INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1971

ASSEMBLY
24th session
Agenda item 19

71FUND/A.24/16/11
20 September 2001
Original: ENGLISH

INCIDENTS INVOLVING THE 1971 FUND

OTHER INCIDENTS

Note by the Director

Summary:	In this document developments are considered regarding the following incidents: *Vistabella, Keumdong N°5, Iliad, Yeo Myung, Yuil N°1, Kriti Sea, Osung N°3, Katja, Kyungnam N°1* and *Maritza Sayalero.*
Action to be taken:	Information to be noted.

1 Vistabella

(Caribbean, 7 March 1991)

The incident

1.1 While being towed, the sea-going barge *Vistabella* (1 090 GRT), registered in Trinidad and Tobago and carrying approximately 2 000 tonnes of heavy fuel oil, sank to a depth of over 600 metres, 15 miles south-east of Nevis. An unknown quantity of oil was spilled as a result of the incident, and the quantity which remained in the barge is not known.

1.2 The *Vistabella* was not entered in any P & I Club but was covered by a third party liability insurance with a Trinidad insurance company. The insurer argued that the insurance did not cover this incident. The limitation amount applicable to the ship was estimated at FFr2 354 000 (£225 000). No limitation fund was established. It was unlikely that the shipowner would be able to meet his obligations under the 1969 Civil Liability Convention without effective insurance cover. The

shipowner and his insurer did not respond to invitations to co-operate in the claim settlement procedure.

1.3 The 1971 Fund paid compensation amounting to FFr8.1 million (£986 500) to the French Government in respect of clean-up operations. Compensation was paid to private claimants in St Barthélemy and the British Virgin Islands and to the authorities of the British Virgin Islands for a total of some £14 250.

Court proceedings

1.4 The French Government brought legal action against the owner of the *Vistabella* and his insurer in the Court of first instance in Basse-Terre (Guadeloupe), claiming compensation for clean-up operations carried out by the French Navy. The 1971 Fund intervened in the proceedings and acquired by subrogation the French Government's claim. The French Government withdrew from the proceedings.

1.5 In a judgement rendered in 1996 the Court of first instance held that the 1969 Civil Liability Convention was not applicable, since the *Vistabella* had been flying the flag of a State (Trinidad and Tobago) which was not Party to that Convention, and instead the Court applied French domestic law. The Court accepted that, on the basis of subrogation, the 1971 Fund had a right of action against the shipowner and a right of direct action against his insurer. The Court held that it was not competent to consider the 1971 Fund's recourse claim for damage caused in the British Virgin Islands. The Court awarded the Fund the right to recover the total amount which it had paid for damage caused in the French territories.

1.6 The 1971 Fund took the view that the judgement was wrong on two points. Firstly, the 1969 Civil Liability Convention which formed part of French law applied to damage caused in a State Party to that Convention, and this was independent of the State of the ship's registry. Secondly, the French courts were competent under that Convention to consider claims for damage in any State Party (including the British Virgin Islands). The 1971 Fund decided nevertheless not to appeal against this judgement as regards the applicability of the 1969 Civil Liability Convention, as it would hardly have any value as a precedent in other cases, since the Court had awarded the 1971 Fund the total amount paid by it for damage in the French territories and as the amount paid by the Fund for damage outside those territories was insignificant.

1.7 The shipowner and the insurer appealed against the judgement.

1.8 The Court of Appeal rendered its judgement in March 1998. In the judgement - which dealt mainly with procedural issues - the Court of Appeal held that the 1969 Civil Liability Convention applied to the incident, since the criterion for applicability was the place of the damage and not the flag State of the ship concerned. The Court further held that the Convention applied to the direct action by the 1971 Fund against the insurer. It was held that this applied also in respect of an insurer with whom the shipowner had taken out insurance although not having been obliged to do so, since the ship was carrying less than 2 000 tonnes of oil in bulk as cargo.

