.8 million (£20 000) from a lawyer in the Philippines representing a chemical supplier who had provided a quantity of dispersants to the shipowner for use in the clean-up operations. It was stated that the chemical supplier had been unable to obtain compensation from the shipowner and that Terra Nova had refused to settle the claim.

Under Article 4.1(b) of the 1992 Fund Convention claimants have to take all reasonable steps to pursue the legal remedies available to them before obtaining compensation from the 1992 Fund. In October 2001 the Executive Committee decided that the claimant should be informed that he should pursue his claim against the shipowner/insurer. The 1992 Fund informed the claimant's lawyer accordingly.

Legal actions

Under Article 6 of the 1992 Fund Convention, rights to compensation against the 1992 Fund shall be extinguished unless an action is brought thereunder or a notification of an action against the shipowner or his insurer has been made within three years from the date when the damage occurred. The third anniversary of the *Mary Anne* incident was on 22 July 2002, and the 1992 Fund wrote to the above claimant's lawyer in early July 2002 explaining the time bar provisions and the steps that needed to be taken to protect the claimant's rights against the shipowner/insurer and the 1992 Fund.

In September 2002 Terra Nova informed the 1992 Fund that proceedings had been commenced in the Makarti City Court against the Fund by Terra Nova and two other parties, one of whom was the claimant referred to above.

The 1992 Fund has not been served with any action in the Philippines, but sought clarification from Terra Nova on the identity of the claimants, the claimed amounts and the bases of the claims. Terra Nova informed the 1992 Fund that it intended to abandon its action against the Fund without prejudice to its position that it was entitled to claim recovery from the Fund. It has not been possible to establish whether any legal action has been taken against the Fund in the Philippines.

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

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

The shipowner 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 the definition of 'ship' as laid down in the 1992 Civil Liability Convention.

Measures to prevent pollution

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

Two of the companies proposed removing the bitumen tanks intact while leaving the wreck in its current position. Both companies estimated the cost to be in the region of US$1.5 million (£940 000). The third company proposed righting the wreck and refloating it with its cargo on board, following which the bitumen would then be removed and the wreck scuttled in deep water. The cost of this method was estimated at US$950 000 (£600 000).

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

The 1992 Fund's experts examined the proposed methods and expressed the view that the third company's proposal was preferable on both technical and cost grounds. The French authorities indicated that they favoured refloating the wreck prior to removing the cargo and then dismantling the wreck on shore, but that they would consider other options.

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

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. The authorities further indicated that as a result of the delays necessitated by the tendering process, during which divers have made regular checks on the condition of the wreck, the operations are expected to commence towards the end of 2002 after the hurricane season. However, the operations have not yet started.

In October 2002 the French Government took legal action against the shipowner and the 1992 Fund claiming provisionally FFr1.2 million or €232 000 (£151 000) 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 (£1.3 million) will be claimed in respect of the removal of the wreck and cargo.

14.5 ERIKA

(France, 12 December 1999)

The incident

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

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

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

Clean-up operations

The French Naval Command in Brest, Brittany, was in charge of the response operations at sea in accordance with the national contingency plan, 'Plan Polmar Mer'. The Préfets of the five affected départements initiated the national contingency plan, 'Plan Polmar Terre', and took charge of shoreline clean-up with assistance from the coastal local authorities, the Civil Defence Corps, local fire brigades, the army and volunteers.

Although the removal of bulk 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.

Area affected by the Erika incident

As regards the details of the clean-up operations, reference is made to the Annual Report 2001, pages 108 and 109.

More than 250 000 tonnes of oily waste was collected from shorelines and temporarily stockpiled. Total Fina SA, the French oil company, engaged a contractor to deal with the disposal of the recovered waste and the operation is underway. The cost of the waste disposal was estimated at some FFr300 million or €46 million (£30 million).

Impact of the spill

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

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

The affected coastline supports an important tourist industry, particularly during the summer months, which was affected to varying degrees during the 2000 tourism season depending on location and type of activity. The 2001 season was not affected to any significant degree.

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 Total Fina Elf, were carried out by an international consortium during the period 6 June - 15 September 2000. No significant quantities of oil escaped during the operations.

Limitation proceedings

At the request of the shipowner, the Commercial Court in Nantes issued an order on 14 March 2000 opening the limitation proceedings. The Court determined the limitation amount applicable to the *Erika* at FFr84 247 733 corresponding to €12 843 484 (£8.4 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, Steamship Mutual.

In 2002, the limitation fund was transferred from the Commercial Court in Nantes to the Commercial Court in Rennes and a new liquidator was appointed.

Maximum amount available for compensation

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

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

The Director's calculation gave 135 million SDR = FFr1 211 966 811 corresponding to €184 763 149 (£113 million), and the Executive Committee endorsed this calculation at its April 2000 and October 2001 sessions. In October 2000 and October 2001 the Assembly endorsed the Committee's decision.

Undertakings by Total Fina and the French Government

Total Fina 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 disposal of oily waste and 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 Total Fina if funds were available after all other claims had been paid in full.

Level of the 1992 Fund's payments

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

The Assembly has taken the view that the 1992 Fund should exercise caution in the payment of claims if there was a risk that the total amount of the claims arising out of a particular incident might exceed the total amount of compensation available under the 1992 Civil Liability Convention and the 1992 Fund Convention, since under Article 4.5 of the 1992 Fund Convention all claimants are to be given equal treatment.

Extensive studies were carried out within the French Ministry of Economy, Finance and Industry in June 2000, January 2001, June 2001 and October 2001 on the extent of the damage caused by the *Erika* incident in respect of the tourism industry.

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 Executive 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 the light of the uncertainties that remained as to the level of admissible claims arising out of the *Erika* incident, the Executive Committee decided, most recently in October 2002, that the level of payments should be maintained at 80%. It was also decided that the level of payments should be reviewed at the Committee's session in February 2003.

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, which can make payments to claimants of up to FFr200 000 or €30 490 (£19 000), had stated that it based its payments on assessments made by Steamship Mutual and the 1992 Fund. As at 31 December 2002 OFIMER had paid €4.6 million (£2.8 million) to claimants in the fishery sector and €1.8 million (£1.1 million) to salt producers.

The French Government also introduced a scheme to provide supplementary payments in the tourism sector. Payments totalling €9.3 million (£6.0 million) have been made under that scheme.

Claims handling

The Steamship Mutual and the 1992 Fund established a Claims Handling Office in Lorient, which opened on 12 January 2000. The Claims Handling Office, which has a staff of seven, serves as a focal point for the claimants and the technical experts engaged to examine the claims for compensation. The Office has a purely administrative role and does not carry out assessment of claims.

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

Claims situation

As at 31 December 2002, 6 639 claims for compensation had been submitted for a total of FFr1 291 million or €197 million (£128 million). Six thousand one hundred and forty-nine claims totalling FFr969 million or €148 million (£97 million) had been assessed at a total of FFr532 million or €81 million (£53 million). Assessments had thus been carried out of 93% of the total number of claims received.

Six hundred and eighty-eight claims, totalling FFr122 million or €19 million (£12 million), had been rejected. Many of the rejected claims are being reassessed in the light of additional documentation provided by the claimants.

Payments for compensation had been made in respect of 4 957 claims for a total of FFr365 million or €56 million (£37 million), out of which the Steamship Mutual had paid FFr84 million or €13 million (£9 million) and the 1992 Fund FFr281 million or €43 million (£28 million).

A further 543 claims, totalling FFr347 million or €53 million (£35 million), were either in the process of being assessed or were awaiting claimants providing further information necessary for the completion of the assessment.

The tables below give details of the processing of claims in various categories.

CLAIMS SUBMITTED BY 31 DECEMBER 2002

Category	Claims submitted	Claims assessed		Claims for which payments have been made		Claims rejected	
Mariculture and oyster farming	989	986	99%	807	82%	86	9%
Shellfish gathering	507	506	99%	352	69%	92	18%
Fishing boats	318	315	99%	270	85%	25	8%
Fish and shellfish processors	37	36	97%	28	76%	6	16%
Tourism	3 449	3 324	96%	2 700	78%	417	12%
Property damage	699	418	60%	290	41%	28	4%
Clean-up operations	138	105	76%	85	62%	8	6%
Miscellaneous	502	459	91%	425	85%	26	5%
Total	**6 639**	**6 149**	**93%**	**4 957**	**75%**	**688**	**10%**

PAYMENTS AUTHORISED AND MADE BY 31 DECEMBER 2002

Category	Payments authorised		Payments made	
	Number of claims	Amounts FFr	Number of claims	Amounts FFr
Mariculture and oyster farming	898	39 495 192	807	28 105 957
Shellfish gathering	409	4 623 893	352	3 329 482
Fishing boats	292	5 749 170	270	4 536 317
Fish and shellfish processors	29	4 320 293	28	4 307 816
Tourism	2 842	289 010 778	2 700	269 912 303
Property damage	319	9 948 276	290	8 495 496
Clean-up operations	97	24 955 412	85	22 587 034
Miscellaneous	431	29 858 845	425	23 239 890
Total	**5 317**	**407 961 859**	**4 957**	**364 514 295**

Admissibility of claims

As set out above, the 1992 Fund has examined over 6 000 claims. During 2002, some claims were referred to the Executive Committee for decision on their admissibility since they gave rise to important questions of principle.

Claims for reduction in tourism tax revenue

In April/May 2002 the Executive Committee considered the admissibility of claims submitted by 17 communes for reduction in revenues from tourism tax.

Tourism tax is levied by communes that are recognised tourism resorts and destinations. The level of the tax is set annually by the commune on the basis of a fixed amount per visitor per night of stay, the amount varying dependent on the type of accommodation. The revenue from the tourism tax is used by the commune to support costs of activities and services which are related to levels of tourism in the commune, *inter alia* beach cleaning, rubbish collection, information and local tourism offices.

Tourism tax takes two forms, namely traditional tourism tax ('taxe de séjour'), which is paid by tourists on the basis of a fixed amount per night, and the so called 'flat-rate' tourism tax ('taxe forfaitaire de séjour'), which is paid by businesses such as hotels and campsites on the basis of the number of rooms or tent pitches available. Most communes adopted the traditional tourist tax, where the revenue is dependent on tourist numbers, rather than the flat rate tax, where the revenue is not. The communes cannot increase the rates of direct taxes during a financial year in order to compensate for a reduction in revenue from the tourism tax.

The Executive Committee decided that claims relating to the reduction in revenue from the 'flat-rate' tourism tax (taxe forfaitaire de séjour) were not admissible, since the revenue did not depend on the number of tourists visiting the area.

The Executive Committee also decided that the claims for reduction in revenue from the traditional tourism tax (taxe de séjour) were admissible in principle in the light of the specific nature of that tax, the direct link between the revenue from that tax and the number of tourists visiting the area and the dependency of the communes in question on beach tourism. The Committee stated that when these claims were examined, it would be necessary to take into account any savings made as a result of the reduction in the number of tourists during the period in question.

Claims from businesses located at some distance from the coast

A significant number of claims were submitted by businesses within the tourism industry which alleged a dependence on coastal tourism but which were situated at some distance inland. The businesses included campsites, hotels, restaurants, historical buildings, museums and other tourist attractions.

In accordance with the 1992 Fund's criterion for admissibility that there should be a reasonable degree of proximity between the contamination and the loss, the Fund had restricted its acceptance of claims to businesses located within approximately 25 kilometres of the coast in the four départements whose coasts were affected by the oil pollution, namely Finistère, Morbihan, Loire Atlantique and Vendée, as well as Charente-Maritime where only a minor part of the coastline (Ile de Ré) was affected by the oil.

As regards businesses located more than some 25 kilometres from the coast, it had been considered that there was in general not a reasonable degree of proximity between the pollution and the alleged loss or damage. The Director felt however that it might be appropriate to reconsider the issue of geographic proximity in the context of the *Erika* incident and submitted for the Executive Committee's consideration the question of how the criterion of a reasonable degree of proximity should be applied in respect of businesses situated somewhat further from the polluted coastline.

The statistics available tended to show that businesses in the tourism industry were more dependent on beach tourism the closer to the

Erika: contamination of shellfish can lead to harvesting bans with consequential economic losses

coast they were located and that businesses situated close to the coast had suffered in general greater decline in tourism trading as a result of the *Erika* incident than businesses located further inland. There were however businesses located a considerable distance inland (say 50 - 60 kilometres) which were heavily dependent on beach tourism, as evidenced from their marketing strategy, their client profile and the seasonal pattern of their trade, whereas other businesses in the same area which were located at the same distance from the coast were not, or were much less, dependent on beach tourism.

The Director took the view that the question under consideration was one of causation rather than one of a particular distance from the coast. He considered that the most equitable method would be to examine each claim in detail in order to establish whether there was a link of causation between the reduction in the number of tourists to the coastal areas affected by the pollution and the economic losses allegedly suffered by businesses located somewhat further away from the polluted coast. The Director made the point that, when considering the admissibility of these claims, the geographic criterion should not be the primary one and that the other criteria laid down by the Assemblies would also have to be taken into account.

The Executive Committee decided that claims by businesses located at some distance from the coast should be assessed on a case-by-case basis in order to establish whether there was a link of causation between the alleged loss or damage and the contamination in accordance with the Fund's normal practice.

Publicity campaign in Charente-Maritime

A claim was submitted by the Département of Charente-Maritime for FFr15.5 million or €2.4 million (£1.5 million) in respect of measures undertaken by the General Council (Conseil Général) to restore the image of the département as a tourism destination. The major part of the expenditure (FFr15 million or €2.3 million (£1.4 million)) related to promotional campaigns over the periods March/June 2000, Christmas/ New Year 2000/2001 and February/March 2001.

Charente-Maritime is a very important tourism area but the pollution of its coast had been limited to light oiling of four beaches on the northern coast of Ile de Ré, which had been cleaned within the first few days of January 2000. Although there had been no contamination of the mainland coast of Charente-Maritime, it had been anticipated in the early stages of the incident that the bulk of the oil would land on its shorelines. As a consequence of these early predictions, the Préfet of Charente-Maritime had been appointed by the French Government to co-ordinate the national contingency plan (Plan Polmar) and there had been considerable media attention suggesting that the département fell within the area affected by the oil. The French and foreign media had continued to make reference to the département as having been adversely affected even after it had been established that the oil had not seriously affected Charente-Maritime.

The Executive Committee decided that most of the claim was inadmissible in principle, since the losses which the publicity campaign had been intended to mitigate had not been caused by contamination but by the media's wrongly giving the public the impression that the beaches in Charente-Maritime had been seriously polluted. The Committee decided, however, that the costs incurred for those parts of the campaign in 2000 which related to the Ile de Ré were admissible in principle, since some beaches on the Ile de Ré had in fact been polluted and that there was therefore a link of causation between the expenses and the contamination.

