INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1971

EXECUTIVE COMMITTEE
59th session
Agenda item 3

71FUND/EXC.59/16
16 October 1998

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, Iliad,* Moroccan spill, *Boyang N°51, Honam Sapphire, Kriti Sea, N°1 Yung Jung, Tsubame Maru N°31, Daiwa Maru N°18, Jeong Jin N°101, Plate Princess, Katja* and *Kyungnam N°1.*
Action to be taken:	Information to be noted.

1 *Vistabella*

(Caribbean, 7 March 1991)

1.1 The incident

1.1.1 The sea-going barge *Vistabella* (1 090 GRT), registered in Trinidad and Tobago and carrying approximately 2 000 tonnes of heavy fuel oil, was being towed by a tug on a voyage from a storage facility in the Netherlands Antilles to Antigua. The tow line parted and the barge 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.

1.1.2 The *Vistabella* was not entered in any P & I Club. The vessel was covered by a third party liability insurance with a Trinidad insurance company. The insurer has argued that the insurance does not cover this incident. The limitation amount applicable to the ship is estimated at FFr2 354 000 (£239 000). No limitation fund has been established. It is 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.

1.2 Compensation payments

The 1971 Fund paid compensation amounting to FFr8.1 million (£986 500)[1] 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 in the amounts of FFr110 000 (£11 040), US$6 100 (£3 200) and US$2 000 (£1 000), respectively. Further claims against the 1971 Fund are time-barred.

1.3 Court proceedings

1.3.1 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 has withdrawn from the proceedings.

1.3.2 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.

1.3.3 In October 1996 the Executive Committee 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.

1.3.4 The Executive Committee decided, however, that the 1971 Fund should not 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. The Court had awarded the 1971 Fund the total amount paid by it for damage in the French territories and the amount paid by the Fund for damage outside these territories was, in the Committee's view, insignificant.

1.3.5 The insurer appealed against the judgement on the basis that French courts had no jurisdiction over foreign insurers.

1.3.6 The Court of Appeal rendered its judgement on 23 March 1998. In its 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.

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[1] In this document conversion of currencies has been made at the rate of exchange on 9 October 1998, except for claims paid by the 1971 Fund for which conversions have been made at the rate of exchange on the date of payment.

1.3.7 The case has been referred back to the Court of first instance which will have to decide on the merits of the case as regards the direct action taken by the 1971 Fund against the insurer.

2 *Iliad*
(Greece, 9 October 1993)

2.1 The incident

2.1.1 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 were spilled. The Greek national contingency plan was activated, and the spill was soon brought under control.

2.1.2 The recovery at sea and the removal of oil from sandy beaches was completed by the end of October 1993. The final cleaning of sea-walls and selected areas of rocky shoreline in Pylos Bay was completed by the middle of January 1994.

2.1.3 Floating oil interrupted the fishing activities in Pylos Bay and along the coast for about two weeks. A fish farm at Pylos lost a small part of its stock and it appeared that the farm's normal selling pattern was interrupted. Tests on the stock showed that there was no residual contamination.

2.2 Limitation proceedings

2.2.1 In March 1994, the shipowner's P & I Insurers, the Newcastle Protection and Indemnity Association (the Newcastle Club) established a limitation fund amounting to Drs 1 496 533 000 (£3.1 million) with the competent court by the deposit of a bank guarantee. One claimant took legal action to challenge the shipowner's right to limit liability. The Court of first instance rejected this action. The claimant appealed against that decision but the appeal was rejected.

2.2.2 The Court decided that the claims should be lodged by 20 January 1995. By that date, 527 claims had been presented, totalling Drs 3 071 million (£6.3 million) plus Drs 378 million (£780 000) for compensation of 'moral damage'.

2.2.3 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.

2.3 Time-bar

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

2.3.2 With the exception of a fish farm, the shipowner and the Newcastle Club, the claimants have failed to take action against the 1971 Fund or notify the Fund formally of the action brought against the shipowner and his insurer.