1.9 The case was referred back to the Court of first instance. In a judgement rendered on 2 March 2000 the Court of first instance ordered the insurer to pay to the 1971 Fund FFr8 239 858 (£771 000) plus interest from 22 March 1993.

1.10 The insurer has appealed against the judgement.

2 ***Keumdong Nº5***

2.1 On 27 September 1993 the Korean barge *Keumdong Nº5* (481 GRT) collided with another vessel near Yosu on the southern coast of the Republic of Korea. As a result an estimated 1 280 tonnes of heavy

fuel oil was spilled from the *Keumdong Nº5*. The oil quickly spread over a wide area due to strong tidal currents and affected mainly the north-west coast of Namhae island.

2.2 The *Keumdong Nº5* was entered in the Standard Steamship Owners' Protection and Indemnity Association (Bermuda) Ltd (Standard Club).

Claims for compensation

2.3 Claims relating to the cost of clean-up operations were settled at an aggregate amount of Won 5 600 million (£2.5 million) and were paid by the Standard Club by September 1994. The total amount paid by the Standard Club by far exceeds the limitation amount applicable to the *Keumdong Nº5*, Won 77 million (£41 000). The 1971 Fund has made advance payments to the Standard Club totalling US$6 million (£4 million) in respect of the Club's subrogated claims.

2.4 The incident affected fishing activities and the aquaculture industry in the area. Claims for compensation were submitted by the Kwang Yang Bay Oil Pollution Accident Compensation Federation, representing 11 fishery co-operatives with some 6 000 members. The total amount of the claims presented was Won 93 132 million (£50 million).

2.5 During the period July 1995 - September 1996 agreements were reached on most of the claims presented by the Kwang Yang Bay Federation. The amounts agreed totalled Won 6 163 million (£4.2 million), compared with a total amount claimed of Won 48 047 million (£33 million). These claims have been paid in full for the agreed amounts.

2.6 In August 2000 a claim by an arkshell fishery co-operative which was the subject of a legal action against the 1971 Fund was paid in the amount of Won 412 million (£260 000) plus interest in accordance with a mediation decision by the Appellate Court (cf document 71FUND/A.23/14/3, paragraphs 3.20 – 3.30).

Legal action by Yosu Fishery Co-operative

2.7 The Yosu Fishery Co-operative left the Kwang Yang Bay Federation and took legal action against the 1971 Fund in May 1996 in the Seoul District Court. Claims were filed in court for damage to common fishing grounds totalling Won 17 162 million (£9.2 million). In addition, claims totalling Won 1 641 million (£882 000) were submitted by over 900 individual members of this co-operative (fishing boat owners, set net fishing licence holders and onshore fish culture facility operators).

2.8 The experts engaged by the 1971 Fund and the Standard Club assessed the losses allegedly suffered by all the claimants of the Yosu Fishery Co-operative at Won 810 million (£435 000). The experts considered that the alleged productivity of the common fishery grounds was exaggerated and inconsistent with official records and field observations, and that the interruption of business was significantly shorter than that alleged by the claimants. The loss of earnings claimed by the fishing boat and set net operators was considered too high in the light of an analysis of information provided by the claimants concerning their normal fishing activity, and certain claims related to losses suffered outside the area affected by the oil. The operators of the fish culture facilities did not provide any evidence that the alleged losses were caused by the oil spill.

2.9 The Seoul District Court rendered a compulsory mediation decision in December 1998. The Court accepted most of the 1971 Fund's arguments, but decided that the compensation for unregistered and unlicensed fishing boat claimants should be calculated in the same way as for registered and licensed claimants. Although the Court did not give a detailed explanation for its decision, it stated that income from business prohibited by law was not necessarily an illegal income which was inadmissible for compensation. The Court stated that when deciding on the admissibility of claims the Court should take into account, on a case by case basis, the original purpose of the law in question, the degree of blameworthiness of the claimant and the degree of illegality of the act. In the

Court's view the income of unlicensed fishermen in this case did not appear to be illegal income. The Court awarded the unlicensed fishing boat claimants Won 65 million (£35 000).