Claim by Brittany Ferries

A claim for compensation was submitted by BAI Brittany Ferries SA (Brittany Ferries), a French company providing ferry services between England and France (Brittany and Normandy), between England and Spain (Santander) and between Ireland and France (Brittany). The claim, which totalled FFr69 335 000 (€10.6 million or £6.8 million), was for economic loss and the costs of a marketing campaign to mitigate losses.

Brittany Ferries pointed out that the pollution on the coast of Brittany, Pays de la Loire and to a lesser extent Poitou-Charente arising out of the *Erika* incident, and the considerable time required to clean up the affected beaches had caused many British holiday-makers to choose holiday destinations not served by the company which had led to a reduction in passenger numbers, ferry ticket revenue and on board sales. Brittany Ferries stated that most passengers on its ferries travelled by car and continued to destinations within the area affected by the *Erika* oil spill. The company mentioned that serious pollution resulting from the *Erika* incident had remained on a substantial part of the French Atlantic coast during the main reservation period for British holiday-makers (January to April 2000) and that the contaminated state of the beaches had been reported widely in the media in the United Kingdom and other European countries as well as in France.

The Steamship Mutual and the 1992 Fund examined information provided by Brittany Ferries on the numbers of passengers transported between England and France, Ireland and France and England and Spain in the period 1997 - 2001 and the number of passengers transported by Brittany Ferries' competitors on routes between England and Brittany and England and Normandy. With the exception of the Cork-Roscoff route, all western channel routes to France operated by Brittany Ferries (ie those to Saint Malo and Roscoff) had suffered a reduction of between 7.02% and 8.6% in the number of passengers carried in the summer of 2000 compared with the summer of 1999. The Cork - Roscoff route, which was the only ferry service between south-west Ireland and France, had showed an increase of 7.14% in the number of passengers in the summer of 2000 compared with 1999, but this service represented only 2.75% of Brittany Ferries' total passenger traffic and was therefore a marginal activity. The great majority of passengers using the western channel crossings to Saint Malo and Roscoff and around 50% of those using the mid-channel crossings proceeded to destinations which were in or close to the area affected by the *Erika* oil spill.

The Executive Committee decided that, since there was a link of causation as regards various

items of the claim between the alleged loss and the contamination, the claim by Brittany Ferries was admissible in principle. The Committee authorised the Director to assess the admissible quantum of the claim, taking into account in particular whether the reduction in passenger numbers fell within the normal fluctuations. The Director was instructed to take into consideration all factors that could have contributed to the losses.

Attack on the Claims Handling Office in Lorient

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

Early in the morning of Saturday 15 December 2001, a person drove a tractor with a front-end loader into the Claims Handling Office building in Lorient, demolishing a number of windows and destroying the door. The two police officers present outside the office were unable to prevent the attack, but arrested the attacker and took him into police custody. After being charged by the investigating judge ('juge d'instruction') the person was released on 16 December. The judge issued an order prohibiting the person from visiting Lorient except to see his lawyer.

The 1992 Fund and the Steamship Mutual pressed charges against the attacker with the local police. The public prosecutor brought charges of causing serious damage to property belonging to another by breaking and entering ('dégradation ou détérioration grave du bien d'autrui avec entrée par effraction') against the attacker in the Criminal Court of Lorient. The public prosecutor requested that the attacker should be given a prison sentence of 18 months, of which six months should be served in prison and the remainder on probation.

The Court rendered its judgement in December 2002. The Court qualified the attacker's act as 'simple damage to property' ('simple déterioration du bien d'autrui') and held that since the act formed part of the activities of a trade union ('action syndicale'), it fell within the scope of a law on amnesty adopted by Parliament on 3 August 2002.

The prosecutor appealed against the judgement. The 1992 Fund and the Steamship Mutual joined in the appeal.

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 évènements 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 and some of its senior staff on the basis of a report by an expert appointed by the magistrate. 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 investigation is carried out by a panel of four experts.

With the permission of the Commercial Court in Dunkirk the experts ordered an operation to

recover two pieces of ship side from the N°2 starboard ballast tank and one piece of deck plate from over the N°2 port ballast and N°3 centre cargo tank. The purpose of the operation was to obtain evidence of the condition of these portions of the ship from a corrosion point of view at the time of the sinking. The recovery operation was carried out in October 2002.

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

Court surveys for evaluation of the damage

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

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 2003.

Efforts were made to minimise the impact of the spill on coastal salt production in marshes in Loire Atlantique and Vendée, and a number of monitoring and analytical programmes were implemented. Salt production resumed in Noirmoutier (Vendée) in mid-May 2000 as a result of an improvement in sea water quality, and bans which were imposed to prevent the intake of sea water in Guérande (Loire Atlantique) were lifted on 23 May 2000. 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 have been received from producers (both independent and members of the co-operative) in Guérande and Noirmoutier.

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. Documentation has been submitted to the court expert. It is not possible to predict when his report will be presented.

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 had not taken legal action against the shipowner, Steamship Mutual and the 1992 Fund by 12 December 2002 and a number had still not commenced legal action by 31 December 2002.

Actions in France against Total Fina, the shipowner and others

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

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

The plaintiffs have maintained that Tevere Shipping Company Ltd and Panship had unlimited liability, due to the fact that the *Erika* was unseaworthy. It has been argued that RINA had not fulfilled its obligations to survey and monitor the *Erika* and, by allowing the vessel to go to sea on 24 November 1999 knowing that repairs were urgently needed, had deliberately taken a risk knowing that damage might occur. As for Total, the plaintiffs have stated that Total had chartered a vessel which was 25 years old and for which the Class' certificate had expired. They have also maintained that Total had failed to inspect the vessel properly and that ultimately Total had not taken the necessary measures during the 24 hours immediately preceding the incident to ensure salvage of the *Erika*.

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

Action in Italy by RINA Spa/Registro Italiano Navale

In late April 2000 RINA SpA and Registro Italiano Navale[7] brought legal action in the Court of Syracusa (Augusta section) (Italy) against the following defendants:

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

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

The plaintiffs also requested that, in the event that they were to be held liable and that there was a link of causation between this hypothetical liability and the consequences of the incident, the Court should declare that they would not have any obligation to pay compensation towards any of the defendants on any ground whatsoever, either directly or indirectly or by way of recourse. They also requested that the Court should declare that this hypothetical liability would be limited as provided in the applicable Rules of the plaintiffs[8].

In the submission to the Court the plaintiffs stated that Registro Italiano Navale had classed the *Erika* in August 1998 and that RINA had

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

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

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

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

The plaintiffs argued that the channelling provisions in Articles III.1 and III.4 of the 1992 Civil Liability Convention preclude any liability of classification societies. They also maintained that it had been established by English and American leading cases that the shipowner was the only party responsible for the operation, maintenance and seaworthiness of the vessel and that no such liability could lie with the classification society which was neither the guarantor nor the underwriter of the classed vessel.

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

The Court of Cassation rendered its decision in October 2002. The Court declared that the Italian Courts lacked jurisdiction as regards the parties having used the special procedure on the grounds that Article IX of the 1992 Civil Liability Convention conferred exclusive jurisdiction on the Courts of the State where the pollution damage was caused.

Recourse actions by the 1992 Fund

At the Executive Committee's October 2002 session, the Director raised the question as to whether the 1992 Fund should take recourse actions against certain parties to recover the amounts paid by it in compensation. He expressed the view that it was not possible for the 1992 Fund to take a final position as to whether the Fund should take recourse actions and, if so, against which parties, until the investigations into the cause of the incident had been completed. However, the Director considered that the 1992 Fund should take such actions as were necessary to prevent its rights becoming time-barred.

In order to pursue successfully recourse actions against Tevere Shipping Co Ltd (registered owner of the *Erika*), Panship Management and Services Srl (manager of the *Erika*), Selmont International Inc (time charterer of the *Erika*) and Total Transport Corporation (voyage charterer), the 1992 Fund would have to prove that the pollution damage resulted from their personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result, since they might otherwise be entitled to the protection laid down in Article III.4 of the 1992 Civil Liability Convention.

Under Article VII.8 of the 1992 Civil Liability Convention an action for pollution damage may be brought directly against the insurer, but the insurer is entitled to limit his liability to the amount prescribed in Article V.1 even if the shipowner is deprived of his right of limitation, and the insurer would be entitled to invoke the defence that the pollution damage resulted from the wilful misconduct of the shipowner.

The Executive Committee decided to authorise the Director to challenge 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 period against the following parties:

- Tevere Shipping Co Ltd (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*)
- Total Fina Elf SA (previously Total Fina SA) (holding company)
- Total Raffinage Distribution SA (shipper)
- Total International Ltd (seller of cargo)
- Total Transport Corporation (voyage charterer of the *Erika*)
- RINA Spa (classification society)
- 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 Executive 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 (Tribunal de Grande Instance) in Lorient on 11 December 2002.

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 €190 553 427 (£125 million) (which could be increased at a later stage), plus interest at the legal rate, as follows:

- €50 124 354 (£33 million) in respect of expenses occurred by the Ministries of Interior, Defence, Economy, Finance and Industry and Health;
- €127 395 920 (£83 million) in respect of payments made under the French oil pollution contingency plan Plan Polmar;
- €13 033 152 (£8.5million) in respect of payments made to victims.

The French State requested the Court to order the defendants, except the limitation fund and the 1992 Fund, to pay €190 553 427. The State 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 Total Fina

Four companies in the Group Total Fina, namely Total Fina Elf SA, Total Fina Elf France SA (in succession of Total Raffinage Distribution SA), Total International Limited and Total Transport Corporation, commenced actions in the Commercial Court in Rennes against Tevere Shipping Co Ltd, Panship Management & Services Srl, Steamship Mutual, the limitation fund, RINA, Registro Italiano Navale and the 1992 Fund. The claim is for €143 million (£93 million) (which could be increased at a later stage), allegedly admissible under the 1992 Fund Convention, and for €3 million (£2 million) for the cost of an 'expertise judiciaire'. The Total Fina Group of companies have also claimed

interest at the legal rate. As regards the action against the 1992 Fund, the Total Group of companies have requested a declaration that the claim is admissible for €143 million but that the right to compensation will be exercised only if all victims (including the French State and the public bodies) are compensated in full.

Legal action taken by Steamship Mutual

Steamship Mutual brought action in the Commercial Court in Rennes against the 1992 Fund, requesting *inter alia* the Court to note that, in the fulfilment of its obligations under the 1992 Civil Liability Convention, Steamship Mutual had paid €12 843 484 (£8.4 million) corresponding to the limitation amount applicable to the shipowner, in agreement with and under the control of 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 has also requested the Court to order the 1992 Fund to reimburse it any amount it will have paid in excess of the limitation amount.

Actions by other claimants

Claims totalling €484 million (£300 million) have been lodged against the shipowner's limitation fund constituted by the shipowner's insurer, Steamship Mutual. This amount includes the claims by the French Government at €191 million (£125 million) and by Total Fina Elf at €170 million (£105 million). However, most of these claims, other than those of the French Government and Total Fina Elf, 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. It appears that one claim has been mistakenly indicated by the claimant at €44 million (£29 million) but should be for €43 326 (£29 000). The 1992 Fund has not received any formal notifications of the claims lodged against the limitation fund.

By 31 December 2002, 645 claimants (including 180 salt producers) had taken court action against the shipowner, Steamship Mutual and the 1992 Fund. The total amount claimed, excluding the claims by the French State and Total Fina Elf, was FFr700 million or €107 million (£70 million).

Most of the claims covered by the court actions had previously been submitted to the Claims Handling Office. However, 28 claims for a total of FFr37 million or €5.7 million (£3.7 million) had not been presented to the office, including claims by four public bodies totalling FFr30 million or €4.6 million (£2.9 million). In respect of a number of claimants the amount claimed in the Claims Handling Office and the amount claimed in the court action are not the same. It is expected that further claims will be filed against the shipowner, Steamship Mutual and the 1992 Fund in early 2003.

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.

14.6 AL JAZIAH 1

(United Arab Emirates, 24 January 2000)

See pages 77 to 80.

14.7 SLOPS

(Greece, 15 June 2000)

The incident

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

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

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

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

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

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 Executive Committee recalled that the 1992 Fund Assembly had decided that offshore craft, namely floating storage units (FSUs) and floating production, storage and offloading units (FPSOs), should be regarded as ships only when they carry oil as cargo on a voyage to or from a port or terminal outside the oil field in which they normally operate. The Committee noted that this decision had been taken on the basis of the conclusions of the Second Intersessional Working Group that had been set up by the Assembly to study this issue.

The Committee also noted that although the Working Group had mainly considered the applicability of the 1992 Conventions in respect of craft in the offshore oil industry, there was no significant difference between the storage and processing of crude oil in the offshore industry and the storage and processing of waste oils derived from shipping. It was further noted that the Working Group had taken the view that in order to be regarded as a 'ship' under the 1992 Conventions, an offshore craft should *inter alia* have persistent oil on board **as cargo or as bunkers**.

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

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

Legal actions

In October 2001 two Greek companies took legal action in the Court of first instance in Piraeus (Greece) against the registered owner of the *Slops* claiming compensation for costs of clean-up operations and preventive measures for €1 536 528 (£1.0 million) and €786 329 (£510 000) (plus interest), respectively. The claimants served the writ on the 1992 Fund in January 2002.

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. They also stated that they had informed the Greek Ministry of Merchant Marine on a daily basis of the operations which had been carried out during a period of 37 days. They mentioned that

an expert engaged by the 1992 Fund had monitored the operations. 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.

The companies did not in their court action refer to the 1992 Civil Liability Convention. It appeared that the action was based on the owner of the *Slops* not having fulfilled his contractual obligations to pay the cost of the operations.

Notification of the 1992 Fund of legal actions against the registered owner is governed by Article 7.6 of the 1992 Fund Convention. Such notification can be made only if that action is based on the 1992 Civil Liability Convention. This action was not based on that Convention. In addition, the provisions of the Greek Civil Procedural Code on notification of actions had not been complied with. The Director decided therefore that the 1992 Fund should not intervene in the proceedings.

In February 2002 the above companies took separate legal actions against the 1992 Fund in the Court of first instance in Piraeus claiming compensation for the cost of clean-up operations and preventive measures for the same amounts as those in the other action. The 1992 Fund was informed of these actions in June 2002.

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.

Both sets of actions were dealt with by the Court at a hearing held on 8 October 2002. The Court rendered its judgements on 13 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 is and remains a ship, although it may subsequently be converted into another type of floating unit, such as a floating oil waste receiving and processing facility, and notwithstanding that it may be stationary or that the engine may have been temporarily sealed or the propeller removed.

The Court held that the 1992 Fund should pay the companies €1 536 528 (£1 001 000) and €786 832 (£518 400) 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 (£60 000).

The Director was not persuaded by the reasons given by the Court of first instance. In its decision, the Executive Committee set out clearly the reasons why the *Slops* does not fall within the definition of 'ship'. Since the issue involved raises an important question of interpretation of one of the basic definitions in the 1992 Conventions, the Director has

recommended to the Executive Committee that the 1992 Fund should appeal against the judgement.

