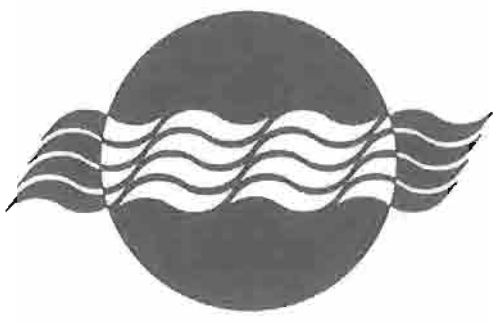
INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS

ANNUAL REPORT

1997

REPORT ON THE ACTIVITIES OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS IN 1997



Photograph on front cover:
Nakhodka incident -Japan
(photograph: General Marine Surveyors)

Printed in Great Britain by:
Repro Workshop Ltd, Caker Stream Road, Alton, Hampshire
Telephone: (01420) 89449

FOREWORD

The Director of the International Oil Pollution Compensation Funds 1971 and 1992 (IOPC Funds) presents the Report of the activities of the Organisations during 1997. This is the nineteenth year of operation of the 1971 Fund and the second year of operation of the 1992 Fund.

The 1971 Fund was established in 1978 to administer the system of compensation for oil pollution damage established by the 1969 Civil Liability Convention and the 1971 Fund Convention. As at 31 December 1997, 76 States were Members of that Organisation.

In 1992 Protocols were adopted amending the 1969 Civil Liability Convention and the 1971 Fund Convention. The 1992 Protocols provide higher limits of compensation and a wider scope of application than the Conventions in their original versions. These Protocols entered into force on 30 May 1996. A new organisation, known as the 1992 Fund, was established from that date. At the end of 1997, 28 States had ratified the 1992 Protocol to the Fund Convention and it is expected that many other States will do so in the near future.

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

In 1997 the 1971 Fund has been involved in the handling of claims for compensation arising from a number of oil pollution incidents, including 11 which occurred during the year (cf Section 9). The 1971 Fund's governing bodies have made a number of important decisions of principle in respect of the admissibility of claims for compensation. During the year the 1971 Fund has paid significant amounts in compensation to victims of oil pollution. The 1992 Fund has become involved in three incidents during 1997 but has so far not made any compensation payments.

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

Måns Jacobsson
Director

TABLE OF CONTENTS

Annexes (continued)

PREFACE

1997 was an important year for the IOPC Funds in many respects. During the year preparations were made for the transition between the old and new compensation systems. The 1992 Fund and the 1971 Fund will separate on 15 May 1998.

The year began with the largest incident, in terms of damage, which the IOPC Funds have dealt with. This incident affects also the 1992 Fund, and it is likely that the total compensation finally paid will be close to the maximum amount payable under the 1992 Conventions.

Another important aspect of 1997 was the decision taken by the Assembly to review the structure of the Secretariat. The ability and dedication of the Director and of the team which he leads have for a long time led us to believe that the small Secretariat set up to administer an organisation with some 20 Member States could keep adapting indefinitely. The initial discussions which took place within the Assemblies have shown that it is necessary to strengthen the resources of the Secretariat without renouncing the principles laid down at the establishment of the 1971 Fund that the Fund should be administered with a minimum of bureaucracy. In 1998 the Assemblies will have to take decisions on the proposals which the Director will submit in this respect.

In 1997, progress was achieved in the settlement of claims arising from a number of old incidents, but the two Funds will separate without some old cases having been fully resolved. The difficulties in settling incidents are not, it must be admitted, the result simply of circumstances peculiar to the incident. The magnitude of the amounts involved, the greater sensitivity to environmental issues, and the diversity of legal and administrative systems represented within the IOPC Funds make it more and more difficult to reach out-of-court settlements thereby ensuring the prompt payment of compensation to victims. Fortunately, the spirit of co-operation of everybody involved and the Director's efforts make it possible in most cases to overcome the difficulties. Aware of this problem, the Assembly had established a Working Group to consider whether there may be ways of facilitating the out-of-court settlement of disputes. The discussions in the Working Group dealt with the issue in great depth, and various suggestions were put forward, but it was clearly not yet possible to take any decisions as to possible solutions. This question is of prime importance and it is imperative that the IOPC Funds resolve it in the future.

Charles Coppolani
Chairman of the Assemblies

1 INTRODUCTION

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

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

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

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

The main function of the IOPC Funds is to provide supplementary compensation to victims of oil pollution damage in Member States who cannot obtain full compensation for the damage under the applicable Civil Liability Convention. The compensation payable by the 1971 Fund for any one incident is limited to 60 million Special Drawing Rights (SDR) (about £49 million or US$81 million), including the sum actually paid by the shipowner or his insurer under the 1969 Civil Liability Convention. The maximum amount payable by the 1992 Fund for any one incident is 135 million SDR (about £110 million or US$182 million), including the sum actually paid by the shipowner or his insurer and the sum paid by the 1971 Fund.

Each Fund has an Assembly which is composed of representatives of all Member States of the respective Organisation. The 1971 Fund also has an Executive Committee of 15 Member States elected by its Assembly. The main function of the 1971 Fund Executive Committee is to approve settlements of claims for compensation against that Organisation, to the extent that the Director of the 1971 Fund is not authorised to make such settlements. The 1992 Fund Assembly will establish a corresponding body during 1998.

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

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

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

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

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

The 1969 and 1971 Conventions apply only to ships which actually carry oil in bulk as cargo, ie generally laden tankers. Spills from tankers during ballast voyages are therefore not covered by these Conventions, nor are spills of bunker oil from ships other than tankers. The 1992 Conventions apply to spills from sea-going vessels constructed or adapted to carry oil in bulk as cargo, ie both laden and unladen tankers, including spills of bunker oil from such ships.

The limit of the shipowner's liability under the 1969 Civil Liability Convention is the lower of 133 Special Drawing Rights (SDR) (£109 or US$179) per ton of the ship's tonnage or 14 million SDR (£11.4 million or US$18.9 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 (£343 or US$567) for each additional unit of tonnage; and

(c) for a ship of 140 000 units of tonnage or over, 59.7 million SDR (£48.7 million or US$80.6 million).

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

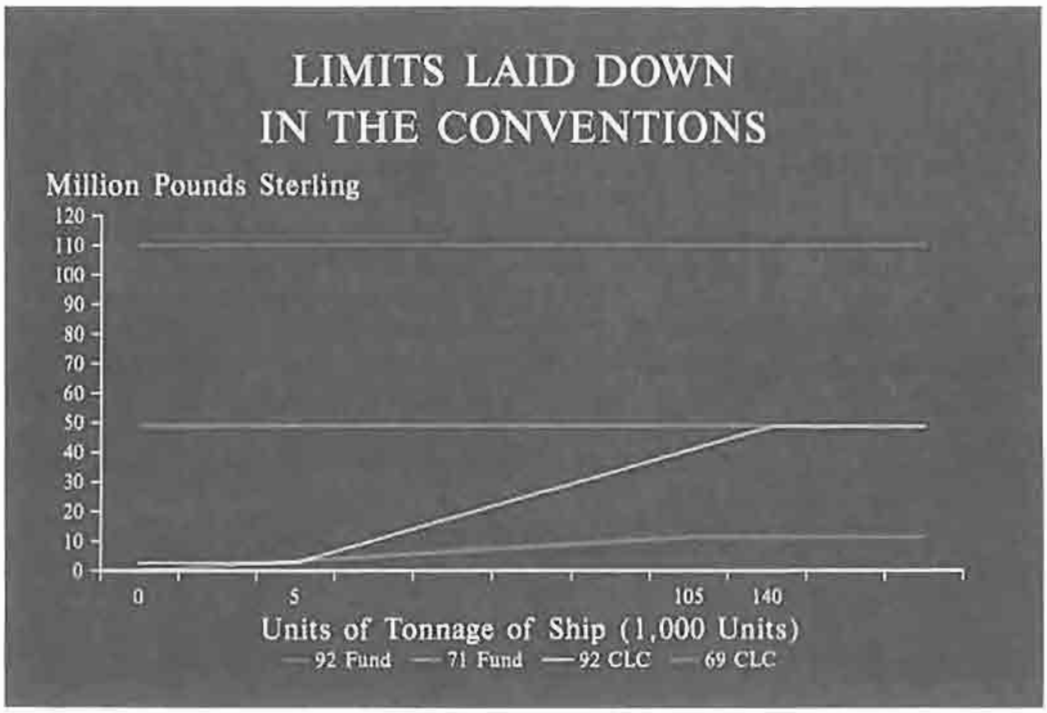
Under the 1969 Civil Liability Convention, the shipowner is deprived of the right to limit his liability if the incident occurred as a result of the owner's personal fault (actual fault or privity). Under the 1992 Convention, however, the shipowner is deprived of this right if it is proved that the

pollution damage resulted from the shipowner's personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

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

The compensation payable by the 1971 Fund in respect of an incident is limited to an aggregate amount of 60 million SDR (£49 million or US$81 million), including the sum actually paid by the shipowner (or his insurer) under the 1969 Civil Liability Convention. The maximum amount payable by the 1992 Fund in respect of an incident is 135 million SDR (£110 million or US$182 million), including the sum actually paid by the shipowner (or his insurer) under the applicable Civil Liability Convention and the sum paid by the 1971 Fund. The 1992 Fund Convention provides a simplified procedure for increasing the maximum amount payable by the 1992 Fund.

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



3 MEMBERSHIP OF THE IOPC FUNDS AND EXTERNAL RELATIONS

3.1 1971 Fund membership

At the time of the entry into force of the 1971 Fund Convention in October 1978, 14 States were Parties to the Convention and thus Members of the 1971 Fund. Since then, the number of Member States has grown steadily. At the end of 1996 there were 70 Member States.

Four States became Parties to the 1971 Fund Convention during 1997. The 1971 Fund Convention entered into force for New Zealand on 20 February 1997, for Mozambique on 23 March 1997, for Colombia on 11 June 1997 and for Antigua and Barbuda on 21 September 1997.

When the United Kingdom ratified the 1971 Fund Convention, it extended the application of the Convention to Hong Kong. With effect from 1 July 1997, Hong Kong ceased to be a dependent territory of the United Kingdom and was restored to the People's Republic of China. In October 1997, the 1971 Fund Assembly agreed to consider that the 1971 Fund Convention should continue to apply to the Hong Kong Special Administrative Region after 30 June 1997.

Guyana deposited an instrument of accession on 10 December 1997, and the 1971 Fund Convention will enter into force for Guyana on 10 March 1998, bringing the number of 1971 Fund Member States to 76.

The 1992 Fund Convention provided a mechanism for the compulsory denunciation of the 1969 Civil Liability Convention and the 1971 Fund Convention, when the total quantity of contributing oil received in States which were Parties to the 1992 Protocol to the Fund Convention (or which had deposited instruments of ratification, acceptance, approval or accession in respect of that Protocol) reached 750 million tonnes.

On 15 November 1996 the Netherlands deposited an instrument of accession to the 1992 Fund Protocol. With the deposit of this instrument, the requirements in the 1992 Fund Protocol for the compulsory denunciation of the 1969 Civil Liability Convention and 1971 Fund Convention were fulfilled. As a result, the States which had deposited instruments of ratification, acceptance, approval or accession in respect of the 1992 Fund Protocol (whether or not the Protocol was in force for the State in question), were obliged to deposit instruments of denunciation of the 1969 Civil Liability Convention and the 1971 Fund Convention by 15 May 1997. These denunciations will take effect 12 months after that date. Those States will then cease to be Parties to the 1971 Fund Convention.

By 15 May 1997, all 24 States which had deposited instruments of accession to the 1992 Fund Protocol had deposited instruments of denunciation of the 1969 Civil Liability Convention and of the 1971 Fund Convention. Twenty-four of the current 76 States Parties to the 1971 Fund Convention will therefore cease to be Parties to the Convention on 15 May 1998, thereby reducing the number of 1971 Fund Member States to 52.

The membership of the 1971 Fund is set out in the table opposite.

1971 Fund Member States as at 31 December 1997		
Albania	Ghana	Poland
Algeria	Guyana *(from 10 March 1998)*	Portugal
Antigua and Barbuda	Iceland	Qatar
Barbados	India	Russian Federation
Belgium	Indonesia	Saint Kitts and Nevis
Benin	Italy	Seychelles
Brunei Darussalam	Kenya	Sierra Leone
Cameroon	Kuwait	Slovenia
Canada	Malaysia	Sri Lanka
China <1>	Maldives	Syrian Arab Republic
Colombia	Malta	Tonga
Côte d'Ivoire	Mauritania	Tuvalu
Croatia	Mauritius	United Arab Emirates
Djibouti	Morocco	Vanuatu
Estonia	Mozambique	Venezuela
Fiji	New Zealand	Yugoslavia
Gabon	Nigeria	
Gambia	Papua New Guinea	
States which have deposited instruments of denunciation and which will leave the 1971 Fund on 15 May 1998		
Australia	Greece	Norway
Bahamas	Ireland	Oman
Bahrain	Japan	Republic of Korea
Cyprus	Liberia	Spain
Denmark	Marshall Islands	Sweden
Finland	Mexico	Switzerland
France	Monaco	Tunisia
Germany	Netherlands <2>	United Kingdom <3>

<1> Applies only to the Hong Kong Special Administrative Region.

<2> The Kingdom of the Netherlands declared its denunciation to be effective in respect of the Kingdom in Europe.

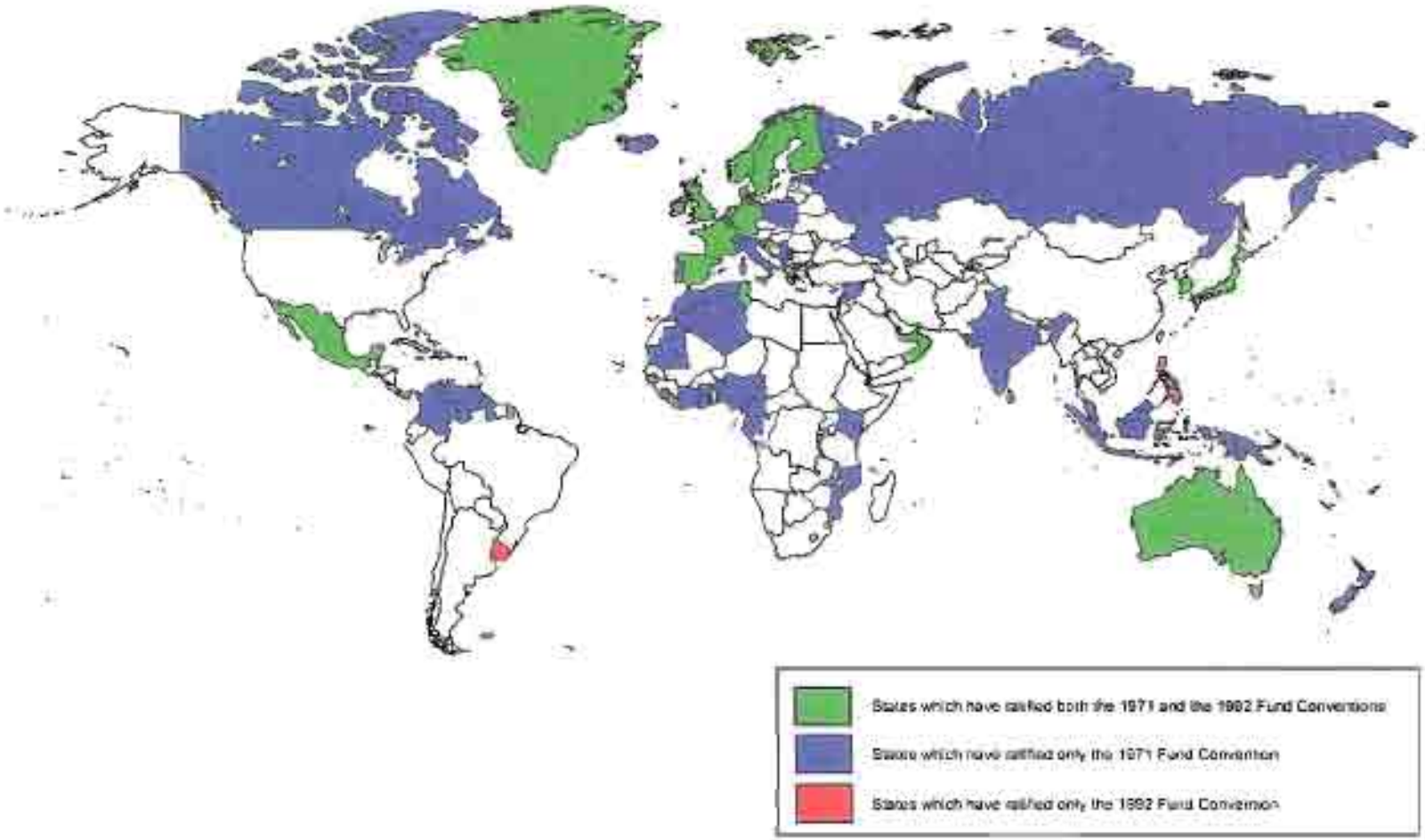
<3> The United Kingdom declared its denunciation to be effective in respect of the United Kingdom of Great Britain and Northern Ireland, the Bailiwick of Jersey, the Isle of Man, the Falkland Islands*, Montserrat and South Georgia and the South Sandwich Islands.

3.2 1992 Fund membership

The 1992 Fund Convention entered into force on 30 May 1996 for nine States. By the end of 1997, 17 States had become Members of the 1992 Fund. Eleven further States have acceded to the 1992 Fund Protocol, bringing the number of Member States to 23 by 16 May 1998 (the date when the States which have ratified the 1992 Fund Protocol will cease to be Members also of the 1971 Fund) and to 28 by the end of 1998, as set out in the table overleaf.

* A dispute exists between the Governments of Argentina and of the United Kingdom of Great Britain and Northern Ireland concerning sovereignty over the Falkland Islands (Malvinas).

STATES WHICH HAVE RATIFIED THE 1971 AND 1992 FUND CONVENTIONS AS AT 31 DECEMBER 1997



1992 Fund Member States as at 31 December 1997		
Australia	Greece	Netherlands<1>
Bahrain	Japan	Norway
Denmark	Liberia	Oman
Finland	Marshall Islands	Sweden
France	Mexico	United Kingdom<2>
Germany	Monaco	

States which have deposited instruments of accession, but for which the 1992 Fund Protocol does not enter into force until date indicated

Tunisia	29 January 1998
Bahamas	1 April 1998
Cyprus	12 May 1998
Ireland	16 May 1998
Republic of Korea	16 May 1998
Spain	16 May 1998
Jamaica	24 June 1998
Philippines	7 July 1998
Uruguay	9 July 1998
United Arab Emirates	19 November 1998
Singapore	31 December 1998

<1> The Kingdom of the Netherlands declared its accession to be effective in respect of the Kingdom in Europe.

<2> The United Kingdom declared its accession to be effective in respect of the United Kingdom of Great Britain and Northern Ireland, the Bailiwick of Jersey, the Isle of Man, the Falkland Islands*, Montserrat and South Georgia and the South Sandwich Islands.

Four States (Jamaica, Philippines, Singapore and Uruguay) deposited instruments of accession to the 1992 Fund Convention in 1997, without having previously been Parties to the 1971 Fund Convention. It appears that many other States which were preparing legislation implementing the 1971 Fund Convention will instead adopt legislation to implement the 1992 Fund Convention and become Members of the 1992 Fund.

It is expected that a number of 1971 Fund Member States will ratify the 1992 Fund Convention in the near future, eg Algeria, Barbados, Belgium, Canada, Ghana, Guyana, Iceland, Morocco, New Zealand, Nigeria, Poland and Sri Lanka. It is likely that a number of other States will also become Members of the 1992 Fund in the near future.

3.3 Relations with Member States

A major reason for the smooth functioning of the system of compensation established by the 1969 and 1971 Conventions is the strong support extended by Governments of Member States to the 1971 and 1992 Funds and their Secretariat. In order to establish and maintain personal contacts between the Secretariat and officials within the national administrations dealing with Fund matters, the Director visits some Member States each year.

* A dispute exists between the Governments of Argentina and of the United Kingdom of Great Britain and Northern Ireland concerning sovereignty over the Falkland Islands (Malvinas).

During 1997 the Director and other Officers visited 12 Member States for discussions with government officials on the Fund Conventions and the operation of the IOPC Funds.

3.4 Relations with non-Member States

The Assemblies of the 1971 Fund and 1992 Fund have granted observer status to a number of non-Member States. Those States which are Members of only one Organisation have observer status with the other Organisation. At the end of 1997 the following States which were not Members of either Organisation had observer status with both.

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

The Secretariat has continued its efforts to increase the number of Member States of the 1992 Fund. To this end, the Secretariat participated in regional seminars on maritime matters in Bahrain, Jamaica, Trinidad and Tobago, Tunisia and Venezuela. The Director and other Officers also participated in other seminars, conferences and workshops on liability and compensation for oil pollution damage and on the operation of the IOPC Funds.

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

3.5 Relations with international organisations and interested circles

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

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

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

The IOPC Funds have particularly close links with the International Maritime Organization (IMO), and co-operation agreements have been concluded between each Fund and IMO. During 1997 the Secretariat represented the IOPC Funds at meetings of the IMO Assembly, Council and Legal Committee.

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

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

The Assembly of the 1992 Fund decided in October 1997 to grant observer status to the European Chemical Industry Council (CEFIC).

In the majority of incidents involving the 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 practically all cases is one of the 'P & I Clubs'. The technical assistance required by the Funds with regard to oil pollution incidents is usually provided by the International Tanker Owners Pollution Federation Limited (ITOPF).

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

4 1971 FUND AND 1992 FUND ASSEMBLIES AND 1971 FUND EXECUTIVE COMMITTEE

The 1971 Fund Assembly and 1992 Fund Assembly each held one regular and one extraordinary session during 1997. All four sessions were held under the chairmanship of Mr Charles Coppolani (France).

4.1 April 1997 Assembly sessions

1971 Fund Assembly: 3rd extraordinary session

The 1971 Fund Assembly held an extraordinary session from 15 to 17 April 1997, convened at the request of the Executive Committee, to consider in particular the levy of contributions for the payment of claims for compensation arising out of the *Nakhodka* incident, which had occurred in Japan on 2 January 1997.

The Assembly decided to levy £15 million in annual contributions to the *Nakhodka* Major Claims Fund, payable by 1 September 1997.

The Assembly adopted a Resolution to the effect that the views of former 1971 Member States should be heard before further decisions were taken concerning the admissibility of claims arising out of incidents which had occurred before those States left the 1971 Fund, that earlier decisions in pending cases should not be overruled without the consent of the majority of the States which were Members of the 1971 Fund when those earlier decisions had been taken, and that persons in former Member States who had contributed to the 1971 Fund should be entitled to participate in an equitable manner in the distribution of the assets which remained when the winding up of the 1971 Fund was completed. Against the background of this Resolution, the Assembly amended the Internal Regulations of the 1971 Fund to the effect that no decisions on matters of principle with regard to the admissibility of claims arising from incidents to which persons in States Parties which have denounced the 1971 Fund Convention have to make contributions, shall be made without those former States Parties having been heard in the Assembly or the Executive Committee.

1992 Fund Assembly: 2nd extraordinary session

An extraordinary session of the 1992 Fund Assembly was held on 16 and 17 April 1997 to consider certain issues arising out of the *Nakhodka* incident.

The Assembly decided to levy £7 million in contributions to the *Nakhodka* Major Claims Fund, payable by 1 September 1997.

4.2 October 1997 Assembly sessions

1971 Fund Assembly: 20th session

The 1971 Fund Assembly held its 20th session from 21 to 24 October 1997. The following major decisions were taken at that session.

- The following States were elected members of the 1971 Fund Executive Committee:

Algeria	Japan
Belgium	Malaysia
Colombia	Morocco
Denmark	Netherlands
France	Poland
Greece	Republic of Korea
India	United Kingdom
Italy	

As an extraordinary session of the Assembly would be held in the spring of 1998 to consider certain issues resulting from the compulsory denunciation of the 1969 Civil Liability Convention and the 1971 Fund Convention by 1992 Fund Member States, the 1971 Fund Assembly decided that the question of the membership of the Executive Committee should be reviewed on that occasion.

- The Assembly noted the External Auditor's Report and his Opinion on the Financial Statements of the 1971 Fund and approved the accounts for the financial period 1 January to 31 December 1996 (cf Section 5.2).

- The Assembly considered an interim report of the consultants who had been engaged to review the working methods within the Secretariat in order to obtain the most efficient and cost effective way of managing the 1971 and 1992 Funds. The Assembly established a steering group to liaise with the consultants through to the preparation of their final report.

- The Assembly decided to reduce the working capital of the 1971 Fund from £10 million to £5 million.

- The Assembly decided to levy 1997 annual contributions for a total amount of £59.2 million, of which £32.2 million was to be paid by 1 February 1998. It was decided that the balance of these levies should be deferred and invoiced, to the extent necessary, during the second half of 1998 (cf Section 6.3).

- In the light of the developments in respect of the *Haven* incident, the Assembly authorised the 1971 Fund Executive Committee to determine at its first session in 1998 whether the conditions for a global settlement laid down by the Assembly had been fulfilled, and if so to approve it (cf Section 9.2).

- The 1971 Fund Assembly agreed to consider that the 1971 Fund Convention should continue to apply to the Hong Kong Special Administrative Region after 30 June 1997, recognising that the consequences of this understanding were that:

  (a) pollution damage caused in the Hong Kong Special Administrative Region after 30 June 1997 and measures taken after that date to prevent or minimise pollution damage in the Region would fall within the scope of the 1971 Fund Convention; and

  (b) entities in the Hong Kong Special Administrative Region would be liable to pay contributions to the 1971 Fund in respect of contributing oil received in the Region as follows:

(i) general fund contributions in accordance with Article 12.2(a) for the period 1 July 1997 to 31 December 1997 and thereafter; and

(ii) major claims fund contributions in accordance with Article 12.2(b) where the incident in question occurred after 30 June 1997.

1992 Fund Assembly: 2nd session

The 1992 Fund Assembly held its 2nd session from 22 to 24 October 1997. The following major decisions were taken at that session.

- The Assembly noted the External Auditor's Opinion on the Financial Statements of the 1992 Fund and approved the accounts for the financial period 30 May to 31 December 1996 (cf Section 5.2).

- The 1992 Fund Assembly considered certain issues relating to the *Nakhodka* and *Osung N°3* cases.

- A Resolution was adopted establishing a 1992 Fund Executive Committee and determining its mandate and composition.

- The Assembly considered the report of a Working Group which had been set up to study the possibilities of introducing alternative dispute settlement procedures (other than litigation before national courts) in the compensation system established by the 1992 Civil Liability Convention and the 1992 Fund Convention for cases where out-of-court settlements cannot be reached. The Assembly also considered a preliminary study carried out by the Director of the possibilities for the 1992 Fund of using arbitration, mediation or conciliation to promote the out-of-court settlement of disputes (cf Section 8).

- The Assembly decided to increase the 1992 Fund's working capital from £7 million to £9 million.

- The Assembly decided to levy 1997 contributions for a total amount of £39.5 million, of which £9.5 million was to be paid by 1 February 1998. It was decided that the balance of these levies should be deferred and invoiced, to the extent necessary, during the second half of 1998 (cf Section 6.6).

Decisions by the Assemblies affecting both the 1971 Fund and the 1992 Fund

The 1971 Fund and 1992 Fund Assemblies took the following major decisions affecting both Organisations.

- The budget appropriations for 1997 were adopted, with an administrative expenditure for the joint Secretariat totalling £1 791 820.

- It was decided that the Director should study the question of extending the scope of the audit of the IOPC Funds.

4.3 1971 Fund Executive Committee

Mr Willem Oosterveen

The 1971 Fund Executive Committee held five sessions during 1997, all under the chairmanship of Mr Willem Oosterveen (Netherlands). The 52nd session was held on 18 and 19 February, the 53rd session from 14 to 17 April, the 54th session on 16 and 17 June, the 55th session from 20 to 22 October and the 56th session on 24 October 1997.

The main decisions taken by the 1971 Fund Executive Committee at these sessions are reflected in Section 9.2 in the context of the particular incidents.

52nd session

The discussions at the 52nd session of the Executive Committee concentrated on questions relating to the *Haven* (Italy, 1991), *Kihnu* (Estonia, 1993), *Sea Empress* (United Kingdom, 1996) and *Nakhodka* (Japan, 1997) incidents.

53rd session

At its 53rd session, the Executive Committee continued its consideration of the *Sea Empress* and *Nakhodka* incidents. In addition, it considered the *Sea Prince* and *Honam Sapphire* incidents (both Republic of Korea, 1995) as well as the *Nissos Amorgos* (Venezuela, 1997) and *Osung N°3* (Republic of Korea and Japan, 1997) incidents.

54th session

The 54th session of the Executive Committee was convened to consider questions relating to the *Nissos Amorgos* incident. The Committee also examined certain aspects of the *Sea Empress*, *Nakhodka*, *Osung N°3* and *Aegean Sea* (Spain, 1992) incidents.

55th session

The Executive Committee at its 55th session continued its consideration of the *Aegean Sea*, *Sea Prince*, *Sea Empress*, *Nakhodka*, *Nissos Amorgos* and *Osung N°3* incidents. The Committee also discussed the *Yeo Myung* and *Yuil N°1* incidents (both Republic of Korea, 1995). The Committee was informed of the situation in respect of claims arising out of other incidents involving the 1971 Fund and took note of the settlements made by the Director.

56th session

At its 56th session, the Executive Committee considered in particular the *Irving Whale* (Canada, 1970), *Diamond Grace* (Japan, 1997) and *Evoikos* (Singapore, 1997) incidents.

5 ADMINISTRATION OF THE IOPC FUNDS

5.1 Secretariat

The 1971 Fund and 1992 Fund have a joint Secretariat. Until 15 May 1998, the 1971 Fund Secretariat will administer also the 1992 Fund. On 16 May 1998, a 1992 Fund Secretariat will be created, and it will thereafter administer both the 1971 Fund and the 1992 Fund.

At the end of 1997 the joint Secretariat of the IOPC Funds was composed of the Director and 17 other staff members.

The Finance Officer, Mr Sampson Nte, who had joined the Secretariat in 1979, retired on 31 December 1997. At their October sessions, the Assemblies of both Organisations expressed their gratitude to Mr Nte for his outstanding service over 18 years and in particular for his having established and developed the financial operation of the Organisations. Mr Nte is succeeded as Finance Officer by Mr Ranjit Pillai.

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

In the light of the changing nature of the work of the Secretariat, the need to administer two Funds, and the workload on staff members, the 1971 Fund Assembly instructed the Director, in October 1996, to undertake a review of the working methods within the Secretariat, with the help of an external consultant, in order to obtain the most efficient and cost effective way of managing the IOPC Funds. The final report of the consultants engaged is expected early in 1998.

5.2 Financial statements for 1996

1971 Fund

The financial statements of the 1971 Fund for the period 1 January to 31 December 1996 were approved by the 1971 Fund Assembly in October 1997. Statements summarising the information contained in the 1971 Fund's audited financial statements for this period are given in Annexes III - XVII to this Report.

As in previous years, the 1971 Fund's accounts were audited by the Comptroller and Auditor General of the United Kingdom. The Auditor's report and his opinion on the financial statements for 1996 are reproduced in full as Annexes XVIII and XIX.

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 one million Special Drawing Rights (SDR), at present approximately £816 000.

The total income for the General Fund (Annex III) in 1996 was £7 372 894, of which £1 070 460 was derived from interest on the investment of the 1971 Fund's assets (cf Section 5.4). Annual contributions accounted for the major part of the General Fund's income. The

administrative expenditure in 1996 totalled £975 953, while expenditure on minor claims totalled £3 478 717. There was a surplus of £2 697 536 at the end of 1996.

On 1 February 1996 reimbursements were made to those persons who had contributed to the *Kasuga Maru N°1* Major Claims Fund and the *Rio Orinoco* Major Claims Fund (Annexes IV and V). The respective balances on these Major Claims Funds were transferred to the General Fund, and these Major Claims Funds were closed.

The *Haven* Major Claims Fund (Annex VI) had a yield of £1 523 134 on the investment of its assets. Payments of fees and expenses totalled £2 714 352, leaving a balance on this Major Claims Fund of £28 007 983 as at 31 December 1996.

Contributions were received into the *Braer*, *Sea Prince*, *Yeo Myung*, *Yuil N°1* and *Senyo Maru* Major Claims Funds (Annexes VIII, XII, XIII, XIV and XV) during 1996. Compensation payments were made from the *Sea Prince*, *Yuil N°1* and *Senyo Maru* Major Claims Funds during the year, whereas no such payments were made from the *Braer* Major Claims Fund. No contributions were received in 1996 in respect of the *Aegean Sea*, *Keumdong N°5* and *Toyotaka Maru* Major Claims Funds (Annexes VII, X and XI). However, compensation payments were made in respect of these three Funds. There were no transactions of significance during 1996 in respect of the *Taiko Maru* Major Claims Fund (Annex IX).

The balance sheet of the 1971 Fund as at 31 December 1996 is reproduced in Annex XVI. The net assets amounted to £18 086 317. Details of the contingent liabilities of the 1971 Fund are given in a schedule to the financial statements. As at 31 December 1996 the contingent liabilities were estimated at £276 846 632 in respect of claims for compensation arising from 20 incidents.

1992 Fund

The financial statements of the 1992 Fund for the period 30 May to 31 December 1996 were approved by the 1992 Fund Assembly in October 1997. Statements summarising the information contained in the 1992 Fund's audited financial statements for this period are given in Annexes XX and XXI to this Report.

The 1992 Fund's accounts were audited by the Comptroller and Auditor General of the United Kingdom. The Auditor's opinion on the financial statements for 1996 is reproduced in full as Annex XXII.

Separate Major Claims Funds are established for incidents for which the total amount payable by the 1992 Fund exceeds four million Special Drawing Rights (SDR), at present approximately £3.3 million. No such Major Claims Fund had been established by 31 December 1996.

There was no income for the General Fund (Annex XX) in 1996, resulting in a deficit of £242 123 at the end of 1996.

5.3 Financial statements for 1997

The financial statements of the 1971 Fund and 1992 Fund for the period 1 January to 31 December 1997 will be submitted to the External Auditor in the spring of 1998, and will be

presented to the respective Assemblies for approval at their sessions in October 1998. These accounts will then be reproduced in the IOPC Funds' 1998 Annual Report.

5.4 Investment of funds

Investment policy

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

1971 Fund

Investments were made by the 1971 Fund during 1997 with a number of banks and building societies in the United Kingdom. As at 31 December 1997 the 1971 Fund's portfolio of investments totalled £123 million plus ¥3 220 million (£15 million). The portfolio was made up of the assets of the 1971 Fund, the Staff Provident Fund and a credit balance on the contributors' account.

Interest due in 1997 on the investments amounted to £8.2 million on an average capital of £133 million.

1992 Fund

Until late January 1997, the 1992 Fund operated on the basis of funds made available by the 1971 Fund, to be repaid on 1 February 1997 when the 1992 Fund has received contributions. Since late January 1997, when the first contributions were received, funds were placed on term deposits with leading London banks and building societies.

Interest due in 1997 on the investments amounted to £170 000 on an average capital of £7 million.

Investment Advisory Body

In October 1994 the 1971 Fund Assembly established an Investment Advisory Body, consisting of experts with specialist knowledge in investment matters, to advise the Director in general terms on such matters. An Investment Advisory Body for the 1992 Fund was established in October 1996. The 1992 Fund Assembly appointed the members of the 1971 Fund's Investment Advisory Body as members also of its own Body.

6 CONTRIBUTIONS

6.1 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

At their sessions in October 1997 the Assemblies of the IOPC Funds noted that there were still a significant number of 1971 Fund Member States which had failed to submit their reports for one or more years, although there had been considerable improvements during 1997, and that some States had not submitted any reports since becoming a Member of the 1971 Fund. The 1992 Fund Assembly considered it important to make efforts to prevent a situation from arising where the operation of the 1992 Fund would be impaired due to the fact that 1992 Fund Member States did not submit their reports.

The 1992 Fund Assembly considered that it was an important obligation of a 1992 Fund Member State to submit reports on contributing oil receipts and that failure to submit reports constituted a breach of this obligation under the 1992 Fund Convention. The Assembly took the view that States which failed to fulfil this obligation should in principle be ineligible for election to the 1992 Fund's Executive Committee and of holding office. It was recognised, however, that there might be cases in which States could have valid reasons for having been unable to fulfil their obligations to submit oil reports to the 1992 Fund, and that it would therefore be inappropriate to impose automatically the sanction of ineligibility in all cases of the non-submission of reports. Furthermore, it was considered that this sanction should be imposed on States only in cases of continued non-fulfilment of the obligation to report. It was agreed that, in the case of incomplete reports, sanctions should be imposed only if the reports were incomplete in a significant respect.

On the question of whether the Funds could refuse to pay compensation for pollution damage caused in a State which had not fulfilled its obligations in respect of the submission of oil reports, at least as regards claims from the Government or other public bodies, the Assemblies of both Organisations considered that the Fund Conventions did not allow the Funds to withhold payments of compensation in such cases, whether to the Government and other public bodies, or to other claimants. It was noted by the 1992 Fund Assembly that, if the approach were to be taken that all claimants in such States would be refused compensation, victims of oil pollution in a particular State, such as fishermen and small businesses, would be penalised for the State's non-fulfilment of its obligations.

The Assemblies of both Organisations considered the question of whether, in the case of a State which had not submitted its reports on oil receipts during a given year, contributions to be based on quantities received during that year could instead be invoiced on the basis of the figures of the latest reports submitted by the State. The Assembly took the view that the obligation to pay

contributions arose under Article 10 of the 1971 and 1992 Fund Conventions, respectively, when an entity had received more than 150 000 tonnes of contributing oil in a calendar year and that this obligation existed whether or not the State in question had submitted the relevant oil reports. The Assemblies decided that this matter needed further consideration and instructed the Director to examine how the obligation to pay contributions could be enforced when a State had failed to submit its contributing oil reports.

Initial and annual contributions

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

Initial contributions are payable when a State becomes a Member of the 1971 Fund. Contributors pay a fixed amount per tonne of contributing oil received during the year preceding that in which the 1971 Fund Convention entered into force for the State in question. This amount was fixed by the Assembly at 0.04718 (gold) francs per tonne (0.003145 SDR), which at 31 December 1997 corresponded to £0.0025658.

Annual contributions are levied by each Organisation to meet the anticipated payments of compensation and the estimated administrative expenses during the forthcoming year and, in the case of the 1971 Fund, payments of indemnification.

Capping of contributions to the 1992 Fund

The 1992 Fund Convention introduced a system for capping contributions for a certain period. If the total contributions in respect of a levy to the General Fund or a Major Claims Fund for all contributors in any one Member State of the 1992 Fund exceed 27.5% of the total amount of that particular levy, then the levies for contributors in that State are reduced *pro rata* so that they together equal 27.5% of the total levy to that fund. The total amount deducted from contributors in the capped State is borne by all other contributors to the fund in question.

The capping of contributions to the 1992 Fund will cease to apply in respect of decisions to levy contributions taken by the 1992 Fund Assembly after the reports on contributing oil submitted by Member States indicate that the total quantity received in all Member States exceeds 750 million tonnes. This quantity was reached in May 1997. The capping procedure was applied to the 1996 contributions as well as to the 1997 contributions levied by the Assembly in October 1997.

Deferred invoicing system

In June 1996 the Assemblies introduced a system of deferred invoicing for the two Organisations. Under this system the Assembly fixes the total amount to be levied in contributions for a given calendar year, but may decide that only a specific lower amount should be invoiced for payment by 1 February 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. The system was first applied by both the 1971 Fund and the 1992 Fund for their 1996 annual contributions (cf Sections 6.3 and 6.6).

Assembly in session
(photograph: John Ross)

6.2 1971 Fund: 1996 annual contributions

In October 1996 the Assembly decided not to levy any 1996 annual contributions to the General Fund. It was decided that £5 million should be credited to contributors following a decision to reduce the working capital of the 1971 Fund from £15 million to £10 million.

The Assembly also decided to levy 1996 annual contributions to three Major Claims Funds for a total amount of £85 million. It was decided that £23 million should be due for payment by 1 February 1997 and that the balance should be deferred. In addition, the Assembly decided that reimbursements totalling £8.2 million should be made to the persons who had paid contributions to two Major Claims Funds and that these reimbursements should be made on the date of payment of the deferred levy.

At an extraordinary session, held in April 1997, the Assembly decided to levy £15 million to the *Nakhodka* Major Claims Fund as 1996 annual contributions for payment by 1 September 1997.

