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INCIDENTS INVOLVING THE 1971 FUND

OTHER INCIDENTS

Note by the Director

Summary:	In this document developments are considered regarding the following incidents: <i>Vistabella</i> , <i>Iliad</i> , <i>Yeo Myung</i> , <i>Yuil N°1</i> , <i>Kriti Sea</i> , <i>Osung N°3</i> , <i>Plate Princess</i> , <i>Diamond Grace</i> , <i>Katja</i> , <i>Kyungnam N°1</i> , <i>Maritza Sayalero</i> .
Action to be taken:	Information to be noted.

1 Vistabella

(Caribbean, 7 March 1991)

The incident

- 1.1 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.
- 1.2 The *Vistabella* was not entered in any P & I Club but was covered by a third party liability insurance with a Trinidad insurance company. The insurer argued that the insurance did not cover this incident. The limitation amount applicable to the ship was estimated at FFr2 354 000 (£220 000). No limitation fund was established. It was unlikely that the shipowner would be able to meet his obligations under the 1969 Civil Liability Convention without effective insurance cover. The shipowner and his insurer did not respond to invitations to co-operate in the claim settlement procedure.

- 1.3 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.

Court proceedings

- 1.4 The French Government brought legal action against the owner of the *Vistabella* and his insurer in the Court of first instance in Basse-Terre (Guadeloupe), claiming compensation for clean-up operations carried out by the French Navy. The 1971 Fund intervened in the proceedings and acquired by subrogation the French Government's claim. The French Government withdrew from the proceedings.
- 1.5 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.
- 1.6 The 1971 Fund took the view that the judgement was wrong on two points. Firstly, the 1969 Civil Liability Convention which formed part of French law applied to damage caused in a State Party to that Convention, and this was independent of the State of the ship's registry. Secondly, the French courts were competent under that Convention to consider claims for damage in any State Party (including the British Virgin Islands). The 1971 Fund decided nevertheless not to appeal against this judgement as regards the applicability of the 1969 Civil Liability Convention, as it would hardly have any value as a precedent in other cases, since the Court had awarded the 1971 Fund the total amount paid by it for damage in the French territories and as the amount paid by the Fund for damage outside those territories was insignificant.
- 1.7 The shipowner and the insurer appealed against the judgement.
- 1.8 The Court of Appeal rendered its judgement in March 1998. In the judgement - which dealt mainly with procedural issues - the Court of Appeal held that the 1969 Civil Liability Convention applied to the incident, since the criterion for applicability was the place of the damage and not the flag State of the ship concerned. The Court further held that the Convention applied to the direct action by the 1971 Fund against the insurer. It was held that this applied also in respect of an insurer with whom the shipowner had taken out insurance although not having been obliged to do so, since the ship was carrying less than 2 000 tonnes of oil in bulk as cargo.
- 1.9 The case was referred back to the Court of first instance. In a judgement rendered on 2 March 2000 the Court of first instance ordered the insurer to pay to the 1971 Fund FFr8 239 858 (£771 000) plus interest from 22 March 1993.
- 1.10 The insurer has appealed against the judgement.

2 *Iliad*

(Greece, 9 October 1993)

The incident

- 2.1 The Greek tanker *Iliad* (33 837 GRT) grounded on rocks close to Sfaktiria island after leaving the port of Pylos (Greece). The *Iliad* was carrying about 80 000 tonnes of Syrian light crude oil, and some 200 tonnes was spilled. The Greek national contingency plan was activated and the spill was cleaned up relatively rapidly.
- 2.2 In March 1994 the shipowner's P & I insurer established a limitation fund amounting to Drs 1 496 533 000 (£2.7 million) with the competent court by the deposit of a bank guarantee. One claimant took legal action to challenge the shipowner's right to limit his liability. The Court of first instance rejected this action. The claimant appealed against that decision but the appeal was rejected.
- 2.3 The Court decided that claims should be lodged by 20 January 1995. By that date, 527 claims had been presented, totalling Drs 3 071 million (£5.6 million) plus Drs 378 million (£685 000) for compensation of 'moral damage'.
- 2.4 The Court appointed a liquidator to examine the claims in the limitation proceedings. It is expected that this examination will be completed in the near future.
- 2.5 Claims against the 1971 Fund in respect of this incident became time-barred on or shortly after 9 October 1996. With the exception of an owner of a fish farm, the shipowner and the P & I insurer who have claims totalling Drs 1 339 million (£2.4 million), the claimants failed to take action against the 1971 Fund or to notify the Fund formally of an action brought against the shipowner and his insurer.
- 2.6 The shipowner and his insurer have taken legal action against the 1971 Fund in order to prevent their rights to reimbursement from the Fund for any compensation payments in excess of the shipowner's limitation amount and to indemnification under Article 5.1 of the 1971 Fund Convention from becoming time-barred.