14.8 INCIDENT IN SPAIN

(Spain, 5 September 2000)

The incident

Between 5 and 15 September 2000 persistent oil landed on several beaches in Lugo and La Coruña, in Galicia. Shoreline clean-up operations were carried out by the local fire brigades of the municipalities of Cervo and Xobe in the north of Galicia.

Investigations by the Spanish authorities indicated that the oil could have been discharged on 5 September 2000 within the Spanish Exclusive Economic Zone to the north of Galicia, possibly from the Maltese tanker *Concordia I* (159 147 GT), which had passed the area at the assumed time of the oil spill on a ballast voyage from Rotterdam (Netherlands) to Sidi Kirir (Egypt). The French authorities had previously informed the Spanish authorities of a discharge of oil from the *Concordia I* in the Bay of Biscay on 5 September 2000.

The Spanish authorities boarded the *Concordia I* in Algeciras (Spain) on 7 September 2000 and took samples of oil from various tanks. According to the Spanish authorities the analyses of the oil samples from the polluted beaches matched those of samples taken from the *Concordia I*. The shipowner has maintained that the oil did not originate from the *Concordia I*.

The *Concordia I* was entered in the Standard Steamship Owners' Protection and Indemnity Association (Bermuda) Ltd (Standard Club).

Claims for compensation

The municipalities of Cervo and Xobe have submitted claims totalling Pts 1 million or €6 000 (£3 800) to the Standard Club and to the 1992 Fund in respect of the costs of clean-up operations.

The limitation amount applicable to the *Concordia I* under the 1992 Civil Liability Convention is 59.7 million SDR (£50 million).

Applicability of the Conventions

The Spanish authorities made available to the 1992 Fund the data obtained from the analyses of the samples of oil taken from the *Concordia I* and the samples of oil collected from the shorelines.

The Director examined the data provided by the Spanish authorities and concurred with their conclusion that the oil from the *Concordia I* matched the polluting oil from the affected shorelines. The 1992 Fund informed the Spanish authorities and the Standard Club of his conclusions and provided copies of the analytical data to the Club for their examination. The Standard Club has sought a further technical opinion on the interpretation of the analytical data.

In October 2002 the Executive Committee decided to authorise the 1992 Fund to make final settlements on behalf of the 1992 Fund of all claims arising out of the incident in the event that the claimants were unable to obtain compensation under the 1992 Civil Liability Convention, but could demonstrate to the satisfaction of the Director that the pollution damage was caused by persistent oil originating from a ship as defined in the 1992 Civil Liability Convention.

14.9 INCIDENT IN SWEDEN

(Sweden, 23 September 2000)

The incident

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

Investigations by the Swedish authorities indicated that the oil could have been discharged on 3 September 2000 within the Swedish Exclusive Economic Zone to the east of Gotland, possibly from the Maltese tanker *Alambra*, which had passed the area at the assumed time of the oil spill on a ballast voyage to Tallinn, Estonia (cf page 80). According to the Coastguard, analyses of oil samples from the polluted islands match those of samples taken from the *Alambra*.

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

Limitation of liability

The limitation amount applicable to the *Alambra* under the 1992 Civil Liability Convention is 32 684 760 SDR (£27.6 million).

Claims for compensation

The Coastguard incurred costs in respect of clean-up operations totalling SEK 1.1 million (£80 000). The Rescue Service Agency, together with local authorities, incurred clean-up costs totalling SEK 4.1 million (£290 000). The aggregate amount of the claims would therefore fall well below the limitation amount applicable to the *Alambra*.

The Swedish authorities informed the Director that they intended to submit their claims for compensation to the owner in the spring of 2003. The authorities further indicated that in the event that they were to be unsuccessful in receiving compensation from the shipowner, they would consider claiming against the 1992 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 an analysis of samples of oil carried on board the *Alambra* and of samples of oil found on several Swedish islands. The documents provided by the Swedish authorities are being examined by the 1992 Fund.

Legal proceedings

The Swedish Coastguard imposed a water pollution fine of SEK 439 000 (£30 000) 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 requesting the Court to 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 Economic Zone 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 District Court rejected the shipowner's request for dismissal on this ground.

The shipowner has lodged appeal against the District Court's decision in the Stockholm Court of Appeal, which in September 2002 upheld the District Court's decision. The shipowner has requested that he be granted leave to appeal to the Supreme Court.

14.10 NATUNA SEA

(Indonesia, 3 October 2000)

See pages 83 to 85.

14.11 BALTIC CARRIER

(Denmark, 29 March 2001)

The incident

The *Baltic Carrier* (23 235 GT), registered in the Marshall Islands, was carrying some 30 000 tonnes of heavy fuel oil when it collided with the *Tern* (20 362 GT), a sugar-laden bulk carrier registered in Cyprus, some 30 miles north-east of Rostock (Germany). The collision caused a hole in one of the *Baltic Carrier*'s cargo tanks, resulting in an escape of some 2 500 tonnes of heavy fuel oil.

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

The spilled oil drifted towards Danish coastal waters, polluting the shorelines of several islands, including Falster, Farø, Bogø and Møn.

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

Clean-up operations in Denmark

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

In July 2002, whilst renovation work was being carried out on a causeway between Bogø and Møn, it was discovered that oil that had become trapped within the underlying boulders of the causeway was being released into the sea. The local authorities and the contractors involved in the renovation work considered two options for dealing with the problem. The first option was to continue with the renovation work as planned, recognising that there would be interruptions for clean-up works to be undertaken when oil was released. The second option, which was the one eventually adopted, was to leave the oily boulders undisturbed and to lay fresh material on top. The contractor estimated that this would lead to an increase in the costs of the renovation project by some DKr 1.8 million (£150 000).

Oil pollution in Rostock and Ventspils

Following the collision the *Tern* proceeded to Rostock (Germany) where it was discovered that about 230 tonnes of the *Baltic Carrier* oil was trapped in the *Tern*'s forepeak tank. During the latter vessel's stay in Rostock its bow was cleaned and most of the oil in the forepeak tank was removed. A small oil spill occurred in Rostock. Clean-up operations were undertaken by the local fire brigade at a cost of DM 600 (£190).

The *Tern* subsequently proceeded to Ventspils (Latvia) to discharge its cargo, and further spillage of *Baltic Carrier* oil occurred in Ventspils. A local contractor was engaged by the Gard Club on behalf of the owner of the *Tern* to undertake clean-up operations in Ventspils and to remove the remaining *Baltic Carrier* oil from the forepeak tank. About 95 tonnes of oil was removed from the damaged tank. The Gard Club has received claims for pollution damage from the Ventspils Port Authority as well as from the owner of the terminal alongside which the spill occurred, the Marine Environment Organisation, a yacht harbour, fishermen and the owners of other vessels that were in the port at the time. It is understood that the Gard Club has settled these claims on best possible terms.

The Gard Club has not indicated whether it intends to maintain that the claims arising in Ventspils fall within the scope of application of the 1992 Civil Liability Convention as regards the *Baltic Carrier* incident.

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

Baltic Carrier: cleaning of man-made structures may be difficult and expensive

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

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

At its session held in October 2001, the Executive Committee considered again the question of whether the spills of the *Baltic Carrier* oil from the *Tern* fell within the scope of application of the 1992 Conventions.

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

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

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

Category of claim	Claimed amount (DKr)	Settlement amount (DKr)
Onshore clean-up	15.9 million	15.9 million
Oil disposal	17.4 million	17.4 million
Environmental monitoring	258 000	258 000
Fish farms	33.9 million	19.7 million
Miscellaneous small claims	2.7 million	1.6 million
Total	**70.2 million (£6.2 million)**	**54.9 million (£4.8 million)**

the applicability of the 1992 Conventions to the spill in Ventspils might also become academic.

The Director has been unable to obtain any further information regarding the cause of the spill in Ventspils. He considered, however, that until more details are available as to the events leading to the spill, and until the Gard Club decides whether or not to maintain that its subrogated claims for pollution damage in Ventspils should be paid from the limitation amount applicable to the *Baltic Carrier*, it was premature for the Executive Committee to take a decision as to whether the spill falls within the scope of application of the 1992 Conventions.

Claims for compensation

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

The table above summarises the claims that have been settled by the Gard Club.

Claims totalling DKr 42.6 million (£3.7 million) in respect of the costs of clean-up operations at sea and on shore are being assessed.

Further claims are expected, for example a claim in respect of the pollution of the causeway referred to above. It is not yet possible to make an evaluation of the total amount of the established claims for compensation. It is unlikely, however, that the limitation amount applicable to the *Baltic Carrier* (see below) will be exceeded and that the 1992 Fund will be called upon to pay compensation.

Limitation of liability

The shipowner has not yet commenced limitation proceedings.

The limitation amount applicable to the *Baltic Carrier* is estimated at DKr 118 million (£10.4 million).

14.12 ZEINAB

(United Arab Emirates, 14 April 2001)

See pages 85 to 86.

14.13 INCIDENT IN GUADELOUPE

(Guadeloupe, 30 June 2002)

The incident

On 23 July 2002 the Mayor of Petit-Bourg (Guadeloupe, Caribbean) informed the 1992 Fund of a pollution incident that affected the coast of the town on 30 June 2002.

On 1 July 2002 the Mayor had issued a ban on sea bathing at Petit-Bourg until clean-up operations had been completed. On 5 July a ban was imposed prohibiting foot-fishing pending

the results of analyses carried out by the Department of Sanitation and Health.

Claims for compensation

The Mayor has estimated the costs of clean-up at approximately €340 000 (£220 000). He has stated that the Department of Guadeloupe intends to submit claims for compensation to the 1992 Fund.

Applicability of the Conventions

Guadeloupe is a Department of France, which is Party to the 1992 Civil Liability Convention and the 1992 Fund Convention.

The Mayor of Petit-Bourg has stated that the pollution resulted from an illegal discharge at sea and that the authorities are trying to identify the ship responsible. Samples of the oil have been sent to a laboratory in France for analysis. The 1992 Fund has requested that it be kept informed of the results of the analysis.

The Executive Committee decided in October 2002 to authorise the Director to make final settlements on behalf of the 1992 Fund of all claims arising out of the incident in the event that the claimants were unable to obtain compensation under the 1992 Civil Liability Convention, but could demonstrate to the satisfaction of the Director that the pollution damage was caused by persistent oil originating from a ship as defined in the 1992 Civil Liability Convention.

14.14 INCIDENT IN THE UNITED KINGDOM

(United Kingdom, 29 September 2002)

The incident

On 29 September 2002 an unknown quantity of emulsified oil stranded on a 3-kilometre stretch of shoreline of the English Channel near Hythe, Kent (United Kingdom). Clean-up of the shorelines was undertaken by contractors appointed by the Shepway District Council with the assistance of Kent County Council. A total of 24 tonnes of oily waste material was collected and taken to a disposal facility in Kent. The costs of clean-up have been provisionally estimated at around £7 000.

Applicability of the Conventions

The local authorities requested the Maritime and Coastguard Agency (MCA) to carry out analyses of the pollution samples, the results of which were sent to the 1992 Fund.

The analytical report produced for the MCA by a laboratory in Scotland concluded that the oil residues collected from the shoreline were most likely to have originated from a spillage of heavy Middle Eastern crude oil. The 1992 Fund concurred with this conclusion. Since there are no refineries or crude oil pipelines in the vicinity of Hythe, the 1992 Fund further concluded that the oil most probably originated from an oil tanker, ie a 'ship' as defined in the 1992 Civil Liability Convention.

The Executive Committee decided at its October 2002 session to authorise the Director to make final settlements on behalf of the 1992 Fund of all claims arising out of the incident in the event that the claimants were unable to obtain compensation under the 1992 Civil Liability Convention, but could demonstrate to the satisfaction of the Director that the pollution damage was caused by persistent oil originating from a ship as defined in the 1992 Civil Liability Convention.

Extensive investigations by the MCA revealed no reports of oil slicks from vessels transiting the area or from aircraft passing overhead. An earlier study by the MCA on tanker movements in the English Channel indicated that between five and ten tankers (laden and unladen) transit the area each day. Despite extensive enquiries the MCA was unable to identify the vessel responsible for the discharge.

It is anticipated that the claim in respect of clean-up operations will be submitted to the 1992 Fund early in 2003.

14.15 PRESTIGE

(Spain, 13 November 2002)

The incident

On 13 November 2002 the Bahamas-registered tanker *Prestige* (42 820 GT), en route from Ventspils (Latvia) to Singapore, suffered structural damage in heavy seas some 30 miles off Cape Finisterre (Spain). The *Prestige* drifted to within 5 miles of the coast before salvage vessels were able to attach lines to the tanker on 14 November 2002. The ship was towed away from the coast and on 19 November 2002 it broke in two some 170 miles west of Vigo (Spain). The two sections of the vessel sank in about 3 500 metres of water. All members of the crew were airlifted to safety prior to the break-up of the vessel.

The *Prestige* was carrying a cargo of 77 000 tonnes of heavy fuel oil, an unknown quantity of which was lost before the vessel broke up. A further unknown quantity of oil was released when the vessel broke in two.

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

Clean-up operations

Clean-up operations in Spanish waters were led by the Sociada Nacional de Salvemento y Seguridad Maritima (SASEMAR). A major offshore oil recovery operation was undertaken with vessels from Spain, Belgium, Denmark, France, Germany, Italy, the Netherlands, Norway, Portugal and the United Kingdom participating in the clean-up. The response was often hampered by severe weather and those vessels without any cargo heating capability had difficulty discharging the recovered oil. Up to 1 000 fishing vessels also participated in the clean-up in sheltered coastal waters. It was reported that some 12 500 tonnes of oil-water mixture was collected at sea. Although the level of at-sea clean-up was scaled down in mid-December, operations were expected to continue for some time.

A major attempt was also made to protect a number of estuaries and sensitive areas by means of defensive booming. Over 20 000 metres of boom was deployed and a further 36 000 metres, much of it brought from outside Spain, was staged at key locations for deployment in the event of new threats from oil at sea.

Manual clean-up of shorelines in Spain was undertaken by a workforce comprising military and local government personnel, contractors and volunteers. Some 5 500 personnel were involved in the clean-up in mid-December. The onshore clean-up is expected to continue for some considerable time.

Liquid oily waste, mainly from offshore clean-up operations, was stored at two MARPOL waste reception facilities and a power station and will eventually be recycled. Solid wastes generated from shoreline clean-up operations will be stored temporarily until final disposal options have been identified.

The London Club and the 1992 Fund monitored the clean-up operations through experts from the International Tanker Owners Pollution Federation Ltd (ITOPF) and a network of Spanish surveyors.

