



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND

EXECUTIVE COMMITTEE  
42nd session  
Agenda item 3

FUND/EXC.42/6  
24 March 1995

Original: ENGLISH

## INCIDENTS INVOLVING THE IOPC FUND

### SEKI

Note by the Director

#### 1 The incident

1.1 The tanker *Baynunah* (34 240 GRT), registered in the United Arab Emirates, and the Panamanian-registered tanker *Seki* (153 506 GRT) collided on 30 March 1994 some nine miles off the port of Fujairah (United Arab Emirates). The *Baynunah* was in ballast at the time, whereas the *Seki* was fully laden with some 293 000 tonnes of Iranian light crude oil. The N°1 port wing tank of the *Seki* was ruptured, resulting in the escape of approximately 16 000 tonnes of oil.

1.2 The spilled oil drifted northwards under the influence of wind and currents and came ashore north of the port of Khorfakkan. Much of this oil was re-floated by offshore winds and driven away from the coast, where much of it dispersed by natural processes. However, some of the oil drifted further north along the coast, affecting the Emirates of Fujairah and Sharjah and polluting some 30 kilometres of shoreline between Khorfakkan in Sharjah and Dibba Hassan in Fujairah. The coast of the Musandam peninsula in Oman was also polluted south of Limah.

1.3 The spill affected artisanal fisheries. Fishermen along the east coast of the United Arab Emirates were instructed by the authorities to suspend fishing activities. Amenity beaches used by tourists for swimming and diving were also affected. The main tourist season runs, however, through the cooler winter months, from late September onwards. A desalination plant immediately south of Khorfakkan was temporarily shut down at night as a precautionary measure.

#### 2 Clean-up operations

2.1 The east coast of the United Arab Emirates which was affected by the spill had no contingency plan for the response to accidental oil spills. The clean-up was initially organised by the Fujairah Port Authority. After two days, a response committee was set up under the chairmanship of the Port Authority. Experts from the International Tanker Owners Pollution Federation Limited (ITOPF) offered advice to this

committee, acting as technical advisers on behalf on the owner of the *Seki*, the P & I insurer (the Britannia Steam Ship Insurance Association Limited, "the Britannia P & I Club") and the IOPC Fund.

2.2 In this initial phase, vessels and equipment used in the response to the spill were provided by the Port of Fujairah, the Abu Dhabi National Oil Company (ADNOC), the Gulf Agency Company (GAC), as the local agent of the shipowner, and a local contractor who provided three skimming vessels engaged in offshore recovery operations.

2.3 Additional response equipment, available at Oil Spill Response Ltd in Southampton (United Kingdom) was put on standby, ready to be flown to Fujairah in case of need. The Petroleum Association of Japan was also contacted by the shipowner in order to make it possible to obtain response equipment held in the association's stockpile at Ras Al Khafji in the Persian Gulf. On ITOPF's advice, response equipment was requested from the Government of Oman, and this equipment arrived in Fujairah on 3 April. Oil spill consultants from Oil Spill Response Ltd were flown out from the United Kingdom to provide additional expertise and assist in the deployment of the Omani equipment. However, this equipment was never deployed, and the equipment on standby in the United Kingdom and Ras Al Khafji was not mobilised, because most of the oil reached the shore on 2 April. Oil released from the beaches together with that remaining at sea moved north towards Dibba but was carried offshore and dispersed by strong offshore winds on 4 April. The oil remaining on the surface of the sea was tracked from the air for a further few days as it moved towards the Strait of Hormuz, where it dissipated naturally.

2.4 Six days after the incident, on 5 April, representatives of the Government of Fujairah expressed dissatisfaction with the level of response and stated that the Government wished to take over all contracts in connection with the incident, in order to enable the Government to exercise better control of all measures taken in response to the incident. The Government hired its own oil pollution consultant, a Norwegian company, well known in the region. The response committee was maintained, however, and ITOPF experts remained as advisers to the committee.