3 Spill from unknown source in Morocco
(Morocco, 30 November 1994)

3.1 In March 1995 the 1971 Fund was informed of an oil spill which had occurred on 30 November 1994 in the port of Mohammédia (Morocco). The Moroccan authorities claimed compensation for clean-up costs totalling Dhr 2.6 million (£166 000). The authorities did not give any indication as to the source of the spill but stated that the oil could only have come from the sea.

3.2 The Director drew the attention of the Moroccan authorities to Article 4.1 of the 1971 Fund Convention. Under that Article, the 1971 Fund is obliged to pay compensation where the victim is

unable to obtain compensation because "no liability arises under the Civil Liability Convention". One of the situations in which no liability would arise under the 1969 Civil Liability Convention is where the identity of the ship which caused the damage is not known, since in that case no shipowner can be held liable under that Convention. Article 4.2(b) of the 1971 Fund Convention provides that in such cases the 1971 Fund is not obliged to pay compensation if "the claimant cannot prove that the damage resulted from an incident involving one or more ships".

3.3 The Moroccan authorities maintained that in all probability, in view of the quantity involved, the oil originated from a laden tanker. The authorities referred to a survey report in which it was stated that the results of laboratory tests, the colour of the oil and its smell showed that it was a crude oil. The 1971 Fund's experts examined the documentation presented by the Moroccan authorities. The experts expressed the opinion that the investigation carried out to determine the oil type was not adequate to establish whether the oil in question was a crude oil or a fuel oil.

3.4 On the basis of the opinion of its experts, the 1971 Fund informed the Moroccan authorities in December 1995 that it had not been established that the oil originated from a ship as defined in the 1971 Fund Convention (ie a laden tanker) and that for this reason the 1971 Fund could not accept the claim for compensation.

3.5 The Moroccan Government has informed the 1971 Fund that the Government has set up a committee to investigate this oil spill in order to try to establish the source of the oil. The Director has invited the Moroccan authorities to inform him of the progress of the Moroccan committee's investigations, but so far no such information has been received.

3.6 In any event, any claim for compensation against the 1971 Fund became time-barred on 30 November 1997 or shortly thereafter.

4 *Boyang N°51*

(*Republic of Korea, 25 May 1995*)

4.1 On 25 May 1995, the *Boyang N°51* (149 GRT), registered in the Republic of Korea, collided with another Korean vessel, the *Ocean Daisy*, off Sandbaeg Do (Republic of Korea). The *Boyang N°51* was carrying some 160 tonnes of diesel oil and heavy fuel oil in its cargo tanks which was to be delivered as bunker oil to fishing vessels. As a result of the collision, the *Boyang N°51* sank and the oil cargo was spilled.

4.2 The Pusan Marine Accident Inquiry Agency carried out an investigation into the cause of the incident. The investigation showed that the incident was due mainly to the *Ocean Daisy*'s failure to sail at a safe speed, but that the *Boyang N°51* had contributed to the incident by not taking proper action to avoid the collision.

4.3 The owner of the *Ocean Daisy* incurred clean-up costs totalling Won 141 832 490 (£60 000).

4.4 The 1971 Fund was notified of the incident by the P & I insurer of the *Ocean Daisy* on 14 April 1998, ie nearly three years after the incident.

4.5 The owner of the *Boyang N°51* commenced limitation proceedings in the competent District Court on the ground that the *Boyang N°51*'s liability for the cost of the clean-up operations incurred by the owner of the *Ocean Daisy* could be limited under the 1969 Civil Liability Convention separately without first having made a set off between the counter claims of the parties. The owner of the *Ocean Daisy* maintained that limitation could apply to claims only after the counter claims of the two parties had been set off against each other. The District Court agreed with the position taken by the owner of the *Boyang N°51* and granted the request for limitation of liability and determined the limitation amount at 19 817 SDR (£14 000).

4.6 The owner of the *Ocean Daisy* appealed against this decision. The Court of Appeal upheld the District Court's decision. The owner of the *Ocean Daisy* appealed to the Supreme Court, which also supported the District Court's decision.