Impact of the spill

As at 31 December 2002 some 270 beaches along an 800-kilometre stretch of the Spanish coastline between Bilbao in the north and Vigo in the west had been polluted with oil to varying degrees. The heaviest oiling occurred between La Coruña and Cabo Torinaña. However, the extent and degree of oiling was expected to increase as further oil was driven ashore by winds and currents. It was also anticipated that oil would reach the south-west coast of France in early January 2003.

Fishing and mariculture are very important industries in Galicia and the Galician Fisheries Council, the regulatory authority, imposed a ban on fishing and shellfish harvesting over an extensive area. A number of onshore fish farms, depuration plants and aquaria, all of which rely on regular supplies of clean seawater, were affected as a result of the entrainment of oil in their intakes. In some cases the situation was

Prestige: satellite image showing oil off the north-west coast of Spain (Galicia)

considered so serious that the authorities insisted on seafood stocks being destroyed. A Spanish fisheries expert engaged by the 1992 Fund and the London Club monitored the effects of the pollution on fishing and mariculture.

Oil also entered Portuguese waters, although as at 31 December 2002 no oil had gone ashore in Portugal.

In view of the expected impact on the French coast the French authorities had, by 31 December 2002, activated the national contingency plan for shorelines (Plan Polmar Terre).

The wreck

The two sunken parts of the *Prestige* contain significant quantities of oil. A survey carried out by a French mini submarine revealed oil escaping from a number of openings in the tanks several weeks after the sinking, despite the ambient temperature on the seabed being around 3-4°C. The quantity of oil being released was estimated at between 50 and 125 tonnes per day.

The *Prestige* had loaded heavy fuel oil with two different specifications, one with a pour point (the temperature below which the oil will not flow) of 12°C and the other with a pour point of 3°C. Both types of oil were combined in the *Prestige*'s tanks to produce a composite-oil with a pour point of 6°C. It was expected that the rate of release of the oil would decrease with time.

The Spanish authorities set up a scientific commission to consider what action, if any, should be taken to deal with the remaining cargo on board the two sections of the wreck.

Claims for compensation

The clean-up operations undertaken by the Spanish authorities at sea and on shore will result in claims for significant amounts from the Spanish Central and Regional Governments, assisting States, clean-up contractors, equipment suppliers and local authorities. The disposal of the oil will also give rise to large claims. If the authorities decide to remove the remaining oil from the wreck, this will result in substantial costs.

It is expected that claims from the fishing and mariculture sectors in Spain will be very large, particularly if the fishing bans are maintained for several months. Claims can also be anticipated from the Spanish tourism sector, although the clean-up of the affected shorelines should be completed well before the start of the 2003 tourist season.

Claims can be expected in respect of pollution damage and preventive measures in France and Portugal. The south-west coast of France supports a major tourism industry, which could lead to substantial claims if serious contamination of shorelines occurs.

It is impossible to make any estimate of the total amount of claims at this stage, but it is expected that it will exceed the total amount available under the 1992 Conventions, 135 million SDR (£114 million).

The limitation amount applicable to the *Prestige* under the 1992 Civil Liability Convention is approximately 18.9 million SDR or €24.4 million (£15.9 million).

Claims Office in Spain

In anticipation of a large number of claims for pollution damage in Spain, and after consultation with the Spanish Government and the Regional Government of Galicia (Xunta), the London Club and the 1992 Fund established a Claims Office in La Coruña. The office became fully operational on 20 December 2002.

Prior to the official opening of the Claims Office in La Coruña, three French nationals, one of whom had been responsible in December 2001 for demolishing part of the Claims Office in Lorient (established to deal with claims arising from the *Erika* incident), forced their way into the La Coruña Office on 12 December 2002 as the newly appointed manager and his deputy were entering the building. Despite the manager's appeal for calm, the intruders daubed 'FIDAC, Erika, Prestige' on the wall of the entrance hall with fuel oil collected from the shoreline. They then forced entry into the second floor office with a container of fuel oil and refused to leave until the television camera crews and press arrived. In the event the police arrived first and persuaded the intruders to leave the premises without violence. After being questioned at the nearby police station the three intruders were released without charge, although one of the intruders stated that he would attack the office again in the New Year.

ANNEXES

ANNEX I

STRUCTURE OF THE IOPC FUNDS

1992 FUND GOVERNING BODIES

ASSEMBLY

Composed of all Member States

6th extraordinary and 7th ordinary sessions

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

EXECUTIVE COMMITTEE

16th - 18th sessions

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

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

19th session

Chairman:	Mr J Rysanek (Canada)
Vice-Chairman:	Lieutenant Commander K Amarantidis (Greece)

Cameroon	Liberia	Republic of Korea
Canada	Marshall Islands	Singapore
France	Mexico	Spain
Greece	Philippines	Sweden
Italy	Poland	United Kingdom

1971 FUND ADMINISTRATIVE COUNCIL

Composed of all States having at any time been Members of the 1971 Fund

7th, 8th and 9th sessions

Chairman: Captain R Malik (Malaysia)

JOINT SECRETARIAT

Officers

Director:	Mr Måns Jacobsson
Deputy Director/Technical Adviser:	Mr Joe Nichols
Legal Counsel:	Mr Masamichi Hasebe
Head, Claims Department:	Mr José Maura
Claims Manager:	Mr Patrick Joseph
Claims Manager:	Ms Laura Plumb
Head, Finance & Administration Department:	Mr Ranjit Pillai
IT Officer:	Mr Robert Owen
Personnel Administrator:	Mrs Rachel Dockerill
Finance Officer:	Mrs Latha Srinivasan
Office Administrator:	Mr Modesto Zotti
Head, External Relations & Conference Department:	Ms Catherine Grey
Senior French Translator/Reviser:	Mrs Marianne Sirgent
Publications/Conference Administrator:	Ms Jill Copley

AUDITORS OF THE 1992 FUND AND THE 1971 FUND

Comptroller and Auditor General
United Kingdom

ANNEX II

NOTE ON 1971 AND 1992 FUNDS' PUBLISHED FINANCIAL STATEMENTS

The financial statements reproduced in Annexes V to VIII and XI to XIV are an extract of information contained in the audited financial statements of the International Oil Pollution Compensation Funds 1971 and 1992 for the year ended 31 December 2001, approved by the Administrative Council of the 1971 Fund at its 9th session and by the Assembly of the 1992 Fund at its 7th 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 2001.

G Miller
Director
for the Comptroller and Auditor General
National Audit Office, United Kingdom
31 January 2003

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 2001

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 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 1971 Fund's financial statements for the financial period ended 31 December 2001.**

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 1971 Fund in 2001 amounted to £20.5 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

5 In addition to their review of claims expenditure, my staff reviewed the overall financial control systems operating at the Fund's Secretariat. Their review covered procedures relating to:

- claims payments;
- contributions income;
- payroll;
- administrative expenditure; and
- cash forecasting and the investment of surplus cash.

6 They found that these systems had satisfactory controls in place, and that control procedures had been adhered to. Concerning the controls relating to the investment of cash held pending settlement of claims, my staff found that the Secretariat had adhered to its declared investment policy, which covers the suitability and extent of investment with individual financial institutions.

SCOPE AND AUDIT APPROACH

Scope of the audit

7 I have audited the financial statements of the International Oil Pollution Compensation Fund 1971 for the financial period ended 31 December 2001. 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, comprised of the Director and his appointed staff, were responsible for preparing these financial statements, and I am responsible for expressing an opinion on them, based on evidence obtained in my audit.

Audit objective

8 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 2001 had been received and incurred for the purposes approved by the 1971 Fund Assembly; whether income and expenditure were properly classified and recorded in accordance with the 1971 Fund's Financial Regulations; and whether the financial statements fairly presented the financial position as at 31 December 2001.

Audit standards

9 My audit of the 1971 Fund's 2001 financial statements was carried out in accordance with the Common Auditing Standards of the Panel of External Auditors of the United Nations, the Specialized Agencies and the International Atomic Energy Agency. These standards require me to plan the audit so as to obtain reasonable assurance that the 1971 Fund's financial statements are free of material misstatement.

Audit approach

10 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.

11 In accordance with the Common 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 and expenditure; bank accounts; accounts receivable and payable; and supplies and equipment;
- 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.

12 These audit procedures are designed primarily for the purpose of forming an opinion on the 1971 Fund's financial statements. Consequently, my work did not involve a detailed review of all aspects of the 1971 Fund's budgetary and financial information systems and the results should not be regarded as a comprehensive statement on them.

Reporting

13 During the audit my staff sought such explanations as they considered necessary in the circumstances on matters arising from the 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

14 Notwithstanding the observations in this report, my examination revealed no weaknesses or errors which I considered material to the accuracy, completeness and validity of the financial statements as a whole. Accordingly, I have placed an unqualified audit opinion on the 1971 Fund's financial statements for the financial period ended 31 December 2001.

DETAILED FINDINGS

Claims expenditure

15 Total claims and claims related payments for the 1971 Fund in 2001 amounted to £20.5 million, compared to £21.2 million for 2000, and were mainly in respect of the *Sea Prince* (51 per cent), *Sea Empress* (17 per cent), *Braer* (18 per cent) and *Nissos Amorgos* (9 per cent) incidents.

16 My staff examined a sample of these payments to supporting documentation held at Secretariat's headquarters in London and discussed the underlying claims with key Secretariat staff including the Director, the Head of the Claims Department and the Legal Counsel.

17 Furthermore, my staff reviewed 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.

18 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

19 My staff reviewed the main financial control systems at the 1971 Fund Secretariat relating to:

- claims expenditure;
- contributions income;
- payroll expenditure;
- administrative expenditure; and
- cash forecasting and the investment of surplus cash.

20 They found that these systems had satisfactory controls in place; and audit testing indicated that the control procedures were being adhered to.

21 Concerning the 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 a standing Investment Advisory Body, which advises the Director on institutions suitable for holding the Fund's investments.

22 My staff reviewed the minutes of 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.

Other financial matters

Amounts Written Off and Fraud

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

FOLLOW UP TO PREVIOUS YEAR'S AUDIT RECOMMENDATIONS

24 In my 2000 report, in addition to observations on claims expenditure and financial controls, I commented on issues concerning the continuation of the 1971 Fund.

Going concern issues related to the 1971 Fund

25 The establishment of the 1992 Fund has resulted in a corresponding decline in the membership of the 1971 Fund. As I have noted in my earlier reports, the possibility thereby arose that, at some stage, the 1971 Fund's declining contribution base would be insufficient to cover the compensation claims and related administrative costs of a future major incident.

26 In my 2000 report, I commented on the fact that this uncertainty had been removed during the year 2000, as the Fund had been able to insure against the cost of further incidents with Lloyds of London.

27 Following the adoption of a Protocol to the 1971 Fund Convention at a Diplomatic Conference in September 2000, the 1971 Fund Convention ceases to be in force on 24 May 2002 when the number of States who are members falls to 24. The Convention will not apply to incidents occurring after that date.

28 It should be noted that the termination of the 1971 Fund Convention will not in itself result in the winding up of the 1971 Fund, since winding up can only take place once all the claims arising from pending incidents have been settled and all expenses have been paid. The 1971 Fund financial statements will continue to be produced and audited until such time as all payments in relation to outstanding claims have been made, and the 1971 Fund wound up.

ACKNOWLEDGEMENT

29 I wish to record my appreciation of the willing co-operation and assistance extended by the Director and his staff during the course of my audit.

Sir John Bourn
Comptroller and Auditor General, United Kingdom
External Auditor
30 June 2002

ANNEX IV

FINANCIAL STATEMENTS OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1971 FOR THE YEAR ENDED 31 DECEMBER 2001 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 V, Schedules I to III and Notes, of the International Oil Pollution Compensation Fund 1971 for the year ended 31 December 2001. These financial statements are the responsibility of the Director. My responsibility is to express an opinion on these financial statements based on my audit.

I conducted my audit in accordance with the Common Auditing Standards of the Panel of External Auditors of the United Nations, the Specialised Agencies and the International Atomic Energy Agency as appropriate. Those standards require that I plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining on a test basis evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by the Director, as well as evaluating the overall financial statement presentation.

In my opinion the financial statements present fairly the financial position as at 31 December 2001 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
30 June 2002

ANNEX V

GENERAL FUND
1971 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 2001

	2001		2000	
	£	£	£	£
INCOME				
Contributions				
Initial contributions	-		4 187	
Adjustment to prior years' assessment	14 454		10 275	
Total contributions		**14 454**		**14 462**
Miscellaneous				
Transfer from *Haven* MCF	-		299 693	
Interest on loan to *Vistabella* MCF	16 487		20 145	
Interest on loan to *Pontoon 300* MCF	12 786		5 254	
Interest on overdue contributions	3 544		5 667	
Interest on investments	348 592		537 021	
Total miscellaneous		**381 409**		**867 780**
TOTAL INCOME		**395 863**		**882 242**
EXPENDITURE				
Secretariat expenses				
Obligations incurred		**880 800**		**1 214 742**
Claims				
Compensation		**204 757**		**325 835**
Claims related expenses				
Insurance	76 830		691 970	
Fees	73 626		384 065	
Travel	2 276		18 549	
Miscellaneous	145		1 239	
Total claims related expenses		**152 877**		**1 095 823**
TOTAL EXPENDITURE		**1 238 434**		**2 636 400**
Income less expenditure		(842 571)		(1 754 158)
Exchange adjustment		(3 945)		(90 060)
(Shortfall)/Excess of income over expenditure		**(846 516)**		**(1 844 218)**

ANNEX VI

MAJOR CLAIMS FUNDS
1971 FUND: INCOME AND EXPENDITURE ACCOUNT
FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 2001

	Aegean Sea		*Braer*	
	2001	**2000**	**2001**	**2000**
	£	**£**	**£**	**£**
INCOME				
Contributions				
Annual contributions (second levy)	-	-	-	-
Annual contributions (fourth levy)	-	-	-	-
Adjustment to prior years' assessment	-	8 391	-	8 232
Total contributions	**-**	**8 391**	**-**	**8 232**
Miscellaneous				
Interest on overdue contributions	-	-	-	-
Interest on investments	2 601 339	2 654 079	256 614	338 319
Interest on loans to *Osung N°3* MCF	63 502	86 362	-	-
Miscellaneous income	-	-	-	-
Total miscellaneous	**2 664 841**	**2 740 441**	**256 614**	**338 319**
TOTAL INCOME	**2 664 841**	**2 748 832**	**256 614**	**346 551**
EXPENDITURE				
Compensation	-	-	3 615 764	2 022 068
Fees	21 981	318 002	75 917	94 666
Travel	1 551	20 968	2 774	3 167
Miscellaneous	328	184	8	204
TOTAL EXPENDITURE	**23 860**	**339 154**	**3 694 463**	**2 120 105**
Excess/(shortfall) of income over expenditure	2 640 981	2 409 678	(3 437 849)	(1 773 554)
Exchange adjustment	-	-	-	-
Balance b/f: 1 January	43 156 162	40 746 484	4 545 839	6 319 393
Balance as at 31 December	**45 797 143**	**43 156 162**	**1 107 990**	**4 545 839**