2.5 Attempts to collect at sea oil released from the shoreline were made but were not effective, and all off-shore recovery operations were terminated on 10 April. Oil pooled against the coast was collected using vacuum trucks and skimmers. The onshore clean-up, initially conducted by local contractors, was suspended when it became clear that the oil had penetrated deep into the coarse sand beaches. In these circumstances, the clean-up presented a difficult technical problem, and trials were conducted to identify the optimum clean-up methods. While these trials were being carried out, ITOPF recommended that a contractor should be engaged to clean a small fishing harbour which had become contaminated. A French contractor was engaged and arrived on site on 19 April. The work in the port started on 26 April and was completed by mid-May.

2.6 The shipowner, through ITOPF, sought advice on techniques to remove the oil which had penetrated into the beaches from AEA Technology (ex Warren Spring Laboratory) in the United Kingdom and from the Centre de documentation, de recherche et d'expérimentations sur les pollutions accidentelles des eaux (CEDRE) in France. Over a period of a few days, a number of experts visited Fujairah in response to the Government's appeal for international assistance, one from the Intergovernmental Marine Emergency Mutual Aid Centre (MEMAC) in Bahrain, four from Saudi Arabia's Meteorological and Environmental Protection Administration (MEPA) and nine from the United States (two from the United States Coast Guard (USCG), four from the National Oceanic and Atmospheric Administration (NOAA), two from a United States consultancy firm, and one from the United States Environmental Protection Agency (EPA)).

2.7 The advice of the United States Coast Guard was to push the oily sand into the sea to allow the release of the oil through wave action which would lead to the subsequent dispersion of the oil. After an initial trial, the Government rejected this proposal on the grounds that the oil released would re-contaminate the shore and cause further damage to the environment and that displaced sand would inconvenience fishermen working off the beach.

2.8 By the beginning of May, alternative techniques had been evaluated, and on 8 May ITOFF presented a report to the Government of Fujairah outlining the options available for cleaning the different shoreline types with recommendations for each type. The report concluded with a proposed action plan to initiate full scale clean-up. Meanwhile, a considerable degree of natural cleaning took place as a result of wave and tidal action.

2.9 After formal tendering procedures had been completed, two companies, one French and one Saudi Arabian, were engaged to remove oil remaining trapped in the sand and pebble sediments along the coast, the work being divided between them. Their contracts provided for payment on a lump sum basis. The operations began during the last week of August, and both contracts were completed by the second week of October. It became evident, however, that the extent of oiling was greater than had been estimated when the contracts were concluded. For this reason, a further contract relating to additional clean-up operations was concluded with the French company which provided for payment on a daily rate basis. These operations are expected to be completed at the end of March 1995.

2.10 Some 11 000 m<sup>3</sup> of oily waste have been collected and will have to be disposed of.

### **3 Claims for compensation**

#### **United Arab Emirates**

3.1 The Ruler of Fujairah, His Majesty Sheikh Hamad bin Mohammed al Sharqi, set up a "Higher Committee to Follow-up on Pollution", also referred to as the "Committee on Limitation and Damage Evaluation", to review damage resulting from the incident and to co-ordinate claims. The Committee was chaired by the Deputy General Manager of the Port of Fujairah and included officials of both the Government of Fujairah and the United Arab Emirates Federal Government. The representatives acting on behalf of the shipowner and the Britannia P & I Club and the IOPC Fund's experts were not invited to attend meetings of this Committee.

3.2 The Government of Fujairah has notified the Court of Fujairah of 30 claims amounting to Dhs 162 967 248 (£28 million). However, the Government has so far submitted only 19 claims to the Britannia P & I Club, totalling Dhs 98 261 000 (£16.8 million). Notice of a further 17 claims (ie 36 claims in all) has been given recently to the IOPC Fund, and some of these claims have not yet been quantified.

