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INCIDENTS INVOLVING THE 1971 FUND

OTHER INCIDENTS

Note by the Director

Summary:	In this document developments are considered regarding the following incidents: <i>Vistabella, Iliad, Kriti Sea, Katja, Evoikos and Natuna Sea.</i>
Action to be taken:	Information to be noted.

1 Vistabella

(Caribbean, 7 March 1991)

- 1.1 While being towed, the sea-going barge *Vistabella* (1 090 GRT), registered in Trinidad and Tobago 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 or €359 000 (£296 000). 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 or €1.2 million (£990 000) to the French Government in respect of clean-up operations. Compensation was paid to private claimants in St Barthélemy and the British Virgin Islands and to the authorities of the British Virgin Islands for a total of some £14 250.

- 1.4 The French Government brought legal action against the owner of the *Vistabella* and his insurer in the Court of first instance in Basse-Terre (Guadeloupe), claiming compensation for clean-up operations carried out by the French Navy. The 1971 Fund intervened in the proceedings and acquired by subrogation the French Government's claim. The French Government withdrew from the proceedings.
- 1.5 In a judgement rendered in 1996 the Court accepted that, on the basis of subrogation, the 1971 Fund had a right of action against the shipowner and a right of direct action against his insurer and awarded the Fund the right to recover the total amount which it had paid for damage caused in the French territories. The shipowner and the insurer appealed against the judgement.
- 1.6 The Court of Appeal rendered its judgement in March 1998. The Court held that the 1969 Civil Liability Convention applied to direct action by the 1971 Fund against the insurer and 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.
- 1.7 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 FFr8.1 million or €1.2 million (£836 000) plus interest from 22 March 1993.
- 1.8 The insurer appealed against the judgement. The 1971 Fund filed pleadings in the Court of Appeal of Basse Terre in February 2002. A court hearing was held in December 2002. A further hearing is scheduled for November 2003.

2 Iliad

(*Greece, 9 October 1993*)

- 2.1 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.
- 2.2 In March 1994 the shipowner's P & I insurer established a limitation fund amounting to Drs 1 496 533 000 or €4.4 million (£2.8 million) with the competent court by the deposit of a bank guarantee.
- 2.3 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 or €9 million (£5.7 million) plus Drs 378 million or €1.1 million (£703 000) for compensation in respect of 'moral damage'.
- 2.4 The Court appointed a liquidator to examine the claims in the limitation proceedings. The liquidator has not yet reported his findings to the court.
- 2.5 The shipowner and his insurer took legal action against the 1971 Fund in order to prevent their rights to reimbursement from the Fund for any compensation payments in excess of the shipowner's limitation amount and to indemnification under Article 5.1 of the 1971 Fund Convention from becoming time-barred. The owner of a fish farm, whose claim is for Drs 1 044 million or €3 million (£1.9 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.

3 Kriti Sea

(*Greece, 9 August 1996*)

- 3.1 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.
- 3.2 The limitation amount applicable to the *Kriti Sea* is estimated at Drs 2 241 million or €6.6 million (£4.1 million). The shipowner established the limitation fund in January 1997 by means of a bank guarantee.
- 3.3 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 or €11.9 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 or €3.4 million (£2 million).
- 3.4 The experts engaged by the shipowner's insurer and the 1971 Fund did not agree with a number of the assessments carried out by the administrator. Objections were lodged in court by the shipowner, the shipowner's insurer and the 1971 Fund in respect of those claims. A number of claimants also filed objections against the decision of the administrator, and the amounts set out in the appeals totalled Drs 2 680 million or €7.9 million (£5 million). Upon hearing these objections, the Court of first instance accepted claims amounting to Drs 1 153 million or €3.4 million (£2.1 million). A number of claimants whose claims were either rejected or not accepted in full by the Court lodged appeals. The appeals were heard by the Court of Appeal on 18 September 2002.
- 3.5 In July 2003 the Court of Appeal affirmed the first instance Court's judgements in respect of the amounts awarded in respect of all but one claim. The Court reduced the amount awarded in respect of that claim by Drs 4.3 million or €12 700 (£8 850). The final total amount awarded by the Court of Appeal is therefore Drs 1 148 million or €3.37 million (£2.4 million). It is not expected that the Court of Appeal's judgement will be challenged in the Supreme Court.
- 3.6 As a result of the findings of the Court of Appeal it is unlikely that the 1971 Fund will not be called upon to make any payments in respect of compensation or indemnification.

4 Katja

(*France, 7 August 1997*)

- 4.1 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.
- 4.2 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.