Keumdong N°5		*Sea Empress*		*Nakhodka*	
2001	**2000**	**2001**	**2000**	**2001**	**2000**
£	**£**	**£**	**£**	**£**	**£**
-	-	-	-	-	-
-	-	-	-	-	998 141
-	2 299	-	-	55 411	-
-	**2 299**	**-**	**-**	**55 411**	**998 141**
-	763	20 065	3 209	3 165	11 943
410 615	429 370	391 327	876 364	317 510	310 318
-	-	-	-	-	-
-	6 352	-	-	-	-
410 615	**436 485**	**411 392**	**879 573**	**320 675**	**322 261**
410 615	**438 784**	**411 392**	**879 573**	**376 086**	**1 320 402**
112 226	48 953	2 783 984	15 132 300	-	-
34 509	150 150	803 585	392 294	-	9 174
-	-	1 739	793	-	-
14	15	127	394	-	62
146 749	**199 118**	**3 589 435**	**15 525 781**	**-**	**9 236**
263 866	239 666	(3 178 043)	(14 646 208)	376 086	1 311 166
-	-	-	-	(14 775)	(3 952)
6 698 698	6 459 032	7 283 582	21 929 790	5 429 554	4 122 340
6 962 564	**6 698 698**	**4 105 539**	**7 283 582**	**5 790 865**	**5 429 554**

MAJOR CLAIMS FUNDS
1971 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 2001

	Sea Prince		*Yeo Myung*	
	2001	**2000**	**2001**	**2000**
	£	**£**	**£**	**£**
INCOME				
Contributions				
Annual contributions (second levy)	-	-	-	-
Adjustment to prior years' assessment	-	3 901	-	454
Total contributions	**-**	**3 901**	**-**	**454**
Miscellaneous				
Interest on overdue contributions	20 973	4 556	2 742	766
Interest on investments	924 165	1 287 768	202 641	207 612
Total miscellaneous	**945 138**	**1 292 324**	**205 383**	**208 378**
TOTAL INCOME	**945 138**	**1 296 225**	**205 383**	**208 832**
EXPENDITURE				
Compensation	10 425 463	10 791	-	-
Fees	89 726	47 649	218	14 485
Interest on loan from *Aegean Sea* MCF	-	-	-	-
Travel	9 145	8 850	-	-
Miscellaneous	17	127	-	1
TOTAL EXPENDITURE	**10 524 351**	**67 417**	**218**	**14 486**
Excess/(shortfall) of income over expenditure	(9 579 213)	1 228 808	205 165	194 346
Balance b/f: 1 January	20 307 744	19 078 936	3 271 630	3 077 284
Balance as at 31 December	**10 728 531**	**20 307 744**	**3 476 795**	**3 271 630**
Amount due to *Aegean Sea* MCF	**-**	**-**	**-**	**-**

Yuil N°1		*Nissos Amorgos*		*Osung N°3*	
2001	**2000**	**2001**	**2000**	**2001**	**2000**
£	**£**	**£**	**£**	**£**	**£**
-	-	-	-	-	5 290 346
-	2 698	2 071	-	7 543	-
-	**2 698**	**2 071**	**-**	**7 543**	**5 290 346**
16 189	3 074	119	306	177	3 159
325 321	337 742	70 718	152 412	-	-
341 510	**340 816**	**70 837**	**152 718**	**177**	**3 159**
341 510	**343 514**	**72 908**	**152 718**	**7 720**	**5 293 505**
-	89 648	1 681 707	-	276 759	1 011 369
115 728	41 927	173 171	-	72 646	113 213
-	-	-	-	63 502	86 362
-	-	18 189	-	-	-
7	5	144	-	234	732
115 735	**131 580**	**1 873 211**	**-**	**413 141**	**1 211 676**
225 775	211 934	(1 800 303)	152 718	(405 421)	4 081 829
5 369 887	5 157 953	2 404 588	2 251 870	(1 061 252)	(5 143 081)
5 595 662	**5 369 887**	**604 285**	**2 404 588**	**-**	**-**
-	**-**	**-**	**-**	**(1 466 673)**	**(1 061 252)**

ANNEX VII

BALANCE SHEET OF THE 1971 FUND AS AT 31 DECEMBER 2001

	2001 £	2000 £
ASSETS		
Cash at banks and in hand	88 126 932	103 833 554
Contributions outstanding	946 558	1 133 908
Interest on overdue contributions outstanding	69 010	73 156
Due from *Vistabella* MCF	472 834	453 656
Due from *Pontoon 300* MCF	302 782	213 412
Due from *Osung N°3* MCF to *Aegean Sea* MCF	1 466 673	1 061 252
Tax recoverable	58 256	158 802
Miscellaneous receivable	-	1 684
TOTAL ASSETS	**91 443 045**	**106 929 424**
LIABILITIES		
Accounts payable	182	993
Unliquidated obligations	8 200	6 936
Contributors' account	146 734	150 814
Due to 1992 Fund	669 539	1 007 465
Due to *Aegean Sea* MCF	45 797 143	43 156 162
Due to *Braer* MCF	1 107 990	4 545 839
Due to *Keumdong N°5* MCF	6 962 564	6 698 698
Due to *Sea Empress* MCF	4 105 539	7 283 582
Due to *Nakhodka* MCF	5 790 865	5 429 554
Due to *Sea Prince* MCF	10 728 531	20 307 744
Due to *Yeo Myung* MCF	3 476 795	3 271 630
Due to *Yuil N°1* MCF	5 595 662	5 369 887
Due to *Nissos Amorgos* MCF	604 285	2 404 588
TOTAL LIABILITIES	**84 994 029**	**99 633 892**
GENERAL FUND BALANCE	**6 449 016**	**7 295 532**
TOTAL LIABILITIES AND GENERAL FUND BALANCE	**91 443 045**	**106 929 424**

ANNEX VIII

CASH FLOW STATEMENT OF THE 1971 FUND FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 2001

	2001		2000	
	£	£	£	£
Cash as at 1 January		103 833 554		114 694 416
OPERATING ACTIVITIES				
Operating Surplus	(21 507 637)		(18 590 291)	
(Increase)/Decrease in Debtors	293 726		413 395	
Increase/(Decrease) in Creditors	(348 912)		173 082	
Net cash flow from operating activities		(21 562 823)		(18 003 814)
RETURNS ON INVESTMENTS				
Interest on investments	5 856 201		7 142 952	
Net cash inflow from returns on investments		5 856 201		7 142 952
Cash as at 31 December		**88 126 932**		**103 833 554**

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 2001

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 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 2001.**

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 2001 amounted to £34.7 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 audit visit to the Lorient claims handling office

5 My staff visited the local claims handling office in Lorient (set up to deal with claims arising from the *Erika* incident) in order to review original claims supporting documentation and to verify the existence of appropriate local internal control procedures for the processing and payment of claims.

6 They found that satisfactory controls remained in place and that the office was well-organised and efficiently managed. They also observed that there had continued to be substantive managerial contact between the Lorient office and the Secretariat, including the Secretariat staff participation in local meetings with P&I Club representatives and with various claimants. I welcome this level of contact, which I believe has considerably assisted the process of settling claims.

On the review of allegations made in relation to the *Erika* incident

7 In October 2001, the Sixth Session of the 1992 Fund Assembly noted that allegations of fraud had been made against the Claims Handling Office and the 1992 Fund in connection with the *Erika* incident and related to the 2001 financial period. The Assembly invited the External Auditor to investigate these issues as part of the 2001 audit, unless any investigation carried out by the French judicial authorities made an investigation by the External Auditor unnecessary.

8 As part of the 2001 audit, therefore, my staff carried out a further review of the controls and operations of the Lorient office, in particular to draw audit conclusions on: whether the 1992 Fund's maximum liability had been correctly calculated in relation to the *Erika* incident, particularly in relation to the conversion of Special Drawing Rights to French francs; and whether the assets and transactions of the Fund were properly reflected in the books of account of the Lorient office.

9 My staff reviewed the Assembly and Executive Committee papers documenting the conversion of the maximum liability of the Fund. They concluded that the Director had acted on the instructions of the Executive Committee, using the date for conversion fixed by the Committee, who in turn had acted under the authority of the Assembly.

10 In relation to the integrity of the records and books of account of the Lorient office, my staff reviewed local payment and banking arrangements to confirm safe custody and handling of all funds. My staff were satisfied that effective controls were in place to safeguard funds and to monitor payments made from the account.

On the audit of the claims handling database and the Tourist Claims Assessment and Tracking System (TCATS)

11 My staff carried out a detailed review of the recently established Claims Handling Database and TCATS systems. They found that the systems have been developed and implemented in a satisfactory and effective manner. Their tests indicated that controls are adequate to ensure that data integrity can be relied upon; and the review gave assurance over the adequacy of security and back up procedures. Overall, I welcome their conclusion that the Claims Handling Database and TCATS have clearly enhanced the Fund's ability to manage claims arising from incidents.

On financial controls at the Fund Secretariat

12 In addition to their review of claims expenditure, my staff reviewed the overall financial control systems operating at the Fund's Secretariat. Their review covered procedures relating to:

- claims payments;
- contributions income;
- payroll;
- administrative expenditure;
- cash forecasting and investment of surplus cash.

13 They found that these systems continued to have satisfactory controls in place, and that control procedures had been adhered to. Concerning the controls relating to the investment of cash held pending claims settlement, my staff found that the Secretariat had adhered to its declared investment policy, which covers the suitability and extent of investment with individual financial institutions.

SCOPE AND AUDIT APPROACH

Scope of the audit

14 I have audited the financial statements of the International Oil Pollution Compensation Fund 1992 for the financial period ended 31 December 2001. 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, comprised of the Director and his appointed staff, were responsible for preparing these financial statements, and I am responsible for expressing an opinion on them, based on evidence obtained in my audit.

Audit objectives

15 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 2001 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 2001.

Audit standards

16 My audit of the 1992 Fund's 2001 financial statements was carried out in accordance with the Common Auditing Standards of the Panel of External Auditors of the United Nations, the Specialized Agencies and the International Atomic Energy Agency. These standards require me to plan the audit so as to obtain reasonable assurance that the 1992 Fund's financial statements are free of material misstatement.

Audit approach

17 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.

18 In accordance with the Common 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 and expenditure; bank accounts; accounts receivable and payable; and supplies and equipment;
- 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.

19 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

20 During the audit my staff sought such explanations as they considered necessary in the circumstances on matters arising from the 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

21 Notwithstanding the observations in my report, my examination revealed no weaknesses or errors which I considered material to the accuracy, completeness and validity of the financial statements as a whole. Accordingly, I have placed an unqualified audit opinion on the 1992 Fund's financial statements for the financial period ended 31 December 2001.

DETAILED FINDINGS

Claims expenditure

22 Total 1992 Fund claims and claims-related payments in 2001 amounted to £34.7 million and were almost entirely in respect of the *Nakhodka* and *Erika* incidents (59 per cent and 40 per cent respectively).

23 My staff reviewed a sample of these payments to supporting documentation held at the Secretariat's headquarters in London and discussed the underlying claims with key Secretariat staff including the Director, the Head of the Claims Department and the Legal Counsel. For payments relating to the *Erika* incident, my staff examined original supporting documentation held at the local claims handling office in Lorient, France.

24 Furthermore, my staff reviewed 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.

25 Overall, my staff found that payments had been properly supported; and that related claims had been processed in accordance with Regulations and settled promptly.

Audit visit to the Lorient claims handling office

26 The 1992 Fund and the Steamship Mutual Underwriting Association (Bermuda) Ltd (a member of the Protection and Indemnity Associations, P&I, Club) established a local claims handling office in Lorient, France, to deal with claims for compensation arising from the *Erika* incident, which occurred at the end of 1999.

27 My staff first visited the claims office in May 2000 as part of the 1999 audit, to review whether satisfactory local procedures had been established for the processing of claims. Due to the large volume and value of claims being processed in Lorient, my staff re-visited the office in April 2001 and again in January 2002.

28 My staff continued to find the office well organised and efficiently managed. They were able to review and assess the overall procedures and internal controls in operation, including a test sample of a number of payments made by the 1992 Fund, and found these to be satisfactory. Audit testing revealed that control procedures had been applied in all cases examined and no errors were identified.

29 My staff also noted that there had continued to be substantive management contact between the Lorient office and the 1992 Fund Secretariat, with numerous visits by staff from the Secretariat,

including for discussions with the P&I Club (who continued to pay claims until June 2001) and with various claimants. I welcome this level of contact, which I believe has considerably assisted the process of settling claims.

Review of allegations made in relation to the *Erika* incident

30 In October 2001, the Sixth Session of the 1992 Fund Assembly noted that allegations of fraud had been made against the Claims Handling Office and the 1992 Fund in connection with the *Erika* incident and related to the 2001 financial period. The Assembly invited the External Auditor to investigate these issues as part of the 2001 audit, unless any investigation carried out by the French judicial authorities made an investigation by the External Auditor unnecessary.

31 As part of the 2001 audit, my staff carried out a further review of the controls and operations of the Lorient office, in particular to draw audit conclusions on:

(i) Whether the 1992 Fund's maximum liability had been correctly calculated in relation to the *Erika* incident, particularly in relation to the conversion of Special Drawing Rights to French francs; and
(ii) Whether the assets of the Fund were properly reflected in the books of account of the Lorient office.

32 In relation to the maximum liability of the 1992 Fund, Article 4.4(e) of the 1992 Fund Convention states that the date to be used for conversion should be the date of the decision of the Assembly as to the first date of payment of compensation. When the Assembly established the Executive Committee at its Second Session, it gave the Executive Committee authority to make decisions regarding claims for compensation. As regards the *Erika* case, in February 2000 the Executive Committee authorised payments to be made and fixed the date to be used for conversion. This was approved by the Assembly in October 2000. As a result of the allegations, the matter was considered again by the Assembly at its October 2001 Session, and the Assembly again endorsed the Executive Committee's position.

33 My staff reviewed the Assembly and Executive Committee papers documenting the conversion of the maximum liability. They concluded that the Director had acted on the instructions of the Executive Committee, using the date for conversion fixed by the Committee, who in turn had acted under the authority of the Assembly.

34 In relation to the integrity of the records and books of account of the Lorient office, my staff reviewed local payment and banking arrangements to confirm safe custody and handling of all funds.

35 The 1992 Fund maintains an account with BNP Paribas and funds are transferred to this account from London when needed to pay compensation. The manager of the Lorient office makes payments on authorisation by the Secretariat; and regular bank reconciliations are carried out by headquarters to match payments from the accounts to lists of authorised claims and bank statements. My staff were satisfied that effective controls were in place to safeguard funds and to monitor payments made from the account.