3.3 A claim for damage to fisheries was submitted to the Government of Fujairah by fishermen along the entire east coast of the United Arab Emirates in the amount of Dhs 49.6 million (£8.5 million). This claim was examined by a fisheries sub-committee established on 9 July by the Higher Committee referred to in paragraph 3.1 above. The sub-committee assessed the total damage in respect of 743 fishermen at Dhs 36.9 million (£6.3 million). The sub-committee examining this claim consisted of representatives of the UAE Ministry of Agriculture and Fisheries, the UAE Federal Environmental Agency, the UAE Coast and Border Guard, the Fujairah, Dibba and Sharjah Municipalities and representatives of the fishery co-operatives of Fujairah and Dibba. A representative of the Fujairah Government and fishermen's representatives from Dibba Hassan, Alghorfa and Kalba also attended some of the meetings. After initial meetings of the sub-committee had taken place, the Britannia P & I Club was invited to send a representative to attend subsequent meetings, and an observer attended the fourth and fifth meetings on behalf of the P & I Club.

3.4 The fisheries sub-committee prepared a claims form. The IOPC Fund has been informed that each fisherman filled in a form setting out, inter alia, a list of his equipment, the number of crew members and their wages. The sub-committee established maximum admissible levels for daily income by boat type, maximum number of crew per boat and maximum number of damaged nets and other fishing gear which would be accepted in a claim, together with unit costs for crew and damaged or lost equipment. The maximum number of lost fishing days was set by the sub-committee equivalent to 10 days for fishermen based south of Badiyah, the point where the oil came ashore, and equivalent to 22 days for those based in Badiyah and the villages north thereof.

3.5 The fisheries sub-committee is understood to have reviewed each claim individually and to have assessed the claims on the basis of the information contained in the respective claims forms, the known fishing practise followed by individual claimants and information provided by representatives of fishery co-operatives who were said to have interviewed individual fishermen.

3.6 The Government of Fujairah submitted the claim for damage to fisheries to the Britannia P & I Club's local correspondent on 16 August 1994. Experts appointed by the Britannia P & I Club and the IOPC Fund <sup><1></sup> began to investigate this claim in late August 1994 and made a preliminary assessment of the losses suffered by fishermen. Since very little information had been presented by claimants, the assessment was made on the basis of a survey of the fishing industry conducted in September 1994, supported by published summaries of fishery statistics, the daily fish sale records of the Khorfakkan Fishermen's Society (a major fishery co-operative) and other relevant records. These data were used to derive a model of the economic impact of the incident. The experts estimated a total loss of Dhs 5.2 million (£890 000). In January 1995, the Britannia P & I Club paid this amount as an advance to the Government, after consultation with the Director. After clarification had been provided by the Government of Fujairah in January 1995 on one point, the assessment was adjusted to Dhs 6 572 707 (£1 123 500). The balance of Dhs 1 372 707 (£240 000) was paid to the Government by the Club in February 1995, again after consultation with the Director.

3.7 The wide disparity between the assessment of the experts engaged by the Britannia P & I Club and the IOPC Fund and that of the fisheries sub-committee derives mainly from the following three sources.

3.7.1 Claims were included for fishermen from areas which were not contaminated by oil. It has been maintained that also these fishermen did not fish during a period of some days after the incident, due to the uncertainty of the situation. It has also been maintained that the market for locally caught fish was interrupted as a result of the incident. However, the information obtained by the experts from interviews with fishermen and from the fish sales records of the Khorfakkan Fishermen's Society supported the experts' conclusion that only the fishermen who operated in contaminated areas had suffered loss of income. Similarly, the experts took the view that only fishermen operating in contaminated areas had suffered loss of or damage to fishing gear.

