INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1971

ADMINISTRATIVE COUNCIL
20th session
Agenda item 15

71FUND/AC.20/13/5
22 September 2006
Original: ENGLISH

INCIDENTS INVOLVING THE 1971 FUND

OTHER INCIDENTS

Note by the Director

Summary:	In this document developments are considered regarding the following incidents: *Vistabella, Aegean Sea, Braer, Iliad, Kriti Sea, Plate Princess, Katja, Evoikos* and *Alambra*.
Action to be taken:	Information to be noted.

1 ***Vistabella***

(Caribbean, 7 March 1991)

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

1.2 The *Vistabella* was not entered in any P&I Club but was covered by third party liability insurance with a Trinidad insurance company. The insurer argued that the insurance did not cover this incident. The limitation amount applicable to the ship was estimated at FFr2 354 000 or €359 000 (£243 294)<1>. 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 process.

1.3 The 1971 Fund paid compensation amounting to FFr8.2 million or €1.3 million (£880 000) to the French Government in respect of clean-up operations. Compensation was paid to private claimants in St Barthélemy and the British Virgin Islands and to the authorities of the British Virgin Islands for a total of some £14 250.

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 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

<1> In this document conversion of currencies has been made on the basis of exchange rate as at 13 September 2006 (€1 = £0.6777) except in respect of payments made by the 1992 Fund where the conversion has been made at the rate on the date of payment.

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

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

1.7 In a judgement rendered in March 2000 the Court of first instance ordered the insurer to pay to the 1971 Fund FFr8.2 million or €1.3 million (£890 000) plus interest. The insurer appealed against the judgement.

1.8 The Court of Appeal rendered its judgement in February 2004 in which it confirmed the judgement of the Court of first instance in March 2000. The insurer has not appealed to the Court of Cassation.

1.9 In consultation with the Fund's French lawyers, the Director has commenced legal action against the insurer in Trinidad and Tobago to enforce the judgement of the Court of Appeal.

2 ***Aegean Sea***

(*Spain, 3 December 1992*)

The incident

2.1 During heavy weather, the Greek OBO *Aegean Sea* (56 801 GRT) ran aground while approaching La Coruña harbour in the north-west of 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 largely intact. The oil remaining in the aft section was removed by salvors working from the shore. The quantity of oil spilled was not known, but most of the cargo was either consumed by the fire on board the vessel or dispersed in the sea. Several stretches of coastline east and north-east of La Coruña were contaminated, as well as the sheltered Ria de Ferrol. Extensive clean-up operations were carried out at sea and on shore.

Claims for compensation

2.2 Claims totalling Pts 48 187 million or €289.6 million (£196 million) were submitted before the criminal and civil courts. A large number of claims were settled out of court but many claimants pursued their claims in court.

Criminal proceedings

2.3 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 shipowner's insurer the United Kingdom Mutual Steamship Assurance Association (Bermuda) Limited (the UK Club), the 1971 Fund, the owner of the cargo on board the *Aegean Sea* and the pilot.

2.4 In a judgement rendered in April 1996 the Criminal Court held that the master and the pilot were both liable for criminal negligence. They were each sentenced to pay a fine of Pts 300 000 (£1 250). The master, the pilot and the Spanish State appealed against the judgement, but the Court of Appeal upheld the judgement in June 1997.

Global settlement

2.5 In June 2001 the Administrative Council authorised the Director to conclude and sign on behalf of the 1971 Fund an agreement with the Spanish State, the shipowner and the UK Club on a global solution of all outstanding issues in the *Aegean Sea* case, provided the agreement contained certain elements. In July 2001, the Director made the formal offer of such an agreement. This offer made the agreement conditional upon the withdrawal of the legal actions by claimants representing at least 90% of the total amount claimed in court.

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

2.7 On 30 October 2002 an agreement was concluded between the Spanish State, the 1971 Fund, the shipowner and the UK Club whereby the total amount due from the owner of the *Aegean Sea*, the UK Club and the 1971 Fund to the victims as a result of the distribution of liabilities determined by the Court of Appeal in La Coruña amounted to Pts 9 000 million (£37 million). As a consequence of the distribution of liabilities determined by the Court of Appeal in La Coruña, the Spanish State undertook to compensate all the victims who might obtain a final judgement by a Spanish court in their favour which condemned the shipowner, the UK Club or the 1971 Fund to pay compensation as a result of the incident.

2.8 On 1 November 2002, pursuant to the agreement, the 1971 Fund paid €38 386 172 corresponding to Pts 6 386 921 613 (£24 411 208) to the Spanish Government.