Audit of the claims handling database and the Tourist Claims Assessment and Tracking System (TCATS)

36 In my 2000 report, I detailed the arrangements for creating a new Claims Handling Database, including a Tourist Claims Assessment and Tracking System (TCATS), which was linked to the

main financial ledger system. Following the establishment of these IT systems, my staff carried out a review in 2001:

- to assess the accuracy and completeness of the information held within the database;
- to ensure the correct interface with the financial ledger;
- to ensure the proper development of the systems, including acceptance-testing, data backup procedures and systems documentation, including user manuals;
- to ensure that management reports from the database are sufficiently complete and accurate to act as a tool for senior management at the Secretariat to manage incidents; and
- to ensure that information on incidents reported to the Assembly is complete and accurate.

37 The majority of the review work was completed at the Secretariat in London, but audit test data from the *Erika* incident was also traced to the TCATS records with L&R, the Fund's tourist claims experts in Paris, and to the Claims Handling Database records at the Lorient office. My staff also spoke to system users at L&R and in the Lorient office to assess the adequacy of systems training and guidance, and to determine whether users found the systems met their needs.

38 My staff identified and evaluated the controls in place over:

- data validation;
- user requirements for reports;
- security;
- operational and user documentation;
- administration procedures;
- change management; and
- recovery procedures.

39 All audit test data was confirmed as having been correctly processed, including reconciliation from the Claims Handling Database to the Fund's financial ledger system, which thereby provides high level assurance over the accuracy of claims payments.

40 My staff found that relevant training had been provided to staff on the new systems a 'helpdesk' established for prompt response to queries. As part of their review, my staff also ascertained that comprehensive back-up procedures were in place to ensure that the 1992 Fund would not lose data in the event of systems failure.

41 In conclusion, the audit review confirmed that the Claims Handling Database and TCATS have clearly enhanced the 1992 Fund's ability to manage claims arising from incidents. In particular, my staff concluded that the systems have significantly improved the Fund's ability to process and monitor claims in a cost-effective manner. Furthermore, the database provides accurate and reliable information on the status of claims for the Secretariat and for reporting to the governing bodies.

Financial controls at the Fund Secretariat

42 As part of the 2001 audit, my staff reviewed the main financial control systems at the 1992 Fund Secretariat relating to:

- claims expenditure;
- contributions income;
- payroll expenditure;
- administrative expenditure; and
- cash forecasting and the investment of surplus cash.

43 My staff found that satisfactory controls were in place for these systems; and audit testing indicated that the control procedures were being adhered to.

44 Concerning controls relating to the investment of cash held pending claims settlement, 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 a standing Investment Advisory Body, which advises the Director on institutions suitable for holding the Fund's investments.

45 My staff reviewed the minutes of the Investment Advisory Body, 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.

Other financial matters

Control of Supplies and Equipment

46 As recorded in Note 10(b) to the 1992 Fund's financial statements, the value of supplies and equipment held by the 1992 Fund was £300,179 as at 31 December 2001. In accordance with the 1992 Fund's stated accounting policies, purchases of equipment, furniture, office machines, supplies and library books are not included in the 1992 Fund's balance sheet, but are charged as expenses when purchased.

47 My staff carried out a test examination of the existence and valuation of the Fund's supplies and equipment under Financial Regulation 13.16(d). As a result of this examination, I am satisfied that the supplies and equipment records as at 31 December 2001 properly reflect the assets held by the 1992 Fund. No losses were reported by the 1992 Fund during the year.

Amounts Written Off and Fraud

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

FOLLOW UP TO PREVIOUS YEAR'S AUDIT RECOMMENDATIONS

49 In my 2000 report, in addition to observations on claims expenditure and financial controls, I made some observations and a recommendation relating to a proposed initiative of the European Union to supplement the compensation of the 1992 Fund.

Proposed supplementary European Union compensation fund

50 At the time of the 2000 audit, the Commission of the European Communities had published a proposal for a Regulation to set up a fund to provide supplementary compensation up to a maximum limit of 1,000 million Euros for oil spills in Member States of the European Union.

51 The audit arrangements for the EU proposal had yet to be clarified, including the extent of reliance that the Commission might place on the audit work of my staff in verifying the correctness of contributions data and claims payments. The Secretariat was also concerned about the additional burden that could be placed on them if there should be any duplication of audit effort.

52 In the context of the necessary liaison between the 1992 Fund Secretariat and the European Commission, I recommended that due attention be placed on ensuring that efficient audit arrangements were put in place which would be acceptable to all parties.

53 However, to date the supplementary fund has not been set up by the Commission. It now appears unlikely that this initiative will be pursued, given that the 1992 Fund has proposed a third tier of compensation to which countries will be able to sign on a voluntary basis. This proposal has been approved by the International Maritime Organization's Legal Committee and will be considered by a Diplomatic Conference to be convened by that organisation in May 2003.

ACKNOWLEDGEMENT

54 I wish to record my appreciation for the willing co-operation and assistance extended by the Director and his staff, and by staff at the local claims handling office in Lorient, during the course of my audit.

Sir John Bourn
Comptroller and Auditor General, United Kingdom
External Auditor
30 June 2002

ANNEX X

FINANCIAL STATEMENTS OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1992 FOR THE YEAR ENDED 31 DECEMBER 2001 OPINION OF THE EXTERNAL AUDITOR

To: the Assembly of the International Oil Pollution Compensation Fund 1992

I have audited the appended financial statements, comprising Statements I to VI, Schedules I to III and Notes, of the International Oil Pollution Compensation Fund 1992 for the year ended 31 December 2001. These financial statements are the responsibility of the Director. My responsibility is to express an opinion on these financial statements based on my audit.

I conducted my audit in accordance with the Common Auditing Standards of the Panel of External Auditors of the United Nations, the Specialised Agencies and the International Atomic Energy Agency as appropriate. Those standards require that I plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining on a test basis evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by the Director, as well as evaluating the overall financial statement presentation.

In my opinion the financial statements present fairly the financial position as at 31 December 2001 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
30 June 2002

ANNEX XI

GENERAL FUND
1992 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 2001

	2001		2000	
	£	£	£	£
INCOME				
Contributions				
Contributions	7 473 593		-	
Adjustment to prior years' assessment	-		-	
Total contributions		**7 473 593**		-
Miscellaneous				
Miscellaneous income	2 052		325	
Transfer from *Osung N°3 Interim MCF*	-		160 376	
Interest on overdue contributions	7 479		(11 502)	
Interest on investments	963 495		1 303 799	
Total miscellaneous		**973 026**		**1 452 998**
TOTAL INCOME		**8 446 619**		**1 452 998**
EXPENDITURE				
Secretariat expenses				
Obligations incurred		1 340 547		1 246 005
Claims				
Compensation		204 756		-
Claims related expenses				
Fees	1 085 462		2 294 323	
Travel	11 576		36 623	
Miscellaneous	781		56 889	
Total claims related expenses		**1 097 819**		**2 387 835**
TOTAL EXPENDITURE		**2 643 122**		**3 633 840**
(Shortfall)/Excess of income over expenditure		**5 803 497**		**(2 180 842)**

ANNEX XII

MAJOR CLAIMS FUNDS
1992 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 2001

	Nakhodka		*Erika*	
	2001	**2000**	**2001**	**2000**
	£	**£**	**£**	**£**
INCOME				
Contributions				
Contribution (fifth levy)	16 943 990			
Contributions (fourth levy)	-	12 957 208		
Contributions (second levy)			24 999 978	-
Contributions (first levy)			-	39 883 216
Total contributions	**16 943 990**	**12 957 208**	**24 999 978**	**39 883 216**
Miscellaneous				
Interest on overdue contributions	14 143	34 608	41 939	23 842
Less interest on overdue contributions waived	(2 596)	-	(5 870)	-
Interest on investments	1 615 712	1 505 288	2 753 644	517 346
Total miscellaneous	**1 627 259**	**1 539 896**	**2 789 713**	**541 188**
TOTAL INCOME	**18 571 249**	**14 497 104**	**27 789 691**	**40 424 404**
EXPENDITURE				
Compensation	18 501 157	24 746 690	9 773 083	-
Fees	1 875 876	2 803 723	3 069 573	-
Travel	53 122	27 346	30 796	-
Miscellaneous	44 051	14 613	27 886	-
TOTAL EXPENDITURE	**20 474 206**	**27 592 372**	**12 901 338**	**-**
(Shortfall)/excess of income over expenditure	(1 902 957)	(13 095 268)	14 888 353	40 424 404
Exchange adjustment	265 283	(265 156)	(150 925)	99 188
Balance b/f: 1 January	23 970 457	37 330 881	40 523 592	-
Balance as at 31 December	**22 332 783**	**23 970 457**	**55 261 020**	**40 523 592**

ANNEX XIII

BALANCE SHEET OF THE 1992 FUND AS AT 31 DECEMBER 2001

	2001 £	2000 £
ASSETS		
Cash at banks and in hand	97 863 543	79 265 275
Contributions outstanding	175 895	470 163
Interest on overdue contributions outstanding	29 298	23 517
Due from 1971 Fund	669 539	1 007 465
Tax recoverable	277 845	511 319
Miscellaneous receivable	198 002	297 645
TOTAL ASSETS	**99 214 122**	**81 575 384**
LIABILITIES		
Staff Provident Fund	1 114 997	1 197 466
Accounts payable	35 221	27 738
Unliquidated obligations	84 354	199 805
Prepaid contributions	291 388	1 331 381
Contributors' account	8 747	42 830
Due to *Nakhodka* MCF	22 332 783	23 970 457
Due to *Erika* MCF	55 261 020	40 523 592
TOTAL LIABILITIES	**79 128 510**	**67 293 269**
GENERAL FUND BALANCE	**20 085 612**	**14 282 115**
TOTAL LIABILITIES AND GENERAL FUND BALANCE	**99 214 122**	**81 575 384**

ANNEX XIV

CASH FLOW STATEMENT OF THE 1992 FUND FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 2001

	2001		2000	
	£	£	£	£
Cash as at 1 January		79 265 275		57 424 942
OPERATING ACTIVITIES				
Operating Surplus	13 570 400		17 746 274	
(Increase)/Decrease in Debtors	959 530		(968 772)	
Increase/(Decrease) in Creditors	(1 334 370)		1 620 181	
Net cash flow from operating activities		13 195 560		18 397 683
RETURNS ON INVESTMENTS				
Interest on investments	5 402 708		3 442 650	
Net cash inflow from returns on investments		5 402 708		3 442 650
Cash as at 31 December		**97 863 543**		**79 265 275**

ANNEX XV

1971 FUND: CONTRIBUTING OIL RECEIVED IN THE CALENDAR YEAR 2001 IN THE TERRITORIES OF STATES WHICH WERE MEMBERS OF THE 1971 FUND ON 24 MAY 2002

As reported by 31 December 2002

Member State	Contributing Oil (Tonnes)	% of Total
Portugal	15 678 265	42.98%
Malaysia	15 630 684	42.85%
Ghana	1 679 152	4.60%
Cameroon	1 597 730	4.38%
Colombia	981 806	2.69%
Qatar	912 109	2.50%
Brunei Darussalam	0	0.00%
Estonia	0	0.00%
Gambia	0	0.00%
Saint Kitts and Nevis	0	0.00%
Tuvalu	0	0.00%
United Arab Emirates	0	0.00%
Yugoslavia	0	0.00%
	36 479 746	**100.00%**

Note

No report from Albania, Benin, Côte d'Ivoire, Gabon, Guyana, Kuwait, Maldives, Mauritania, Mozambique, Nigeria, Sierra Leone and Syrian Arab Republic.

ANNEX XVI

1992 FUND: CONTRIBUTING OIL RECEIVED IN THE CALENDAR YEAR 2001 IN THE TERRITORIES OF STATES WHICH WERE MEMBERS OF THE 1992 FUND ON 31 DECEMBER 2002

As reported by 31 December 2002

Member State	Contributing Oil (Tonnes)	% of Total
Japan	253 771 718	20.53%
Italy	133 615 026	10.81%
Republic of Korea	124 269 563	10.05%
Netherlands	106 082 611	8.58%
France	102 532 481	8.29%
United Kingdom	71 050 022	5.75%
Singapore	65 542 353	5.30%
Spain	59 713 702	4.83%
Canada	58 624 260	4.74%
Germany	37 583 248	3.04%
Australia	30 956 356	2.51%
Norway	27 485 439	2.22%
Greece	21 832 387	1.77%
Sweden	21 178 467	1.71%
Portugal	15 678 265	1.27%
Philippines	12 759 735	1.03%
Argentina	11 430 953	0.92%
Mexico	11 408 492	0.92%
Finland	10 711 302	0.87%
Venezuela	9 511 000	0.77%
Belgium	8 632 333	0.70%
Denmark	5 620 142	0.45%
Ireland	4 997 982	0.41%
New Zealand	4 664 655	0.38%
Tunisia	3 440 065	0.28%
China (Hong Kong Special Administrative Region)	3 417 763	0.28%
Croatia	3 217 803	0.26%
Jamaica	2 837 720	0.23%
Sri Lanka	2 093 664	0.17%
Cyprus	2 028 441	0.16%
Uruguay	1 778 128	0.14%
Bahamas	1 761 493	0.14%
Cameroon	1 597 730	0.13%
Malta	1 216 094	0.10%
Colombia	981 806	0.08%
Poland	938 275	0.08%
Qatar	912 109	0.07%
Kenya	273 614	0.02%
Barbados	166 710	0.01%

Member State	Contributing Oil (Tonnes)	% of Total
Antigua and Barbuda	0	0.00%
Iceland	0	0.00%
Latvia	0	0.00%
Liberia	0	0.00%
Lithuania	0	0.00%
Marshall Islands	0	0.00%
Mauritius	0	0.00%
Monaco	0	0.00%
Oman	0	0.00%
Seychelles	0	0.00%
Slovenia	0	0.00%
Tonga	0	0.00%
United Arab Emirates	0	0.00%
Vanuatu	0	0.00%
	1 236 313 907	**100.00%**

Note

No report from Algeria, Angola, Bahrain, Belize, Cambodia, Comoros, Djibouti, Dominica, Dominican Republic, Fiji, Georgia, Grenada, India, Morocco, Panama, Papua New Guinea, Russian Federation, Saint Vincent and the Grenadines, Sierra Leone, Trinidad and Tobago and Turkey.

