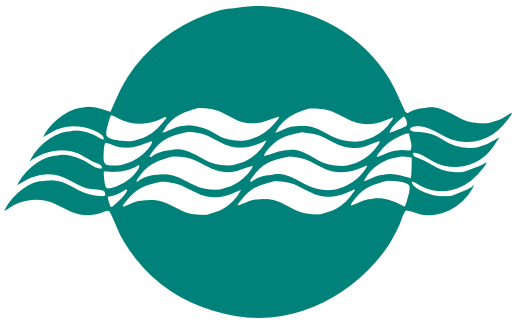
Annual Report 2008

INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS

REPORT ON THE ACTIVITIES OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS IN 2008



Photograph on front cover:
Hebei Spirit: Volunteer clean-up workers assembling on the beach

Acknowledgements

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FOREWORD

As Director of the International Oil Pollution Compensation Funds (IOPC Funds), I am pleased to present the Annual Report for the year 2008.

During 2008, the IOPC Funds celebrated their 30th anniversary, the 1971 Fund having been established in 1978. Since then the system has grown considerably: when the 1971 Fund was established it had just 14 Member States whilst 103 States had ratified the 1992 Fund Convention by the end of 2008. During these 30 years, the Funds have overcome many challenges and I am sure that many more lie ahead.

One of the biggest challenges that the Funds' Secretariat has had to face in recent years is the increasing complexity of incidents and the sheer number of individual claims that have to be handled. Fortunately, there have been no new major incidents during 2008 but the *Hebei Spirit* incident in particular, which occurred in December 2007, is generating a huge number of claims. Whereas the *Erika* incident resulted in some seven thousand claims and the *Solar 1* incident in some thirty-two thousand claims, the *Hebei Spirit* incident is expected to lead to more than one hundred thousand. With such numbers, the use of modern technology is essential and the Funds have therefore speeded up the implementation of their new state-of-the-art web-based claims management system, which significantly facilitates the claims handling process.

The implementation of the HNS Convention also moved a step forward during 2008 with the successful development by the HNS Focus Group of a draft Protocol designed to facilitate the rapid entry into force of the HNS Convention. The draft Protocol was approved by the 1992 Fund Assembly in June and was then considered by the Legal Committee of the International Maritime Organization (IMO) in October. In November, the IMO Council endorsed in principle the Committee's recommendation that a Diplomatic Conference to consider the Protocol be held as soon as possible in 2010 and I hope that, as a result, the Convention will enter into force in the next few years.

Willem Oosterveen

I would like to take this opportunity to thank the Government of Monaco for its generosity in hosting the March 2008 meetings of the Funds and the Government of the United Kingdom for its continued support as host government.

Last but not least, I would like to thank all my staff for their dedication to the Funds in 2008.

I hope that readers will find this Report interesting and that it will help them understand the role of the IOPC Funds within the international oil pollution compensation regime.

Willem Oosterveen
Director

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ANNEXES

PREFACE

I would like to start by thanking the government of Monaco for its generosity in hosting the March meeting of the IOPC Funds: I am sure that the many delegates who attended the meeting will all remember it with great pleasure.

The Monaco meeting included the first session of the HNS Focus Group, which was established by the 1992 Fund Assembly in 2007 in order to facilitate the rapid entry into force of the HNS Convention. The Focus Group worked very speedily, with the able support of the Secretariat, and I sincerely hope that the resulting Protocol will be ratified quickly by many States so that victims of spills of hazardous and noxious substances can benefit from an international compensation system in the same way as victims of oil spills from tankers.

2008 was a year which contained a number of anniversaries, being sixty and forty years respectively since the establishment of both the International Maritime Organization (IMO) and the International Tanker Owners Pollution Federation Limited (ITOPF), the Funds' principal technical advisors. It also marked the 30th anniversary of the IOPC Funds. I congratulate the Funds on reaching this significant milestone. I have every confidence that the system will continue to develop and grow, serving the needs of claimants, governments and industry and I very much hope that, by the next significant anniversary, the HNS Convention will finally have entered into force and we will be able to welcome the HNS Fund to the Fund family.

The international financial crisis which developed during the latter part of 2008 has caused major problems for many organisations. We are extremely fortunate that under the excellent leadership of the Director, assisted as always by sound advice from the Audit Body and the Investment Advisory Body, the Funds have so far weathered the storm without any investment losses. The Funds are regularly commended by the auditors for their proactive approach to good governance and this is a clear example of the resulting benefits.

Jerry Rysanek

It is fortunate that there were no new major incidents during the last 12 months since the *Hebei Spirit* and *Volgoneft 139* incidents have significantly increased the Secretariat's workload during 2008. On behalf of the Member States, I would like to thank the Director and his staff for all their efforts on our behalf. I would also like to thank all those who have chaired meetings of the IOPC Funds during 2008: Captain David Bruce (Marshall Islands), Mr John Gillies (Australia), Rear-Admiral Giancarlo Olimbo (Italy), Mrs Birgit Sølling Olsen (Denmark) and Mr Alfred Popp QC (Canada).

Jerry Rysanek
Chairman of the 1992 Fund Assembly

PART 1

1 INTRODUCTION

The International Oil Pollution Compensation Funds 1971 and 1992 and the International Oil Pollution Compensation Supplementary Fund (IOPC Funds) are intergovernmental organisations which provide compensation for oil pollution damage resulting from spills of persistent oil from tankers.

The International Oil Pollution Compensation Fund 1971 (1971 Fund) was established in October 1978 and it operates within the framework of two international Conventions. These are the 1969 International Convention on Civil Liability for Oil Pollution Damage (1969 Civil Liability Convention) and the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (1971 Fund Convention).

This 'old' regime was amended in 1992 by two Protocols and the amended Conventions, known as the 1992 Civil Liability Convention and the 1992 Fund Convention, entered into force on 30 May 1996 and therefore on that date the International Oil Pollution Compensation Fund 1992 (1992 Fund) was established. The 1992 Civil Liability Convention provides a first tier of compensation which is paid by the owner of a ship which causes pollution damage. The 1992 Fund Convention provides a second tier of compensation which is financed by receivers of oil after sea transport in States Parties to the Convention.

A third tier of compensation for oil pollution damage, also financed by oil receivers, is available through the International Oil Pollution Compensation Supplementary Fund (Supplementary Fund), established by a Protocol to the 1992 Fund Convention which was adopted in 2003 and entered into force on 3 March 2005. Any State which is a Party to the 1992 Fund Convention may become Party to the Supplementary Fund Protocol and thereby become a Member of the Supplementary Fund.

The 1971 Fund Convention ceased to be in force on 24 May 2002 and does not apply to incidents taking place after that date. However, before the 1971 Fund can be wound up, all pending claims arising from incidents which occurred before that date in 1971 Fund Member States will have to be dealt with and any remaining assets distributed among contributors.

The 1969 Civil Liability Convention still remains in force in respect of 38 States. Although it was envisaged that States which became Parties to the 1992 Civil Liability Convention would denounce the 1969 Convention, some States are still Parties to both, resulting in complex treaty relationships.

The 1969 and 1992 Civil Liability Conventions govern the liability of shipowners for oil pollution damage. These Conventions lay down the principle of strict liability for shipowners and create a system of compulsory liability insurance. The shipowner is normally entitled to limit liability to an amount which is linked to the tonnage of the ship.

The IOPC Funds provide compensation to anyone having suffered oil pollution damage in Member States who cannot obtain full compensation for the damage under the applicable Civil Liability Convention. The compensation payable by the 1971 Fund for any one incident is limited to 60 million Special Drawing Rights (SDR) (about £63.4 million or US$92.4 million)[1]. The maximum amount of compensation payable by the 1992 Fund for any one incident is 203 million SDR (about £214.5 million or US$312.7 million) in respect of incidents occurring on or after 1 November 2003. For incidents which took place before that date, the maximum amount payable is 135 million SDR (about £142.6 million or US$208 million). For each Fund these amounts include the sum actually paid by the shipowner under the respective Civil Liability Convention.

The Supplementary Fund Protocol made available a total amount of 750 million SDR (£792.4 million or US$1 155 million) in compensation for pollution damage in States

[1] *The unit of account in the treaty instruments is the Special Drawing Right (SDR) as defined by the International Monetary Fund. Conversion of currencies in this Report has been made on the basis of the rates at 31 December 2008 (on that day 1 SDR = £1.056 570 or US$1.540 270), except in respect of claims paid by the Funds where conversion has been made at the rate of exchange when the currency was purchased.*

which have become Members of that Fund, including the amounts payable under the 1992 Conventions.

The 1971 Fund has an Administrative Council which deals with both administrative and incident-related matters. The 1992 Fund is governed by an Assembly composed of all Member States and an Executive Committee comprising 15 Member States elected by the Assembly. The main function of the Executive Committee is to take policy decisions concerning the admissibility of compensation claims. The Supplementary Fund is governed by an Assembly composed of all States that are Members of that Fund.

The day-to-day operation of all three Funds is the responsibility of the Secretariat, headed by the Director.

Staff of the joint Secretariat

2 THE LEGAL FRAMEWORK

Scope of application

The 1992 Civil Liability Convention, the 1992 Fund Convention and the Supplementary Fund Protocol all apply to spills of persistent oil from oil tankers that cause pollution damage in the territory (including the territorial sea) or the exclusive economic zone (EEZ) or equivalent area of a State Party to the respective treaty instrument. Under the 1969 Civil Liability Convention and the 1971 Fund Convention, however, the geographical scope is limited to the territory (including the territorial sea).

'Pollution damage' is defined in the 1992 Conventions and the Supplementary Fund Protocol as loss or damage caused by contamination, with the addition of clarification that compensation for impairment of the environment, other than loss of profit from such impairment, is limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken. 'Pollution damage' is defined in the 1969 and 1971 Conventions as loss or damage caused by contamination but the 1971 Fund has consistently interpreted this to include the clarification later laid down in the text of the 1992 Conventions. 'Pollution damage' includes, in all these Conventions, the costs of reasonable preventive measures, ie measures to prevent or minimise pollution damage.