Recent developments

2.9 Six claimants did not reach agreement with the Spanish Government on the amount of their losses and pursued their claims in the Court of first instance in La Coruña against the Spanish State and the 1971 Fund for a total amount of €3 646 000 (£2.5 million). The 1971 Fund submitted pleadings to the Court to the effect that the 1971 Fund was not liable to compensate these claimants since the Spanish Government had, in the above-mentioned agreement with the 1971 Fund, undertaken to compensate all the victims of the incident with outstanding claims and that this undertaking had been approved by a Royal Decree.

2.10 In December 2005, the Court rendered judgements in respect of three of the claims. In the judgements the Court rejected the argument of the 1971 Fund on the grounds that the Royal Decree did not exonerate the 1971 Fund from responsibility vis-à-vis the victims since it related to a contract between the 1971 Fund and the Spanish State. The Court also held that the Spanish State had not been authorised by the victims to reach agreement on their claims with third parties. The Court held that the Government and the Fund had joint liability to the claimants but awarded amounts considerably lower than those claimed. All parties have appealed against the judgements.

2.11 The Spanish Government will, under the agreement with the 1971 Fund, pay any amounts awarded by these judgements.

2.12 In July 2006 the Court ordered the provisional execution of the judgement issued in respect of one of the claimants referred to in paragraph 2.10.

2.13 There have not been any further developments in respect of the five remaining claims.

3 ***Braer***

(*United Kingdom, 5 January 1993*)

The incident

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

Claims for compensation

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

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

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

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

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

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

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

3.9 In January 2005, the Appellate Court issued a judgment confirming the decision of the Court of first instance. Accordingly, although Shetland Sea Farms cannot rely on the existence of the alleged contract, the company can proceed with the claim on the basis that, even if there was no pre-existing contract, it would have acquired, reared and sold smolt from which it would earn a profit. The claimant has not as yet quantified the claim in accordance with the criteria laid down by the Court.

3.10 In view of the conduct of Shetland Sea Farms, the Appellate Court issued an interim order in July 2006 against Shetland Sea Farms requiring the company to pay the majority of the costs incurred by the shipowner, the Skuld Club and the Fund in relation to the Court proceedings. The Court made it a condition that the company paid these costs before it would be allowed to continue with the proceedings. So far these costs have not been paid.

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

4 ***Iliad***

(Greece, 9 October 1993)

4.1 The Greek tanker Iliad (33 837 GRT) grounded on rocks close to Sfaktiria island after leaving the port of Pylos (Greece), resulting in a spill of some 300 tonnes of Syrian light crude oil. The Greek national contingency plan was activated and the spill was cleaned up relatively rapidly.

4.2 In March 1994 the shipowner's P&I insurer established a limitation fund amounting to Drs 1 497 million or €4.4 million (£2.9 million) with the competent court by the deposit of a bank guarantee.

4.3 The Court decided that claims should be lodged by 20 January 1995. By that date, 527 claims had been presented in the limitation proceedings, totalling Drs 3 071 million or €9 million (£6.1 million) plus Drs 378 million or €1.1 million (£745 000) for compensation of 'moral damage'.

4.4 In March 1994, the Court appointed a liquidator to examine the claims in the limitation proceedings. It was reported at the meeting of the Administrative Council in October 2004 (document 71FUND/AC.15/14/1) that the liquidator had submitted his report to the Court but that the report had not yet been made available to the 1971 Fund. However, the Fund's lawyers in Greece have subsequently informed the Director that this report had not been submitted. The claimants have submitted an official complaint against the liquidator for neglect of duty. An official inquiry has been launched and the Public Prosecutor summoned the liquidator to explain the inordinate delay in submitting the report.

4.5 The shipowner and his insurer took legal action against the 1971 Fund in order to prevent their rights to reimbursement from the Fund for any compensation payments in excess of the shipowner's limitation amount and to indemnification under Article 5.1 of the 1971 Fund Convention from becoming time-barred. The owner of a fish farm, whose claim is for Drs 1 044 million or €3 million (£2 million), also interrupted the time bar period by taking legal action against the 1971 Fund. All other claims have become time-barred vis-à-vis the Fund.

4.6 The liquidator submitted his report to the Court in March 2006. In his report, the liquidator assessed the 527 claims at €2 125 755 (£1.4 million), which is below the limitation amount applicable to the shipowner. However, 446 of these claimants, including the shipowner and his insurer, have filed objections to the report. The Fund also filed interventions to the Court in relation to the report in which the Fund dealt with the criteria for the admissibility of claims for compensation under the 1969

Civil Liability Convention and the 1971 Fund Convention. The Fund, in its interventions, reserved vis-à-vis all claimants other than the shipowner, his insurer and the owner of the fish farm all rights deriving under Article 6 of the 1971 Fund Convention, i.e. the Article relating to time bar.