3 *Yeo Myung*

(Republic of Korea, 3 August 1995)

The incident

- 3.1 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 was spilled.
- 3.2 The *Yeo Myung* was entered in the North of England Protection and Indemnity Association Limited (North of England P & I Club).
- 3.3 As regards the cause of the incident, the clean-up operations and previous claims handling, reference is made to documents FUND/EXC.44/12, 71FUND/EXC.55/6, 71FUND/EXC.57/5, 71FUND/EXC.58/4 and 71FUND/EXC.59/6.

Claims for compensation

- 3.4 Claims relating to clean-up, fishery and tourism for a total of Won 24 483 million (£15 million) have been settled at a total of Won 1 554 million (£990 000). These claims have been paid in full.
- 3.5 The only outstanding claim is within the fisheries sector. The amount claimed is Won 335 million (£213 000), whereas the claim has been assessed by the 1971 Fund's experts at Won 459 000 (£290).

Limitation proceedings

- 3.6 The shipowner commenced limitation proceedings at the competent District Court. The limitation fund was established by the North of England P & I Club by payment of the limitation amount of Won 21 million (£9 200) to the Court.
- 3.7 On 20 September 1999 the Court held a hearing at which the 1971 Fund filed its subrogated claims against the shipowner's limitation fund. At the Court's request the 1971 Fund has submitted a copy of the Fund's experts' assessment report.
- 3.8 There has been no progress in the limitation proceedings during the last twelve months.

4 *Yuil N°1**(Republic of Korea, 21 September 1995)**The incident*

- 4.1 The *Yuil N°1* (1 591 GRT) carrying approximately 2 870 tonnes of heavy fuel oil, ran aground on the island of Namhyeongjedo off Pusan (Republic of Korea). The tanker was refloated but while being towed towards the port of Pusan, the tanker sank in 70 metres of water, ten kilometres from the mainland.
- 4.2 As for the clean-up operations, reference is made to document 71FUND/EXC.55/6.
- 4.3 Operations to recover the oil from the *Yuil N°1* were carried out from 24 June to 31 August 1998 under a contract between the Korean Marine Pollution Response Corporation (KMPRC) and a Dutch salvage company. Some 670 m³ of oil was recovered.

Claims for compensation

- 4.4 KMPRC submitted claims for compensation in relation to the *Yuil N°1* oil removal operation. The claims were settled at a total of Won 6 824 million (£3.2 million) and were paid in full by the 1971 Fund.
- 4.5 All clean-up claims arising out of this incident have been settled at a total of Won 12 393 million (£8.5 million). The shipowner's insurer, the Standard Steamship Owners' Protection & Indemnity Association (Bermuda) Limited (the Standard Club), paid some of these claims in full, and the 1971 Fund reimbursed 60% of these payments to the Club. The 1971 Fund will reimburse the Standard Club the balance (40%) of these payments minus the shipowner's limitation amount after that amount has been established in Won.
- 4.6 Fishery claims totalling Won 22 490 million (£14.3 million) have been settled at Won 5 522 million (£2.8 million).
- 4.7 Fishery claims totalling Won 17 473 million (£11.1 million), which have been assessed by the Fund's experts at Won 441 million (£280 000), have not yet been settled. These claims have been filed in court for a reduced amount of Won 14 329 million (£9.1 million). Further fishery claims totalling Won 70 million (£44 000) have also been filed in court, but these claims have not yet been assessed by the Fund's experts.

4.8 The situation in respect of the pending claims is shown in the table set out below.

Claims pending in court		
	Amount claimed in court (million Won)	Amount assessed by the 1971 Fund's experts (million Won)
Fishery claims	14 329	441
Fishery claims	70	under assessment
Total	14 399 (£ 9.1 million)	

Limitation proceedings

- 4.9 The owner of the *Yuil N°1* 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 (£160 000).
- 4.10 Fishery co-operatives presented claims totalling Won 60 000 million (£38 million) to the Court.
- 4.11 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.
- 4.12 In November 1997, the Court decided to adopt the administrator's proposal to accept one third of the amounts claimed as fishery damage. The 1971 Fund has lodged an opposition to the Court's decision. The Court is waiting for the Fund's experts to finalise their assessments.