Under the 1992 Conventions and the Supplementary Fund Protocol, expenses incurred for preventive measures are recoverable even when no spill of oil occurs, provided that there was a grave and imminent threat of pollution damage. The 1969 and 1971 Conventions only apply, however, to damage caused or measures taken after oil has escaped or been discharged and do not apply to pure threat removal measures, ie preventive measures which are so successful that there is no actual spill of oil from the tanker involved.

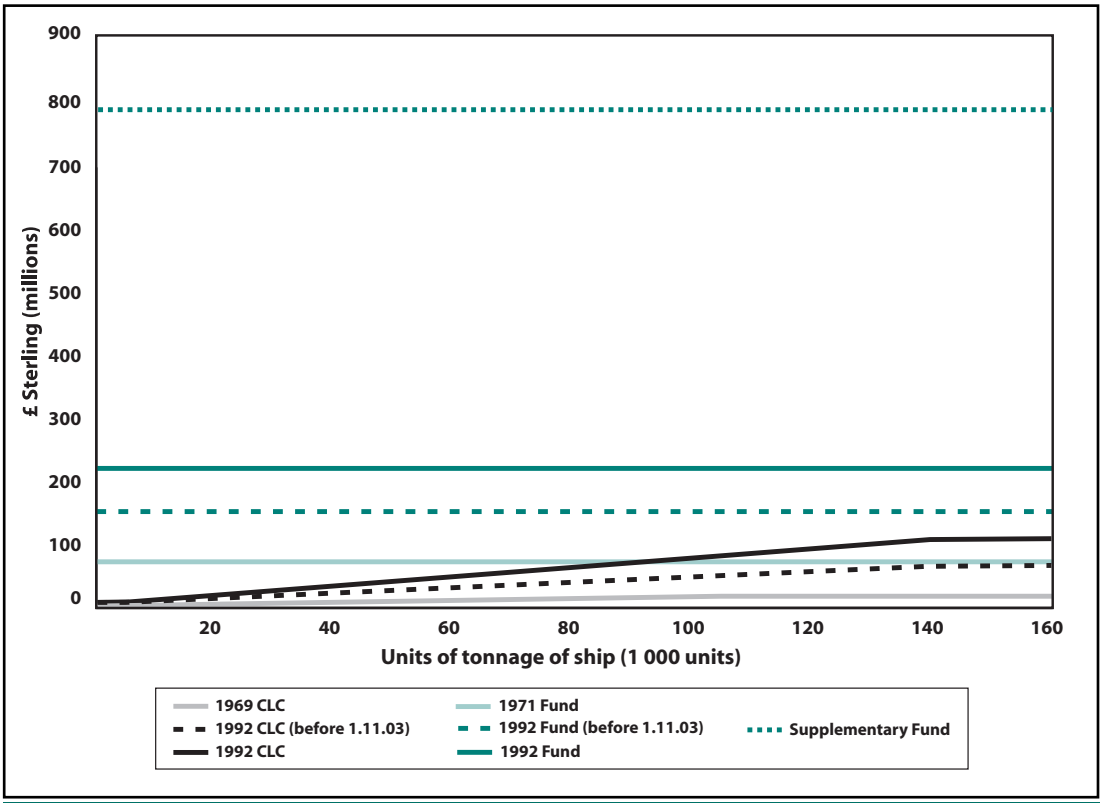
The 1992 Conventions and the Supplementary Fund Protocol apply to spills of bunker oil from unladen tankers provided they have residues of a persistent oil cargo aboard. The 1969 and 1971 Conventions apply only to ships that actually carry oil in bulk as cargo, ie generally laden tankers; spills from tankers during ballast voyages are therefore not covered by these Conventions. None of the above-mentioned treaty instruments apply to spills of bunker oil from ships other than tankers.

Shipowner's liability

Under the Civil Liability Conventions, the shipowner has strict liability for pollution damage caused by the escape or discharge of persistent oil from his ship. This means that he is liable even in the absence of fault on his part. He is exempt from liability only if he proves that:

- the damage resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or
- the damage was wholly caused by an act or

Ship's tonnage	Incidents occurring before or on 31 October 2003	Incidents occurring on or after 1 November 2003
Ship not exceeding 5 000 units of gross tonnage	3 000 000 SDR (£3.2 million or US$4.6 million)	4 510 000 SDR (£4.8 million or US$6.9 million)
Ship between 5 000 and 140 000 units of gross tonnage	3 000 000 SDR (£3.2 million or US$4.6 million) plus 420 SDR (£444 or US$647) for each additional unit of tonnage	4 510 000 SDR (£4.8 million or US$6.9 million) plus 631 SDR (£667 or US$972) for each additional unit of tonnage
Ship of 140 000 units of gross tonnage or over	59 700 000 SDR (£63.1 million or US$92 million)	89 770 000 SDR (£94.9 million or US$138.3 million)



Limits laid down in the Conventions

omission done with the intent to cause damage by a third party; or

- the damage was wholly caused by the negligence or other wrongful act of public authorities in maintaining lights or other navigational aids.

The shipowner is normally entitled to limit his liability to an amount determined by the size of the ship.

The original limits under the 1992 Civil Liability Convention, which were considerably higher than those under the 1969 Convention, were further increased by 50.73% for incidents occurring on or after 1 November 2003. These increases were decided by the Legal Committee of the International Maritime Organization (IMO), using a special procedure laid down in the 1992 Conventions (the 'tacit amendment procedure'). The limits under the 1992 Civil Liability Convention are set out in the table on page 15.

Under the 1969 Civil Liability Convention, the shipowner's liability is limited to 133 Special Drawing Rights (SDR) (£141 or US$205) per ton of the ship's tonnage or 14 million SDR (£14.8 million or US$21.6 million), whichever is the less.

Under the 1971 Fund Convention the 1971 Fund also indemnified the shipowner, under certain conditions, for part of his liability under the 1969 Civil Liability Convention.

Under the 1992 Convention, the shipowner is deprived of his right to limit his liability only if it is proved that the pollution damage resulted from the shipowner's personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result. Under the 1969 Civil Liability Convention, however, the shipowner is deprived of the right to limit his liability if the incident occurred as a result of the owner's personal fault, ie 'actual fault or privity'.

Compulsory insurance

The shipowner is obliged to maintain insurance to cover his liability under the applicable Civil Liability Convention. This requirement only applies to ships carrying more than 2 000 tonnes of oil as cargo.

Channelling of liability

Claims for pollution damage under the Civil Liability Conventions can be made only against the registered owner of the ship concerned. This does not, in principle, preclude victims from claiming compensation outside the Conventions from persons other than the shipowner. The 1992 Civil Liability Convention, however, prohibits claims against the servants or agents of the shipowner, the members of the crew, the pilot, the charterer (including a bareboat charterer), manager or operator of the ship, or any person carrying out salvage operations or taking preventive measures. The 1969 Civil Liability Convention only prohibits claims against the servants or agents of the shipowner. This prohibition does not apply if the pollution damage resulted from the personal act or omission of the person concerned, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

The IOPC Funds' obligations

The IOPC Funds pay compensation when those suffering oil pollution damage cannot obtain full compensation from the shipowner or his insurer under the applicable Civil Liability Convention in the following cases:

- the damage exceeds the limit of the shipowner's liability under the applicable Civil Liability Convention;
- the shipowner is exempt from liability under the applicable Civil Liability Convention because the damage was caused by a grave natural disaster, or was wholly caused by an act or omission done with the intent to cause damage by a third party or by the negligence of public authorities in maintaining lights or other navigational aids;
- the shipowner is financially incapable of meeting his obligations in full under the applicable Civil Liability Convention, and the insurance is insufficient to pay valid compensation claims.

The maximum compensation payable by the 1992 Fund is 203 million SDR (about £214.5 million or US$312.7 million) for incidents occurring on or after 1 November 2003, irrespective of the size of the ship. For incidents occurring before that date the maximum amount payable is 135 million SDR (about £142.6 million or US$208 million). As for the 1971 Fund, the maximum amount payable in respect of one incident is 60 million SDR (about £63.4 million or US$92.4 million), irrespective of the size of the ship involved. These maximum amounts include the sums actually paid by the shipowner under the applicable Civil Liability Convention.

The Supplementary Fund makes additional compensation to that under the 1992 Fund Convention available so that the total amount payable for any one incident for pollution damage in a State that is a Member of that Fund is 750 million SDR (£792.4 million or US$1 155 million), including the amount payable under the 1992 Civil Liability and Fund Conventions.

The graph on page 16 shows the limits laid down in respect of the Civil Liability and Fund Conventions and the Supplementary Fund Protocol.

Time bar

Claims for compensation under the Civil Liability and Fund Conventions and the Supplementary Fund Protocol are time-barred (extinguished) unless legal action is brought against the shipowner and his insurer and against the relevant Fund within three years of the date when the damage occurred and in any event within six years of the date of the incident. A claim made against the 1992 Fund is regarded as a claim made against the Supplementary Fund. Rights to compensation from the Supplementary

Fund are therefore extinguished only if they are extinguished as regards the 1992 Fund.

Jurisdiction and enforcement of judgements

The courts in the Contracting State or States where the pollution damage occurred or where preventive measures were taken have exclusive jurisdiction over actions for compensation against the shipowner, his insurer and the IOPC Funds. A final judgement against the Funds by a Court competent under the applicable treaty which is enforceable in the State where the judgement is rendered, shall be recognised and enforceable in the other Contracting States.

Structure and financing

The structure and financing of the IOPC Funds are described in sections 5, 8 and 9.

3 MEMBERSHIP OF THE IOPC FUNDS

3.1 1992 Fund

The 1992 Fund Convention entered into force on 30 May 1996 for nine States. By the end of 2008, 102 States were Members of the 1992 Fund and one additional State had acceded to the 1992 Fund Convention and will become a Member of the 1992 Fund in the course of 2009. The list of States which have acceded to the 1992 Fund Convention is set out below.

It is likely that a number of other States will become Members of the 1992 Fund in the near future.