- 4.3 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 or €7.3 million (£4.6 million).
- 4.4 A claim presented by the French Government for clean-up costs was settled in July 2000 at FFr1 356 075 or €206 700 (£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 or €2.3 million (£1.4 million).
- 4.5 Legal actions were taken against the shipowner, his P & I insurer and the 1971 Fund relating to claims for the cost of clean-up operations incurred by the regional and local authorities, property damage and loss of income in the fisheries sector totalling FFr9 million or €1.4 million (£910 000). In December 2002 one of the outstanding claims for clean-up costs was settled out of court for FFr32 798 or €5 000 (£3 260). Only three claims totalling, FFr6.4 million or €976 000 (£650 000) remain pending in court, the largest of which is a claim by the Port Autonome du Havre (PAH) for FFr6 million or €915 000 (£607 000) in respect of clean-up costs.
- 4.6 Further claims became time-barred on or shortly after 7 August 2000.
- 4.7 It is practically certain that all claims will be settled for an amount well below 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.
- 4.8 The shipowner and his insurer filed proceedings against the PAH on 29 July 2002. The grounds for the action were that a) the port had sent the *Katja* to an unsuitable berth and had thereby been, wholly or partially, responsible for the incident and b) the port's inadequate counter-pollution response to the incident had increased the extent of the pollution damage. It is expected that the case will be heard in October 2003. As the 1971 Fund is unlikely to be called upon to make payments in this case, the Director decided that the 1971 Fund should not intervene in these proceedings.

5 Evoikos

(Singapore, 15 October 1997)

- 5.1 The Cypriot tanker *Evoikos* (80 823 GRT) collided with the Thai tanker *Orapin Global* (138 037 GRT) whilst passing through the Strait of Singapore. The *Evoikos*, which was carrying approximately 130 000 tonnes of heavy fuel oil, suffered damage to three cargo tanks, and an estimated 29 000 tonnes of its cargo was 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 State of Selangor.
- 5.2 At the time of the incident, Singapore was Party to the 1969 Civil Liability Convention but not to the 1971 Fund Convention or the 1992 Conventions, whereas Malaysia and Indonesia were Parties to the 1969 Civil Liability Convention and the 1971 Fund Convention, but not to the 1992 Conventions.
- 5.3 Claims for compensation in Malaysia and Singapore have been settled by the shipowner. The total compensation paid by the shipowner fell within the limitation amount applicable to the *Evoikos* under the 1969 Civil Liability Convention and the 1971 Fund was not required to make any payments in relation to this incident.
- 5.4 The insurer commenced legal actions against the Fund in London, Indonesia and Malaysia to protect its rights against the Fund. The Indonesian court, at the request of the Club and the Fund, discontinued the action in Indonesia. The actions in London and in Malaysia were stayed by mutual consent. Although all

future claims are time barred under the Conventions, the Club informed the Fund that it is not prepared to withdraw its actions against the Fund in Malaysia and London until they have had the opportunity to establish that there are no outstanding claims against the shipowner, which may result in the shipowner's limit being reached.

6 Natuna Sea

(Singapore, 3 October 2000)

The incident

- 6.1 The Panamanian tanker *Natuna Sea* (51 095 GT) grounded in the Singapore Strait off Batu Behanti, Indonesia. The vessel was carrying a cargo of 70 000 tonnes of Nile Blend crude oil and an estimated 7 000 tonnes was spilled as a result of the grounding.
- 6.2 On the Singapore side of the Strait a number of islands and the south-east coast of Singapore were polluted. A number of Indonesian islands in the Strait were affected by oil. Oil also impacted the south-east tip of the Johor Peninsula in Malaysia.
- 6.3 The *Natuna Sea* is entered with the London Steam-Ship Owners' Mutual Insurance Association Ltd (London Club).

Applicability of the Conventions

- 6.4 At the time of the incident Singapore was Party to the 1992 Civil Liability Convention and the 1992 Fund Convention, Indonesia was Party to the 1992 Civil Liability Convention only and Malaysia was Party to the 1969 Civil Liability Convention and the 1971 Fund Convention.
- 6.5 The limitation amount applicable to the *Natuna Sea* under the 1992 Civil Liability Convention is approximately 22.4 million SDR (£18.9 million) and under the 1969 Civil Liability Convention approximately 6.1 million SDR (£5.2 million).

Claims for compensation

- 6.6 All claims in Malaysia have been settled for a total of RM 2.2 million (£370 000). The 1971 Fund will therefore not be required to make any payments in respect of compensation and indemnification.
- 6.7 All claims in Indonesia have been settled for a total of US\$2.8 million (£1.8 million) and all claims in Singapore have been settled for a total of US\$8.4 million (£5.3 million). The 1992 Fund will therefore not be required to make any compensation payments in respect of the *Natuna Sea* incident.

7 Action to be taken by the Administrative Council

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