3.7.2 The amount claimed for loss of or damage to nets and other fishing gear represents 61% of the fisheries claim. The level of damage to or loss of fishing gear was considered by the experts to be unrealistically high. From a survey of a sample of the fishing fleet made by the P & I Club's surveyors, it appeared that every fisherman in the survey area who owned a kingfish, tuna or drift net had presented a claim for damage or loss. This is inconsistent with the pattern of fishing activity understood from the interviews mentioned in paragraph 3.7.1. Furthermore, more fish traps were alleged to have been lost than the experts estimated to be in use. Amounts claimed relating to two categories of fishing gear (beach seines and fish traps) were discounted by the experts, because no plausible explanation was offered as to how such gear came to be damaged or lost and no evidence was offered to show that such items were in fact lost or damaged beyond repair. It appears that no survey, other than the alleged interviews conducted by fishery co-operatives, was carried out of the damaged equipment and that no systematic documentation or photographic record was kept of the damaged property, or of the subsequent destruction of such property.

3.7.3 The unit costs applied by the sub-committee in respect of damaged or lost fishing gear were considered by the experts to be unreasonably high for most categories of gear when compared to prices quoted by local suppliers.

---

<1>

Dr A. Seymour, assisted by Mr G. Macfadyen, MacAlister Elliot & Partners Ltd, Lymington, United Kingdom.

3.8 After further discussions in February 1995 between the experts engaged by the Club and the IOPC Fund and the members of the fisheries sub-committee, the experts reconsidered their assessment of the losses suffered by the fishermen but they were unable to make a reliable reassessment of the quantum of the damage suffered. The experts accepted in principle damage to two categories of fishing gear previously rejected, following new explanations of the causes of loss made by members of the sub-committee. However, despite these explanations, the experts were unable to quantify these losses. It was also accepted that some disruption to the fishing industry was likely in areas which were not contaminated by oil, but again the experts were unable to quantify any losses which may have been incurred as a result.

3.9 During the discussions referred to in paragraph 3.8 above, the experts appointed by the Club and the IOPC Fund requested, from the fisheries sub-committee and the Deputy Minister of Agriculture and Fisheries in Dubai, detailed fishery statistics and records of sales from the municipal fish markets. These data were not made available.

3.10 In the view of the experts engaged by the Britannia P & I Club and the IOPC Fund, the limited evidence available does not support the level of loss assessed by the fisheries sub-committee.

3.11 The French and Saudi Arabian clean-up contractors referred to in paragraph 2.9 above each submitted claims for Dhs 4.65 million (£795 000). After consultation with the Director, the Britannia P & I Club paid Dhs 4 247 000 (£726 000) and Dhs 4.65 million (£795 000) to these contractors, respectively. The reason for the payment to the French company being for less than the amount claimed is that some of the work which should have been carried out under the original lump sum contract was not completed but was transferred to the new daily rate contract (cf paragraph 2.9). An amount of Dhs 2 225 040 (£380 300) was paid by the Club to the Government in respect of this contract for additional work and a further Dhs 841 449 (£144 000) has been approved for payment, again after consultation with the Director.

3.12 The local contractor responsible for offshore recovery operations during the initial stages of the incident has submitted a claim for US\$6.0 million (£3.8 million). The Britannia P & I Club has made an advance payment of US\$1 million (£628 000) to this contractor. An examination of the claim carried out by the experts appointed by the Club and the IOPC Fund showed that, in their view, the amount claimed was excessive due to the calculation being based on inflated hire charges and because vessels and equipment were kept on hire longer than was considered reasonable.

3.13 The Government of Fujairah has submitted various claims in relation to clean-up operations and Government personnel costs, amounting to Dhs 9.2 million (£1.6 million). After consultation with the Director, the Britannia P & I Club effected advance payments totalling Dhs 3.35 million (£573 000). The Government of Fujairah has not provided sufficient information to permit an advance payment to be made for claims of Dhs 5 517 641 (£943 000) in respect of Government personnel costs. The Government has also claimed Dhs 327 702 (£56 000) for costs incurred in respect of a survey which had the dual purpose of mapping the distribution and penetration of oil along the coast and recording any damage to the environment resulting from the oil spill.