5 Kriti Sea

(Greece, 9 August 1996)

The incident

- 5.1 The Greek tanker *Kriti Sea* (62 678 GRT) spilled 20 - 50 tonnes of Arabian light crude while discharging at an oil terminal in the port of Agioi Theodori (Greece) some 40 kilometres west of Piraeus. Rocky shores and stretches of beach were oiled, seven fish farms were affected and the hulls of pleasure craft and fishing vessels in the area sustained oiling.
- 5.2 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.
- 5.3 The limitation amount applicable to the *Kriti Sea* is estimated at Drs 2 241 million (£4.1 million). The shipowner established the limitation fund in December 1996 by means of a bank guarantee.
- 5.4 The shipowner and his P & I insurer, the United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Ltd (UK Club), and the administrator appointed by the Court to examine claims against the limitation fund were notified of claims totalling Drs 4 054 million (£7.3 million). The administrator reported on his examination of the claims in March 1999. The total amount of the claims accepted by the administrator was Drs 1 130 million (£2 million).
- 5.5 The experts engaged by the UK Club and the 1971 Fund do not agree with a number of the assessments carried out by the administrator. Appeals have been lodged in court by the shipowner, the Club and the 1971 Fund in respect of those claims.

- 5.6 A number of claimants have appealed against the decision of the administrator and the amounts set out in the appeals total Drs 2 680 million (£4.6 million).
- 5.7 A hearing on the appeals was fixed for 16 December 1999 but the hearing was postponed.
- 5.8 In October 1999 the shipowner and his insurer served a writ on the 1971 Fund in respect of claims in excess of the shipowner's limitation fund as well as a claim for indemnification in the amount of Drs 556 million (£1 million).

6 *Osung N°3*

(Republic of Korea, 3 April 1997)

The incident

- 6.1 The Korean tanker *Osung N°3* (786 GRT) ran aground on the island of Tunggado, just south of the island of Koje in the Pusan area, and sank to a depth of 70 metres. The vessel was carrying about 1 700 tonnes of heavy fuel oil. Oil was spilled immediately, but it was not possible to assess the quantity spilt or the quantity remaining on board.
- 6.2 Oil which was shown to have originated from the *Osung N°3* reached the sea adjacent to Tsushima island in Japan on 7 April 1997.
- 6.3 Concerning the clean-up operations in the Republic of Korea and Japan, reference is made to document 71FUND/EXC.59/7.
- 6.4 Operations to remove the oil from the *Osung N°3* were carried out from 2 September to 9 November 1998 under a contract between Korean Marine Pollution Response Corporation (KMPRC) and a Dutch salvage company. It had been estimated that the wreck had some 1400 tonnes of oil in her tanks, but only 27 m³ was recovered.

Claims for compensation

- 6.5 KMPRC submitted claims for compensation in relation to the oil removal operation. These claims were settled at a total of Won 6 739 million (£3.2 million) and were paid in full by the 1971 Fund.
- 6.6 As regards the Republic of Korea, claims for compensation were presented by the Korean Marine Police, some local authorities, the charterer of the *Osung N°3* and a number of contractors for participation in the clean-up operations and the inspection of the sunken vessel, and by two fishery co-operative associations for loss of income. Claims totalling Won 1 219 million (£668 000) were settled at Won 935 million (£597 000).
- 6.7 Seven claims totalling ¥732 million (£4.8 million) were submitted for clean-up operations carried out in Japan. Six of these claims, for ¥81 million (£4.4 million), were settled at ¥609 million (£4 million).
- 6.8 The remaining claim for ¥51 million (£337 000) was submitted by the Japanese Self Defence Forces (JSDF). The 1971 Fund has assessed this claim at ¥47.5 million. The 1971 Fund rejected certain items. The Fund has considered it not reasonable for the JSDF to carry out regular aerial reconnaissance of oil on shorelines. The Fund also considers that it was unnecessary for the Maritime Self Defence Forces to use vessels to search for oil on the sea surface when the Maritime Safety Agency was providing aerial reconnaissance. The JSDF has taken legal action against the 1971 Fund.
- 6.9 A claim was presented by a Japanese fishery co-operative association for ¥282 million (£1.9 million) for loss of income caused by the oil spill. This claim was settled at ¥182 million (£1.2 million).

