



**INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND 1971**

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## **REPORT OF THE DIRECTOR**

### **1 Introduction**

1.1 This Report contains a review of some of the main issues relating to the activities of the 1971 Fund since the 18th session of the Assembly. It also deals with the finances of the 1971 Fund for the first eight months of 1996.

1.2 The 1971 Fund's Annual Report for the calendar year 1995 was published in March 1996. This Report attracted great interest from all those dealing with the 1971 Fund as well as from persons and bodies interested in environmental matters in general.

1.3 Since the 18th session of the Assembly, there have been five new incidents involving the 1971 Fund. Several incidents which occurred in previous years still require a considerable amount of work by the Fund Secretariat.

1.4 In June 1996 the Assembly held an extraordinary session to coincide with the 1st session of the Assembly of the 1992 Fund, following the entry into force on 30 May 1996 of the 1992 Protocols amending the 1969 Civil Liability Convention and the 1971 Fund Convention. There are now two intergovernmental Organisations, one established under the 1971 Fund Convention (the 1971 Fund) and another set up under that Convention as modified by the 1992 Protocol thereto (the 1992 Fund). A number of important decisions were taken at the extraordinary session of the 1971 Fund Assembly, in particular that the 1971 Fund Secretariat should administer also the 1992 Fund.

### **2 Membership of the 1971 Fund and external relations**

#### **2.1 1971 Fund Member States**

2.1.1 At the time of the entry into force of the 1971 Fund Convention in October 1978, 14 States were Parties to the 1971 Fund Convention and thus Members of the 1971 Fund. By the time of the 18th session of the Assembly in October 1995, there were 66 Member States.

2.1.2 Four States have acceded to the 1971 Fund Convention since the 18th session of the Assembly. The 1971 Fund Convention entered into force for Mauritania on 15 February 1996, for Tonga on 1 May 1996 and for Bahrain on 1 August 1996, and will enter into force for Switzerland on 2 October 1996. As a result of these developments, the 1971 Fund will have 70 Member States at the time of the 19th session of the Assembly.

2.1.3 A major reason for the smooth functioning of the system of compensation established by the 1969 Civil Liability Convention and the 1971 Fund Convention is the strong support that Governments of Member States have given the 1971 Fund and its Secretariat over the years. In order to establish and maintain personal contacts between the 1971 Fund Secretariat and officials within the national administrations dealing with Fund matters, the Director visits some Member States every year. Since the 18th session of the Assembly, the Director and other officers have visited five Member States for discussions with government officials on the 1971 Fund Convention, the operations of the 1971 and 1992 Funds and the 1992 Protocols.

## 2.2 Relations with non-Member States

2.2.1 Several States are expected to join either the 1971 Fund and/or the 1992 Fund in the near future. Legislation implementing the 1971 Fund Convention and/or the 1992 Protocol thereto is in an advanced stage in Argentina, Chile, Colombia, Ecuador, Honduras, the Islamic Republic of Iran, Israel, Mozambique, New Zealand, Peru, Saudi Arabia, Singapore and Uruguay. Many other States are also examining the question of accession to the Convention and the Protocol.

2.2.2 The 1971 Fund Secretariat has continued its efforts to increase the number of Member States. In order to promote membership, the Director went to Argentina and Uruguay for discussions on the Conventions and the operation of the 1971 Fund and 1992 Fund with government officials and interested circles. The Director also gave a lecture to the students of the World Maritime University in Malmö (Sweden) on liability and compensation for oil pollution damage.

2.2.3 The Director and other Officers have participated in seminars, conferences and workshops on liability and compensation for oil pollution damage and on the operation of the 1971 Fund and 1992 Fund, for example at an Oil Spill Symposium held in Tokyo (Japan), at a Seminar on the Civil Liability Convention and Fund Convention held in Bangkok (Thailand) and at the "Latin American Oil Forum" held in Panama City (Panama).

2.2.4 The Director and other members of the 1971 Fund Secretariat also had discussions with government representatives of non-Member States in connection with meetings within the International Maritime Organization (IMO), in particular during the sessions of the IMO Assembly in November 1995, the IMO Council in November 1995 and June 1996, and during the International Conference in April 1996 which adopted the International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS Convention).