3.14 A claim for Dhs 1 634 840 (£280 000) has been submitted by the Government of Fujairah in respect of costs incurred by Abu Dhabi National Oil Company (ADNOC) for assistance given by ADNOC's oil spill response centre. Three claims totalling Dhs 17 640 334 (£3 million) have been presented for losses allegedly suffered in respect of, inter alia, loss of value of a domestic dwelling, interruption of beach sand extraction and lost income for a beach-side hotel. These four claims are being examined.

3.15 The advance payments made to the Government of Fujairah by the Britannia P & I Club in respect of the claims referred to above total Dhs 23 369 000 (£4.0 million).

3.16 The Britannia P & I Club has also paid Dhs 86 423 (£14 700) for the cost of advice to the Government of Fujairah on ship-to-ship transfer of the oil remaining in the *Seki* and other matters relating to the condition of the ship and the cause of the incident. In the Director's view these costs fall outside the concepts of "pollution damage" and "preventive measures" laid down in the Civil Liability Convention and the Fund Convention.

3.17 A claim has been submitted by Gulf Agency Company (GAC), as the local agent of the owner of *Seki*, for Dhs 753 745 (£129 000), in respect of the first phase of the clean-up operations. A payment of the same amount has been made by the Britannia P & I Club.

3.18 On the basis of a preliminary assessment of the damage caused by the incident, the Director did not originally expect that the total amount of the claims for compensation would exceed the limitation amount applicable to the *Seki*. It was only in October 1994 that the Director became aware that the claims would in fact exceed that amount and that the IOPC Fund would be involved in the handling of claims.

3.19 The Director and representatives of the Britannia P & I Club visited Fujairah on 30 and 31 January 1995 for discussions with the representatives of the Government of Fujairah. Further discussions have thereafter been held with the lawyer representing the Government.

3.20 In his discussions with the Government representatives, the Director has stated that, in accordance with the policy laid down by the IOPC Fund Assembly and Executive Committee, claims could only be accepted to the extent that they were substantiated by documents or other evidence. The Government has made the point that, in particular as regards the fishery claims, there was no further evidence available, since fishermen did not record their catches.

3.21 Claims notified to the Court which have not yet been submitted to the Britannia P & I Club include claims, totalling some Dhs 2.5 million (£427 000), for additional losses to sectors of the economy other than fishing (such as losses by a hotel owner in Fujairah, fish transporters, fish traders and ice producers), and a claim for alleged damage to the environment in the amount of Dhs 59 million (£10.1 million).

3.22 As regards claims relating to environmental damage, attention should be drawn to the Resolution adopted by the IOPC Fund Assembly in 1980 (Resolution N°3) which stated that "the assessment of compensation to be paid by the International Oil Pollution Compensation Fund is not to be made on the basis of an abstract quantification of damage calculated in accordance with theoretical models".

3.23 The IOPC Fund's position in respect of the admissibility of claims relating to damage to the marine environment can be summarized as follows (documents FUND/WGR.7/4, paragraph 7.1 and FUND/A.17/23, paragraphs 7.3.5 and 7.3.6).

- (a) The IOPC Fund accepts claims which, in accordance with the terminology used in document FUND/WGR.7/4<sup><2></sup>, relate to "quantifiable elements" of damage to the marine environment, for example:
- (i) reasonable costs of reinstatement of the damaged environment; and
  - (ii) loss of profit (income, revenue) resulting from damage to the marine environment suffered by persons who depend directly on earnings from coastal or sea-related activities, eg loss of earnings suffered by fishermen or by hoteliers and restaurateurs at seaside resorts.

---

<sup><2></sup> For the purpose of that document, the expression "quantifiable elements" was taken to mean damage to the environment in respect of which the value of the damage can be assessed in terms of market prices; the expression "non-quantifiable elements" was taken to mean damage in respect of which the quantum of the damage cannot be assessed according to market prices.