4.7 In April 1998, before the Supreme Court rendered the above decision, the owner of the *Ocean Daisy* requested that the 1971 Fund should agree to an extension of the three year time bar period, which would expire on or shortly after 25 May 1998. The owner of the *Ocean Daisy* stated that he would like to reach an out-of-court settlement. The Executive Committee decided, at its 58th session that, in line with the position taken by the 1971 Fund in previous cases, the three year period laid down in Article 6.1 of the 1971 Fund Convention could not be extended (document 71FUND/EXC.58/15, paragraph 3.13.6).

4.8 The Korean lawyer acting for the P & I insurer of the *Ocean Daisy* indicated that the insurer would consider an amicable settlement at $30 000. The Director replied that it was not possible for the 1971 Fund to settle claims without first carrying out a proper assessment.

4.9 The claim by the owner of the *Ocean Daisy* has become time-barred, since no legal action was taken against the 1971 Fund before the expiry of the time bar period.

5 ***Honam Sapphire***

(Republic of Korea, 17 November 1995)

5.1 The incident

5.1.1 During berthing manoeuvres at the oil terminal in Yosu (Republic of Korea), the fully laden Panamanian tanker *Honam Sapphire* (142 488 GRT) struck a fender, puncturing the N°2 port 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, and there was also a slight impact on an island 50 kilometres from the site of the incident.

5.1.2 The *Honam Sapphire* was entered in the United Kingdom Mutual Steamship Assurance Association (Bermuda) Limited (UK Club).

5.2 Clean-up operations and impact on aquaculture and fisheries

5.2.1 The offshore clean-up operation was led by the Marine Police. The onshore impact was in most areas comparatively light and the onshore clean-up operations were completed in many areas by early January 1996, although in the most heavily polluted areas the operations continued until March 1996.

5.2.2 It was maintained that oil still remained on some shorelines, and the Marine Police requested the shipowner to carry out further clean-up activities. On the basis of the advice of its experts, the 1971 Fund informed the Marine Police that, in the Fund's view, it would not be reasonable to carry out such operations and that the cost of such activities would not be admissible for compensation.

5.2.3 Mariculture facilities, set nets and common intertidal fishing areas were affected by the oil.

5.3 Claims for compensation

5.3.1 Claims for clean-up costs were presented by various local authorities and contractors for a total amount of Won 9 727 million (£4.3 million). Some claims in this category have been agreed for a total amount of Won 9 033 million (£4 million) and the settlement amounts have been paid in full by the shipowner. The remaining claims in this category are being examined. Further claims may be submitted.

5.3.2 Fishery-related claims have been submitted totalling Won 49 115 million (£22 million). So far 843 claims have been settled at Won 1 303 million (£577 000). These claims have been paid by the shipowner.

5.3.3 The 1971 Fund's and UK Club's experts had intended to assess the claims of the Yosu fishery co-operatives arising out of the *Honam Sapphire* incident, totalling Won 48 830 million (£17 million), using consignment sales data as was done in the *Sea Prince* case. However, for several fishery sectors little or no such data has been submitted. For this reason, some assessments have had to be based on consignment sales data relating to nearby areas. Some of these claims have been agreed at a total amount of Won 994 million (£440 000) and have been paid by the shipowner.

5.3.4 The settlements reached so far total Won 10 336 million (£4.6 million). Claims totalling Won 19 562 million (£8.7 million) are being examined.

5.3.5 It is very unlikely that the total amount of the established claims will reach the limitation amount applicable to the *Honam Sapphire*, *viz* 14 million SDR (£11.7 million). For this reason, it is very unlikely that the 1971 Fund will be called upon to make any payments in respect of this incident.

5.4 Limitation proceedings and investigation into the cause of the incident

5.4.1 The shipowner commenced limitation proceedings in September 1996.

5.4.2 At a court hearing held in February 1997, the shipowner, after consultation with the UK Club and the 1971 Fund, submitted a report prepared by the International Tanker Owners Pollution Federation Ltd (ITOPF). This report contained criticism of the assessment made by the claimants' experts. In the report ITOPF demonstrated that the assessment of the claims undertaken by the claimants' experts was largely subjective and that little or no supporting documentation had been provided.