3.2 1971 Fund

The 1971 Fund Convention ceased to be in force on 24 May 2002, when the number of Member States fell below 25, and does not apply to incidents occurring after that date. The 1971 Fund therefore has no Member States. As regards the winding up of the 1971 Fund, reference is made to Section 6.

Of the 23 States which were Members of the 1971 Fund on 24 May 2002, 16 have acceded to the 1992 Fund Convention. However, seven of

102 STATES FOR WHICH THE 1992 FUND CONVENTION IS IN FORCE (AND THEREFORE MEMBERS OF THE 1992 FUND)

Albania
Algeria
Angola
Antigua and Barbuda
Argentina
Australia
Bahamas
Bahrain
Barbados
Belgium
Belize
Brunei Darussalam
Bulgaria
Cambodia
Cameroon
Canada
Cape Verde
China (Hong Kong Special Administrative Region)
Colombia
Comoros
Congo
Cook Islands
Croatia
Cyprus
Denmark
Djibouti
Dominica
Dominican Republic
Ecuador
Estonia
Fiji
Finland
France
Gabon
Georgia
Germany
Ghana
Greece
Grenada
Guinea
Hungary
Iceland
India
Ireland
Israel
Italy
Jamaica
Japan
Kenya
Kiribati
Latvia
Liberia
Lithuania
Luxembourg
Madagascar
Malaysia
Maldives
Malta
Marshall Islands
Mauritius
Mexico
Monaco
Morocco
Mozambique
Namibia
Netherlands
New Zealand
Nigeria
Norway
Oman
Panama
Papua New Guinea
Philippines
Poland
Portugal
Qatar
Republic of Korea
Russian Federation
Saint Kitts and Nevis
Saint Lucia
Saint Vincent and the Grenadines
Samoa
Seychelles
Sierra Leone
Singapore
Slovenia
South Africa
Spain
Sri Lanka
Sweden
Switzerland
Tonga
Trinidad and Tobago
Tunisia
Turkey
Tuvalu
United Arab Emirates
United Kingdom
United Republic of Tanzania
Uruguay
Vanuatu
Venezuela

1 STATE WHICH HAS DEPOSITED AN INSTRUMENT OF ACCESSION, BUT FOR WHICH THE 1992 FUND CONVENTION DOES NOT ENTER INTO FORCE UNTIL DATE INDICATED	
Islamic Republic of Iran	5 November 2009

these States have not yet done so, namely Benin, Côte d'Ivoire, Gambia, Guyana, Kuwait, Mauritania and Syrian Arab Republic. Indonesia, which had earlier denounced the 1971 Fund Convention, has also not become a Member of the 1992 Fund. It is hoped that these States will ratify the 1992 Fund Convention in the near future.

3.3 Supplementary Fund

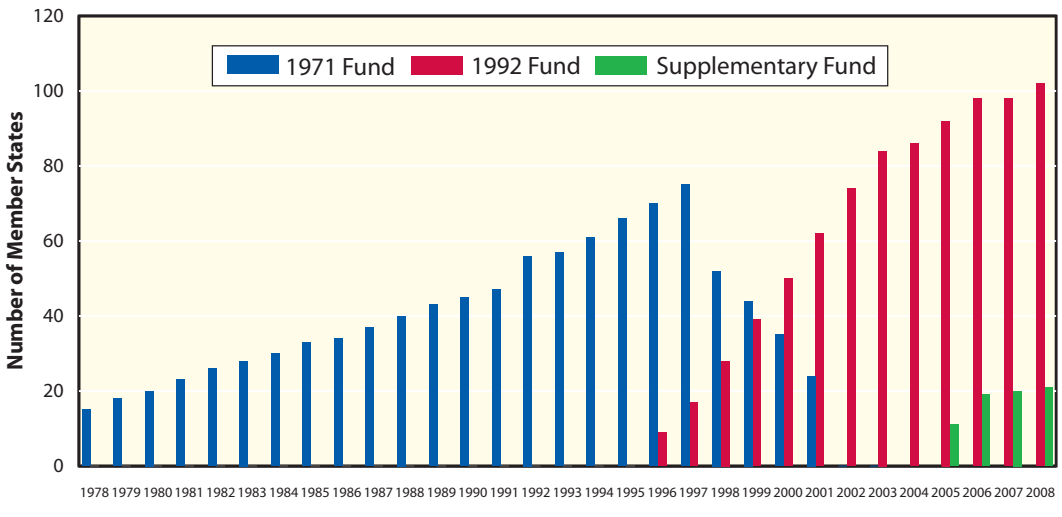
By the end of 2008, 21 States had become Members of the Supplementary Fund. Two States have acceded to the Supplementary Fund Protocol and will become Members in January and March 2009 respectively, as set out below.

3.4 Developments over the years

The graph below shows developments as regards the number of Member States of the 1971 Fund, 1992 Fund and Supplementary Fund over the years.

21 STATES PARTIES TO THE 2003 SUPPLEMENTARY FUND PROTOCOL (AND THEREFORE MEMBERS OF THE SUPPLEMENTARY FUND)		
Barbados	Greece	Netherlands
Belgium	Hungary	Norway
Croatia	Ireland	Portugal
Denmark	Italy	Slovenia
Finland	Japan	Spain
France	Latvia	Sweden
Germany	Lithuania	United Kingdom

2 STATES WHICH HAVE DEPOSITED INSTRUMENTS OF ACCESSION, BUT FOR WHICH THE PROTOCOL DOES NOT ENTER INTO FORCE UNTIL DATE INDICATED	
Estonia	14 January 2009
Poland	9 March 2009



Annual membership of the 1971, 1992 and Supplementary Funds

4 EXTERNAL RELATIONS

4.1 Promotion of 1992 Fund membership and information on Fund activities

The Secretariat has continued its efforts to increase the number of Member States of the 1992 Fund and Supplementary Fund. Discussions were held with government officials from a number of Member States on matters relating to the international compensation regime in order to establish and maintain personal contacts between the Secretariat and officials within the national administrations dealing with Fund matters.

The Director and other members of the Secretariat have also participated in seminars and conferences in a number of countries and gave lectures on liability and compensation for oil pollution damage and on the operation of the IOPC Funds. The training package on the submission of claims for compensation, developed by the Secretariat, was used in a workshop held in Madagascar.

As in previous years, Funds' staff lectured to students at the IMO International Maritime Law Institute (IMLI) in Malta and to students of Southampton University's Institute of Maritime Law (United Kingdom), providing the opportunity to disseminate information on the international compensation regime to students who eventually return to their administrations throughout the world. In addition, students from several European universities as well as fellows of the International Tribunal for the Law of the Sea capacity building and training programme on dispute settlement visited the IOPC Funds' London office for presentations on the international oil pollution compensation regime.

The Director and other members of the Secretariat met with government representatives of a number of States during IMO meetings which gave them the possibility to promote the international compensation regime.

As requested by the 1992 Fund Assembly, the IOPC Funds have allocated high priority to the preparations for the entry into force of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (HNS Convention).

Former Member States of the 1971 Fund automatically have observer status with the 1992 Fund. In addition, the 1992 Fund Assembly has granted observer status to a number of States that have never been parties to either Fund Convention. At the end of 2008, the non-Member States set out in the table below had observer status with the 1992 Fund (former 1971 Fund Member States are indicated with an asterisk).

4.2 Relations with international organisations and interested bodies

The IOPC Funds co-operate closely with many intergovernmental and international non-governmental organisations, as well as with bodies set up by private interests involved in the maritime transport of oil.

The following intergovernmental organisations

NON-MEMBER STATES WITH OBSERVER STATUS

Benin*
Brazil
Chile
Côte d'Ivoire*
Democratic People's Republic of Korea
Egypt
Gambia*
Guyana*
Indonesia*
Islamic Republic of Iran
Kuwait*
Lebanon
Mauritania*
Pakistan
Peru
Saudi Arabia
Syrian Arab Republic*
Ukraine
United States

have been granted observer status with the IOPC Funds:

- United Nations
- International Maritime Organization (IMO)
- United Nations Environment Programme (UNEP)
- Baltic Marine Environment Protection Commission (Helsinki Commission)
- Central Commission for Navigation on the Rhine (CCNR)
- European Commission
- International Institute for the Unification of Private Law (UNIDROIT)
- Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea (REMPEC)

The IOPC Funds have particularly close links with IMO and co-operation agreements have been concluded between the Funds and that Organisation. During 2008 the Secretariat represented the IOPC Funds at meetings of the IMO Assembly, Council and Legal Committee and other IMO bodies dealing with issues of interest to the Fund.

The following international non-governmental organisations have observer status with the IOPC Funds:

- Advisory Committee on Protection of the Sea (ACOPS)
- BIMCO
- Comité Maritime International (CMI)
- Conference of Peripheral Maritime Regions (CPMR)
- European Chemical Industry Council (CEFIC)
- Federation of European Tank Storage Associations (FETSA)
- Friends of the Earth International (FOEI)
- International Association of Classification Societies Limited (IACS)
- International Association of Independent Tanker Owners (INTERTANKO)
- International Chamber of Shipping (ICS)
- International Group of Liquefied Natural Gas Importers (GIIGNL)
- International Group of P&I Clubs
- International Salvage Union (ISU)
- International Tanker Owners Pollution Federation Limited (ITOPF)
- International Union for the Conservation of Nature and Natural Resources (IUCN)
- International Union of Marine Insurance (IUMI)
- Oil Companies International Marine Forum (OCIMF)

4.3 Website

The IOPC Funds have a trilingual website (www.iopcfund.org) containing information in English, French and Spanish on the Organisations and their activities and a dedicated website for the HNS Convention (http://www.hnsconvention.org). During 2008 information on conferences, seminars and workshops in which members of the IOPC Funds Secretariat participated continued to be added to the website, reflecting the increasing outreach activities of the Organisations.

The further development of the website has had to take lower priority during 2008 due to staff shortages, however a major upgrade is planned for 2009 in order to ensure that it continues to provide stakeholders with appropriate information and facilities in a user-friendly format and utilises new technologies where appropriate.

