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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: *Vistabella*, *Aegean Sea*, *Iliad*, *Kriti Sea*, *Nissos Amorgos*, *Plate Princess*, *Katja*, *Evoikos*, *Pontoon 300* and *Alambra*.
Action to be taken:	Information to be noted.

1 *Vistabella*

Summary of the incident

1.1

Ship	*Vistabella*
Date of incident	07.03.91
Place of incident	Guadeloupe, France
Cause of incident	Sinking
Quantity of oil spilled	Unknown
Flag State of ship	Trinidad and Tobago
Gross tonnage (GT)	1 090 GT
Shipowner's Insurer	Maritime General Insurance Company Limited
CLC Limit	€359 000 (£286 230) <1>
Compensation	£969 250 paid by the 1971 Fund
Legal proceedings	The 1971 Fund brought recourse action against the shipowner's insurer. The Court of Appeal in Guadeloupe rendered judgement in favour of the Fund for €1 289 483 plus interest and costs.

1.2 While being towed, the sea-going barge *Vistabella* (1 090 GT), 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.

1.3 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 (£286 230). No limitation fund was established. It was unlikely that the shipowner would be able to

<1> In this document conversion of currencies has been made on the basis of exchange rate as at 22 August 2008 (€1 = £0.7973, 1 SDR = £0.8473, 1 US$ = £0.5381, 1 EEK = £0.0510) except in respect of payments made by the 1971 Fund where the conversion has been made at the rate on the date of payment.

meet his obligations under the 1969 Civil Liability Convention (1969 CLC) without effective insurance cover. The shipowner and his insurer did not respond to invitations to co-operate in the claims settlement process.

Claims for compensation

1.4 The 1971 Fund paid compensation amounting to FFr8.2 million or €1.3 million (£955 000) to the French Government in respect of clean-up operations. Compensation was paid to private claimants in St Barthélemy and the British Virgin Islands and to the authorities of the British Virgin Islands for a total of some £14 250.

Legal proceedings in Guadeloupe (France)

1.5 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 subsequently withdrew from the proceedings.

1.6 In a judgement rendered in 1996 the Court of first instance accepted that, on the basis of subrogation, the 1971 Fund had a right of action against the shipowner and a right of direct action against his insurer and awarded the Fund the right to recover the total amount which it had paid for damage caused in the French territories. The insurer appealed against the judgement.

1.7 The Court of Appeal rendered its judgement in March 1998. The Court of Appeal held that the 1969 CLC 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.

1.8 In a judgement rendered in March 2000 the Court of first instance ordered the insurer to pay FFr8.2 million or €1.3 million (£1 million) plus interest to the 1971 Fund. The insurer appealed against the judgement.

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

Legal proceedings in Trinidad and Tobago

1.10 In consultation with the Fund's Trinidad and Tobago lawyers the Fund has commenced summary proceedings against the insurer in Trinidad and Tobago to enforce the judgement of 9 February 2004 issued by the Court of Appeal in Guadeloupe (France).

1.11 The 1971 Fund has submitted an application for a summary execution of the judgement in the High Court in Trinidad and Tobago. The insurer has filed defence pleadings opposing the execution of the judgement on the grounds that it was issued in application of the 1969 CLC to which Trinidad and Tobago was not a Party.

1.12 The 1971 Fund has submitted a reply arguing that it was not requesting the Court to apply the 1969 CLC, but that it was seeking to enforce a foreign judgement under common law.

1.13 In March 2008 the Court delivered a judgement granting a summary judgement in the 1971 Fund's favour. The insurer has appealed against this judgement to the Court of Appeal in Trinidad and Tobago.

2 ***Aegean Sea***

Summary of the incident

2.1

Ship	*Aegean Sea*
Date of incident	03.12.92
Place of incident	La Coruña, Spain
Cause of incident	Grounding
Quantity of oil spilled	73 500 tonnes of crude oil
Flag State of ship	Greece
Gross tonnage (GT)	57 801 GT
P&I insurer	United Kingdom Mutual Steamship Assurance Association (Bermuda) Limited (UK Club)
CLC limit	€6.7 million (£5.3 million)
CLC + Fund limit	€57.2 million (£45.6 million)
Compensation	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 amounted to Pts 9 000 million or €54 million (£43 million) and the Spanish State undertook to compensate all the victims who obtained 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.

