

 <b>INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS</b>	<b>Agenda item: 3</b>	<b>IOPC/OCT09/3/2</b>
	Original: ENGLISH	28 August 2009
	1992 Fund Assembly	<b>92A14</b>
	1992 Fund Executive Committee	<b>92EC46</b>
	Supplementary Fund Assembly	<b>SA5</b>
1971 Fund Administrative Council	<b>71AC24</b>	•

## INCIDENTS INVOLVING THE IOPC FUNDS

### 1971 FUND: VISTABELLA, AEGEAN SEA, ILIAD, KRITI SEA, NISSOS AMORGOS, PLATE PRINCESS, EVOIKOS, ALAMBRA AND AL JAZIAH 1

#### Note by the Director

<b>Summary:</b>	In this document the latest information is provided regarding the following 1971 Fund incidents: <i>Vistabella</i> , <i>Aegean Sea</i> , <i>Iliad</i> , <i>Kriti Sea</i> , <i>Nissos Amorgos</i> , <i>Plate Princess</i> , <i>Evoikos</i> , <i>Alambra</i> and <i>Al Jaziah 1</i> .
<b>Action to be taken:</b>	<u>1971 Fund Administrative Council:</u>  Information to be noted.

#### 1 Vistabella

##### *Summary of the incident*

1.1	Ship	<i>Vistabella</i>
	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 (GRT)	1 090 GRT
	Shipowner's Insurer	Maritime General Insurance Company Limited
	CLC Limit	€359 000
	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 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.

1.3 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. No limitation fund was established. It was unlikely that the shipowner would be able to 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*

- 1.5 With regard to legal proceedings in Guadeloupe (France) and Trinidad and Tobago reference is made to the Annual Report 2008, pages 56 and 57.
- 1.6 There have been no further developments in this case since it was reported to the 1971 Fund Administrative Council at its 23rd session in October 2008.

## 2 *Aegean Sea*

*Summary of the incident*

2.1	Ship	<i>Aegean Sea</i>
	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 (GRT)	57 801 GRT
	P&I insurer	United Kingdom Mutual Steamship Assurance Association (Bermuda) Limited (UK Club)
	CLC limit	€6.7 million
	CLC + Fund limit	€7.2 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 <i>Aegean Sea</i> , the UK Club and the 1971 Fund to the victims amounted to Pts 9 000 million or €4 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 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, since most of the cargo was either dispersed in the sea or consumed by the fire on board the vessel, but it was estimated at some 73 500 tonnes. 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 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 With regard to the criminal proceedings initiated in relation to this incident, reference is made to the Annual Report 2008, pages 57 and 59.

*Global settlement*

- 2.5 With regard to the agreement signed between the Spanish State, the shipowner and the UK Club on a global solution of all outstanding issues in the *Aegean Sea* case, reference is made to the Annual Report 2008, pages 57-58.

*Civil proceedings*

- 2.6 With regard to the civil proceedings initiated by six claimants from the fisheries and mariculture sectors who did not reach agreement with the Spanish State on the amount of their losses reference is made to Annual Report 2008, pages 58-59.
- 2.7 A fish processor, a fishing boat owner and a boat fisherman requested leave to appeal to the Supreme Court but by July 2009 the Court had denied the leave to appeal in all three cases. The judgements by the Court of Appeal have therefore become final.
- 2.8 The Spanish State will, under the agreement with the 1971 Fund, pay any amounts awarded by the Courts.

### 3 *Iliad*

*Summary of the incident*

3.1	Ship	<i>Iliad</i>
	Date of incident	09.10.93
	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 (GRT)	33 837 GRT
	P&I insurer	North of England Protection and Indemnity Association Limited
	CLC limit	€4.4 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.

- 3.2 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 200 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 1971 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, 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 1971 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 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 plus Drs 378 million or €1.1 million 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 € 125 755, 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. The next hearing will take place in 2010.

#### 4 *Kriti Sea*

*Summary of the incident*

4.1	Ship	<i>Kriti Sea</i>
	Date of incident	09.08.96
	Place of incident	Agioi Theodoroi, Greece
	Cause of incident	Mishandling of oil supply
	Quantity of oil spilled	20 to 50 tonnes of light crude oil
	Flag State of ship	Greece
	Gross tonnage (GRT)	62 678 GRT
	P&I insurer	United Kingdom Mutual Steamship Assurance Association (Bermuda) Limited (UK Club)
	CLC limit	€6.6 million
	Compensation	All claims have been settled or are the subject of a final court judgement, with total amounts falling within the 1969 CLC limit. Therefore the 1971 Fund will not be called upon to pay any compensation in respect of this incident.