2.10 The position taken by the Court in the mediation decision was at variance with the policy adopted by the 1971 Fund, ie that claims for loss of income by fishermen operating without a required licence were inadmissible. The 1971 Fund therefore lodged an opposition to the Court's mediation decision.

2.11 In a judgement rendered in January 1999 the District Court found that the claimants had suffered damage due to the oil pollution, but rejected their calculation of their losses due to the lack of information on the income of individual fishermen, the unreliability of the evidence they presented, the unreliability of part of the testimony of the Chairman of the Yosu Fishery Co-operative and the lack of a direct causal relationship between the alleged losses of income and the incident.

2.12 In determining the amount of the damage the District Court awarded compensation for both loss of earnings and pain and suffering (condolence money) in respect of common fishing grounds and intertidal culture farms, for loss of earnings only in respect of fishing vessels and for pain and suffering only in respect of cage culture farms, one onshore aquarium and one onshore hatchery. The total amount awarded by the Court was Won 1 571 million (£844 000).

2.13 In addition, the District Court decided that the 1971 Fund should pay interest on the awarded amounts, calculated at 5% per annum from 27 September 1993 to 26 January 1999 and at 25% per annum from 27 January 1999 to the date of payment. The Court decided that the claimants should bear 9/10 and the 1971 Fund 1/10 of the legal costs that were incurred by the plaintiffs and the 1971 Fund.

2.14 All the claimants belonging to the Yosu Fishery Co-operative, with the exception of one village fishery association, appealed against the judgement. Their total claimed amount was indicated in the appeal at Won 13 868 million (£7.5 million).

2.15 At its 61st session the Executive Committee examined the reasoning in the District Court's judgement. The Director was instructed to pursue appeals in respect of the questions of fact, the decision to allow compensation for pain and suffering, the apparently arbitrary methods used to determine compensation and the decision to award compensation to fishermen operating in breach of the licensing requirements (document 71FUND/EXC.61/14, paragraphs 4.4.3 - 4.4.6).

2.16 The 1971 Fund lodged appeals against the District Court's judgement. The Court granted provisional enforcement of the judgement. In connection with its appeals the 1971 Fund requested a stay of the provisional enforcement. Under Korean law the Court has the discretion to grant such a stay, but in order for a request for stay to be granted, the defendant has to make a deposit with the Court of the amount awarded to the plaintiff. The 1971 Fund deposited Won 1 571 million (£795 000) with the Court. The Court subsequently granted a stay of the provisional enforcement.

2.17 In May 2001 the Appellate Court rendered its judgement in respect of the claims by the Yosu Co-operative. The Appellate Court overturned the judgement of the District Court in respect of losses due to pain and suffering and losses in respect of unlicensed and unregistered fishing activities.

2.18 In its consideration of whether claims for pain and suffering were admissible, the Appellate Court examined first the definition of "pollution damage" in the Korean Oil Pollution Guarantee Act and the 1969 Civil Liability Convention. The Court stated that there were no concrete standards in the international conventions in relation to the definition of pollution damage and that therefore *lex fori* (the law of the State of the court seized) would apply. The Court then examined the legislation in various States. It noted that the legislation in the country accepting the broadest scope of liability, the United States (the Oil Pollution Act 1990), did not make reference to damage resulting from pain and suffering, neither did the Japanese legislation. The Court also noted that the Guidelines of Comité Maritime International (CMI) restricted compensation to proven economic loss or damage.

2.19 Referring to the fact that there were no generally accepted principles in the common law system and the continental law system as to compensation for pain and suffering and no internationally adopted standards on this point, the Court took the view that there should not be a difference in the application of the Conventions among Contracting States. In view of this and the special international nature of the 1971 Fund, the Court held that pollution damage under the Korean Act should include only the economic and property damages. For this reason the Court held that claims for pain and suffering were not admissible.