- (b) (i) The IOPC Fund has consistently taken the position that claims relating to unquantifiable elements of damage to the marine environment cannot be admitted.
- (ii) The Assembly has rejected claims for compensation for damage to the marine environment calculated on the basis of theoretical models.
- (iii) Compensation can be granted only if a claimant has suffered quantifiable economic loss.
- (c) (i) Damages of a punitive character, calculated on the basis of the degree of the fault of the wrong-doer and/or the profit earned by the wrong-doer, are not admissible.
- (ii) Criminal and civil penalties for oil pollution from ships do not constitute compensation and do not therefore fall within the scope of the Civil Liability Convention and the Fund Convention.

3.24 The Government has also claimed compensation for fees totalling Dhs 1 363 386 (£233 000) incurred for professional advice given by various law firms in the United Arab Emirates, London (United Kingdom) and the United States. In his discussions with the Government, the Director has referred to the decision concerning professional fees taken by the Executive Committee at its 37th session. The Committee decided that reasonable fees for work done would be considered, but that fees would not be paid on a contingency or percentage basis. The Committee took the view that the question of whether and to what extent fees were payable should be assessed in connection with the examination of a particular claim, taking into account the necessity for the claimant to use expert advice, the usefulness of the work carried out by the expert, the quality of that work, the time needed and the normal rate for work of that kind (document FUND/EXC.37/3, paragraph 4.2.21).

3.25 The Director has informed the Government of Fujairah that the IOPC Fund accepts that a claimant may need the assistance of experts or advisers in respect of complicated claims and that the Government needed such assistance, in particular in the light of the relative scarcity of expertise in the United Arab Emirates. He has explained that in order to be admissible, the work carried out must be useful for the claimant and facilitate or contribute to the presentation and settlement of claims. He has stated that the assessment of the quality of the work should be made on an objective basis and that it had to be assessed whether the person giving advice was qualified to deal with matters relating to the issues involved by possessing the necessary expertise. He has pointed out that since claims for compensation against the IOPC Fund could only be based on the Civil Liability Convention and the Fund Convention - to which the United States was not a party - it appeared that United States law firms would not be familiar with the system of compensation established by these Conventions and would therefore not be in a position to give proper advice. He has expressed the view that it would be more appropriate to use qualified lawyers and others experts in States which had experience of dealing with claims for compensation under the Conventions.

3.26 In his correspondence with the Government, the Director has also stated that, since the IOPC Fund only deals with claims for compensation for pollution damage under the Conventions, fees for professional advice was admissible only if the work carried out related to matters for which compensation could reasonably be claimed under the Conventions. He has explained that this did not mean that activities which did not relate to claims for compensation under the Conventions could not form the basis of claims for compensation for fees under other applicable rules and against subjects other than the IOPC Fund. He has also stated that, in his view, it was not reasonable to use six law firms, since this might lead to unnecessary duplication of work.

3.27 The Director has requested a more detailed presentation of the work carried out by the various firms, so as to enable the Fund to assess whether and to what extent the fees claimed were reasonable, but so far no such presentation has been received.

3.28 The Britannia P & I Club has made an advance payment for professional fees of Dhr899 078 (£153 700). The Director has informed the Government of Fujairah and the Club that this payment is without prejudice to the IOPC Fund's position in respect of the admissibility of professional fees.

#### Oman

3.29 The Government of Oman submitted a claim for OR100 564 (£164 000) for costs of surveillance activities, costs incurred in placing dispersant-spraying aircraft on standby and in the provision of offshore recovery equipment to the Government of Fujairah. The claim included an item for OR27 000 (£44 000) for fishery damage along the affected coastline of the Musandam peninsula. This claim was settled and paid by the P & I Club in November 1994 at OR92 279 (£150 500), after consultation with the Director.