- 4.2 The Greek tanker *Kriti Sea* (62 678 GRT) 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 by means of a bank guarantee.
- 4.4 Three claims, ie those of the Greek State, a fish farm and a seaside resort owner were the subject of legal actions. 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 grounds 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 grounds 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. A hearing took place at the Court of Appeal in March 2008. The Court of Appeal issued its judgements in December 2008, reducing the initial awards to the claimants. These judgements have now become final.

- 4.5 The aggregate amount adjudicated to all claimants in respect of this incident falls within the limitation fund established under the 1969 CLC. Therefore no liability will be attached to the 1971 Fund in respect of this incident.
- 4.6 Given that the case is closed as far as the 1971 Fund is concerned, the 1971 Fund has decided to discontinue monitoring the proceedings prior to formal closure.

## 5 *Nissos Amorgos*

### *Summary of the incident*

5.1	Ship	<i>Nissos Amorgos</i>
	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 (GRT)	50 563 GRT
	P&I insurer	Assuranceföreningen Gard (Gard Club)
	CLC Limit	Bs3 473 million or BsF 3.5 million <sup>&lt;1&gt;</sup>
	CLC + Fund limit	Bs39 738 million or \$83 221 800
	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 each. These claims are duplicated and time-barred. One claim by three fish processors for US\$30 000 000.

- 5.2 The Greek tanker *Nissos Amorgos* (50 563 GRT), carrying approximately 75 000 tonnes of Venezuelan crude oil, ran aground whilst passing through the Maracaibo Channel in the Gulf of Venezuela 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 were spilled.

### *Settled claims*

- 5.3 The incident has given rise to a number of claims. The table overleaf summarises the settled claims, which have all been paid in full:

<sup><1></sup> In January 2008 the Bolivar Fuerte (BsF) replaced the Bolivar (Bs) at the rate of 1 BsF = 1000 Bs.

Claimant	Category	Settlement amount Bs	Settlement amount US\$
Petroleos de Venezuela S.A. (PDVSA)	Clean up		\$8 364 223
ICLAM <sup>&lt;2&gt;</sup>	Preventive measures	Bs61 075 468	
Shrimp fishermen and processors	Loss of income		\$16 033 389
Other claims <sup>&lt;3&gt;</sup>	Property damage and loss of income	Bs289 000 000	
<b>Total</b>		<b>Bs350 075 468</b> <b>(£69 000)</b>	<b>\$24 397 612</b> <b>(£13 million)</b>

*Claims for compensation in court*

- 5.4 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
<b>Total</b>		<b>\$150 500 792</b>		

*Claims by the Republic of Venezuela*

- 5.5 The Republic of Venezuela presented a claim for environmental damage for US\$60 250 396 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.
- 5.6 The 1971 Fund 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 1971 Fund 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).

*Claims by fish processors*

- 5.7 Three fish processors presented claims totalling US\$30 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.
- 5.8 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

<sup><2></sup> Instituto para el Control y la Conservación de la Cuenca del Lago de Maracaibo.

<sup><3></sup> Paid in full by the shipowner's insurer with the exception of the claim by Corpozulia, a tourism authority of the Republic of Venezuela.

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*

- 5.9 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.
- 5.10 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.
- 5.11 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.
- 5.12 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.
- 5.13 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 would be decided.
- 5.14 The shipowner and its insurer have pleaded that the Criminal Court of First Instance has no jurisdiction over the case and that the file should be transferred to the Maritime Court.
- 5.15 In March 2009 the Criminal Court of First Instance issued a decision rejecting the plea of lack of jurisdiction. This decision was notified to the Master, but not to the shipowner and his insurer or the 1971 Fund. In the decision the Court also fixes the commencement of the presentation of conclusions.
- 5.16 The 1971 Fund has submitted pleadings arguing that by not notifying the 1971 Fund of the decision the Court had denied the Fund a proper defence. In its pleadings the Fund also submits its conclusions, as follows:
- The claims by the Republic of Venezuela are time-barred in respect of the 1971 Fund.
  - All admissible claims for pollution damage have already been compensated by the Club and the Fund.
  - The claim by the Republic of Venezuela is not admissible under the 1971 Civil Liability Convention (1971 CLC) and Fund Conventions and the alleged damage is not proved.
- 5.17 The Court has not issued its decision yet.