In accordance with the authority given to him by the Assembly at its October 1996 session, the Director decided to invoice a total of £31 million to two Major Claims Funds for payment by 1 September 1997.

As at 31 December 1997, 97% of the 1996 annual contributions to the three Major Claims Funds had been paid.

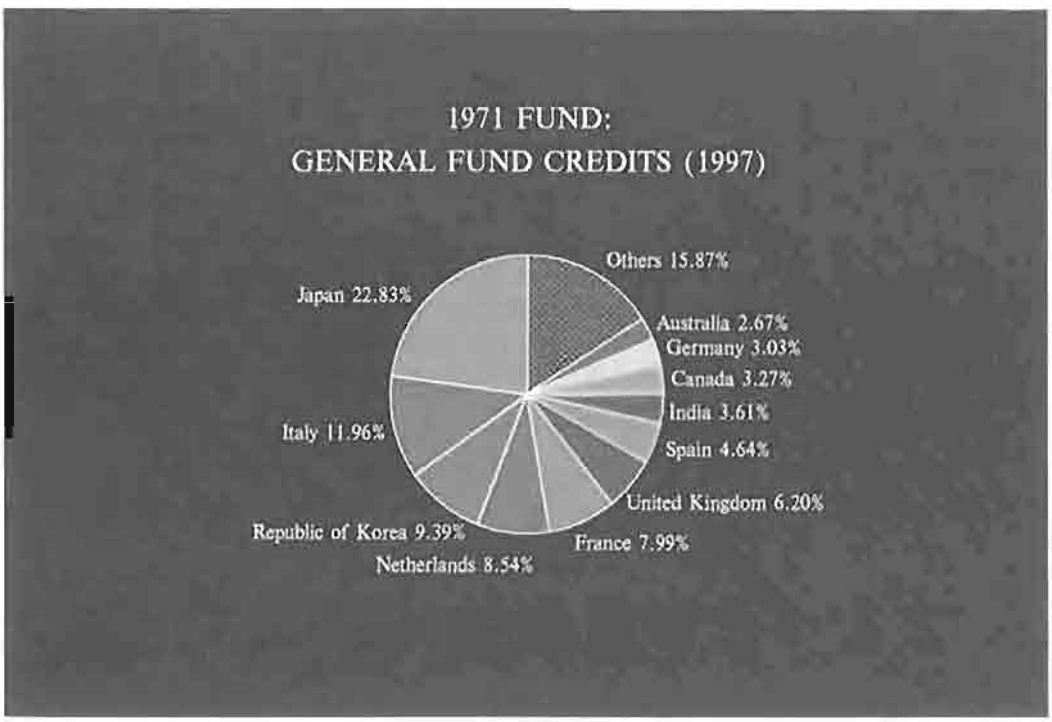
6.3 1971 Fund: 1997 annual contributions

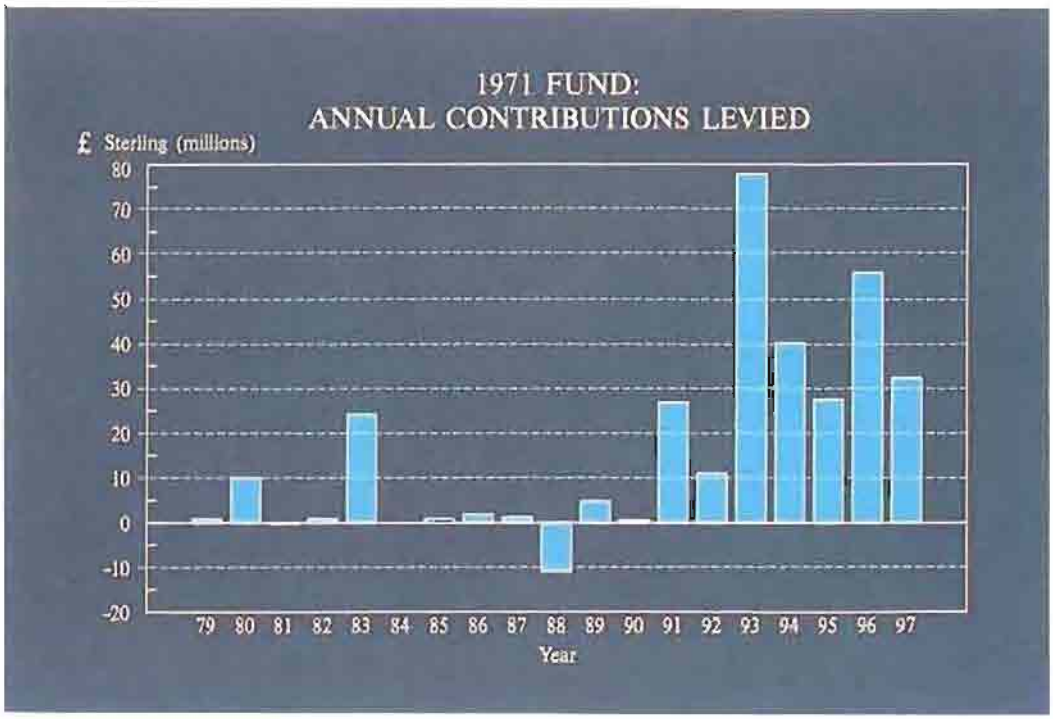
In October 1997 the Assembly decided to credit contributors in respect of the 1997 General Fund for a total of £2 million on 1 February 1998.

The Assembly took note of the fact that all claims and expenses arising out of the *Senyo Maru* incident had been paid. Since the amount remaining in this Major Claims Fund was considered to be substantial, the Assembly decided, pursuant to the Financial Regulations, that £2.8 million should be reimbursed to the contributors to that Major Claims Fund on 1 February 1998 and that the balance should be transferred to the General Fund.

The Assembly also decided to levy 1997 annual contributions to four Major Claims Funds for a total amount of £64 million. It was decided that part of the levies to each of the Major Claims Funds (£37 million) should be due for payment by 1 February 1998, and that the balance should be deferred. The Director was authorised by the Assembly to decide whether to invoice all or part of the amounts of the deferred levies for payment during the second half of 1998.

The 1997 General Fund credit is based on the quantities of contributing oil received in 1996 in States which are Members of the 1971 Fund (Annex XXIII). The shares of the 1997 reimbursements from the General Fund in respect of Member States are illustrated by the chart below.





6.4 1971 Fund: Annual contributions over the years

The payments made by the 1971 Fund 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 Fund has fluctuated from one year to another, as illustrated in the graph above.

Details of the 1971 Fund's 1996 and 1997 annual contributions are set out in the table overleaf.

As for contributions levied by the 1971 Fund in respect of previous years, £864 000 was outstanding as at 31 December 1997.

In October 1997 the 1971 Fund Assembly expressed its satisfaction with the situation regarding the payment of contributions.

Annual Contribution Year	Assembly Decision		General Fund/Major Claims Fund		Total amount due $	Oil year	Levy per tonne $
1996	October 1996	1st levy	General Fund (credit)		-5 000 000	1995	-0.0042173
			Sea Prince/ Yeo Myung/ Yuil N°1	Republic of Korea Republic of Korea Republic of Korea	13 000 000	1994	0.0108112
			Sea Empress	United Kingdom	10 000 000	1995	0.0084346
		2nd levy	*Sea Prince/ Yeo Myung/ Yuil N°1*	Republic of Korea Republic of Korea Republic of Korea	11 000 000	1994	0.0091411
			Sea Empress	United Kingdom	20 000 000	1995	0.0168504
			Nakhodka	Japan	15 000 000	1996	0.0121504
			Credit *Taiko Maru*	Japan	-3 500 000	1992	-0.0033489
			Credit *Toyotoku Maru*	Japan	-4 300 000	1993	-0.0042633
1997	October 1997	1st levy	General Fund (credit)		-2 000 000	1996	-0.0016356
			Sea Prince/ Yeo Myung/ Yuil N°1	Republic of Korea Republic of Korea Republic of Korea	3 000 000	1994	0.0025025
			Nakhodka	Japan	30 000 000	1996	0.0245100
			Nissos Amorgos	Venezuela	2 000 000	1996	0.0016348
			Osung N°3	Republic of Korea/Japan	2 000 000	1996	0.0016348
			Credit *Sanyo Maru*	Japan	-2 900 000	1994	-0.0023357
		2nd levy	*Sea Prince/ Yeo Myung/ Yuil N°1*	Republic of Korea Republic of Korea Republic of Korea	*Maximum:* <1> 11 000 000	1994	
			Nakhodka	Japan	5 000 000	1996	
			Nissos Amorgos	Venezuela	3 000 000	1996	
			Osung N°3	Republic of Korea/Japan	8 000 000	1996	

<1> To be invoked to the extent required for payments in the second half of 1998.

6.5 1992 Fund: 1996 annual contributions

In October 1996 the 1992 Fund Assembly decided to levy 1996 contributions to the General Fund for a total of £7 million, of which £4 million was to be paid by 1 February 1997. It was decided that the balance of this levy should be deferred. The Director was authorised to decide whether to invoice all or part of the deferred levy for payment during the second half of 1997. No levy was made to any Major Claims Fund.

At an extraordinary session, held in April 1997, the Assembly decided to levy £7 million to the *Nakhodka* Major Claims Fund as 1996 contributions for payment by 1 September 1997.

In accordance with the authority given to him by the Assembly at its 1st extraordinary session, the Director decided to invoice a further £3 million to the General Fund for payment by 1 September 1997.

The total contributions payable to the General Fund (both in the first and the deferred levies) and to the *Nakhodka* Major Claims Fund in respect of contributors in Japan would have exceeded 27.5% of the respective total levy. It was therefore necessary to apply the capping procedure described in Section 6.1 above.

As at 31 December 1997, 98% of the 1996 contributions to the 1992 Fund had been received.

6.6 1992 Fund: 1997 annual contributions

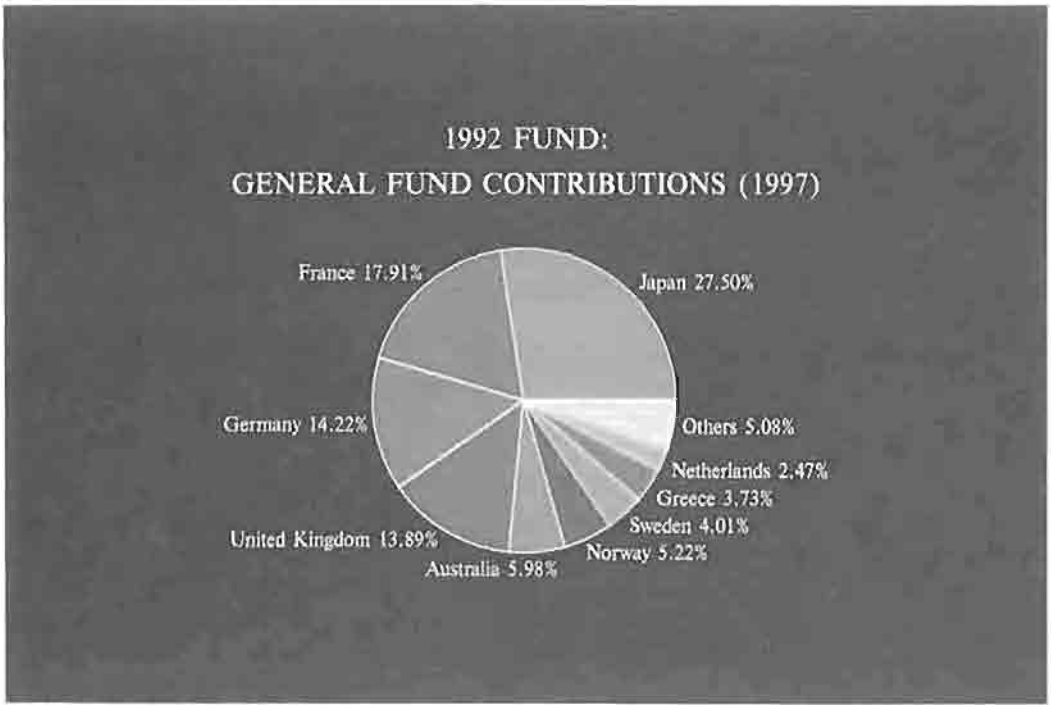
In October 1997 the Assembly decided to levy 1997 contributions to the General Fund for a total of £6 million.

The Assembly also decided to levy £30 million in 1997 contributions to the *Nakhodka* Major Claims Fund. It was decided that the whole of this levy should be deferred. The Director was authorised by the Assembly to decide whether to invoice all or part of the deferred levy for payment during the second half of 1998.

The Assembly decided to make a levy of £3.5 million to an *Osung N°3* Interim Major Claims Fund, as 1997 contributions (cf Section 9.2). It was decided that this levy should be due for payment by 1 February 1998.

The Assembly's decisions are summarised in the table below.

Fund	Oil year	Total levy £	Payment by 1 February 1998		Maximum deferred levy
			Levy £	Levy per tonne £	Levy £
General Fund	1996	6 000 000	6 000 000	0.0088365	0
Nakhodka	1996	30 000 000	0	0.0000000	30 000 000
Osung N°3	1996	3 500 000	3 500 000	0.0052553	0
Total		39 500 000	9 500 000		30 000 000



The 1997 General Fund levy is based on the quantities of contributing oil received in 1996 in States which are Members of the 1992 Fund (Annex XXIV). The shares of the 1997 contributions to the General Fund in respect of 1992 Fund Member States are illustrated by the chart shown above.

7 THE VOLUNTARY INDUSTRY SCHEMES

At the same time as the 1969 Civil Liability Convention and the 1971 Fund Convention were negotiated, two corresponding voluntary industry schemes were adopted. These two schemes were known as TOVALOP (Tanker Owners Voluntary Agreement concerning Liability for Oil Pollution) and CRISTAL (Contract Regarding a Supplement to Tanker Liability for Oil Pollution). The purpose of these industry schemes was to provide benefits comparable to those available under the Civil Liability Convention and the Fund Convention in States which had not ratified those Conventions. Both TOVALOP and CRISTAL were intended to be interim solutions and to remain in operation only until the international Conventions had worldwide application.

In November 1995 the industries concerned decided that the voluntary agreements would not be renewed when their present terms ended on 20 February 1997. It was believed by these industries that the relevance of the interim TOVALOP and CRISTAL agreements had eroded over the years, as more States had become Parties to the 1969 Civil Liability Convention and the 1971 Fund Convention. The decision to discontinue TOVALOP and CRISTAL reflected the rapid growth in the acceptance by maritime States of the two Conventions and of the 1992 Protocols thereto, which offer significant advantages over the voluntary agreements for those claiming compensation for oil pollution damage. The industries considered that the continued existence of the voluntary agreements could slow progress by acting as a disincentive to States which had not yet become Parties to the Protocols.

As a result, victims of oil pollution damage are not able to receive any compensation from the voluntary industry schemes for incidents occurring after 20 February 1997.

8 1992 FUND WORKING GROUP ON ALTERNATIVE DISPUTE SETTLEMENT PROCEDURES

In October 1996, the 1992 Fund Assembly decided to set up an intersessional Working Group to study the possibilities of introducing alternative settlement procedures in the compensation system established by the 1992 Civil Liability Convention and the 1992 Fund Convention for cases in which it had not been possible to reach out-of-court settlements.

The Working Group met on 16 and 17 April 1997 under the chairmanship of Mr Alfred Popp (Canada).

The Working Group studied three options, namely:

(1) states would present claims for compensation on behalf of national claimants;

(2) a special international body (tribunal) should be established to deal with all claims for compensation; and

(3) an independent compensation board should be established to deal with all claims before their submission to national courts, if necessary.

The Working Group concluded that there was no support for Option 1. Some interest was expressed in Option 2, but that Option was not acceptable for a number of States for constitutional and other reasons. Some interest was also shown in respect of Option 3, although there was not sufficient support to justify a further study of that Option at this stage. It was also generally considered that a cautious approach should be taken to any solution which would require amendments to the 1992 Civil Liability Convention and the 1992 Fund Convention and that Options 2 and 3 should be considered only in the event of a general revision of the Conventions.

At the invitation of the Working Group, the Director undertook a preliminary study of the different ways in which the 1992 Fund might promote the out-of-court settlement of disputes. The possibilities considered were arbitration, mediation and conciliation. The Director also examined the claims settlement procedures of commercial insurers, such as the P & I Clubs, and the question of whether the experience gained from commercial insurers could be used to improve the claims settlement procedures applied by the 1992 Fund.

The 1992 Fund Assembly considered the Working Group's Report and the results of the Director's study at its October 1997 session.

The Assembly noted that P & I Clubs were able to take into account commercial factors and public relations aspects of a settlement, and that Clubs might consider a commercial settlement preferable to risking a court decision which might create an unfavourable precedent. However, in view of the need for the 1992 Fund to abide by the definitions laid down in the Conventions, as interpreted by the Fund's bodies, the Assembly decided that it would not be appropriate for the 1992 Fund to take such factors into account for the purpose of claim settlements.

The Assembly noted that arbitration might in many cases be a quicker and more convenient procedure for the settlement of disputes than court proceedings. It was recognised, however, that it would often be difficult to use arbitration to settle disputes between the 1971 Fund/1992 Fund and claimants. The Assembly took the view that the benefits of submitting claims

to arbitration would be limited to certain particular cases. It was suggested that it might, for example, be appropriate to submit to binding arbitration an individual large claim or a number of claims which gave rise to a particular question of principle where it was clear that the total amount of the claims would not exceed the maximum amount of compensation available. It was recognised that claimants might be reluctant to submit their claims to arbitration and might insist on having claims decided by the national courts in their own country.

In view of the position taken by the Assembly and the Executive Committee of the 1971 Fund (and endorsed by the 1992 Fund Assembly) that a claim is admissible only if it falls within the definitions of 'pollution damage' or 'preventive measures' laid down in the Conventions as interpreted by the 1971 Fund bodies, the Assembly recognised that the scope for the 1992 Fund to submit claims to arbitration would be limited.

It was suggested that many of the techniques generally used in mediation and conciliation were already employed by the 1971 and 1992 Funds in their efforts to reach out-of-court settlements. Although it was recognised that it might be difficult to use such procedures, it was nevertheless decided that the question should be examined further.

9 SETTLEMENT OF CLAIMS

9.1 Overview

1971 Fund claims settlements 1978 – 1997

Since its establishment in October 1978, the 1971 Fund has, up to 31 December 1997, been involved in the settlement of claims arising out of 89 incidents. The total compensation paid by the 1971 Fund to date amounts to over £166 million.

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

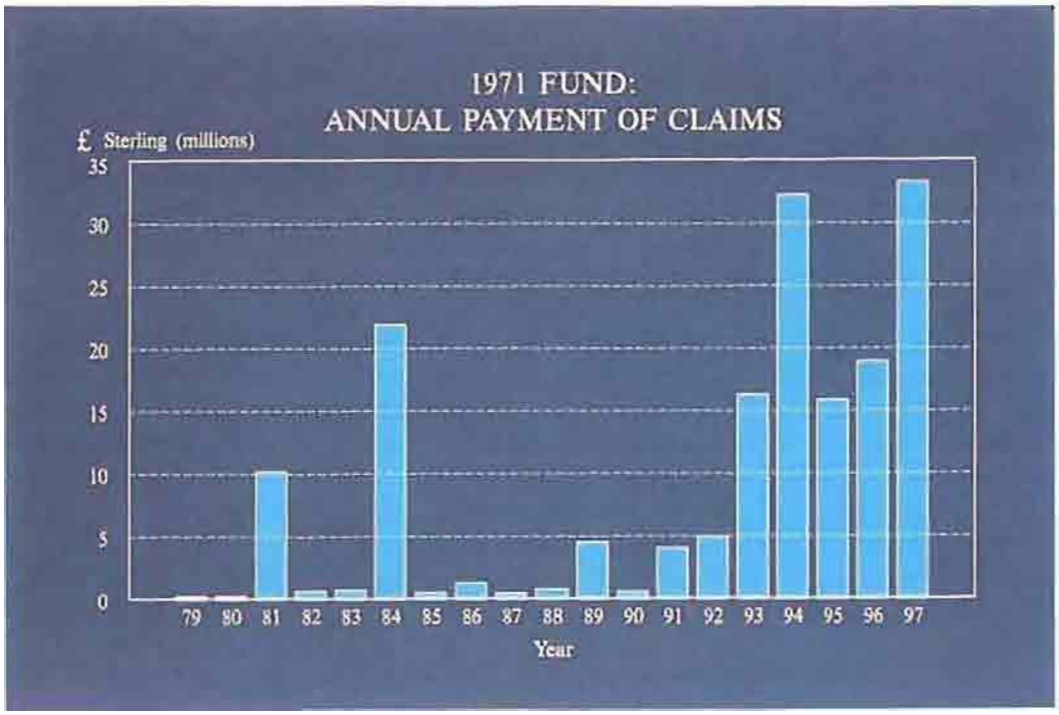
Ship	Place of Incident	Year	1971 Fund Payments
Antonio Gramsci	Sweden	1979	£9.2 million
Tanio	France	1980	£18.7 million
Ondina	Federal Republic of Germany	1982	£3.0 million
Thuntank 5	Sweden	1986	£2.4 million
Rio Orinoco	Canada	1990	£6.2 million
Tsuko Maru	Japan	1993	£7.2 million
Toyotaka Maru	Japan	1994	£5.1 million

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

Ship	Place of Incident	Year	1971 Fund Payments
Haven	Italy	1991	£2.0 million
Aegean Sea	Spain	1992	£4.1 million
Braer	United Kingdom	1993	£40.6 million
Keumdong N°5	Republic of Korea	1993	£9.7 million
Sea Prince	Republic of Korea	1995	£6.3 million
Yuil N°1	Republic of Korea	1995	£7.4 million
Sea Empress	United Kingdom	1996	£5.9 million
Nakhodka	Japan	1997	£22.6 million

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

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



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

Incidents in 1997 involving the 1971 Fund

During 1997 11 incidents occurred that have given or may give rise to claims against the 1971 Fund, namely the *Nakhodka*, *Tsubame Maru N°31*, *Daiwa Maru* and *Diamond Grace* incidents which occurred in Japan, the *Nissos Amorgos* and *Plate Princess* incidents which took place in Venezuela, the *Jeong Jin N°101*, *Osung N°3* and *Kyungnam N°1* incidents which occurred in the Republic of Korea, the *Katja* which happened in France and the *Evoikos* incident which took place in Singapore. In addition, the 1971 Fund was notified in 1997 of a legal action in the *Irving Whale* incident, the tanker having sunk in Canada in 1970 and been refloated in 1996. Brief information on some of these incidents is set out below.

Whilst proceeding from China to the Russian Federation, the *Nakhodka* broke up in heavy seas, spilling some 6 200 tonnes of oil. The stern section sank and the upturned bow section grounded near the shore, causing heavy contamination of the shoreline. Claims totalling £147 million have been received, and so far payments totalling £22.6 million have been made by

the 1971 Fund. Further claims are expected. Compensation is available also from the 1992 Fund in respect of claims arising out of this incident.

The *Nissos Amorgos* ran aground in the Gulf of Venezuela, spilling an estimated 3 600 tonnes of crude oil. Oil spread along 45 kilometres of the coast. Claims totalling £7.1 million have been presented to the Claims Agency established in Maracaibo by the 1971 Fund and the shipowner's insurer. Claims have so far been approved for £1.4 million, and the settlement amounts have been paid in full by the shipowner's insurer. Claims for significant amounts, including a claim of £37 million by the Republic of Venezuela and a claim of £79 million by a fishermen's union, have been lodged in court. Further claims are expected.

The *Osung N°3* was carrying 1 700 tonnes of oil when it ran aground and sank, spilling an unknown quantity of the oil, which affected both the Republic of Korea and Japan. It has not been possible to assess the quantity of oil remaining on board. Operations to remove the oil from the sunken tanker, as well as the wreck itself, are being considered by the Korean authorities. Claims totalling £466 000 have been received from claimants in Korea and these claims are being examined. There may be further claims in Korea from the fishery and mariculture sectors. Claims have been submitted in Japan totalling £4.4 million for clean-up and loss of income suffered by fishermen. Further claims are expected. Compensation to claimants in Japan will also be available under the 1992 Fund Convention, if required.

The *Diamond Grace* grounded in Tokyo Bay (Japan), spilling some 1 500 tonnes. Claims for compensation totalling £5.7 million are being examined, and further claims are expected. It is possible, however, that the total amount of the claims will not exceed the shipowner's limitation amount.

The *Kaija* struck a quay in the Port of Le Havre, and 190 tonnes of heavy fuel oil was spilled. Oil contaminated some 15 kilometres of quay within the port, as well as beaches to the north and south of Le Havre and a marina in the port area. Very few quantified claims have been received so far. It is unlikely, however, that the claims will exceed the shipowner's limitation amount of £4.7 million.

The tanker *Evoikos* collided with another tanker in the Strait of Singapore. It is estimated that some 29 000 tonnes of heavy fuel oil was spilled from the *Evoikos*. The oil drifted in the waters of Singapore, Malaysia and Indonesia. It is not yet possible to make any estimate of the level of claims which might be submitted.

The barge *Irving Whale* sank in 1970, while being towed by a tug. Heavy fuel oil was released from the barge, and oil has continued to seep from the barge over the years. Following an environmental assessment, the barge was refloated in 1996. A small quantity of oil was released during the refloating operation. The cost of the refloating and clean-up operations amounted to some £18 million. The Canadian Government has taken legal action against the owners and operators of the *Irving Whale* claiming compensation for these costs, and has notified the 1971 Fund of the legal action. The 1971 Fund has taken the view that the 1969 Civil Liability Convention and the 1971 Fund Convention do not apply to damage sustained after their entry into force resulting from an incident which occurred before that time. The 1971 Fund considers that the lifting operations carried out in 1996 constitute part of the incident which started with the sinking of the barge in 1970, when the 1971 Fund Convention was not in force. Accordingly, the 1971 Fund does not consider that the Canadian Government's claim in this case falls within the scope of application of the 1971 Fund Convention.

Incidents in previous years with outstanding claims against the 1971 Fund

As at 31 December 1997 there were outstanding third party claims in respect of 13 incidents involving the 1971 Fund which had occurred before 1997. In addition, further third party claims may be submitted in respect of one incident. The situation in respect of some of these incidents is summarised below.

The *Haven* incident (Italy, April 1991) caused serious oil pollution in Italy and also affected France and Monaco. The claims admitted in legal proceedings total £74 million and include a claim of £15.4 million by the Italian Government relating to environmental damage. The 1971 Fund has lodged opposition in respect of a number of claims. The 1971 Fund has maintained in the legal proceedings in Italy that the majority of the claims arising out of the *Haven* incident became time-barred as regards the 1971 Fund on or shortly after 11 April 1994. The 1971 Fund has paid £2.1 million in respect of claims which it does not consider to be time-barred. The shipowner and his insurer have settled and paid all claims admitted in the legal proceedings except for that of the Italian Government. There are also some claims which have recently been pursued in court. During 1997 efforts continued to be made towards reaching a global settlement in the *Haven* case. Such a global settlement would, as regards the 1971 Fund, have to respect the following conditions: the maximum amount payable under the 1969 Civil Liability Convention and the 1971 Fund Convention is 60 million SDR, claims are admissible only if a claimant has suffered a quantifiable economic loss, and claims for damage to the marine environment *per se* are not admissible. A proposal for a global settlement has been made by the 1971 Fund and the shipowner's insurer. The insurer has made an offer to the Italian Government to make an *ex gratia* payment so as to enable the Government to consider positively a settlement within the terms of the 1971 Fund's offer. In October 1997, the Italian delegation stated that the proposal presented by the UK Club, in conjunction with the offer made by the Fund, satisfied the minimum requisites requested by the Italian Government in order to examine the possibility of accepting a global settlement for the *Haven* incident, and that the Italian Government would therefore be in a position to evaluate the matter positively. It was mentioned that the decision of the Government would have to be submitted to the Italian Parliament.

Claims arising from the *Aegean Sea* incident (Spain, December 1992) have been submitted for a total amount of some £99 million. The 1971 Fund has paid approximately £4.2 million in compensation, and the shipowner's P & I insurer has paid some £4.0 million. In June 1997 the Court of Appeal upheld the judgement of the Criminal Court of first instance with regard to criminal and civil liability and on the claims for compensation presented in the criminal proceedings. The Courts held *inter alia* that the evidence submitted by the majority of the claimants was insufficient to substantiate the amount of the losses suffered and those claims were referred for quantification to the procedure for the execution of the Court of Appeal's judgement. There is still a high degree of uncertainty as to the total amount of the established claims. The 1971 Fund is considering complex issues relating to the distribution of liability and recourse arising from the Court of Appeal's judgement in respect of the civil liabilities of the parties concerned, in particular as regards the distribution of liability between the 1971 Fund and the Spanish State.

As regards the *Braer* incident (United Kingdom, January 1993), the 1971 Fund has paid approximately £41 million in compensation, and the shipowner's P & I insurer has paid some £4.8 million. Further claims amounting to £5.2 million have been agreed. In addition, claims amounting to £80 million became the subject of legal proceedings in Edinburgh. A number of the claims have been withdrawn and out-of-court settlements have been reached in respect of others, so that the claims remaining in court now total £48 million. The total amount of the claims presented exceeds the maximum available under the 1969 Civil Liability Convention and the 1971

Fund Convention, *viz* 60 million SDR (£49 million). In view of the uncertainty as regards the outstanding claims, the Executive Committee decided in October 1995 to suspend any further payments of compensation. Only limited progress has been made in the court proceedings.

The *Keumdong N°5* incident (Republic of Korea, September 1993) has also given rise to a large number of claims which originally totalled some £127 million. All claims relating to the clean-up operations have been settled and paid for a total amount of £2 million. Claims by fishermen have been agreed for some £2 million and further claims in this category, amounting to £8 million, are pending in court.

The claims settled so far in respect of the *Sea Prince* incident (Republic of Korea, July 1995) total approximately £12 million, and these claims have been paid in full by the shipowner and his insurer. Further claims totalling £1.2 million have been filed in court. The 1971 Fund has reimbursed £6 million to the shipowner and his insurer. The Fund's payments were limited to 50% of the settlement amount, since the aggregate amount of the claims presented or indicated greatly exceeded the maximum amount available under the Conventions. If outstanding claims in the fishery and tourism sectors are settled on the basis of assessments carried out by the experts of the 1971 Fund and the shipowner's insurer, this percentage will be increased to 100%. It is expected that this will be achieved early in 1998.

As for the *Yuil N°1* incident (Republic of Korea, September 1995), claims for clean-up operations and fishery damage have been agreed for a total of some £5.6 million. Further claims for clean-up and fishery damage amounting to some £23 million are being examined, and these claims have been filed in court.

In respect of the *Honam Sapphire* incident (Republic of Korea, November 1995), claims have been agreed so far for a total of £3.2 million. Claims totalling £17 million are being examined. The 1971 Fund has not yet made any compensation payments, since the total amount of the established claims has not reached the limitation amount applicable to the *Honam Sapphire* (£12 million).

As regards the *Sea Empress* incident (United Kingdom, February 1996) claims have been approved for a total of £13 million. Payments of £7 million have been made by the shipowner's insurer, and of £6 million by the 1971 Fund. Further claims are being examined. It is expected that the United Kingdom Government will submit a claim for clean-up costs of some £11 million. In November 1997 payments by the 1971 Fund were increased from 75% to 100% of the damage actually suffered by the claimant as assessed by the experts engaged by the Fund and the shipowner's insurer. The 1971 Fund is examining the reports on investigations into the cause of the incident published by the Marine Accident Investigation Branch of the United Kingdom Department of Transport and by the Republic of Liberia.

Incidents in 1997 involving the 1992 Fund

During 1997 the 1992 Fund became involved in three incidents which have given or may give rise to claims against the 1992 Fund. Two of these incidents, the *Nakhodka* and the *Osung N°3*, involve also the 1971 Fund, and are summarised above.

In September 1997, bunker fuel oil landed on beaches on the east coast of England. The 1992 Fund has been notified of a claim for clean-up costs estimated at £10 000. The 1992 Fund is investigating the origin of the oil. In view of the small quantity of oil which was beached, however, it appears unlikely that the oil came from either a laden or unladen tanker.

Incident in 1996 involving the 1992 Fund

In June 1996 crude oil was found to have polluted a number of German islands close to the border with Denmark in the North Sea. On the basis of chemical analysis, the German authorities maintain that the oil came from the *Kuzbass*, which had discharged its cargo in the port of Wilhelmshaven on 11 June 1996. The German authorities have approached the owner of the *Kuzbass* and requested that he should accept responsibility for the oil pollution. They have stated that, failing this, the authorities will take legal action against him. If the German authorities were to pursue a claim against the 1992 Fund, the question would arise of whether they have proved that the damage resulted from an incident involving one or more ships. This issue will have to be examined, on the basis of all evidence submitted, in the light of the definition of 'ship' contained in the 1992 Civil Liability Convention.

Criteria applied by the 1971 and 1992 Funds for the admissibility of claims

The 1971 and 1992 Funds can accept only those claims which fall within the definitions of 'pollution damage' and 'preventive measures' laid down in the applicable Conventions. Over the years the 1971 Fund has developed certain principles on the admissibility of claims. The 1971 Fund Assembly and Executive Committee have taken a number of important decisions in this regard. These principles have also been developed by the Director in his negotiations with claimants. The settlements made by the Director and the principles upon which these settlements have been based have been explicitly approved or endorsed by the Executive Committee.

During 1994 the criteria for the admissibility of claims were examined by an Intersessional Working Group of the 1971 Fund. The Report of the Working Group was endorsed by the 1971 Fund Assembly in October 1994.

In June 1996 the 1992 Fund Assembly adopted a Resolution to the effect that the Report of the above-mentioned Working Group of the 1971 Fund should form the basis of the 1992 Fund's policy on the criteria for the admissibility of claims, and that the criteria previously laid down by the Executive Committee of the 1971 Fund should be applied also by the 1992 Fund. In the Resolution it was also stated that the 1992 Fund should endeavour to ensure consistency, as far as possible, between the decisions of the 1992 Fund and those of the 1971 Fund on the admissibility of claims, and a corresponding statement was made in a Resolution adopted by the 1971 Fund Assembly. For situations not covered by the criteria adopted prior to June 1996 within the 1971 Fund, the Assemblies considered that consistency of decisions between the two Organisations could be achieved through consultations between their competent bodies.

9.2 Incidents dealt with by the 1971 Fund during 1997

The following section of this Report details incidents with which the 1971 Fund has been involved in 1997. The Report sets out the developments of the various cases during 1997 and the position taken by the 1971 Fund in respect of claims. The Report is not intended to reflect in full the discussions of the Executive Committee.

Claim amounts have been rounded in this Report. The conversion of foreign currencies into Pounds Sterling is as at 31 December 1997, except for claims paid by the 1971 Fund for which conversions have been made at the rate of exchange on the date of payment.

IRVING WHALE

(Canada, 7 September 1970)

While being towed, the Canadian registered oil barge *Irving Whale* sank on 7 September 1970 in approximately 67 metres of water in the Gulf of St Lawrence (Canada). The barge was loaded with 4 270 tonnes of heavy fuel oil. Following the sinking, heavy fuel oil was released from the barge.

Over the years, small quantities of oil continued to seep from the barge. In 1991, it was determined that there were still over 3 000 tonnes of oil on board. The Canadian Government considered pumping the oil from the sunken barge, but the water temperature would have made it necessary to heat the oil, and it was decided that a better option would be to raise the barge.

As required under Canadian law, an assessment was made of the impact on the environment of raising the *Irving Whale*. The results of this assessment were published in 1994. The refloating operation was planned for 1995, and a contract for the refloating was concluded in June of that year.

The barge's heating coils contained a chemical routinely used during the 1960s (when the barge was constructed) but which more recently has been recognised as a pollutant. In August 1995 an environmental group obtained an injunction obliging the Government to prepare a further environmental assessment.

The report of the second environmental assessment was published in March 1996. Further attempts to obtain an injunction failed, and the refloating took place in the summer of 1996. The barge was successfully removed. A small quantity of oil was released during the refloating operation. The cost of the 1995 preparations and of the refloating operation in 1996 (including clean-up costs) amounted to some Can$42 million (£18 million).

In 1997, the Canadian Government took legal action against the owners and operators of the *Irving Whale*, claiming compensation for the cost referred to above. So far, all defendants have denied liability although formal defences have not yet been filed. The Government of Canada has notified the 1971 Fund of the legal action.

It should be noted that the Canadian Government has not claimed compensation for the cost of the clean-up operations incurred in connection with the sinking of the *Irving Whale* in 1970. The claim relates only to the cost of the preparations in 1995 and the refloating operation (including clean-up) in 1996.

The Canadian Government's claim was considered by the Executive Committee in October 1997. The Committee took the view that, although the lifting of the barge was carried out in 1996, these operations should be considered as being part of the incident which started with the sinking of the barge in 1970. It was noted that "incident" was defined in the Conventions as any occurrence or series of occurrences having the same origin (Article I.8 of the 1969 Civil Liability Convention and Article 1.1 of the 1971 Fund Convention). The Committee recalled that a similar situation was addressed by the 1971 Fund in the *Czantoria* case (Canada, 1988). The Committee decided in that case that the 1969 Civil Liability Convention and the 1971 Fund Convention did not apply to damage sustained in a given State after the entry into force of the respective Convention for that State resulting from an incident occurring before the entry into force. In the light of its decision in the *Czantoria* case, the Committee decided that the claim presented by the Canadian Government in the *Irving Whale* case did not fall within the scope of application of the 1971 Fund Convention.

The 1971 Fund intends to intervene in the court proceedings to protect the Fund's interests.

VISTABELLA

(Caribbean, 7 March 1991)

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

The *Vistabella* was not entered in any P & I Club but was covered by a third party liability insurance with a Trinidad insurance company. The insurer has argued that the insurance does not cover this incident. The limitation amount applicable to the ship is estimated at FFr2 354 000 (£240 000). No limitation fund has been established. It is unlikely that the shipowner would be able to meet his obligations under the 1969 Civil Liability Convention without effective insurance cover. The shipowner and his insurer did not respond to invitations to co-operate in the claim settlement procedure.

The 1971 Fund paid compensation amounting to FFr8.1 million (£986 500) to the French Government in respect of clean-up operations. Compensation was paid to private claimants in St Barthélemy and the British Virgin Islands and to the authorities of the British Virgin Islands for a total of some £14 250.

The French Government brought legal action against the owner of the *Vistabella* and his insurer in the Court of first instance in Basse-Terre (Guadeloupe), claiming compensation for clean-up operations carried out by the French Navy. The 1971 Fund intervened in the proceedings and acquired by subrogation the French Government's claim. The French Government has withdrawn from the proceedings.

In a judgement rendered in 1996, the Court of first instance held that the 1969 Civil Liability Convention was not applicable, since the *Vistabella* had been flying the flag of a State (Trinidad and Tobago) which was not Party to that Convention, and instead the Court applied French domestic law. The Court accepted that, on the basis of subrogation, the 1971 Fund had a right of action against the shipowner and a right of direct action against his insurer. The Court held that it was not competent to consider the 1971 Fund's recourse claim for damage caused in the British Virgin Islands. The Court awarded the Fund the right to recover the total amount which it had paid for damage caused in the French territories.

The 1971 Fund has taken the view that the judgement was wrong on two points. Firstly, the 1969 Civil Liability Convention which formed part of French law applied to damage caused in a State Party to that Convention, and this was independent of the State of the ship's registry. Secondly, the French courts were competent under that Convention to consider claims for damage in any State Party (including the British Virgin Islands). The 1971 Fund decided nevertheless not to appeal against this judgement as regards the applicability of the 1969 Civil Liability Convention, as it would hardly have any value as a precedent in other cases, and since the Court had awarded the 1971 Fund the total amount paid by it for damage in the French territories and as the amount paid by the Fund for damage outside these territories was insignificant.

The shipowner and the insurer have appealed against the judgement. The Court of Appeal is expected to render its judgement in 1998.

HAVEN

(Italy, 11 April 1991)

The incident

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

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

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

Limitation proceedings

After legal action had been taken against the shipowner, the Court of first instance in Genoa opened limitation proceedings in May 1991. The Court fixed the limitation amount at Llt 23 950 220 000 (£9.2 million), which corresponds to 14 million SDR. The shipowner's P & I insurer, the United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Limited (the UK Club), provided a bank guarantee for Llt 24 002 million. The 1971 Fund intervened in the limitation proceedings, pursuant to Article 7.4 of the 1971 Fund Convention.