2.2.5 The 1971 Fund Secretariat has, on request, assisted several non-Member States in the elaboration of the national legislation necessary for the implementation of the 1969 Civil Liability Convention and the 1971 Fund Convention.

## 2.3 Relationship with international organisations and interested circles

2.3.1 As in previous years, the 1971 Fund has benefited from close co-operation with many intergovernmental and international non-governmental organisations, as well as with bodies set up by private interests involved in the maritime transport of oil.

2.3.2 The 1971 Fund has particularly close links with IMO and it has observer status with that Organisation. The Secretariat has represented the 1971 Fund at meetings of the IMO Assembly, the IMO

Council and various IMO Committees, as well as at the International Conference which adopted the HNS Convention. The support given by IMO to the 1971 Fund is of great importance in a number of ways. The Director would like to express his profound gratitude to the Secretary-General of IMO and his staff for the assistance they have given the 1971 Fund during the last 12 months.

2.3.3 In the majority of incidents involving the 1971 Fund, clean-up operations are monitored and claims are assessed in close co-operation between the Fund and the P & I Club concerned. The technical assistance required by the 1971 Fund with regard to oil pollution incidents is usually provided by the International Tanker Owners Pollution Federation Limited (ITOPF). The 1971 Fund also co-operates closely with the oil industry, represented by the Oil Companies International Marine Forum (OCIMF) and Cristal Limited. The co-operation between the 1971 Fund and Cristal Ltd is very important, in view of the link which exists between the system of compensation governed by the international Conventions and the voluntary industry schemes (TOVALOP and CRISTAL).

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

### **3 Administration of the 1971 Fund**

#### **3.1 Secretariat**

3.1.1 The Secretariat has at present 14 staff members: the Director, the Legal Officer, the Finance/Personnel Officer, two Claims Officers, the Administrative Officer, the Director's Secretary, five Clerk/Secretaries, a Clerk/Messenger and a Telephonist/Secretary.

3.1.2 At its 18th session, the Assembly authorised the Director to recruit a successor to the Finance Officer, to work for some time with the present incumbent until the latter retired. The Director has appointed Mr Ranjit Pillai to succeed the present Finance Officer. Mr Pillai will join the Secretariat on 18 November 1996.

3.1.3 In June 1996 the Assemblies of the 1971 Fund and 1992 Fund decided that the 1971 Fund and the 1992 Fund would have a joint Secretariat headed by one Director. The 1971 Fund Assembly authorised the 1971 Fund Secretariat to administer also the 1992 Fund and also authorised the Director of the 1971 Fund to perform the function of Director of the 1992 Fund. This arrangement will apply at least so long as the States with major receipts of contributing oil remain Parties to the 1971 Fund Convention. The Director was instructed to study the question of Secretariat functions after the expiry of the transitional period, ie when the compulsory denunciations referred to in section 5.4 below take effect. The Director's report on this matter is contained in document 71FUND/A.19/9.

3.1.4 During the last twelve months the 1971 Fund Secretariat has faced a very heavy workload, which has put considerable pressure on the staff. The strong commitment of all the staff members to their work, as well as their knowledge and expertise, are a great asset to the Organisation and these factors are crucial to the efficient functioning of the Secretariat.

3.1.5 In the light of the discussions held at the 18th session and the 2nd extraordinary session of the Assembly, the Director has submitted to the Assembly for consideration proposals for strengthening and restructuring the resources of the Secretariat (document 71FUND/A.19/10).

3.1.6 In view of the small size of the 1971 Fund Secretariat, the Fund uses consultants to give legal or technical advice or to carry out studies. In a few cases the 1971 Fund and the P & I insurer involved have jointly set up local claims offices to handle large numbers of claims more effectively. The *Aegean Sea* claims office, which was set up in La Coruña (Spain) shortly after the incident which occurred in December 1992, is still operating. The *Sea Empress* claims office was opened in Milford Haven (United Kingdom) in February 1996. The staff at these offices have carried out their duties in an excellent manner.

3.1.7 A number of incidents have necessitated the use of outside experts for technical advice in respect of claims. These experts have rendered invaluable assistance to the 1971 Fund Secretariat and the local claims offices.