5.4.3 The court closed the investigation hearings on 13 October 1998 and is expected to render its decision in December 1998.

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 to the west, south and east of this terminal 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. The clean-up operations at sea were continued to 17 August, and the shoreline clean-up was largely completed by the end of the month.

6.3 The ship is entered in the United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Ltd (UK Club).

6.4 The limitation amount applicable to the *Kriti Sea* is estimated at Drs 2 241 million (£4.7 million). The shipowner established the limitation fund in December 1996 by means of a bank guarantee.

6.5 Claims totalling Drs 4 054 million (£8.2 million) have been notified to the shipowner and the UK Club and to the administrator appointed by the Court to examine claims against the limitation fund. The administrator is expected to start his examination of the claims in the near future. It is expected that all claims will be settled for a total amount significantly lower than the limitation amount applicable to the *Kriti Sea*.

7 *N°1 Yung Jung*
(Republic of Korea, 15 August 1996)

7.1 The incident

7.1.1 While the Korean sea-going barge *N°1 Yung Jung* (GRT 560), laden with 200 tonnes of marine diesel oil and 1 600 tonnes of medium fuel oil, took shelter from an approaching typhoon at a wharf in the port of Pusan (Republic of Korea) on 15 August 1996, the barge grounded on a submerged rock which did not appear on the chart. As a result, approximately 28 tonnes of medium fuel oil spilled into the sea. A dozen ships which were in the vicinity of the grounding site and various port facilities such as piers and embankments, as well as nearby rocky shores were contaminated.

7.1.2 Clean-up operations were carried out by three contractors engaged by the shipowner, and the operations were completed by 14 September 1996.

7.1.3 The wreck of *N°1 Yung Jung* was removed and the remaining oil was transhipped to another vessel.

7.1.4 The *N°1 Yung Jung* was not entered in any P & I Club, but had liability insurance of US$1 million (£585 000) per incident.

7.2 Claims for compensation

7.2.1 Claims relating to clean-up operations, totalling Won 871 million (£381 000), were presented by the shipowner, the Pusan Marine Police and four clean-up contractors. These claims were settled at a total amount of Won 690 million (£302 000). The shipowner/his insurer paid the settlement amounts in respect of five of the claims, totalling Won 675 million (£295 000).

7.2.2 A salvage company presented a claim for Won 77 million (£34 000) for inspections of the bottom of the *N°1 Yung Jung* and videotaping carried out by divers. In the Director's view, these operations had a dual purpose, ie they were undertaken partly for the re-floating of the vessel and partly to prevent or minimise pollution damage. After negotiations, the claimant, the shipowner and the 1971 Fund reached agreement that the claim should be settled at Won 20 million (£9 000) and that 50% would be paid under the 1969 Civil Liability Convention and the 1971 Fund Convention and 50% by the shipowner outside the Conventions.

7.2.3 A claim relating to operations to tranship the cargo and carry out temporary repairs to the hull of the *N°1 Yung Jung* for Won 70 million (£30 000) was presented to the Pusan District Court. The Court accepted this claim for Won 49 million (£21 000). After negotiations with the shipowner, the amount was distributed 50:50 between salvage and preventive measures. As this claimant had not presented his claim in the limitation proceedings within the period laid down by the Court, the claimant's hypothetical share of the limitation fund, ie Won 4 123 073 (£1 800), was deducted and the balance, Won 20 376 927(£8 600), was paid by the 1971 Fund.

7.2.4 The owners of 25 seafood restaurants submitted claims totalling Won 13 million (£5 700). A fishery co-operative presented a claim for loss of income for Won 105 million (£45 000). The claims were assessed by the 1971 Fund's technical experts at Won 6 million (£2 700) and Won 17 million (£7 130) respectively. The claims which were settled at the assessed amounts were paid by the 1971 Fund.

7.3 Cause of the incident and limitation proceedings

7.3.1 The shipowner commenced limitation proceedings in August 1997. The shipowner's insurer presented a letter of guarantee for the limitation amount to the Court.