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

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

Question of time bar

The question has arisen of whether or not the majority of the claims arising out of the *Haven* incident are time-barred *vis-à-vis* the 1971 Fund. According to Article 6.1 of the 1971 Fund Convention, claims for compensation against the 1971 Fund are time-barred three years after the date when the damage occurred, unless the claimants take certain legal steps. In the *Haven* case, the three-year period expired on or shortly after 11 April 1994. A claimant can avoid the time bar as regards the 1971 Fund by bringing legal action against the Fund or by making a notification to the Fund under Article 7.6 of the 1971 Fund Convention of an action against the shipowner and/or his insurer. Only a few claimants fulfilled the requirements of Article 6.1 by notifying the 1971 Fund under Article 7.6, namely the French State, the French communes, the Principality of Monaco, a few Italian claimants, the shipowner and the UK Club.

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

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

Claims for compensation

Some 1 350 Italian claimants presented claims relating to damage other than damage to the environment. These claims totalled approximately LIt 765 000 million (£294 million), including a claim by the Italian Government for clean-up operations for LIt 261 000 million (£100 million). There were also claims by a number of other clean-up operators.

The Italian Government also presented a claim relating to damage to the marine environment. The items of this claim which have been quantified by the claimant total LIt 883 435 million (£340 million) and relate to restoration of phanerogams, wreck removal and damage restored by the natural recovery of the resources (sea and atmosphere). The claim contained in addition several important items where the quantification was left to the Court to decide on the basis of equity, namely the consequences of beach erosion caused by damage to phanerogams, and irreparable damage to the sea and the atmosphere. Also, the Region of Liguria, two provinces and 14 municipalities included items relating to environmental damage in their respective claims. Some of the municipalities also claimed for loss of touristic image.

A number of yacht owners and fishermen claimed compensation for contamination of their property. Over 1 000 individuals and small businesses (fishermen, hotel operators, shopkeepers and restaurateurs) claimed compensation for loss of income.

List of established claims ("stato passivo")

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

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

The claims in respect of which agreement on quantum had been reached at that time between the claimants and the shipowner/UK Club were admitted for the agreed amounts, since these amounts had not been challenged. The list of admissible claims established by the judge included claims totalling LIt 186 000 million (£74 million) plus interest and compensation for inflation. The judge stated that the numerous claims which were not documented could not be admitted.

The judge held that the municipalities were not entitled to compensation for "damage to touristic image". In his view, only individual tourism operators could claim compensation for such loss of image to the extent that this resulted in a loss in the claimant's economic activity. He stated that the municipalities could be entitled to compensation for the cost of promoting tourism to the extent that it was proved that, as a consequence of the incident, such expenses were not effective, or that expenses were incurred after the incident to promote the touristic image.

As regards the claims for environmental damage, the 1971 Fund has maintained the position that claims relating to non-quantifiable elements of damage to the environment cannot be admitted. In its interpretation of the 1969 Civil Liability Convention and the 1971 Fund

Convention, the 1971 Fund Assembly has rejected the assessment of compensation for damage to the marine environment on the basis of an abstract quantification of damage calculated in accordance with theoretical models (Resolution N°3 adopted by the Assembly in 1980). The Assembly has also taken the view that compensation can be granted only if a claimant has suffered quantifiable economic loss.

The judge held that the 1969 Civil Liability Convention and the 1971 Fund Convention did not exclude environmental damage. He stated that only the State of Italy was entitled to compensation for environmental damage and that consequently the local authorities had no right to such compensation. He took the view that the environmental damage could not be quantified according to a commercial or economic evaluation. He assessed this damage as a proportion (approximately ⅓) (Llt 40 000 million or £15.4 million) of the cost of the clean-up operations. The amount arrived at by this assessment would, in his view, represent the damage which was not repaired by these operations.

Oppositions to the "stato passivo"

Oppositions to the judge's decision have been lodged by the 1971 Fund, the Italian Government, one Italian contractor, the shipowner and the UK Club. The oppositions will be considered by the Court of first instance, composed of three judges. It may take several years until the Court renders its judgement.

In its opposition the 1971 Fund has maintained that the judge was wrong in rejecting the defence of time bar. The Fund has also lodged opposition in respect of a number of other issues, in particular the claims relating to environmental damage.

The State of Italy has made opposition in respect of a number of items which were not accepted in full by the judge. In particular, the State has requested that compensation for environmental damage should be increased from the amount awarded by the judge, Llt 40 000 million (£15.4 million), to Llt 883 435 million (£340 million).

Method of converting (gold) francs

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

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

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

The judge in charge of the limitation proceedings held that the maximum amount payable by the 1971 Fund should be calculated by the application of the free market value of gold, which gives an amount of Lit 771 397 947 400 (£296 million) (including the amount paid by the shipowner under the 1969 Civil Liability Convention), instead of Lit 102 643 800 000 (£39 million), as maintained by the 1971 Fund, calculated on the basis of the SDR. After the 1971 Fund had lodged opposition, the Court of first instance (which was composed of three judges) upheld the decision.

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

> The 1971 Fund had maintained that, since most of the claims were time-barred *vis-à-vis* the Fund, the total amount of the claims against the Fund did not exceed 60 million SDR and that for this reason it was not necessary for the Court to take any position as to the method of conversion. The defence of time bar was rejected by the Court which held that the intervention of the 1971 Fund under Article 7.4 of the Fund Convention had the same effect as a notification under Article 7.6.
>
> The Court of Appeal took the view that the demise of the official value of gold did not allow national courts, when calculating the maximum amount payable under the 1971 Fund Convention, to substitute the SDR for the (gold) franc before the entry into force of the 1976 Protocol to that Convention. The Court also held that the entry into force of that Protocol did not apply retroactively. For this reason the Court of Appeal stated that the gold unit could be converted only at its market value.

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

In 1997, the Italian Government set up a commission of three Italian experts on international law to give an opinion as to whether, pursuant to the Vienna Convention on the Law of Treaties, Italy was bound to apply the 1976 Protocol to the 1971 Fund Convention in the *Haven* case although the Protocol had not entered into force when the incident occurred. In their opinion, the experts stated that in an interpretation of the 1971 Fund Convention it was necessary to choose the SDR as the unit of account, not as a result of the 1976 Protocol which was not in force at the time of the *Haven* incident, but because the SDR had been adopted by the IMF as an internationally accepted unit of account after the abolition of the official parities of currencies based on gold

content. The experts then addressed the question as to the number of SDR to which the reference should be made. The experts expressed the view that, although the 1984 and 1992 Protocols were without effect for Italy, reference should nevertheless be made to the amounts fixed by those Protocols to provide a basis for resolution of the issue. The reason given for this position was that the amounts in those Protocols resulted from an official increase originating from the same system as that in which the issue had arisen regarding the percentage increase required to maintain the original relationship between the level of compensation and the actual loss or damage.

Settlements made by the shipowner/UK Club

Following the publication of the "stato passivo" in April 1996, the UK Club agreed to pay directly to the Region of Liguria, the Provinces of Genoa and Savona and the 20 municipalities in Italy an *ex gratia* amount of Lit 25 000 million (£9.6 million), in addition to the amounts admitted to the "stato passivo".

During the period 1995 to 1997 the shipowner/UK Club continued to settle and pay claims in the "stato passivo" and the only claims in respect of which agreement had not been reached were those of Oromare (an Italian contractor) and the Italian State. In December 1997, however, agreement was reached between the shipowner/UK Club and Oromare, and the UK Club paid this claim on 31 December 1997. As a result of this settlement, the only unresolved claim included in the "stato passivo" is that of the Italian State.

Payments made by the 1971 Fund to certain claimants

The French Government had requested that the French public bodies other than the French State should be paid in full. The French Government gave an undertaking that the amount payable by the 1971 Fund to the French State for the State's accepted claim in the amount of FFr12 580 724 (£1 623 000) would form a security against overpayment by the Fund to these French claimants, whose claims had been accepted for an amount of FFr10 659 469 (£1 375 200).

When the French Government's request was considered by the Executive Committee, a number of delegations stated that the 1971 Fund should exercise great caution in agreeing to make payments against guarantees of any kind, and that this should be done only in very special cases and provided that the guarantees offered gave the 1971 Fund security against overpayment. In view of the very special situation which had arisen in the *Haven* case and the protection against overpayment which the undertaking made by the French Government would give the 1971 Fund, the Executive Committee decided, in February 1996, to instruct the Director to pay in full the claims presented by the French public bodies other than the French State for the amounts agreed. These claims were paid in April 1996.

Two Italian claimants whose claims are not time-barred offered to provide a bank guarantee to protect the 1971 Fund against overpayment, if their claims were paid. The Executive Committee authorised the Director to pay in full these two claims on condition that the claimants provided a bank guarantee which would give the 1971 Fund adequate protection against overpayment if claims were later reduced *pro rata*. After a bank guarantee had been provided, these claims, totalling Lit 1 582 million (£666 000), were paid in October 1996.

Search for a solution

Being convinced of the legal validity of the 1971 Fund's position in respect of the time bar issue, the Executive Committee, nevertheless, recognised in October 1994 that the on-going legal proceedings in Italy gave rise to some uncertainty as regards the final outcome of this issue. For this reason, and conscious of the desirability of victims of pollution damage being compensated, the Committee instructed the Director to enter into negotiations with all the parties concerned for

the purpose of arriving at a global solution of all outstanding claims and issues. The Committee emphasised that such a solution must respect *inter alia* the following conditions:

- the maximum payable under the 1969 Civil Liability Convention and the 1971 Fund Convention was 60 million SDR;
- claims could be admissible only if a claimant had suffered a quantifiable economic loss, and claims for damage to the marine environment *per se* were not admissible.

These conditions have been endorsed by the Assembly.

Settlement proposal

In June 1995 the shipowner/UK Club offered to make available an additional amount of Lit 25 000 million (£9.6 million) as an *ex gratia* payment, in an effort to assist in arriving at a global settlement without prejudice and without any admission of liability of any parties in any proceedings, and subject to certain conditions being satisfied, thereby bringing an end to all litigation in this case.

At its session in June 1995 the Executive Committee, having considered all the issues involved, instructed the Director to continue the negotiations with the claimants and authorised the Director to agree, on behalf of the 1971 Fund, to a global settlement within the framework of the amount of some Lit 137 000 million (£52 million) being made available to victims, calculated as follows:

	Lit
60 million SDR	102 643 800 000
Interest on the shipowner's limitation fund (approximate)	10 000 000 000
	112 643 800 000
Amount offered as *ex gratia* payment by shipowner/UK Club	25 000 000 000
Total	137 643 800 000

The Committee decided that the proposed global settlement would be subject to a number of conditions, *inter alia* that except as regards the shipowner's/UK Club's *ex gratia* payment of Lit 25 000 million, payments would be made only to the extent that a claimant had suffered a quantifiable economic loss and no payment would be made in respect of claims for damage to the marine environment *per se*.

Consideration by the Assembly in October 1997

The question of a possible global settlement was considered further at the Assembly's session in October 1997.

The representative of the UK Club informed the Assembly that the shipowner and the UK Club had made an offer to the Italian Government to contribute to a global settlement on a basis which would enable the Italian Government to consider positively a global solution within the terms that the 1971 Fund has previously laid down as conditions for a global settlement. It was emphasised that the offer was made without any admission as to liability in excess of the shipowner's limitation amount under the 1969 Civil Liability Convention and consisted of an offer of an *ex gratia* amount in consideration of the termination of all outstanding litigation between the parties to a global settlement in connection with the *Haven* incident. It was mentioned that the offer

was entirely consistent with the position of the 1971 Fund in respect of its prior conditions for a global settlement. It was stated that in order to conclude all litigation between the Italian State, the shipowner/Club and the 1971 Fund, the UK Club, as part of its contribution to a global settlement, would undertake to resolve the only claim outstanding at that time which had been admitted to the "stato passivo", ie that submitted by Oromare. The UK Club representative also mentioned that further claims had recently been submitted in the "stato passivo" from fishing interests in the Province of Imperia, which claims would be vigorously resisted. It was stated that the UK Club would undertake to continue to defend these claims and to resolve them at its own expense with the appropriate indemnity to the 1971 Fund.

The Italian delegation stated that the proposal presented by the UK Club, in conjunction with the offer made by the Fund, satisfied the minimum requisites requested by the Italian Government in order to examine the possibility of accepting a global settlement for the *Haven* incident and that the Italian Government would therefore be in a position to evaluate positively the matter. It was mentioned that the decision of the Government would have to be submitted to the Italian Parliament.

The Assembly confirmed that the 1971 Fund's offer was still available subject to certain conditions, in particular that the offer was without prejudice to the 1971 Fund's position in respect of the issue of time bar.

It was noted that, under the proposed global settlement, all legal actions in the Italian Courts would be withdrawn.

If a global settlement of all outstanding issues were to be reached along the lines set out by the Assembly and the Executive Committee, the 1971 Fund 's involvement would be as follows:

			Llt
Total available under 1969/1971 Conventions (60 million SDR), converted using rate applicable on date shipowner's limitation fund established			102 643 800 000
Less	Shipowner's limitation fund (14 million SDR)		- 23 950 220 000
			78 693 580 000
Less	Payments by 1971 Fund to two Italian contractors		- 1 582 341 690
			77 111 238 310
Less	Payments by 1971 Fund to French public bodies other than the French State (FFr10 659 469), converted using rate applicable on date of purchase of French Francs (28.3.96): FFr1 = Llt 311.60		- 3 321 490 540
			73 789 747 770
Less	Payments by 1971 Fund		
	- To French State	FFr12 580 724	
	- To Principality of Monaco	270 035	
		FFr12 850 759 [1]	- 4 369 258 060
Balance to be paid by 1971 Fund to Italian State in the context of a possible global settlement			69 420 489 710

[1] Estimate of the cost in Italian Lire of purchasing FFr12 850 759, based on cross rate of 31 December 1997, ie 340 Lire = 1FFr. Consequently, the final figure may differ from the estimated figure.

A remaining issue is that relating to the shipowner's right of indemnification under Article 5.1 of the 1971 Fund Convention. The UK Club had, in connection with a previous offer for a global settlement, volunteered to waive its claim for indemnification. Since the original terms of the proposal for a global settlement were not met, the Club has stated that it is no longer prepared to waive its claim in this respect and will continue to request indemnification under Article 5.1. Further discussion between the Club and the 1971 Fund will take place on this issue.

Criminal proceedings

Criminal action was brought in the Court of Genoa against Messrs L and S Haji Ioannou and Mr C Doules, three individuals connected with the ownership and operations of the *Haven*. The accused were acquitted by a verdict delivered in November 1997. The reasoned judgement is not yet available. The prosecutor has not yet indicated whether he will appeal against the judgement.

Assembly chaired by Mr Coppoluni
(photograph: John Ross)

AEGEAN SEA

(Spain, 3 December 1992)

The incident

During heavy weather, the Greek OBO *Aegean Sea* (57 801 GRT) ran aground while approaching La Coruña harbour in north-west Spain. The ship, which was carrying approximately 80 000 tonnes of crude oil, broke in two and burnt fiercely for about 24 hours. The forward section sank some 50 metres from the coast. The stern section remained to a large extent intact. The oil remaining in the aft section was removed by salvors working from the shore. While the quantity of oil spilled is unknown, it appears that 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 onshore.

Claims handling

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

Claims for compensation

As at 31 December 1997, 1 277 claims had been received by the Joint Claims Office, totalling Pts 24 809 million (£99 million). Compensation had been paid in respect of 835 claims for a total amount of Pts 1 617 million (£8.2 million). Out of this amount, the UK Club had paid Pts 782 million (£4.0 million) and the 1971 Fund Pts 835 million (£4.2 million).

Claims have also been submitted to the Criminal Court of first instance in La Coruña, totalling some Pts 24 730 million (£99 million). These claims correspond to a great extent to those presented to the Joint Claims Office.

Some claimants have indicated that they will present their claims at a later stage in civil proceedings against the shipowner, his insurer and the 1971 Fund. It is estimated that these claims may total Pts 26 855 million (£107 million).

Level of provisional payments

In view of the uncertainty of the total amount of the claims arising out of the *Aegean Sea* incident, the 1971 Fund decided in 1993 to limit payments to 25% of the established damage suffered by each claimant as assessed by the 1971 Fund on the basis of the advice of its experts. This figure was increased to 40% in October 1994.

Criminal proceedings in La Coruña

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

In a judgement rendered in April 1996 the Criminal Court found that the master had acted in an imprudent manner, and he was held liable for criminal negligence. The Court held that the pilot was liable for criminal negligence as he was under an obligation to provide pilotage services from the exterior limits of the port but did not do so. The pilot and the master were each sentenced to pay a fine of Pts 300 000 (£1 200) or one day's imprisonment for each Pts 5 000 (£20) not paid.

The master and the pilot appealed against the judgement and requested that they should be acquitted. The Spanish State appealed against the judgement in respect of the pilot and requested that he should be acquitted since he was not, in the State's view, guilty of any criminal negligence. The 1971 Fund did not appeal in respect of the criminal liabilities. In its reply to the appeals of the other parties, the 1971 Fund stated that the Fund was not involved in criminal liability and that the Fund accepted the judgement of the Court of first instance as regards such liabilities.

In a judgement rendered in June 1997, the Court of Appeal upheld the judgement of the Court of first instance with regard to the criminal liability of the master and the pilot.

Distribution of liabilities and questions relating to recourse

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

In previous cases the Executive Committee has taken the view that the policy of the 1971 Fund is to take recourse action whenever appropriate and that the Fund should in each case consider whether it would be possible to recover any amounts paid by it to victims from the shipowner or from other parties on the basis of the applicable national law. The Committee has stated that the 1971 Fund's decision on whether or not to take such action should be made on a case by case basis, in the light of the prospect of success within the legal system in question.

The question of whether the 1971 Fund should take recourse action against the pilot and the Spanish State was considered by the Executive Committee in October 1997. The Director stated that, in his view, a claimant was entitled to request the enforcement of a judgement awarding him compensation against the pilot and, if the latter was unable to pay, against the State, or against the master/UK Club/1971 Fund (and subsidiarily against the shipowner). The Committee noted that when payments were made to claimants, the defendants who had made these payments could, in the view of the 1971 Fund's Spanish lawyer, take recourse action to claim reimbursement from the other defendants so that ultimately the master/UK Club/1971 Fund would pay 50% of the awarded amounts and the pilot/Spanish State would pay 50% of these amounts.

The Spanish delegation maintained that, even if the Court held that the pilot was liable and that the Spanish State was liable for the acts of the pilots, it was crucial to differentiate the level of liabilities of each party. The Spanish delegation stated that the judgements meant that the UK Club and the 1971 Fund should pay the maximum amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention, and that the Spanish State would pay compensation only if the total amount of the established claims exceeded that amount.

The Spanish delegation considered it inappropriate to address the question of recourse against the Spanish State. The Spanish delegation drew attention to the fact that the 1971 Fund had

not taken recourse action against a State in any other case. The delegation mentioned that in many Fund Member States pilots had no liability for oil pollution damage due to provisions in national law channelling liability to the shipowner, that in a number of Member States the State had no liability for the acts of pilots and that, as a consequence, a recourse action of the type considered by the 1971 Fund in the *Aegean Sea* case would not succeed in States in either of these groups. The Spanish delegation expressed the view that it would not be acceptable if the Spanish State were treated differently from other States.

The Executive Committee decided to postpone its consideration of the question of recourse until a later session. The Committee instructed the Director to obtain a second opinion in relation to the interpretation of the judgement in respect of the distribution of liabilities between the parties involved.

The Courts' decisions in respect of claims for compensation

General observations

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 that 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 decided that many claims should be quantified during the procedure for the execution of the judgement, and the Court of Appeal endorsed the position taken by the Court of first instance in this regard.

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 thus took the same position as the 1971 Fund in this respect. The 1971 Fund had from the outset maintained that each claimant, or each group of claimants, had to submit appropriate documentation to substantiate their losses. Also in this regard the Courts took the same position as the Fund.

The total of the claims which the Courts found substantiated by acceptable evidence was about Pts 840 million (£3.3 million). All but two of these claims related to clean-up operations or preventive measures. All but two claims in the fishery sector were referred to the procedure for the execution of the judgement.

Appeals were lodged by the 1971 Fund, the shipowner, the UK Club, the master, the pilot, the Spanish State and eight other parties.

In its appeal, the 1971 Fund stated that it could be obliged to pay compensation only for damage which fell within the definitions of 'pollution damage' and 'preventive measures' as laid down in Articles I.6 and I.7 of the 1969 Civil Liability Convention which formed part of Spanish law. The 1971 Fund maintained that the decisions taken by the competent bodies of the Fund as regards the criteria for the admissibility of claims for compensation should be taken into account. The 1971 Fund stated in the appeal that the Criminal Court had admitted a number of claims which could not be considered as 'damage caused by contamination' or as 'preventive measures'. The 1971 Fund also appealed against the judgement on points where, in the Fund's view, the claim was admissible in principle but where the claimant had not substantiated his loss or the Court's assessment of the damage was incorrect.

Details of the claims which were the subject of appeals are set out below.

Claim by the Spanish State

The Spanish State had presented a claim for Pts 1 155 million (£4.6 million). The greater part of this claim, Pts 740 million (£3.0 million), related to the cost of placing some 286 000m³ of sand on certain recreational beaches. The 1971 Fund maintained that a programme for the regeneration of beaches had been established by the State before the *Aegean Sea* incident had occurred, and that regeneration had started prior to the incident. The 1971 Fund took the view that the part of this claim concerning the replacement of sand was not admissible, except as regards the replacement of 1 230m³ which had been removed after the incident occurred. The Spanish State also claimed compensation for Pts 100 million (£400 000) for certain investigations into the long term effects of the pollution. In the 1971 Fund's view, studies of this kind are admissible only if they relate to clean-up operations or preventive measures. The 1971 Fund appealed against the judgement in respect of these items.

The Court of Appeal rejected the 1971 Fund's appeal in these respects, stating that the strict interpretation of the definitions of 'pollution damage' and 'preventive measures' which the 1971 Fund wished to adopt was not acceptable because, if it were adopted, a major part of the purpose of the Conventions would not be achieved. The Court also stated that a more flexible reading of the definitions was necessary and that it was not acceptable that the guidelines or directives established by the organs of the 1971 Fund should have binding effect.

It should be noted that in its submissions to the Court of first instance, the 1971 Fund did not maintain that the criteria for admissibility adopted by the Fund bodies should have binding effect. The 1971 Fund argued that the decisions taken by the competent bodies of the Fund as regards the criteria for the admissibility of claims for compensation should be taken into account.

The Court of Appeal agreed with the Criminal Court of first instance that the Spanish State's claim should be referred to the procedure for the execution of the judgement.

Claim by the Government of the Region of Galicia (Xunta)

The Xunta de Galicia had claimed compensation for a total amount of Pts 246 million (£1.0 million) and was awarded Pts 245 million. The 1971 Fund appealed *inter alia* with regard to costs for monitoring air quality which it considered did not relate to damage caused by contamination, nor to preventive measures, for work carried out by 70 biologists in respect of which no evidence had been presented to indicate that the costs were admissible, for materials used or damaged during operations to rescue the crew of the *Aegean Sea* which the Fund considered fell outside the definitions of 'pollution damage' or 'preventive measures', and for a large part of scientific studies of the contamination in mussels and barnacles which the Fund considered did not relate to clean-up operations or preventive measures, and for the cost of a campaign for the promotion of Galician fish products which the Executive Committee had rejected, since the promotional activities were considered of too general a nature.

The Courts rejected the 1971 Fund's appeal on the same grounds as set out above in respect of the claim by the Spanish State.

Local councils

With respect to one local council, the 1971 Fund appealed with regard to restoration of damage allegedly caused in a zone which had been totally redeveloped for reasons other than the *Aegean Sea* incident. The Criminal Court nevertheless awarded compensation in the claimed amount of Pts 12.9 million (£52 000). The Fund also appealed in respect of a claim by this council for costs of Pts 11.5 million (£46 000) incurred by certain public services which the Fund considered did not relate to pollution damage or preventive measures.

With regard to another council, the 1971 Fund appealed in respect of costs accepted by the Criminal Court for clean-up work in an area which it was well established, in the Fund's view, that the contamination caused by the *Aegean Sea* had not reached. The 1971 Fund also appealed against the acceptance of a third council's claim for Pts 25.3 million (£101 000) for an environmental assessment programme in respect of which no evidence had been presented that the work fell within the definitions of 'pollution damage' or 'preventive measures'.

The Courts rejected the 1971 Fund's appeal on the same grounds as set out above in respect of the claim by the Spanish State.

Claims by fishermen and shellfish harvesters

The only evidence submitted to support the majority of claims, totalling Pts 10 364 million (£41 million), submitted by fishermen and shellfish harvesters was a study prepared by the University of Santiago de Compostela. This study considered the global losses for the affected zone and covered not only the periods in which fishing was banned but also the time after these bans had been lifted.

The 1971 Fund disputed the validity of the Santiago University report, and in particular in respect of its conclusion that there were long term losses. The Fund also disputed that the report contained sufficient information to allow the equitable distribution of compensation between the individuals and groups claiming through and outside the Criminal Court.

The Court of first instance did not accept the conclusions of this study and held that each claimant had to prove that he had suffered an economic loss. The Court held that the claims by the fishing boat owners should be substantiated by tax reports and/or catch records. The Court further decided that the compensation of the shellfish harvesters should be determined on the basis of exploitation plans approved by the Fisheries Council of the Xunta de Galicia prior to the incident and that the fishing boat crews should be compensated according to recognised minimum salary levels. The Court also held that compensation was payable only for the period during which fishing and shellfish harvesting were prohibited due to the fishing bans imposed by the Xunta de Galicia. All these claims were referred for quantification to the procedure for the execution of the judgement.

The Criminal Court accepted to a large extent the position of principle taken by the 1971 Fund in respect of the requirement of evidence relating to the claims submitted by the fishermen and shellfish harvesters. Nevertheless, the 1971 Fund appealed against the method adopted by the Court for calculating the shellfish harvesters' losses, namely using the maximum allowable harvest days and quantities. The 1971 Fund stated that it was unlikely that these maximum days and quantities could ever be realised and pointed out that approved exploitation plans anticipated far lower total catches.

A number of claimants in the fisheries sector appealed, requesting that compensation should be assessed on the basis of the University of Santiago report. One claimant requested additional compensation for long term losses subsequent to the period covered by the University report (ie up to the end of 1995) and for moral damage. The claimants criticised the approach adopted by the Criminal Court that claims should be quantified on an individual rather than on a group basis, insisting that the University of Santiago report was indisputable and dealt adequately with the distribution of the losses between those concerned. No evidence was provided to support the amount claimed for the period beyond that considered in the University report.

The Court of Appeal stated that the right to claim compensation rested with the individuals and that claims should be made individually and not jointly or en bloc. The Court held that the losses should be determined in the procedure for the execution of the judgement. The Court rejected specifically the conclusions in the report by the University of Santiago that the pollution would have long term economic effects on fishing and shellfish harvesting.

The Court of Appeal confirmed the judgement of the Court of first instance in respect of these claims. The Court of Appeal did not refer in its judgement to the objections raised by the 1971 Fund in respect of the criteria laid down by the Court of first instance for the calculation of shellfish harvesting losses.

Determination of the maximum amount payable by the 1971 Fund

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

In the hearing, the 1971 Fund maintained that the conversion should be made on the basis of the SDR, and invoked mainly the same reasons as it had used in the court proceedings in the *Haven* case (page 48 above). The 1971 Fund drew the Criminal Court's attention to the fact that, in connection with the discussion of the *Haven* incident in the Executive Committee, the Spanish delegation had mentioned that the Spanish Government had notified the Court in Genoa that it supported the Fund's position as to the method of conversion.

In the judgement, the Criminal Court of first instance stated that as regards the 1971 Fund the applicable limit was the one laid down in Article 4 of the 1971 Fund Convention.

In their appeals, the claimants referred to above requested that the Court of Appeal should fix the maximum amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention by reference to the free market value of gold.

In its response, the 1971 Fund requested that the Court of Appeal should hold that the maximum amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention corresponds to 60 million SDR. The Fund drew the Court of Appeal's attention to the fact that, at the Executive Committee's session in February 1996 (ie after the hearing in the Criminal Court), the Spanish delegation had stated that the Spanish Government had always supported the 1971 Fund's position as regards the method to be applied for the conversion.

The Court of Appeal stated that the maximum amount payable by the 1971 Fund was 900 million Poincaré francs or 60 million SDR, which should be converted into the national currency at the official value thereof in relation to a unit consisting of 65.5 milligrams of 900/1000 fine gold, or otherwise in relation to the value of the currency in relation to the SDR. The Court stated that the claimants were entitled to opt for the method of conversion that they considered more favourable to them.

At its session in October 1997, the Executive Committee expressed the view that it would be difficult to apply the judgement if some claimants were to choose to have the maximum amount converted into Pesetas on the basis of the Poincaré franc, while others chose conversion on the basis of the SDR. It was noted that, if claimants choose to have the maximum amount converted into Pesetas on the basis of the Poincaré franc, this would have to be done using the last official value of gold in Spain, ie that of 19 November 1967, since there was no longer an official value of gold. Converting 900 million (gold) francs into Pesetas on that basis would give Pts 4 179 105 000 (£16.7 million). A conversion based on the value of the SDR on the date of the constitution of the shipowner's limitation fund, on the other hand, would give Pts 9 513 473 400 (£38 million).

Question of time bar

In order to prevent his claim from becoming time-barred, a claimant must take legal action against the 1971 Fund before the expiry of a period of three years from 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. The Executive Committee examined in December 1995 whether some claims had become time-barred *vis-à-vis* the 1971 Fund.

A number of claimants in the fishery and aquaculture sectors had filed criminal accusations against four individuals. These claimants had not submitted claims for compensation in those proceedings, but had 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. The Executive Committee noted that these claimants had 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. 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, the Committee took the view that these claims should be considered time-barred *vis-à-vis* the 1971 Fund.

The Committee also considered the position of another group of claimants who had presented their claims to the Joint Claims Office in La Coruña but not to the Court. The Committee took the view that these claimants had not taken the steps required under the 1971 Fund Convention to prevent their claims from becoming time-barred *vis-à-vis* the 1971 Fund.

The Executive Committee instructed the Director to study further the issue of time bar. It has been agreed with the Spanish Government that this matter should be discussed between the Government and the Director before his study is presented to the Executive Committee. However, the Spanish Government has not yet been in a position to discuss this issue.

Execution of the Court of Appeal's Judgement

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

In December 1995, the Executive Committee decided that, in view of the remaining uncertainty as to the total amount of the established claims, the provisional payments of the 1971 Fund should remain limited to 40% of the damage actually suffered by the claimants as assessed by the Fund's experts.

In this connection it is necessary to consider the relevant provisions of the 1971 Fund Convention which form an integral part of Spanish law. Of special interest are Articles 4.5, 8 and 18.7 which read:

> Article 4
> 5 Where the amount of established claims against the Fund exceeds the aggregate amount of compensation payable under paragraph 4, the amount available shall be distributed in such a manner that the proportion between any established claim and the amount of compensation actually recovered by the claimant under the Liability Convention and this Convention shall be the same for all claimants.
>
> Article 8
> Subject to any decision concerning the distribution referred to in Article 4, paragraph 5, any judgement given against the Fund by a court having jurisdiction in accordance with Article 7, paragraphs 1 and 3, shall, when it has become enforceable in the State of origin and is in that State no longer subject to ordinary forms of review, be recognized and enforceable in each Contracting State on the same conditions as are prescribed in Article X of the Liability Convention.
>
> Article 18
> The functions of the Assembly shall, subject to the provisions of Article 26, be:
> .....
> 7 to approve settlements of claims against the Fund, to take decisions in respect of the distribution among claimants of the available amount of compensation in accordance with Article 4, paragraph 5, and to determine the terms and conditions according to which provisional payments in respect of claims shall be made with a view to ensuring that victims of pollution damage are compensated as promptly as possible;

At the Executive Committee's session in October 1997, the Spanish delegation stated that the Spanish constitution recognised the exclusive jurisdiction of the Spanish Courts as regards the enforcement of judgements rendered by those Courts. The delegation maintained that it would not be acceptable if the organs of the 1971 Fund took decisions to correct the decisions of the Spanish Courts. The Spanish delegation considered that it was not necessary for the Executive Committee to take any decision under Article 18.7 of the 1971 Fund Convention in respect of the distribution between the claimants of the amount of compensation available under the 1971 Fund Convention. That delegation stated that, since the Spanish State would pay compensation in excess of the maximum amount of compensation available under the 1969 Civil Liability Convention and the 1971 Fund Convention, there was no risk of overpayment by the 1971 Fund and that the caution exercised by the 1971 Fund in limiting the level of payments to 40% of the damage was therefore not justified. The Spanish delegation requested that the Committee should instruct the Director to pay in full the claims for which the Courts had awarded a specific amount in compensation.

Although the enforceability of judgements rendered by national courts was recognised in the 1971 Fund Convention, the Executive Committee noted that the Convention also provided that such enforcement could be subject to a decision of the Assembly or of the Executive Committee concerning the distribution of the total amount available for compensation under the 1969 Civil Liability Convention and the 1971 Fund Convention. In view of the high degree of uncertainty as to the total amount of the established claims, both as regards many of the claims covered by the judgements of the Criminal Court of first instance and the Court of Appeal, and as regards the

claims which might be presented at a later stage in the civil proceedings (although the 1971 Fund took the view that these claims were time-barred), the Executive Committee decided that payments to the claimants who had been awarded a specific amount in the judgements should be limited to 40% of the respective amounts so awarded.

Criticism by the Spanish delegation of the 1971 Fund's handling of the *Aegean Sea* incident

At several Executive Committee sessions in 1997, the Spanish delegation made statements containing criticisms of the 1971 Fund's handling of the *Aegean Sea* incident. The Spanish delegation expressed the disappointment of the Spanish administration at the insufficient payments made to the Spanish claimants. The delegation stated that the assessments made by the 1971 Fund's experts in the *Aegean Sea* case were excessively low and that the requests for evidence to substantiate the claimants' losses had been out of proportion. In particular, the Spanish delegation expressed the fear that the Spanish victims had been treated in a discriminatory manner and that the Fund's experts had dealt with the *Aegean Sea* incident in a biased way.

At the Executive Committee's June 1997 session, a number of delegations expressed their regret at the statement made by the Spanish delegation. They referred to the interventions made at the Committee's session in June 1996 in support of the way in which the Director and the Secretariat were handling the *Aegean Sea* case. At that 1996 session, the Committee had concluded that there were no indications that the 1971 Fund, the Director, the Secretariat or the Fund's experts had discriminated against Spain or Spanish claimants, nor that they had dealt with the incident in an unfair or biased manner. The Committee had stated that the Director had acted in conformity with the policy laid down by the Assembly and the Executive Committee as regards the procedures to be followed and the requirements with respect to the presentation of evidence. The Committee had also emphasised the importance of States ensuring that the provisions of the Conventions were respected in their national law and that the rules and criteria laid down by the governing bodies of the 1971 Fund were also respected. These delegations re-iterated their full confidence in the experts engaged by the 1971 Fund.

BRAER

(United Kingdom, 5 January 1993)

The incident

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

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

Claims settled out of court

As at 31 December 1997, some 2 000 claims for compensation had been paid, wholly or partly, for a total amount of approximately £46 million. Out of this amount the 1971 Fund has paid

some £41 million and the shipowner's P & I insurer, Assuranceföreningen Skuld (Skuld Club), some £4.8 million. In addition, claims amounting to £5.2 million have been accepted as admissible but have not yet been paid.

Court proceedings

General situation

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

During 1996 and 1997 49 claims amounting to £5 729 118 were withdrawn from the legal proceedings. Thirty-three of the claims pending in court, totalling £24 970 662, were settled for a total amount of £3 284 071. The claims remaining in the legal proceedings total £47.8 million.

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

Most of the claimants did not include in their original court action sufficient details of the alleged losses to enable the 1971 Fund to assess the validity of their claims. As at 31 December 1997 many of the claimants had still not produced sufficient documents to substantiate their claims.

Except in respect of the claim by Landcatch Ltd which is dealt with below, there has been only limited progress in the court proceedings.

Smolt supplier

In 1994 the Executive Committee considered a claim presented by Landcatch Ltd (hereafter referred to as "Landcatch") for £2 601 506 plus interest. Landcatch supplied smolt to salmon farmers on Shetland from its installation on mainland Scotland some 500 kilometres from Shetland. The claim related to losses allegedly suffered as a result of the *Braer* incident having interrupted the normal stocking of salmon smolt in Shetland waters. The Committee rejected this claim as not fulfilling the criteria for admissibility of claims for compensation.

The Executive Committee noted the arguments advanced by Landcatch that the criterion of geographic proximity must be viewed in the light of the impossibility of Shetland to meet its own requirements for smolt, due to the lack of adequate freshwater on Shetland. Nevertheless, in the Committee's view, Landcatch's smolt-rearing activity was geographically more remote from the contamination than the activities of claimants who had received compensation in the *Braer* case or in previous cases. The Committee did not accept that Landcatch's smolt production should be seen as a joint venture with the Shetland salmon farming industry, as maintained by Landcatch's Counsel. In the view of the Committee, Landcatch should be considered as a supplier of raw material to the Shetland salmon farming industry. Although the Committee noted the point made by the claimant that Landcatch and the Shetland salmon industry were financially inter-dependent, since, according to the claimant, the group of companies to which Landcatch belonged was a major employer and supporter of the Shetland economy, the Committee did not accept that a criterion of economic inter-dependency would be an appropriate test for the admissibility of claims. In

addition, the Committee took the view that Landcatch's smolt-rearing activity did not form an integral part of the economic activity of the area. It was noted that Landcatch had argued that a test should be whether the claimant's business was so inextricably linked with an operation carried out in polluted waters that the claimant must necessarily be affected by the inability to use those waters, whether this business was affected to a significant degree and whether the claimant had any opportunity to avoid the damage. The Committee did not accept that the concept of "inextricably linked" was an appropriate criterion for admissibility. In the Committee's view, the loss could not be considered as damage caused by contamination but was due to the unwillingness of customers to conclude contracts for the purchase of smolt and to Landcatch's lack of adequate alternative markets.

Landcatch pursued its claim against the shipowner (Braer Corporation), the Skuld Club and the 1971 Fund in the Court of Session. A court hearing on the question of admissibility in principle of this claim ("legal debate") was held from 28 April to 9 May 1997.

The main substantive issue dealt with by the Court which is of interest to the 1971 Fund was whether Landcatch's claim was admissible under the applicable United Kingdom statutes, ie the Merchant Shipping (Oil Pollution) Act 1971 and the Merchant Shipping Act 1974, which gave effect to the 1969 Civil Liability Convention and the 1971 Fund Convention, respectively. The question was whether the loss allegedly suffered by Landcatch constituted "damage caused ..... by contamination resulting from the discharge or escape" of oil (Section 1(1)a of the 1971 Act and Sections 4(1) and 1(3) of the 1974 Act).

The main argument invoked by Landcatch was that the 1971 and 1974 Acts imposed an absolute liability of indeterminate extent in respect of all losses caused by contamination. As a subsidiary argument, Landcatch maintained that the Court should pay close regard to the criteria adopted by the 1971 Fund in dealing with other claims for pollution damage.

The owner of the *Braer*, the Skuld Club and the 1971 Fund maintained that, although claims for pure economic loss may be admissible under the 1971 and 1974 Acts, it did not follow that all claims for pure economic loss were admissible. They argued that, on the contrary, the legislation in question was governed by the well established principle of common law by which a pragmatic limit was placed on the scope of liability, and that in any event Landcatch's claim fell outside that limit.

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

The Court found that the decisions of the 1971 Fund established that, while not excluding claims for economic loss, the Fund considered each such claim on its merits, that the Fund did not

apply "but for" tests, that the Fund had interpreted the Convention as requiring a line to be drawn to exclude an indeterminate chain of causation, and, therefore, a liability of indeterminate scope, and that the Fund accepted that in cases of economic loss there must be a reasonable degree of proximity between the contamination and the loss.

Landcatch's reliance on common law was rejected by the Court. On examining what the Court termed the "unsatisfactory list of authorities" relied upon by Landcatch, it found that these did not assist Landcatch. The Court stated that an examination of the relevant case law rather exemplified the consistent refusal of the Courts to expose defendants to indeterminate liability and demonstrated a consistent distinction made by the Courts between principal or direct victims of loss and those who were secondary or remote. In the Court's view, there was nothing in Landcatch's pleadings to establish the necessary proximity on which claims for economic loss depended. According to the Court, Landcatch's argument that its business activities were "bound with the Shetland salmon fishing industry" and that these activities were "closely integrated with it" were empty phrases. The Court considered it plain that Landcatch was no more than a potential supplier to salmon farmers carrying out business in the contaminated area.