2.20 As regards the claims in respect of unregistered and unlicensed fishing activities, the Appellate Court noted that so-called "illegal income" earned through the continued carrying out of illegal activities should not be used as a basis for the determination of compensation. However, the Court stated that a certain income should not be regarded as illegal income only because the law prohibited the activities in question. The Appellate Court referred to a judgement by the Korean Supreme Court, according to which the issue of whether a certain income was illegal should be determined on the basis of the original purpose of the legislation in question, the degree of blameworthiness of the activity, and in particular the degree of illegality of the activity, on a case-by-case basis. The Appellate Court held that in the light of the special position of the 1971 Fund and the 1971 Fund Convention and the fact that a restrictive interpretation of the concept of 'pollution damage' would be closer to international standards, the income of the plaintiffs who did not have the licenses, permits or registrations required under the Korean Fisheries Act to carry out their activities should be regarded as illegal income which could not be included in the calculation of compensation. The Court therefore rejected these claims. The Court also stated that there was no evidence that the claimants who did not have licenses, permits or registrations had suffered the alleged loss of income due to the incident and that there was no evidence of any link of causation between the incident and the alleged reduction in income.

2.21 The Appellate Court upheld the decision of the District Court in respect of loss of earnings due to business interruption caused by the clean-up of licensed common fishing grounds and intertidal culture farms.

2.22 In the judgement the Appellate Court ordered the Fund to pay Won 142 743 033 (£77 000) plus interest of 5% per annum from 27 September 1993 to 8 May 2001 and 25% per annum from 9 May 2001 until the date of payment.

2.23 In view of the fact that the 1971 Fund's position on matters of principle had been accepted, ie that compensation should not be granted for pain and suffering and for losses in respect of unlicensed and unregistered fishing activities, the Director decided that the Fund should not appeal against the decision by the Appellate Court in respect of the claims by Yosu FCU. Although the individual members of the Yosu FCU did not appeal against the decision, 36 village fishery associations appealed to the Korean Supreme Court.

2.24 The amount claimed in the appeal is Won 2 756 million (£1.5 million).

3 *Illiad*

(Greece, 9 October 1993)

3.1 The Greek tanker *Iliad* (33 837 GRT) grounded on rocks close to Sfaktiria island after leaving the port of Pylos (Greece). The *Iliad* was carrying about 80 000 tonnes of Syrian light crude oil, and some 200 tonnes was spilled. The Greek national contingency plan was activated and the spill was cleaned up relatively rapidly.

3.2 In March 1994 the shipowner's P & I insurer established a limitation fund amounting to Drs 1 496 533 000 (£2.8 million) with the competent court by the deposit of a bank guarantee.

3.3 The Court decided that claims should be lodged by 20 January 1995. By that date, 527 claims had been presented, totalling Drs 3 071 million (£5.7 million) plus Drs 378 million (£696 000) for compensation of 'moral damage'.

3.4 The Court appointed a liquidator to examine the claims in the limitation proceedings. It is expected that this examination will be completed in the near future.

3.5 Claims against the 1971 Fund in respect of this incident became time-barred on or shortly after 9 October 1996.

3.6 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 (£1.4 million), also interrupted the time bar period in respect of the claims by taking legal action against the 1971 Fund. All other claims have become time-barred *vis-à-vis* the Fund.

4 ***Yeo Myung***

(Republic of Korea, 3 August 1995)

4.1 The Korean tanker *Yeo Myung* (138 GRT), laden with some 440 tonnes of heavy fuel oil, collided with a tug which was towing a sand barge off Maemul island, near Koeje island (Republic of Korea). Two of the tanker's cargo tanks were breached and about 40 tonnes of oil was spilled which necessitated clean-up operations.

4.2 As regards the cause of the incident, the clean-up operations and previous claims handling, reference is made to documents FUND/EXC.44/12, 71FUND/EXC.55/6, 71FUND/EXC.57/5, 71FUND/EXC.58/4 and 71FUND/EXC.59/6.