*Attempts to resolve the outstanding issues*

- 5.18 With regard to attempts made by the 1971 Fund over the years to resolve the outstanding issues, reference is made to the Annual Report 2008, pages 64-66.
- 5.19 In December 2008 a meeting was held in Caracas between representatives of the 1971 Fund, visiting Venezuela on other business, and representatives of the Venezuelan Ministry of Foreign Affairs. The representatives conducted a general review of the outstanding issues.
- 5.20 With regard to the outstanding claims by three fish processors against the 1971 Fund and the Instituto Nacional de Canalizaciones, the representatives of the Ministry of External Affairs stated that the Government could not intervene since the plaintiffs were private companies.
- 5.21 With regards to the claims by the Republic of Venezuela, the representatives of the Ministry of External Affairs expressed surprise that the claim by the Procuraduria had not been withdrawn. It was suggested that the Ministry of Foreign Affairs would convene a meeting with the interested parties, including the Public Prosecutor, Attorney General and Ministry of the Environment, to examine whether a solution could be found.
- 5.22 The representatives of the Ministry of External Affairs were not able to convene such a meeting while the representatives of the 1971 Fund were in Caracas but a meeting did take place later in December 2008 attended by only representatives of the Ministry of External Affairs. The 1971 Fund was represented by its Venezuelan Lawyers. At that meeting, the representatives of the Ministry of External Affairs expressed their intention to reactivate the case and to bring the matter to the attention of the Minister of Foreign Affairs. The representatives of the Ministry of Foreign Affairs stated that, once they had received instructions from the Minister, they would convene a meeting of all interested parties and the 1971 Fund would be invited to attend.

**6 Plate Princess***Summary of the incident*

6.1	Ship	<i>Plate Princess</i>
	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 (GRT)	30 423 GRT
	P&I insurer	The Standard Steamship Owners' Protection and Indemnity Association (Bermuda) Limited (Standard Club)
	CLC limit	BsF 2.8 million
	Compensation	Claims against 1971 Fund are time-barred.

- 6.2 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 (Republic of Venezuela) when 3.2 tonnes of oil were reportedly discharged into Lake Maracaibo together with ballast water.

*Court proceedings*

- 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 in Cabimas on behalf of 1 692 fishing boat owners, claiming a total of US\$17 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.



- 6.4 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.
- 6.5 At its May 2006 session 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 (cf Annual Report 2006, pages 67 to 69).
- 6.6 In December 2006 the claims mentioned above were transferred to the Maritime Court of First Instance.

*Limitation proceedings*

- 6.7 The limitation amount applicable to the *Plate Princess* under the 1969 Civil Liability Convention was estimated in 1998 at 3.6 million SDR or Bs 2 845 million and, in 1997, a bank guarantee for this amount was provided to the Criminal Court of Cabimas.
- 6.8 In December 2006, the claims in the Civil Court of Caracas by FETRAPESCA and the Sindicato Único de Pescadores de Puerto Miranda were transferred to the Maritime Court of Caracas.
- 6.9 In November 2008, the shipowner and the Master of the *Plate Princess* presented pleadings to the Maritime Court of Caracas requesting the constitution of the limitation fund in the amount of the bank guarantee provided to the Criminal Court of Cabimas.
- 6.10 In December 2008 the Maritime Court of Caracas denied the request by the shipowner and the Master of the *Plate Princess* to start limitation proceedings. The shipowner and the Master have appealed against this decision.

*Further developments on the claim by FETRAPESCA*

- 6.11 In July 2008, the shipowner and the Master of the *Plate Princess* requested the Maritime Court of Caracas to declare the claim by FETRAPESCA time-barred (perención de instancia) since the plaintiffs had not taken steps to duly pursue their claim in Court. In a decision published later that month the Court decided that the claim was not time-barred. The shipowner and the Master appealed against this decision but, in October 2008, the Maritime Court of Appeal upheld the judgement of the Maritime Court of Caracas.
- 6.12 In a judgement rendered in February 2009 the Court accepted the claim by FETRAPESCA and ordered the payment of the damages suffered by the claimant, to be quantified by a Court expert. The judgement has not been formally notified to the Fund.