7.3.2 In the case of barges of this type, the Korean authorities do not carry out an investigation into the cause of the incident.

7.3.3 In criminal proceedings the master of the *N°1 Yung Jung* received a six month suspended prison sentence for having caused oil pollution by negligence, although the barge had grounded on a submerged and uncharted rock.

7.3.4 In the light of advice received from the 1971 Fund's Korean lawyer, the Executive Committee decided, at its 55th session, that there were no grounds for the 1971 Fund to oppose the shipowner's right to limit his liability, nor to refuse indemnification under Article 5.1 of the 1971 Fund Convention (document 71FUND/ EXC.55/19, paragraph 3.17.3).

7.3.5 In May 1998, the Pusan District Court determined the limitation amount applicable to the *N°1 Yung Jung* at Won 122 million (£53 000).

7.4 In September 1998, the 1971 Fund paid to the insurer an amount of £262 373 (the sterling equivalent of Won 615 221 178) corresponding to what the insurer had paid in excess of the limitation amount applicable to the *N°1 Yung Jung* (including interest). The 1971 Fund also paid indemnification under Article 5.1 of the 1971 Fund Convention, Won 28 071 490 (£12 000).

8 *Tsubame Maru N°31*
(Japan, 25 January 1997)

8.1 Whilst the Japanese coastal tanker *Tsubame Maru N°31* (89 GRT) was being loaded with heavy fuel oil as cargo in the port of Otaru, Hokkaido (Japan), the crew of that ship failed to close in time the inlet valve of the tank into which the oil was being loaded. As a consequence, some of the cargo oil overflowed from the tank and spilled into the sea.

8.2 Seven claims for clean-up operations, totalling ¥7 827 589 (£34 000), have been submitted. These claims were settled at ¥7 673 830 (£33 300) and were paid by the shipowner's P&I insurer (the Japan Ship Owners' Mutual Protection & Indemnity Association, JPIA) in March 1998.

8.3 JPIA requested that the 1971 Fund should in this case waive the requirement to establish the limitation fund. In view of the disproportionately high legal costs which would be incurred in establishing the limitation fund in respect of this incident compared with the low limitation amount under the 1969 Civil Liability Convention in this case, the Executive Committee decided, at its 57th session, that the requirement to establish the limitation fund should be waived in the *Tsubame Maru N°31* case, so that the 1971 Fund could, as an exception, pay compensation and indemnification without the limitation fund having been established (document 71FUND/EXC. 57/15, paragraph 3.13.2). The limitation amount was determined at ¥1 843 849, on the basis of the value of the Yen in relation to the SDR on 6 February 1998 (the date of the Committee's decision).

8.4 In June 1998, the 1971 Fund paid its share of the compensation and the surveyors' fees of ¥5 829 981 (£25 600) and ¥995 419 (£4 400), respectively, and paid indemnification to the shipowner in the amount of ¥457 497(£2 000).

8.5 The final calculation of the total damage and the respective shares of liability and fees for the 1971 Fund and the shipowner is as follows.

	Total ¥	Shipowner's share ¥	1971 Fund's share ¥
Compensation	7 673 830	1 843 849	5 829 981
Surveyors' fees	1 310 240	314 821	995 419
Indemnification		- 457 497	457 497
Total	8 984 070	1 710 173	7 282 897

9 *Daiwa Maru N°18*
(Japan, 27 March 1997)

9.1 While the Japanese tanker *Daiwa Maru N°18* (186 GRT) was loading heavy fuel oil from onshore tanks at an oil refinery in Kawasaki, Kanagawa Prefecture (Japan), some of the cargo oil leaked out from the end of a cargo hose connected to the outboard side of the ship's manifold. This hose was not in use at the time of the incident. The oil washed the deck of the *Daiwa Maru N°18* and spilled into the sea. Subsequent investigations showed that there was a defective valve in the ship's manifold and that the blank flange fitted to the end of the cargo hose had been incorrectly secured.

9.2 Clean-up operations were carried out by contractors and by the oil refinery, which mobilised its employees. The operations were completed on 28 March 1997.