Limitation proceedings

- 6.10 The *Osung N°3* was not entered in any P & I Club, but had liability insurance up to a limit of US\$1 million (£714 000) per incident. The limitation amount applicable to the vessel under the 1969 Civil Liability Convention is estimated at 104 500 SDR (£95 000).
- 6.11 The shipowner applied to the competent Korean court for the commencement of limitation proceedings, which was granted in October 1997.

7 *Plate Princess*

(Venezuela, 27 May 1997)

The incident

- 7.1 The Maltese tanker *Plate Princess* (30 423 GRT) was berthed at an oil terminal at Puerto Miranda on Lake Maracaibo (Venezuela). While the ship was loading a cargo of 44 250 tonnes of Lagotreco crude oil, some 3.2 tonnes was reportedly spilled.
- 7.2 A few days before the incident satisfactory examinations of the *Plate Princess*' cargo tanks and ballast tanks had been carried out by an independent inspector and by a pollution inspector. Following the ballast tank inspection, the master had been granted permission by a government inspector to discharge the ballast into Lake Maracaibo.
- 7.3 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.
- 7.4 An expert engaged by the 1971 Fund and the shipowner's P & I insurer attended the site of the incident on 7 June 1997 and reported that there were no signs of oil pollution in the immediate vicinity of where the *Plate Princess* was berthed at the time of the spill, nor at nearby launch and tug jetties. The expert was informed that the oil was observed to drift towards the north-west, in the direction of a small stand of mangroves approximately one kilometre away. Oil was observed coming ashore in an area which was uninhabited. No fishery or other economic resources are known to have been contaminated or affected.
- 7.5 The limitation amount applicable to the *Plate Princess* under the 1969 Civil Liability Convention is estimated at 3.6 million SDR (£3.3 million).
- 7.6 In June 1997 the Executive Committee considered that, if it were confirmed that the spilt oil was the same Lagotreco crude as was being loaded on to the *Plate Princess*, then it would appear that the oil which escaped via a defective coupling in the ballast line had first been loaded into the cargo tanks. The Committee took the view that the incident would therefore fall within the scope of the Conventions, as the oil was carried on board as cargo.

Court proceedings

- 7.7 Immediately after the incident a Criminal Court of first instance in Cabimas commenced an investigation into the cause of the incident. The Criminal Court decided that criminal proceedings should be brought against the master of the *Plate Princess*.
- 7.8 A fishermen's trade union (FETRAPESCA) presented a petition in the Criminal Court on behalf of 1 692 fishing boat owners, claiming an estimated US\$10 060 per boat (£7 200), ie a total of US\$17 million (£12.1 million). The claim is for alleged damage to fishing boats and nets and for loss of earnings.

- 7.9 FETRAPESCA also presented a claim against the shipowner and the master of the *Plate Princess* before the Civil Court of Caracas for an estimated amount of US\$10 million (£7.1 million). The claim is for the fishermen's loss of income as a result of the spill.
- 7.10 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 (£14.3 million) plus legal costs.
- 7.11 The 1971 Fund has not been notified of the legal actions.
- 7.12 The master and the shipowner filed a motion before the Civil Court of Caracas requesting that the Court should declare that it does not have jurisdiction over actions brought as a result of the *Plate Princess* incident and that the Criminal Court of Cabimas has exclusive jurisdiction over all such actions because the incident occurred within the area over which the Criminal Court has jurisdiction. They have also maintained that the action in the Caracas Court should in any case be dismissed, since the Criminal Court is already carrying out an investigation into the circumstances of the spill. So far, no decision has been taken on the motion.
- 7.13 There has been no progress in the court proceedings during 1999 and 2000.
- 7.14 Claims against the 1971 Fund became time barred on or shortly after 27 May 2000.