### 3.2 Accounts of the 1971 Fund

3.2.1 The expenditure for the administration of the 1971 Fund in 1995 was £1 024 802, compared with the budgetary appropriation of £1 212 880. Details of the accounts of the 1971 Fund for the financial year 1995 are given in the Financial Statements (document 71FUND/A.19/5, Annex IV).

3.2.2 The expenditure for the administration during the first eight months of 1996 amounts to approximately £680 000. The budget appropriation for the whole of 1996 is £1 435 930. It is expected that there will be a budgetary surplus at the end of the year.

3.2.3 As in previous years, excellent co-operation with the External Auditor, the Comptroller and Auditor General of the United Kingdom, has facilitated the administration of the 1971 Fund.

### 3.3 Investment of funds

3.3.1 During 1995 and 1996, funds which were not required for the short-term operation of the 1971 Fund were placed on term deposits with several leading London banks, discount houses and building societies. Apart from deposits placed overnight or for up to seven days fixed, the average rate of interest on the investments in 1995 was 6.8%.

3.3.2 The base rate in London, which stood at 6¼% at the time of the 18th session of the Assembly, was lowered to 6½% on 13 December 1995, to 6¼% on 18 January, to 6% on 8 March and to 5¼% on 6 June 1996. It is estimated that the average rate of interest on the 1971 Fund's investments in 1996 will be approximately 5.9%.

3.3.3 Interest earned during the first eight months of 1996 amounted to £3.7 million, with another £2.7 million due during the remaining four months.

3.3.4 As at 20 September 1996, the 1971 Fund had liquid assets of some £114 million. The reason for the Fund's holding such a large amount is mainly that the settlement of claims arising out of the *Aegean Sea* and *Keumdong N°5* incidents has proceeded much more slowly than expected, and that it has been possible to make only very limited payments in respect of the *Haven* incident due to on-going legal proceedings.

3.3.5 Details of the investments from 1 July 1995 to 30 June 1996 are given in document 71FUND/A.19/3.

3.3.6 At its 17th session, in October 1994, the Assembly decided to set up an Investment Advisory Body, composed of external experts with special knowledge in investment matters, to advise the Director in general terms on such matters. The report of the Investment Advisory Body is contained in document 71FUND/A.19/4.

## 4 Contributions

4.1 The Assembly decided at its 18th session to levy 1995 annual contributions to the General Fund and three Major Claims Funds totalling £43 million as indicated in the following table.

Fund	Date of Incident	Oil Receipts: Applicable Year	Total Levy £	Levy £ per Tonne
General Fund	-	1994	6 million	0.0051345
Braer Major Claims Fund	5.1.93	1992	14 million	0.0143252
Sea Prince/Yeo Myung/Yuil N°1 Major Claims Fund	23.7.95/3.8.95/21.9.95	1994	20 million	0.0170880
Senyo Maru Major Claims Fund	3.9.95	1994	3 million	0.0025632

4.2 The 1995 annual contributions were payable by 1 February 1996. Of the contributions assessed to these funds, 97.47%, 99.64%, 97.47% and 97.47%, respectively, had been paid as at 20 September 1996.

4.3 In respect of contributions levied for previous years, the situation must be regarded as satisfactory. As of 20 September 1996, an amount of £1 041 251 was outstanding, out of which contributors in the former Union of Soviet Socialist Republics owed £429 144, contributors in the former Socialist Federal Republic of Yugoslavia owed £140 803 and an Italian contributor in liquidation owed £150 222.

4.4 At its sessions in October 1994 and October 1995, the Assembly noted the concerns expressed by the Director and the External Auditor relating to the continued failure of some Member States to submit their reports on contributing oil receipts. The Assembly agreed with the Director that the non-submission of these reports constituted a considerable problem. The Assembly drew the attention of Member States to Resolution N°7, adopted in 1988, in which Member States were urged to take the necessary steps to ensure that the reports on contributing oil received in their territories were submitted on time and in the manner prescribed in the 1971 Fund's Internal Regulations.