4.4 Document Server

The IOPC Funds have established a Document Server to provide delegates to the Funds' governing bodies and the general public with access to documents for Fund meetings via the IOPC Funds' website.

4.5 Records of Decisions database

The IOPC Funds are in the process of establishing a database of all the decisions taken by the governing bodies of the IOPC Funds since their inception in 1978. A key feature of the database, which will be web-based and set up

at least initially in English only, is that each decision will be accompanied by an abstract of that decision, which will be linked directly to the relevant paragraphs in the source documents relating to the decision. The categorisation of all the decisions and other relevant information, such as court judgements, has been completed. Mr Måns Jacobsson, the former Director of the IOPC Funds, has been checking the correctness and completeness of the entries and references, and editing where necessary. Once his work has been finalised, a database interface will be installed to enable the database to be accessible online. The database will then be kept up to date by the Secretariat after each session of the governing bodies.

5 THE FUNDS' GOVERNING BODIES

The 1992 Fund has an Assembly composed of all Member States and an Executive Committee of 15 Member States elected by the Assembly. The main function of the Executive Committee is to take policy decisions concerning the admissibility of compensation claims.

In 2002 the 1992 Fund Assembly recognised that, because of the growth in the number of Member States and the lack of attendance of many Member States, it might be unable to achieve a quorum at future sessions. The Assembly therefore adopted a Resolution establishing an Administrative Council for the 1992 Fund which used the rules adopted in 1998 for the 1971 Fund Assembly (see below) as a model. The quorum requirement for this Administrative Council was set at 25 Member States.

The 1992 Fund Assembly had been scheduled to hold an extraordinary session to deal with a number of administrative matters from 24-27 June 2008. As it was unable to achieve the required quorum, the 1992 Fund Administrative Council therefore dealt with the items on the Assembly's agenda. The regular autumn session of the 1992 Fund Assembly was held from 13-17 October 2008. Both sessions were chaired by Mr Jerry Rysanek (Canada).

John Gillies

The 1992 Fund Executive Committee held four sessions in 2008. At the kind invitation of the Government of the Principality of Monaco, the March 2008 session of the Executive Committee as well as meetings of the 1992 Fund's fourth and fifth Intersessional Working Groups, were held at the Monte Carlo Sporting Complex in Monaco. Further sessions of the Executive Committee were held in June and October. The first three sessions of the Executive Committee were chaired by Mr John Gillies (Australia) and the fourth session, which was also held in October 2008, was chaired by Mr. Daniel Kjellgren (Sweden). The main decisions taken by the 1992 Fund Executive Committee at these sessions are reflected in Section 15 in the context of the particular incidents.

Under the 1971 Fund Convention, the 1971 Fund had an Assembly and an Executive Committee. However, in 1998 it became evident that as a result of diminishing membership and as many of the remaining Member States did not send representatives to meetings, there was an imminent risk that these bodies would be unable to achieve a quorum. The Assembly therefore adopted a Resolution establishing an Administrative Council which would act on behalf of the Assembly when the latter did not achieve a quorum. Since October 1998 the Administrative Council (which does not have any quorum requirement) has fulfilled the roles of the Assembly and the Executive Committee and therefore deals with both administrative and incident-related matters. The Council also focuses on the winding up of the 1971 Fund.

The 1971 Fund Administrative Council held its regular session in October 2008 and elected Captain David J.F. Bruce (Marshall Islands) as its Chairman. It noted that the previous Chairperson, Mrs Teresa Martins de Oliveira (Portugal) had had to stand down as Chairperson and representative of the Portuguese delegation since taking up a new post and expressed its appreciation for her participation in the work of the IOPC Funds and for chairing the 1971 Administrative

Council. The main decisions taken by the Council at these sessions in respect of incidents involving the 1971 Fund are reflected in Section 14 in the context of particular pollution incidents involving that Fund.

The Supplementary Fund has an Assembly composed of all States which are Parties to the Supplementary Fund Protocol. It held an ordinary session from 13-17 October 2008 which was chaired by Rear-Admiral Giancarlo Olimbo (Italy).

At their 2008 sessions the governing bodies dealt with the following main issues:

Decisions relating to all three Organisations

October 2008

- The governing bodies noted that the 1971 Fund Convention had entered into force on 16 October 1978 and that on that same date in 2008 the IOPC Funds would have been in operation for 30 years. A special reception to mark the occasion was held at IMO on 14 October 2008.
- The governing bodies noted with appreciation the External Auditor's Reports and Opinions on the Financial Statements of the 1971 Fund, the 1992 Fund and the Supplementary Fund and that the External Auditor had provided an unqualified audit opinion on the 2007 Financial Statements, following a rigorous examination of the financial operations and accounts in conformity with applicable audit standards and best practice. The governing bodies further noted that the unqualified audit opinion was the confirmation that the Organisations' internal financial controls had operated effectively. The governing bodies of the three Funds approved the accounts for the three Funds for the financial year ending 31 December 2007 (see Section 8.3) as recommended by the Organisations' joint Audit Body.
- The governing bodies decided to adopt a revised Composition and Mandate for the joint Audit Body which took into account, in particular, the inclusion of the organisation of the process for the selection of the External Auditor.
- The governing bodies approved the adoption, in principle, of the International Public Sector Accounting Standards (IPSAS) by the IOPC Funds from the financial year 2010 and noted the proposed tentative timetable for its implementation.
- The 1971 Fund, 1992 Fund and the Supplementary Fund have a joint Audit Body, the members of which are elected by the 1992 Fund Assembly. The following persons were elected members of the joint Audit Body for a term of three years: Mr Emile di Sanza (Canada), Mr Thomas Johansson (Sweden), Mr Mendim Me Nko'o (Cameroon), Professor Seiichi Ochiai (Japan), Mr Wayne Stuart (Canada (Chairman)) and Mr John Wren (United Kingdom). Mr Nigel Macdonald (United Kingdom) was re-elected to the joint Audit Body as 'external expert' not related to the Organisations for a further and final three-year term. The governing bodies expressed their gratitude to Mr Charles Coppolani (France), Mr Maurice Jaques (Canada), Dr Reinhard Renger (Germany) and Professor Hisashi Tanikawa (Japan), the out-going members, for their valuable

Captain David Bruce

Rear-Admiral Giancarlo Olimbo

contribution to the work of the Audit Body.

- The governing bodies re-appointed Mr David Jude, Mr Brian Turner and Mr Simon Whitney-Long as members of the joint Investment Advisory Body for a term of three years.

Decisions relating to the 1992 Fund and the Supplementary Fund only

October 2008

- As requested by the Supplementary Fund Assembly, the 1992 Fund Assembly decided that its Credentials Committee would also examine the credentials of Member States of the Supplementary Fund.

Decisions relating to the 1992 Fund only

June 2008

- The Administrative Council, acting on behalf of the 1992 Fund Assembly, decided that the 'Guidelines for claimants in the subsistence fisheries sector' which had been prepared on the basis of the 'Technical Guidelines for experts for assessing fisheries sector claims' should be published as a Fund document.
- The Administrative Council decided to grant observer status to Ukraine on a permanent basis.
- The Administrative Council decided to levy contributions of £50 million to the *Hebei Spirit* Major Claims Fund payable by 1 November 2008.
- The Administrative Council noted that the Bunkers Convention would enter into force in November 2008 and that, following the entry into force of the Bunkers Convention every ship that was registered in a State Party or entered or left a port in the territory of a State Party, and with a gross tonnage (GT) greater than 1 000, would be required to maintain insurance or other financial security in accordance with the provisions of the Convention and to obtain a certificate issued by a State Party attesting that such insurance or financial security was in place.

October 2008

- The Assembly elected the following delegates to hold office until the next regular session of the Assembly:
  Chairman: Mr Jerry Rysanek (Canada)
  First Vice-Chairman: Mr Edward K Tawiah (Ghana)
  Second Vice-Chairman: Mr Ichiro Shimizu (Japan)
- The Assembly decided that the possibility of including the 1992 Conventions in the IMO Voluntary Audit Scheme should remain part of the Secretariat's ongoing communication with IMO, with a view to exploring at regular intervals whether and at what point in the future the 1992 Conventions could usefully be incorporated in that Scheme.
- The Assembly decided to instruct the Audit Body to review the matter of outstanding contributions and to put forward proposals to ensure prompt payment of contributions.

- The Assembly decided to adopt a new policy on the deferment of compensation payments in States which have outstanding oil reports in order to address its very serious concern as regards the number of Member States which have not fulfilled their treaty obligation to submit oil reports, since the submission of these reports is crucial to the functioning of the IOPC Funds:

  > Where a State is two or more oil reports in arrears, any claim submitted by the Administration of that State or a public authority working directly on the response or recovery from the pollution incident on behalf of that State will be assessed for admissibility but payment will be deferred until the reporting deficiency is rectified.

- The Assembly instructed the Director to prepare a circular containing the policy decision together with appropriate background information and to circulate it to all Member States and to bring the policy to the attention of Member States by any other appropriate means.
- The Assembly elected the following States as members of the 1992 Fund Executive Committee to hold office until the end of the next regular session of the Assembly:

Canada	Philippines
China (Hong Kong Special Administrative Region)	Qatar
	Republic of Korea
Cyprus	Spain
France	Sweden
India	Trinidad and Tobago
Italy	United Kingdom
Liberia	Uruguay

- The Assembly agreed that the 1971 Fund and the Supplementary Fund should pay flat management fees of £210 000 and £50 000 respectively to the 1992 Fund for the financial year 2009.
- The Assembly adopted the budget for 2009 for the administrative expenses for the joint expenses for the joint Secretariat for a total of £3 723 625 (including the cost of the external audit for the three Funds).
- The Assembly decided to maintain the working capital of the 1992 Fund at £22 million.
- The Assembly decided to levy contributions to the General Fund of the 1992 Fund for a total of £10 million, with the entire levy due for payment by 1 March 2009. The Assembly further decided to levy £50 million with respect to the *Volgoneft 139* incident, the entire levy to be deferred and to levy 2008 contributions to the *Prestige* and *Hebei Spirit* Major Claims Funds of £2 million and £33.5 million respectively, the entire levies to be deferred.
- The Assembly noted that the fourth intersessional Working Group had completed its mandate and that, although the Group had not made any recommendations to the Assembly and there were still some issues under the umbrella of quality shipping which remained unresolved, in the view of the Chairperson of the Working Group, the measure of success of the Working Group should not be the number of proposals put forward but other aspects, such as the degree to which its work had enhanced awareness and understanding of the issues involved, and the willingness to participate in, discuss and encourage initiatives to promote quality shipping.
- The Assembly noted the developments in respect of the work of the HNS Focus Group which had been set up by the Assembly at its 12th session in October 2007. The Assembly noted that the Protocol to the HNS Convention which had been developed by the Focus Group and endorsed by the Assembly had been referred by the Director to the Secretary-General of IMO requesting him to refer it to IMO's Legal Committee for consideration with a view to convening a Diplomatic Conference to consider it at the earliest opportunity (see Section 11).