*Amended claim by the Sindicato Único de Pescadores de Puerto Miranda*

- 6.13 In April 2008 the Sindicato Único de Pescadores de Puerto Miranda submitted an amended claim against the shipowner, Master of the *Plate Princess* and the 1971 Fund. The amended claim which now totals BsF 53.5 million is for losses suffered by some 650 fishermen in respect of damage to nets and boats and in respect of loss of income for a period of six months. The Maritime Court of Caracas accepted the amended claim.
- 6.14 In July 2008 the 1971 Fund submitted pleadings stating that the claim was time-barred since the 1971 Fund:
- had not been notified of the action against the shipowner within 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 and

- had not been named as defendant in an action within the six-year period since the date of the incident as also provided in Article 6 of the 1971 Fund Convention.
- 6.15 The 1971 Fund engaged experts to examine the claim and requested the Court to provide copies of the documentation submitted by the claimants to demonstrate the losses. The documentation amounted to thousands of pages and was beyond the resources of the Maritime Court to copy. The Maritime Court therefore subcontracted the work. The documentation was only received by the 1971 Fund in August 2008.
- 6.16 The 1971 Fund's experts issued their report in early October 2008. In their report, the experts concluded that:
- the claimants had not demonstrated that any damage allegedly suffered by the fishermen had been caused by the spill from the *Plate Princess*;
  - the quantity of oil known to have been spilled was so small that it could not explain the extensive damage alleged;
  - the inspection reports submitted to demonstrate the extent of the damage to nets and boats were of doubtful accuracy; and that
  - the documents submitted to support the claim for loss of income had in many instances been falsified and produced for the purpose of making the claim.
- 6.17 The 1971 Fund's experts' report was submitted to the Maritime Court in November 2008 but the Court decided that the report was not admissible since it had not been submitted within the time limit provided by Venezuelan law. The 1971 Fund appealed against this decision on the grounds that the time limit was not sufficient for the Court to provide the 1971 Fund with copies of the documentation and for their experts to review them.
- 6.18 In November 2008, the Head of the Claims Department and one of the experts engaged by the 1971 Fund travelled to Caracas to assist the 1971 Fund's lawyers to prepare for the Maritime Court's main hearing of the claim, scheduled to commence in early December 2008. Discussions were held with both the 1971 Fund's lawyers and the lawyers appointed by the Master and shipowner. The hearing was, however, postponed until January 2009.
- 6.19 The Court issued its decision in February 2009. In its decision, the Court accepts the claim by the Sindicato Único de Pescadores de Puerto Miranda and orders the 1971 Fund to pay the damages suffered by the claimant, to be quantified by a Court expert, together with interest from the date of the incident until the date of execution of the judgement. In its decision the Court also rejects the fraud allegations submitted by the Fund.
- 6.20 The Master has submitted pleadings alleging lack of due process (desorden judicial).
- 6.21 The Master, the shipowner and the 1971 Fund have appealed against the judgement.

7 *Evoikos**Summary of the incident*

7.1	Ship	<i>Evoikos</i>
	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 (GRT)	80 823 GRT
	P&I insurer	United Kingdom Mutual Steamship Assurance Association (Bermuda) Limited (UK Club)
	CLC limit	8 846 942 SDR
	Compensation	The total compensation paid by the shipowner is below the limitation amount applicable to the ship under the 1969 CLC.

- 7.2 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.
- 7.3 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.
- 7.4 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.
- 7.5 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.
- 7.6 The total compensation paid by the shipowner is below the limitation amount applicable to the ship under the 1969 CLC.
- 7.7 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.
- 7.8 There have been no further developments in this case since 2003. This case cannot be closed until all pending litigation has been finalised.

8 *Alambra**Summary of the incident*

8.1	Ship	<i>Alambra</i>
	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 (GRT)	75 366 GRT
	P&I insurer	London Steam-Ship Owners' Mutual Insurance Association Ltd (London Club)
	CLC limit	7.6 million SDR
	Compensation	All claims arising from this incident have been settled and paid within the CLC limit

8.2 The Maltese tanker *Alambra* (75 366 GRT) 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.

*Claims for compensation*

8.3 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. 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.

8.4 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, submitted claims to the shipowner and the London Club for EEK 29.1 million and EEK 9.7 million respectively for loss of income due to the unavailability of the berth whilst clean-up operations were being undertaken.

*Legal actions*

8.5 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.

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

8.7 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, 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.

- 8.8 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.
- 8.9 After negotiations between the two claimants mentioned above and the shipowner, in June 2009 a settlement agreement between those two claimants (now merged into one company) and the shipowner was signed, whereby the claimants undertook to withdraw their claims upon receipt of the sum of US\$ 450 000 from the shipowner, as compensation of their claims. The shipowner's insurer and the 1971 Fund were participants to the agreement.
- 8.10 The agreed amount has been received by the claimants and, in compliance with the agreement, the claims have been withdrawn from the Court. As part of the agreement, the claimants released the shipowner's insurer and the 1971 Fund of any obligations arising from the incident.
- 8.11 This case is now closed.