4.5 The Director regrets to inform the Assembly that the non-submission of the reports on contributing oil receipts by some Member States still constitutes a considerable problem, although there have been some recent improvements in the situation. On 31 March 1996, the date by which Member States should submit their reports of oil received in 1995 in accordance with the 1971 Fund's Internal Regulations, only 15 reports had been received by the Director. By 20 September 1996, 39 reports had been submitted. In addition, some States have still not submitted their reports on contributing oil receipts in previous years (see Annex V of document 71FUND/A.19/8 and document 71FUND/A.19/8/Add.1). In his Report on the Financial Statements for 1995, the External Auditor again commented on the problem of the timely submission of reports on contributing oil (document 71FUND/A.19/5, Annex II, paragraph 18). It should be emphasised that it is of decisive importance for the operation of the 1971 Fund that these reports are actually submitted by governments. If the reports on contributing oil receipts are not submitted to the 1971 Fund, the Director is unable to issue invoices for the contributions in respect of the States concerned. The system of levying contributions will then not function in an equitable manner.

## 5 1992 Protocols to the Civil Liability Convention and the Fund Convention

### 5.1 Entry into force

5.1.1 The Protocols of 1992 amending the Civil Liability Convention and the Fund Convention entered into force on 30 May 1996, and the International Oil Pollution Compensation Fund 1992 (1992 Fund) was created. As at 20 September 1996, 17 States had deposited instruments of ratification or accession to the 1992 Protocol to the Civil Liability Convention and to the 1992 Protocol to the Fund Convention. One State has deposited an instrument of accession to the Protocol to the Civil Liability Convention only. Details of these ratifications are given in document 71FUND/A.19/24.

5.1.2 The Secretary-General of IMO convened the 1st session of the 1992 Fund Assembly in the week commencing 24 June 1996. An extraordinary session of the 1971 Fund Assembly was held during the same week, so that it could take certain decisions in the light of the decisions taken by the 1992 Fund Assembly.

## 5.2 Administrative matters

5.2.1 The Assemblies of the 1971 and 1992 Funds decided that the two Organisations should have a joint Secretariat, that the 1971 Fund Secretariat should, for the time being, administer also the 1992 Fund, and that the Director of the 1971 Fund should also be Director of the 1992 Fund. The Director was instructed to study the question of Secretariat functions after the expiry of the transitional period referred to in section 5.4 below. The Director's report on this matter is contained in document 71FUND/A.19/9.

5.2.2 It was agreed by the Assemblies in June 1996 that the 1971 Fund would make the necessary funds available to the 1992 Fund, as required, to cover the 1992 Fund's administrative expenses and payments of compensation until contributions were received by the 1992 Fund in February 1997.

5.2.3 Following the establishment of the 1992 Fund and the decision to have a joint Secretariat, the 1971 Fund Assembly adopted a number of modifications to the Rules of Procedure of the Assembly, the Internal Regulations, the Financial Regulations and the Staff Regulations. In addition the Assemblies agreed on the sharing of joint administrative costs and on the sharing of joint costs in respect of incidents involving both the 1971 Fund and the 1992 Fund.

5.2.4 It was also decided that the 1971 Fund and the 1992 Fund should publish a joint Annual Report.

## 5.3 Compensation matters

5.3.1 At their sessions in June 1996, the Assemblies of the 1971 Fund and the 1992 Fund considered that it was essential to ensure consistency between the decisions of the 1971 Fund and those of the 1992 Fund on the admissibility of claims, in particular because one incident might involve both Funds.

5.3.2 The Assembly of the 1992 Fund adopted a Resolution to the effect that the report of the 7th Intersessional Working Group of the 1971 Fund should form the basis of the 1992 Fund's policy on the criteria for the admissibility of claims, that the criteria previously laid down by the Executive Committee of the 1971 Fund should be applied also by the 1992 Fund, and that the 1992 Fund should endeavour to ensure consistency, as far as possible, between the decisions of the 1992 Fund and those of the 1971 Fund on the admissibility of claims.

5.3.3 As regards the admissibility of claims in respect of situations not covered by the criteria adopted so far within the 1971 Fund, the Assemblies of both Organisations considered that consistency of decisions between the two Organisations could be achieved through consultations between their competent bodies.