4.3 Claims relating to clean-up, fishery and tourism for a total of Won 24 483 million (£13 million) have been settled at a total of Won 1 554 million (£990 000). These claims have been paid in full.

4.4 The only outstanding claim is within the fisheries sector. The amount claimed is Won 335 million (£180 000), whereas the claim has been assessed by the 1971 Fund's experts at Won 459 000 (£247).

4.5 The shipowner commenced limitation proceedings at the competent District Court. The limitation fund was established by the shipowner's P & I insurer by payment of the limitation amount of Won 21 million (£9 200) to the Court.

4.6 In September 1999 the Court held a hearing at which the 1971 Fund filed its subrogated claims against the shipowner's limitation fund. At the Court's request the 1971 Fund has submitted a copy of the Fund's experts' assessment report.

4.7 There has been no progress in the limitation proceedings during the last twelve months.

5 ***Yuil N°1***

(Republic of Korea, 21 September 1995)

5.1 The *Yuil N°1* (1 591 GRT), carrying approximately 2 870 tonnes of heavy fuel oil, ran aground on the island of Namhyeongjedo off Pusan (Republic of Korea). The tanker was refloated but while being towed towards the port of Pusan, the tanker sank in 70 metres of water, ten kilometres from the mainland.

5.2 As for the clean-up operations, reference is made to document 71FUND/EXC.55/6.

5.3 Operations to recover the oil from the *Yuil N°I* were carried out from 24 June to 31 August 1998 under a contract between the Korean Marine Pollution Response Corporation (KMPRC) and a Dutch salvage company. Some 670 m^3 of oil was recovered.

5.4 KMPRC submitted claims for compensation in relation to the *Yuil N°I* oil removal operation. The claims were settled at a total of Won 6 824 million (£3.2 million) and were paid in full by the 1971 Fund.

5.5 All clean-up claims arising out of this incident have been settled at a total of Won 12 393 million (£8.5 million). The shipowner's insurer paid some of these claims in full, and the 1971 Fund reimbursed 60% of these payments to the insurer. The 1971 Fund will reimburse the balance (40%) of these payments minus the shipowner's limitation amount after that amount has been established in Won.

5.6 Fishery claims totalling Won 14 399 million (£7.7 million) have been filed in court. These claims have been assessed by the Fund's experts at Won 441 million (£237 000) and have not yet been settled.

5.7 The owner of the *Yuil N°I* commenced limitation proceedings at the Pusan District Court in April 1996. The limitation amount applicable to the *Yuil N°I* is estimated at Won 250 million (£160 000).

5.8 Fishery co-operatives presented claims totalling Won 60 000 million (£32 million) to the Court.

5.9 At a court hearing held in October 1996, an administrator appointed by the Court presented an opinion to the effect that there was not sufficient evidence to enable him to make an assessment of the fishery claims. However, he stated that since he was required to present an opinion on the assessment to the Court, he proposed that the Court should accept one third of the claimed amounts as reasonable.

5.10 In November 1997 the Court decided to adopt the administrator's proposal to accept one third of the amounts claimed as fishery damage. The 1971 Fund lodged opposition to the Court's decision. There has been no development in these proceedings.

6 ***Kriti Sea***

(Greece, 9 August 1996)

6.1 The Greek tanker *Kriti Sea* (62 678 GRT) spilled 20 - 50 tonnes of Arabian light crude while discharging at an oil terminal in the port of Agioi Theodori (Greece) some 40 kilometres west of Piraeus. Rocky shores and stretches of beach were oiled, seven fish farms were affected and the hulls of pleasure craft and fishing vessels in the area sustained oiling.

6.2 Clean-up operations were undertaken by the staff of the terminal and by contractors engaged by the shipowner, the Ministry of Merchant Marine and the local authorities.