## 9 *Al Jaziah 1*

### *Summary of the incident*

9.1	Ship	<i>Al Jaziah 1</i>
	Date of incident	24.01.00
	Place of incident	Abu Dhabi, United Arab Emirates
	Cause of incident	Sinking
	Quantity of oil spilled	100-200 tonnes of fuel oil
	Flag State of ship	Honduras
	Gross tonnage (GRT)	681 GRT
	P&I insurer	None
	CLC Limit	3 million SDR (£2.6 million)
	Compensation	All the claims have been settled and paid, for a total amount of Dhs 6.4 million (£870 000). The 1971 and 1992 Funds have each contributed 50% of the amounts paid.
	Legal proceedings:	The Funds have taken recourse action against the shipowner claiming reimbursement of the amount paid in compensation, ie Dhs 6.4 million (£870 000). The Court has decided in favour of the Funds, but it will be very difficult to execute the judgement since the shipowner does not have sufficient assets.

- 9.2 On 24 January 2000, the tanker *Al Jaziah 1* (681 GRT), laden with fuel oil, sank in about ten metres of water five miles north-east of the port of Mina Zayed, Abu Dhabi, United Arab Emirates (UAE). It was estimated that approximately 100 to 200 tonnes of cargo escaped from the wreck. The oil drifted under the influence of strong winds towards the nearby shorelines polluting a number of small islands and sand banks. Some mangroves were also oiled. The sunken vessel was refloated by salvors and taken into the Abu Dhabi Freeport.
- 9.3 The vessel was not entered with any classification society and did not hold any liability insurance.

### *Applicability of the Conventions*

- 9.4 The 1992 Fund Executive Committee and the 1971 Fund Administrative Council decided at their October 2000 sessions that, since the United Arab Emirates was at the time of the *Al Jaziah 1* incident a party to both the 1969/1971 Conventions and the 1992 Conventions, both sets of Conventions applied to the incident, and that the liabilities should be distributed between the 1971 Fund and the

1992 Fund on a 50:50 basis.

*Claims for compensation*

- 9.5 All claims were settled and paid at Dhs 6.4 million (£870 000). The 1971 and 1992 Funds will not be required to make any further compensation payments.

*Recourse action*

- 9.6 At their October 2002 sessions, the governing bodies of the 1971 and 1992 Funds decided that the 1992 Fund should pursue a recourse action against the shipowner on the grounds that the vessel was not seaworthy and that the shipowner was not entitled to limit his liability.
- 9.7 In January 2003 the Funds commenced legal action in the Abu Dhabi Court of First Instance against the entity being the registered owner<sup><4></sup> of the *Al Jaziah 1* and its sole proprietor, requesting that the defendants should pay Dhs 6.4 million (£870 000) to the Funds, the amount to be distributed equally between the 1971 Fund and the 1992 Fund.
- 9.8 In a judgement rendered in March 2008 the Court decided to order the shipowner to pay the Funds an amount of Dhs 6 402 282.00 (£870 000) and that this amount should be distributed equally between the 1971 Fund and the 1992 Fund.
- 9.9 The shipowner has not appealed against the judgement and therefore it has become final.
- 9.10 The Funds have requested the Court to enforce the judgement and at a hearing in July 2008 the Court bailiff informed the Funds' lawyers that the shipowner was in serious financial difficulties. It was suggested that the Funds would have to investigate whether the shipowner had other financial resources to pay in accordance with the judgement.
- 9.11 The Funds' lawyers have been advised by the Court that the shipowner had a heavy burden of debts of some Dhs 63 million including the judgement awarded in favour of the Funds, that the shipowner had been in prison due to his inability to pay his debts and that he had been released recently from prison after having given an undertaking to pay an amount of Dhs 4 200 per month from his salary towards the payment of his debts.
- 9.12 The Funds' lawyers have investigated whether the shipowner has additional assets available to pay the judgement but according to the investigation carried out the shipowner has no additional assets. The Funds' lawyers have advised the Funds that in the present circumstances it would be very difficult to recover the amounts awarded by the Court of First Instance.
- 9.13 At their October 2008 sessions, the governing bodies of the 1971 and 1992 Funds instructed the Director to approach the shipowner to discuss a settlement, taking into account his financial situation.
- 9.14 The Funds, through their lawyers in the United Arab Emirates, have approached the shipowner in accordance with the instructions by the Funds' governing bodies.
- 9.15 There has been no progress in the discussions with the shipowner.

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<sup><4></sup> Under the law of the United Arab Emirates, this type of entity, known as 'sole proprietorship', does not have assets or liabilities separate from its owner.

**10**     **Action to be taken**

1971 Fund Administrative Council

- a)     to take note of the information contained in this document; and
  - b)     to give the Director such other instructions as regards this incident as it may deem appropriate.
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