2.2 During heavy weather, the *Aegean Sea* (57 801 GT) 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

2.3 Claims totalling Pts 48 187 million or €289.6 million (£231 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

2.4 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 (UK Club), the 1971 Fund, the owner of the cargo on board the *Aegean Sea* and the pilot.

2.5 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 or €1 803 (£1 440). The master, the pilot, the Spanish State, the 1971 Fund and the UK Club appealed against the judgement, but the Court of Appeal upheld the judgement in June 1997.

Global settlement

2.6 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.

2.7 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 State an agreement between Spain, the shipowner, the UK Club and the 1971 Fund. The Decree also authorised the Spanish State to make out-of-court settlements with claimants in exchange for the withdrawal of their court actions. By 30 October 2002 the Spanish State 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.

2.8 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 or €54 million (£43 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.

2.9 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 State.

Developments in civil proceedings

2.10 Six claimants from the fisheries and mariculture sectors did not reach agreement with the Spanish State 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 €3.7 million (£3 million). The Spanish State submitted pleadings contesting the claims both on procedural grounds and on the merits of the claims. 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 State 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.

Judgements by the Court of first instance of La Coruña

2.11 Between October 2005 and March 2007 the Court rendered judgements in respect of the six claims mentioned above. 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 liability *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 settle their claims with third parties. The Court held that the State and the Fund had joint and several liability to the claimants but awarded amounts lower than those claimed. All parties appealed against the judgements. The Spanish State, the 1971 Fund and some of the claimants appealed against the judgements.

Judgements by the Court of Appeal

2.12 The situation in respect of the claims on the basis of the decision of the Court of Appeal is summarised in the following table:

Claimant	Amount Claimed	Amount awarded (Court of Appeal)
Fishing boat owner	€122 334	Rejected
Association of mussel farmers	€635 036	€135 000
Fish pond owner	€799 921	File sent back to Court of First Instance
Fish processor (sea urchin)	€1 182 394	€43 453[<2>]
Mussel depuration plant	€397 570	€55 640
Boat fisherman (sea urchin and octopus)	€503 538	€16 128
Total	**€3 640 793 (£2.9 million)**	**€250 221 (£200 000)**

2.13 The Spanish State has undertaken to pay, under the agreement with the 1971 Fund, any amounts awarded by these judgements.

Supreme Court

2.14 The fish processor and the fishing boat owner have requested leave to appeal to the Supreme Court. No decision has been made on these two requests.

Developments in criminal proceedings

2.15 Five additional claimants have not reached an agreement with the Spanish State and have pursued their claims in the Criminal Court of La Coruña for very small amounts.

2.16 In November 2007 the Criminal Court in La Coruña decided on the execution of the judgement in respect of two of the claimants that had continued their compensation claims in the Criminal Court, for a total of €3 709 (£3 000) plus interest. As is the case with the civil proceedings, the Spanish State will, under the agreement with the 1971 Fund, pay any amounts awarded by the Criminal Court.

3 ***Iliad***

Summary of the incident

3.1

Ship	*Iliad*
Date of incident	03.10.93
Place of incident	Pylos, Greece
Cause of incident	Grounding
Quantity of oil spilled	200 tonnes of light crude oil
Flag State of ship	Greece
Gross tonnage (GT)	33 837 GT
P&I insurer	North of England Protection and Indemnity Association Limited
CLC limit	€4.4 million (£3.5 million))
Compensation	All claims filed in the limitation proceedings are time-barred against the 1971 Fund except for two: 1) a claim from the shipowner and his insurer in respect of reimbursement for any compensation payments in excess of the shipowner's limitation amount and for indemnification under Article 5.1 of the 1971 Fund Convention; and 2) a claim from the owner of a fish farm for €3 million (£2.4 million).

[<2>] The Spanish State has, under the Agreement with the 1971 Fund, paid the amount awarded.

3.2 The Greek tanker *Iliad* (33 837 GT) grounded on rocks close to Satiric 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.

3.3 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 (£2.4 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.