Landcatch has appealed against the judgement to the Inner House of the Court of Session (the Court of Appeal for Scotland). In its appeal Landcatch has maintained that the test for admissibility under the 1971 Act is causation alone (the "but for" test) and that the correctness of this test could also be inferred from the 1971 Fund Convention and the preparatory works. Landcatch has stated that, having regard to the principles laid down by the 1971 Fund's 7th Intersessional Working Group, it could not be said that Landcatch's claim was bound to fail, and that Landcatch should therefore be allowed to present evidence of the damage suffered. In addition, Landcatch has maintained that the Court did not pay proper regard to the principles adopted by the 1971 Fund in drawing a line on the scope of recovery. Finally, Landcatch has argued that at common law Landcatch's pleadings set out a sufficiently close relationship with the Shetland fish farming industry to establish the necessary proximity for a claim for economic loss to be admissible even where there was no property damage.

Suspension of payments

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

Shipowner's right of limitation

On 25 September 1997, the Court of Sessions decided that the Skuld Club was entitled to limit its liability in the amount of 5 790 052.50 SDR (£4.9 million). The Court ordered that the sterling equivalent in cash, a bank guarantee or any other security approved by the Court should be lodged within 28 days of the order.

The Court has not yet considered the question of whether or not the shipowner is entitled to limit his liability.

After careful consideration of the legal and technical issues involved and in view of the fact that a successful recovery by the Fund of any significant amounts was unlikely, the Executive Committee decided that the 1971 Fund should not challenge the shipowner's right of limitation or

take legal action against him or any other person to recover the amounts paid by the 1971 Fund in compensation.

Landcatch Ltd has challenged the right of the shipowner to limit liability.

KIHNU

(Estonia, 16 January 1993)

The incident

The Estonian tanker *Kihnu* (949 GRT) grounded on 16 January 1993 close to the port of Tallinn (Estonia). It is estimated that some 100 tonnes of heavy fuel oil and 40 tonnes of diesel oil were spilled as a result of the grounding.

The Estonian authorities carried out certain clean-up operations. The Finnish authorities despatched two oil combatting vessels and a helicopter to Estonia to assist in dealing with the spill.

Claim for compensation

In December 1995 the Finnish Government submitted a claim to the 1971 Fund for FM713 055 (£90 000) relating to the clean-up operations carried out by the Finnish authorities in Estonian territorial waters.

The 1969 Civil Liability Convention and the 1971 Fund Convention entered into force for Estonia on 1 March 1993, ie after the *Kihnu* incident. The Executive Committee considered that, although the claim of the Finnish Government related to activities undertaken within the territorial waters of a non-Member State, the measures were taken to prevent or minimise pollution damage within the territory or territorial sea of Finland, which was a Member State at the time of the incident. The Committee decided, therefore, that the measures taken by the Finnish authorities in principle fell within the scope of application of the 1969 Civil Liability Convention and 1971 Fund Convention.

The Finnish Government's claim was discussed at a meeting held in Helsinki in January 1997. The Government agreed to reduce the amounts claimed for certain items relating to the maintenance of Government owned vessels and to the salaries of crews, since the amounts claimed included certain elements of 'fixed costs' which were not closely linked to the clean-up operations. As a result of these and other agreed revisions, the Government reduced its claim to FM543 618 (£65 100), provided that an out-of-court settlement would be reached.

Court action

The State of Finland took legal action against the 1971 Fund and the P & I insurer in the Helsinki District Court in January 1996, claiming compensation for FM713 055.

The limitation amount applicable to the *Kihnu* calculated in accordance with the 1969 Civil Liability Convention was estimated at 113 000 SDR (FM746 800, corresponding to £94 700).

Out-of-court settlement

The Finnish Government informed the 1971 Fund that the Estonian authorities had not requested assistance from the Finnish Government. The Government indicated that, when notifying the Finnish Government of the incident, the Estonian authorities had stated that the Finnish Government would be welcome to assist if it so wished, but that the Estonian authorities had no possibility of paying the Finnish authorities for any assistance rendered. The Finnish Government

stated that it had nevertheless decided to intervene in order to protect the Finnish coast and territorial waters.

The Executive Committee took the view that the Finnish Government's right of compensation from the shipowner and the 1971 Fund for the costs incurred was not dependent on whether the Government was entitled to recover its costs from the Estonian authorities. The Committee noted that, under Article 1.7 of the 1969 Civil Liability Convention, any person carrying out preventive measures was entitled to compensation. It was also considered that the Estonian authorities would have been entitled to present a subrogated claim against the shipowner and the 1971 Fund, if they had reimbursed the Finnish Government for its costs.

The Executive Committee noted that it appeared very unlikely that the Finnish Government would have been able to recover its costs for preventive measures from the shipowner, the bareboat charterer or the insurer by taking legal action in Estonia or in Finland. It took the view that the Finnish Government had taken all reasonable steps to pursue the legal remedies available to recover these costs from parties other than the 1971 Fund. The Committee decided that the 1971 Fund should pay the amount agreed to the Finnish Government without waiting for the Finnish Court's decision against the insurer. The Committee further decided that the 1971 Fund should not pursue the Finnish Government's action against the insurer in order to recover the amount paid to the Government, since such an action was unlikely to succeed.

The 1971 Fund paid the agreed amount of FM543 618 (£65 100) to the Finnish Government in April 1997.

Nakhodka incident - volunteers join in the clean-up
(photograph: Ishikawa Prefecture)

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 were spilled from the *Keumdong N°5*. The oil quickly spread over a wide area due to strong tidal currents and affected mainly the north-west coast of Namhae island.

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

Claims for compensation

Claims relating to the cost of clean-up operations were settled at an aggregate amount of Won 5 600 million (£2.0 million)[1] and were paid by the shipowner's P & I insurer, the Standard Steamship Owners' Protection and Indemnity Association (Bermuda) Ltd (Standard Club), by September 1994. The total amount paid by the Standard Club considerably exceeds the limitation amount applicable to the *Keumdong N°5*, *viz* Won 77 million (£53 000). The 1971 Fund has made advance payments to the Standard Club totalling US$6 million (£4 million) in respect of the Club's subrogated claims in respect of clean-up and fishery damage.

The incident affected fishing activities and the aquaculture industry in the area. Claims for compensation were submitted by the Kwang Yang Bay Oil Pollution Accident Compensation Federation, representing 11 fishery co-operatives with some 6 000 members in all. The total amount of the claims presented was Won 93 132 million (£28 million). The Federation indicated that it would present further claims in the region of Won 90 000 million.

During the period July 1995 to September 1996 agreements were reached on most of the claims presented by the Kwang Yang Bay Federation. The amounts agreed totalled Won 6 163 million (£2.2 million) compared with a total amount claimed of Won 48 047 million (£17 million). These claims have been paid in full for the agreed amounts.

One major co-operative, the Yosu fishery co-operative, left the Kwang Yang Bay Federation and took legal action against the 1971 Fund in May 1996. Claims have been filed in court totalling Won 17 162 million (£6.2 million) for damage to the common fishery grounds. In addition, claims have been submitted by over 900 individual fishermen belonging to this co-operative, who are fishing boat owners, set net fishing licence holders or onshore fish culture facility operators. These claims total Won 1 643 million (£590 000).

The experts engaged by the 1971 Fund and the Standard Club have assessed the losses allegedly suffered by all the claimants of the Yosu co-operative at Won 810 million (£290 000). The reasons for the great difference between the amount claimed and the amount assessed are as follows. 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

[1] As for the rate of conversion of Korean Won to Pounds Sterling, see page 43.

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 have not provided evidence that the alleged losses were caused by the oil spill.

An arkshell fishery co-operative brought legal action against the 1971 Fund in respect of a claim for Won 4 160 million (£1.5 million). This claim relates to damage allegedly caused during 1994 to the arkshell cultivation farms of the co-operative's members. The co-operative has reserved its right to increase the amount later for damage not yet quantified which would allegedly be suffered after 1994. This claim has been rejected by the 1971 Fund because there was no evidence that the alleged damage was caused by oil pollution.

Claims by two other co-operatives for Won 6 053 million (£2.2 million) and Won 411 million (£150 000), respectively, were rejected by the 1971 Fund, since it had not been shown that the alleged losses occurred as a result of oil pollution. These claims have not been pursued in court.

Since the total amount of the claims submitted exceeded the maximum amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention, the Executive Committee decided, in February 1994, that the 1971 Fund's payments would, at least for the time being, be limited to 50% of the established damage suffered by each claimant.

In order to make it possible for the 1971 Fund to pay agreed items in full, an agreement in principle was reached between the Fund and the Kwang Yang Bay Federation in the summer of 1995 that the admissible amount of the claims of the members of all the 11 fishery co-operatives forming part of the Federation would not exceed a specified amount determined to give the 1971 Fund a safety margin against overpayment. In October 1995, the Executive Committee shared the Director's view that, once the agreement was properly signed to the satisfaction of the 1971 Fund's Korean lawyer, the Fund would be in a position to pay any established claims in full. The agreement was signed by the co-operative chairmen in July 1996, on the basis of powers of attorney issued by all the individual members. As a result all agreed claims were paid in full.

A table showing the situation as at 31 December 1997 in respect of the settled fishery claims is set out below.

	Amount claimed (million)		Amount agreed (million)	
	Won	£	Won	£
Claims settled out of court	97 351	34	6 163	2
Claims rejected by 1971 Fund and not pursued in court (two fishery co-operatives)	6 464	2	-	-
	103 815	36	6 163	2

The claims pending in court can be summarised as follows.

Claimant	Originally claimed amounts (million Won)	Amounts claimed in court (million Won)
Yosu fishery co-operative	18 430	18 805
Arkshell fishery co-operative	25 197	4 160
Total	43 627 (£15.6 million)	22 965 (£8.2 million)

The experts engaged by the 1971 Fund and the Standard Club have assessed the claims pending in court at less than Won 1 500 million (£540 000).

Several court hearings have been held, and the claimants have submitted some documentation in support of their claims, including a survey report relating to the Yosu co-operative's claim. The Court is expected to render its judgement in early 1998.

Recent investigations have shown that a number of fishing boats belonging to the Yosu fishery co-operative had in fact been contaminated. The cost of cleaning these boats, which formed a minor part of the co-operative's claim, has been assessed by the 1971 Fund's experts at Won 7 million (£2 500), compared with the amount claimed of Won 46 million (£16 500).

Limitation proceedings

The shipowner made an application to the competent district court that limitation proceedings should be opened. The Standard Club paid the limitation amount plus interest, corresponding to Won 77 million (£28 000), in cash to the Court in December 1994. The Court prepared a table setting out the distribution of the limitation fund to the various claimants. The limitation fund was distributed to the claimants, and the limitation proceedings were completed in August 1995.

ILIAD

(Greece, 9 October 1993)

The incident

The Greek tanker *Iliad* (33 837 GRT) grounded on rocks close to Sfaktiria island after leaving the port of Pylos (Greece). Some 300 tonnes of the *Iliad*'s cargo of about 80 000 tonnes of Syrian light crude oil were spilled. The Greek national contingency plan was activated. The spill was soon brought under control and the vessel left the port, anchoring offshore to await inspection and temporary repairs.

By 22 October 1993 only sheens and traces of oil residues remained on the water surface, and the recovery at sea was concluded. The removal of oil from sandy beaches was completed by 29 October 1993. The final cleaning of seawalls and selected areas of rocky shoreline was completed by the middle of January 1994.

Floating oil interrupted the fishing activities in Pylos Bay and along the coast for about two weeks. A fish farm at Pylos lost a small part of its stock, and it was alleged that the farm's normal selling pattern was interrupted. Tests on the stock showed that there was no residual contamination.

Limitation proceedings and claims for compensation

In March 1994 the shipowner's P & I insurer, the Newcastle Protection and Indemnity Association (Newcastle Club), established a limitation fund amounting to Drs 1 497 million (£3.2 million) with the competent court by the deposit of a bank guarantee. One claimant took legal action to challenge the shipowner's right to limit his liability. The Court of first instance rejected this action. The claimant appealed against this decision, but the appeal was rejected.

The Court decided that the claims had to be lodged by 20 January 1995. By that date 527 claims had been presented, totalling Drs 3 071 million (£6.6 million) plus Drs 378 million (£800 000) for compensation for 'moral damage'.

Claims for clean-up costs presented by the Ministry of Merchant Marine and by the shipowner have been settled and paid by the Newcastle Club for a total of Drs 294 million (£630 000). In addition, the Club has made an advance payment of US$350 000 (£214 000) in respect of a contractor's clean-up claim of Drs 131 million (£279 000) which is still under negotiation.

In the fishery sector, claims totalling Drs 1 100 million (£2.3 million) have been submitted by fishermen and two fish farmers for alleged loss of income, damage to facilities and higher mortalities. As little or no documentary evidence has been submitted in support of these claims, further documentation has been requested to substantiate them.

There are also a number of claims for loss of income allegedly suffered by individuals and a wide range of small businesses, such as hoteliers and restaurateurs, as well as taxi drivers, shopkeepers and estate agents.

The claims for moral damages have been submitted by a number of claimants for various amounts. Only sworn affadavits have been submitted in support of the moral damages claimed, and the claimants maintain that these substantiate their loss. The Assembly and the Executive Committee have taken the position that only a claimant who has suffered a quantifiable economic loss is entitled to compensation under the 1969 Civil Liability Convention and the 1971 Fund Convention. For this reason, the Fund's position is that the claims for moral damages are inadmissible.

The claims are being examined by the experts engaged by the Newcastle Club and the 1971 Fund.

The Court has appointed a liquidator to examine the claims. This examination started at the end of 1997.

Time bar

Claims against the 1971 Fund in respect of this incident became time-barred on or shortly after 9 October 1996.

With the exception of a fish farm, the clean-up contractor mentioned above, the shipowner and the Newcastle Club, the claimants have failed to take action against the 1971 Fund or notify the Fund formally of the action brought against the shipowner and his insurer within the prescribed time limit.

SPILL FROM UNKNOWN SOURCE IN MOROCCO

(Morocco, 30 November 1994)

In March 1995 the 1971 Fund was informed of an oil spill which had occurred on 30 November 1994 in the port of Mohammédia (Morocco). The Moroccan authorities claimed compensation for clean-up costs totalling Dhr 2.6 million (£166 000). The authorities did not give any indication as to the source of the spill but stated that the oil could only have come from the sea.

The Director drew the attention of the Moroccan authorities to Article 4.1 of the 1971 Fund Convention. Under that Article, the 1971 Fund is obliged to pay compensation where the victim is unable to obtain compensation because "no liability arises under the Civil Liability Convention". One of the situations in which no liability would arise under the 1969 Civil Liability Convention is where the identity of the ship which caused the damage is not known, since in that case no shipowner can be held liable under that Convention. Article 4.2(b) of the 1971 Fund Convention provides that in such cases the 1971 Fund is not obliged to pay compensation if "the claimant cannot prove that the damage resulted from an incident involving one or more ships".

The Moroccan authorities maintained that in all probability, in view of the quantity involved, the oil originated from a laden tanker. The authorities referred to a survey report in which it was stated that the results of laboratory tests, the colour of the oil and its smell showed that it was a crude oil. The 1971 Fund's experts examined the documentation presented by the Moroccan authorities. The experts expressed the opinion that the investigation carried out to determine the oil type was not adequate to establish whether the oil in question was a crude oil or a fuel oil.

On the basis of the opinion of its experts, the 1971 Fund informed the Moroccan authorities in December 1995 that it had not been established that the oil originated from a ship as defined in the 1971 Fund Convention (ie a laden tanker) and that for this reason the 1971 Fund could not accept the claim for compensation.

The Moroccan Government has informed the 1971 Fund that the Government has set up a committee to investigate this oil spill in order to try to establish the source of the oil. The Fund has invited the Moroccan authorities to inform him of the progress of the Moroccan committee's investigations, but so far no such information has been received.

DAE WOONG

(Republic of Korea, 27 June 1995)

The Korean tanker *Dae Woong* (642 GRT), laden with 1 500 tonnes of heavy fuel oil and 70 tonnes of diesel oil as cargo, ran aground off the port of Kojung some 150 kilometres south-west of Seoul, on the west coast of the Republic of Korea. Two cargo tanks were damaged, and approximately one tonne of oil spilled into the sea.

Some small islands and inlets near the site of the incident were contaminated by oil. Clean-up operations were carried out by the Marine Police and contractors applying dispersants and sorbents. Some mariculture facilities were also affected by the oil spill.

The Marine Police and a private contractor presented claims in respect of the clean-up operations for Won 31 million (£24 000) and Won 14 million (£11 000), respectively. The claim

of the clean-up contractor was settled at Won 12 million (£10 000). The Marine Police's claim was settled for the amount claimed.

Several fishery co-operative associations have indicated that they will submit claims for compensation, but so far no such claims have been received. Further claims will be time-barred on or shortly after 27 June 1998.

The limitation amount applicable to the *Dae Woong* is estimated at Won 95 million (£65 000). The ship was not covered by any insurance or other guarantee at the time of the incident.

Although the aggregate amount of the claims settled was below the limit of the shipowner's liability, the shipowner did not pay these claims. The shipowner has not commenced limitation proceedings. An investigation by the 1971 Fund into the financial situation of the shipowner showed that the shipowner had no substantial assets. The 1971 Fund therefore paid the settled claims in June 1996.

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 were 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 islands of Oki.

A Japanese salvage company was engaged by the shipowner to salve the ship and the remaining cargo, under a salvage contract (Lloyds Open Form 95). The salvor transhipped some 80 000 tonnes of oil into barges, leaving some 950 tonnes on board. The remaining oil in the cargo tanks was dosed with dispersants to ensure rapid dispersal into the water column should the oil be lost during subsequent salvage operations or bad weather. Further investigation revealed that the vessel had suffered serious structural damage, and the technical experts agreed, on the basis of information supplied by the salvor, that there was an unacceptable risk that the ship could break up during refloating. In view of this the salvage contract was terminated and a contract was signed with another salvage company for the removal of the ship. The *Sea Prince* was successfully refloated and was towed out of Korean waters.

Clean-up operations and impact on aquaculture and fisheries

Small areas of rocky coasts, sea wall defences and isolated pebble beaches were affected. Most of the clean-up operations were completed by the end of October 1995, and the remainder were completed in July 1996. Buried oil was found at one location, and removal of this oil was carried out in October 1996.

In addition to traditional fisheries, intensive aquaculture is carried out in the area, particularly around the islands near Sorido. Floating fish cages, mussel farms and set nets were oiled to varying degrees.

Joint surveys to record the oil pollution of aquaculture facilities in the affected area were carried out with the involvement of various local fishing representatives, experts engaged by the shipowner, his insurer, the United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Limited (UK Club), the 1971 Fund, and local surveyors. Samples of fish, shellfish and seaweed were taken for chemical analysis and taint testing.

Chemical analyses of marine products taken from polluted and non-polluted areas were undertaken in the United Kingdom. Most of the samples taken from the polluted areas showed low levels of petroleum hydrocarbons which were comparable to those found in samples taken from the non-polluted areas. Samples of mussels and clams taken from the polluted area showed high levels of petroleum hydrocarbons. However, the fingerprints of the oils indicated that the *Sea Prince* was not the source of the contamination.

Taste testings of samples were proposed by the experts of the UK Club and the 1971 Fund. However, the claimants refused to allow these tests to be carried out.

Level of the 1971 Fund's payments

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

In the light of the information on the aggregate amount of the claims presented, the Committee decided in February 1996 to increase the 1971 Fund's payments from 25% to 50% of the established damage suffered by each claimant, subject to confirmation of a significant reduction of the total amount of the fishery related claims. In June 1997, the Director decided to implement the Executive Committee's decision to increase the 1971 Fund's payments to 50%, since there had been a significant reduction in the total amount of the fisheries claims.

In April 1997 the Executive Committee noted the Director's view that, on the assumption that the method of assessment used by the experts of the UK Club/1971 Fund were to be accepted, the total admissible amount of all claims arising out of this incident would fall well below the maximum amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention and the 1971 Fund would be able to pay all outstanding claims for the full settlement amounts. The Committee therefore decided to authorise the Director to pay all settled claims in full (to the extent they had not already been paid), provided that all or most of the outstanding claims in the fishery and tourism sectors were settled on the basis of the assessment made by the experts engaged by the 1971 Fund and the UK Club that any uncertainty be eliminated as to the level of the shipowner's claim relating to the cost of the measures associated with the work carried out under the contract for the removal of the ship and related operations, and that the Director was convinced that the aggregate amount of all claims arising out of this incident would fall below 60 million SDR (£49 million). It is expected that these conditions will be fulfilled early in 1998 and that the 1971 Fund will then pay the balance of the settlement amounts.

Claims for compensation

Nearly all claims relating to clean-up operations have been settled for approximately Won 19 700 million (£7 million)[2]. These claims have been paid in full by the shipowner and the UK Club, who have presented subrogated claims to the 1971 Fund.

[2] As for the rate of conversion of Korean Won to Pounds Sterling, see page 43.

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

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

The members of seven fishery co-operatives affected by the spill formed a 'Countermeasure Committee' to co-ordinate the submission of their claims and to negotiate with the shipowner, the UK Club and the 1971 Fund. Provisional claims for fishery damage were submitted by this Committee in respect of alleged damage to caged fish, common fishery grounds and other fisheries, but without supporting documentation. The fishery experts engaged by the Countermeasure Committee submitted a report containing revised claims which were assessed by these experts at a total amount of Won 70 600 million (£49 million). However, the report was not accompanied by supporting documentary evidence. After discussions with the experts engaged by the UK Club and the 1971 Fund, the chairman of the Countermeasure Committee provided sales consignment data in November 1996 for most of the fishing sectors allegedly affected by the oil.

Pusan Fishery Co-operative Association, which did not form part of the Countermeasure Committee, submitted claims for Won 345 million (£238 000).

By 31 December 1997, claims in the fishery and tourism sectors in Korea had been settled on the basis of the Fund experts' method of assessment for a total of Won 13 456 million (£4.8 million). These claims had originally been presented for a total amount of Won 178 758 million (£64 million). These settled claims were paid in full by the shipowner. The shipowner presented a subrogated claim to the 1971 Fund, and 50% of the settlement amount has been reimbursed to the shipowner.

Claims from five fishery co-operative associations are outstanding. These claims were originally presented for a total of Won 54 432 million (£19.5 million). The experts engaged by the claimants had assessed these claims at Won 8 670 million (£3.1 million), whereas the Fund experts had assessed them at a total of Won 1 402 million (£503 000). A claim for Won 72 660 000 (£26 000) by the Pusan Fishery Co-operative Association relating to loss of income from fishing boats has not yet been assessed.

The most important of the pending claims were those relating to common fishery grounds submitted by members of the Yosu Fishery Co-operative Association, which originally amounted to Won 58 308 million (£21 million). The experts engaged by the claimant had assessed these claims at Won 7 807 million (£3 million), and the claims were filed in court for that amount. The Fund experts assessed these claims at Won 1 141 million (£410 000). Discussions are continuing with these claimants, and it is expected that these claims will be settled in early 1998.

A claim for Won 767 million (£275 000) was presented in court by a company which operated a stockpile of clean-up equipment and material on behalf of the shipowner in connection with the *Sea Prince* and *Honam Sapphire* incidents. This claim had been assessed by the experts engaged by the 1971 Fund and the UK Club at Won 285.5 million (£102 000). At a hearing held in September 1997 the Court rendered a so-called mediation judgement, in which the claim was assessed at Won 400 million (£143 000). Any party can lodge an opposition against this judgement within two weeks of its being served on the party. After further investigation by the experts

engaged by the Club and the Fund, the Director and the Club decided to accept the amount assessed by the Court (ie Won 400 million) as reasonable, and did not lodge opposition. However, the claimant lodged opposition to the judgement.

The claims situation is shown in the tables set out below.

Claims settled		
Claims category	Originally claimed million Won	Agreed million Won
Clean-up	21 544	20 460
Fishery	152 155	12 943
Tourism and agriculture	3 459	513
Total	177 158	33 916
	(£64 million)	(£12 million)

Claims in litigation		
	Originally claimed million Won	Claimed in court million Won
Clean-up	432	767
Fishery	2 969	5
Total	3 401	772
	(£1.2 million)	(£280 000)

Limitation proceedings and investigation into the cause of the incident

The limitation amount applicable to the *Sea Prince* is 14 million SDR (£12 million).

The competent district court issued an order for the commencement of limitation proceedings and decided that all claims should be filed by 28 August 1996. By that date, claims totalling Won 120 000 million (£43 million) had been submitted. These included clean-up claims totalling Won 44 500 million (£16 million), fishery claims totalling Won 70 700 million (£25 million) and claims relating to tourism and agriculture for Won 4 600 million (£1.6 million). The 1971 Fund has submitted claims subrogated from the UK Club in the amount of £2 million. The shipowner has also filed a claim for the cost of the measures associated with the work carried out under contract for the removal of the oil and the vessel and related operations for US$24.8 million (£15.1 million).

Several court hearings have been held. The UK Club and the 1971 Fund have made objections to the fishery claims.

At a hearing held in January 1997, the shipowner, after consultation with the UK Club and the 1971 Fund, submitted a report prepared by International Tanker Owners Pollution Federation Ltd (ITOPF). This report contained criticism of the assessment made by the claimants' experts. In the report ITOPF demonstrated that the assessment of the claims undertaken by the claimants'

experts was largely subjective and that the claimants had provided little or no supporting documentation.

At a hearing in February 1997, the administrator appointed by the Court submitted an opinion together with a list of the claims accepted by him. The administrator stated that, due to the lack of objective supporting material, he had experienced difficulties in assessing the claims. The administrator accepted most of the amounts claimed without any significant modification, however, and did not take into account the above-mentioned ITOPF report. The judge requested the UK Club and the 1971 Fund to submit comments on the administrator's opinion, whereupon the Court would request the claimants to provide supporting documents.

As regards the claims for which settlement agreements have been reached, it is expected that the Court will accept the settled amounts.

It is expected that the Court will render its assessment decision on the quantum of the claims in March 1998. If the parties involved were to make objections to this assessment decision, it is likely that the opposition proceedings in the Court of first instance would take several years.

Investigation into the cause of the incident

The 1971 Fund has, through its Korean lawyer, followed the investigation of the Korean Marine Inquiry Agency into the cause of the incident. The Fund has also examined the judgement by the Court of first instance in the criminal proceedings against the master of the *Sea Prince*.

The *Sea Prince* grounded off Sorido island during a typhoon, having lost control under heavy swell and wind while on her way from the anchorage in Yosu Bay to take refuge in the open sea. It appears that the incident was caused by a navigational error on the part of the master of the *Sea Prince*, and the unusual movement of the typhoon contributed to the incident. In June 1996 the Executive Committee decided that the 1971 Fund should not challenge the shipowner's right of limitation.

The 1971 Fund has investigated, through its Korean lawyer, the possibility of taking recourse action against any person who contributed to the incident. In the light of these investigations, the Executive Committee decided that there were no grounds on which the 1971 Fund could take recourse action against any third party to recover the amounts paid by the Fund in this case.

YEO MYUNG

(Republic of Korea, 3 August 1995)

The incident

The Korean tanker *Yeo Myung* (138 GRT), laden with some 440 tonnes of heavy fuel oil, collided with a tug which was towing a sand barge off Maemul island, near Koeje island (Republic of Korea).

Two of the tanker's cargo tanks were breached, and about 40 tonnes of oil were spilled. The oil drifted in a north-easterly direction and stranded at a number of locations on Koeje island from 4 to 8 August 1995. Many of these locations had been previously oiled as a result of the spill from the *Sea Prince* incident which occurred on 23 July 1995, the clean-up of which was in progress when the *Yeo Myung* incident took place.

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

In addition to traditional fishing, aquaculture activities are carried out in the area affected by the *Yeo Myung* incident.

Claims for compensation

Claims for clean-up operations totalling Won 758 million (£523 000)<1> have been settled at Won 661 million (£457 000). The claims have been paid partly by the North of England Protection and Indemnity Association Limited (North of England P & I Club), partly by the 1971 Fund. Further claims totalling Won 3 350 000 (£1 200) are being examined.

A fishery co-operative presented claims for losses in the fishery and mariculture sector for Won 19 149 million (£6.9 million). These claims were assessed by the 1971 Fund's experts at Won 467 million (£167 000). Most of these claims have been settled at the amounts assessed by these experts.

The owners of set nets and fish farms presented claims separately for Won 644 million (£230 000) for losses already suffered and for an additional Won 1 618 million (£580 000) for anticipated future losses. The claimed amounts were later reduced to Won 429 million (£150 000) for set nets and Won 669 million (£240 000) for fish farms, excluding future losses. These claims have been assessed by the experts engaged by the Club and the 1971 Fund at Won 35.5 million (£13 000). So far this assessment has been accepted by only a few of these claimants.

Local businesses in the tourism sector along the affected beaches on Koeje island presented claims for Won 2 592 million (£1.7 million) relating to loss of income. Most of these claimants had also submitted claims in respect of the *Sea Prince* incident. These claims were settled as regards the *Yeo Myung* incident at Won 269 million (£97 000).

Limitation proceedings and investigation into the cause of the incident

The shipowner commenced limitation proceedings at the competent district court. The limitation fund was established by the shipowner's insurer, the North of England P & I Club, by payment of the limitation amount of Won 21 million (£15 000) to the Court.

In August 1996, 13 groups of claimants, including the shipowner, lodged claims in the Court relating to clean-up operations, fishery activities and businesses in the tourism sector for a total amount of Won 6 994 million (£4.8 million). The first court hearing was held in March 1997 and the proceedings were adjourned until the assessment of damages is finalised.

As regards the claims for which settlements have been reached, it is expected that the Court will accept the settlement amounts.

The claims situation is shown in the table set out below.

<1> As for the rate of conversion of Korean Won to Pounds Sterling, see page 43.

Claims settled			
Claims category	Amount originally claimed million Won	Amount assessed by Fund's experts million Won	Amount agreed million Won
Fishery	12 511	352	352
Tourism	2 592	269	269
Clean-up	758	661	661
Total	15 861 (£5.7 million)	1 282 (£460 000)	1 282 (£460 000)

The investigation of the Marine Accident Inquiry Agency into the cause of the incident revealed that the incident was caused by a navigational error on the part of the masters of both vessels involved in the collision. The investigation did not give any indication that the incident was caused by the actual fault or privity of the owner of the *Yeo Myung*. In October 1996 the Executive Committee decided that the 1971 Fund should not challenge the shipowner's right to limit his liability, nor oppose the shipowner's request for indemnification under Article 5.1 of the 1971 Fund Convention.

In the light of the findings of the MAIA, the 1971 Fund's Korean lawyer took the view that the liability for the collision should be apportioned equally between the two vessels. The Fund's lawyer had ascertained that the owner of the other vessel involved in the collision (a tug) had no assets against which a judgement in a recourse action could be enforced. The Executive Committee therefore decided that the 1971 Fund should not take recourse action against the tug owner.

SENYO MARU

(Japan, 3 September 1995)

The Japanese tanker *Senyo Maru* (895 GRT), carrying 2 000 tonnes of heavy fuel oil, collided with the Panamanian bulk carrier *Batis* (23 277 GRT) off Ube, Yamaguchi Prefecture (Japan). One of the tanker's cargo tanks was damaged, and some 94 tonnes of heavy fuel oil were spilled.

The clean-up operations at sea were carried out by the Japan Maritime Safety Agency , the Japan Marine Disaster Prevention Centre and various contractors employed by the owner of the *Senyo Maru*. Some 360 vessels participated in these operations, including some 250 fishing boats. The oil spread over a very large area, and at one time a single slick extended over some 300km^2. A major part of the spilt oil polluted some four kilometres of beaches, some of which were heavily contaminated. Over 400 villagers and fishermen participated in the onshore clean-up operations. Some 2 500m^3 of oily waste were collected and disposed of.

Claims totalling ¥413 million (£2.5 million) for clean-up operations and fishery damage were presented by the Japanese authorities, a number of contractors and fishery co-operatives. These claims were settled at a total amount of ¥388 million (£2.4 million) and paid by May 1996, ie within eight months of the incident.

The investigation into the cause of the incident was carried out by the competent Marine Court which rendered its decision in February 1997. The Court found that the collision between the *Batis* and the *Senyo Maru* was in part caused by poor visibility due to heavy rain and in part due to the fact that neither vessel had sounded fog signals nor reduced speed when they came into close-quarters.

Since the incident was caused by errors on the part of both vessels, the 1971 Fund considered that there were no grounds on which the 1971 Fund could oppose the right of limitation of either shipowner.

The limitation amount applicable to the *Senyo Maru* is ¥20 million (£100 000).

In September 1997, the 1971 Fund paid indemnification of ¥5 million (£26 184) to the insurer of the *Senyo Maru*.

The 1971 Fund took steps to initiate recourse action against the *Batis*. An agreement was reached between the parties on an apportionment of liability at 1/3 : 2/3 in favour of the *Senyo Maru*. The owner of the *Batis* paid ¥279 million (£1 418 000) to the 1971 Fund in October 1997, representing the Fund's recovery. The 1971 Fund's total cost in respect of this incident is ¥141 million (£1 148 000).

YUIL N°1

(Republic of Korea, 21 September 1995)

The incident

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

Shorelines on the east and north coast of Koeje island, on the west coast of Kadokto and immediately to the east and west of the mainland at Pusan, as well as a number of smaller islands, were oiled as a result of the initial spill following the grounding and sinking. Some re-oiling of shorelines west of Pusan also occurred following later small releases of oil from the wreck.

Clean-up operations

Initially, the clean-up operations at sea were carried out by using two oil recovery vessels and a number of fishing vessels. The Marine Police also used ships for spraying dispersants. Booms were deployed in some coastal areas to protect laver seaweed farms.

The onshore clean-up operations were carried out by a number of contractors, with the assistance of some 1 750 villagers. The clean-up activities in many areas were completed by early November. In the more heavily polluted areas the operations were terminated at the end of November, although some operations were not completed until mid January 1996.

Level of payments

The Executive Committee expressed its concern that the total amount of the established claims arising out of this incident might exceed the total amount of compensation available under the 1969 Civil Liability Convention and the 1971 Fund Convention. For this reason, the

Committee decided, in December 1995, that the 1971 Fund's payments should for the time being be limited to 60% of the established damage suffered by each claimant.

At the Executive Committee's session in February 1996, the delegation of the Republic of Korea requested that the level of compensation payable by the 1971 Fund be increased from 60% to 100%. The delegation stated that, if this request were accepted, the Korean Government was prepared to provide a guarantee to protect the 1971 Fund against overpayment. A number of delegations expressed the view that the 1971 Fund should be very cautious in accepting a guarantee of the type proposed by the Korean delegation. The Executive Committee decided not to accept such a guarantee. The Committee further decided to maintain the limit of the 1971 Fund's payments at 60% of the established damage suffered by each claimant.

In January 1997, the National Federation of Fisheries Co-operatives (NFFC) paid the remaining 40% of most of the established claims for clean-up operations. As a result, NFFC acquired by subrogation the balance of these claims against the 1971 Fund for the amounts paid.

In February 1997, the delegation of the Republic of Korea noted that NFFC had paid the remaining 40% of the clean-up claims in order to avoid further delay in the payment of those claims. The delegation stated that the 1971 Fund should reimburse NFFC for the amount paid for these claims, together with due interest.

The Director stated that, in his view, it would not be possible for the 1971 Fund to reimburse NFFC for its subrogated claim, which represented the balance of the established clean-up claims, while the Fund's payments were limited to 60% of the established claims as decided by the Executive Committee, since all claimants had to be given equal treatment.

Claims for compensation

Claims relating to clean-up operations were received from various contractors, a fishery co-operative, Pusan Marine Police and Koeje City. Agreement has been reached on the quantum of the claims with most of the contractors and the other entities for a total of Won 12 383 million (£8.5 million).[4] The shipowner's insurer, the Standard Steamship Owners' Protection & Indemnity Association (Bermuda) Limited (the Standard Club), has paid some of these claims in full, and the 1971 Fund has reimbursed the Club 60% of these payments. The Fund's payments for these claims total Won 7 142 million (£5.6 million).

Claims in the fishery sector were submitted by a co-operative of set net owners, 11 fishery associations, the owner of a laver cultivation farm and the owners of oyster and mussel farms. The claims related to the cost of cleaning nets, contaminated equipment and facilities, and for loss of income. The claims submitted totalled Won 4 524 million (£1.6 million). Agreements were reached for a total of Won 3 235 million (£2.1 million) in respect of these claims. The 1971 Fund paid 60% of the settlement amounts in respect of some of these claims. The Standard Club paid the other agreed amounts in full, and the 1971 Fund reimbursed 60% of each established claim to the Standard Club.

So far, claims have been agreed for a total of Won 15 628 million (£10.7 million), out of which Won 12 393 million (£8.5 million) relates to clean-up operations and Won 3 235 million (£2.0 million) to fishery claims. Payments made total Won 10 417 million (£8.7 million), out of which the 1971 Fund's payments total Won 8 763 million (£7.3 million).

[4] As for the rate of conversion of Korean Won to Pounds Sterling, see page 43.

Clean-up claims for a total amount of Won 25 million (£17 000) and fishery related claims for a total amount of Won 60 892 million (£23 million) have not yet been settled.

The claims situation is shown in the table set out below.

	Claimed million Won	Assessed million Won	Agreed million Won
Agreed fishery claims	4 524	3 239	3 239
Outstanding fishery claims	60,892	-	-
Agreed clean-up claims	12 564	12 393	12 393
Outstanding clean-up claims	25	-	-
Total	78 005	15 632	15 632
	(£28 million)	(£5.6 million)	(£5.6 million)

Wreck removal and related issues

In November 1995 the Marine Police ordered the shipowner to remove the oil or the wreck. On the basis of studies carried out by experts employed by the shipowner, the owner maintained that it would be unnecessary and unwise to remove the oil or the wreck. The shipowner argued that there was a minimal release of oil and that there was no risk of any significant release of oil if the wreck were left where it was, since it was slowly being covered by mud which would help to prevent further significant releases of oil. The owner also stated that if an oil removal or wreck removal operation were to be carried out, there would be a significant risk that oil would escape causing further pollution.

In a letter to the 1971 Fund the Korean Government stated that there was growing concern about the possibility of an oil spill from the wreck which could cause pollution in the nearby coastal area and which could severely affect the livelihood of the local people. The Government mentioned that Korean experts were of the opinion that there was a need to carry out further investigation of the wreck using deep sea divers in order to acquire more accurate and detailed information on the condition of the wreck for removal. The Government therefore asked whether the 1971 Fund was prepared to carry out further investigation of the condition of the wreck and also asked whether, in the event that the 1971 Fund was not prepared to carry out such an investigation, the Fund would compensate the Korean Government for the cost of carrying out this investigation as a preventive measure against possible oil pollution. Finally, the Government asked whether the 1971 Fund would fund the costs incurred by the Government for removing the sunken tanker and its cargo.

In February 1996, the Executive Committee discussed this issue and took the view that it was not the task of the 1971 Fund itself to carry out clean-up operations or preventive measures, nor to undertake studies in these fields, and that the 1971 Fund should therefore not undertake the investigation requested. The Committee took the view that it would be for the Committee to decide, on an objective basis and in the light of all the circumstances of the case, whether the cost of any investigation or of any operation carried out by the Korean Government in respect of the removal of the oil or the wreck would be admissible for compensation.

The Korean delegation stated that the Korean Government wished to find a solution to the wreck removal issue. The delegation mentioned that an *ad hoc* committee composed of several

interested Government authorities had been set up to take anti-pollution measures and that a final decision would be taken after all aspects had been duly considered, including the position taken by the Executive Committee. The delegation stated that the Korean Government would like to have a more detailed discussion with the 1971 Fund after the Government's decision had been taken.

The Korean Research Institute of Ships and Ocean Engineering presented a report on a survey of the *Yuil N°1*. The report concluded that it was unlikely that the wreck would become buried in the mud or that the oil remaining in the tanks would solidify. It also stated that some tanks still contained oil, that corrosion to damaged shell plating would cause release of oil from the wreck within ten years, and that the removal of the remaining oil should therefore be carried out as soon as possible. The report acknowledged that a variety of factors made removal of the oil and the wreck difficult, but stated that such operations would succeed if they were carried out at the appropriate time and using proper equipment. It was concluded that the removal of the oil should precede the wreck removal, since such a procedure would reduce the risk of oil spillage. It was foreseen that the operation to remove the oil and the wreck would take about four months and would cost about Won 9 000 million (£6.2 million).