ANNEX XVII

1971 FUND: SUMMARY OF INCIDENTS (31 DECEMBER 2002)

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

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 Nº8*	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 Nº5*	8.12.79	Mebaru, Japan	Japan	19	¥845 480
6	*Showa Maru*	9.1.80	Naruto Strait, Japan	Japan	199	¥8 123 140
7	*Unsei Maru*	9.1.80	Akune, Japan	Japan	99	¥3 143 180
8	*Tanio*	7.3.80	Brittany, France	Madagascar	18 048	FFr11 833 718

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1971 Fund, unless indicated to the contrary)		Notes
Sinking	(unknown)			*Irving Whale* refloated in 1996. Canadian Court dismissed action against 1971 Fund as Fund could not be held liable for events which occurred prior to entry into force of 1971 Fund Convention for Canada.
Grounding	5 500	Clean-up	SKr95 707 157	
Collision	540	Clean-up Fishery-related Indemnification	¥108 589 104 ¥31 521 478 ¥9 427 585 **¥149 538 167**	¥5 438 909 recovered by way of recourse.
Collision	(unknown)	Clean-up	£363 550	
Sinking	10	Clean-up Fishery-related Indemnification	¥7 477 481 ¥2 710 854 ¥211 370 **¥10 399 705**	
Collision	100	Clean-up Fishery-related Indemnification	¥10 408 369 ¥92 696 505 ¥2 030 785 **¥105 135 659**	¥9 893 496 recovered by way of recourse.
Collision	<140			Because of the distribution of liability between the two colliding ships, 1971 Fund not called upon to pay any compensation.
Breaking	13 500	Clean-up Tourism-related Fishery-related Other loss of income	FFr219 164 465 FFr2 429 338 FFr52 024 FFr494 816 **FFr222 140 643**	Total payment equalled limit of compensation available under 1971 Fund Convention; payments by 1971 Fund represented 63.85% of accepted amounts. US$17 480 028 recovered by way of recourse.

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
9	*Furenas*	3.6.80	Oresund, Sweden	Sweden	999	SKr612 443
10	*Hosei Maru*	21.8.80	Miyagi, Japan	Japan	983	¥35 765 920
11	*Jose Marti*	7.1.81	Dalarö, Sweden	USSR	27 706	SKr23 844 593
12	*Suma Maru N°11*	21.11.81	Karatsu, Japan	Japan	199	¥7 396 340
13	*Globe Asimi*	22.11.81	Klaipeda, USSR	Gibraltar	12 404	Rbls 1 350 324
14	*Ondina*	3.3.82	Hamburg, Federal Republic of Germany	Netherlands	31 030	DM10 080 383
15	*Shiota Maru N°2*	31.3.82	Takashima island, Japan	Japan	161	¥6 304 300
16	*Fukutoko Maru N°8*	3.4.82	Tachibana Bay, Japan	Japan	499	¥20 844 440
17	*Kifuku Maru N°35*	1.12.82	Ishinomaki, Japan	Japan	107	¥4 271 560
18	*Shinkai Maru N°3*	21.6.83	Ichikawa, Japan	Japan	48	¥1 880 940
19	*Eiko Maru N°1*	13.8.83	Karakuwazaki, Japan	Japan	999	¥39 445 920
20	*Koei Maru N°3*	22.12.83	Nagoya, Japan	Japan	82	¥3 091 660
21	*Tsunehisa Maru N°8*	26.8.84	Osaka, Japan	Japan	38	¥964 800

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1971 Fund, unless indicated to the contrary)		Notes
Collision	200	Clean-up Clean-up Indemnification	SKr3 187 687 DKr418 589 SKr153 111	SKr449 961 recovered by way of recourse.
Collision	270	Clean-up Fishery-related Indemnification	¥163 051 598 ¥50 271 267 ¥8 941 480 **¥222 264 345**	¥18 221 905 recovered by way of recourse.
Grounding	1 000			Total damage less than shipowner's liability (clean-up SKr20 361 000 claimed). Shipowner's defence that he should be exonerated from liability rejected in final court judgement.
Grounding	10	Clean-up Indemnification	¥6 426 857 ¥1 849 085 **¥8 275 942**	
Grounding	>16 000	Indemnification	US$467 953	No damage in 1971 Fund Member State.
Discharge	200-300	Clean-up	DM11 345 174	
Grounding	20	Clean-up Fishery-related Indemnification	¥46 524 524 ¥24 571 190 ¥1 576 075 **¥72 671 789**	
Collision	85	Clean-up Fishery-related Indemnification	¥200 476 274 ¥163 255 481 ¥5 211 110 **¥368 942 865**	
Sinking	33	Indemnification	¥598 181	Total damage less than shipowner's liability.
Discharge	3.5	Clean-up Indemnification	¥1 005 160 ¥470 235 **¥1 475 395**	
Collision	357	Clean-up Fishery-related Indemnification	¥23 193 525 ¥1 541 584 ¥9 861 480 **¥34 596 589**	¥14 843 746 recovered by way of recourse.
Collision	49	Clean-up Fishery-related Indemnification	¥18 010 269 ¥8 971 979 ¥772 915 **¥27 755 163**	¥8 994 083 recovered by way of recourse.
Sinking	30	Clean-up Indemnification	¥16 610 200 ¥241 200 **¥16 851 400**	

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
22	*Koho Maru N°3*	5.11.84	Hiroshima, Japan	Japan	199	¥5 385 920
23	*Koshun Maru N°1*	5.3.85	Tokyo Bay, Japan	Japan	68	¥1 896 320
24	*Patmos*	21.3.85	Straits of Messina, Italy	Greece	51 627	LIt 13 263 703 650
25	*Jan*	2.8.85	Aalborg, Denmark	Federal Republic of Germany	1 400	DKr1 576 170
26	*Rose Garden Maru*	26.12.85	Umm Al Qaiwain, United Arab Emirates	Panama	2 621	US$364 182 (estimate)
27	*Brady Maria*	3.1.86	Elbe Estuary, Federal Republic of Germany	Panama	996	DM324 629
28	*Take Maru N°6*	9.1.86	Sakai-Senboku, Japan	Japan	83	¥3 876 800
29	*Oued Gueterini*	18.12.86	Algiers, Algeria	Algeria	1 576	Din1 175 064
30	*Thuntank 5*	21.12.86	Gävle, Sweden	Sweden	2 866	SKr2 741 746
31	*Antonio Gramsci*	6.2.87	Borgå, Finland	USSR	27 706	Rbls 2 431 854
32	*Southern Eagle*	15.6.87	Sada Misaki, Japan	Panama	4 461	¥93 874 528
33	*El Hani*	22.7.87	Indonesia	Libya	81 412	£7 900 000 (estimate)
34	*Akari*	25.8.87	Dubai, United Arab Emirates	Panama	1 345	£92 800 (estimate)

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1971 Fund, unless indicated to the contrary)		Notes
Grounding	20	Clean-up Fishery-related Indemnification **¥95 458 298**	¥68 609 674 ¥25 502 144 ¥1 346 480	
Collision	80	Clean-up Indemnification **¥26 598 669**	¥26 124 589 ¥474 080	¥8 866 222 recovered by way of recourse.
Collision	700			Total damage agreed out of court or decided by court (LIt11 583 298 650) less than shipowner's liability.
Grounding	300	Clean-up Indemnification **DKr9 849 704**	DKr9 455 661 DKr394 043	
Discharge of oil	(unknown)			Claim against 1971 Fund (US$44 204) withdrawn.
Collision	200	Clean-up	DM3 220 511	DM333 027 recovered by way of recourse.
Discharge of oil	0.1	Indemnification	¥104 987	Total damage less than shipowner's liability.
Discharge	15	Clean-up Clean-up Clean-up Other loss of income Indemnification	US$1 133 FFr708 824 Din5 650 £126 120 Din293 766	
Grounding	150-200	Clean-up Fishery-related Indemnification **SKr23 903 069**	SKr23 168 271 SKr49 361 SKr685 437	
Grounding	600-700	Clean-up	FM1 849 924	USSR clean-up claims (Rbls 1 417 448) not paid by 1971 Fund since USSR not Member of 1971 Fund at time of incident.
Collision	15			Total damage less than shipowner's liability (¥35 346 679 clean-up and ¥51 521 183 fishery-related agreed).
Grounding	3 000			Clean-up claim (US$242 800) not pursued.
Fire	1 000	Clean-up Clean-up	Dhs 864 293 US$187 165	US$160 000 refunded by shipowner's insurer.

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
35	*Tolmiros*	11.9.87	West coast, Sweden	Greece	48 914	SKr50 000 000 (estimate)
36	*Hinode Maru 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 Tourism Financial costs Amounts awarded by criminal court Previously settled claims Miscellaneous **Pts 13 207 970 962** Indemnification	Pts 8 696 000 000 Pts 1 729 240 000 Pts 13 810 000 Pts 371 680 000 Pts 893 880 000 Pts 1 250 370 962 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 1 250 370 962 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 Indemnification **£52 218 927**	£593 883 £38 538 451 £77 375 £3 572 392 £8 904 047 £252 790 £279 989	£6 213 497 paid by shipowner's insurer. 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	Yosu, 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) Other damage to property (paid)	Won 7 502 755 270 Won 8 718 601 175 Won 14 206 046 **Won 16 235 562 491**	Won 5 429 795 661 paid by shipowner's insurer, of which Won 5 352 378 451 reimbursed by 1971 Fund.
		Fishery-related (claimed)	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 1 099 000 000 Drs 1 547 000 000 Drs 378 000 000 **Drs 3 380 204 011**	Drs 356 204 011 and US$565 000 paid by shipowner's insurer.
		Clean-up (paid)	US$565 000	
Collision	16 000			Settlement outside the Conventions concluded between the Government of Fujairah and the shipowner. Terms of settlement not known to 1971 Fund. The 1971 Fund will not be called upon to pay any compensation.
Overflow during loading operation	0.5	Clean-up Indemnification	¥1 187 304 ¥846 640 **¥2 033 944**	
Collision	560	Clean-up Fishery-related Other loss of income Indemnification	¥629 516 429 ¥50 730 359 ¥15 490 030 ¥20 455 920 **¥716 192 738**	¥31 021 717 recovered by way of recourse.
Mishandling of oil supply	(unknown)	Other damage to property Clean-up Indemnification	¥3 954 861 ¥202 854 ¥272 320 **¥4 430 035**	
Grounding	18	Clean-up Fishery-related	Won 9 401 293 Won 28 378 819 **Won 37 780 112**	Shipowner lost right to limit his liability because proceedings not commenced within period specified under Korean law.
(unknown)	(unknown)	Clean-up (claimed)	Mor Dhr 2 600 000	Not established that oil originated from a ship as defined in 1971 Fund Convention.
Collision	160			Clean-up claim (Won 142 million) time-barred as necessary legal action not taken.

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
78	*Dae Woong*	27.6.95	Kojung, Republic of Korea	Republic of Korea	642	Won 95 000 000 (estimate)
79	*Sea Prince*	23.7.95	Yosu, Republic of Korea	Cyprus	144 567	Won 18 308 275 906
80	*Yeo Myung*	3.8.95	Yosu, Republic of Korea	Republic of Korea	138	Won 21 465 434
81	*Shinryu Maru N°8*	4.8.95	Chita, Japan	Japan	198	¥3 967 138
82	*Senyo Maru*	3.9.95	Ube, Japan	Japan	895	¥20 203 325
83	*Yuil N°1*	21.9.95	Pusan, Republic of Korea	Republic of Korea	1 591	Won 250 million (estimate)
84	*Honam Sapphire*	17.11.95	Yosu, Republic of Korea	Panama	142 488	14 million SDR
85	*Toko Maru*	23.1.96	Anegasaki, Japan	Japan	699	¥18 769 567 (estimate)

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1971 Fund, unless indicated to the contrary)		Notes
Grounding	1	Clean-up	Won 43 517 127	
Grounding	5 035	Clean-up (paid)	Won 20 709 245 359	Won 18 308 275 906 paid by shipowner's insurer.
		Fishery-related (paid)	Won 19 719 079 210	
		Tourism-related (paid)	Won 538 000 000	
		Oil removal (paid)	Won 8 420 123 382	
		Environmental studies (paid)	Won 723 490 410	
			Won 50 109 938 361	
		Clean-up (paid)	¥357 214	
		Indemnification (paid)	Won 7 410 928 540	
		Fishery-related (awarded by Court)	Won 2 060 000 000	Appeal pending.
Collision	40	Clean-up (paid)	Won 684 000 000	Won 560 945 437 paid by shipowner's insurer.
		Fishery-related (paid)	Won 600 000 000	
		Tourism-related (paid)	Won 269 029 739	
			Won 1 553 029 739	
		Claims pending in court:		
		Fishery-related	Won 335 000 000	
Mishandling of oil supply	0.5	Clean-up (paid)	¥8 650 249	¥3 718 455 paid by shipowner's insurer.
		Indemnification (paid)	¥984 327	
			¥9 634 576	
		Other damage to property (agreed)	US$3 103	
		Other loss of income (agreed)	US$2 560	
			US$5 663	
Collision	94	Clean-up	¥314 838 937	¥279 973 101 recovered by way of recourse action.
		Fishery-related	¥46 726 661	
		Indemnification	¥5 012 855	
			¥366 578 453	
Sinking	(unknown)	Clean-up (paid)	Won 12 393 138 987	Won 1 654 million paid by shipowner's insurer.
		Fishery-related (paid)	Won 5 855 522 002	
		Oil removal operation (paid)	Won 6 824 362 810	
			Won 25 073 023 799	
		Claims pending in court:		
		Fishery-related (claimed)	Won 12 444 242 002	Claims pending in court.
Contact with fender	1 800	Clean-up (paid)	Won 9 033 000 000	US$13.5 million paid by shipowner's insurer.
		Fishery-related (paid)	Won 1 112 000 000	
		Environmental studies (claimed)	Won 114 000 000	
			Won 10 259 000 000	
Collision	4			Total damage less than owner's liability. Indemnification not requested.

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
86	*Sea Empress*	15.2.96	Milford Haven, Wales, United Kingdom	Liberia	77 356	£7 395 748
87	*Kugenuma Maru*	6.3.96	Kawasaki, Japan	Japan	57	¥1 175 055 (estimate)
88	*Kriti Sea*	9.8.96	Agioi Theodoroi, Greece	Greece	62 678	Drs 2 241 million (estimate)
89	*N°1 Yung Jung*	15.8.96	Pusan, Republic of Korea	Republic of Korea	560	Won 122 million
90	*Nakhodka*	2.1.97	Oki island, Japan	Russian Federation	13 159	1 588 000 SDR
91	*Tsubame Maru N°31*	25.1.97	Otaru, Japan	Japan	89	¥1 843 849
92	*Nissos Amorgos*	28.2.97	Maracaibo, Venezuela	Greece	50 563	5 245 000 SDR (estimate)

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1971 Fund, unless indicated to the contrary)		Notes
Grounding	72 360	Clean-up (paid) Other damage to property (paid) Fishery-related (paid) Tourism-related (paid) Other loss of income (paid) Indemnification (paid) **£38 171 886**	£23 291 444 £378 554 £10 101 347 £ 1 296 726 £268 780 £1 835 035	£6 866 809 paid by shipowner's insurer.
		Fishery-related (claimed) Tourism-related (claimed) Other loss of income (claimed)	£643 556 £226 196 not quantified	Claims subject to legal actions.
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 (paid) Clean-up (claimed) Clean-up (agreed) Fishery-related (paid) Fishery-related (claimed) Tourism-related (paid) Tourism-related (claimed) Other loss of income (paid) Other loss of income (claimed) **Drs2 285 317 142**	Drs 522 162 557 Drs 366 676 811 Drs 518 030 496 Drs 83 464 212 Drs 813 464 212 Drs 35 375 000 Drs 10 715 500 Drs 23 799 354 Drs 241 629 000	Drs 664 801 123 paid by shipowner's insurer. Further claims being examined.
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 ¥10 957 755 000 and the Funds paid ¥15 132 138 000.
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) Tourism-related (settled) Tourism-related (claimed) Environmental damage (claimed) Miscellaneous (claimed)	Bs3 523 252 942 US$35 850 Bs57 700 000 Bs133 011 848 US$16 033 390 Bs8 188 078 Bs2 420 348 035 US$60 000 000 Bs550 000 000	Bs1 258 220 385 and US$4 008 347 paid by shipowner's insurer. Bs17 501 083 and US$3 646 480 paid by 1971 Fund.