Limitation proceedings

3.4 In March 1994 the shipowner's P&I insurer established a limitation fund amounting to Drs 1 497 million or €4.4 million (£3.5 million) with the Court in Nafplion by the deposit of a bank guarantee.

3.5 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 (£7.2 million) plus Drs 378 million or €1.1 million (£877 000) for compensation of 'moral damage'.

3.6 In March 1994, the Court appointed a liquidator to examine the claims in the limitation proceedings. The liquidator submitted his report to the Court in March 2006. In his report, the liquidator assessed the 527 claims at €2 125 755 (£1.7 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 pleadings to the Court in which it dealt with the criteria for the admissibility of claims for compensation under the 1969 CLC and the 1971 Fund Convention. The Fund, in its pleadings, argued that all claims except those mentioned in paragraph 3.3 were time-barred.

3.7 In October 2007 the Court in Nafplion decided that it did not have jurisdiction in respect of the limitation proceedings and referred the case to the Court of Kalamata as the court closest to the area where the incident took place. A number of claimants have appealed against the decision. The 1971 Fund, following advice received from its Greek lawyer, has joined in the appeal. It is expected that the Court of Appeal will render its decision in 2009.

4 ***Kriti Sea***

Summary of the incident

4.1

Ship	*Kriti Sea*
Date of incident	09.08.96
Place of incident	Agioi Theodoroi, Greece
Cause of incident	Mishandling of oil supply
Quantity of oil spilled	30 tonnes of light crude oil
Flag State of ship	Greece
Gross tonnage (GT)	62 678 GT
P&I insurer	United Kingdom Mutual Steamship Assurance Association (Bermuda) Limited (UK Club)
CLC limit	€6.6 million (£5.3 million)
Compensation	All settled claims have been paid by the shipowner's insurer. Three claims totalling €3.4 million (£2.7 million) are pending in court. These claims are from the Greek State, a fish farm and a seaside resort owner.

4.2 The Greek tanker *Kriti Sea* (62 678 GT) spilled 20 to 50 tonnes of Arabian light crude while discharging at an oil terminal in the port of Agioi Theodoroi (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.

4.3 In December 1996 the shipowner established a limitation fund amounting to Drs 2 241 million or €6.6 million (£5.3 million) by means of a bank guarantee.

4.4 Most claims have been resolved. However three claims, ie those of the Greek State, a fish farm and a seaside resort owner, remain unresolved. In judgements rendered in March 2006, the Supreme Court overturned 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 overturned 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.

4.5 A hearing took place at the Court of Appeal in March 2008. The Court is expected to issue its judgements in the near future.

4.6 Taking into account the interest which continues to accrue in relation to the pending cases, and costs which may be awarded by the Court, it is not certain whether the aggregate amount of the settled claims and the final adjudicated sums in respect of the pending cases will remain below the limitation amount applicable to the ship under the 1969 CLC.

5 ***Nissos Amorgos***

Summary of the incident

5.1

Ship	*Nissos Amorgos*
Date of incident	28.02.97
Place of incident	Maracaibo, Republic of Venezuela
Cause of incident	Grounding
Quantity of oil spilled	3 600 tonnes of crude oil
Flag State of ship	Greece
Gross tonnage (GT)	50 563 GT
P&I insurer	Assuranceföreningen Gard (Gard Club)
CLC Limit	Bs3 473 million or BsF 3.5 million (£870 300 million) <3>
CLC + Fund limit	Bs39 738 million or $83 221 800 (£44.8 million)
Compensation	Claims have been settled for Bs350 075 468 (£69 000) and $24 397 612 (£13 million). All the settled claims have been paid.
Legal proceedings	Three claims remain in Court as follows: Two claims by the Republic of Venezuela, for US$60 250 396 (£32.4 million) each. These claims are duplicated and time-barred. One claim by 3 fish processors for US$30 000 000 (£16.1 million).

5.2 The Greek tanker *Nissos Amorgos* (50 563 GT), carrying approximately 75 000 tonnes of Venezuelan crude oil, ran aground whilst passing through the Maracaibo Channel in the Gulf of Venezuela on 28 February 1997. The Venezuelan authorities have maintained that the actual grounding occurred outside the Channel itself. An estimated 3 600 tonnes of crude oil was spilled.