Limitation proceedings

The shipowner commenced limitation proceedings at the Pusan District Court in April 1996. The limitation amount applicable to the *Yuil N°1* is estimated at Won 250 million (£173 000).

By May 1996, fishery co-operatives had presented claims totalling Won 60 000 million (£41 million) to the Court. The Standard Club and the 1971 Fund presented their subrogated fishery and clean-up claims to the Court for a total amount of Won 10 000 million (£6.9 million). The clean-up contractors and fishery associations, who have so far received only 60% of the agreed amounts, filed claims for the balance, totalling Won 4 700 million (£3.2 million) and Won 29 million (£2 000), respectively.

At the court hearings the Club and the 1971 Fund filed objections to the fishery claims and the fishermen submitted objections to all the clean-up claims.

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

In November 1997, the Court rendered its decision adopting the administrator's proposal to accept one third of the fishery claims. The 1971 Fund has lodged an opposition to the Court's decision.

Investigation into the cause of the incident and recourse action

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

As regards the refloating and towing operation of the *Yuil N°1*, which followed the initial grounding and subsequently led to the sinking of the *Yuil N°1*, MAIA pointed out in its investigation report that the master of the *Yuil N°1* did not check the damaged plating, the extent

of the damage and how much water entered the vessel, nor did he ascertain the situation of the *Yuil N°1* and take emergency measures to minimise the risk of sinking. However, MAIA accepted that the sinking was a force majeure and decided that the action taken by the master after the grounding was inevitable. MAIA also pointed out that the Captain of the naval vessel which took part in the refloating and towing operations was reckless because the *Yuil N°1* had sunk up to deck level and that towing by the method envisaged could have resulted in the naval vessel sinking. MAIA concluded that the navigating officer of the tug involved did not undertake the tow on his own initiative, and that therefore he was not to blame for the incident.

The hull insurer of the *Yuil N°1* took legal action in the Republic of Korea against the Korean Government and the owner of the tug in respect of negligence during the refloating and towing operation for the purpose of recovering the amount it had paid for the damage to the hull (Won 1 173 million or £803 000).

The Court of first instance rendered its judgement in August 1997 rejecting the hull insurer's action. The hull insurer has appealed against the judgement.

In the light of the results of the investigation into the cause of the incident, the Executive Committee decided that there were no grounds on which the 1971 Fund could oppose the shipowner's right to limit his liability.

HONAM SAPPHIRE

(Republic of Korea, 17 November 1995)

The incident

During berthing manoeuvres at the oil terminal in Yosu (Republic of Korea), the fully laden Panamanian tanker *Honam Sapphire* (142 488 GRT) struck a fender, puncturing the N°2 port wing tank. An unknown quantity of Arabian heavy crude oil escaped from the damaged tank. The spilt oil drifted south and contaminated shorelines up to 30 kilometres away, and there was also a slight impact on an island 50 kilometres from the site of the incident.

Clean-up operations and impact on aquaculture and fisheries

The offshore clean-up operation was led by the Marine Police. Some 35 Marine Police vessels, several hundred fishing vessels and other craft and two helicopters were engaged in these operations.

The onshore impact was in most areas comparatively light. Onshore clean-up operations were completed in many areas by early January 1996, whereas in the most heavily polluted areas the operations continued until March 1996.

Mariculture facilities, set nets and common intertidal fishing areas were affected by the oil.

It has been maintained that oil still remains in some areas, and the Marine Police has requested that the shipowner should carry out further clean-up activities. On the basis of the advice of its experts, the 1971 Fund has informed the Marine Police that, in the Fund's view, it would not be reasonable to carry out such operations and that the cost of such activities would not be admissible for compensation.

Claims for compensation

Claims for clean-up costs were presented by various local authorities and contractors for a total amount of Won 9 727 million (£3.3 million)<>. Some claims in this category have been agreed for a total amount of Won 9 033 million (£3.2 million), and the settlement amounts have been paid in full by the shipowner. The remaining claims in this category are being examined. Further claims may be submitted.

Claims for fishery damage have been submitted by several fishery co-operatives in the area affected by the spill, totalling Won 49 115 million (£18 million).

Nine set net fishery operators in the Dolsan island area presented claims totalling Won 173 million (£62 000) for damage to facilities and loss of income during the period when fishing was interrupted as a result of the incident. These claims were settled at Won 106 million (£38 000) and were paid by the shipowner in April 1996.

Claims presented by a fishery co-operative, totalling Won 635 million (£228 000), related to various types of fishing carried out by its members. These claims were settled at an aggregate amount of Won 203 million (£72 000) and were paid by the shipowner in July 1996. The assessment was based on the actual interruption of business while the clean-up operations were carried out. The claims relating to the alleged mortality of caged fish were not accepted, since there was no evidence that such mortality had occurred as a result of the oil pollution or the clean-up operations.

The 1971 Fund's and UK Club's experts had hoped to assess the claims of the Yosu fishery co-operatives arising out of the *Honam Sapphire* incident, totalling Won 48 830 million (£17 million), in a way similar to that used in the *Sea Prince* case, namely using consignment sales data. However, for several fishery sectors little or no such data has been submitted. For this reason, assessments, at least for some sectors, have been based on consignment sales data relating to nearby areas. Some of these claims have been agreed at a total amount of Won 249 million (£90 000) and have been paid by the shipowner.

The settlements reached so far total Won 9 591 million (£3.4 million). Claims totalling Won 48 000 million (£17 million) are being examined.

The 1971 Fund has not yet made any payments for compensation, since the total amount of the established claims has not reached the limitation amount applicable to the *Honam Sapphire*, *viz* 14 million SDR (£12 million).

Limitation proceedings and investigation into the cause of the incident

The shipowner commenced limitation proceedings in September 1996.

At a court hearing held in February 1997, the shipowner, after consultation with the shipowner's insurer, the United Kingdom Mutual Steamship Assurance Association (Bermuda) Limited (UK Club), and the 1971 Fund, submitted a report prepared by International Tanker Owners Pollution Federation Ltd (ITOPF). This report contained criticism of the assessment made by the claimants' experts. In the report ITOPF demonstrated that the assessment of the claims undertaken by the claimants' experts was largely subjective and that the claimant had provided little or no supporting documentation.

The next court hearing will take place in January 1998.

<> As for the rate of conversion of Korean Won to Pounds Sterling, see page 43.

SEA EMPRESS

(United Kingdom, 15 February 1996)

The incident

The Liberian registered tanker *Sea Empress* (77 356 GRT), which was laden with more than 130 000 tonnes of crude oil, ran aground in the entrance to Milford Haven in south-west Wales (United Kingdom) on 15 February 1996, resulting in an initial loss of around 2 000 tonnes of crude oil. A pilot was on board, having joined the tanker outside the harbour entrance. Although quickly refloated, the tanker grounded a number of times during the period 15 to 18 February 1996, during persistently bad weather. On 21 February, the vessel was refloated and taken alongside a jetty inside the Haven where between 24 February and 3 March the remaining cargo, some 58 000 tonnes, was discharged. The *Sea Empress* was towed out of Milford Haven on 27 March, and a further small quantity of fuel oil was spilled at the start of and during the voyage. It is 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.

Impact of the spill

South-west Wales has a coastline of great scenic interest and scientific importance, of which about 200 kilometres was affected by the spill. A large part of the affected coast falls within the Pembrokeshire Coast National Park. The area includes one of the United Kingdom's three Marine Nature Reserves. In addition, Lundy Island in the Bristol Channel received light oiling, and some pellets of oil reached the Irish coast.

Clean-up operations

Salvage operations were co-ordinated jointly by the Milford Haven Port Authority and the Marine Pollution Control Unit (MPCU) of the Department of Transport. MPCU was also responsible for directing offshore pollution response operations. A Joint Response Centre (JRC) was opened in Milford Haven on 16 February 1996 to co-ordinate the onshore clean-up. The JRC was managed by a team consisting of representatives of central and local authorities, conservation agencies and the oil industry. The JRC was closed in October 1997.

Offshore clean-up operations were completed in March 1996.

The work on beaches and accessible rocky coastlines to remove major accumulations of oil was completed by the middle of March 1996. The main recreational beaches were cleaned by early April, although minor re-oiling occurred during the summer, and some cleaning operations were continued through the winter. At the height of the clean-up activity about 600 people were employed.

Small teams of clean-up workers were held in readiness throughout the holiday season of 1996 to ensure that amenity beaches were kept thoroughly clean and that any re-oiling was dealt with promptly. Operations to clean rocky and cobble coastlines required a greater effort. These operations were made difficult by the natural movement of sand alternately exposing and covering oiled rocks.

Severe storms in the region at the end of October 1996 resulted in oil being re-exposed at a number of sites and released from others. Clean-up work was undertaken immediately.

Approximately 18 000 tonnes of oil/water mixture and 13 200 tonnes of oily beach material and other waste were collected during the clean-up operations.

Sea Empress incident - skimmer in operation
(photograph: ITOPF)

In March 1996 reports were received from the Republic of Ireland of tar balls stranding on many beaches along 100 kilometres of the south-east coast. Results of chemical analysis, together with other evidence, established that the source of the tar balls was the *Sea Empress* spill. Clean-up of the contaminated beaches was completed during April 1996.

Effects on the fishing industry

There is diverse inshore fishing activity carried out from several ports in Milford Haven and the surrounding area as well as hand-gathering of shellfish in the intertidal zone. There are also offshore fishing activities based in Milford Haven. Inshore fishermen in the affected area imposed a voluntary ban on fishing from 21 February. On 28 February, the Welsh Office imposed an Order under the Food Environment Protection Act prohibiting the landing of fishery and aquaculture products taken from a designated zone which extended 10 - 30 kilometres offshore. On 20 March a statutory ban was also imposed on salmon and migratory trout in all freshwater rivers and streams which flow into a specific area of the sea. The Ministry of Agriculture, Fisheries and Food continuously monitored the levels of oil contamination in coastal waters and in animal tissues within the designated zone.

The ban on salmon and migratory trout was lifted on 3 May 1996 and on other fin fish species on 21 May 1996. The ban on the exploitation of shellfish living on the sea bottom, notably whelks and crustaceans such as lobsters and crabs, was gradually lifted for most of the designated area by 29 August 1996, after which time the majority of commercial fishing activities in the area affected by the spill could continue as normal.

Certain shellfish, notably molluscs and seaweed which live in the intertidal zone and were directly oiled in some locations, were more heavily contaminated and recovered more slowly. Restrictions on crustaceans within the Haven were lifted on 17 October 1996. On 7 February 1997 the restriction regarding whelks within the Haven was lifted. All remaining restrictions were lifted on 11 September 1997.

Effects on the tourism industry

Tourism is an important industry in Pembrokeshire, consisting of a range of small hotels, guest houses, caravan parks and cottages, as well as restaurants, shops, visitor attractions and activities such as boat trips. The Pembrokeshire Coast National Park includes some 400 kilometres of coastline. Many of the tourist resorts and villages are linked by the Pembrokeshire Coastal Path.

Many tourism operators reported a sharp drop in the number of accommodation enquiries and in the level of bookings for the period immediately following the incident. It appears, however, that the impact of the incident was less marked during the peak tourism season of July and August 1996.

Claims handling

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

Since there were only relatively few outstanding claims at the end of 1997, it is likely that the Claims Handling Office will close to the public in February 1998.

Level of compensation payments

The Executive Committee decided in April 1996 to limit the 1971 Fund's payments to 75% of the damage actually suffered by the respective claimant, since the total amount of the claims arising out of the *Sea Empress* incident might exceed the total amount of compensation available under the 1969 Civil Liability Convention and the 1971 Fund Convention. However, payments of up to 100% of the approved amounts were made by the Skuld Club in a number of cases where the amount of compensation was small or where the claimant was able to demonstrate that a payment of more than 75% was necessary to avoid immediate financial hardship.

Since the cargo carried by the *Sea Empress* was owned by a party to CRISTAL (Contract Regarding a Supplement to Tanker Liability for Oil Pollution), claimants who do not receive full compensation under the 1969 Civil Liability Convention and the 1971 Fund Convention may be entitled to compensation from Cristal Ltd (the company which administers the compensation system under the CRISTAL Contract).

In accordance with the CRISTAL Contract, a total of at least 19 million SDR (£16 million) is available under that Contract for payment by Cristal Ltd in respect of the *Sea Empress* incident. Cristal Ltd is a payer of last resort, so all claimants must first pursue their claims against other persons who are under an obligation to pay compensation, ie against the shipowner/P & I Club and the 1971 Fund.

The Executive Committee reconsidered the level of payments in October 1997. The United Kingdom delegation informed the Committee that, if and to the extent that the claim by the United Kingdom Government, estimated at £11 - 11.5 million, were to result in the total amount of the established claims exceeding the maximum amount of compensation payable under the 1969 Civil Liability Convention and the 1971 Fund Convention (60 million SDR), the Government

would not pursue its claim, in its entirety or in part, against the 1971 Fund and would, instead, pursue it against Cristal Ltd.

In the light of the position taken by the United Kingdom Government, the Executive Committee considered that the amount available under the CRISTAL contract in respect of the Government's claim would constitute sufficient security against overpayment by the 1971 Fund. For this reason the Committee decided to increase the 1971 Fund's payments to 100% of the damage actually suffered by the claimant as assessed by the experts engaged by the Fund and the Skuld Club.

Following that decision, the Claims Handling Office made all necessary arrangements to pay the outstanding 25% to all claimants as soon as possible. By 21 November 1997 cheques totalling £2.9 million relating to the payment of this balance had been made available to all claimants concerned.

Claims for compensation

General situation

As at 31 December 1997, 927 claimants had presented claims for compensation to the Claims Handling Office.

Claims had been approved for a total of £13 million. Payments had been made to 621 claimants, totalling £12.7 million, of which £6.8 million by the Skuld Club and £5.9 million by the 1971 Fund.

Claims for clean-up operations

The United Kingdom Government is expected to submit a claim for the clean-up operations carried out under the auspices of MPCU. This claim is estimated to be in the region of £11.5 million.

Pembrokeshire County Council submitted an interim claim for £1.1 million in respect of costs incurred by Preseli Pembrokeshire District Council and South Pembrokeshire District Council for expenses prior to local authority re-organisation on 1 April 1996. Pembrokeshire County Council also submitted claims for the period April 1996 to March 1997, amounting to £4.2 million. Interim payments totalling £3.7 million were made during 1996 and 1997.

Devon County Council and two Devon District Councils submitted claims for £8 900, £2 200 and £1 500, respectively. These claims have been paid in full at £4 900, £1 900 and £1 500, respectively.

Carmarthenshire County Council submitted claims amounting to £1.3 million on behalf of four district councils and two county councils for clean-up operations carried out during 1996. On the basis of the documentation presented so far, the experts engaged by the 1971 Fund and the Skuld Club have made a preliminary assessment of the claims for clean-up costs for the period February to March 1996 at £229 000, and the 1971 Fund made an interim payment of this amount to the Council in December 1997.

The Environment Agency submitted a claim for £400 000 for costs incurred by the National Rivers Authority in respect of staff costs, transport and equipment hire. A further claim by the Agency is expected.

The Milford Haven Standing Conference on Anti-Oil Pollution, which was set up for the purpose of providing a spill response capability within Milford Haven, has presented a claim for £1.2 million in respect of costs incurred for the provision of booms, skimmers and spill response craft in the clean-up operations. It is anticipated that the assessment of this claim will be completed, together with claims from Texaco and MPCU, after all other admissible claims have been paid.

Two charities, Care for the Wild and the South Devon Seabird Trust, claimed compensation of £4 900 and £700, respectively for cleaning birds. These claims have been settled and paid in full. The Dyfed Wildlife Trust has submitted a claim for £44 000 for cleaning birds, bird surveys and general shoreline monitoring. This claim is being examined.

The National Trust has submitted a claim for £37 000 for bird rescue and monitoring of the coastline, and the Joint Nature Conservancy Council has submitted a claim for £11 000 for diving surveys and bird surveys. Queries raised by the experts engaged by the Skuld Club and the 1971 Fund have been forwarded to both claimants, and responses to those questions are awaited.

The French Government has claimed compensation for FFr1.5 million (£150 000) in respect of the provision of two vessels which assisted in offshore pollution response operations. This claim is being examined.

Four county councils in Ireland have submitted claims totalling Irish pounds 72 734 (£71 000). The experts have made a preliminary assessment of these claims of IE33 282 (£29 000) pending clarification of some items from the claimants.

Property claims

A total of 257 claims for contamination to property have been submitted. They relate to contamination of boats and moorings, buildings contaminated by wind-blown oil, damage to carpets of shops and houses located on the sea front of the most severely polluted areas, damage to clothing and equipment worn by personnel involved in the clean-up operations, and damage to private roads caused by the passage of heavy vehicles involved in these operations.

Claims have been approved and paid by the Skuld Club for a total amount of £274 000. Twenty-eight claims totalling £74 000 have been rejected. There are three pending claims in this category totalling £947.

Fishery claims

Claims have been presented by fishermen for loss of income as a result of the fishing bans. Some of these fishermen are involved in catching white fish, but the majority catch whelks and crustaceans. Claims from 131 fishermen have been approved for a total of £5.5 million.

Most fishermen have agreed with the loss of income assessment made by the Skuld Club and the 1971 Fund. However, nine fishermen involved in catching whelks and crustaceans have not accepted the assessment as a full and final settlement of their claims. These claims total £1.6 million, and interim payments have been made totalling £929 000. Nineteen claims for loss of income from fishing, amounting to £782 000, have been rejected by the Skuld Club and the 1971 Fund.

Some fishermen have also claimed for lost fishing gear. Eight claims have been approved and payments totalling £38 000 have been made in respect of these claims. Fifteen claims relating to fishing gear allegedly lost or damaged as a result of the clean-up operations have been rejected.

These rejected claims total £62 000. Some of these claimants were unable to show that they had any fishing gear in the water immediately before the spill, since they had not been fishing at the time. Others alleged that they had lost pots in areas where no clean-up operations or other activities relating to the oil spill were carried out.

Fourteen fish and shellfish processing companies and merchants have claimed compensation for losses suffered as a result of having been deprived of raw material due to the fishing ban. So far, interim payments totalling £1.5 million have been made to ten of these companies. Seven claimants in this category, whose claims total £4.2 million, have not accepted a full and final settlement of their claims on the basis of the assessment.

Claims have been received from seven fishermen for £110 000 relating to allegedly reduced catches of whitefish and squid. Five of these fishermen are based in areas of the Bristol Channel which were not affected by the oil from the *Sea Empress*. The Skuld Club and the 1971 Fund have requested that these fishermen present evidence to support the alleged reduction in catches and to show that the alleged reduction in catches was the result of the *Sea Empress* incident.

A shellfish merchant who collected and processed cockles and mussels submitted claims for losses allegedly suffered as a result of not being able to sell to a regular customer and losses incurred as a result of a new customer not paying for produce delivered to him.

From the date when the ban on cockles was lifted, the claimant had been in a position to resume delivery to a regular French customer. In the meanwhile, however, the French customer had agreed to buy from an Irish merchant, although he resumed his business relationship with the claimant two months after the lifting of the ban. The Executive Committee considered that the claimant's losses for the period after the ban was lifted were not a direct result of the contamination and the ensuing fishing ban, but were due to a commercial decision by a third party to protect his business for a period of time, until he could be sure that the claimant would be able to resume normal deliveries, and that for this reason there was not a sufficient degree of proximity between the loss and the contamination. The Committee therefore rejected this part of the claim.

After the lifting of the harvesting ban, the claimant purchased larger quantities of cockles from the gatherers than before the ban, at higher than the prevailing price. The claimant maintained that this was done in order to re-establish a loyal group of gatherers, although at that time he did not have customers for the increased quantities. Apart from a sale to a new customer in Spain, the cockles purchased by the claimant were sold to another local shellfish processor at a reduced price. The Executive Committee took the view that it was not reasonable for the claimant to have bought larger quantities of cockles than he required to satisfy the orders that he had at the time, paying higher than the prevailing price to the gatherers. Although the claimant maintained that there were good commercial reasons for his action, the Committee decided that any loss resulting from this action could not be attributed to the *Sea Empress* incident.

Claim by fish transporter

The owner of a haulage company, which operated general transport vehicles throughout the United Kingdom from its base ten kilometres from Saundersfoot in the area affected by the oil spill, submitted a claim relating to loss of income suffered as a result of not having been able to use one of its vehicles. This vehicle had been specifically purchased for the collection of whelks from Saundersfoot and for their transportation to a fish processor some 60 kilometres from its base, and could not be used in other areas of the claimant's business.

Since the oil spill had affected the use of only one of the claimant's 11 vehicles, the Executive Committee took the view that the claimant was only to a very limited extent dependent on the affected resource. It was also considered that only a minor part of the claimant's business formed an integral part of the economic activity within the area affected by the spill. For these reasons, the Committee considered that there was not a reasonable degree of proximity between the contamination and the alleged loss and rejected the claim.

Claim by an exporter of processed shellfish

An exporter of processed shellfish submitted a claim for losses as a result of the ban on fishing for whelks. The Committee concluded that this claim was admissible in principle, since there was a reasonable degree of proximity between the contamination caused by the *Sea Empress* incident and the losses allegedly suffered by the claimant. An interim assessment of the losses was made on the basis of the prices and quantities actually invoiced, and the claimant was paid compensation accordingly. However, the claimant stated that, at the request of some overseas customers, he had issued invoices for quantities lower than those actually sold and for prices lower than those paid, the customers paying the invoiced amount and later completing the purchase by way of a supplementary payment of the balance. The objective of this procedure appeared to be to reduce the amount of import duty payable by the customers. The claimant maintained that, as a result of this procedure, some of the invoices presented in support of the claim did not give an accurate picture of the prices obtained, and argued that the claim should be assessed on the basis of the prices and quantities actually agreed with the foreign customers, not the invoiced amounts.

The Executive Committee considered that it would not be appropriate for the 1971 Fund to disregard written evidence, in the form of invoices, of prices which, on the claimant's own admission, were incorrect in order to enable customers to reduce their import duties. The Committee therefore decided that the claim should be assessed on the basis of the prices and quantities actually invoiced to customers.

Claims from the tourism industry and related businesses

Claims have been received from 426 operators in the tourism industry. The majority of the claims are from small businesses providing bed and breakfast or self-catering accommodation. Claims from 266 operators in this category have been approved for a total of £1.4 million. Fifty-two claims in this category, totalling £733 460, are being examined or awaiting further information from the claimant.

Eight operators in the tourism industry who have received interim payments of £170 000 have not been willing to conclude full and final settlements of their claims, because they do not agree with the assessment of their claim or because they wish to preserve the right to submit further claims for later periods. The amounts claimed total £302 000.

The Executive Committee rejected a number of claims in the tourism sector, since they did not fulfil the criteria for admissibility laid down by the Assembly and the Executive Committee. The Director has rejected 74 claims in this sector, totalling £425 000, since the claimants had not shown that they had suffered any economic loss as a result of the *Sea Empress* incident.

A claim for loss of profit was presented by a wholesale company based in Northamptonshire, some 450 kilometres from Milford Haven, in respect of its depot in Haverfordwest, 11 kilometres from Milford Haven. The company operated 169 depots throughout the United Kingdom, trading with some 1 700 customers in the hotel and catering trade and some 670 retailers.

The Executive Committee emphasised that the system of compensation established by the 1969 Civil Liability Convention and the 1971 Fund Convention related to damage caused by contamination. It was considered therefore that it was necessary to distinguish between, on the one hand, those claimants who sold their goods or services directly to tourists and whose businesses were affected directly by a reduction in visitors to the area affected by an oil spill, and, on the other hand, those claimants who did not provide goods or services directly to tourists but only to other businesses which in their turn served tourists. The Committee took the view that in general there would not be a reasonable degree of proximity between the contamination and the losses suffered by claimants in the latter category and that claims of this type would not normally be admissible in principle.

The Committee considered that the wholesale company's business did not form an integral part of the economic activity of the area affected by the spill, since only a very small part of its activity was carried out in that area, and that it was not dependent on the affected resource. The Committee noted that the reduction in turnover at the Haverfordwest depot was a more indirect result of the reduction in tourism than losses suffered by hotels and restaurants. For these reasons, the Committee considered that the loss allegedly suffered by the company could not be considered as damage caused by contamination and rejected the claim.

The Executive Committee considered also claims from an ice cream and frozen food supplier, a postcard manufacturer and a laundry service operator. These claims were rejected mainly because these businesses did not sell their products or services directly to tourists.

The Youth Hostel Association

The Youth Hostel Association (England and Wales) Ltd (YHA), through its Wales regional office located in Cardiff, presented a claim for loss of income. The YHA, which has its headquarters outside Wales, provides inexpensive holiday accommodation in 240 hostels in England and Wales. The claim related to eight hostels in Pembrokeshire operated by the regional office, which also operated 37 hostels in other parts of Wales.

The Executive Committee considered that the eight hostels in Pembrokeshire operated by the Wales regional office satisfied the criterion of geographic proximity between the claimant's activity and the pollution, since they were located on or very close to the coast, and that the operations of the hostels which were the subject of the claim were economically dependent on the affected resource. The Committee took the view that the operations of the eight hostels formed an integral part of the economic activity within the area affected by the spill. For these reasons, the Committee considered that losses suffered as a result of the reduction in occupancy of the eight hostels should be considered as damage caused by contamination, and decided that the claim was admissible in principle, provided that when assessing the quantum of the loss, any increase in occupancy in the other hostels run by the Wales regional office as a result of people not wishing to use the hostels in Pembrokeshire should be taken into account.

Decrease in value of an island

A trust acting for the owner of an island located in the entrance to Milford Haven submitted a claim for losses allegedly suffered as a result of not having been able to sell the island at the price expected before the *Sea Empress* incident. A hotel located on the island was to have been included in the sale.

The island had been cleaned after the oil spill, and there was no remaining contamination of any significance. There was therefore no indication that any permanent damage had been caused to the island. The Executive Committee considered that the depreciation in value, if any, which

would be of a psychological nature, should not be considered as damage caused by contamination. For this reason, the Executive Committee rejected the claim.

Civil engineering contractor

A civil engineering contractor, based in Pembrokeshire, claimed for losses resulting from contracts allegedly lost due to the *Sea Empress* incident. The claimant alleged that the company was dependent on work carried out for local authorities, but that such work had not been forthcoming in the months following the incident because the authorities were concentrating on the clean-up operations and did not place any orders due to lack of funds.

The Executive Committee considered that the claimant's loss was only indirectly caused by contamination. The Committee noted that the alleged loss was suffered as a result of local authority decisions based on financial constraints, and not as a result of the contamination itself. In the light of these circumstances, the Committee took the view that there was not a sufficient degree of proximity between the claimant's loss and the contamination resulting from the *Sea Empress* incident. The Committee therefore rejected this claim.

Claims by company selling angling rights and by angling clubs

Claims were presented by a company that sold angling rights and by 11 unincorporated associations (angling clubs) which conducted their activities in rivers in Wales covered by the ban on migratory fish imposed by the United Kingdom Government.

The company and five of the angling clubs claimed compensation for loss of income due to a reduction in the sale of day tickets to casual anglers and/or due to club members not having renewed their subscriptions in 1996, both allegedly as a result of the fishing ban. The company's claim also covered loss of income in other fields of business, such as a fishing school, the provision of accommodation and the sale of food and beverages.

The Committee decided that the claims of the above-mentioned company and five angling clubs for loss of income should be considered as damage caused by contamination and that these claims were therefore admissible in principle.

The above-mentioned company also claimed compensation following its decision to make a 20% refund to the anglers who had purchased fishing rights ('rod fees') for the 1996 angling season, during which the fishing ban was in force. The Executive Committee considered that the company was under no legal obligation to reimburse the rod fees for the part of the year when the fishing ban was in force. The Committee also considered that the individuals concerned were not deprived of the entire benefits of the contracts with the company, since fishing was prohibited during only part of the season. The Committee decided, therefore, that the company was not entitled to compensation for losses suffered as a result of the reimbursement of rod fees.

Eight angling clubs had presented claims on behalf of their members for the part of their membership fees for the 1996 angling season which related to the period of the fishing ban. The Executive Committee was of the view that the individual members should be considered as the claimants, and that the loss suffered by them was one of loss of enjoyment. The Committee decided that such claims for loss of enjoyment were not admissible for compensation.

The angling clubs had also submitted claims in respect of certain expenses for the period of the fishing ban (namely the lease of fishing rights, insurance premiums, maintenance, bailiff fees, water rates and other standing charges). The Executive Committee considered that the costs covered by the claims were not admissible for compensation, since they would have been incurred

whether or not there had been a fishing ban. The Committee therefore rejected these parts of the claims.

Claim for damage resulting from a road traffic accident

A claim was submitted for the costs incurred in repairing a car which had been damaged as a result of a traffic accident in the outskirts of Tenby on 11 March 1996. According to the claimant, the accident had occurred because the road was covered with a thin film of oil, allegedly built up following use by vehicles carrying oil from the contaminated beaches to a disposal area. It was alleged that there were no warning signs indicating the condition of the road and that the thin film of oil had formed an emulsion with the rain-water, creating a slippery surface.

The Executive Committee rejected this claim, since there was not a sufficiently close link of causation between the contamination resulting from the release of the oil from the *Sea Empress* and the damage suffered by the claimant.

Investigations into the cause of the incident

An investigation into the *Sea Empress* incident was carried out by the Marine Accident Investigation Branch (MAIB) of the United Kingdom Department of Transport. The purpose of the investigation was to determine the circumstances and causes of the incident, with the aim of improving the safety of life at sea and avoiding accidents in the future. The report of the investigation, published on 27 March 1997, did not attempt to apportion liability, or to apportion blame, except so far as was necessary to achieve the fundamental purpose.

The MAIB report concluded that the cause of the initial grounding was pilot error, and that this was due in part to inadequate training and experience in the pilotage of large tankers.

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

The Director is examining, with the assistance of the 1971 Fund's lawyers, the two reports on the investigations into the cause of the *Sea Empress* incident.

KUGENUMA MARU

(Japan, 6 March 1996)

While the Japanese tanker *Kugenuma Maru* (57 GRT) was loading some 120 tonnes of heavy fuel oil at an oil terminal in Kawasaki, Kanagawa (Japan), 0.3 tonnes of oil overflowed from the cargo tank and spilled into the sea due to the mishandling of the valve used for loading.

Claims in respect of clean-up operations were settled at ¥2 million (£9 990) and were paid by the shipowner's P & I insurer in January 1997.

The limitation amount of the *Kugenuma Maru* is ¥1.2 million (£6 200).

In March 1997 the 1971 Fund paid its share of the compensation, ¥784 136 (£3 900), and paid indemnification to the shipowner in the amount of ¥297 066 (£1 500).

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 to the west, south and east of this terminal were oiled, seven fish farms were affected and the hulls of pleasure craft and fishing vessels in the area sustained oiling.

Clean-up operations were undertaken by the staff of the terminal and by contractors engaged by the shipowner, the Ministry of Merchant Marine and the local authorities. The clean-up operations at sea were continued to 17 August, and the shoreline clean-up was largely completed by the end of the month.

The limitation amount applicable to the *Kriti Sea* is estimated at Drs 2 241 million (£4.8 million). The shipowner established the limitation fund in December 1996 by means of a bank guarantee.

Claims totalling Drs 5 509 million (£11.8 million) have been notified to the shipowner and his insurer and to the administrator appointed by the Court to examine claims against the limitation fund. These include claims for the cost of clean-up operations and loss of income of fishermen, fishfarmers and hoteliers. Of this total figure, claims totalling Drs 1 298 227 896 (£2.8 million) have been settled, fully or partially, at Drs 186 520 262 (£396 000), and these claims have been paid by the shipowner and/or his insurer.

The administrator has announced that he intends to issue in the near future a list of the remaining claims where he deems that the evidence is sufficient to warrant a claim against the limitation fund.

N°1 YUNG JUNG

(Republic of Korea, 15 August 1996)

The incident

While the Korean sea-going barge *N°1 Yung Jung* (560 GRT) was taking shelter from an approaching typhoon at a wharf in the port of Pusan (Republic of Korea), the barge grounded on a submerged rock which did not appear on the chart. As a result, approximately 28 tonnes of medium fuel oil spilled into the sea. A dozen ships which were in the vicinity of the grounding site and various port facilities such as piers and embankments, as well as nearby rocky shores were contaminated. Clean-up operations were carried out by contractors engaged by the shipowner, and were completed within a month.

The wreck of the *N°1 Yung Jung* was removed and the remaining oil was transhipped to another vessel.

The *N°1 Yung Jung* was not entered in any P & I Club, but had liability insurance of US$1 million (£608 000) per incident.

Claims for compensation

Claims relating to clean-up operations, totalling Won 871 million (£310 000), were presented by the shipowner, the Pusan Marine Police and four clean-up contractors. These claims were settled at a total amount of Won 690 million (£250 000). The shipowner paid the settlement amounts in respect of five of the claims, totalling Won 675 million (£240 000). Pending the commencement of limitation proceedings, the remaining claim, that of the shipowner himself, has not been paid by the 1971 Fund.

A salvage company presented a claim for Won 78 million (£30 000) for inspections of the bottom of the ship and videotaping carried out by divers. In the Director's view, these operations had a dual purpose, ie they were undertaken partly for the re-floating of the vessel and partly to prevent or minimise pollution damage. After negotiations, the claimant, the shipowner and the 1971 Fund reached agreement that the claim should be settled at Won 20 million (£7 000) and that 50% would be paid under the 1969 Civil Liability Convention and the 1971 Fund Convention and 50% outside the Conventions.

The owners of 25 seafood restaurants have submitted claims totalling Won 13 million (£4 700). A fishery co-operative has presented a claim for loss of income for Won 105 million (£40 000). A claim has also been submitted relating to operations to tranship the cargo and effect temporary repairs to the hull, for Won 71 million (£25 000). These claims are being examined by the 1971 Fund's surveyor.

It is unlikely that there will be any further claims.

Limitation of liability

The limitation amount applicable to the *N°1 Yung Jung* is estimated at Won 88 million (£32 000).

The shipowner commenced limitation proceedings in August 1997. The shipowner's insurer has presented a letter of guarantee for the limitation amount to the Court.

Investigation into the cause of the incident

In the case of barges of this type, the Korean authorities do not carry out an investigation into the cause of the incident. In criminal proceedings, the master of the *N°1 Yung Jung* was sentenced to prison for six months for having caused oil pollution by negligence. The sentence was suspended for one year.

In the light of advice received from the 1971 Fund's Korean lawyer, the Executive Committee decided that there were no grounds on which the 1971 Fund could oppose the shipowner's right to limit his liability, nor refuse indemnification under Article 5.1 of the 1971 Fund Convention.

NAKHODKA

(Japan, 2 January 1997)

The incident

The Russian tanker *Nakhodka* (13 159 GRT), proceeding from Shanghai (China) to Petropavlovsk (Russian Federation) with a cargo of 19 000 tonnes of medium fuel oil, broke up in heavy seas some 100 kilometres north-east of the Oki islands in the Sea of Japan.

The tanker broke into two sections, 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, leaking oil at a slow rate. Attempts to secure a line to the bow were unsuccessful, due to the severe weather conditions and the lack of suitable attachment points. On 7 January, the bow section grounded on rocks some 200 metres from the shore, near the town of Mikuni in Fukui Prefecture. Following the grounding of the bow section, a substantial quantity of oil was released, causing heavy contamination of the adjacent shoreline.

Stern section

The stern section is lying at a depth of 2 500 metres, some 140 kilometres from the nearest coast, but is not considered to be a significant threat to coastal resources. An investigation by a deep-sea unmanned submarine has shown that oil is leaking from two tanks which together contained some 2 480m³. A committee set up by the Japanese Government to consider options available for preventing further release of oil from the sunken stern section has concluded that current technology does not offer any practicable methods to prevent such release. Since the release does not pose a significant threat of pollution, the Committee has not proposed any immediate action in respect of the stern section other than the continued monitoring of the oil reaching the surface.

Removal of oil from bow section

A Japanese salvage company was contracted by the shipowner to remove the remaining oil from the bow section prior to its being taken away, but the operations were hampered by adverse swell and weather conditions. The Japanese authorities took over the operation, using the services of two Japanese salvage companies, while simultaneously ordering 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, if it should prove impossible to do so from the sea.

The operation to remove the oil from the bow section was completed on 25 February 1997. In total some 2 830m³ of oil/water mixture were removed.

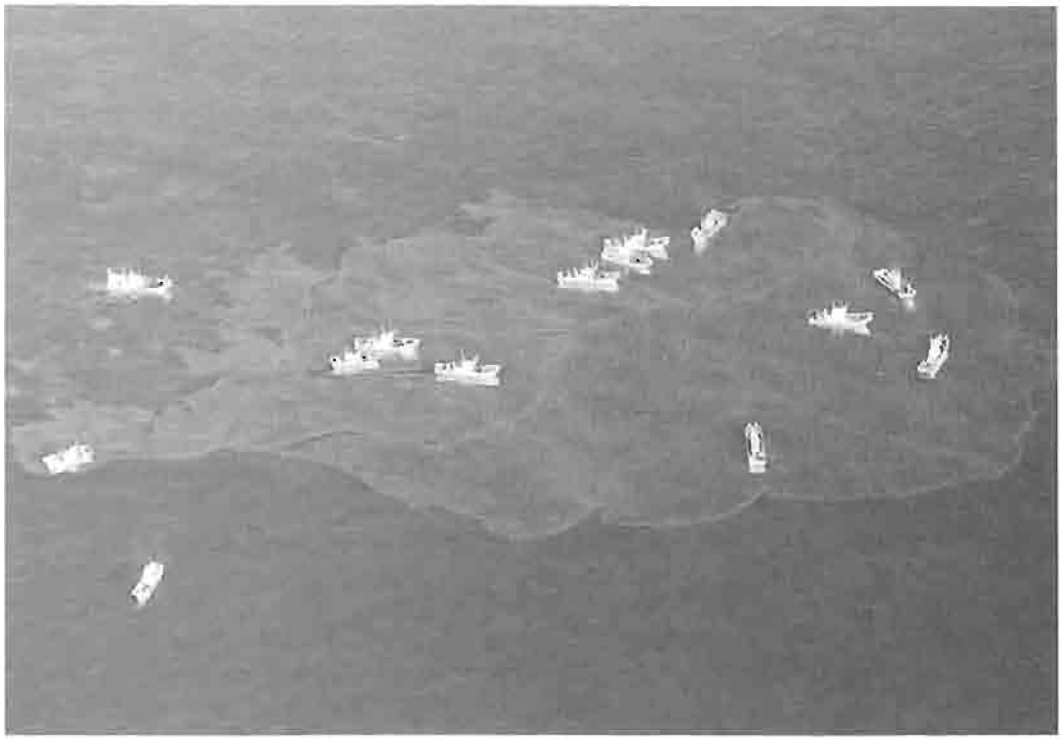
The causeway extended 175 metres from the shore. A large crane was assembled at its seaward end with a sufficiently long arm to reach the bow section. The causeway and crane were not used in the removal of the majority of the oil from the bow section, but only to remove the last 380m³ of oil/water mixture. Since May 1997 the causeway has been progressively dismantled and the construction material removed from the site.

In May 1997, a Japanese salvage company engaged by the shipowner removed the bow section of the *Nakhodka* on to a barge and transported it to a shipyard for scrapping.

Clean-up operations

Although much of the oil which was lost when the ship broke up dispersed naturally at sea, patches of heavily emulsified oil, ranging in size from one to 100 metres in diameter, drifted towards the coast. Several hundred tonnes of emulsion stranded at various locations over a distance of more than 1 000 kilometres covering ten prefectures.

A contract was signed on behalf of the shipowner with the Japan Marine Disaster Prevention Centre (JMDPC) to organise the clean-up operations by using commercial clean-up contractors. In addition, the Petroleum Association of Japan provided coastal booms, skimmers,



Nakhodka incident - oil clean-up by fishing boats
(photograph: Ishikawa Prefecture)

portable storage tanks and a number of trained operators. The equipment provided was used to protect sensitive areas and to recover floating oil. Several ships and tugs were mobilised to collect viscous emulsions.

A considerable number of vessels, belonging to the Maritime Safety Agency of Japan (MSA) and the Japan Self Defence Force, were engaged in oil recovery operations. Prefecture governments within the affected area also mobilised their own vessels and chartered others to collect oil from the sea. Helicopters from MSA and from private companies were used to spray dispersants at sea, primarily to deal with floating oil escaping from the bow section. In addition, several hundred fishing boats were mobilised to collect oil at sea.