The Assembly in session at IMO, October 2008

Decisions relating to the Supplementary Fund only

October 2008

- The Assembly elected the following delegates to hold office until the next regular session of the Assembly:
  Chairman: Rear-Admiral Giancarlo Olimbo (Italy)
  First Vice-Chairperson: Mrs Birgit Sølling Olsen (Denmark)
  Second Vice-Chairman: Mr Yukio Yamashita (Japan)
- The Assembly adopted the 2009 budget for the administrative expenses of the Supplementary Fund for a total of £63 600 (including the management fee of £50 000 payable to the 1992 Fund).
- The Assembly decided to maintain the working capital at £1 million fixed in October 2005.
- The Assembly decided not to levy 2008 contributions to the General Fund.

Decisions relating to the 1971 Fund only

October 2008

- The Administrative Council elected Captain David J. F. Bruce (Marshall Islands) as its Chairman, and Mr Victor Koyoc Cauich (Mexico) as Vice-Chairman.
- The Administrative Council noted that there were outstanding third party claims in respect of seven incidents (*Aegean Sea*, *Iliad*, *Kriti Sea*, *Nissos Amorgos*, *Plate Princess*, *Evoikos* and *Alambra*) and that recourse actions taken by the 1971 Fund in respect of two incidents (*Vistabella* and *Al Jaziah 1*) were also pending.
- The Administrative Council decided that there should be no levies of 2008 contributions in respect of the *Vistabella* and *Nissos Amorgos* Major Claims Funds (see Section 9.2).
- The Administrative Council adopted the budget for 2009 for the administrative expenses of the 1971 Fund for a total of £475 300 (including the management fee of £210 000 payable to the 1992 Fund).

6 WINDING UP OF THE 1971 FUND

6.1 Termination of the 1971 Fund Convention

As mentioned in Section 3.2, the 1971 Fund Convention ceased to be in force on 24 May 2002 and does not apply to incidents occurring after that date.

6.2 Incidents pending

The termination of the 1971 Fund Convention does not result in the immediate liquidation of the 1971 Fund as the Organisation has to meet its obligations in respect of pending incidents. During 2008 further progress was made towards the winding up of the 1971 Fund. It is anticipated that by the end of 2009 there will only be outstanding compensation and/or indemnification claims in respect of a very small number of incidents, and that the 1971 Fund may still be involved in recourse proceedings or outstanding issues relating to costs in respect of some other incidents.

6.3 Distribution of the 1971 Fund's remaining assets

The distribution of the 1971 Fund's remaining assets is dealt with in Article 44.2 of the 1971 Fund Convention which reads:

> The Assembly shall take all appropriate measures to complete the winding up of the Fund, including the distribution in an equitable manner of any remaining assets among those persons who have contributed to the Fund.

The remaining assets will consist of the balances, if any, on the remaining two Major Claims Funds and on the General Fund.

6.4 Contributors in arrears

There has been an improvement in the contribution situation over the last five years. The total amount of the principal in arrears has decreased from £930 000 in October 2002 to £311 530 in December 2008. This represents some 0.081% of the total amount levied by the 1971 Fund during the period 1978-2003 (the year of the last levy). The number of contributors in arrears has decreased from 27 to 11, out of which five are located in the former USSR (but not in the Russian Federation) and three are located in the former Socialist Federal Republic of Yugoslavia.

During 2008 the Director continued his efforts to make contributors in arrears pay the amounts due. Contributors were reminded by telefax or letter of their outstanding contributions and the Director wrote to the contributors with significant arrears, explaining the legal basis for their obligation to pay, and making it clear that the 1971 Fund might take legal action to recover outstanding amounts. In some cases the Fund's lawyers in the States concerned have contacted the contributor in arrears and pressed for payment. The Secretariat has sometimes made direct contact with a person within a defaulting entity to press for payment and in some cases assistance has been given by members of the delegations of the States concerned. The Director will continue his efforts and will consider, on a case-by-case basis, whether legal action should be taken against a particular contributor.

At their October 2008 sessions, the governing bodies instructed the Audit Body to review the matter of outstanding contributions and put forward proposals to ensure prompt payment of contributions.

6.5 Non-submission of oil reports

In October 2003 the 1971 Fund Administrative Council decided that the reimbursement of surpluses from any Major Claims Funds (after offset had been made against any arrears) to contributors in States with outstanding reports should be postponed until all contributing oil reports for that State had been submitted. As decided at the Council's October 2005 session, the former 1971 Fund Member States with outstanding oil reports are listed on the IOPC Funds' website.

7 WORKING GROUP ON NON-TECHNICAL MEASURES TO PROMOTE QUALITY SHIPPING

7.1 Establishment of the Working Group

At its February/March 2006 session, the 1992 Fund Assembly established a Working Group to consider non-technical measures to promote quality shipping for the carriage of oil by sea.

The full text of the mandate of the Working Group can be found in the Annual Report 2007, page 30. The Working Group held five meetings chaired by Mrs Birgit Sølling Olsen (Denmark), in May 2006, March and June 2007 and March and June 2008 respectively and submitted a final report to the 1992 Fund Assembly at its October 2008 session (document 92FUND/A.13/21/1).

7.2 Key issues discussed and conclusions reached over the five meetings of the Working Group

Preliminary question

The Working Group concluded at its second meeting that, taking into account the results of a study undertaken by the Secretariat, ships falling outside the ambit of classification societies that were members of the International Association of Classification Societies (IACS) and outside the ambit of P&I Clubs that were members of the International Group of P&I Clubs (International Group) were not more likely to be involved in pollution incidents than vessels within the ambit of IACS and of the International Group of P&I Clubs and therefore decided that such ships should not be the main focus of its attention. The topics discussed by the Working Group were as set out below:

Common criteria for issuing CLC certificates

The Working Group addressed the issue of the development of common criteria to be uniformly applied by Contracting States to ensure that fully effective insurance was in place before States issued Certificates under the Civil Liability Convention, both when certificates were issued on the basis of 'blue cards' issued by the Clubs of the International Group and when they were issued against security by other providers of financial security. A number of States submitted information on their procedures when granting CLC certificates.

The Working Group concluded that States did not encounter difficulties when a ship was insured by a member of the International Group, but that States should look into whether they had the correct checks in place and whether these checks were enforced when the insurer was not a member of the International Group. It recommended that States took note of the practices in those States which had submitted documents or spoken on this issue, looked into their own practices and considered whether common procedures could be adopted by all States. It was suggested that States should consider, in particular, whether there should be an alignment of the safety issue and the quality of the ship and whether certificates were issued purely based on the Conventions or whether the issuing authorities, the flag State and the industry were benefiting from all of the information that could be available in relation to the quality of the ship.

Sharing of information between marine insurers

The Working Group attempted to identify factors that prevented the sharing of information between marine insurers, with a view to developing a common policy or other measures that would facilitate such sharing of information. The Working Group took note of the information submitted by the Oil Companies International Marine Forum (OCIMF), on its Tanker Management and Self-assessment (TMSA) Guide, a tool designed to help shipowners/operators measure and improve their management systems.

At its first meeting, the Working Group also extended an invitation to the Comité Maritime International (CMI) to undertake a study to identify factors influencing the degree to which marine insurers and other business endeavours could share information on clients and to identify whether competition law and practices take into consideration the need for taking measures to encourage quality shipping for the transportation of oil.

The Working Group decided that the study should focus on the difficulties faced by property insurers. At its fourth meeting, the Working Group noted that an initial review of the responses to CMI's questionnaire had, in the view of CMI, shown extreme differences in the practices of States and that it would be difficult synthesise the results into one set of principles that could be recommended to all States.

The Working Group noted that the International Group had drafted a model rule to incorporate into insurance contracts for use by all Clubs within the International Group stating that the shipowner agreed to the sharing of information related to the condition of his ship. The Working Group hoped that the incorporation of the International Group's model rule into its Clubs' contracts would facilitate and encourage the sharing of information among marine insurers, since this was the best and most practical way of ensuring the transparency necessary to enhance the quality of shipping, including the transportation of oil in bulk as cargo. Member States were urged to carry out CMI's request to encourage their National Maritime Law Associations to respond to the questionnaire and to take note of the results of the study when they became available in October 2008. Any further difficulties identified at that stage could then be brought to the attention of the Assembly for consideration.

Practical measures to improve coordination between insurers, shipowners and cargo interests to promote quality shipping

The observer delegation of the International Group of P&I Clubs stated that this was largely

Birgit Sølling Olsen

a matter of freedom of exchange of information between the relevant industry players and that the more information that could be freely exchanged between them the easier it would be for these parties to identify and target substandard ships. That delegation pointed out that the International Group Clubs inspected between 10 and 20% of all entered ships and that it would be very beneficial to the Clubs if they could access data on ship inspection from other sources.

The Working Group was of the view that the improvement of coordination between insurers, shipowners and cargo interests was also dependent on their ability and willingness to share information and it was therefore hoped that the solutions set out in respect of the sharing of information between marine insurers would also contribute to cooperation among the industry.

Hull insurance

At its third meeting, following a proposal by the French delegation, the Working Group invited the Secretariat to undertake a study in cooperation with IUMI and CMI to examine the role that providers of hull insurance could play in the identification and elimination of substandard vessels, the promotion of insurance

which was sensitive to the condition of vessels and in the promotion of conditions of operation and management which could contribute to quality transportation of oil.