6.3 The limitation amount applicable to the *Kriti Sea* is estimated at Drs 2 241 million (£4.1 million). The shipowner established the limitation fund in December 1996 by means of a bank guarantee.

6.4 The shipowner and his P & I insurer and the administrator appointed by the Court to examine claims against the limitation fund were notified of claims totalling Drs 4 054 million (£7.5 million). The administrator reported on his examination of the claims in March 1999. The total amount of the claims accepted by the administrator was Drs 1 153 million (£2 million).

6.5 The experts engaged by the shipowner’s insurer and the 1971 Fund do not agree with a number of the assessments carried out by the administrator. Appeals have been lodged in court by the shipowner, the shipowner's insurer and the 1971 Fund in respect of those claims. A number of claimants have

also appealed against the decision of the administrator, and the amounts set out in the appeals total Drs 2 680 million (£4.9 million). The Court's decision is expected in early 2002.

6.6 In order to prevent their rights becoming time-barred the shipowner and his insurer served a writ on the 1971 Fund in August 1999 in respect of claims in excess of the shipowner's limitation fund as well as a claim for indemnification under Article 5.1 of the 1971 Fund Convention in the amount of Drs 556 million (£1 million).

7 ***Osung N°3***

(Republic of Korea, 3 April 1997)

The incident

7.1 The *Osung N°3* (786 GRT), registered in the Republic of Korea, ran aground in the Pusan area and sank to a depth of 70 metres. The vessel was carrying about 1 700 tonnes of heavy fuel oil. Oil was spilled immediately, but it was not possible to assess the quantity spilt or the quantity remaining on board. Oil originating from the *Osung N°3* reached the sea adjacent to Tsushima island in Japan on 7 April 1997.

7.2 Concerning the clean-up operations in the Republic of Korea and Japan, reference is made to document 71FUND/EXC.59/7.

7.3 Operations to remove the oil from the *Osung N°3* were carried out from 2 September to 9 November 1998 under a contract between Korean Marine Pollution Response Corporation (KMPRC) and a Dutch salvage company. It had been estimated that the wreck had some 1 400 tonnes of oil in its tanks, but only 27 m^3 was recovered.

Claims for compensation

7.4 KMPRC submitted claims for compensation in relation to the oil removal operation. These claims were settled at a total of Won 6 739 million (£3.2 million) and were paid in full by the 1971 Fund.

7.5 As regards the Republic of Korea, claims for compensation were presented by the Korean Marine Police, some local authorities, the charterer of the *Osung N°3* and a number of contractors for participation in the clean-up operations and the inspection of the sunken vessel, and by two fishery co-operative associations for loss of income. Claims totalling Won 1 219 million (£668 000) were settled at Won 935 million (£597 000).

7.6 Seven claims totalling ¥732 million (£4.8 million) were submitted for clean-up operations carried out in Japan. Six of these claims, for 681 million (£4.4 million), were settled at ¥609 million (£4 million).

7.7 The remaining claim for ¥51 million (£300 000) was submitted by the Japanese Self Defence Forces (JSDF). The 1971 Fund assessed this claim at ¥47.5 million (£280 000). The 1971 Fund rejected certain items, since it had considered it not reasonable for the JSDF to carry out regular aerial reconnaissance of oil on shorelines. The Fund also considered that it had been unnecessary for the Maritime Self Defence Forces to use vessels to search for oil on the sea surface when the Maritime Safety Agency had been providing aerial reconnaissance. The JSDF took legal action against the 1971 Fund. In December 2000 the Court rendered a judgement accepting the claim made by JSDF. The Court considered that the aerial surveillance carried out by JSDF was reasonable in order to enable JSDF to pursue a quick and efficient clean-up. The 1971 Fund decided not to appeal against the judgement, since it was unlikely that an Appellate Court would overrule the assessment of the Court of first instance as to the facts, and taking into account the small amount in dispute. The amount awarded by the Court was paid to JSDF in early 2001.