Since there was a risk that the bow section would break up before the oil could be removed, the International Tanker Owners Pollution Federation Ltd (ITOPF) recommended that the local offshore response capability should be supplemented with equipment from the East Asia Response Ltd (EARL) stockpile in Singapore. Two recovery systems were provided by EARL. One unit was installed on a salvage tug and the other on a supply vessel.

The Russian Ministry of Merchant Marine dispatched an offshore supply vessel and two tugs equipped with oil recovery systems.

Onshore clean-up operations were carried out by manual and mechanical methods, and the bulk of the stranded oil had been removed from polluted beaches by mid February. Several large

pits were excavated to provide temporary storage for the large volumes of oil and water which were recovered as a result of these operations.

Some 500 000 man days were used in the onshore clean-up operations in the five prefectures which were most severely affected. About half of the work was carried out by volunteers from all over Japan. The remainder of the workforce comprised fishermen, local residents, municipal workers, fire brigades and the Self Defence Force.

By 30 May 1997 all prefectures affected by the spill had made public declarations that the clean-up operations in their respective prefectures had been completed.

In December 1997, some oil which had been trapped within tetrapod sea defences was washed out by heavy weather. Some additional onshore clean-up work was therefore carried out.

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

Impact on fishing, tourism and other industries

There are important mariculture activities in the affected area, including oyster, fish and seaweed cultivation in sheltered bays and inlets. Throughout the affected area there are many large complex set nets. Where practicable, booms were used extensively to protect mariculture facilities and nets, and their deployment was largely successful. However, one fish farm with indoor tanks for rearing flatfish was severely affected by oil entering sea water suction pipes.

On rocky shores throughout the affected area naturally occurring seaweed is harvested for human consumption. One such seaweed grows on concrete platforms constructed amongst rocky outcrops and is usually harvested from December to February. Following the spill, harvesting of this seaweed was abandoned for the season.

Several national parks are located within the affected area, and tourism is an important industry. Tourists visit this coast throughout the year, not only for its natural beauty, spas and temples, but also, during the winter months, to eat crabs which are caught in deep water offshore.

The sea water used to supply an aquarium near Mikuni was contaminated. Fourteen dolphins were moved from the aquarium to other locations.

In the affected area there are seven nuclear power stations and several oil fired stations which depend on sea water for their cooling systems. The sea water intakes of these installations were successfully protected by booms.

Claims handling

The 1971 and 1992 Funds, the shipowner and his insurer, the United Kingdom Mutual Steamship Assurance Association (Bermuda) Ltd (the UK Club), have established jointly a Claims Handling Office in Kobe.

At regular intervals the staff of the Claims Handling Office visit the affected area, so as to enable claimants and their representatives to discuss the claims.

The technical examination of the claims is being carried out by the staff of the Claims Handling Office in close co-operation with the staff of ITOPF. Experts are engaged for the assessment of claims in specialised fields, as required.

Claims for compensation

General situation

432 claims totalling ¥31 904 million (£147 million) have been received by the Claims Handling Office in Kobe. The claims situation is summarised in the table reproduced opposite.

The total payments made by the 1971 Fund to claimants amounted to ¥4 496 million (£22.6 million) as at 31 December 1997. The shipowner/UK Club has made payments totalling US$867 593 (£525 000).

Details of claims submitted

Claims from JMDPC and 54 contractors engaged in clean-up operations under the JMDPC umbrella (items (a) and (b) in the table opposite) have been submitted. These claims include costs for the disposal of oily waste. On the basis of preliminary assessments, the 1971 Fund has made provisional payments totalling ¥2 464 million (£12.3 million), representing 60% of the minimum admissible amount assessed by the experts.

A claim has been received from JMDPC for the participation of members of the National Fishery Federation (which represents nine Prefecture fishery co-operative associations with some 68 000 members) in the clean-up operations (item (c) in the table). After a preliminary examination of this claim, the 1971 Fund has made provisional payments totalling ¥676 million (£3.4 million). A further claim by JMDPC relating to the participation of fishermen in the clean-up operations is being examined.

JMDPC has claimed compensation relating to the cost of constructing a causeway to the grounded bow section (item (k) in the table) and for the cost of removing oil from the bow section (item (l) in the table).

The Government of Japan has made funds available to JMDPC enabling the latter to pay those who participated in the clean-up operations, pending payments from the shipowner/UK Club and the 1971/1992 Funds.

The Japanese Government has claimed (item (d) in the table) for additional costs incurred by MSA for aerial surveillance and offshore clean-up operations, by the Self Defence Force for aerial surveillance, offshore clean-up operations and assistance in the removal of the oil from the shoreline, and by the Department of Transport for the cost of clean-up operations.

Ten prefectures have submitted claims (item (e) in the table) for costs incurred in the clean-up operations. On the basis of a preliminary examination of these claims, the 1971 Fund made provisional payments to four prefectures of ¥1 035 million (£4.8 million) in October 1997 and of ¥259 million (£1.2 million) in December 1997.

Six claims have been received from electricity companies (item (f) in the table). These claims relate to the cost of clean-up operations and preventive measures in respect of their power stations.

Claims situation as at 31 December 1997

Claim				Claims submitted			Claims paid		
				Number	Amount		Number	Amount	
					US$ <1>	Yen (million)		US$ <1>	Yen (million)
Clean-up costs	(a)	JMDPC	- Operations carried out by JMDPC	1		123	1		<2> 50
	(b)		- Contractors under JMDPC	54		7 935	48		<2> 2 414
	(c)		- Fishery Co-operative Associations	1		2 793	1		<2> 676
	(d)		- Japanese Government Agencies	8		1 524	0		0
	(e)		- Prefectures and Municipalities	10		5 650	4		<2> 1 293
	(f)	Electricity companies		6		2 943	0		0
	(g)	Other entities		2		18	1		9
	(h)	EARL		1	542 593	71	1	542 593	<2> 71
	(i)	Russian authorities		2	3 284 322	427	1	325 000	<2> 42
		Sub-total		85		21 484	57		4 554
Loss of income: fishery	(j)			9		5 232	1		<2> 49
Causeway construction	(k)	JMDPC		1		1 126	0		0
Removal of oil from ship	(l)	JMDPC		3		1 194	0		0
Aquarium	(m)			1		7	1		<2> 8
Tourism	(n)			336		2 883	0		0
TOTAL				435		31 904	59		4 608
						€149 million			€23 million

<1> Amounts in US$ converted into Yen on the basis of the rate of exchange at 31 December 1997
<2> Includes provisional payments
<3> Payments made by the shipowner/UK Club

A claim by a contractor participating in the clean-up operations (item (g) in the table) was settled at ¥15 million (£80 000). Payment of 60% of the settlement amount has been made by the 1971 Fund.

A claim by EARL for the provision of recovery systems (item (h) in the table) was settled at US$542 593 (£337 000). The settlement amount was paid in full by the shipowner.

A claim by the Russian authorities for the cost of the participation in clean-up operations of two of the vessels under contract with the shipowner (item (i) in the table) was settled at US$325 000 (£202 000). The settlement amount was paid in full by the shipowner. A further claim for US$2 959 322 (£1.8 million) relating to the participation of these ships has been submitted to the IOPC Funds.

Claims for loss of income suffered by fishermen have been presented (item (j) in the table).

A claim has been submitted in respect of the contamination of an aquarium near Mikuni (item (m) in the table). On the basis of a preliminary assessment, a provisional payment of ¥3.8 million (£18 000) was made in respect of this claim in November 1997.

Claims have been received from 336 operators in the tourism sector (item (n) in the table).

Further claims are expected. The shipowner is expected to claim for the cost of contracting a salvor to attempt to tow the bow section before it grounded. Claims will also be presented by the shipowner for costs incurred prior to and during the bow lifting operations. Claims may be submitted for costs for the removal of the causeway. Further claims will be presented for loss of income in the fishing and aquaculture industries. There may also be some further claims by businesses in the tourism industry.

Applicability of the Conventions

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

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

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

The Committee expressed the view that the 1971 Fund and the 1992 Fund should endeavour to ensure consistency in respect of the admissibility of claims for compensation.

Level of payments

Consideration by the 1971 Fund Executive Committee and Assembly

In February 1997, the Executive Committee noted that the total amount of the claims arising out of the *Nakhodka* incident would exceed the amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention, ie 60 million SDR (approximately ¥10 100 million or £51 million). Since the 1992 Fund Convention also applied in the *Nakhodka* case, the Committee considered that the level of the 1971 Fund's payments should be determined by taking into account the amounts available under both the 1971 and the 1992 Fund Conventions, ie a total of 135 million SDR (approximately ¥22 700 million or £116 million).

In view of the uncertainty as to the level of the total amount of the claims, the Executive Committee decided that the payments to be made by the 1971 Fund should, for the time being, be limited to 60% of the amount of the damage actually suffered by the respective claimants as assessed by the experts engaged by the Funds and the shipowner/UK Club at the time when the payment was made.

In April 1997, the 1971 Fund Assembly endorsed the Director's view that the 1971 Fund should pay 60% of the damage suffered by each claimant up to a total amount of 60 million SDR, before the 1992 Fund commenced payments of compensation.

Consideration by the 1992 Fund Assembly

In April 1997, the Assembly of the 1992 Fund considered that the level of the 1992 Fund's payments should be determined by taking into account the amounts available under both the 1971 and 1992 Fund Conventions. It was considered that, in order to avoid an over-payment situation arising for either the 1971 Fund or the 1992 Fund (or for both), a co-ordinated approach should be taken in respect of the payments by the two Organisations. The Assembly decided that the payments to be made by the 1992 Fund should, for the time being, be limited to 60% of the amount of the damage actually suffered by the respective claimants as assessed by the experts engaged by the Funds and the shipowner/his insurer at the time when the payment was made.

The Assembly decided that the conversion of 135 million SDR into national currency should be made on the basis of the value of that currency *vis-à-vis* the SDR on the date of the 1992 Fund Assembly's (or the Executive Committee's) adoption of the Record of Decisions of the session at which the Assembly (or the Executive Committee) took the decision which made payments of claims possible. It was further decided that, if the Record of Decisions was not adopted during the session, the date for conversion should be that of the last day of session. As regards the *Nakhodka* incident, the Record of Decisions was adopted on 17 April 1997. Using the rate of exchange on that date (1 SDR = ¥171.589) would result in 135 million SDR equalling ¥23 164 515 000 (£114 million).

Investigation into the cause of the incident

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

The Japanese investigation report was published in July 1997. The report concluded that, if the *Nakhodka* had been properly maintained she would have been capable of withstanding the wind and wave conditions prevailing at the time of the incident, and that, due to the extensive

corrosion weakening the internal structure of the ship, the stresses on the hull as a result of the heavy weather caused the ship to break in two. It was acknowledged that the weather conditions in the Sea of Japan at the time of the incident were among the worst reported, and it was also concluded that the unusual distribution of the cargo would have increased the stresses in the ship's hull.

The Russian report states that the *Nakhodka* must have broken due to the bow section hitting some half-submerged object, most likely a Russian trawler that sank in the vicinity shortly before the *Nakhodka* incident.

At the Executive Committee's October 1997 session, several delegations noted that the conclusions of the Japanese report suggested that the incident had occurred as a result of the actual fault and privity of the shipowner, and that therefore all steps should be taken to preserve the 1971 Fund's right to take recourse action against the shipowner. The Committee instructed the Director to examine the reports on the cause of the incident and to submit his findings to the Committee as soon as possible, so as to enable it to take a decision on issues relating to limitation of liability and recourse.

TSUBAME MARU N°31

(Japan, 25 January 1997)

Whilst the Japanese coastal tanker *Tsubame Maru N°31* (89 GRT) was being loaded with heavy oil as cargo in the port of Otaru, Hokkaido (Japan), the crew of that ship failed to close in time the inlet valve of the tank into which the oil was being loaded. As a consequence, some of the cargo oil overflowed from the tank and spilled into the sea.

Clean-up operations were carried out by private entities under the supervision of the Marine Safety Agency. The operations were completed within four days.

The limitation amount applicable to the *Tsubame Maru N°31* is estimated at ¥1.8 million (£8 600).

Seven claims for clean-up operations totalling ¥7.8 million (£36 600) have been submitted. It is expected that these claims will be settled in early 1998.

No further claims are expected.

The shipowner's P & I insurer requested that the 1971 Fund should waive the requirement to establish the limitation fund. In view of the disproportionately high legal costs that would be incurred in establishing the limitation fund compared with the low limitation amount under the 1969 Civil Liability Convention in this case, the Executive Committee decided that the 1971 Fund could, as an exception, pay compensation in this case without the limitation fund being established.

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 tanker sustained damage to three cargo tanks, and an estimated 3 600 tonnes of crude oil were subsequently spilled.

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

Impact of the oil and clean-up operations

Under the Venezuelan National Contingency Plan for Oil Pollution, Lagoven and Maraven (wholly owned subsidiaries of the national oil company, Petroleos de Venezuela SA - PDVSA) are responsible for implementing oil spill response measures in the Gulf of Venezuela.

Lagoven deployed a skimming vessel at the anchorage off Punta Cardon in response to the leakage of oil from the damaged tanker. No oil was uncovered. No oil is reported to have come ashore in the eastern part of the Gulf of Venezuela.

Oil polluted a long sandy beach near the grounding position, spreading along a 45 kilometre stretch of coast. Some of the beached oil was quickly buried under fresh deposits of sand on successive tides, while some of the spilt oil sank in the surf zone, ie the shallow water adjacent to the polluted beach.

Lagoven organised beach cleaning activities, and oil-contaminated sand in the intertidal zone was removed manually and with heavy machinery. Collected oily beach material was deposited in dune areas adjacent to the beach. The clean-up operations were hampered by frequent re-distribution of stranded oil by tidal action, and by the fact that some oil became buried under layers of sand. Lagoven removed large quantities of oil buried in the beach and in the adjacent surf zone, using mechanical excavators.

The clean-up operations were monitored by a committee, comprising representatives from Lagoven, Maraven, a public research institute called the Instituto para el Control y la Conservación de la Cuenca del Lago de Maracaibo (ICLAM), the Ministry of the Environment and several local government departments. This committee determined the clean-up policy to be followed and when the clean-up operations would be terminated. Shoreline clean-up activity was completed by November 1997. Some 40 000m^3 of contaminated sand have been collected. Various options for treating the oily sand were considered by Lagoven, namely landfilling, landfarming, sand sieving and road paving.

Claims Agency

The Gard Club and the 1971 Fund have established a Claims Agency at Maracaibo. The Claims Agency opened on 4 April 1997.

Nissos Amorgos incident - contaminated fishing nets
(photograph: ITOPF)

Claims presented to the Claims Agency

General situation

As at 31 December 1997, 158 claims for compensation totalling Bs6 000 million (£7.1 million) had been presented to the Claims Agency. So far 87 claims have been approved for a total of Bs1 133 million (£1.4 million), and the Gard Club has paid the settlement amounts in full.

Clean-up operations

Lagoven has presented claims to the Claims Agency totalling Bs3 744 million (£4.5 million) for onshore clean-up operations, and Maraven has submitted claims totalling Bs1 044 million (£1.3 million) for offshore clean-up operations.

On the basis of provisional assessments and after consultation with the 1971 Fund, the Gard Club has made interim payments to Lagoven and Maraven of Bs775 million (£900 000) and Bs271 million (£300 000), respectively.

With a view to speeding up the assessment of Lagoven's and Maraven's claims, the Gard Club and the 1971 Fund proposed that Lagoven and Maraven should each provide a team dedicated to the detailed presentation of the claims and with the knowledge, or immediate access to the knowledge, required to answer queries. A team of experts engaged by the Gard Club and the 1971 Fund would be available to work in close contact with Lagoven's and Maraven's teams. Since this proposal was made, Lagoven and Maraven have been merged into the holding company, PDVSA. PDVSA has agreed to the proposed procedure, and it is hoped that meetings will be held in March 1998.

Damage to property

The Claims Agency has received claims totalling Bs29 million (£34 000) from 15 individuals for damage to nets, boats and outboard motors. Twelve claims in this category have been approved for a total of Bs11.8 million (£14 000), and these claims have been paid in full by the Gard Club.

Fishery sector

A number of claims by fishermen and some fish transporters for loss of income, totalling Bs1 135 million (£1.4 million), have been presented to the Claims Agency.

The Executive Committee decided that compensation should not be payable in the *Nissos Amorgos* case to fishermen who, although required under Venezuelan law to hold a valid licence, did not do so. It was further decided that compensation should be payable to fishermen who were not subject to licence requirements under Venezuelan law, provided that the claimant showed that he had suffered an economic loss as a result of the incident.

The 1971 Fund and the Gard Club have approved 58 claims by owners of fishing boats for amounts totalling Bs43.5 million (£52 000). The claims have been paid by the Gard Club.

Forty-two claims totalling Bs170 million (£200 000) submitted by other fishermen are being examined by the experts appointed by the Gard Club and the 1971 Fund. Many of the fishermen involved have not provided evidence that they were licensed at the time of the incident.

Claims by 16 fish, clam and shrimp transporters, totalling Bs62 million (£75 000), have been received. Eleven of these claims have been approved for a total of Bs11.9 million (£14 000), and this amount has been paid by the Gard Club.

Fish processing plants

The Claims Agency has been informed by a lawyer representing a large number of fish processing plants in the Maracaibo area that his clients believe they will suffer losses from a long term reduction in catches as a result of the effects of the pollution of fish stocks. In April 1997 it was stated that claims from this sector would be received shortly, but so far no claims have been submitted.

Tourism industry

A claim totalling Bs12.5 million (£15 000) was submitted on behalf of 96 owners of beach cabins for loss of income as a result of the closure of the beach during the clean-up operations. The claim was settled at a total of Bs10.8 million (£13 000) and was paid in full by the Gard Club.

A restaurant owner and a hotelier have been asked to provide further evidence of the alleged losses, for which they have claimed compensation.

Further claims are expected from tourism businesses in the area.

Court proceedings

Criminal Court of Cabimas

A criminal first instance court in Cabimas is carrying out an investigation into the cause of the incident. The Cabimas Court will determine whether anyone has incurred criminal liability as a result of the incident. A hearing is expected to take place in March 1998.

The shipowner has presented a guarantee to the Cabimas Court for Bs3 473 million (£4.2 million), being the limitation amount applicable under the 1969 Civil Liability Convention.

In October 1997, the Republic of Venezuela presented a claim for pollution damage against the master, the shipowner and the Gard Club in the Cabimas Court for US$60 250 369 (£37 million). The 1971 Fund has been notified of this claim. The claim is based on a letter to the Attorney General from the Venezuelan Ministry of Environment and Renewable Natural Resources, which gave details of the amount of compensation allegedly payable to the Republic of Venezuela in respect of oil pollution. Compensation is claimed for damage to the communities of clams living in the intertidal zone affected by the spill, for the cost of restoring the quality of the water of the affected coasts, for the cost of replacing damaged sand and for damage to the beach as a tourist resort.

The 1971 Fund Assembly and Executive Committee have consistently taken the view that claims for damage to the environment *per se* are not admissible under the 1969 Civil Liability Convention and the 1971 Fund Convention. Resolution N°3 adopted by the Assembly in 1980 states that the assessment of compensation to be paid by the 1971 Fund is not to be made on the basis of an abstract quantification of damage calculated in accordance with theoretical models.

The 1971 Fund's position in respect of the admissibility of claims relating to damage to the marine environment was summarised by the Assembly in October 1994 as follows.

(a) The 1971 Fund accepts claims which relate to "quantifiable elements" of damage to the marine environment, for example, reasonable costs of reinstatement of the damaged environment, and loss of profit (income, revenue) resulting from damage to the marine environment suffered by persons who depend directly on earnings from coastal or sea-related activities, eg loss of earnings suffered by fishermen or by hoteliers and restaurateurs at seaside resorts.

(b) The 1971 Fund has consistently taken the position that claims relating to unquantifiable elements of damage to the marine environment cannot be admitted. The Assembly has rejected claims for compensation for damage to the marine environment calculated on the basis of theoretical models. Compensation can be granted only if a claimant has suffered quantifiable economic loss.

(c) Damages of a punitive character, calculated on the basis of the degree of the fault of the wrong-doer and/or the profit earned by the wrong-doer, are not admissible. Criminal and civil penalties for oil pollution from ships do not constitute compensation and do not therefore fall within the scope of the Civil Liability Convention and the Fund Convention.

The admissibility of claims for measures to reinstate the environment was considered by the 7th Intersessional Working Group. The Working Group agreed that in order to be admissible for compensation measures for reinstatement of the environment would have to fulfil the following criteria:

- the cost of the measures should be reasonable;
- the cost of the measures should not be disproportionate to the results achieved or the results which could reasonably be expected; and
- the measures should be appropriate and offer a reasonable prospect of success.

The Report of the Working Group was endorsed by the Assembly in October 1994.

In October 1997, the Executive Committee considered the claim presented by the Republic of Venezuela. The Committee noted that the Director had not yet been able to make an in-depth examination of the various items of this claim. The Committee noted however that, in the Director's view, it appeared that two items of the claim (damage to clams and to tourist beaches) had been calculated on the basis of theoretical models and did not correspond to losses actually suffered by the claimant, and that in his view these items were therefore not admissible for compensation under the 1969 Civil Liability Convention and the 1971 Fund Convention. It was not clear whether the claim for restoring water quality related to costs for reinstatement of the marine environment or to damage to the environment *per se*. It appeared that the claim for replacing sand related to measures to reinstate the marine environment. The Committee noted the Director's view that it had to be considered whether the two latter items fulfilled the criteria for admissibility.

The Executive Committee agreed with the Director's preliminary analysis as to the admissibility of the items referred to above. It emphasised the importance of the 1971 Fund's adhering to the principles of admissibility in respect of claims for damage to the environment *per se* and claims relating to measures to reinstate the environment.

Civil Court of Caracas

The Republic of Venezuela presented a claim against the shipowner, the master of the *Nissos Amorgos* and the Gard Club for an estimated amount of US$20 million (£12.2 million), later increased to US$60 248 701 (£37 million), before a first instance Civil Court in Caracas. It appears that this claim relates to the same four items of damage as the claim in the Cabimas court. In its pleadings the Republic of Venezuela maintained that it was a very significant incident which seriously affected the environment and the ecosystem in general, and which resulted in considerable expenditure being incurred in respect of 'pollution damage' and 'preventive measures'. The 1971 Fund has not been notified of this claim.

A fishermen's trade union (FETRAPESCA) has presented a claim against the shipowner, the Gard Club and the master of the *Nissos Amorgos* before the Caracas Civil Court for an estimated amount of US$130 million (£79 million) plus legal costs. The 1971 has been notified of this claim.

FETRAPESCA obtained an order by the Court in Caracas for the arrest of the shipowner's property, of vessels which are not his property but which are under associated management, and of assets belonging to the Gard Club, up to a total of US$292.5 million (£178 million). This order is still in force.

At the request of FETRAPESCA the Court appointed a committee composed of lawyers and technical experts to assess the value of the damage to the environment caused by the spill. That committee filed its report before the Court on 24 October 1997 but it does not attempt to quantify the effects of the spill. However, it suggests that about 20 000 fishermen have seen their income reduced by approximately 80% as a consequence.

FETRAPESCA has also presented a claim in the Caracas Civil Court against the bank which provided a guarantee to the criminal court of Cabimas for the amount of Bs 3 473 million (£4.2 million) relating to the losses suffered by the trade union members. The 1971 Fund has not been notified of this claim.

Eleven fish and shellfish processors have presented a claim in the Caracas Civil Court against the shipowner, the Gard Club and the master of the *Nissos Amorgos* for an estimated

amount of US$100 million (£61 million) plus legal costs. The 1971 Fund has not been notified of this claim.

A local fishermen's union has presented a claim in the Caracas Civil Court against the shipowner and the Gard Club for an estimated US$10 million (£6.1 million) plus legal costs. At the request of the shipowner/Gard Club, the Court dismissed the action on the grounds of a technical defect.

Conflict of jurisdiction

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

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. The Committee considered that it was necessary to strike a balance between the need to exercise caution in the payment of claims and the importance of the 1971 Fund's being able to pay claims at an early stage. The Committee therefore decided that the 1971 Fund's payment should at this stage 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 at the time the payment was made.

Cause of the incident and related issues

The 1971 Fund is following the investigation into the cause of the incident which is being carried out by the Venezuelan authorities. The Fund has engaged a technical expert to investigate the cause of the incident, so as to enable the Fund to intervene in future legal proceedings, if appropriate.

The Venezuelan delegation has maintained that the actual grounding occurred outside the Maracaibo Channel itself.

The shipowner has notified the 1971 Fund that he reserves the right to seek exoneration from liability for pollution damage arising from the incident, under Article III.2(c) of the 1969 Civil Liability Convention, on the ground that the damage had been caused wholly by the negligence or other wrongful act of a Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.

In June 1997, the Executive Committee noted that, due to lack of information as to the cause of the incident, it was not possible to take any position as to whether the shipowner would be exonerated from liability. A number of delegations pointed out that it would generally be difficult to prove that the incident was wholly caused by the negligence of an authority.

The shipowner and the Gard Club have informed the 1971 Fund that they intend to submit a detailed statement of their position with regard to the cause of the incident, together with supporting evidence, for consideration by the 1971 Fund and its experts, and that they have stated that it is their intention to continue paying claims for the time being.

DAIWA MARU N°18

(Japan, 27 March 1997)

While the Japanese tanker *Daiwa Maru N°18* (186 GRT) was loading heavy fuel oil to onshore tanks at an oil refinery in Kawasaki, Kanagawa Prefecture (Japan), some cargo oil leaked from a crack in the rubber hose which connected the loading pipeline of the *Daiwa Maru N°18* to the shore facility. The oil washed the deck of the *Daiwa Maru N°18* and spilled into the sea.

Clean-up operations were carried out by contractors and by the oil refinery, which mobilised its employees. The operations were completed within two days. The 1971 Fund monitored the operations through its Japanese surveyors.

The limitation amount applicable to the *Daiwa Maru N°18* is estimated at ¥3.4 million (£15 800).

Claims totalling ¥18 million (£82 000) have been received from several contractors. The claims are being examined by the 1971 Fund's Japanese surveyors.

The 1971 Fund is investigating whether the spilt oil can be considered as 'cargo', which is the condition for the incident's falling within the scope of the application of the 1969 Civil Liability Convention and the 1992 Fund Convention.

JEONG JIN N°101

(Republic of Korea, 1 April 1997)

The incident

On 1 April 1997, the Korean barge *Jeong Jin N°101* (896 GRT) was loading heavy fuel oil at an oil terminal in the port of Pusan (Republic of Korea). Approximately 124 tonnes of oil is believed to have overflowed from one of the tanks of the *Jeong Jin N°101* and spilled into the sea. Clean-up operations were commenced immediately by the operator of the oil terminal. The spilt oil nevertheless contaminated various parts of the port. The clean-up operations were completed by the end of April 1997.

The *Jeong Jin N°101* was not covered by any insurance for liability under the 1969 Civil Liability Convention. However, the shipowner had a bank guarantee issued by a Korean bank for Won 143 million (£51 000), to cover his civil liability for oil pollution damage in respect of this ship.

The limitation amount applicable to *Jeong Jin N°101* is estimated at Won 148 million (£53 000).

The shipowner commenced limitation proceedings in November 1997.

An investigation carried out by the 1971 Fund's Korean lawyer into the events leading to the spill showed that the oil had entered into hold N°2 and then overflowed from the hatch of that hold. The Executive Committee took the view that, since the oil had entered the hold, it should be considered as fulfilling the criterion of being carried on board as cargo. The Committee considered therefore that this incident fell within the scope of application of the 1969 Civil Liability Convention and the 1971 Fund Convention.

Jeong Jin N°101 incident - clean-up of the breakwater
(photograph: KOMOS)

The 1971 Fund's Korean lawyer also investigated the involvement of the oil terminal in the events. The investigation showed that, at the oil terminal in question, an employee of the terminal went on board the barge and checked the capacity of the barge and the condition of the holds prior to the commencement of loading. This was done in the *Jeong Jin N°101* case. It was established that it is general practice in Korea that once the loading began it was the sole responsibility of the barge crew to load the oil properly and that the staff of the terminal had no obligation in respect of the loading except to check the manifold for any leaks. There were no problems with the manifold in this case.

In view of this information, the Executive Committee decided that there were no grounds on which the 1971 Fund could take recourse action against the oil terminal.

Claims for compensation

Eight claims relating to clean-up operations, totalling Won 565 million (£203 000), have been submitted. The experts engaged by the 1971 Fund have assessed these claims at Won 415 million (£150 000). Negotiations with the claimants are in progress.

No claims have been received from the fishery or tourism sectors. It is unlikely that there will be any further claims.

OSUNG N°3

(Republic of Korea, 3 April 1997)

The tanker *Osung N°3* (786 GRT), registered in the Republic of Korea, ran aground on the island of Tunggado, just south of the island of Kojedo in the Pusan area (Republic of Korea), and sank to a depth of 70 metres. The vessel was carrying about 1 700 tonnes of heavy fuel oil. Oil was spilled immediately, but it has not been possible to assess the quantity spilt or the quantity remaining on board.

The spilt oil spread over about 15km² around the grounding location. The oil in this area was estimated at between 50 and 200 tonnes. Small but diminishing quantities of oil continued to leak from the sunken vessel, and by 9 April 1997 only faint traces of sheen were coming to the surface.

The Korean Marine Police, assisted by local authorities and clean-up contractors appointed by the shipowner, organised and carried out clean-up operations at sea. Some 100 vessels were employed in dispersant spraying, skimming and the manual removal of oil using sorbent pads. The clean-up at sea was terminated on 12 April 1997.

Although the shores of small islands close to the grounding location were oiled, there were no reports of the mainland coast having been polluted.

Oil which may have originated from the *Osung N°3* reached the sea adjacent to Tsushima island in Japan on 7 April 1997. The Japan Maritime Safety Agency deployed about 150 vessels to combat the oil at sea during the period 7 - 21 April. The oil also affected the shorelines of the northwest corner of Tsushima island. The onshore clean-up was carried out by fishermen, members of the Self Defence Force and the fire brigades, municipal officials and volunteers.

Samples of the oil in Japan were taken for comparison with the oil coming from the *Osung N°3*. These samples were sent for chemical analysis. In the view of the 1971 Fund's experts, the results of the analyses were fully consistent with the oil in Japan having been spilled from the *Osung N°3*.

Impact on fisheries

Republic of Korea

Traditional fishery and intensive aquaculture are carried out throughout the south Korean coast. Important fisheries are the common fishing grounds, coastal set net fisheries and an extensive mariculture industry. It is believed that the oil had only minimal impact on the fishery and mariculture industries.

Japan

Tsushima island supports seaweed harvesting, set net fishing and a boat fishing community. Damage to these fisheries has been alleged, but so far there has been no clear indication of the scale of impact.

Issues relating to the wreck and the oil on board

In April 1997, the Executive Committee noted that it was likely that a significant quantity of oil remained on board the sunken ship, that if this oil were to be released there would be a risk of the oil affecting a large number of aquaculture facilities located some seven kilometres north of the site of the sunken ship and that such a release could give rise to substantial claims for compensation.

The Executive Committee endorsed the Director's proposed course of action, which was to hold discussions with the Korean authorities concerning the most appropriate way of dealing with the oil remaining in the sunken ship, whilst not involving the 1971 Fund in carrying out such operations. He would make it clear that the 1971 Fund could assist the Korean authorities only with expert advice and could not become involved in the operations to inspect the ship, make repairs to prevent further escape of oil or remove any oil from the ship. He would also make it clear that the 1971 Fund could not guarantee to pay the costs of any such operations, but that these costs would have to be presented as a claim for compensation which would be subject to an assessment as to admissibility on the basis of the criteria laid down by the Assembly and Executive Committee.

The 1971 Fund employed an expert from a London firm of marine surveyors to monitor operations and to liaise with the Korean authorities which were considering taking measures to inspect the wreck and to remove the oil from the wreck. The expert has visited the Republic of Korea twice and held discussions with the Korean Marine Police on these matters.

The Korean authorities carried out inspections of the wreck in April/May 1997, using a remotely operated vehicle (ROV). The surveys, some of which encountered technical problems, established that the wreck was in an upright position, that there was damage to a number of tanks forward on the port side, and that traces of oil were leaking from one port cargo tank.

The 1971 Fund's expert conveyed to the Korean Marine Police the Director's view that the oil remaining in the wreck constituted a serious pollution risk and that it was important that appropriate measures were taken to prevent further escape of the oil. The expert indicated that in his view only very limited information could be obtained through inspections by ROV. He stated that he considered it necessary to use experienced divers to determine the condition of the ship. Various methods for recovering the oil were also discussed at the meeting.

The Korean Marine Police issued an order to the shipowner to remove the oil and the wreck. It is understood that the cargo owner was instructed to remove the oil.

The 1971 Fund received requests from the Korean authorities, from the shipowner and from the owner of the cargo that the 1971 Fund should take measures to remove the wreck or the oil or guarantee the payment of such measures. The 1971 Fund also received enquiries from salvage companies about the 1971 Fund's position as regards the payment of the cost of oil removal operations. In reply to these requests, the Director explained the role of the 1971 Fund and the criteria for the admissibility of claims for compensation along the lines set out above.

The Korean Research Institute of Ships and Ocean Engineering presented a report on a survey of the *Osung N°3*. In the report it was estimated that the wreck of the *Osung N°3* contained about 1 400 tonnes of oil in her tanks, which was not likely to solidify. It was concluded that oil might escape from the wreck because of further deterioration of the damaged ship, or as a result of a ship or fishing gear coming into contact with the submerged wreck, or if the wreck were to be disturbed by a passing typhoon.

Given the risk of further spillage and potential impacts on nearby fishing grounds, extensive mariculture facilities and tourist beaches, it was concluded in the report that an oil removal operation should be carried out as soon as possible to reduce the pollution risk, since 60% to 80% of the oil could be recovered. It was further concluded that the wreck itself should also be removed, with a view to eliminating completely the risk of further pollution. Although the best time to carry out wreck and oil removal operations would be between March and May, it was stated that, in view of the urgency of the work, the operations could be carried out between September and November.

It was estimated that the oil removal would take four months and cost Won 4 000 million (£2.8 million), whilst the wreck removal would last three months and cost Won 3 000 million (£2.1 million).

It is understood that the Korean authorities are considering carrying out an operation to determine the quantity of oil in the tanks of the wreck by drilling holes in the hull. It is also understood that several salvage companies have been in contact with the Korean authorities and the shipowner, and expressed interest in carrying out operations to remove the oil and the wreck.

Claims for compensation

As regards Korea, claims for compensation have been presented by the Korean Marine Police, some local authorities, the charterer of the *Osung N°3* and a number of contractors for participation in the clean-up operations and the inspection of the sunken vessel, and by two fishery co-operative associations for loss of income. These claims, totalling Won 1 200 million (£466 000), are being examined by the 1971 Fund's experts.

It is possible that there will be further claims from the Korean fishery and mariculture sectors.

Claims, totalling ¥659 million (£3.1 million), have been submitted for clean-up operations carried out in Japan. A claim has been presented by a Japanese fishery co-operative association for ¥285 million (£1.3 million) for loss of income caused by the oil spill. These claims are being examined by the 1971 Fund's experts.

A further claim for some ¥60 million (£280 000) by the Japanese Self Defence Force for clean-up operations is expected.

Level of the 1971 Fund's payments

In June 1997, the Executive Committee noted that there was only limited information available as to the cost of the clean-up operations in the Republic of Korea, and that claims might be submitted by the Korean fishery and mariculture sectors. It was noted that it was not possible to make an estimate of the cost of operations which might be undertaken to prevent further release of oil or for wreck removal. The Committee also noted that there was no information as to the cost of the clean-up operations in Japan, nor as to potential fishery claims in Japan.

In view of the great uncertainty resulting from the fact that a significant quantity of oil remained in the wreck, representing a serious pollution risk, the Executive Committee shared the Director's view that it was not possible to make any reasonable estimate as to the total amount of the claims arising out of the *Osung N°3* incident. The Committee considered that it was necessary to strike a balance between the need to exercise caution in the payment of claims and the importance of the 1971 Fund's being able to make payments at an early stage, noting that the limitation amount applicable to the *Osung N°3* was very low. The Committee therefore decided that, for the time being, the Director was authorised to make payments of 25% of the damage or loss actually suffered by each claimant, as assessed by the experts of the 1971 Fund at the time the payment was made.

In view of the continuing uncertainty as to the total amount of the claims arising out of the *Osung N°3* incident, the Executive Committee decided in October 1997 to maintain the limit of the 1971 Fund's payments at 25% of the amount of the claims actually suffered by the respective claimants.

Limitation proceedings

The *Osung N°3* was not entered in any P & I Club, but had liability insurance up to a limit of US$1 million (£600 000) per incident.

The limitation amount applicable to the vessel under the 1969 Civil Liability Convention is estimated at 104 500 SDR (£90 000).

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

Investigation into the cause of the incident

In a judgement rendered on 24 June 1997, the competent Korean Criminal Court held that the master of the *Osung N°3* had navigated the vessel through a prohibited area in order to save time and had failed to exercise due care in the navigation of the ship. The Court therefore sentenced him to one year's imprisonment.

The Executive Committee decided that, in the light of the findings of the Criminal Court, there were no grounds on which the 1971 Fund could oppose the shipowner's right to limit his liability, nor refuse to pay indemnification under Article 5.1 of the 1971 Fund Convention.

Applicability of the Conventions

At the time of the *Osung N°3* incident, the Republic of Korea was not Party to the 1992 Civil Liability Convention and the 1992 Fund Convention. The amount available for compensation for damage caused in Korea is therefore to be determined pursuant to the 1969 Civil Liability Convention and the 1971 Fund Convention, ie 60 million SDR (approximately £50 million).

Japan, however, was Party to the 1992 Conventions at the time of the incident. The maximum amount available for damage in Japan is therefore to be determined in accordance with those Conventions, ie 135 million SDR (£112 million), including any payments made to Korean and Japanese claimants under the 1969 Civil Liability Convention and the 1971 Fund Convention. If the total amount of the claims arising out of the incident for damage in Korea and Japan were to exceed 60 million SDR and payment under the 1971 Fund Convention had to be pro rated, the Japanese claimants would be entitled to additional compensation under the 1992 Fund Convention. Since the *Osung N°3* was registered in the Republic of Korea, the limit of the shipowner's liability would be that laid down in the 1969 Civil Liability Convention.

The Assembly considered in October 1997 whether the 1992 Fund should pay claimants in Japan the balance of 75%, and then present subrogated claims against the 1971 Fund if and when the 1971 Fund's payments are increased beyond the 25% limit. The Assembly decided that it would be appropriate for the 1992 Fund to intervene at this stage, as a State for which the 1992 Fund had entered into force had thereby ensured that victims of oil pollution damage in that State had the benefit of a higher maximum amount of compensation than that provided by the 1971 Fund Convention. The Assembly therefore authorised the Director to pay the balance of the established claims relating to damage in Japan.

PLATE PRINCESS

(Venezuela, 27 May 1997)

The incident

The Maltese tanker *Plate Princess* (30 423 GRT) berthed at an oil terminal at Puerto Miranda on Lake Maracaibo (Venezuela). On 27 May 1997, while the ship was loading a cargo of 44 250 tonnes of Lagotreco crude oil, some 3.2 tonnes were reportedly spilled.

On 22 May 1997 satisfactory examinations of the *Plate Princess*' cargo tanks and ballast tanks had been carried out by an independent inspector and by a pollution inspector, respectively. Following the ballast tank inspection, the master had been granted permission by a government inspector to discharge the ballast into Lake Maracaibo.

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

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

The limitation amount applicable to the *Plate Princess* under the 1969 Civil Liability Convention is estimated at 3.6 million SDR (£2.9 million).

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

Court proceedings

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

A fishermen's trade union (FETRAPESCA) has presented a petition in the Cabimas Court on behalf of 1 692 fishing boat owners, claiming an estimated US$10 060 per boat (£6 100) ie a total of US$17 million (£10 million). The claim is for alleged damage to fishing boats and nets and for loss of earnings. The 1971 Fund has not been notified of this action.

FETRAPESCA requested that the Cabimas Court should set up a commission to inspect the damage and establish *inter alia* a formula to assess the environmental impact of the oil spill, the criteria to determine the effects of the oil spill on the ecosystem and the consequences of the spill for the affected communities, in particular the fishermen.

FETRAPESCA has also presented a claim against the shipowner and the master of the *Plate Princess* for an estimated amount of US$10 million (£6.0 million) before a Civil Court of Caracas. The claim is for the fishermen's loss of income as a result of the spill.