8 *Diamond Grace*

(Japan, 2 July 1997)

The incident

- 8.1 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.
- 8.2 The *Diamond Grace* was registered in Panama which at the time of the incident was Party to the 1969 Civil Liability Convention but not to the 1992 Civil Liability Convention. The shipowner's right of limitation is therefore governed by the 1969 Civil Liability Convention to which both Japan and Panama were Parties.
- 8.3 Claims totalling ¥2 152 million (£14 million) were presented. All these claims were settled for a total of ¥1 418 million (£9 million).
- 8.4 The limitation amount applicable to the *Diamond Grace* under the 1969 Civil Liability Convention is 14 million SDR, corresponding to approximately ¥1 930 million (£12.8 million). The 1971 Fund will therefore not be called upon to make any payments in respect of this incident.

9 *Katja*

(France, 7 August 1997)

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

- 9.2 Clean-up operations within the port area were arranged by the port authority and the operators of various berths. The operations were undertaken by local contractors. The cleaning of the beaches was organised by the local authorities using local contractors, the fire brigade and the army. Bathing and watersports were prohibited for a short time (one or two days) while oil remained on the beaches. Some shrimp fishermen from Le Havre were prevented from storing their catch in the port, as is their custom.
- 9.3 At the time of the incident, the Bahamas was not Party to the 1992 Civil Liability Convention. The limitation amount applicable to the *Katja* is therefore to be determined in accordance with the 1969 Civil Liability Convention and is estimated at FFr48 million (£4.5 million).
- 9.4 Claims for compensation have been presented for the cost of clean-up operations incurred by the regional and local authorities in the amount of FFr17.3 million (£1.6 million).
- 9.5 A claim presented by the French Government was settled in July 2000 at FFr1 356 075 (£127 000).
- 9.6 A number of claims have been presented for damage to property in the amount of FFr7.8 million (£730 000) and for loss of income in the amount of FFr1.2 million (£112 000).
- 9.7 It is expected that all claims will be settled for an amount significantly lower than the limitation amount which applies to the *Katja* under the 1969 Civil Liability Convention. It is not expected, therefore, that the 1971 Fund will be called upon to make any payments in this case.

10 **Kyungnam N°1**

(Republic of Korea, 7 November 1997)

The incident

- 10.1 The coastal tanker *Kyungnam N°1* (168 GRT), registered in the Republic of Korea, ran aground off Ulsan (Republic of Korea). The Marine Police estimated that about one tonne of cargo oil was spilled. The 1971 Fund's experts estimate, however, that there was a spill of some 15 - 20 tonnes. The spilt oil affected several kilometres of rocky shoreline.
- 10.2 There are significant aquaculture activities along the affected coast. Some sea mustard farms and some set nets were contaminated, as well as 20 - 30 small fishing vessels which were moored in the area at the time of the incident.
- 10.3 Offshore clean-up operations were carried out by the Marine Police. Local fishermen and divers were engaged by the shipowner to carry out manual clean-up operations on shore.

Claims for compensation

- 10.4 Thirty-one claims totalling Won 971 million (£620 000) have been submitted.
- 10.5 At its 60th session the Executive Committee decided that, in view of the relatively small amounts involved, the 1971 Fund should pay all established claims in full and present subrogated claims against the shipowner's limitation fund (document 71FUND/EXC.60/17, paragraph 3.11.2). As a result of that decision, the 1971 Fund paid Won 229 million (£122 000) to 12 claimants in June 1999.
- 10.6 The shipowner had paid compensation to 14 claimants, totalling Won 27 million (£17 000). In respect three of these claims the shipowner's payments were for amounts higher than those assessed by the Fund.
- 10.7 In June 2000 an agreement was reached between the shipowner and the 1971 Fund in respect of the 14 claims paid by the shipowner. After deduction of the amounts paid by the shipowner in excess of the 1971 Fund's assessments in respect of these claims, the 1971 Fund reimbursed the shipowner Won 7 311 259 (£4 400).

- 10.8 Two claims relating to clean-up operations had been presented for Won 33 393 140 (£21 000) and Won 1 873 000 (£1 200). These claims were settled in May and June 2000 for Won 15 178 700 and Won 1 188 400 (£9 800) and were paid by the 1971 Fund.
- 10.9 Three claims totalling Won 85 million (£54 000) are pending. However, these claims which were assessed at nil by the 1971 Fund's experts, have not been filed in court. It is unlikely that the claimants will take legal actions.
- 10.10 Claims will be time-barred on or shortly after 7 November 2000. It is expected that no further claims will be submitted.