5.3.4 The 1971 Fund Assembly adopted a Resolution (1971 Fund Resolution N°9) to the effect that the 1971 Fund should endeavour to ensure consistency, as far as possible, between the decisions of the 1971 Fund and those of the 1992 Fund on the admissibility of claims.

5.3.5 The Assemblies of the 1992 Fund and the 1971 Fund decided to publish a joint Claims Manual, based on the present (4th) edition of the Claims Manual of the 1971 Fund adopted by the Executive Committee at its 43rd session, and published in June 1995. It was agreed that the text should be revised to reflect the amendments to the Civil Liability Convention and the Fund Convention in the 1992 Protocols thereto, but that it would otherwise remain in its present form, with the information on the criteria for the admissibility of claims unchanged. A draft text of a joint Claims Manual is submitted by the Director in document 71FUND/A.19/18 for consideration by the Assembly.

#### 5.4 Compulsory denunciation of the 1969 and 1971 Conventions

5.4.1 The 1992 Protocol to the Fund Convention provides a mechanism for the compulsory denunciation of the 1969 Civil Liability Convention and the 1971 Fund Convention, when the total quantity of contributing oil received in States Parties to the 1992 Protocol to the Fund Convention, as well as in States which have deposited their instruments of accession in respect of that Protocol, reaches 750 million tonnes (Article 31 of the 1992 Protocol to the Fund Convention). It is expected that the requirements for compulsory denunciation will be fulfilled during the autumn of 1996, by the accession to the 1992 Protocols by the Netherlands. States Parties to the 1992 Protocol to the Fund Convention as well as States which have deposited their instruments of ratification or accession in respect of that Protocol would then have to denounce the 1969 Civil Liability Convention and the 1971 Fund Convention within six months, with effect 18 months after the date on which the compulsory denunciation requirements are fulfilled. On this date, the transitional period will end (Article 36bis of the 1992 Fund Convention), and thereafter a State may be Party either to the 'old' system of the 1969 Civil Liability Convention and the 1971 Fund Convention or to the 'new' system of the 1992 Conventions, but not to both systems.

5.4.2 If a State Party to the 1992 Protocol to the Fund Convention fails to deposit instruments of denunciation of the 1969 Civil Liability Convention and the 1971 Fund Convention during the above-mentioned six-month period, the State will be deemed to have denounced the 1992 Protocols, with effect from the date when such denunciations would have taken effect, ie 18 months after the date on which the compulsory denunciation requirements are fulfilled (Article 34.5 of the 1992 Protocol to the Fund Convention). As a result, such a State would be Party to only the 1969 Civil Liability Convention and the 1971 Fund Convention.

### 6 Incidents Involving the 1971 Fund

#### 6.1 Overview

6.1.1 Since its establishment in October 1978, the 1971 Fund has, up to 20 September 1996, been involved in the settlement of claims arising out of some 75 incidents, and has so far paid compensation or indemnification in respect of 61 incidents. The total amount of compensation and indemnification paid by the 1971 Fund to date is some £133 million.

6.1.2 For details regarding the various incidents with which the 1971 Fund has dealt over the years, reference is made to the 1995 Annual Report and to the updated Statistics (1996) which will be distributed shortly after this session of the Assembly.

6.1.3 The various documents submitted to the 50th session of the Executive Committee give details of incidents which have taken place since the 18th session of the Assembly, as well as of the settlement of claims arising out of earlier incidents.

6.1.4 It is the established policy of the 1971 Fund to settle claims within a short period of the incident in question, wherever possible. The Fund Secretariat does its utmost to continue this policy. The Director also endeavours to ensure that the definition of "pollution damage" is given a uniform interpretation in all 1971 Fund Member States.

#### 6.2 Incidents since the 18th session of the Assembly

6.2.1 Since the 18th session of the Assembly, five incidents have occurred which have given or will give rise to claims against the 1971 Fund, namely the *Honam Sapphire* and *N°1 Yung Jung* incidents which took place in the Republic of Korea, the *Toko Maru* and *Kugenuma Maru* incidents which occurred in Japan, and the *Sea Empress* incident which took place in the United Kingdom. In addition, since the

that session of the Assembly, the 1971 Fund has been notified of claims in respect of the *Kihnu* incident which occurred in Estonia in January 1993.