4.7 The next hearing at the Court in the limitation proceedings is expected to take place in October 2006.

5 ***Kriti Sea***

(Greece, 9 August 1996)

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, Greece. Rocky shores and stretches of beach were oiled, seven fish farms were affected and the hulls of pleasure craft and fishing vessels in the area sustained oiling.

5.2 In December 1996 the shipowner established a limitation fund amounting to Drs 2 241 million or €6.6 million (£4.5 million) by means of a bank guarantee.

5.3 Most claims have been resolved. However, three claims i.e. those of the Greek State, a fish farm and a seaside resort owner, remain unresolved. In judgements rendered in March 2006, the Supreme Court quashed the Court of Appeal decisions which had upheld the claims of the Greek State and the fish farm, on the ground of lack of proper legal reasoning, and also quashed the Court of Appeal decision which had rejected the seaside resort owner's claim, on the ground of improper application of the law. The Supreme Court referred these claims back to the Court of Appeal to rehear the cases on their merits and to deal with the issue of quantum.

5.4 The Court of Appeal will hear the case on 16 May 2007.

6 ***Plate Princess***

(Venezuela, 27 May 1997)

The incident

6.1 On 27 May 1997 the Maltese tanker *Plate Princess* (30 423 GRT) was loading a cargo of 44 250 tonnes of Lagotreco crude oil at an oil terminal at Puerto Miranda on Lake Maracaibo (Venezuela) when 3.2 tonnes of oil was reportedly discharged into Lake Maracaibo together with ballast water.

Court proceedings

6.2 The limitation amount applicable to the Plate Princess under the 1969 Civil Liability Convention is estimated at 3.6 million SDR (£2.8 million)[<1>]. The shipowner provided a bank guarantee from Banco Venezolano de Credito (BVC) in the amount of Bs 2 844 million (£710 000)[<2>].

6.3 In June 1997 a fishermen's trade union (FETRAPESCA) brought an action against the master and the owner of the *Plate Princess* in the Criminal Court on behalf of 1 692 fishing boat owners, claiming an estimated US$10 060 per boat (£5 400), ie a total of US$17 million (£9 million)[<3>]. The claim was for alleged damage to fishing boats and nets and for loss of earnings. FETRAPESCA also brought a

---

[<1>] The conversion of the Special Drawing Right (SDR) has been made on the basis of the exchange rate as at 13 September 2006 (£1 = SDR 1.27349).

[<2>] The conversion of the Venezuelan Bolivar has been made on the basis of the exchange rate as at 13 September 2006 (£1 = Bs 4 025).

[<3>] The conversion of the US$ has been made on the basis of the exchange rate as at 13 September 2006 (£1 = US$0.5341).

claim for fishermen's loss of earnings against the shipowner and the master of the *Plate Princess* before the Civil Court of Caracas for an estimated amount of US$10 million (£5.3 million).

6.4 In June 1997 a local fishermen's union, the Sindicato Único de Pescadores de Puerto Miranda, also 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 (£10.6 million).

Time bar provisions in the 1971 Fund Convention

6.5 In order to prevent a claim from becoming time-barred the claimant must, within three years of the date of the damage, either take legal action against the 1971 Fund or notify the Fund of an action against the shipowner and/or his insurer in accordance with Article 7.6 of the Convention (Article 6.1., first sentence). Even if the claimant has notified the 1971 Fund of an action against the shipowner and/or his insurer within that period, the claim is time-barred unless the claimant takes legal action against the 1971 Fund within six years of the date of the incident (Article 6.1, second sentence).

Consideration at the Administrative Council's session in October 2005

6.6 At the October 2005 session of the Administrative Council, the Venezuelan delegation stated that although it had been assumed that claims arising from this incident had become time-barred, its legal advisers were of the opinion that this was not the case by virtue of Article 7.6 of the 1971 Fund Convention. The Venezuelan delegation referred to a recent decision by the Venezuelan Supreme Court in respect of this incident and stated that it wished to include the *Plate Princess* incident on the agenda of the next session of the 1971 Fund Administrative Council (document 71FUND/AC.17/20, paragraph 15.3).