A local fishermen's union has presented a claim in the Civil Court in Caracas against the shipowner and the master of the *Plate Princess*, for an estimated amount of US$20 million (£12.1 million) plus legal costs.

Conflict of jurisdiction

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

DIAMOND GRACE
(Japan, 2 July 1997)

The incident

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

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

The limitation amount applicable to the *Diamond Grace* under the 1969 Civil Liability Convention is 14 million SDR, corresponding to approximately ¥2 444 million (£11.4 million).

Clean-up operations

The oil spread rapidly in the centre of Tokyo Bay, and light but steady winds from the south moved the dissipating residues into Kawasaki port. The shipowner and the Japanese authorities mobilised a fleet of about 150 response vessels to deploy booms in and around Kawasaki port, and to recover oil with sorbent pads. A small number of vessels sprayed dispersants on heavier oil patches around Kawasaki breakwater and in the port. The clean-up response was co-ordinated by the Maritime Safety Agency (MSA).

The major part of the clean-up operations was completed within four days of the incident, leaving only small quantities of residue staining sea walls or trapped among tetrapods in the port. The cleaning of sea walls and tetrapods was completed within three weeks.

Claims for compensation

Immediately after the incident there were fears that the incident would give rise to claims for compensation for very high amounts. The 1971 Fund and the shipowner's insurer, the United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Limited (UK Club), therefore jointly set up a Claims Handling Office in Tokyo.

As of 31 December 1997, the Claims Handling Office had received 58 claims totalling ¥1 209 million (£5.7 million). Out of this amount, ¥703 million (£3.3 million) related to clean-up operations and ¥464 million (£2.2 million) to fishery damage. The Claims Handling Office had been notified of a further ten claims for which no amounts had been indicated. Claims for personal

injury, caused by the inhalation of oily vapour, had also been submitted but for relatively small amounts.

It is unlikely that there will be any further claims for significant amounts. It is possible, therefore, that the total amount of the claims will not exceed the shipowner's limitation amount.

KATJA

(France, 7 August 1997)

The Bahamas-registered *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 the port fuel oil tank, and 190 tonnes of heavy fuel oil was spilled. Booms were placed around the berth, but oil had already 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 is being constructed.

Clean-up operations within the port area were arranged by the Port authority and the operators of various berths. The operations were undertaken by local contractors.

The cleaning of the beaches was organised by the local authorities using local contractors, the Fire Brigade and the Army. Bathing and watersports were prohibited for a few days while oil remained on the beaches. All beaches were reopened and bathing restrictions lifted in time for a long weekend holiday from 15 to 17 August.

Some shrimp fishermen from Le Havre were prevented from storing their catch in the port, as is their custom. While commercial fishing was not disrupted, a ban was placed on recreational fishing, including the collection of shellfish and shrimps. It is understood, however, that the ban is unlikely to have had any economic consequences as the catches are not sold commercially.

At the time of the incident, the Bahamas was not Party to the 1969 Civil Liability Convention nor to the 1992 Civil Liability Convention. The limitation amount in respect of the vessel is therefore to be determined in accordance with the 1969 Convention and is estimated at FFr48 million (£4.7 million).

Claim forms, prepared jointly by the shipowner's insurer, Assuranceföreningen Skuld (Skuld Club), and the 1971 Fund, were distributed to potential claimants by the Skuld Club's correspondent in Le Havre, who was given the task of receiving claims for compensation.

Claims have been received for the cost of cleaning the Port of Le Havre, surrounding beaches, commercial ships and pleasure yachts which were in the harbour at the time of the incident. Some inshore shrimp fishermen have claimed compensation for loss of income following the incident.

It is not possible at this stage to make an estimate of the total amount of the claims. It is unlikely that the claims will exceed the limitation amount applicable to the *Katja*.

Katja incident - boom closing the entrance to a marina
(photograph: ITOPF)

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 on 15 October 1997. The *Evoikos*, which carried approximately 130 000 tonnes of heavy fuel oil, suffered damage to three cargo tanks, and an estimated 29 000 tonnes of heavy fuel oil was subsequently spilled. The *Orapin Global*, which was in ballast, did not spill any oil.

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

Impact of the spill

The spilt oil initially affected the waters of Singapore. About a dozen of the southern islands of Singapore were contaminated by oil.

By 19 October 1997 oil slicks had drifted into the Malaysian and Indonesian waters of the Malacca Straits. For several weeks, the oil drifted in a generally northwesterly direction, influenced by tidal streams and local currents. On 23 December, oil came ashore in places along a 40 kilometre length of the Malaysian coast in the Province of Selangor, including several short

sandy beaches, a one kilometre stretch of rocks, a concrete breakwater and two separate areas of mangrove.

On 20 November 1997, the Belize registered general cargo ship *An Tai* sank at her berth in Port Klang, spilling an unknown quantity of fuel oil which flowed into the Malacca Strait. Some oil from the *An Tai* subsequently became mixed with slicks further out in the Straits originating from the *Evoikos*. Samples of oil have been taken during the clean-up operations to identify the source of the oil at various locations.

Clean-up operations

Singapore

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

The oiled shores of a recreational island (Pulau Hantu) and a lighthouse island (Raffles Light) were cleaned by a commercial contractor using dispersants and seawater pumps at a cost of about S$400 000 (£145 000). This work was funded by the shipowner and his insurer, the United Kingdom Mutual Steamship Assurance Association (Bermuda) Ltd (UK Club).

The shipowner and the UK Club engaged various contractors to assist in the clean-up operations. The cost of these operations is estimated at £1.5 million.

Malaysia

By the time oil had reached the Malacca Straits, it was no longer amenable to chemical dispersants. The slicks were nearly solid and had spread over a wide area, rendering at-sea recovery operations ineffectual. The Malaysian Marine Department undertook aerial and boat surveillance and placed equipment on stand-by so as to make it possible to take preventive measures if required. In the event, some five kilometres of shore were oiled.

Onshore clean-up operations have been co-ordinated by the Malaysian Department of Environment with support from the Marine Department. Individual district authorities within the Selangor Province have organised the manual removal of oil and oily material from sandy shores, and arrangements are being made to clear the rocky and concrete breakwater area. The mangrove areas are being left to recover naturally.

Indonesia

There is no information on any pollution damage in Indonesia.

Impact on fishing and tourism in Malaysia

Many fish farms are located along the Malaysian coast, and measures were taken to protect those threatened by the oil. Fish farmers were encouraged to use locally available materials, including plastic sheeting weighted with bricks, to surround the fish cages, so forming a protective barrier against floating oil.

One fish farmer has reported that some of his nets and cages were contaminated and that some fish in the farm died as a result of the contamination. No evidence has so far been produced to support a claim for compensation by this fish farmer.

Evoikos incident - oil sheens in the Malacca Strait
(photograph: ITOPF)

Some fishermen have complained to the Malaysian Fisheries Department that their fishing boats and nets have been contaminated, and these allegations are being investigated.

There are so far no indications that the tourism industry has been affected.

Claims for compensation

MPA has stated that the cost of its clean-up operations in Singapore amounts to S$13 million (£4.7 million). It is expected that MPA will submit a breakdown of these costs to the shipowner/UK Club in the near future.

The UK Club has been notified of claims amounting to £1 million by various shipowners and terminal operators in Singapore whose property has been polluted.

As regards Malaysia, claims are expected from the Department of Environment and from the Marine Department. Claims from fishermen and fish farmers will be co-ordinated by the Malaysian Fisheries Department.

It is not possible at this stage to make any estimate of the level of the claims which might be submitted from either Singapore or Malaysia.

It has been indicated that the shipowner and the UK Club might maintain that the operations carried out in Singaporean waters (or at least part thereof) were undertaken to prevent or minimise pollution damage in Malaysia or Indonesia and that the costs thereof would therefore qualify for

compensation under the 1971 Fund Compensation. The shipowner and the UK Club have referred to the position taken by the Executive Committee in respect of the *Kihnu* incident. In addition, claims for salvage operations might be submitted not only under Article 13 of the 1989 International Convention on Salvage but also under Article 14 of that Convention.

At its session in October 1997, the Executive Committee took the view that it was premature for the Committee to take any position on these issues.

Limitation proceedings

The shipowner has commenced limitation proceedings with the competent Singapore court. The limitation amount applicable to the *Evoikos* is approximately 9.7 million SDR (£8 million.)

Investigation into the cause of the incident

Both the Singapore and the Cypriot authorities are investigating the cause of the incident. The Director is following these investigations.

KYUNGNAM N°1

(Republic of Korea, 7 November 1997)

The coastal tanker *Kyungnam N°1* (168 GRT), registered in the Republic of Korea, ran aground off Ulsan (Republic of Korea) while carrying about 400 tonnes of heavy fuel oil. As a result, the bottom of one of the starboard cargo tanks was fractured. The Ulsan Marine Police estimated that about one tonne of cargo oil was released into the sea. However, the 1971 Fund's experts estimate that there was a spill of some 15 - 20 tonnes.

The spilt oil affected several kilometres of rocky shoreline.

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

Offshore clean-up operations were carried out by the Ulsan Marine Police using vessels, a skimmer unit, booms, sorbents and dispersants. Local fishermen and divers were engaged by the shipowner to carry out manual clean-up operations onshore.

A claim has been presented for Won 9 million (£3 400), relating to the cost of cleaning three vessels which were undergoing repairs at a shipyard at the time of the incident, and to the cost of cleaning some shipyard facilities. Further claims for clean-up and claims from the fishery sector are expected.

The limitation amount applicable to the *Kyungnam N°1* under Korean law is estimated at Won 46 million (£17 000). The ship was not entered in any P & I Club, but had a bank guarantee for pollution damage for Won 28 million (£10 000). Due to the depreciation of Korean Won since the guarantee was issued, the guaranteed amount falls short of the limitation amount applicable to the ship.

The criminal investigation into the cause of the incident concluded that the master had failed to check the sea chart and had followed a dangerous course which caused the ship to ground on a submerged rock.

In the light of the findings of the criminal investigation, the 1971 Fund has taken the view that there are no grounds on which the 1971 Fund can challenge the shipowner's right of limitation, nor refuse to pay indemnification to the shipowner under Article 5 of the 1971 Fund Convention. However, the shipowner will need to establish a limitation fund in order to be entitled to limit his liability.

9.3 Incidents dealt with by the 1992 Fund during 1997

As in Section 9.2 of this Report, claim amounts have been rounded. The conversion of foreign currencies into Pounds Sterling is as at 31 December 1997.

INCIDENT IN GERMANY

(Germany, 20 June 1996)

On 20 June 1996 crude oil was found to have polluted a number of German islands close to the border with Denmark in the North Sea. According to the German authorities, computer simulations of currents and wind movements indicated that the oil had been discharged between 12 and 18 June approximately 60 - 100 nautical miles north-west of the Isle of Sylt. The German authorities undertook clean-up operations at sea and onshore, and some 2 130 tonnes of oil and sand mixture were removed from the beaches. The cost of these operations has been indicated at some DM2.6 million (£900 000).

The German Federal Maritime and Hydrographic Agency took samples of the oil that was washed ashore. Chemical analysis indicated that the oil was Libyan crude.

Investigations by the German authorities revealed that the Russian tanker *Kuzbass* (88 692 GRT) had discharged Libyan crude in the port of Wilhelmshaven on 11 June 1996. Analysis of oil samples taken from the ship matched the results of the analysis of samples taken from the polluted coastline. Comparisons with chemical analytical data on North Sea crude oils showed that the pollution was not caused by crude oil from North Sea platforms.

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 German authorities notified the 1992 Fund of the incident. It appears that the authorities maintain that the ship from which the oil originated was an unladen tanker. The definition of "ship" in Article I.1 of the 1992 Civil Liability Convention covers also unladen tankers, and so, by reference, does the definition of ship in the 1992 Fund Convention. Article I.1 of the 1992 Civil Liability Convention reads:

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

If the German authorities were to pursue a claim against the 1992 Fund, the question arises of whether they have proved that the damage resulted from an incident involving one or more ships. This issue will have to be examined, on the basis of all evidence submitted, in the light of the definition of "ship" contained in the 1992 Civil Liability Convention.

The limitation amount applicable to the *Kuzbass* under the 1992 Civil Liability Convention is estimated at approximately 38 million SDR (£28 million).

The German authorities are preparing to take legal action against the owner of the *Kuzbass* and his insurer, the West of England Ship Owners' Mutual Insurance Association (Luxembourg). The German authorities have informed the 1992 Fund that, if their attempts to recover the cost of the clean-up operations were to be unsuccessful, they would claim against the 1992 Fund.

NAKHODKA

(Japan, 2 January 1997)

See pages 97 - 105 above.

OSUNG N°3

(Republic of Korea, 3 April 1997)

See pages 113 - 117 above.

INCIDENT IN THE UNITED KINGDOM

(United Kingdom, 28 September 1997)

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

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

In order for this spill to fall within the scope of application of the 1992 Fund Convention, the claimant must show that the oil originated from a ship as defined in Article I.1 of the 1992 Civil Liability Convention which by reference is included in the 1992 Fund Convention. This definition is quoted above in connection with the incident which took place in Germany on 20 June 1996.

The 1992 Fund is investigating the origin of the oil. In view of the small quantity of oil which reached the beaches, however, the Director considers it unlikely that it can be established that the oil came from a tanker, whether laden or unladen.

10 LOOKING AHEAD

Over the last 19 years, the membership of the 1971 Fund has increased steadily, reaching 76 by the end of 1997. This will probably be the height of the Organisation's membership. In coming years there will be a steady reduction in the number of 1971 Fund Member States. A third of the Organisation's Members will be leaving the 1971 Fund on 15 May 1998, as required under the 1992 Fund Protocol. As the number of 1971 Fund Member States decreases, it will be necessary to start considering how the 1971 Fund will operate in the future and to prepare for its eventual winding up.

Meanwhile, the number of States which have ratified the 1992 Fund Convention has more than trebled in the 20 months since the Convention came into force in May 1996. States which wish to become part of the international system of liability and compensation are likely in the future to ratify the 1992 Protocols directly. It is expected that there will be a steady growth in 1992 Fund membership in the coming years.

Since June 1996 the 1971 Fund Secretariat has administered the 1992 Fund as well as the 1971 Fund. From 16 May 1998, however, the 1971 Fund will cease to have its own Secretariat, but will be administered by the newly established Secretariat of the 1992 Fund.

The joint Secretariat will pursue its efforts to bring the pollution cases which the Funds are now handling to satisfactory conclusions as soon as possible. In particular, the Secretariat will endeavour to build on the considerable progress made during 1997 towards the settlement of claims with regard to a number of incidents involving the 1971 Fund. Furthermore, the Secretariat will deal efficiently with claims arising from future pollution incidents affecting States which remain Members of the 1971 Fund, as well as those arising from spills which occur in 1992 Fund Member States.

It is crucial that the joint Secretariat is given sufficient resources and an appropriate structure to enable it to provide the services which victims of oil pollution incidents, Member States and interested circles are entitled to expect. A review of the working methods within the Secretariat is at present being undertaken. The final report of the consultants carrying out the review will be published in the spring of 1998. It is expected that as a result of this study the Secretariat will be given additional resources which will enable it to work more effectively.

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

ANNEX I

Structure of the IOPC Funds

1971 FUND ASSEMBLY

Composed of all Member States

Chairman: Mr C Coppolani (France)

Vice-Chairmen:
Mr A H E Popp (Canada)
Mrs I Barinova (Russian Federation)

1992 FUND ASSEMBLY

Composed of all Member States

Chairman: Mr C Coppolani (France)

Vice-Chairmen:
Professor H Tanikawa (Japan)
Mr P Gómez-Flores (Mexico)

1971 FUND EXECUTIVE COMMITTEE

52nd to 55th sessions		*56th session*	
Chairman:	Mr W J G Oosterveen (Netherlands)	Chairman:	Mr W J G Oosterveen (Netherlands)
Vice-Chairman:	Dr M Babangida Aliyu (Nigeria)	Vice-Chairman:	Professor L S Chai (Republic of Korea)
Australia	Morocco	Algeria	Japan
Belgium	Netherlands	Belgium	Malaysia
Canada	Nigeria	Colombia	Morocco
Denmark	Republic of Korea	Denmark	Netherlands
Finland	Russian Federation	France	Poland
Germany	Spain	Greece	Republic of Korea
Greece	United Kingdom	India	United Kingdom
Malaysia		Italy	

SECRETARIAT

Officers

Mr M Jacobsson	Director
Mr S Osanai	Legal Officer
Mr S O Nte	Finance/Personnel Officer
Mr R Pillai	Finance Officer
Miss S Gregory	Claims Officer
Mr J Maura	Claims Officer
Ms H Warson	Administrative Officer
Mrs P Binkhorst van Romunde	Assistant Finance Officer

AUDITORS

Comptroller and Auditor General
United Kingdom

ANNEX II

Note on 1971 and 1992 Funds' Published Financial Statements

The financial statements reproduced in Annexes III to XVII, XX and XXI 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 1996, approved by the Assemblies of the 1971 and 1992 Funds at their 20th and 2nd sessions respectively.

EXTERNAL AUDITOR'S STATEMENT

The extracts of the financial statements set out in Annexes III to XVII, XX and XXI are consistent with the audited financial statements of the International Oil Pollution Compensation Funds 1971 and 1992 for the year ended 31 December 1996.

R Maggs
Director
for the Comptroller and Auditor General
National Audit Office, United Kingdom
31 January 1998

ANNEX III

General Fund

1971 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 1996

	1996		1995	
INCOME	£	£	£	£
Contributions				
Initial contributions		1 162		*125 660*
Annual contributions		5 808 890		*5 935 049*
Adjustment to prior years' assessment		7 212		*14 223*
		5 817 264		*6 074 932*
Miscellaneous				
Miscellaneous income	248 545		*347 871*	
Income from 1992 Fund	68 117		-	
Transfer from MCF *Kasuga Maru N°1*	29 744		-	
Transfer from MCF *Rio Orinoco*	83 017		-	
Interest on loan to MCF *Vistabella*	18 618		*20 247*	
Interest on loan to MCF *Agip Abruzzo*	-		*4 605*	
Interest on loan to MCF *Yuil N°1*	8 306		*642*	
Interest on loan to MCF *Sea Empress*	113		-	
Interest on overdue contributions	28 710		*9 608*	
Interest on investments	1 070 460		*1 038 619*	
		1 555 630		*1 421 592*
		7 372 894		*7 496 524*
EXPENDITURE				
Secretariat expenses				
Obligations incurred		975 953		*1 024 802*
Claims				
Compensation		1 977 901		*2 487 962*
Claims related expenses				
Fees	1 492 239		*443 741*	
Travel	1 769		*6 585*	
Miscellaneous	6 808		*515*	
		1 500 816		*450 841*
		4 454 670		*3 963 605*
Income less expenditure		2 918 224		*3 532 919*
Exchange adjustment		(44 026)		*30 414*
		2 874 198		*3 563 333*
Transfer from MCF *Agip Abruzzo*		(176 662)		-
Excess of income over expenditure		2 697 536		*3 563 333*

ANNEX IV

Major Claims Fund - *Kasuga Maru N°1*

1971 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 1996

	1996		*1995*	
INCOME	£	£	£	£
Interest on overdue contributions	-		-	
Interest on investments	-		*26 385*	
		-		*26 385*
EXPENDITURE				
Compensation	-		-	
Fees	-		-	
Travel	-		-	
Miscellaneous	-		-	
		-		-
Excess of income over expenditure		-		*26 385*
Balance b/f: 1 January		389 734		*363 349*
Credit to Contributors' Account	359 990		-	
Transfer to General Fund	29 744		-	
		389 734		-
Balance as at 31 December		NIL		*389 734*

ANNEX V

Major Claims Fund - *Rio Orinoco*

1971 FUND: INCOME AND EXPENDITURE ACCOUNT
FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 1996

	1996		1995	
INCOME	£	£	£	£
Contributions				
Adjustment to prior years' assessment	-		*(11 266)*	
		-		*(11 266)*
Miscellaneous				
Interest on overdue contributions	-		*7 566*	
Interest on investments	-		*94 180*	
		-		*101 746*
		-		*90 480*
EXPENDITURE				
Compensation	-		-	
Fees	-		*15 554*	
Travel	-		-	
Miscellaneous	-		*125*	
		-		*15 679*
Excess of income over expenditure				*74 801*
Balance b/f: 1 January		1 363 008		*1 288 207*
Credit to Contributors' Account	1 279 991		-	
Transfer to General Fund	83 017		-	
		1 363 008		-
Balance as at 31 December		NIL		*1 363 008*

ANNEX VI

Major Claims Fund - *Haven*

1971 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 1996

	1996		1995	
INCOME	£	£	£	£
Contributions				
Annual contributions (second levy)	-		-	
Annual contributions (first levy)	-		-	
Adjustment to prior years' assessment	921		(49 156)	
		921		(49 156)
Miscellaneous				
Interest on overdue contributions	-		18 651	
Interest on investments	1 523 134		1 618 858	
Interest on loan to MCF *Brner*	41 850		327 416	
		1 564 984		1 964 925
		1 565 905		1 915 769
EXPENDITURE				
Compensation	2 048 108		-	
Fees	662 958		766 379	
Travel	2 160		11 358	
Miscellaneous	1 126		249	
		2 714 352		777 986
Excess/(shortfall) of income over expenditure		(1 148 447)		1 137 783
Balance b/f: 1 January		29 156 430		28 018 647
Balance as at 31 December		28 007 983		29 156 430

ANNEX VII

Major Claims Fund - *Aegean Sea*

1971 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 1996

	1996		1995	
INCOME	£	£	£	£
Contributions				
Annual contributions (second levy)	-		*14 971 787*	
Annual contributions (first levy)	-		-	
Adjustment to prior years' assessment	676 876		*534*	
		676 876		*14 972 321*
Miscellaneous				
Interest on overdue contributions	25 122		*3 692*	
Interest on investments	1 914 053		*2 244 463*	
		1 939 175		*2 248 155*
		2 616 051		*17 220 476*
EXPENDITURE				
Compensation	356 613		*2 028 253*	
Fees	698 706		*524 630*	
Travel	6 245		*3 994*	
Miscellaneous	1 304		*13 190*	
		1 062 868		*2 570 067*
Excess of income over expenditure		1 553 183		*14 650 409*
Balance b/f: 1 January		33 842 451		*19 192 042*
Balance as at 31 December		35 395 634		*33 842 451*

ANNEX VIII

Major Claims Fund - *Bruer*

1971 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 1996

	1996		1995	
INCOME	£	£	£	£
Contributions				
Annual contributions (second levy)	13 940 004		-	
Annual contributions (first levy)	-		-	
Adjustment to prior years' assessment	21 919		*(56 888)*	
		13 961 923		*(56 888)*
Miscellaneous				
Interest on overdue contributions	22 275		*1 539*	
Interest on investments	286 353		-	
		308 628		*1 539*
		14 270 551		*(55 349)*
EXPENDITURE				
Compensation	(1 454)		6 461 809	
Fees	570 150		625 796	
Travel	14 495		5 022	
Interest on loan from MCF *Haven*	41 850		327 416	
Miscellaneous	14 698		2 665	
		639 739		*7 422 708*
Excess/(Shortfall) of income over expenditure		13 630 812		*(7 478 057)*
Amount due to MCF *Haven*		(7 794 155)		*(316 098)*
Balance as at 31 December		5 836 657		*(7 794 155)*

ANNEX IX

Major Claims Fund - *Taiko Maru*

1971 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 1996

	1996		1995	
INCOME	£	£	£	£
Contributions				
Annual contributions	-		-	
Adjustment to prior years' assessment	5 707		45 285	
		5 707		45 285
Miscellaneous				
Interest on overdue contributions	2 526		1 751	
Interest on investments	195 612		230 120	
		198 138		231 871
		203 845		277 156
EXPENDITURE				
Compensation	-		46 713	
Fees	-		21 425	
Miscellaneous	-		1 766	
		-		69 904
Excess of income over expenditure		203 845		207 252
Balance b/f: 1 January		3 395 410		3 188 158
Balance as at 31 December		3 599 255		3 395 410

ANNEX X

Major Claims Fund - *Keumdong N°5*

1971 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 1996

	1996		1995	
INCOME	£	£	£	£
Contributions				
Annual contributions (second levy)	-		*9 926 332*	
Annual contributions (first levy)	-		-	
Adjustment to prior years' assessment	8 576		*22 642*	
		8 576		*9 948 974*
Miscellaneous				
Interest on overdue contributions	13 252		*4 346*	
Interest on investments	493 479		*761 991*	
		506 731		*766 337*
		515 307		*10 715 311*
EXPENDITURE				
Compensation	5 639 236		-	
Fees	133 907		*208 789*	
Miscellaneous	179		*350*	
		5 773 322		*209 139*
Excess/(shortfall) of income over expenditure		(5 258 015)		*10 506 172*
Balance b/f: 1 January		11 957 808		*1 451 636*
Balance as at 31 December		6 699 793		*11 957 808*

ANNEX XI

Major Claims Fund - *Toyotaka Maru*

1971 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 1996

	1996		1995	
INCOME	£	£	£	£
Contributions				
Annual contributions	-		8 907 469	
Adjustment to prior years' assessment	3 480		-	
		3 480		8 907 469
Miscellaneous				
Interest on overdue contributions	9 771		3 021	
Interest on investments	258 558		385 941	
		268 329		388 962
		271 809		9 296 431
EXPENDITURE				
Compensation	125 189		4 280 631	
Fees	16 242		354 363	
Travel	-		7 260	
Miscellaneous	92		2 812	
		141 523		4 645 066
Excess of income over expenditure		130 286		
Balance b/f: 1 January		4 651 365		
Balance as at 31 December		4 781 651		4 651 365

ANNEX XII

Major Claims Fund - *Sea Prince*

1971 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 1996

	1996	
INCOME	£	£
Contributions		
Annual contributions	10 650 275	
		10 650 275
Miscellaneous		
Interest on overdue contributions	21 433	
Interest on investments	502 481	
		523 914
		11 174 189
EXPENDITURE		
Compensation	1 318 262	
Fees	14 824	
Miscellaneous	79	
		1 333 165
Balance as at 31 December		9 841 024

ANNEX XIII

Major Claims Fund - *Yeo Myung*

1971 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 1996

	1996	
INCOME	£	£
Contributions		
Annual contributions	1 936 414	
		1 936 414
Miscellaneous		
Interest on overdue contributions	3 897	
Interest on investments	97 109	
		101 006
		2 037 420
EXPENDITURE		
Compensation	-	
Fees	-	
Miscellaneous	-	
		-
Balance as at 31 December		2 037 420

ANNEX XIV

Major Claims Fund - *Yuil N°1*

1971 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 1996

	1996	
INCOME	£	£
Contributions		
Annual contributions	6 777 448	
		6 777 448
Miscellaneous		
Interest on overdue contributions	13 639	
		13 639
		6 791 087
EXPENDITURE		
Compensation	5 959 273	
Fees	313 035	
Interest on loan from the General Fund	8 306	
Miscellaneous	286	
		6 280 900
Excess of income over expenditure		510 187
Amount due to General Fund		(402 929)
Balance as at 31 December		107 258

ANNEX XV

Major Claims Fund - *Seiyo Maru*

1971 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 1996

	1996	
INCOME	£	£
Contributions		
Annual contributions	2 904 620	
		2 904 620
Miscellaneous		
Interest on overdue contributions	4 728	
Interest on investments	87 583	
		92 311
		2 996 931
EXPENDITURE		
Compensation	1 450 409	
Fees	111 016	
Travel	904	
Miscellaneous	1 417	
		1 563 746
Balance as at 31 December		1 433 185

ANNEX XVI

1971 FUND: BALANCE SHEET AS AT 31 DECEMBER 1996

	1996	*1995*
ASSETS	£	*£*
Cash at banks and in hand	115 793 967	*91 016 695*
Contributions outstanding	1 354 808	*1 631 848*
Due from 1992 Fund	237 898	-
Due from MCF *Braer* to MCF *Haven*	-	*7 794 155*
Due from MCF *Vistabella*	347 808	*328 039*
Due from MCF *Agip Abruzzo*	-	*176 662*
Due from MCF *Yuil N°1*	-	*402 929*
Due from MCF *Sea Empress*	58 257	-
Tax recoverable	77 257	*25 977*
Miscellaneous receivable	11 710	*20 619*
Interest on overdue contributions	25 342	*4 386*
Total Assets	117 907 047	*101 401 310*
LIABILITIES		
Staff Provident Fund	1 005 794	*805 746*
Accounts payable	31 987	*19 612*
Unliquidated obligations	135 327	*68 718*
Prepaid contributions	374 897	*179 561*
Contributors' account	532 865	*182 686*
Due to MCF *Kasuga Maru N°1*	-	*389 734*
Due to MCF *Rio Orinoco*	-	*1 363 008*
Due to MCF *Haven*	28 007 983	*29 156 430*
Due to MCF *Aegean Sea*	35 395 634	*33 842 451*
Due to MCF *Braer*	5 836 657	-
Due to MCF *Taiko Maru*	3 599 255	*3 395 410*
Due to MCF *Keumdong N°5*	6 699 793	*11 957 808*
Due to MCF *Toyotaka Maru*	4 781 651	*4 651 365*
Due to MCF *Sea Prince*	9 841 024	-
Due to MCF *Yeo Myung*	2 037 420	-
Due to MCF *Yuil N°1*	107 258	-
Due to MCF *Senyo Maru*	1 433 185	-
Total Liabilities	99 820 730	*86 012 529*
General Fund Balance	18 086 317	*15 388 781*
TOTAL LIABILITIES AND GENERAL FUND BALANCE	117 907 047	*101 401 310*

ANNEX XVII

1971 FUND: CASH FLOW STATEMENT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 1996

	£	£
Cash as at 1 January 1996		91 016 695
OPERATING ACTIVITIES		
Initial contributions	15 535	
Previous year's contributions received	41 764 651	
Prior years' contributions received	1 240 358	
Prepaid contributors 1992 Fund	4 225	
Interest received on overdue contributions	124 397	
Other sources of income	355 267	
Receipts from contributors	363 838	
Exchange adjustment	(44 026)	
Administrative expenditure (1971/1992 Funds)	(1 083 350)	
Claims expenditure	(22 997 471)	
Repayment to contributors	(1 673 412)	
Other cash payments	(10 000)	
Net cash from operating activities before net current asset changes	18 060 012	
Increase in net current liabilities	207 711	
Net cash flow from operating activities		18 267 723
RETURNS ON INVESTMENTS		
Interest on investments	6 509 549	
Net cash inflow from returns on investments		6 509 549
Cash as at 31 December 1996		115 793 967

ANNEX XVIII

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 1996

INTRODUCTION

Scope of the audit

1 I have audited the financial statements of the International Oil Pollution Compensation Fund 1971 ("the 1971 Fund") for the eighteenth financial period ended 31 December 1996. My examination was carried out with due regard to the provisions of the 1971 Fund Convention and to the Financial Regulations.

Audit Objective

2 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 1996 had been received and incurred for the purposes approved by the Assembly; whether income and expenditure were properly classified and recorded in accordance with the 1971 Fund's Financial Regulations; and whether the financial statements presented fairly the financial position as at 31 December 1996.

Auditing Standards

3 My audit 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 and carry out the audit so as to obtain reasonable assurance that the 1971 Fund's financial statements are free of material misstatement. The 1971 Fund's Secretariat were responsible for preparing these financial statements, and I am responsible for expressing an opinion on them, based on evidence gathered in my audit.

Audit Approach

4 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;
- a broad assessment of the internal controls for income and expenditure; cash management; accounts receivable and payable; and supplies and equipment;
- substantive testing of transactions, including those in respect of contributions and claims, across all funds; and
- substantive testing of year end balances.

Reporting

5 During the audit, my staff sought such explanations from the 1971 Fund's Secretariat as they considered necessary on matters arising from their examination of internal controls, accounting records and financial statements. My observations on those matters arising from the audit which I consider should be brought to the attention of the Assembly are set out in the paragraphs below.

Overall Results

6 My examination revealed no weaknesses or errors considered material to the accuracy, completeness and validity of the financial statements as a whole. Subject to continuing uncertainty surrounding the outcome of the court action on the Haven incident (paragraphs 13 to 20 below), I confirm that, in my opinion, the financial statements present fairly the financial position as at 31 December 1996.

7 The findings of my audit are set out in paragraphs 8 to 27 below.

FINDINGS

FINANCIAL MATTERS

Budgetary Outturn and Transfers

8 Statement I to the financial statements shows that obligations incurred in the period ended 31 December 1996 totalled £1 147 086 this being £288 844 within the budget of £1 435 930. Total obligations were apportioned between the 1971 Fund and the 1992 Fund in accordance with the decisions of both Assemblies. Accordingly, £171 133 was charged to the 1992 Fund, to be repaid to the 1971 Fund in 1997.

9 During 1996, the Director made transfers of appropriations within chapters of the budget in accordance with Financial Regulation 6.3. The Director has reported on these transfers in his comments which accompany the audited financial statements.

Contributions

10 The 1971 Fund received a total of £41 764 651 in assessed annual contributions for the General Fund and Major Claims Funds in 1996, representing an average collection rate of 99 per cent. In 1996, the 1971 Fund also received £15 535 of initial contributions and £1 240 358 of annual contributions due from previous periods and £374 897 in contributions for the 1997 period. Outstanding initial and annual contributions for 1995 and previous financial periods amount to £1 354 808. Of this, some £394 205 or 29 per cent, relates to amounts outstanding from the former USSR and the former Yugoslavia. In addition, one contributor has gone bankrupt owing £150 222 or 11 per cent of the total amount outstanding. The 1971 Fund has registered a claim in the bankruptcy proceedings for the amount due.

11 In my previous Reports, I have mentioned the Assembly's concerns on the timely submission of reports on contributing oil receipts to ensure the system of levying contributions functions in an equitable manner. For this year, I note that the situation has not significantly improved. As at 31 December 1996, a total of 18 (1995: 20) Member States had not submitted reports on contributing oil receipts for the years 1993 and earlier (1995: for 1992 and earlier). As a result, the 1971 Fund was unable to calculate a total of 133 (1995: 124) annual assessments for the General Fund and relevant Major Claims Funds. However, it should be noted that, in respect of many of these Member States, the reports would indicate that no contributing oil - or only a small quantity - had been received in that State.

CONTINGENT LIABILITIES

General

12 The 1971 Fund's contingent liabilities are disclosed in Schedule III to the financial statements and mostly relate to compensation claims for oil pollution damage. Under the 1971 Fund Convention, those liabilities which mature will be met by contributions assessed by the Assembly.

Haven Incident

13 As disclosed in Schedule III to the financial statements, the 1971 Fund has assessed contingent liabilities of £276 846 632 as at 31 December 1996, compared with £368 097 764 in 1995. Within this total, £32 920 642 relates to the *Haven* incident, representing the 1971 Fund's view of the maximum compensation of £39 447 590 (60 million Special Drawing Rights) payable under the 1971 Fund Convention, less amounts paid in 1996 of £2 048 108, less the shipowner's limitation amount of £9 204 440, plus indemnification of £3 725 600 and fees of £1 000 000.

14 At 31 December 1996, claims submitted to the 1971 Fund for compensation for oil pollution damage resulting from the *Haven* incident totalled approximately £643 million. In addition, there were non-quantified claims relating to damage to the marine environment. The Italian Courts in Genoa dealing with the claims have been called upon to rule on the extent of the 1971 Fund's liability under the 1971 Fund Convention.

15 On 14 March 1992, the judge in the Court of first instance in Genoa, who is in charge of the limitation proceedings, rendered a decision which indicated that the 1971 Fund would face a potential maximum liability of Lit 771 397 947 400 (approximately £296 million). This compared with the 1971 Fund's assessment of Lit 102 643 800 000 (60 million Special Drawing Rights, approximately £39 million), being the maximum amount available under the 1969 Civil Liability and 1971 Fund Conventions.

16 The 1971 Fund lodged opposition to the judge's decision of 14 March 1992. On 26 July 1993, the Italian Court of first instance in Genoa rendered its judgement in respect of the 1971 Fund's opposition in which it upheld the judge's decision of 14 March 1992. The 1971 Fund appealed against this judgement.

17 In a judgement rendered on 30 March 1996, the Court of Appeal in Genoa confirmed the judgement of the Court of first instance. In April 1996, the Executive Committee instructed the Director to take the necessary steps to appeal to the Supreme Court of Cassation. An appeal was lodged in January 1997.

18 In April 1996, the judge in the Court of first instance in Genoa in charge of the limitation proceedings rendered a decision in which he determined the admissible claims for compensation. These amounted to Lit 186 455 432 828 (£72 million) plus interest and compensation for devaluation. The 1971 Fund has lodged opposition to a number of these claims.

19 In June 1995 and again in October 1996, the 1971 Fund Assembly instructed the Director to explore the possibility of arriving at a global settlement which fell within the maximum amount of compensation available. So far no global settlement has been reached.

20 As explained in my previous Reports, because of the uncertainty surrounding the outcome of these legal proceedings, I have qualified my audit opinion on the 1971 Fund's financial statements in respect of the contingent liability for the *Haven* incident.

FINANCIAL CONTROL MATTERS

The Accounting Systems

21 During the 1996 audit, my staff carried out a review of the accounting systems to the extent considered necessary for the purpose of forming an opinion on the financial statements. As a result of their examination, my staff concluded that proper books of account had been maintained and that the accounting records were, in all significant respects, sufficient to form the basis of the 1996 financial statements.

Control of Supplies and Equipment

22 In accordance with the 1971 Fund's stated accounting policies, purchases of equipment, furniture, office machines, supplies and library books are not included in the 1971 Fund's Balance Sheet. Note 18(b) to the financial statements shows that the value of these assets held by the 1971 Fund as at 31 December 1996 amounted to £160 756.

23 My staff carried out a test examination of the 1971 Fund's records of supplies and equipment under Financial Regulation 13.16(d). As a result of this examination, I am satisfied that the supplies and equipment records as at 31 December 1996 properly reflect the assets held by the 1971 Fund. No losses were reported by the 1971 Fund during the year.

Common Accounting Standards

24 In 1995, I reported that the United Nations Consultative Committee on Administrative Questions (Finance and Budgetary Questions) had approved revised standards which incorporate common formats and guidelines for financial statements subject to audit. These changes are directly applicable to the form of financial statements produced within the United Nations System.

25 The 1971 Fund has in the past sought to conform with the common accounting standards introduced by the Consultative Committee, including the introduction of a consolidated cash flow statement. However, in consultation with my staff, the Director has taken the view that, given the unique nature of the 1971 Fund, it would not be appropriate for the financial statements to be re-formatted in order to meet the requirements of the revised standards.

OTHER MATTERS

Recovery of VAT

26 As I noted in my Report on the 1971 Fund's 1995 financial statements, a number of invoices received from Italian law firms, dating back to 1991, have been paid inclusive of Italian value added tax. The Italian authorities have agreed in principle that some £368 000 of value added tax should be repaid to the 1971 Fund. Although the financial statements do not record the amount due for repayment, and to date no money has been repaid, the 1971 Fund expects to receive a full refund.

Amounts Written Off and Fraud

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

ACKNOWLEDGEMENT

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

SIR JOHN BOURN KCB
Comptroller and Auditor General, United Kingdom
External Auditor

17 July 1997

ANNEX XIX

FINANCIAL STATEMENTS OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1971 FOR THE YEAR ENDED 31 DECEMBER 1996

OPINION OF THE EXTERNAL AUDITOR

To: the Assembly of the International Oil Pollution Compensation Fund 1971

I have examined the appended financial statements, comprising Statements I to XVII, Schedules I to III and Notes, of the International Oil Pollution Compensation Fund 1971 for the year ended 31 December 1996 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. My examination included a general review of the accounting procedures and such tests of the accounting records and other supporting evidence as I considered necessary in the circumstances.

Subject to the uncertainty of the contingent liability referred to in paragraphs 13 to 20 of my Report, as a result of my examination, I am of the opinion that the financial statements present fairly the financial position as at 31 December 1996 and the results of the year then ended; that they were prepared in accordance with the 1971 Fund's stated accounting policies which were applied on a basis consistent with that of the preceding financial year; and that the transactions were in accordance with the Financial Regulations and legislative authority.