Having analysed the input provided by IUMI and CMI, the Director concluded that there was a general lack of information which was readily available and which could be applied directly to the questions which formed the basis of the study. He suggested that this lack of information could only be resolved by further in-depth research and fact-finding which would require not only specific expertise of the hull insurance market but also of scientifically sound methods of collecting statistically reliable data.

The Chairperson concluded at the Working Group's fifth meeting that there was no support for continuing with the hull insurance study but that such a decision did not imply that the Working Group did not recognise the importance of the issue.

Other issues considered

Denial or withdrawal of CLC certificates
At its third and fourth meetings the Working Group considered possible measures for the denial or withdrawal of insurance cover but concluded that there was not sufficient support within the Working Group to pursue this matter.

The impact of differentiated insurance rates and premiums that would encourage quality shipping
Based on information provided by the International Group of P&I Clubs indicating that there was no evidence of a direct correlation between substandard ships and a bad claims record, the Working Group concluded that differentiation of insurance rates and premiums was not likely to lead to a significant improvement in the quality of transportation of oil in bulk by sea.

Economic incentives for quality shipowners
INTERTANKO, OCIMF, the International Group of P&I Clubs and BIMCO had proposed the introduction of economic incentives, such as reduced port tariffs and fewer ship inspections, to encourage quality shipping. It was noted that some ports operated 'green award' schemes whereby ships meeting the highest standards were subject to lower port dues. However, the proposal had gathered insufficient support among the Working Group.

7.3 Report to the Assembly

In presenting the Working Group's final Report at the 1992 Fund Assembly's 13th session, held in October 2008, the Chairperson stated that, although the Group had not made any recommendations to the Assembly, in her view, the measure of success of the Working Group should not be the number of proposals put forward but other aspects, such as the degree to which its work had enhanced awareness and understanding of the issues involved, and the willingness to participate in, discuss and encourage initiatives to promote quality shipping. She acknowledged that various issues under the umbrella of quality shipping remained unresolved and stated that, despite the termination of the Working Group, it was hoped that Member States and members of the industry would continue to work towards their resolution.

The Assembly noted that the Working Group had completed its mandate, thanked Mrs Olsen for chairing the Working Group so capably and for her comprehensive reports on the Working Group's final meetings.

8 ADMINISTRATION OF THE IOPC FUNDS

8.1 Secretariat

The 1971 Fund, 1992 Fund and Supplementary Fund have a joint Secretariat headed by one Director. The commitment of the staff to their work, as well as their knowledge and expertise, are important assets to the IOPC Funds and are crucial to the efficient functioning of the Secretariat.

The IOPC Funds continue to use external consultants to obtain advice on legal and technical matters in relation to incidents. In connection with a number of major incidents the Funds and the shipowner's liability insurer involved have jointly established local claims offices to facilitate the efficient handling of the great numbers of claims submitted and, in general, to assist claimants.

In the majority of incidents involving the IOPC Funds, clean-up operations are monitored and claims are assessed in close co-operation between the Funds and the shipowner's liability insurer, which in most cases is one of the mutual Protection and Indemnity Associations ('P&I Clubs'). The technical assistance required by the Funds with regard to oil pollution incidents is usually provided by the International Tanker Owners Pollution Federation Limited (ITOPF), supported by a world-wide network of technical experts.

8.2 Risk Management

During 2008 the Director continued a review of the IOPC Funds' risk management. In close co-operation with the Audit Body, and with the assistance of consultants and the External Auditor, five areas of risk have been identified, namely: reputation risk, claims-handling process, financial risk, human resource management and business continuity. The sub-risks have been mapped and assessed under each of the five areas of risk. The Audit Body and the External Auditor have made valuable contributions to the work in this field. During 2008 the Secretariat developed a Key Risk Register, bringing together the key risks under each risk area, which was reviewed by the Audit Body at its June 2008 meeting. It is expected that the risks identified under the different risk areas will be reviewed annually by the "risk owners" and the Key Risk Register annually by the Audit Body.

8.3 Financial statements for 2007

As in previous years the financial statements of the 1971 Fund, the 1992 Fund and the Supplementary Fund were audited by the Comptroller and Auditor General of the United Kingdom.

The financial statements of the 1971 Fund, the 1992 Fund and the Supplementary Fund for the period 1 January to 31 December 2007 were approved by the respective governing bodies during their sessions in October 2008.

The Auditor's reports on the 1971 Fund and the 1992 Fund are reproduced in full in Annexes III and IX respectively and his opinions on each financial statement are reproduced in Annexes IV and X. Summaries of the information contained in the audited statements for this period are given in Annexes V to VIII for the 1971 Fund and in Annexes XI to XIV for the 1992 Fund.

As regards the 1971 Fund and the 1992 Fund separate Major Claims Funds are established for incidents for which the total amounts payable exceed 1 million Special Drawing Rights (SDR) (£1.07 million) for the 1971 Fund or 4 million SDR (£4.27 million) for the 1992 Fund; conversion from SDR to Pounds Sterling is made at the rate applicable at the date of the incident in question. There are separate income and expenditure accounts for the General Fund and for each Major Claims Fund.

In view of the limited financial activity of the Supplementary Fund, the External Auditor decided not to produce any report on the accounts. The External Auditor did express an opinion on the financial statements of the Supplementary Fund which is set out in Annex XV. A summary of the information contained in the audited statements for the Supplementary Fund for this period is given in Annexes XVI to XVIII.

The administrative expenses for the joint Secretariat totalled £2 927 628 in 2007, compared to a budgetary appropriation of £3 590 750.

1992 Fund

Contributions of some £3 million were due in respect of the General Fund during 2007. No contributions were due to the Major Claims Fund during the same period.

Claims and claims-related expenditure during 2007 was £10.2 million. The payments related mainly to the *Erika* and *Prestige* incidents and the *Solar 1* incident for which recovery was made under STOPIA 2006 from the P&I Club.

The balance sheet of the 1992 Fund as at 31 December 2007 is reproduced in Annex XIII. The balances of the various Major Claims Funds are also given. The contingent liabilities were estimated at £326.6 million in respect of claims and claims-related expenditure arising from ten incidents, mainly in respect of the *Volgoneft 139* and *Hebei Spirit* incidents, both of which occurred in 2007.

1971 Fund

No annual contributions were due in respect of the General Fund during 2007 as it is no longer possible to levy contributions to the General Fund. No contributions were due during 2007 in respect of any Major Claims Funds.

Total obligations incurred by the 1971 Fund in 2007 amounted to £285 000, manly in respect of the management fee payable to the 1992 Fund for the administration of the joint Secretariat of £275 000.

Claims and claims-related expenditure for 2007 amounted to £514 000. The majority of this expenditure related to three cases, namely the *Pontoon 300*, *Iliad* and *Aegean Sea* incidents.

The balance sheet of the 1971 Fund as at 31 December 2007 is reproduced in Annex VII. The balances of the various Major Claims Funds are also given. The contingent liabilities were estimated at over £39 million in respect of claims arising from 10 incidents.

Supplementary Fund

No annual contributions were due during 2007. The total obligations incurred by the Supplementary Fund in 2007 amounted to £74 288, mainly in respect of the management fee payable to the 1992 Fund for the administration of the joint Secretariat of £70 000. There were no incidents involving the Supplementary Fund during 2007.

8.4 Financial statements for 2008

The financial statements of the 1971 Fund, 1992 Fund and Supplementary Fund for the period 1 January to 31 December 2008 will be submitted to the External Auditor in the spring of 2009 and will be presented to the respective governing bodies for approval at their sessions in October 2009. These accounts will be reproduced in the IOPC Funds' 2009 Annual Report.

The following preliminary information is given on the financial operations during 2008. The figures, which have been rounded, have not yet been audited by the External Auditor. Further details are given in Annexes XIX, XX and XXI, respectively.

The administrative expenses for operating the joint Secretariat (including the External Auditor's fees for the three Funds) in 2008 total some £2.85 million, compared to a budget appropriation of £3.646 million.

1992 Fund

Contributions of £3 million were due to the General Fund in 2008. In addition contributions were levied in 2008, for payment in the same year, of £50 million in respect of the *Hebei Spirit* Major Claims Fund.

The 1992 Fund's claims and claims related payments during 2008 totalled some £10 716 000, out of which some £2 million related to the *Prestige* incident, £1 million to the *Erika* incident, £3.2 million to the *Slops* incident and a further £3.2 million in relation

to the *Hebei Spirit* incident . Payments made to settle claims arising from the *Solar 1* incident have been reimbursed by the shipowner's insurer under the STOPIA 2006 agreement.

1971 Fund

With respect to the 1971 Fund, no annual contributions were due in 2008 to the two remaining Major Claims Funds.

An amount of £2.2 million of the surplus on the *Pontoon 300* Major Claims Fund was reimbursed to contributors in 2008.

The total claims and claims related expenditure incurred by the 1971 Fund during 2008 was approximately £158 000.

The 1971 Fund paid a management fee of £210 000 to the 1992 Fund towards the administrative costs of the joint Secretariat.

Supplementary Fund

No annual contributions were due in respect of the General Fund during 2008. The Supplementary Fund paid a management fee of £50 000 to the 1992 Fund towards the administrative costs of the joint Secretariat. There were no incidents involving the Supplementary Fund during 2008.

8.5 Investment of funds

Investment policy

In accordance with the Financial Regulations of the IOPC Funds, the Director is responsible for the investment of any funds which are not required for the short-term operation of each Fund. In making any investments all necessary steps are taken to ensure the maintenance of sufficient liquid funds for the operation of the respective Fund, to avoid undue currency risks and to obtain a reasonable return on the investments of each Organisation. The investments are mainly made in Pounds Sterling. The assets are placed on term deposit. Investments may be made with banks and building societies which satisfy certain criteria as to their financial standing.