Notification of the 1971 Fund

6.7 Shortly after the Administrative Council's October 2005 session the 1971 Fund learned that both fishermen's unions had in 1997 requested the Court to notify the 1971 Fund of their actions. However, it was only on 31 October 2005 that the 1971 Fund was formally notified through diplomatic channels of the actions for compensation brought in the Civil Court in Caracas by FETRAPESCA and the Sindicato Único de Pescadores de Puerto Miranda against the shipowner and the master of the *Plate Princess* in June 1997.

Considerations by the Administrative Council at its February/March 2006 session

6.8 At the February/March 2006 session the Director submitted a document in which he stated as follows.

> Claims for compensation before the Venezuelan Courts were brought against the master and the shipowner in June 1997. The 1971 Fund was not named as a defendant in these actions. The 1971 Fund was not notified of the action against the shipowner until 31 October 2005, ie nearly seven and a half years after the damage occurred. Since the Fund was not notified of the claims against the shipowner within three years from the date when the damage occurred, in the Director's opinion these claims are time-barred under the 1971 Fund Convention pursuant to the first sentence of Article 6. They are, in his view, also time-barred under the second sentence of that Article since no action was brought against the Fund within six years from the date of the incident.
>
> The Director has examined the judgement by the Supreme Court referred to by the Venezuelan delegation at the Council's October 2005 session and has noted that it relates to an action by Sindicato Único de Pescadores de Puerto Miranda against BVC, the bank that issued the guarantee provided by the shipowner in connection with the incident. The issue dealt with in the judgement was whether the bank guarantee should be given back to BVC. In the Director's view, the judgement has no bearing on the 1971 Fund, since it relates to an

action which is entirely different from those brought by the fishermen's unions against the shipowner.

6.9 At that session the Venezuelan delegation stated that it did not share the Director's view that the claim by the fishermen was time-barred, since legal action had been taken against the shipowner within the time set out in Articles 6 and 7.6 of the 1971 Fund Convention. The Venezuelan delegation also stated that Article 6 of the 1971 Fund Convention referred directly to Article 7.6 of that Convention which established that there had to be an action for compensation against the shipowner under the 1969 Civil Liability Convention or a notification to the 1971 Fund of such an action. The delegation further stated that both conditions did not have to be fulfilled; one of them was sufficient.

6.10 The Venezuelan delegation expressed the view that any decision by the Court was binding on the 1971 Fund and that the Fund had sufficient time to present its arguments before the courts since points of defence had not yet been submitted. The delegation requested the Administrative Council to instruct the Director to intervene in the proceedings, examine the claims for compensation presented and pay the compensation due to the victims.

6.11 The Administrative Council instructed the Director to take the necessary action to defend the 1971 Fund's position on time bar before the Venezuelan Courts (document 71FUND/AC.18/6, paragraph 5.2.21).

Consideration by the Administrative Council at its May 2006 session

6.12 In a document submitted to the May 2006 session the Director stated that while he recognised that the final decision on whether the claims were time-barred vis-à-vis the 1971 Fund was a matter for the Venezuelan Courts, he disagreed with the analysis by the Venezuelan delegation of the provisions of the 1971 Fund Convention.

6.13 In that document the Director stated that the provisions on time bar were always brutal in their application since, if not respected, claimants lost their rights to obtain compensation but that the 1971 Fund and the 1992 Fund governing bodies had decided that the provisions on time bar of the Conventions should be strictly adhered to. The Director also stated that the 1971 Fund had not been notified of the action against the shipowner in accordance with the formalities required by the law of the court seized and that, in his view, the claims were therefore time-barred under the first sentence of Article 6.1 of the 1971 Fund Convention. The Director further stated that, in his view, the claims were also time-barred under the second sentence of Article 6.1 since no action had been brought against the 1971 Fund within six years from the date when the incident occurred.

6.14 The Venezuelan delegation stated that it maintained its view that the claims had not become time-barred because a legal action had been brought against the shipowner in June 1997 fulfilling the requirements established by Article 6.1 and Article 7.6 of the 1971 Fund Convention. The delegation made the point that under Article 6.1 of the 1971 Fund Convention it was not necessary to fulfill the two requirements but that it was sufficient to comply with one of them.

6.15 A number of delegations, whilst expressing sympathy with the victims of the incident and regretting that the time bar provisions had worked to their detriment, stated that it was necessary to adhere to the current text of the Conventions. The point was made that knowledge of an incident by the Fund was not the same as formal notification in accordance with Article 6.1 of the 1971 Fund Convention. Those delegations agreed with the Director's interpretation of Articles 6.1 and 7.6 of the 1971 Fund Convention and expressed the view that the claims arising from the incident were time barred.