<3> In January 2008 the Bolivar Fuerte replaced the Bolivar at the rate of 1 BsF = 1000 Bs. The conversion of the Venezuelan Bolivar Fuerte has been made on the basis of the exchange rate as at 22 August 2008 (£1 = BsF 3.9905).

Settled claims

5.3 The incident has given rise to a number of claims. The table below summarises the settled claims:

Claimant	Category	Settlement amount Bs	Settlement amount US$
Petroleos de Venezuela S.A. (PDVSA)	Clean up		$8 364 223
ICLAM[<4>]	Preventive measures	Bs61 075 468	
Shrimp fishermen and processors	Loss of income		$16 033 389
Other claims[<5>]	Property damage and loss of income	Bs289 000 000	
Total		**Bs350 075 468 (£69 000)**	**$24 397 612 (£13 million)**

5.4 All settled claims have been paid in full.

Claims for compensation in court

5.5 The situation in respect of the claims for compensation pending before the Courts in Venezuela is as follows:

Claimant	Category	Claimed amount US$	Court	Fund's position
Republic of Venezuela	Environmental damage	$60 250 396	Criminal court	Time-barred
Republic of Venezuela	Environmental damage	$60 250 396	Civil court	Time-barred
Three fish processors	Loss of income	$30 000 000	Civil court	No loss proven
Total		**$150 500 792 (£81 million)**		

Claims by the Republic of Venezuela

5.6 The Republic of Venezuela presented a claim for environmental damage for US$60 250 396 (£32.4 million) against the master, the shipowner and his insurer, Gard Club, in the Criminal Court in Cabimas. The Republic of Venezuela also presented the same claim before the Civil Court of Caracas.

5.7 The Administrative Council, in July 2003, decided that the components of the claims by the Republic of Venezuela did not relate to pollution damage falling within the scope of the 1969 CLC and the 1971 Fund Convention, that the claims should be treated as not admissible and that they were duplications, since they related to the same items of damage (document 71FUND/AC.11/3). The Administrative Council, in October 2005, decided that the claims by the Republic of Venezuela were also time-barred *vis-à-vis* the 1971 Fund (document 71FUND/AC.17/20).

<4> Instituto para el Control y la Conservación de la Cuenca del Lago de Maracaibo.

<5> Paid in full by the shipowner's insurer with the exception of the claim by Corpozulia, a tourism authority of the Republic of Venezuela.

Claims by fish processors

5.8 Three fish processors presented claims totalling US$30 million (£16.1 million) in the Supreme Court against the 1971 Fund and the Instituto Nacional de Canalizaciones (INC). These claims were presented in the Supreme Court not as a result of an 'avocamiento' but because one of the defendants is an agency of the Republic of Venezuela and, under Venezuelan law, claims against the Republic have to be presented before the Supreme Court. The Supreme Court would in this case act as court of first and last instance. At its July 2003 session, the Administrative Council noted that the claims had not been substantiated by supporting documentation and that they should therefore be treated as not admissible.

5.9 In August 2003 the 1971 Fund submitted pleadings to the Supreme Court arguing that, as the claimants had submitted and subsequently renounced claims in the Criminal Court in Cabimas and the Civil Court in Caracas against the master, the shipowner and the Gard Club for the same damage, they had implicitly renounced any claim against the 1971 Fund. The 1971 Fund also argued that not only had the claimants failed to demonstrate the extent of their loss but the evidence they had submitted indicated that the cause of any loss was not related to the pollution. There have been no developments in respect of these claims.

Criminal proceedings

5.10 Criminal proceedings were brought against the master. In a judgement rendered in May 2000, the Criminal Court held him liable for the damage arising as a result of the incident and sentenced him to one year and four months in prison. The master appealed.

5.11 In a judgement rendered in February 2005, the Criminal Court of Appeal held that the master had incurred criminal liability due to negligence causing pollution damage to the environment, but that, since more than four and a half years from the date of the criminal act had passed, the criminal action against the master was time-barred. In its judgement the Court stated that this decision was without prejudice to the civil liabilities which could arise from the criminal act dealt with in the judgement which was declared time-barred.