#### **4 Need for claims to be substantiated**

4.1 In relation to the claims arising out of the *Seki* incident, the Director would like to draw attention to the position taken by the 7th Intersessional Working Group in respect of the establishment of the quantum of losses sustained by a claimant (document FUND/A.17.23, paragraph 7.2.33) which reads as follows:

The Working Group endorsed the policy followed by the IOPC Fund that a claimant had to substantiate his loss. It was recognised, however, that in many countries, in particular in developing countries, it would be very difficult and sometimes impossible for claimants to present appropriate documentation to substantiate their claims. The Working Group took the view that the requirements as to supporting documentation would have to be adapted to what could reasonably be expected of a claimant in the country concerned.

4.2 At its 17th session, the Assembly agreed with the conclusions of the Intersessional Working Group (document FUND/A.17/35, paragraph 26.5).

4.3 As regards the claims for losses suffered by fishermen, no documents have been presented which show the losses actually sustained by the individuals concerned. The claims have been assessed by the fisheries sub-committee referred to in paragraph 3.3 above. The report of this sub-committee explains briefly how the amount assessed, viz Dhs 36.9 million (£6.3 million), has been calculated. At a meeting with the IOPC Fund's fishery experts held in February 1995, the fisheries sub-committee gave further explanation on the method of assessment used. Some further explanations on the method used for assessing the period of fishing interruption have been given by the Government's lawyer in a recent letter to the Director. No formal records have been produced in respect of damage to or loss of fishing gear. The amount assessed by the sub-committee and the assessment made by the experts appointed by the IOPC Fund and the Britannia P & I Club differ greatly. The analysis of the experts took as a basis the most likely level of losses actually suffered according to the data available to them, as set out in paragraph 3.6.

4.4 The Director accepts that the individual fishermen concerned do not have accounts or tax returns to support their claims. It is also accepted that the published fishery statistics are not accurate and that the sales records available do not give a correct picture of the normal income of the fishermen in the area. Nevertheless, the experts employed by the Britannia P & I Club and the IOPC Fund have expressed the opinion that the amount assessed by the sub-committee is not supported by the facts, both as regards the catches and as regards the affected area. Likewise, the experts have taken the view that the sub-committee's assessment of the alleged damage to fishing gear is unrealistically high.

4.5 In view of the difficulty that has arisen in respect of the assessment of the fishery claims in the *Seki* case, the Director submits for consideration by the Executive Committee the question of what approach should be taken to this assessment.

**5 Limitation proceedings and related issues**

5.1 The limitation amount applicable to the *Seki* is 14 million SDR (approximately £13.6 million). The Britannia P & I Club has established a limitation fund for the limitation amount in the Court of Fujairah by means of a letter of guarantee.

5.2 Through its agent (World-Wide Shipping Agency Limited), the owner of the *Seki* entered into a Memorandum of Agreement with the Government of Fujairah. Pursuant to this Memorandum, the owner has deposited US\$19.6 million (£12.3 million) with a bank in the United Arab Emirates. A claim presented by the Government can be paid out of this deposit even if it has been rejected by the Britannia P & I Club and the IOPC Fund. If such a payment were to be made for a rejected claim, the shipowner may take legal action in respect of that claim against the Club and the IOPC Fund in the competent court in the United Arab Emirates. The Government is obliged to refund to the shipowner the amount received towards any part of a claim not upheld by the court. So far, no claims have been paid under this procedure.

5.3 The Director has made it clear to the shipowner and to the authorities of the United Arab Emirates that the IOPC Fund is not bound by any agreement in respect of a claim unless that claim has been approved explicitly by the Fund or has been established by a final judgement rendered by a competent court in legal proceedings brought under Article IX of the Civil Liability Convention or Article 7.1 of the Fund Convention.

**6 Investigations into the cause of the incident**

The authorities of the United Arab Emirates are investigating the cause of the incident. The IOPC Fund is following these investigations.

**7 Action to be taken by the Executive Committee**

The Executive Committee is invited to:

- (a) take note of the information contained in this document; and
  - (b) give the Director such instructions as it may deem appropriate concerning the handling the claims arising out of this incident.
-