Investments

Investments were made by the 1971 Fund and the 1992 Fund during 2008 with a number of banks and one building society. As at 31 December 2008, the portfolios of investments held in Pounds Sterling totalled some £8.1 million for the 1971 Fund and £1.1 million for the Supplementary Fund. The portfolio of investments held in Pounds Sterling and Euros totalled some £139.7 million for the 1992 Fund. Interest received in 2008 on the investments amounted to £469 000 for the 1971 Fund, £5.6 million for the 1992 Fund and £58 200 for the Supplementary Fund.

Investment Advisory Body

The 1971 Fund, the 1992 Fund and the Supplementary Fund have a joint Investment Advisory Body, consisting of three experts with specialist knowledge in investment matters, to advise the Director in general terms on such matters. The members of the Body are elected by the 1992 Fund Assembly.

During 2008 the Investment Advisory Body monitored the relevant procedures for investment and cash management controls. It also monitored the credit ratings of financial institutions and reviewed on a continuing basis the list of institutions which meet the Funds' investment criteria. In addition, the Body regularly reviewed the Funds' investment and foreign exchange requirements and the quotations for investments in order to ensure that reasonable investment returns were achieved without compromising the Funds' assets.

The Investment Advisory Body reports annually to the governing bodies.

8.6 Audit Body

The 1971 Fund, the 1992 Fund and the Supplementary Fund have a joint Audit Body, the members of which are elected by the 1992 Fund Assembly. At their October 2008 sessions, the governing bodies reviewed the Composition and Mandate of the Audit Body and adopted the following revised mandate:

(a) review the adequacy and effectiveness of the Organisations' management and financial systems, financial reporting, internal controls, operational procedures, risk management and related matters;

(b) promote the understanding and effectiveness of the audit function within the Organisations, and provide a forum to discuss matters referred to in (a) above and matters raised by the external audit;

(c) discuss with the External Auditor the nature and scope of each forthcoming audit and provide input to the development of the strategic audit plan;

(d) review the Organisations' Financial Statements and reports;

(e) consider all relevant reports by the External Auditor, including reports on the Organisations' Financial Statements, and make appropriate recommendations to the Funds' governing bodies;

(f) manage the process for the selection of the External Auditor; and

(g) undertake any other tasks or activities as requested by the Funds' governing bodies.

During 2008 the Audit Body met with the representatives of the External Auditor and received a detailed report of the work carried out by the auditor and the auditor's findings, all of which were considered satisfactory. The Audit Body was satisfied that the extent of the audit examination was appropriate and recommended that the governing bodies should approve the accounts for the financial year 2007. Liaison with the Investment Advisory Body continued.

In its report to the governing bodies, the Audit Body reiterated its serious concern that a number of States did not fulfil their treaty obligations to submit their oil reports, since without these oil reports the contribution system could not work on an equitable basis. At its October 2008 session, the 1992 Fund Assembly adopted a policy put forward by the Audit Body to address the matter of non submission of oil reports (see Section 9).

The Audit Body continued to monitor the risk management process which had been established by the Secretariat.

9 CONTRIBUTIONS

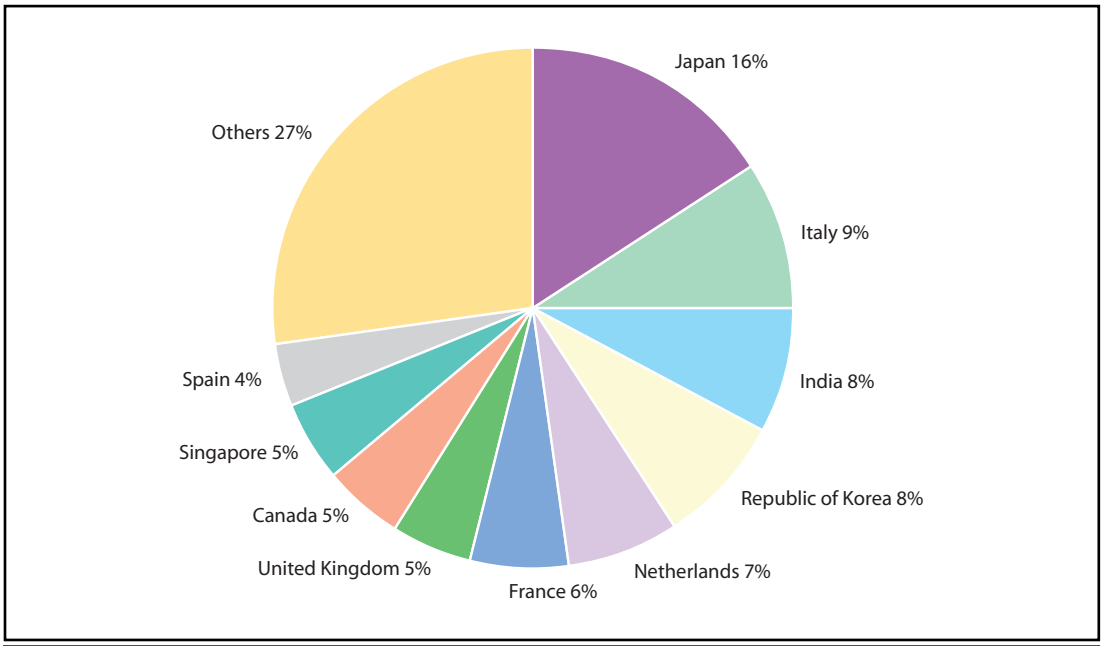
9.1 The contribution system

Basis for levy of contributions

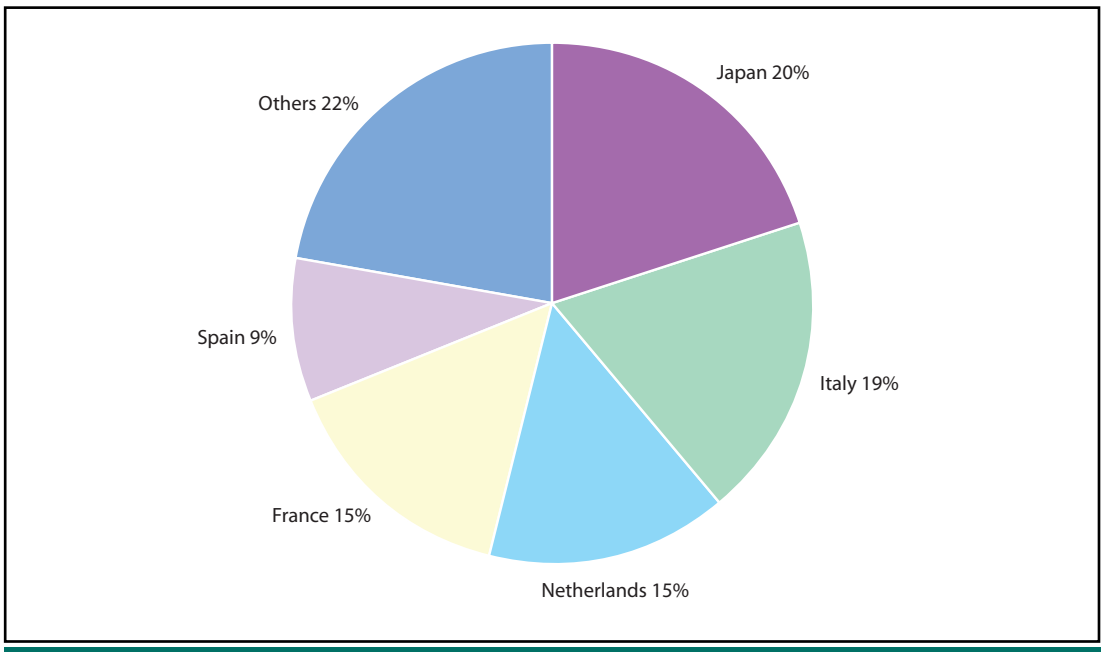
The IOPC Funds are financed by contributions paid by any person who has received in the relevant calendar year in excess of 150 000 tonnes of crude oil or heavy fuel oil (contributing oil) in ports or terminal installations in a State which is a Member of the relevant Fund, after carriage by sea. The levy of contributions is based on reports on oil receipts in respect of individual contributors (oil reports) which are submitted to the Fund Secretariat by the Governments of Member States. Contributions are paid by the individual contributors directly to the IOPC Funds. Governments are not responsible for these payments, unless they have voluntarily accepted such responsibility.

As regards the Supplementary Fund, for the purpose of contributions at least 1 million tonnes of contributing oil will be deemed to have been received each calendar year in each Member State of that Fund. If the aggregate quantity of contributing oil received in a Member State is less than 1 million tonnes, that Member State will be liable to pay contributions for a quantity of contributing oil corresponding to the difference between 1 million tonnes and the aggregate quantity of actual contributing oil receipts in respect of that State.

The Supplementary Fund Protocol contains provisions for so-called 'capping' of contributions, ie that the aggregate amount of contributions payable in respect of contributing oil received in a particular State during a calendar year should not exceed 20% of the total amount of contributions of each levy. The result of the capping system is that if the total contributions for all contributors in any one Member State of the Supplementary Fund in respect of a General Fund levy or a levy to a Claims Fund exceeds 20% of the total amount of that particular levy, then the levies for contributors in that State will be reduced proportionally so that they together equal 20% of the total levy. The total amount deducted for contributors in the 'capped State' will be borne by all other contributors to the Fund in question by way of a capping levy. The capping provisions apply until the total amount of contributing oil received in the States which are Members of the Supplementary Fund has reached 1 000 million tonnes or for a period of 10 years from the date of the entry into force of the Protocol, whichever is the earlier.



1992 Fund: General Fund contributions 2008 (based on 2007 oil reports)



Supplementary Fund: General Fund contributions 2006 (no 2007 or 2008 contributions levied)

Non-submission of oil reports

The non-submission of oil reports by a number of Member States was again considered at the October 2008 sessions of the governing bodies of the three Funds. At that time a total of 33 States had outstanding oil reports for both the 1971 Fund and/or the 1992 Fund. Oil reports were outstanding for between four and eleven years in respect of 14 States. Eight States had not submitted oil reports since joining the respective Fund. The total number of outstanding reports had increased from 116 in October 2007 to 120 in October 2008, which corresponds to an increase of 3%. There were no outstanding oil reports as regards the Supplementary Fund.