5.12 In October 2006 the public prosecutor requested the Supreme Court (Constitutional Section) to revise the judgement of the Criminal Court of Appeal on the grounds that the Court had not decided in respect of the claim for compensation submitted by the public prosecutor on behalf of the Republic of Venezuela.

5.13 The Supreme Court (constitutional section), in a judgement rendered in March 2007, decided to annul the judgement of the Court of Appeal and send back the criminal file to the Court of Appeal where a different section would render a new judgement. In its judgement the Supreme Court stated that the judgement of the Court of Appeal was unconstitutional since it had not decided on the claim for compensation submitted by the Republic of Venezuela that had been presented to obtain compensation for the Venezuelan State for the damage caused. The criminal file was returned to the Court of Appeal.

5.14 A different section of the Criminal Court of Appeal issued a new judgement in February 2008, confirming that the criminal action against the master was time-barred but preserving the civil action arising from the criminal act. In the judgement the Court of Appeal decided to send the file to a criminal court of first instance, in which the civil action filed by the Republic of Venezuela will be decided. To the date of issue of this document no decision had been taken by this new court.

Attempts to resolve the outstanding issues

5.15 In October 2005 the Administrative Council, following a request from the Venezuelan delegation, invited the Director to approach the Gard Club and the Attorney General and the Public Prosecutor of the Republic of Venezuela for the purpose of assisting them in resolving the outstanding issues.

5.16 Since October 2005 there have been several meetings and discussions between the Venezuelan delegation and the 1971 Fund. In February 2006 the 1971 Fund wrote to the Venezuelan authorities setting out possible solutions to the outstanding issues. In May 2006 a meeting took place in Caracas between the various interested parties including representatives of the Venezuelan Government. The 1971 Fund was represented at the meeting by its Venezuelan lawyers. The purpose of the meeting was to brief the various parties as regards the current situation concerning the outstanding claims.

5.17 In June 2006 a meeting was held in London between the Venezuelan delegation and the 1971 Fund at which time the Fund was informed that the Venezuelan authorities were well advanced in their internal discussions. In October 2006 a meeting was held in Caracas at the Ministry of External Affairs attended by representatives of the Ministry of External Affairs, the Ministry of the Environment, the Public Prosecutor, the Attorney General and the Instituto Nacional de los Espacios Acuaticos (National Institute of Aquatic Spaces). At the meeting the participants expressed a desire to resolve the outstanding issues without pursuing the claims in court. There has been no progress on such a resolution since then.

5.18 The Director has met with representatives of the shipowner and the Assuranceföreningen Gard (Gard Club) to examine the consequences of the judgement by the Supreme Court.

5.19 No further developments have taken place in respect of this case.

6 ***Plate Princess***

Summary of the incident

6.1

Ship	*Plate Princess*
Date of incident	27.05.97
Place of incident	Lake Maracaibo, Republic of Venezuela
Cause of incident	Overflow during loading operation
Quantity of oil spilled	3.2 tonnes of crude oil
Flag State of ship	Malta
Gross tonnage (GT)	30 423 GT
P&I insurer	The Standard Steamship Owners' Protection and Indemnity Association (Bermuda) Limited (Standard Club)
CLC limit	BsF 2.8 million (£712 700)
Compensation	Claims against 1971 Fund are time-barred.

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

Court proceedings

6.3 The limitation amount applicable to the *Plate Princess* under the 1969 CLC is estimated at 3.6 million SDR (£3 million). The shipowner provided a bank guarantee from Banco Venezolano de Credito (BVC) in the amount of Bs2 844 million or BsF 2.8 million (£712 700).

6.4 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 in Cabimas on behalf of 1 692 fishing boat owners, claiming a total of US$17 million (£9.2 million). The claim was for alleged damage to fishing boats and nets and for loss of earnings. FETRAPESCA also brought a 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 (£5.4 million).

6.5 In June 1997 a local fishermen's union, the Sindicato Unico 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 (£10.8 million).

6.6 At its May 2006 session the Administrative Council decided that the claims referred to in paragraphs 6.4 and 6.5 were time-barred in respect of the 1971 Fund (cf Annual Report 2006, pages 67 to 69).