6.2.2 During berthing manoeuvres on 17 November 1995 at the crude oil terminal in Yosu (Republic of Korea), the fully laden *Honam Sapphire* struck a fender, puncturing a wing tank. An unknown quantity of Arabian heavy crude oil escaped from the damaged tank. The spilt oil drifted south and contaminated shorelines up to 30 kilometres away. So far claims have been agreed for a total of £3.4 million. Claims totalling £42 million are being examined.

6.2.3 On 23 January 1996, while the *Toku Maru* was at anchor off Anegasaki, Chiba prefecture (Japan), a gravel carrier struck the port side of the ship, which was carrying 2 000 tonnes of heavy fuel oil. One of the *Toku Maru*'s tanks was damaged and four tonnes of oil spilled into the sea. Claims for the cost of clean-up operations and fishery damage have been paid by the shipowner's insurer, and it now appears that the Fund will not be called upon to pay compensation.

6.2.4 The *Sea Empress* ran aground near the entrance to Milford Haven harbour in South Wales (United Kingdom) on 15 February 1996. The ship was carrying a cargo of approximately 130 000 tonnes of crude oil. As a result of the grounding several of the ship's tanks were severely damaged and some 6 000 tonnes of its cargo spilled immediately. During unsuccessful attempts to refloat the tanker, further spills of substantial quantities of oil occurred. The *Sea Empress* was finally refloated on 21 February, and the remaining cargo transferred. It is estimated that a total of some 72 000 tonnes of oil escaped. Substantial claims have already been submitted, and further claims for significant amounts are expected.

6.2.5 On 6 March 1996, while the *Kugenuma Maru* was loading heavy fuel oil at an oil terminal in Kawasaki, Kanagawa (Japan), some 120 tonnes of oil overflowed from the cargo tank and spilled into the sea due to the mishandling of the valve used for loading. Clean-up operations were completed the same day. Claims for the cost of clean-up operations are being examined by the 1971 Fund's surveyors.

6.2.6 While taking shelter from an approaching typhoon, the *N°1 Yung Jung* grounded on a submerged uncharted rock on 15 August 1996 off Pusan (Republic of Korea), spilling 28 tonnes of medium fuel oil. Claims for the cost of clean-up operations and for cleaning nearby vessels are being examined. Claims for fishery damage are expected.

6.2.7 The Estonian tanker *Kihnu* grounded on 16 January 1993 close to the port of Tallin (Estonia). It is estimated that some 100 tonnes of heavy fuel oil and 40 tonnes of diesel oil were spilled as a result of the grounding. In December 1995 the Finnish Environment Agency submitted a claim to the 1971 Fund for the cost of measures taken by the Finnish authorities in Estonian territorial waters, maintaining that there was a risk that the oil would be taken by winds and currents to the coast of Finland, which is only some 80 kilometres north of Tallin. The Executive Committee considered, at its 49th session, that although the claim of the Finnish authorities related to activities undertaken within the territorial waters of a non-Member State (Estonia), the measures were taken to prevent or minimise pollution damage within the territory or territorial sea of Finland, a 1971 Fund Member State. The Committee decided, therefore, that the measures taken by the Finnish authorities in principle fell within the scope of application of the 1969 Civil Liability Convention and the 1971 Fund Convention.

### 6.3 Previous incidents with outstanding claims

6.3.1 In addition to the new incidents, there are, as at 20 September 1996, outstanding third party claims in respect of 11 incidents, namely the *Haven*, *Aegean Sea*, *Braer*, *Keumdong N°5*, *Iliad*, *Dae Woong*, *Sea Prince*, *Yeo Myung*, *Shinryu Maru N°8* and *Yuil N°1* incidents, as well as claims following pollution from an unknown source in Morocco.