6.16 The Administrative Council decided that the claims referred to in paragraphs 6.3 and 6.4 were time-barred in respect of the 1971 Fund (document 71FUND/AC.19/5, paragraph 4.2.25).

6.17 The Venezuelan delegation stated that it intended to submit a document on the *Plate Princess* at a future session of the Administrative Council and asked that the incident should therefore remain on the Council's agenda.

6.18 As at 22 September 2006 the 1971 Fund has not received any document from the Venezuelan delegation nor any information on the basis of the claims or any document supporting them.

7 ***Katja***

(France, 7 August 1997)

The incident

7.1 The Bahamas-registered tanker *Katja* (52 079 GRT) struck a quay while manoeuvring into a berth at the port of Le Havre (France) resulting in a spill of 190 tonnes of heavy fuel oil from a bunker tank. Beaches both to the north and to the south of Le Havre were affected and approximately 15 kilometres of quay and other structures within the port were contaminated. Oil also entered a marina at the entrance to the port and many pleasure boats were polluted.

7.2 The limitation amount applicable to the *Katja* in accordance with the 1969 Civil Liability Convention is estimated at €7.3 million (£4.9 million).

7.3 A claim presented by the French Government for clean-up costs was settled in July 2000 at €207 000 (£140 000). Other claims relating to clean-up, property damage and loss of income in the fisheries sector were settled at a total of €2.3 million (£1.6 million).

7.4 Legal actions were taken against the shipowner, his P&I insurer and the 1971 Fund relating to claims for the cost of clean-up operations incurred by the regional and local authorities, property damage and loss of income in the fisheries sector totalling €1.4 million (£950 000).

7.5 Only three claims totalling €976 000 (£660 000) remain pending in court, the largest of which is a claim by the Port Autonome du Havre (PAH) in respect of clean-up costs for €878 000 (£595 000).

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

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

7.8 At a hearing on 9 May 2006, the PAH submitted pleadings rejecting the arguments submitted by the shipowner. The PAH referred to the report of its own expert that showed that the berth used by the *Katja* was not dangerous and that the response to the incident by the PAH was appropriate.

7.9 The next court hearing is expected to take place on 18 December 2006.

8 ***Evoikos***

(Singapore, 15 October 1997)

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

8.2 At the time of the incident, Singapore was 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.

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

8.4 In the limitation proceedings commenced by the shipowner in Singapore, the Court determined the limitation amount applicable to the *Evoikos* under the 1969 Civil Liability Convention at 8 846 942 SDR (£6.9 million).

8.5 The total compensation paid by the shipowner is below the level at which the 1971 Fund would make any payments in respect of compensation or indemnification.

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

8.7 The Director has held discussions with the shipowner's insurer with a view to resolving outstanding issues.

9 ***Alambra***

(Estonia, 17 September 2000)

The incident

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

Limitation of liability

9.2 The limitation amount applicable to the *Alambra* under the 1969 Civil Liability Convention is estimated at 7.6 million SDR (£5.9 million).

Claims for compensation

9.3 The shipowner and his insurer, the London Steam-Ship Owners Mutual Insurance Association Ltd (London Club), have settled claims for clean-up costs for a total of US$620 000 (£330 000). The

Estonian Court of first instance approved this settlement in March 2004, and all court actions against the shipowner and the Club in relation to claims in respect of clean-up were terminated.

9.4 A claim by the Estonian State for EEK 45.1 million (£1.9 million), which had the character of a fine or charge, was settled by the shipowner and the London Club at US$655 000 (£350 000). The Court approved this settlement in March 2004, and the proceedings against the shipowner and the Club in relation to this claim were terminated.

9.5 A claim for US$100 000 (£53 000) has been presented to the shipowner and the London Club by a charterer of a vessel said to have been delayed whilst clean-up operations were being undertaken.

9.6 The owner of the berth in the Port of Muuga from which the *Alambra* was loading cargo at the time of the incident, and a company contracted by the owner of the berth to carry out oil-loading activities on its behalf, have submitted claims to the shipowner and the London Club for EEK 29.1 million (£1.3 million) and EEK 9.7 million (£420 000) respectively for loss of income due to the unavailability of the berth whilst clean-up operations were being undertaken.

Legal actions

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

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

The constitutional issue

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

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

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

Constitutional review

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

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

Other issues raised in the legal proceedings

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

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

9.15 The proceedings are ongoing in the Court of first instance. No date has been fixed for the next hearing.

10 Action to be taken by the Administrative Council

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