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
93	*Daiwa Maru N°18*	27.3.97	Kawasaki, Japan	Japan	186	¥3 372 368 (estimate)
94	*Jeong Jin N°101*	1.4.97	Pusan, Republic of Korea	Republic of Korea	896	Won 246 million
95	*Osung N°3*	3.4.97	Tunggado, Republic of Korea	Republic of Korea	786	104 500 SDR (estimate)
96	*Plate Princess*	27.5.97	Puerto Miranda, Venezuela	Malta	30 423	3.6 million SDR (estimate)
97	*Diamond Grace*	2.7.97	Tokyo Bay, Japan	Panama	147 012	14 million SDR
98	*Katja*	7.8.97	Le Havre, France	Bahamas	52 079	FFr48 million (estimate)
99	*Evoikos*	15.10.97	Strait of Singapore	Cyprus	80 823	8 846 941 SDR
100	*Kyungnam N°1*	7.11.97	Ulsan, Republic of Korea	Republic of Korea	168	Won 43 543 015

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1971 Fund, unless indicated to the contrary)		Notes
Mishandling of oil supply	1	Clean-up Indemnification **Total**	¥415 600 000 ¥865 406 **¥416 465 406**	
Overflow during loading operation	124	Clean-up Indemnification **Total**	Won 418 000 000 Won 58 000 000 **Won 476 000 000**	
Grounding	(unknown)	Clean-up (paid) Fishery-related (paid) Oil removal operation (paid) **Total**	Won 866 906 355 Won 68 795 729 Won 6 738 565 917 **Won 7 674 268 001**	The 1992 Fund paid ¥340 million to claimants. This amount was later reimbursed by the 1971 Fund.
		Clean-up (paid) Fishery-related (paid) **Total**	¥669 252 879 ¥181 786 486 **¥851 039 365**	
		Indemnification	Won 37 963 635	
Overflow during loading operation	3.2	Fishery-related (claimed)	US$47 000 000	Claims against the 1971 Fund time-barred.
Grounding	1 500	Clean-up (paid) Fishery-related (paid) Tourism-related (paid) Other loss of income (paid) **Total**	¥1 074 000 000 ¥263 000 000 ¥23 000 000 ¥8 000 000 **¥1 680 000 000**	Total amount of established claims did not exceed shipowner's liability.
Striking a quay	190	Clean-up (paid) Clean-up (claimed)	FFr16 192 738 FFr6 962 988	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) **Total**	FFr328 000 FFr261 156 **FFr23 744 882**	Claims pending in court.
Collision	29 000	*Singapore* Clean-up (paid) Other damage to property (paid) Other damage to property (claimed) **Total**	 S$10 000 000 S$1 500 000 S$67 000 **S$11 567 000**	All settled claims in Singapore and Malaysia paid by shipowner.
		Malaysia Clean-up (paid) Fishery-related (paid) **Total**	 RM1 424 000 RM1 200 000 **RM2 624 000**	
		Indonesia Clean-up (claimed) Environmental damage (claimed) Fishery-related (claimed) **Total**	 US$152 000 US$3 200 000 US$11 000 **US$3 363 000**	All claims in Indonesia dismissed by limitation court in Singapore.
Grounding	15-20	Clean-up (paid) Fishery-related (paid) **Total**	Won 189 214 535 Won 82 818 635 **Won 265 023 170**	The shipowner has paid Won 26 622 030.

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
101	*Pontoon 300*	7.1.98	Hamriyah, Sharjah, United Arab Emirates	Saint Vincent and the Grenadines	4 233	Not available
102	*Maritza Sayalero*	8.6.98	Carenero Bay, Venezuela	Panama	28 338	3 million SDR (estimate)
103	*Al Jaziah 1*	24.1.00	Abu Dhabi, United Arab Emirates	Honduras	681	Not available
104	*Alambra*	17.9.00	Estonia	Malta	75 366	£6 600 000 (estimate)
105	*Natuna Sea*	3.10.00	Indonesia	Panama	51 095	6 100 000 SDR (estimate)
106	*Zeinab*	14.4.01	United Arab Emirates	Georgia	2 178	Not available
107	*Singapura Timur*	28.5.01	Malaysia	Panama	1 369	102 000 SDR (estimate)

Notes

See page 180.

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1971 Fund, unless indicated to the contrary)		Notes
Sinking	4 000	Clean-up (settled) Other damage (claimed)	Dhs 6 380 522 Dhs 198 752 497 **Dhs 205 133 019**	Payments limited to 75% (Dhs 4 785 392).
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	Preventive measures (paid) Preventive measures (paid) Clean-up (settled) Clean-up (settled) Clean-up (claimed)	US$29 000 Dhs 2 470 500 US$119 000 £127 000 US$1 184 258	The 1971 and 1992 Funds have each paid 50% of the amounts paid.
Corrosion	300 (estimate)	Clean-up (claimed) Environmental damage (claimed) Economic loss (claimed) Economic loss (claimed)	EEK10 500 000 EEK45 100 000 US$100 000 EEK 38 800 000	Claims subject to legal proceedings.
Grounding	7 000 (estimate)	*Singapore* Clean-up (paid) Clean-up (claimed)	US$10 100 000 US$16 000 **US$10 116 000**	All settled claims have been paid by the shipowner's insurer. No further claims are anticipated in Malaysia. The 1971 Fund will not be called upon to make payments in compensation or indemnification as regards Malaysia. The 1992 Fund might be called upon to make payments for pollution damage in Singapore.
		Clean-up (paid) Clean-up (claimed) Fishery-related (paid) Fishery-related (claimed)	S$2 800 000 S$800 000 S$95 000 S$56 000 **S$3 751 000**	
		Malaysia Clean-up (paid) Fishery-related (paid)	RM1 300 000 RM905 000 **RM2 205 000**	
		Indonesia Clean-up (settled) Clean-up (claimed)	Rp253 000 000 Rp21 000 000 000 **Rp21 253 000 000**	
		Clean-up (claimed) Fishery-related (claimed) Environmental studies (claimed) Environmental damage (claimed)	US$700 000 US$12 300 000 US$383 000 US$16 700 000 **US$30 083 000**	
Sinking	400	Clean-up (paid) Clean-up (paid) Clean-up (claimed)	US$844 000 Dhs1 600 000 Dhs2 500 000	The 1971 and 1992 Funds have each contributed 50% of the amounts paid.
Collision	Unknown	Clean-up (paid) Preventive measures (paid) Preventive measures (claimed)	US$62 896 ¥11 436 000 US$848 000	Total claims exceed the limitation amount. Settled claims paid by the shipowner's insurer.

ANNEX XVIII

1992 FUND: SUMMARY OF INCIDENTS (31 DECEMBER 2002)

For this table, damage has been grouped into the following categories:

- Clean-up
- Preventive measures
- Pre-spill preventive measures
- Fishery-related
- Tourism-related
- Other damage to property
- Environmental damage/studies

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GT)	Limit of shipowner's liability under applicable CLC
1	Unknown	20.6.96	North Sea coast, Germany	-	-	-
2	*Nakhodka*	2.1.97	Oki island, Japan	Russian Federation	13 159	1 588 000 SDR
3	*Osung N°3*	3.4.97	Tunggado, Republic of Korea	Republic of Korea	786	104 500 SDR (estimate)
4	Unknown	28.9.97	Essex, United Kingdom	-	-	-
5	*Santa Anna*	1.1.98	Devon, United Kingdom	Panama	17 134	10 196 280 SDR
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)	DM2 610 226	A German court has found the owner of the *Kuzbass* and his insurer liable for pollution damage. If the shipowner/insurer were to mount a successful appeal against the judgement the 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 ¥10 957 755 000 and the Funds paid ¥15 132 138 000.
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 settled by the shipowner/ 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 (claimed)	US$2 500 000 PPs1 800 000	US$2.5 million paid by shipowner's insurer.

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	Not available
11	*Slops*	15.6.00	Piraeus, Greece	Greece	10 815	None
12	Incident in Sweden	23.9.00	Sweden	Unknown	Unknown	Unknown

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) Clean-up (claimed) Fishery-related (settled) Fishery-related (claimed) Other damage to property (settled) Other damage to property (claimed) Tourism (settled) Tourism-related (claimed) Other loss of income (settled) Other loss of income (claimed)	FFr27 892 000 FFr52 182 000 FFr66 275 000 FFr26 136 000 FFr6 525 000 FFr21 604 000 FFr313 046 000 FFr460 230 000 FFr37 313 000 FFr140 328 000 **FFr1 151 531 000**	Payments made by the shipowner's insurer for FFr84 million and by the 1992 Fund for FFr281 million. These payments represent between 50% and 80% of the settlement amounts. Amounts claimed are those indicated by claimants in their legal actions. The amounts may subsequently increase or decrease. Further claims may be pursued during 2003.
Sinking	100-200	Preventive measures (paid) Preventive measures (paid) Clean-up (settled) Clean-up (settled) Clean-up (claimed)	US$29 000 Dhs2 047 500 US$119 000 £127 400 US$1 184 258	The 1971 and 1992 Funds have each contributed 50% of the amounts paid.
Fire	Unknown	Clean-up (claimed)	US$2 559 000	The 1992 Fund considers that the *Slops* does not fall within the definition of 'ship'. Two contractors took legal action against the 1992 Fund. The Court of first instance held that the *Slops* did fall within the definition of 'ship'. The 1992 Fund will appeal against the judgement.
Unknown	Unknown			No claims submitted to date.

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GT)	Limit of shipowner's liability under applicable CLC
13	*Natuna Sea*	3.10.00	Indonesia	Panama	51 095	22 400 000 SDR (estimate)
14	Incident in Spain	5.9.00	Spain	Unknown	Unknown	Unknown
15	*Baltic Carrier*	29.3.01	Denmark	Marshall Islands	23 235	DKr118 million
16	*Zeinab*	14.4.01	United Arab Emirates	Georgia	2 178	Not available
17	Incident in Guadeloupe	30.6.02	Guadeloupe	Unknown	Unknown	Unknown
18	Incident in the UK	29.9.02	United Kingdom	Unknown	Unknown	Unknown
19	*Prestige*	13.11.02	Spain	Bahamas	42 820	18 900 000 SDR (estimate)

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1992 Fund, unless indicated to the contrary)		Notes
Grounding	7 000 (estimate)	*Singapore*		All settled claims have been paid by the shipowner's insurer. No further claims are anticipated for damage in Malaysia. The 1971 Fund will not be called upon to make payments in compensation or indemnification as regards Malaysia. The 1992 Fund might be called upon to make payments for damage in Singapore.
		Clean-up (paid)	US$10 100 000	
		Clean-up (claimed)	US$16 000	
			US$10 116 000	
		Clean-up (paid)	S$2 800 000	
		Clean-up (claimed)	S$800 000	
		Fishery-related (paid)	S$95 000	
		Fishery-related (claimed)	S$56 000	
			S$3 751 000	
		Malaysia		
		Clean-up (paid)	RM1 300 000	
		Fishery-related (paid)	RM905 000	
			RM2 205 000	
		Indonesia		
		Clean-up (settled)	Rp253 000 000	
		Clean-up (claimed)	Rp21 000 000 000	
			Rp21 253 000 000	
		Clean-up (claimed)	US$700 000	
		Fishery-related (claimed)	US$12 300 000	
		Environmental damage (claimed)	US$16 700 000	
		Environmental studies (claimed)	US$383 000	
			US$30 083 000	
Unknown	Unknown	Clean-up (claimed)	Pts 1 006 500	Spanish authorities have identified potential source of pollution.
Collision	2 500	Clean-up (paid)	DKr15 900 000	
		Oil disposal (paid)	DKr17 400 000	
		Property damage/economic loss (paid)	DKr1 600 000	
		Fishery-related (paid)	DKr19 700 000	
		Environmental monitoring (paid)	DKr258 000	
			DKr54 858 000	
		Clean-up (claimed)	DKr42 600 000	
Sinking	400	Clean-up (paid)	US$844 000	The 1971 and 1992 Funds have each contributed 50% of the amounts paid.
		Clean-up (paid)	Dhs1 600 000	
		Clean-up (claimed)	Dhs2 500 000	
Unknown	Unknown			No claims submitted to date.
Unknown	Unknown			No claims submitted to date.
Breaking	Unknown			Claims expected for pollution damage in Spain, France and Portugal.

Notes to Annexes XVII and XVIII

1 Amounts are given in national currencies. The relevant conversion rates as at 31 December 2002 are as follows:

£1 =

Algerian Dinar	Din	127.039	Japanese Yen	¥	191.047
Bahrain Dinar	BD	0.6070	Malaysian Ringgit	RM	6.1176
Canadian Dollar	Can$	2.5433	Moroccan Dirham	Mor Dhr	16.3369
Danish Kroner	DKr	11.3954	Philippines Peso	PPs	85.9445
Estonian Kroon	EEK	23.9991	Republic of Korea Won	Won	1909.42
Euro	€	1.5342	Russian Rouble	Rbls	51.4363
Finnish Markka	FM	9.1219	Singapore Dollar	S$	2.7924
French Franc	FFr	10.0637	Spanish Peseta	Pts	255.2694
German Mark	DM	3.0006	Swedish Krona	SKr	14.0276
Greek Drachma	Drs	522.7787	UAE Dirham	UAE Dhs	5.9130
Indonesian Rupiah	Rp	14408.6	United States Dollar	US$	1.6099
Italian Lira	LIt	2970.6254	Venezuelan Bolivar	Bs	2232.54

£1 = 1.1843 SDR or 1 SDR = £0.84438

2 The inclusion of claimed amounts is not to be understood as indicating that either the claim or the amount is accepted by the 1971 or 1992 Funds.

INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS

PORTLAND HOUSE
STAG PLACE
LONDON SW1E 5PN
UNITED KINGDOM

Telephone: +44 (0)20 7592 7100
Telefax: +44 (0)20 7592 7111
E-mail: info@iopcfund.org
Web site: www.iopcfund.org