6.7 In December 2006 the claims mentioned above were transferred to the Maritime Court of First Instance.

6.8 In June 2008 the Shipowner submitted pleadings arguing that the claim by FETRAPESCA had lapsed (perención de la instancia) according to Venezuelan law. The Court has denied the petition stating that the claim was not lapsed. The shipowner has appealed against the judgement before the Superior Maritime Court.

6.9 In April 2008 the Sindicato Unico de Pescadores de Puerto Miranda (cf paragraph 6.5) submitted pleadings amending the claim and submitted documentation in support of its claim. The claim totals now BsF 2 million (£500 000) in respect of property damage and BsF 51.5 million (£12.9 million) in respect of economic losses. In the new pleadings the claimants request the court to formally notify the 1971 Fund of an action for compensation brought against the shipowner under the 1969 CLC and the 1971 Fund Convention.

6.10 The 1971 Fund has submitted pleadings reiterating that the claim is time-barred since the action was taken against the shipowner and not against the Fund and the Fund had not been notified of the action within the deadline of three years from the occurrence of the damage, as provided in Article 6 of the 1971 Fund Convention and in accordance with the decision by the Administrative Council at its May 2006 session (cf paragraph 6.6). Without prejudice to its position on the time bar issue, the 1971 Fund has engaged experts to examine the claim. The shipowner has also submitted defence pleadings arguing that the claim has lapsed according to Venezuelan law.

6.11 The Court has not yet fixed a date for a hearing.

7 ***Katja***

Summary of the incident

7.1

Ship	*Katja*
Date of incident	07.08.97
Place of incident	Le Havre, France
Cause of incident	Striking a quay
Quantity of oil spilled	190 tonnes of heavy fuel oil
Flag State of ship	Bahamas
Gross tonnage (GT)	52 079 GT
P&I insurer	Assuranceföreningen Skuld (Gjensidig) (Skuld Club)
CLC limit	€7.3 million (£5.8 million)
Compensation	The case is now closed and the 1971 Fund will not have to make any payments.

7.2 The Bahamas-registered tanker *Katja* (52 079 GT) 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.

7.3 A claim presented by the French Government for clean-up costs was settled in July 2000 at €207 000 (£165 000). 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 (£1.8 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 (£1.1 million). These actions included a claim by the Port Autonome du Havre (PAH) in respect of clean-up costs for €878 000 (£700 000).

7.5 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.

7.6 The PAH submitted pleadings rejecting the arguments submitted by the shipowner. The PAH referred to the report of its own expert which showed that the berth used by the *Katja* was not dangerous and that the response to the incident by the PAH had been appropriate.

7.7 In April 2008 a settlement agreement was concluded between the shipowner, his insurer and the PAH, whereby the shipowner and its insurer paid to PAH €70 000 (£55 800) and all parties to the agreement withdrew their legal actions.

7.8 This case is now closed.

8 ***Evoikos***

Summary of the incident

8.1

Ship	*Evoikos*
Date of incident	15.10.97
Place of incident	Strait of Singapore
Cause of incident	Collision
Quantity of oil spilled	29 000 tonnes of heavy fuel oil
Area affected	Singapore, Malaysia and Indonesia
Flag State of ship	Cyprus
Gross tonnage (GT)	80 823 GT
P&I insurer	United Kingdom Mutual Steamship Assurance Association (Bermuda) Limited (UK Club)
CLC limit	8 846 942 SDR (£7.5 million)
Compensation	The total compensation paid by the shipowner is below the limitation amount applicable to the ship under the 1969 CLC.

8.2 The Cypriot tanker *Evoikos* (80 823 GT) collided with the Thai tanker *Orapin Global* (138 037 GT) 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.

8.3 At the time of the incident, Singapore was Party to the 1969 CLC but not to the 1971 Fund Convention, whereas Malaysia and Indonesia were Parties to the 1969 CLC and the 1971 Fund Convention.

8.4 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.

8.5 In the limitation proceedings commenced by the shipowner in Singapore, the Court determined the limitation amount applicable to the *Evoikos* under the 1969 CLC at 8 846 942 SDR (£7.5 million).

8.6 The total compensation paid by the shipowner is below the limitation amount applicable to the ship under the 1969 CLC.

8.7 The shipowner's insurer commenced legal actions against the 1971 Fund in London, Indonesia and Malaysia to protect its rights against the Fund. The action in Indonesia has been discontinued. 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 London and Malaysia 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.