7.8 A claim was presented by a Japanese fishery co-operative association for ¥282 million (£1.9 million) for loss of income caused by the oil spill. This claim was settled at ¥182 million (£1.2 million).

Limitation proceedings

7.9 The *Osung Nº3* was not entered in any P & I Club, but had liability insurance up to a limit of US$1 million (£714 000) per incident. The limitation amount applicable to the vessel under the 1969 Civil Liability Convention is Won 153 005 346 (£87 600).

7.10 The shipowner applied to the competent Korean court for the commencement of limitation proceedings, which was granted in October 1997. The limitation fund was established on 27 February 2001.

7.11 The indemnification of the shipowner, Won 37 963 635 (£20 500), has not yet been paid.

8 ***Katja***

(France, 7 August 1997)

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

8.2 Clean-up operations within the port area were arranged by the port authority and the operators of various berths. The cleaning of the beaches was organised by the local authorities. Bathing and watersports were prohibited for a short time (one or two days) while oil remained on the beaches. Some shrimp fishermen from Le Havre were prevented from storing their catch in the port, as is their custom.

8.3 At the time of the incident, the Bahamas was not Party to the 1992 Civil Liability Convention. The limitation amount applicable to the *Katja* is therefore to be determined in accordance with the 1969 Civil Liability Convention and is estimated at FFr48 million (£4.6 million).

8.4 A claim presented by the French Government for clean-up costs was settled in July 2000 at FFr1 356 075 (£127 000). Other claims relating to clean-up, property damage and loss of income in the fisheries sector were settled at a total of FFr15.1 million (£1.4 million).

8.5 Legal actions have been 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 FFr9 million (£860 000).

8.6 Further claims became time-barred on or shortly after 7 August 2000.

8.7 It is practically certain that all claims will be settled for an amount lower than the limitation amount applicable to the *Katja* under the 1969 Civil Liability Convention. It is unlikely, therefore, that the 1971 Fund will be called upon to make any payments in this case.

9 ***Kyungnam N°1***

(Republic of Korea, 7 November 1997)

The incident

9.1 The coastal tanker *Kyungnam N°1* (168 GRT), registered in the Republic of Korea, ran aground off Ulsan (Republic of Korea). The Marine Police estimated that about one tonne of cargo oil was spilled. The 1971 Fund's experts estimate, however, that there was a spill of some 15 - 20 tonnes. The spilt oil affected several kilometres of rocky shoreline.

9.2 There are significant aquaculture activities along the affected coast. Some sea mustard farms and some set nets were contaminated, as well as 20 - 30 small fishing vessels which were moored in the area at the time of the incident.

9.3 The Marine Police carried out all offshore clean-up operations. Local fishermen and divers were engaged by the shipowner to carry out manual clean-up operations on shore.

Claims for compensation

9.4 Thirty-one claims totalling Won 971 million (£522 000) have been submitted.

9.5 At its 60th session the Executive Committee decided that, in view of the relatively small amounts involved, the 1971 Fund should pay all established claims in full and present subrogated claims against the shipowner's limitation fund (document 71FUND/EXC.60/17, paragraph 3.11.2). As a result of that decision, the 1971 Fund paid Won 229 million (£122 000) to 12 claimants in June 1999.

9.6 The shipowner had paid compensation to 14 claimants, totalling Won 27 million (£17 000). In respect of three of these claims the shipowner's payments were for amounts higher than those assessed by the Fund.

9.7 In June 2000 an agreement was reached between the shipowner and the 1971 Fund in respect of the 14 claims paid by the shipowner. After deduction of the amounts paid by the shipowner in excess of the 1971 Fund's assessments in respect of these claims, the 1971 Fund reimbursed the shipowner Won 7 311 259 (£4 400).

9.8 Two claims relating to clean-up operations had been presented for Won 33 393 140 (£18 000) and Won 1 873 000 (£1 000). These claims were settled in May and June 2000 for Won 15 178 700 and Won 1 188 400 (£9 800) and were paid by the 1971 Fund.