9.3 Claims totalling ¥18 million (£80 000) have been received from several contractors. These claims were settled at ¥15.6 million (£68 000) and were paid by the shipowner's P&I insurer (Japan Ship Owners' Mutual Protection & Indemnity Association, JPIA). No further claims are expected.

9.4 At its 58th session the Executive Committee considered whether the 1969 Civil Liability Convention and the 1971 Fund Convention applied to this incident, as the oil was spilled before it entered the cargo tanks of the *Daiwa Maru N°18*. The Committee noted that oil is generally considered as cargo once it entered the pipe of a ship through a loading arm on the port side and that the ship had responsibility for the oil from that moment. In view of this explanation, the Committee considered that the spilt oil should be considered as cargo and that the incident therefore fell within the scope of the Conventions (document 71FUND/EXC. 58/15, paragraph 3.12.6).

9.5 JPIA requested that the 1971 Fund should in this case waive the requirement to establish the limitation fund. For the reasons set out above in respect of the *Tsubame Maru N°51* incident, the Executive Committee decided, at its 58th session, that the requirement to establish the limitation fund should be waived in the *Daiwa Maru N°18* case, so that the 1971 Fund could, as an exception, pay compensation and indemnification without the limitation fund having been established (document FUND/EXC. 58/15, paragraph 3.12.8). The limitation amount was determined at ¥3 487 849 on the basis of the value of the Yen in relation to the SDR on 27 April 1998 (the date of the Committee's decision).

9.6 In August 1998, the 1971 Fund paid its share of the compensation and the surveyors' fees of ¥12 157 169 (£51 600) and ¥435 259 (£1 800), respectively, and paid indemnification to the shipowner in the amount of ¥865 406 (£3 700).

9.7 The final calculation of the total damage and the respective shares of liability and fees for the 1971 Fund and the shipowner is as follows:

	Total ¥	Shipowner's share ¥	1971 Fund's share ¥
Compensation	15 645 018	3 487 849	12 157 169
Surveyors' fees	560 133	124 874	435 259
Indemnification		- 865 406	865 406
Total	16 205 151	2 747 317	13 457 834

10 *Jeong Jin N°101*
(Republic of Korea, 1 April 1997)

10.1 The incident

10.1.1 The Korean barge *Jeong Jin N°101* (896 GRT) was loading heavy fuel oil at an oil terminal in the port of Pusan (Republic of Korea). Approximately 124 tonnes of oil is believed to have overflowed from one of the tanks of the *Jeong Jin N°101* and spilled into the sea. The spilt oil contaminated various parts of the port. The clean-up operations were completed by the end of April 1997.

10.1.2 The *Jeong Jin N°101* was not covered by any insurance for liability under the 1969 Civil Liability Convention. However, the shipowner had a bank guarantee issued by a Korean bank for Won 143 million (£60 700) to cover his civil liability for oil pollution damage in respect of this ship.

10.2 Consideration by the Executive Committee at previous sessions

At its 54th session, the Executive Committee decided that the incident fell within the scope of application of the 1969 Civil Liability Convention and the 1971 Fund Convention (document 71FUND/EXC.54/10, paragraph 3.3.4). The Committee decided, at its 55th session, that there were no grounds on which the 1971 Fund could take recourse action against the oil terminal (document 71FUND/EXC.55/19, paragraph 3.18.5).

10.3 Claims for compensation

10.3.1 Eight claims relating to clean-up operations, totalling Won 567 million (£248 000), have been submitted. These claims were settled at Won 415 million (£182 000) as assessed by the experts engaged by the 1971 Fund.

10.3.2 According to the 1971 Fund's Korean surveyor, it is unlikely that there will be any further claims.

10.4 Limitation proceedings

10.4.1 On 2 April 1998, the Pusan District Court determined the limitation amount applicable to the ship at Won 246 million (£108 000).

10.4.2 The Court admitted the eight claims mentioned in paragraph 10.3.1 for the amounts assessed by the 1971 Fund's experts.