6.3.2 The *Haven* incident, which occurred in Italy in April 1991, caused serious oil pollution in Italy and also affected France and Monaco. Some 1 350 claims for compensation have been submitted to the Court of first instance in Genoa for a total amount corresponding to approximately £660 million; however,



a number of claims are duplications. On 5 April 1996, the judge in the Court of first instance in Genoa, who is in charge of the limitation proceedings in the *Haven* case, determined the admissible claims for compensation ("stato passivo"). The claims admitted by the judge totalled approximately £78 million, and included the Italian Government's claim relating to environmental damage for an amount of £16.8 million. The judge held that the amounts determined by him should be increased by interest and that many claims should also be increased to compensate for devaluation. The 1971 Fund has lodged opposition in respect of a number of claims.

6.3.3 The aggregate amount of the claims greatly exceeds the total amount of compensation available under the Civil Liability Convention and the Fund Convention, viz 900 million (gold) francs, which in the 1971 Fund's view corresponds to 60 million Special Drawing Rights (SDRs) or Lit 102 643 800 000 (£39.4 million). However, the Court of first instance in Genoa had fixed the maximum amount payable by the 1971 Fund at Lit 771 397 947 400 (£296 million), calculated on the basis of the free market value of gold. The 1971 Fund had appealed against the Court's judgement. In a judgement rendered on 30 March 1996, the Court of Appeal confirmed the position taken by the Court of first instance that the maximum amount payable by the Fund should be calculated by the application of the free market value of gold. The Executive Committee has instructed the Director to take the necessary steps to appeal against the Court of Appeal's judgement to the Supreme Court of Cassation.

6.3.4 The situation in respect of the claims arising out of the *Haven* incident is described in some detail in document 71FUND/EXC.50/3. As set out in that document, the 1971 Fund has maintained in the legal proceedings in Italy that the majority of the claims arising out of the *Haven* incident became time-barred as regards the 1971 Fund on or shortly after 11 April 1994.

6.3.5 In June 1995, the Executive Committee instructed the Director to continue the negotiations with the claimants in the *Haven* case and authorised him to agree, on behalf of the 1971 Fund, to a global settlement within the framework of a total amount of Lit 137 643 800 000 (£53 million), on certain terms and conditions. That amount would have been made up as follows: the shipowner/his insurer would contribute the shipowner's limitation fund under the 1969 Civil Liability Convention (Lit 23 950 220 000 or £9.2 million) plus interest on this amount (Lit 10 000 million or £3.8 million) and an additional ex-gratia payment (Lit 25 000 million or £9.6 million); the 1971 Fund would contribute an amount of Lit 78 693 580 000 or £30.2 million corresponding to the difference between the shipowner's limitation fund and the maximum of 60 million SDR (Lit 102 643 800 000 or £39.4 million) payable under the 1971 Fund Convention. The Executive Committee stated that the negotiations with the claimants should be without prejudice to the 1971 Fund's position in respect of the question of time-bar, pending a solution of all outstanding issues. However, no agreement on the proposed global settlement was reached. Since the Italian Government had not accepted the offer nor had given an indication that it was looking favourably at the offer, the Assembly at its 18th session considered this to mean that the offer had been rejected. Since that session, neither the Italian Government nor any other claimant has approached the 1971 Fund on the issue of a global settlement.

6.3.6 Following the French Government's undertaking to use the agreed claim of the French State as security, the 1971 Fund paid compensation to 33 public bodies in France (other than the State) in April 1996 for a total of £1.4 million. Two Italian claimants whose claims were not considered to be time-barred will be paid by the 1971 Fund in October 1996, following the submission of bank guarantees which give the Fund adequate protection against overpayment.

6.3.7 Claims arising from the *Aegean Sea* incident (Spain, 3 December 1992) have been submitted for a total amount of some £125 million. Claims became time-barred on or shortly after 3 December 1995. The 1971 Fund has paid approximately £4.2 million in compensation, and the shipowner's P & I insurer has paid some £4.0 million.

6.3.8 On 30 April 1996, the Criminal Court in La Coruña rendered a judgement dealing with both the criminal liability of the master and pilot of the *Aegean Sea* and a number of claims for compensation. The Court accepted claims for a total of £4.3 million. In respect of most of the claims the Court considered that there was not sufficient evidence for it to assess the quantum of the damage suffered

and for this reason, the Court referred these claims to the procedure of the execution of the judgement. The 1971 Fund appealed against the judgement in respect of a number of claims, in particular because they did fall within the concepts of "pollution damage" and "preventive measures". A number of other parties have also appealed against the judgement.