8.8 There have been no further developments in this case since 2003. This case cannot be closed until all pending litigation has been finalised.

9 ***Pontoon 300***

Summary of the incident

9.1

Ship	*Pontoon 300*
Date of incident	07.01.98
Place of incident	Hamriyah, Sharjah, United Arab Emirates
Cause of incident	Sinking
Quantity of oil spilled	8 000 tonnes of intermediate fuel oil
Flag State of ship	Saint Vincent and the Grenadines
Gross tonnage (GT)	4 233 GT
P&I insurer	None
CLC limit	None
Compensation	All claims in respect of this incident have been settled for a total of Dhs 7.9 million (£1 million)

9.2 On 7 January 1998 the Saint Vincent and Grenadines barge *Pontoon 300* (4 233 GT), which was being towed by the tug *Falcon 1*, sank at a depth of 21 metres off Hamriyah, in Sharjah, United Arab Emirates (UAE). An estimated 8 000 tonnes of intermediate fuel oil were spilled, which spread over 40 kilometres of coastline, affecting four Emirates. The worst affected Emirate was Umm Al Quwain.

Claims for compensation

9.3 All claims in respect of this incident have been settled for a total of Dhs 7.9 million (£1 million).

Legal actions

9.4 For details of the criminal action against the master of the tug *Falcon 1*, the civil action by the Municipality of Umm Al Quwain and the withdrawal of the action by the 1971 Fund against the owner of the tug *Falcon 1*, reference is made to the Annual Report 2006, pages 71 to 74.

Level of the 1971 Fund's payments

9.5 In April 2000 the Executive Committee decided that, in view of the uncertainty regarding the total amount of claims for compensation, the 1971 Fund's payments should be limited to 75% of the loss or damage actually suffered by each claimant (cf Annual Report 2006, page 74).

9.6 At its October 2006 session the Administrative Council decided to increase the level of payments from 75% to 100% of all settled claims if the legal action by the Umm Al Quwain Municipality against the 1971 Fund were to be withdrawn. When the claim by the Umm Al Quwain Municipality was withdrawn in November 2006, the 1971 Fund increased the level of payments to 100% of all settled claims, in accordance with the Administrative Council's decision.

9.7 The 1971 Fund has since paid the remaining 25% of all agreed claims. This case is now closed.

10 ***Alambra***

Summary of the incident

10.1

Ship	*Alambra*
Date of incident	17.09.00
Place of incident	Tallinn, Estonia
Cause of incident	Corrosion
Quantity of oil spilled	300 tonnes of heavy fuel oil
Flag State of ship	Malta
Gross tonnage (GT)	75 366 GT
P&I insurer	London Steam-Ship Owners' Mutual Insurance Association Ltd (London Club)
CLC limit	7.6 million SDR (£6.4 million)
Compensation	Claims arising from this incident are below the CLC limit

10.2 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

10.3 The limitation amount applicable to the *Alambra* under the 1969 CLC is estimated at 7.6 million SDR (£6.4 million).

Claims for compensation

10.4 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 (£333 600). 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.

10.5 A claim by the Estonian State for EEK 45.1 million (£2.3 million), which had the character of a fine or charge, was settled by the shipowner and the London Club at US$655 000 (£352 500). The Court approved this settlement in March 2004, and the proceedings against the shipowner and the Club in relation to this claim were terminated.

10.6 A claim for US$100 000 (£53 800) 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.

10.7 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 (£1.5 million) and EEK 9.7 million (£494 700) respectively for loss of income due to the unavailability of the berth whilst clean-up operations were being undertaken.

Legal actions

10.8 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.

10.9 In the context of these legal actions, the question has arisen as to whether the 1969 CLC and the 1971 Fund Convention have been correctly implemented into Estonian national law. For details regarding this issue reference is made to the Annual Report 2007, pages 72-73.

Other issues raised in the legal proceedings

10.10 In September 2002 the London Club filed pleadings in court in respect of the claims presented by the berth-owner in the Port of Muuga and the company contracted by the berth-owner (cf paragraph 10.7), 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.

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

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

11 Action to be taken by the Administrative Council

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