9.9 Three claims totalling Won 85 million (£46 000) which were assessed at nil by the 1971 Fund's experts were not filed in court. These claims became time-barred on or shortly after 7 November 2000.

Limitation proceedings

9.10 The Ulsan District Court fixed the limitation amount applicable to the *Kyungnam N°1* at Won 43 543 015 (£23 000). The shipowner deposited this amount in court. In December the 1971 Fund received Won 45 million (£24 000) from the shipowner's limitation fund in respect of its subrogated claims including interest.

Indemnification of the shipowner

9.11 The 1971 Fund paid Won 10 million (£5 600) to the shipowner in indemnification in December 2000.

10 ***Maritza Sayalero***

(Venezuela, 8 June 1998)

The incident

10.1 The Panamanian tanker *Maritza Sayalero* (28 338 GRT) was berthed at an oil terminal at Carenero Bay (Venezuela) operated by Petroleos de Venezuela SA (PDVSA), the national oil company, where it was to discharge its cargo. While the tanker was discharging medium diesel oil, a member of the crew observed a slick of oil of about 140 m² on the port side of the ship. The crew stopped the discharging operation. On the basis of shore tank and ship's cargo tank measurements it was estimated that 262 tonnes of medium diesel was lost from the tanker and a further 699 tonnes of medium diesel was lost from the terminal.

10.2 A diver checked the hoses and found two ruptures on the submarine hose used to discharge the medium diesel. This hose, which belonged to the oil terminal, consisted of six pieces of flexible hose of about 9 metres each, hooked together by bolts. One end of this set of hoses was connected to the shore submarine pipeline and the other to the vessel's manifold. The ruptures were located in the second and third hoses from the end which were connected to the shore submarine pipeline. The distance between the tanker and the rupture was approximately 40 metres.

Clean-up operations

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

Claims for compensation

10.4 Although it appears that there was minimal impact on fishing and tourism, PDVSA estimated that the claims for commercial losses would be in the region of US$700 000 (£483 000). It is understood that PDVSA has settled some claims. There has not been any consultation between PDVSA and the 1971 Fund with regard to claim settlements.

10.5 The town of Brion presented a claim for compensation against the terminal operator, PDVSA, the shipowner and his P & I insurer before the Supreme Court of Venezuela for an estimated amount of Bs10 000 million (£9.6 million) plus legal costs. The town requested that the Court should notify the 1971 Fund of the proceedings, but no such notification was made. This action was withdrawn in January 2000 except as regards PDVSA.

10.6 Claims against the 1971 Fund became time-barred on or shortly after 8 June 2001.

Applicability of the Conventions

10.7 At its 59th session the Executive Committee noted that the spill emanated from a hose belonging to the oil terminal that had ruptured at a distance of approximately 40 metres from the ship's manifold. The Committee considered that the maritime transport of the oil had been completed and that the oil could not be considered as being carried by the *Maritza Sayalero* at the time of the spill. For this reason the Committee decided that the incident fell outside the scope of application of the 1969 Civil Liability Convention and the 1971 Fund Convention (document 71FUND/EXC.59/17, paragraph 3.13.2).

10.8 The 1969 Civil Liability Convention and the 1971 Fund Convention apply only to spills of oil falling within the definition of 'oil' in Article I.5 of the 1969 Civil Liability Convention which covers only

persistent oil. The Committee noted at its 59th session that the analysis of a sample of the medium diesel oil taken from one of the ship's cargo tanks had shown that the oil was non-persistent. The Committee therefore decided that, for this reason also, the incident fell outside the scope of application of the Conventions.

Limitation proceedings

10.9 The shipowner has not yet commenced limitation proceedings.

10.10 If the 1969 Civil Liability Convention were to apply to the incident, the limitation amount applicable to the *Maritza Sayalero* would be in the region of 3 million SDR (£2.7 million).

11 Action to be taken by the Assembly

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