6.3.9 Claims arising from the *Braer* incident (United Kingdom, 5 January 1993) became time-barred on or shortly after 5 January 1996. The 1971 Fund has paid approximately £41 million in compensation, and the shipowner's P & I insurer has paid some £4.8 million. Further claims amounting to £1.9 million have been agreed. In addition, claims amounting to £75 million have been submitted to the Court of Session in Edinburgh. The total amount of the claims presented exceeds the maximum available under the 1969 Civil Liability Convention and the 1971 Fund Convention, viz 60 million SDRs (£57 million). In view of the uncertainty as regards the outstanding claims, the Executive Committee decided, at its 44th session, to suspend any further payments of compensation. No progress has been made in the court proceedings.

6.3.10 The *Keumdong N°5* incident (Republic of Korea, 27 September 1993) has also given rise to a large number of claims which originally totalled some £150 million. All claims relating to the clean-up operations have been settled and paid for a total amount of £4.6 million. Certain claims by fishermen have been agreed for some £5.5 million. Further claims in this category, amounting to £6.9 million, are pending in court, but the claimants have reserved their right to increase their claims significantly.

6.3.11 Claims for compensation totalling some £8.5 million have been lodged in the competent Greek court following the *Iliad* incident (Greece, 9 October 1993).

6.3.12 As for the spill from an unknown source in Morocco on 30 November 1994, the Director has informed the Moroccan authorities that it has not been shown that the spill originated from a ship carrying oil in bulk as cargo and that therefore the claim for compensation cannot be accepted (cf Article 4.2(b) of the 1971 Fund Convention). The Moroccan authorities are examining the issue.

6.3.13 All claims for clean-up operations in respect of the *Dae Woong* incident (Republic of Korea, 27 June 1995) have been settled and paid for a total of £35 000. It is expected that there will be claims for fishery damage but no such claims have been submitted yet.

6.3.14 The claims agreed so far in respect of the *Sea Prince* incident (Republic of Korea, 23 July 1995) total approximately £15.6 million. Further claims for a total of some £63 million are being examined, and most of these claims have been filed in court.

6.3.15 In respect of the *Yeo Myung* incident (Republic of Korea, 3 August 1995), claims agreed so far amount to £600 000, and further claims totalling £7.6 million are pending in court.

6.3.16 Claims arising from the *Shinryu Maru N°8* incident (Japan, 4 August 1995) have been agreed for a total of £54 600.

6.3.17 As for the *Yuil N°1* incident (Republic of Korea, 21 September 1995), claims for clean-up operations and fishery damage have been agreed for a total of some £11.7 million. Further claims for clean-up and fishery damage amounting to some £47 million are being examined and these claims have been filed in court.

## 7 Looking ahead

7.1 When the 1971 Fund Convention entered into force in October 1978, the 1971 Fund had 14 Member States. The number of Member States has grown to 70. The 1971 Fund is now a truly worldwide Organisation. The expansion of membership demonstrates that the international community has found the system of compensation created by the 1969 Civil Liability Convention and the 1971 Fund Convention a viable one, providing compensation to victims of oil pollution damage.

7.2 As mentioned above, the 1992 Protocols amending the 1969 Civil Liability Convention and the 1971 Fund Convention came into force on 30 May 1996, thereby ensuring the viability of the international system of compensation established by the 1969 Civil Liability Convention and the 1971 Fund Convention in the future.

7.3 The smooth operation of the 1971 Fund has only been possible due to the strong support which the Organisation has enjoyed over the years from the Governments of Member States. The close co-operation with the P & I Clubs has greatly facilitated the activities. The 1971 Fund has also had the benefit of important support from the shipping and oil industries. It is crucial for the 1971 Fund and the 1992 Fund that they continue to enjoy this strong support from governments and public bodies as well as from the various private interests involved in oil spills.

7.4 It is an essential task for the 1971 Fund and the 1992 Fund and their joint Secretariat to develop further the international compensation system, so as to ensure that this system continues to meet the needs of society in respect of compensation for oil pollution damage.

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