Limitation proceedings

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

Indemnification of the shipowner

- 10.12 An agreement has been reached between the 1971 Fund and the shipowner that the Fund will pay Won 10 468 345 (£6 500) in indemnification after the expiry of the time bar period or, if further claims are submitted, when these claims have been settled or decided by the courts.

11 Maritza Sayalero

(Venezuela, 8 June 1998)

The incident

- 11.1 The Panamanian tanker *Maritza Sayalero* (28 338 GRT) was berthed at an oil terminal at Carenero Bay (Venezuela) operated by Petroleos de Venezuela SA (PDVSA), the national oil company, where it was to discharge its cargo. While the tanker was discharging medium diesel oil, a member of the crew observed a slick of oil of about 140 m² on the port side of the ship. The crew stopped the discharging operation. On the basis of shore tank and ship's cargo tank measurements it was estimated that 262 tonnes of medium diesel was lost from the tanker and a further 699 tonnes of medium diesel was lost from the terminal.
- 11.2 A diver checked the hoses and found two ruptures on the submarine hose used to discharge the medium diesel. This hose, which belonged to the oil terminal, consisted of six pieces of flexible hose of about 9 metres each, hooked together by bolts. One end of this set of hoses was connected to the shore submarine pipeline and the other to the vessel's manifold. The ruptures were located in the second and third hoses from the end which were connected to the shore submarine pipeline. The distance between the tanker and the rupture was approximately 40 metres.

Clean-up operations

- 11.3 Under the Venezuelan National Contingency Plan for Oil Pollution, PDVSA is responsible for implementing oil spill response measures in Carenero Bay. PDVSA activated the contingency plan and booms were deployed to protect sensitive areas. A small quantity of spilt medium diesel reached a nearby beach and reportedly affected bivalves living in the intertidal zone. Clean-up operations were carried out on the affected beaches. PDVSA instructed three Venezuelan bodies to assess the damage caused to the environment.

Impact on fishing and tourism

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

Court proceedings

- 11.5 The town of Brion presented a claim for compensation against the terminal operator, PDVSA, the shipowner and his P & I insurer before the Supreme Court of Venezuela for an estimated amount of Bs10 000 million (£10.3 million) plus legal costs. The town of Brion requested that the Court should notify the 1971 Fund of the proceedings. The 1971 Fund has not yet been notified of this action.

Applicability of the Conventions

- 11.6 At its October 1998 session the Executive Committee noted that the spill emanated from a hose belonging to the oil terminal that had ruptured at a distance of approximately 40 metres from the ship's manifold. The Committee considered that the maritime transport of the oil had been completed and that the oil could not be considered as being carried by the *Maritza Sayalero* at the time of the spill. For this reason the Committee decided that the incident fell outside the scope of application of the 1969 Civil Liability Convention and the 1971 Fund Convention (document 71FUND/EXC59/17, paragraph 3.13.2).
- 11.7 The 1969 Civil Liability Convention and the 1971 Fund Convention apply only to spills of oil falling within the definition of 'oil' in Article I.5 of the 1969 Civil Liability Convention which covers only persistent oil. The 1971 Fund has elaborated a non-technical guide to the nature and definition of persistent oil, which was considered by the Assembly in 1981. Under this guide an oil is considered non-persistent if at the time of shipment at least 50% of the hydrocarbon fractions, by volume, distil at a temperature of 340°C and at least 95% of the hydrocarbon fractions, by volume, distil at a temperature of 370°C. The Committee noted in October 1998 that the analysis of a sample of the medium diesel oil taken from one of the ship's cargo tanks had shown that the oil was non-persistent. The Committee therefore decided that, for this reason also, the incident fell outside the scope of application of the Conventions.

Limitation proceedings

- 11.8 The shipowner has not yet commenced limitation proceedings.
- 11.9 If the 1969 Civil Liability Convention were to apply to the incident, the limitation amount applicable to the *Maritza Sayalero* would be in the region of 3 million SDR (£2.7 million).

Investigations into the cause of the incident

- 11.10 A criminal first instance Court is carrying out an investigation into the cause of the incident. The Court will determine whether anyone has incurred criminal liability as a result of the incident.
- 11.11 An investigation by the shipowner's insurer into the cause of the incident has ruled out any fault or negligence on the part of the vessel.

12 Action to be taken by the Assembly

The Assembly is invited to take note of the information contained in this document.