SIR JOHN BOURN KCB
Comptroller and Auditor General, United Kingdom
External Auditor

17 July 1997

ANNEX XX

General Fund

1992 FUND: INCOME AND EXPENDITURE ACCOUNT
FOR THE FINANCIAL PERIOD 30 MAY - 31 DECEMBER 1996

	1996	
INCOME	£	£
		NIL
EXPENDITURE		
Secretariat expenses		
Obligations incurred		242 123
Balance as at 31 December 1996		(242 123)

ANNEX XXI

1992 FUND: BALANCE SHEET AS AT 31 DECEMBER 1996

	1996	
ASSETS	£	£
Total Assets		NIL
LIABILITIES		
Due to 1971 Fund	237 898	
Prepaid contributions	4 225	
Total Liabilities		242 123
General Fund Balance		(242 123)
TOTAL LIABILITIES AND GENERAL FUND BALANCE		NIL

ANNEX XXII

FINANCIAL STATEMENTS OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1992 FOR THE YEAR ENDED 31 DECEMBER 1996

OPINION OF THE EXTERNAL AUDITOR

To: the Assembly of the International Oil Pollution Compensation Fund 1992

I have examined the appended financial statements, comprising Statements I to III, the Schedule and Notes, of the International Oil Pollution Compensation Fund 1992 for the year ended 31 December 1996 in accordance with generally accepted common auditing standards. My examination included a general review of the accounting procedures and such tests of the accounting records and other supporting evidence as I considered necessary in the circumstances.

In my opinion the financial statements present fairly the financial position as at 31 December 1996 and the results of the year then ended; that they were prepared in accordance with the 1992 Fund's stated accounting policies; and that the transactions were in accordance with the Financial Regulations and legislative authority.

I have not considered it necessary to issue a report on my audit of the 1992 Fund's financial statements.

SIR JOHN BOURN KCB
Comptroller and Auditor General, United Kingdom
External Auditor

17 July 1997

ANNEX XXIII

1971 Fund: Contributing oil received in the territories of Member States in the calendar year 1996

As reported by 31 December 1997

Member State	Contributing Oil (tonnes)	% of Total
Japan	276 661 459	22.80%
Italy	144 922 341	11.94%
Republic of Korea	113 830 620	9.38%
Netherlands	103 527 284	8.53%
France	96 844 142	7.98%
United Kingdom	75 092 048	6.19%
Spain	56 208 957	4.63%
India	43 720 614	3.60%
Canada	39 581 235	3.26%
Germany	36 781 648	3.03%
Australia	32 362 331	2.67%
Norway	28 239 838	2.33%
Sweden	21 658 170	1.79%
Greece	20 146 111	1.66%
Venezuela	16 842 544	1.39%
Malaysia	16 434 656	1.35%
Portugal	12 945 513	1.07%
Mexico	10 790 306	0.89%
Finland	9 830 428	0.81%
Indonesia	9 271 145	0.76%
Belgium	7 018 628	0.58%
Denmark	6 842 016	0.56%
Morocco	5 335 586	0.44%
China (Hong Kong)	5 329 528	0.44%
New Zealand	4 408 937	0.36%
Côte d'Ivoire	3 340 637	0.28%
Ireland	3 130 883	0.26%
Tunisia	2 550 364	0.21%
Sri Lanka	1 977 298	0.16%
Kenya	1 569 103	0.13%
Bahamas	1 500 193	0.12%
Cyprus	1 456 807	0.12%
Malta	824 209	0.07%
Nigeria	754 106	0.06%
Ghana	660 677	0.05%
Algeria	490 000	0.04%
Russian Federation	290 100	0.02%
Barbados	170 372	0.01%
	1 213 340 834	100.00%

Notes: Nil return from Bahrain, Brunei Darussalam, Djibouti, Estonia, Gambia, Iceland, Kuwait, Liberia, Maldives, Marshall Islands, Mauritius, Monaco, Oman, Papua New Guinea, Slovenia, Switzerland, Tonga, Vanuatu.

No report from Albania, Antigua and Barbuda, Benin, Cameroon, Colombia, Croatia, Fiji, Gabon, Mauritania, Mozambique, Poland, Qatar, Saint Kitts and Nevis, Seychelles, Sierra Leone, Syrian Arab Republic, Tuvalu, United Arab Emirates and Yugoslavia.

ANNEX XXIV

1992 Fund: Contributing oil received in the territories of Member States in the calendar year 1996

As reported by 31 December 1997

Member State	Contributing Oil (tonnes)	% of Total
Japan	276 661 459	36.35%
Netherlands	103 527 284	13.60%
France	96 844 142	12.72%
Germany	79 064 608	10.39%
United Kingdom	75 092 048	9.87%
Australia	32 362 331	4.25%
Norway	28 239 838	3.71%
Sweden	21 658 170	2.85%
Greece	20 146 111	2.65%
Mexico	10 790 306	1.42%
Finland	9 830 428	1.29%
Denmark	6 842 016	0.90%
Bahrain	0	0.00%
Liberia	0	0.00%
Marshall Islands	0	0.00%
Monaco	0	0.00%
Oman	0	0.00%
	761 058 741	100.00%

ANNEX

SUMMARY OF

(31 December

For this table, damage has been grouped into the following categories

	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC	Cause of incident
1	*Irving Whale*	7.9.70	Gulf of St Lawrence, Canada	Canada	2 261	*(unknown)*	Sinking
2	*Antonio Gramsci*	27.2.79	Ventspils, USSR	USSR	27 694	Rbls 2 431 584	Grounding
3	*Miyu Maru N°8*	22.3.79	Bisan Seto, Japan	Japan	997	¥37 710 340	Collision
4	*Tarpenbek*	21.6.79	Solsey Bill, United Kingdom	Federal Republic of Germany	999	£64 356	Collision
5	*Mehrazaki Maru N°5*	8.12.79	Mehara, Japan	Japan	19	¥845 480	Sinking
6	*Showa Maru*	9.1.80	Naruto Strait, Japan	Japan	199	¥8 123 140	Collision
7	*Unaei Maru*	9.1.80	Akune, Japan	Japan	99	¥3 143 180	Collision
8	*Tsuio*	7.3.80	Brittany, France	Madagascar	18 048	FFr11 833 718	Breaking
9	*Fiverna*	3.6.80	Oresund, Sweden	Sweden	999	SKr612 443	Collision
10	*Hosei Maru*	21.8.80	Miyagi, Japan	Japan	983	¥35 765 920	Collision

XXV

INCIDENTS: 1971 FUND

1997)

- Clean-up (including preventive measures)
- Fishery-related
- Tourism-related
- Farming-related
- Other loss of income
- Other damage to property
- Environmental damage

Quantity of oil spilled (tonnes)	Compensation (Amounts paid by 1971 Fund, unless indicated to the contrary)		Notes	
(unknown)	Refloating *(claimed)* clean-up *(claimed)*	Can$42 447 639	*Irving Whale* was refloated in 1996. The Fund takes the view that this claim does not fall within the scope of the Conventions, since the incident occured before the entry into force of the Conventions for Canada.	1
5 500	Clean-up	SKr95 707 157		2
540	Clean-up Fishery-related Indemnification	¥108 589 104 ¥31 521 478 ¥9 427 585 ¥149 538 167	¥5 438 909 recovered by way of recourse	3
(unknown)	Clean-up	£363 550		4
10	Clean-up Fishery-related Indemnification	¥7 477 481 ¥2 710 854 ¥211 370 ¥10 399 705		5
100	Clean-up Fishery-related Indemnification	¥10 408 369 ¥92 696 505 ¥2 030 785 ¥105 135 659	¥9 893 496 recovered by way of recourse.	6
<140			Because of the distribution of liability between the two colliding ships, 1971 Fund not called upon to pay any compensation.	7
13 500	Clean-up Tourism-related Fishery-related Other loss of income	FFr219 164 465 FFr2 429 338 FFr52 024 FFr494 816 FFr222 140 643	Total payment equalled limit of compensation available under 1971 Fund Convention; payments by 1971 Fund represented 63.85% of accepted amounts. US$17 480 028 recovered by way of recourse.	8
200	Clean-up Clean-up Indemnification	SKr3 187 687 DKr418 589 SKr153 111	SKr449 961 recovered by way of recourse.	9
270	Clean-up Fishery-related Indemnification	¥163 051 598 ¥50 271 267 ¥8 941 480 ¥222 264 345	¥18 221 905 recovered by way of recourse.	10

	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC	Cause of incident
11	*Jose Marti*	7.1.81	Dalarö, Sweden	USSR	27 706	SKr23 844 593	Grounding
12	*Suna Maru N°11*	21.11.81	Karatsu, Japan	Japan	199	¥7 396 340	Grounding
13	*Globe Asimi*	22.11.81	Klaipeda, USSR	Gibraltar	12 404	Rbls 1 350 324	Grounding
14	*Ondina*	3.3.82	Hamburg, Federal Republic of Germany	Netherlands	31 030	DM10 080 383	Discharge
15	*Shiota Maru N°2*	31.3.82	Takashima Island, Japan	Japan	161	¥6 304 300	Grounding
16	*Fukutoku Maru N°8*	3.4.82	Tachibana Bay, Japan	Japan	499	¥20 844 440	Collision
17	*Kifuku Maru N°35*	1.12.82	Ishinomaki, Japan	Japan	107	¥4 271 560	Sinking
18	*Shinkai Maru N°3*	21.6.83	Ichikawa, Japan	Japan	48	¥1 880 940	Discharge
19	*Eiko Maru N°1*	13.8.83	Kamakuwazaki, Japan	Japan	999	¥39 445 920	Collision
20	*Koei Maru N°3*	22.12.83	Nagoya, Japan	Japan	82	¥3 091 660	Collision
21	*Tsunehisa Maru N°8*	26.8.84	Osaka, Japan	Japan	38	¥964 800	Sinking
22	*Koho Maru N°3*	5.11.84	Hiroshima, Japan	Japan	199	¥5 385 920	Grounding
23	*Kyohan Maru N°1*	5.3.85	Tokyo Bay, Japan	Japan	68	¥1 896 320	Collision
24	*Patmos*	21.3.85	Straits of Messina, Italy	Greece	51 627	Lit 13 263 703 650	Collision
25	*Jan*	2.8.85	Aalborg, Denmark	Federal Republic of Germany	1 400	DKr1 576 170	Grounding

Quantity of oil spilled (tonnes)	Compensation (Amounts paid by 1971 Fund, unless indicated to the contrary)		Notes	
1 000			Total damage less than shipowner's liability (clean-up SKr20 361 000 claimed). Shipowner's defence that he should be exonerated from liability rejected in final court judgement.	11
10	Clean-up Indemnification	¥6 426 857 ¥1 849 085 ¥8 275 942		12
>16 000	Indemnification	US$467 953	No damage in 1971 Fund Member State.	13
200-300	Clean-up	DM11 345 174		14
20	Clean-up Fishery-related Indemnification	¥46 524 524 ¥24 571 190 ¥1 576 075 ¥72 671 789		15
85	Clean-up Fishery-related Indemnification	¥200 476 274 ¥163 255 481 ¥5 211 110 ¥368 942 865		16
33	Indemnification	¥398 181	Total damage less than shipowner's liability.	17
3.5	Clean-up Indemnification	¥1 005 160 ¥470 235 ¥1 475 395		18
357	Clean-up Fishery-related Indemnification	¥23 193 525 ¥1 541 584 ¥9 861 480 ¥34 596 589	¥14 843 746 recovered by way of recourse.	19
49	Clean-up Fishery-related Indemnification	¥18 010 269 ¥8 971 979 ¥772 915 ¥27 755 163	¥8 904 083 recovered by way of recourse.	20
30	Clean-up Indemnification	¥16 610 200 ¥241 200 ¥16 851 400		21
20	Clean-up Fishery-related Indemnification	¥68 609 674 ¥25 502 144 ¥1 346 480 ¥95 458 298		22
80	Clean-up Indemnification	¥26 124 589 ¥474 080 ¥26 598 669	¥8 866 222 recovered by way of recourse.	23
700			Total damage agreed out of court or decided by court (Lit 11 583 298 650) less than shipowner's liability.	24
300	Clean-up Indemnification	DKr9 455 661 DKr394 043 DKr9 849 704		25

	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC	Cause of incident
26	*Rose Garden Maru*	26.12.85	Umm Al Qaiwain, United Arab Emirates	Panama	2 621	US$364 182 *(estimate)*	Discharge of oil
27	*Brady Maria*	3 1 86	Elbe Estuary, Federal Republic of Germany	Panama	996	DM324 629	Collision
28	*Take Maru N°6*	9.1 86	Sakai-Senboku, Japan	Japan	83	¥3 876 800	Discharge of oil
29	*Oued Gueterini*	18.12.86	Algiers, Algeria	Algeria	1 576	Dinl 175 064	Discharge
30	*Thuntank 5*	21.12.86	Gävle, Sweden	Sweden	2 866	SKr2 741 746	Grounding
31	*Antonio Gramsci*	6.2.87	Borgå, Finland	USSR	27 706	Rbls 2 431 854	Grounding
32	*Southern Eagle*	15.6.87	Sada Misaki, Japan	Panama	4 461	¥93 874 528	Collision
33	*El Hani*	22.7.87	Indonesia	Libya	81 412	£7 900 000 *(estimate)*	Grounding
34	*Akari*	25.8.87	Dubai, United Arab Emirates	Panama	1 345	£92 800 *(estimate)*	Fire
35	*Tolmiros*	11.9.87	West coast, Sweden	Greece	48 914	SKr50 000 000 *(estimate)*	*Unknown*
36	*Hinode Maru N°1*	18.12.87	Yawatahama, Japan	Japan	19	¥608 000	Mishandling of cargo
37	*Amazzone*	31.1.88	Brittany, France	Italy	18 325	FFr13 860 369	Storm damage to tanks
38	*Taiyo Maru N°13*	12.3.88	Yokohama, Japan	Japan	86	¥2 476 800	Discharge
39	*Czantoria*	8.5.88	St Romuald, Canada	Canada	81 197	*(unknown)*	Collision with berth
40	*Kasuga Maru N°1*	10.12.88	Kyoga Misaki, Japan	Japan	480	¥17 015 040	Sinking

Quantity of oil spilled (tonnes)	Compensation (Amounts paid by 1971 Fund, unless indicated to the contrary)		Notes	
(unknown)			Claim against 1971 Fund (US$44 204) withdrawn.	26
200	Clean-up	DM3 220 511	DM333 027 recovered by way of recourse.	27
0.1	Indemnification	¥104 987	Total damage less than shipowner's liability.	28
15	Clean-up Clean-up Clean-up Other loss of income Indemnification	US$1 133 FFr708 824 Din5 650 £126 120 Din293 766		29
150-200	Clean-up Fishery-related Indemnification	Skr23 168 271 SKr49 361 SKr685 437 SKr23 903 069		30
600-700	Clean-up	FM1 849 924	USSR clean-up claims (Rbls 1 417 448) not paid by 1971 Fund since USSR not Member of 1971 Fund at time of incident.	31
15			Total damage less than shipowner's liability (¥35 346 679 clean-up and ¥51 521 183 fishery-related agreed).	32
3 000			Clean-up claim (US$242 800) not pursued.	33
1 000	Clean-up Clean-up	Dhr 864 293 US$187 165	US$160 000 refunded by shipowner's insurer.	34
200			Clean-up claim (SKr100 639 999) not pursued, since legal action by Swedish Government against shipowner and 1971 Fund withdrawn	35
25	Clean-up Indemnification	¥1 847 225 ¥152 000 ¥1 999 225		36
2 000	Clean-up Fishery-related	FFr1 141 185 FFr145 792 FFr1 286 977	FFr1 000 000 recovered from shipowner's insurer.	37
6	Clean-up Indemnification	¥6 134 885 ¥619 200 ¥6 754 085		38
(unknown)			1971 Fund Convention not applicable, as incident occurred before entry into force of Convention for Canada. Clean-up claim (Can$1 787 771) not pursued.	39
1 100	Clean-up Fishery-related Indemnification	¥371 865 167 ¥53 500 000 ¥4 253 760 ¥429 618 927		40

	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC	Cause of incident
41	*Nestucca*	23.12.88	Vancouver Island, Canada	United States of America	1 612	*(unknown)*	Collision
42	*Fukkol Maru N°12*	15.5.89	Shiogama, Japan	Japan	94	¥2 198 400	Overflow from supply pipe
43	*Tsubame Maru N°58*	18.5.89	Shiogama, Japan	Japan	74	¥2 971 520	Mishandling of oil transfer
44	*Tsubame Maru N°16*	15.6.89	Kushiro, Japan	Japan	56	¥1 613 120	Discharge
45	*Kifuku Maru N°103*	28.6.89	Otsuji, Japan	Japan	59	¥1 727 040	Mishandling of cargo
46	*Nancy Orr Goucher*	25.7.89	Hamilton, Canada	Liberia	2 829	Can$473 766	Overflow during discharge
47	*Dainichi Maru N°5*	28.10.89	Yaizu, Japan	Japan	174	¥4 199 680	Mishandling of cargo
48	*Daito Maru N°3*	5.4.90	Yokohama, Japan	Japan	93	¥2 495 360	Mishandling of cargo
49	*Kazuei Maru N°10*	11.4.90	Osaka, Japan	Japan	121	¥3 476 160	Collision
50	*Fuji Maru N°3*	12.4.90	Yokohama, Japan	Japan	199	¥5 352 000	Overflow during supply operation
51	*Volgoneft 263*	14.5.90	Karlskrona, Sweden	USSR	3 566	SKr3 205 204	Collision
52	*Hato Maru N°2*	27.7.90	Kobe, Japan	Japan	31	¥803 200	Mishandling of cargo
53	*Bonito*	12.10.90	River Thames, United Kingdom	Sweden	2 866	£241 000 *(estimate)*	Mishandling of cargo
54	*Rio Orinoco*	16.10.90	Anticosti Island, Canada	Cayman Islands	5 999	Can$1 182 617	Grounding
55	*Portfield*	5.11.90	Pembroke, Wales, United Kingdom	United Kingdom	481	£69 141	Sinking
56	*Vistabella*	7.3.91	Caribbean	Trinidad and Tobago	1 090	FFr2 354 000 *(estimate)*	Sinking

Quantity of oil spilled (tonnes)	Compensation (Amounts paid by 1971 Fund, unless indicated to the contrary)		Notes	
(unknown)			1971 Fund Convention not applicable, as incident occurred before entry into force of Convention for Canada. Clean-up claims (Can$10 475) not pursued.	41
0.5	Clean-up Indemnification	¥492 635 ¥549 600 ¥1 042 235		42
7	Other damage to property Indemnification	¥19 159 905 ¥742 880 ¥19 902 785		43
(unknown)	Other damage to property Indemnification	¥273 580 ¥403 280 ¥676 860		44
(unknown)	Clean-up Indemnification	¥8 285 960 ¥431 761 ¥8 717 721		45
250			Total damage less than shipowner's liability (clean-up Can$292 110 agreed).	46
0.2	Fishery-related Clean-up Indemnification	¥1 792 100 ¥368 510 ¥1 049 920 ¥3 210 530		47
3	Clean-up Indemnification	¥5 490 570 ¥623 840 ¥6 114 410		48
30	Clean-up Fishery-related Indemnification	¥48 883 038 ¥560 588 ¥869 040 ¥50 312 666	¥45 038 833 recovered by way of recourse.	49
(unknown)	Clean-up Indemnification	¥96 431 ¥1 338 000 ¥1 434 431	¥430 329 recovered by way of recourse.	50
800	Clean-up Fishery-related Indemnification	SKr15 523 813 SKr530 239 SKr795 276 SKr16 849 328		51
(unknown)	Other damage to property Indemnification	¥1 087 700 ¥200 800 ¥1 288 500		52
20			Total damage less than shipowner's liability (clean-up £130 000 agreed).	53
185	Clean-up	Can$12 831 892		54
110	Clean-up Fishery-related Indemnification	£249 630 £9 879 £17 155 £276 663		55
(unknown)	Clean-up Clean-up	FFr8 237 529 US$8 068		56

	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC	Cause of incident
57	*Hokuman Maru N°12*	5.4.91	Okushiri Island, Japan	Japan	209	¥3 523 520	Grounding
58	*Agip Abruzzo*	10.4.91	Livorno, Italy	Italy	98 544	Lit 21 800 000 000 *(estimate)*	Collision
59	*Haven*	11.4.91	Genoa, Italy	Cyprus	109 977	Lit 23 950 220 000	Fire and explosion
60	*Kaiko Maru N°86*	12.4.91	Nomazaki, Japan	Japan	499	¥14 660 480	Collision
61	*Kumi Maru N°12*	27.12.91	Tokyo Bay, Japan	Japan	113	¥3 058 560	Collision
62	*Fukkol Maru N°12*	9.6.92	Ishinomaki, Japan	Japan	94	¥2 198 400	Mishandling of oil supply
63	*Aegean Sea*	3.12.92	La Coruña, Spain	Greece	57 801	Pts 1 121 219 450	Grounding
64	*Braer*	5.1.93	Shetland, United Kingdom	Liberia	44 989	£5 790 052	Grounding
65	*Kihnu*	16.1.93	Tallinn, Estonia	Estonia	949	113 000 SDR *(estimate)*	Grounding

Quantity of oil spilled (tonnes)	Compensation (Amounts paid by 1971 Fund, unless indicated to the contrary)		Notes	
(unknown)	Clean-up Fishery-related Indemnification	¥2 119 966 ¥4 024 863 ¥880 880 ¥7 025 709		57
2 000	Indemnification	Lit 1 666 031 931	Total damage less than shipowner's liability.	58
(unknown)	*Figures as awarded in 'stato passivo':* Clean-up: ◦ Italian Government ◦ Other Italian Authorities ◦ Private claimants ◦ French Government ◦ Other French Authorities ◦ Principality of Monaco ◦ Shipowner/UK Club Tourism-related: ◦ Italian private claimants ◦ French private claimants Fishery-related: ◦ Italian private claimants Environmental damage: ◦ Italian Government Total	 Lit 105 260 722 046 Lit 1 457 371 664 Lit 16 481 320 800 Lit 3 891 304 156 Lit 4 277 446 160 Lit 3 321 490 540 Lit 91 811 900 Lit 4 277 446 160 Lit 139 058 913 426 Lit 4 705 136 915 Lit 73 447 387 Lit 4 778 584 302 Lit 8 933 580 000 Lit 40 000 000 000 Lit 192 771 077 728	Opposition lodged by 1971 Fund in respect of a number of claims, including environmental damage claim. Italian Government and two other claimants have also lodged opposition. Question of time bar *vis-à-vis* 1971 Fund has arisen in respect of majority of claims. FFr10 659 469 and Lit 1 582 341 690 paid by 1971 Fund. Lit 29 130 million paid by shipowner's insurer.	59
25	Clean-up Fishery-related Indemnification	¥53 513 992 ¥39 553 821 ¥3 665 120 ¥96 732 933		60
5	Clean-up Indemnification	¥1 056 519 ¥764 640 ¥1 821 159	¥650 522 recovered by way of recourse.	61
(unknown)	Other damage to property Indemnification	¥4 243 997 ¥549 600 ¥4 793 597		62
73 500	*Figures as in court judgement:* ◦ Spanish Government *(claimed)* ◦ Public Bodies *(awarded)* ◦ Private claimant *(claimed)* Fishery-related: ◦ Private claimants *(awarded)* ◦ Private claimants *(claimed)*	 Pts 1 154 500 000 Pts 303 263 261 Pts 184 216 423 Pts 327 027 638 Pts 14 955 486 084 Pts 16 924 493 406	Amounts indicated as claimed relate to claims referred to the procedure for the execution of judgement. Pts 835 million paid by 1971 Fund. Pts 782 million paid by shipowner's insurer.	63
84 000	Clean-up Fishery-related Tourism-related Farming-related Other damage to property Other loss of income	£200 285 £33 269 350 £77 375 £3 533 504 £8 259 156 £186 985 £45 526 655	Further claims amounting to £5.2 million agreed. Claims amounting to £47 771 685 subject of court proceedings. £4 807 323 paid by shipowner's insurer.	64
140	Clean-up	FM543 618		65

	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC	Cause of incident
66	*Sambo N°11*	12.4.93	Seoul, Republic of Korea	Republic of Korea	520	Won 77 786 224 *(estimate)*	Grounding
67	*Taiko Maru*	31.5.93	Shioyazaki, Japan	Japan	699	¥29 205 120	Collision
68	*Ryoya Maru*	23.7.93	Izu Peninsula, Japan	Japan	699	¥28 105 920	Collision
69	*Keumdong N°5*	27.9.93	Yosu, Republic of Korea	Republic of Korea	481	Won 77 417 210	Collision
70	*Iliad*	9.10.93	Pylos, Greece	Greece	33 837	Drs 1 496 533 000	Grounding
71	*Seki*	30.3.94	Fujairah, United Arab Emirates, and Oman	Panama	153 506	14 million SDR	Collision
72	*Daito Maru N°5*	11.6.94	Yokohama, Japan	Japan	116	¥3 386 560	Overflow during loading operation
73	*Toyotaka Maru*	17.10.94	Kainan, Japan	Japan	2 960	¥81 823 680	Collision
74	*Hoyu Maru N°53*	31.10.94	Monbetsu, Japan	Japan	43	¥1 089 280	Mishandling of oil supply
75	*Sung Il N°1*	8.11.94	Onsan, Republic of Korea	Republic of Korea	150	Won 23 000 000 *(estimate)*	Grounding
76	Spill from unknown source	30.11.94	Mohammédia, Morocco	-	-	-	*(Unknown)*
77	*Dae Woong*	27.6.95	Kojung, Republic of Korea	Republic of Korea	642	Won 95 000 000 *(estimate)*	Grounding

Quantity of oil spilled (tonnes)	Compensation (Amounts paid by 1971 Fund, unless indicated to the contrary)		Notes	
4	Clean-up Fishery-related	Won 176 866 632 Won 42 848 123 Won 219 714 755	US$22 504 recovered from shipowner's insurer.	66
520	Clean-up Fishery-related Indemnification	¥756 780 796 ¥336 404 259 ¥7 301 280 ¥1 100 486 335	¥49 104 248 recovered by way of recourse.	67
500	Clean-up Indemnification	¥8 433 001 ¥7 026 480 ¥15 459 481	¥10 455 440 recovered by way of recourse.	68
1 280	Clean-up *(paid)* Fishery-related *(paid)* Fishery-related *(claimed)* Other damage to property *(paid)*	Won 5 587 815 812 Won 6 163 000 000 Won 22 964 791 254 Won 14 206 046 Won 34 729 813 112	Won 5 587 815 812 paid by shipowner's insurer, of which US$6 000 000 reimbursed by 1971 Fund. Claims amounting to Won 22 964 791 254 subject of legal proceedings.	69
200	Clean-up *(paid)* Clean-up *(paid)* Clean-up *(claimed)* Fishery-related *(claimed)* Other loss of income *(claimed)* Moral damages *(claimed)*	Drs 294 429 011 US$350 000 Drs 130 844 700 Drs 1 099 000 000 Drs 1 547 000 000 Drs 3 071 273 711 Drs 378 000 000	Drs 294 429 011 paid by shipowner's insurer.	70
16 000			Settlement outside the Conventions concluded between the Government of Fujairah and the shipowner. Terms of settlement not known to 1971 Fund. The 1971 Fund will not be called upon to pay any compensation.	71
0.5	Clean-up Indemnification	¥1 187 304 ¥846 640 ¥2 033 944		72
560	Clean-up Fishery-related Other loss of income Indemnification	¥629 516 429 ¥50 730 359 ¥15 490 030 ¥20 455 920 ¥716 192 738	¥31 021 717 recovered by way of recourse.	73
(unknown)	Other damage to property Clean-up Indemnification	¥3 954 861 ¥202 854 ¥272 320 ¥4 430 035		74
18	Clean-up Fishery-related	Won 9 401 293 Won 28 378 819 Won 37 780 112	Shipowner lost right to limit his liability because proceedings not commenced within period specified under Korean law.	75
(unknown)	Clean-up *(claimed)*	Mor Dhr 2 600 000	Not established that oil originated from a ship as defined in 1971 Fund Convention.	76
1	Clean-up	Won 43 517 127	Further claims may be submitted.	77

	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC	Cause of incident
78	*Sea Prince*	23.7.95	Yosu, Republic of Korea	Cyprus	144 567	14 million SDR	Grounding
79	*Yeo Myung*	3.8.95	Yosu, Republic of Korea	Republic of Korea	138	Won 21 465 434	Collision
80	*Shinryu Maru N°8*	4.8.95	Chita, Japan	Japan	198	¥3 967 138	Mishandling of oil supply
81	*Senyo Maru*	3.9.95	Ube, Japan	Japan	895	¥20 203 325	Collision
82	*Yuil N°1*	21.9.95	Pusan, Republic of Korea	Republic of Korea	1 591	Won 250 million *(estimate)*	Sinking
83	*Honam Sapphire*	17.11.95	Yosu, Republic of Korea	Panama	142 488	14 million SDR	Contact with fender
84	*Toko Maru*	23.1.96	Anegasaki, Japan	Japan	699	¥18 769 567 *(estimate)*	Collision
85	*Sea Empress*	15.2.96	Milford Haven, Wales, United Kingdom	Liberia	77 356	£8 million *(estimate)*	Grounding
86	*Kugenuma Maru*	6.3.96	Kawasaki, Japan	Japan	57	¥1 175 055 *(estimate)*	Mishandling of oil supply
87	*Kriti Sea*	9.8.96	Agioi Theodoroi, Greece	Greece	62 678	Drs 2 241 million	Mishandling of oil supply

Quantity of oil spilled (tonnes)	Compensation (Amounts paid by 1971 Fund, unless indicated to the contrary)		Notes	
5 035	Clean-up *(paid)*	Won 20 460 000 000	Payments of Won 26 428 million made by shipowner's insurer, of which £4.4 million reimbursed by 1971 Fund.	78
	Fishery-related *(paid)*	Won 12 943 000 000		
	Tourism-related *(paid)*	Won 513 000 000		
		Won 33 916 000 000		
	Claims pending in Court			
	Clean-up	Won 767 000 000		
	Fishery-related	Won 5 000 000		
		Won 772 000 000		
	Removal of oil and vessel	US$24 800 000		
40	Clean-up *(paid)*	Won 660 726 381	Won 560 945 437 paid by shipowner's insurer.	79
	Clean-up *(claimed)*	Won 3 350 244		
	Fishery-related *(paid)*	Won 166 246 619		
	Fishery-related *(claimed)*	Won 3 583 087 000		
	Tourism-related *(paid)*	Won 269 029 739		
		Won 4 682 439 983		
0.5	Clean-up *(paid)*	¥8 650 249	¥3 718 455 paid by shipowner's insurer.	80
	Indemnification *(paid)*	¥984 327		
		¥9 634 576		
	Other damage to property *(agreed)*	US$3 103		
	Other loss of income *(agreed)*	US$2 560		
		US$5 663		
94	Clean-up	¥314 838 937	¥279 973 101 recovered by way of recourse action.	81
	Fishery-related	¥46 726 661		
	Indemnification	¥5 012 855		
		¥366 578 453		
(unknown)	Clean-up *(paid)*	Won 7 456 000 000	Won 1 654 million paid by shipowner's insurer.	82
	Clean-up *(agreed)*	Won 4 937 000 000		
	Clean-up *(claimed)*	Won 25 000 000		
	Fishery-related *(paid)*	Won 3 234 949 220		
	Fishery-related *(claimed)*	Won 60 892 000 000		
		Won 76 544 949 220		
1 800	Clean-up *(paid)*	Won 9 033 000 000	Further claims are expected. Won 9 591 million paid by shipowner's insurer.	83
	Fishery-related *(paid)*	Won 309 000 000		
	Clean-up]			
	Fishery-related] *(claimed)*	Won 48 000 000 000		
		Won 57 342 000 000		
4			Total damage less than owner's liability. Indemnification not requested.	84
72 360	Clean-up	£3 932 164	Further claims for significant amounts being examined. £6 866 809 paid by shipowner's insurer.	85
	Other damage to property	£272 231		
	Fishery-related	£7 141 806		
	Tourism-related	£1 326 626		
	Other loss of income	£107 818		
		£ 12 780 645		
0.3	Clean-up *(paid)*	¥1 981 403		86
	Indemnification *(paid)*	¥297 066		
	Recourse action	-¥1 197 267		
		¥1 081 202		
20-50	Clean-up *(paid)*	Drs 127 803 919	Drs 186 520 131 paid by shipowner's insurer. Further claims being examined	87
	Fishery-related *(paid)*	Drs 56 866 212		
	Other loss of income *(paid)*	Drs 1 850 000		
		Drs 186 520 131		

	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC	Cause of incident
88	*N°1 Yung Jung*	15.8.96	Pusan, Republic of Korea	Republic of Korea	560	Won 88 365 090 *(estimate)*	Grounding
89	*Nakhodka*	2.1.97	Oki Island, Japan	Russian Federation	13 159	1 588 000 SDR	Breaking
90	*Tsubame Maru N°31*	25.1.97	Otaru, Japan	Japan	89	¥1 801 465 *(estimate)*	Overflow during loading operation
91	*Nissos Amorgos*	28.2.97	Maracaibo, Venezuela	Greece	50 563	Bs3 473 million *(estimate)*	Grounding
92	*Daiwa Maru N°18*	27.3.97	Kawasaki, Japan	Japan	186	¥3 372 368 *(estimated)*	Mishandling of oil supply
93	*Jeong Jin N°101*	1.4.97	Pusan, Republic of Korea	Republic of Korea	896	Won 148 117 000 *(estimate)*	Overflow during loading operation
94	*Osung N°3*	3.4.97	Tunggado, Republic of Korea	Republic of Korea	786	104 500 SDR *(estimate)*	Grounding
95	*Plate Princess*	27.5.97	Puerto Miranda, Venezuela	Malta	30 423	3.6 million SDR *(estimated)*	Overflow during loading operation
96	*Diamond Grace*	2.7.97	Tokyo Bay, Japan	Panama	147 012	14 million SDR	Grounding
97	*Katja*	7.8.97	Le Havre, France	Bahamas	52 079	FFr 48 million *(estimate)*	Striking a quay

Quantity of oil spilled (tonnes)	Compensation (Amounts paid by 1971 Fund, unless indicated to the contrary)		Notes	
28	Clean-up *(paid)* Clean-up *(agreed)* Salvage *(paid)* Fishery-related *(claimed)* Tourism-related *(claimed)* Cargo transhipment *(Claimed)*	Won 674 891 862 Won 14 937 175 Won 10 000 000 Won 105 290 000 Won 13 375 000 Won 70 832 350 Won 889 326 387	Won 674 891 862 paid by shipowner's insurer.	88
6 200	Clean-up *(claimed)* Fishery-related *(claimed)* Oil removal *(claimed)* Tourism-related *(claimed)* Causeway construction *(claimed)*	¥21 484 000 000 ¥5 212 000 000 ¥1 194 000 000 ¥2 888 000 000 ¥1 126 000 000 ¥31 904 000 000	Provisional payments of ¥4 496 million made by 1971 Fund. Payments of US$867 593 made by shipowner's insurer. Further claims are expected.	89
0.593Kl	Clean-up *(claimed)*	¥7 827 589	No further claims are expected.	90
3 600	Clean-up *(paid)* Other damage to property *(paid)* Fishery-related *(paid)* Tourism-related *(paid)*	Bs1 046 000 000 Bs11 830 431 Bs55 400 000 Bs10 827 150 Bs1 133 223 607	Bs1 133 223 607 paid by shipowner's insurer. Claims for significant amounts are being examined. Further claims are expected.	91
1 Kl	Clean-up *(claimed)*	¥17 893 000		92
124	Clean-up *(claimed)*	Won 564 931 071		93
(unknown)	Clean-up *(claimed)* Fishery-related *(claimed)* Clean-up *(claimed)* Fishery-related *(claimed)*	Won 1 280 336 930 Won 287 722 000 Won 1 344 306 930 ¥654 333 082 ¥287 722 000 ¥942 055 082	Further claims are expected.	94
3.2	Fishery-related *(claimed)*	US$30 000 000	Further claims are expected.	95
1 500	Clean-up *(claimed)* Fishery-related *(claimed)* Other loss of income *(claimed)*	¥703 000 000 ¥466 000 000 ¥ 42 000 000 ¥1 209 000 000	No further claims expected. Claims have also been submitted for personal injury but for relatively small amounts.	96
190			Probable that total damage will be less than owner's liability.	97

	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC	Cause of incident
98	*Evoikos*	15.10.97	Strait of Singapore	Cyprus	80 823	7.9 million SDR *(estimate)*	Collision
99	*Kyungnam N°1*	7.11.97	Ulsan, Republic of Korea	Republic of Korea	168	Won 46 459 837 *(estimate)*	Grounding

NOTES

1 Amounts are given in national currencies. The relevant conversion rates as at 31 December 1997 are as follows:

£ =						
	Algerian Dinar	Din	96.2919	Moroccan Dirham	Mor Dhr	16.0266
	Canadian Dollar	Can$	2.3546	Omani Rial	OR	0.6334
	Cyprus Pound	£	0.8683	Republic of Korea Won	Won	2788.87
	Danish Krone	DKr	11.2664	Russian Rouble	Rbls	9.87
	Finnish Markka	FM	8.9600	Singapore dollars	S$	2.7724
	French Franc	FFr	9.8985	Spanish Peseta	Pts	250.784
	German Mark	DM	2.9585	Swedish Krona	SKr	13.0552
	Greek Drachma	Drs	466.802	UAE Dirham	UAE Dhr	6.0428
	Italian Lira	Lit	2809.06	United States Dollar	US$	1.6454
	Japanese Yen	¥	213.937	Venezuelan Bolivars	Bs	829 750

£ = 1.225718 SDR or 1 SDR = £0.81585

Quantity of oil spilled (tonnes)	Compensation (Amounts paid by 1971 Fund, unless indicated to the contrary)		Notes	
29 000	Clean-up *(claimed)*	£1 000 000	Further claims are expected.	98
5	Clean-up *(claimed)*	Won 9 546 242	Further clean-up and fishery-related claims are expected.	99

2 The inclusion of claimed amounts is not to be understood as indicating that either the claim or the amount is accepted by the 1971 Fund.

3 Where claims are indicated as paid, the figure given shows the actual amount paid by the 1971 Fund (ie excluding the shipowner's liability).

ANNEX

SUMMARY OF

(31 December

For this table, damage has been grouped into the following categories:

	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under applicable CLC	Cause of incident
1	Unknown	20.6.96	North Sea coast, Germany	-	-	-	*Unknown*
2	*Nakhodka*	2.1.97	Oki island, Japan	Russian Federation	13 159	1 588 000 SDR	Breaking
3	*Osung N°3*	3.4.97	Tunggado, Republic of Korea	Republic of Korea	786	104 500 SDR *(estimated)*	Grounding
4	Unknown	28.9.97	Essex, east coast of England	-	-	-	*Unknown*

NOTES

1 Amounts are given in national currencies. The relevant conversion rates as at 31 December 1997 are as follows:

German Mark	DM	2.9585
Republic of Korea Won	Won	2788.87
Japanese Yen	¥	213.937

£ = 1.225718SDR or 1 SDR = £0.81585

XXVI

INCIDENTS: 1992 FUND

1997)

- Clean-up (including preventive measures)
- Fishery-related
- Tourism-related
- Other damage to property

Quantity of oil spilled (tonnes)	Compensation (Amounts paid by 1992 Fund, unless indicated to the contrary)		Notes	
Unknown	Clean-up (estimated)	DM2.6 million	German authorities are taking legal action against a shipowner whose ship is suspected to be responsible for the oil spill. If this action is unsuccessful, the authorities will claim against the 1992 Fund.	1
6 200	Clean-up *(claimed)* Fishery-related *(claimed)* Oil removal *(claimed)* Tourism-related *(claimed)* Causeway construction *(claimed)*	¥21 484 000 000 ¥5 212 000 000 ¥1 194 000 000 ¥2 888 000 000 ¥1 126 000 000 ¥31 904 000 000	Provisional payments of ¥4 496 million made by 1971 Fund. Payments of US$867 593 made by shipowner's insurer. Further claims are expected.	2
Unknown	Clean-up *(claimed)* Fishery-related *(claimed)* Clean-up *(claimed)* Fishery-related *(claimed)*	Won 1 280 336 930 Won 287 722 000 Won 1 344 306 930 ¥654 333 082 ¥287 722 000 ¥942 055 082	Further claims are expected.	3
Unknown	Clean-up (estimated)	£10 000	In view of the small quantity of oil which reached the beach it is unlikely that the oil came from a tanker, whether laden or unladen.	4

2 The inclusion of claimed amounts is not to be understood as indicating that either the claim or the amount is accepted by the 1992 Fund.

3 Where claims are indicated as paid, the figure given shows the actual amount paid by the 1992 Fund (ie excluding the shipowner's liability).

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