10.5 Payments by the 1971 Fund

In May 1998, the 1971 Fund paid Won 172 million (£75 000) to the eight claimants, constituting the difference between the total settlement amount and the limitation amount. The Fund also paid Won 58 million (£26 000) to the shipowner in indemnification, under Article 5 of the 1971 Fund Convention.

11 *Plate Princess*
(Venezuela, 27 May 1997)

11.1 The incident

11.1.1 The Maltese tanker *Plate Princess* (30 423 GRT) was berthed at an oil terminal at Puerto Miranda on Lake Maracaibo (Venezuela). On 27 May 1997, while the ship was loading a cargo of 44 250 tonnes of Lagotreco crude oil, some 3.2 tonnes was reportedly spilled.

11.1.2 On 22 May 1997 satisfactory examinations of the *Plate Princess*' cargo tanks and ballast tanks had been carried out by an independent inspector and by a pollution inspector. Following the ballast

tank inspection, the master had been granted permission by a government inspector to discharge the ballast into Lake Maracaibo.

11.1.3 The master of the *Plate Princess* reported that he believed that couplings on the ship's ballast line might have become loose during bad weather encountered on the ship's voyage to Puerto Miranda. The master suspected that, since the ballast line passed through the tanks into which the cargo of crude was being loaded, oil from those tanks seeped into the ballast line during deballasting, spilling into Lake Maracaibo.

11.1.4 An expert engaged by the 1971 Fund and the shipowner's P & I insurer, the Standard Steamship Owner's Protection & Indemnity Association (Bermuda) Ltd (Standard Club), attended the site of the incident on 7 June 1997 and reported that there were no signs of oil pollution in the immediate vicinity of where the *Plate Princess* was berthed at the time of the spill, nor at nearby launch and tug jetties. The expert was informed that the oil was observed to drift towards the north-west, in the direction of a small stand of mangroves approximately one kilometre away. Oil was observed coming ashore in an area which was uninhabited. No fishery or other economic resources are known to have been contaminated or affected.

11.1.5 The limitation amount applicable to the *Plate Princess* under the 1969 Civil Liability Convention is estimated at 3.6 million SDR (£2.9 million).

11.1.6 At its 54th session, the Executive Committee considered that, if it were confirmed that the spilt oil was the same Lagotreco crude as was being loaded on to the *Plate Princess*, then it would appear that the oil which escaped via a defective coupling in the ballast line had first been loaded into the cargo tanks. The Committee took the view that the incident would therefore fall within the scope of the Conventions, as the oil was carried on board as cargo (document 71FUND/EXC.54/10, paragraph 3.6.3).

11.2 Court proceedings

11.2.1 Immediately after the incident a Criminal Court of first instance in Cabimas commenced an investigation into the cause of the incident. The Cabimas Court decided that criminal proceedings should be brought against the master of the *Plate Princess*.

11.2.2 A fishermen's trade union (FETRAPESCA) has presented a petition in the Cabimas Court on behalf of 1 692 fishing boat owners, claiming an estimated US$10 060 per boat (£5 900), ie a total of US$17 million (£9.9 million). The claim is for alleged damage to fishing boats and nets and for loss of earnings.

11.2.3 FETRAPESCA has also presented a claim against the shipowner and the master of the *Plate Princess* for an estimated amount of US$10 million (£5.8 million) before a Civil Court of Caracas. The claim is for the fishermen's loss of income as a result of the spill.

11.2.4 A local fishermen's union has presented a claim in the Civil Court in Caracas against the shipowner and the master of the *Plate Princess*, for an estimated amount of US$20 million (£11.7 million) plus legal costs.

11.2.5 The 1971 Fund has not been notified of the actions referred to in paragraphs 11.2.2 - 11.2.4.

11.3 Conflict of jurisdiction

The master and the shipowner have filed a motion before the Civil Court of Caracas requesting that the Court should declare that it does not have jurisdiction over actions brought as a result of the *Plate Princess* incident and that the Criminal Court of Cabimas has exclusive jurisdiction over all such actions because the incident occurred within the area over which the Cabimas Court has jurisdiction. They have also maintained that the action in the Caracas Court should in any case be dismissed, since

the Cabimas Court is already carrying out an investigation into the circumstances of the spill. So far, no decision has been taken on the motion.

12 *Katja*
(France, 7 August 1997)

12.1 The incident

12.1.1 The Bahamas-registered tanker *Katja* (52 079 GT) 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 is being constructed.

12.1.2 Clean-up operations within the port area were arranged by the Port Autonome du Havre and the operators of various berths. The operations were undertaken by local contractors.

12.1.3 The cleaning of the beaches was organised by the local authorities using local contractors, the Fire Brigade and the Army. Bathing and watersports were prohibited for a short time (one or two days) while oil remained on the beaches. All beaches were reopened and bathing restrictions lifted in time for a long weekend holiday from 15 to 17 August 1997.

12.1.4 Some shrimp fishermen from Le Havre were prevented from storing their catch in the port, as is their custom.

12.1.5 The *Katja* is entered in Assuranceföreningen Skuld Gjensidig (Skuld Club).

12.1.6 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 FFr 48 million (£5.1 million).

12.2 Claims for compensation

12.2.1 Claims for compensation have been presented for the cost of clean-up operations incurred by the regional and local authorities in the amount of FFr7 250 000 (£772 000).

12.2.2 A number of claims have been presented for damage to property in the amount of FFr9 million (£947 000) and loss of income in the amount of FFr1.2 million (£128 000).

12.2.3 It is expected that all claims will be settled for an amount significantly lower than the limitation amount which applies 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.

13 *Kyungnam N°1*
(Republic of Korea, 7 November 1997)

13.1 The incident

13.1.1 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 spilt. The 1971 Fund's experts estimate, however, that there was a spill of some 15 - 20 tonnes of cargo oil. The spilt oil affected some kilometres of rocky shoreline.

13.1.2 There are significant aquaculture activities along the affected coast. Some sea mustard farm facilities 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.

13.2 Clean-up operations

13.2.1 Offshore clean-up operations were carried out by the Ulsan Marine Police using vessels, a skimmer unit, booms, sorbents and dispersants. The operations were terminated on 8 November 1997.

13.2.2 Local fishermen and divers were engaged by the shipowner to carry out manual clean-up operations onshore. These operations were completed on 26 December 1997.

13.3 Claims for compensation

13.3.1 Twenty-four claims have been submitted in respect of the clean-up operations, totalling Won 207 million (£90 700). Five claims have been assessed by the 1971 Fund's technical experts at Won 45 million (£19 500). The other claims are being assessed by the experts.

13.3.2 Six claims have been submitted in respect of fishery damage totalling Won 241 million (£105 000). These claims are being assessed by the Fund's experts.

13.3.3 It is unlikely that there will be any further claims.

13.4 Cause of the incident

13.4.1 The criminal investigation into the cause of the incident concluded that the master had failed to check the sea chart and had followed a dangerous course which caused the ship to ground on a submerged rock.

13.4.2 In the light of the findings of the criminal investigation, the Executive Committee, at its 57th session, took the view that there were no grounds on which the 1971 Fund could challenge the shipowner's right of limitation, nor refuse to pay indemnification to the shipowner under Article 5 of the 1971 Fund Convention. The Committee decided, however, that the shipowner would need to establish a limitation fund in order to be entitled to limit his liability (document 71FUND/EXC.57/15, paragraph 3.12.3).

13.5 Limitation proceedings

13.5.1 The limitation amount applicable to the *Kyungnam N°1* has been established by the Ulsan District Court at Won 43 million (£19 000). The shipowner has deposited that amount in cash.

13.5.2 In August 1998, the 1971 Fund filed subrogated claims with the limitation court for Won 449 million (£196 000), comprising Won 207 million (£91 000) for clean-up costs and Won 242 million (£105 000) for fisheries claims. Six claimants also filed claims for clean-up costs totalling Won 212 million (£93 000), and one fishery association presented a claim for Won 752 million (£329 000).

14 Action to be taken by the Executive Committee

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