The governing bodies noted that the failure of a number of Member States to submit oil reports had been a very serious issue for a number of years. The governing bodies expressed their very serious concern as regards the number of Member States which had not fulfilled their obligation to submit oil reports, since the submission of these reports was crucial to the functioning of the IOPC Funds. The Audit Body also expressed its great concern in this regard (see Section 8.6). At its October 2008 session the 1992 Fund Assembly adopted a policy developed by the Audit Body whereby where a State was two or more oil reports in arrears, any claim submitted by the Administration of that State or a public authority working directly on the response or recovery from the pollution incident on behalf of that State would be assessed for admissibility but payment would be deferred until the reporting deficiency was rectified. The Assembly also decided that after a grace period of 90 days, the policy would apply to all claims in Member States with outstanding oil reports. The Director was instructed to bring this policy to the attention of Member States via a Circular and any other appropriate means.

The 1971 Fund Administrative Council and the 1992 Fund Assembly instructed the Director to pursue his efforts to obtain the outstanding oil reports and urged all delegations to co-operate with the Secretariat in order to ensure that States fulfilled their treaty obligations in this regard.

As decided by the 1971 Fund Administrative Council in October 2005, the former 1971 Fund Member States with outstanding oil reports are listed on the IOPC Funds' website.

In view of the fact that the non-submission of oil reports had been a recurring problem for both the 1971 Fund and the 1992 Fund, it was decided when the Supplementary Fund Protocol was drafted to insert provisions in the Protocol under which compensation would be denied temporarily or permanently in respect of pollution damage in States that failed to fulfil their obligation to submit oil reports. The Supplementary Fund Assembly decided in March 2005 that it would be for it to determine whether compensation should be denied.

Levy of contributions

If required, contributions are levied annually by the governing bodies of each Fund to meet the anticipated payments of compensation and the estimated administrative expenses during the forthcoming year.

Deferred invoicing

The three Funds operate a deferred invoicing system. Under this system the governing bodies fixes the total amount to be levied in contributions for a given calendar year, but may decide that only a specific lower amount should be invoiced for payment by 1 March in the following year, the remaining amount, or a part thereof, to be invoiced later in the year if it should prove to be necessary.

9.2 Contribution levies/reimbursements

1992 Fund

2007 and 2008 contributions

The 1992 Fund Assembly decided to levy 2007 and 2008 contributions of £3 million and £10 million respectively to the General Fund of the 1992 Fund due for payment by 1 March 2008 and 1 March 2009 respectively.

The Assembly decided that there should be no levy of 2007 and 2008 contributions to the *Erika* Major Claims Fund.

The 1992 Fund Extraordinary Assembly at its June 2008 meeting decided to levy 2008 contributions to the *Hebei Spirit* Major Claims Fund of £50 million due for payment by 1 November 2008.

At its October 2008 session the Assembly decided to levy £50 million with respect to the *Volgoneft 139* incident, the entire levy to be deferred and subject to a decision by the Executive Committee authorising the Director to make payments of compensation with respect to this incident. In order to enable the 1992 Fund to make payments of claims for compensation arising out of the *Prestige* and *Hebei Spirit* incidents, the Assembly decided to levy 2008 contributions to these two Major Claims Funds of £2 million and £33.5 million respectively, the entire levies to be deferred. The Director was authorised to invoice all or part of the deferred levies to these Major Claims Funds for payment during the second half of 2009, if and to the extent required.

1971 Fund

It is no longer possible to levy contributions to the 1971 Fund's General Fund.

2007 and 2008 contributions

The 1971 Fund Administrative Council decided that there should be no levy of 2007 and 2008 contributions in respect of the two remaining Major Claims Funds, ie the *Vistabella*, and *Nissos Amorgos*. The Council decided to reimburse on 1 March 2008 £2.2 million to contributors to the *Pontoon 300* Major Claims Fund.

Supplementary Fund

2007 and 2008 contributions

The Supplementary Fund Assembly decided that there should be no levy of 2007 and 2008 contributions to the General Fund. The Assembly also decided that, since there had been no incidents which would or might require that Fund to pay compensation, there was no need for contributions to be levied to any Claims Fund.

9.3 Contributions over the years

Details of the IOPC Funds' 2007 and 2008 contributions are set out in the table on page 40.

IOPC FUNDS' 2007 AND 2008 ANNUAL CONTRIBUTIONS

Organisation	Annual contribution year	Decision of governing body Date	Decision	Reimbursement/ levy due date	Total amount due £	Oil year	Levy per tonne £
1992 FUND	2007	October 2007	Levy to General Fund	1 March 2008	3 000 000	2006	0.0019699
	2008	June 2008	Levy to *Hebei Spirit* Major Claims Fund	1 November 2008	50 000 000	2006	0.0328304
	2008	October 2008	Levy to General Fund	1 March 2009	10 000 000	2007	0.0064870
			Deferred levy to *Prestige* Major Claims Fund		2 000 000	2001	
			Deferred levy to *Hebei Spirit* Major Claims Fund		33 500 000	2006	
			Deferred levy to *Volgoneft 139* Major Claims Fund (to be set up if required)		50 000 000	2006	
1971 FUND	2007	October 2007	Reimbursement to *Pontoon 300* Major Claims Fund	1 March 2008	-2 200 000	1997	-0.0017480
	2008	October 2008	No levy				
SUPPLE-MENTARY FUND	2007	October 2007	No levy		0		
	2008	October 2008	No levy		0		

The payments made by the 1971 and 1992 Funds in respect of claims for compensation for oil pollution damage have varied considerably from year to year. As a result, the level of contributions to the Funds has fluctuated from one year to another, as illustrated in the graph on page 41.

1992 Fund

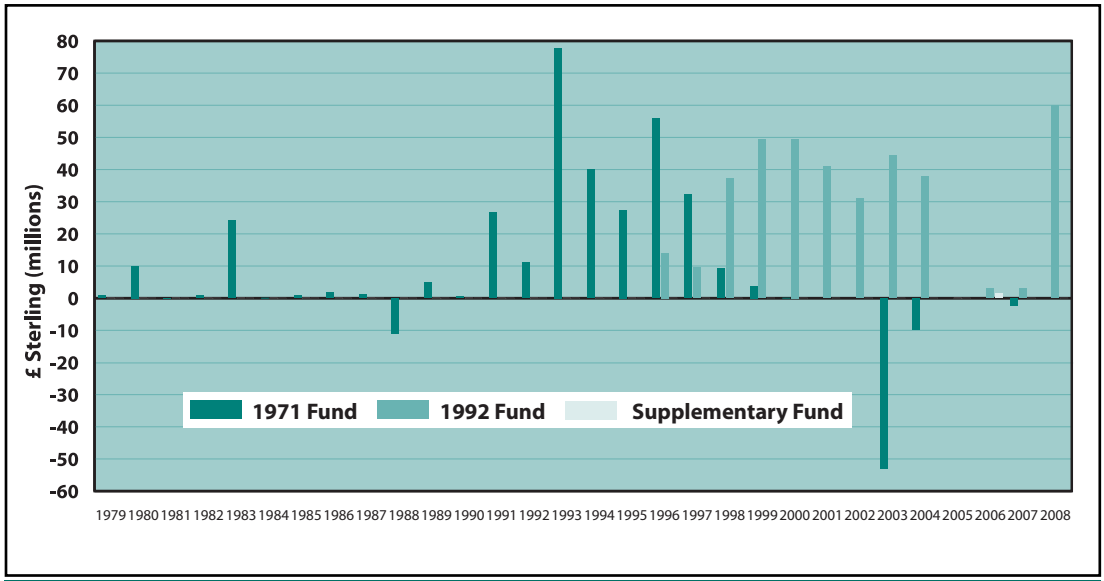
The total amount levied by the 1992 Fund over the years is £422 million. Reimbursements totalling £42 million have been made to contributors.

As at 31 December 2008, £4.3 million was outstanding, which represents 1.04 % of the amount levied.

1971 Fund

The total amount levied by the 1971 Fund over the years is £386 million. Reimbursements totalling £119 million have been made to contributors.

As at 31 December 2008, £311 530 was outstanding, which represents 0.08 % of the amount levied.



1971 Fund, 1992 Fund and Supplementary Fund: annual contributions over the years

Supplementary Fund

The total amount levied by the Supplementary Fund since it came into force is £1.4 million.

As at 31 December 2008, no contributions were outstanding to the Supplementary Fund.

10 STOPIA 2006 AND TOPIA 2006

10.1 Consideration of a possible review of the 1992 Conventions

In 2000 the 1992 Fund Assembly established an intersessional Working Group to assess the adequacy of the international compensation system created by the 1992 Civil Liability Convention and the 1992 Fund Convention. The Working Group also prepared *inter alia* the text of the Supplementary Fund Protocol.

Having considered the Working Group's final report at its October 2005 session, the 1992 Fund Assembly decided, in light of the fact that there was insufficient support for a revision of the 1992 Conventions, that the Working Group should be disbanded and that the revision should be removed from the Assembly's agenda. In this regard, reference is made to the 2005 Annual Report (Section 7).

10.2 Development of voluntary industry agreements

At the 1992 Fund Assembly's March 2005 session, the International Group of P&I Clubs had offered to increase, on a voluntary basis, the limitation amount for small tankers under the 1992 Civil Liability Convention by means of an agreement to be known as the Small Tanker Oil Pollution Indemnification Agreement (STOPIA). STOPIA, which applies to pollution damage in a State for which the Supplementary Fund Protocol is in force, is a contract between owners of small tankers and their respective P&I Club. It applies to all ships insured by one of the P&I Clubs that are members of the International Group of such Clubs and reinsured through the Group's pooling arrangement. The agreement came into force on 3 March 2005, ie the date of the entry into force of the Supplementary Fund Protocol.

At the Assembly's October 2005 session, the International Group of P&I Clubs made another proposal, whereby it would extend STOPIA to all States Parties to the 1992 Civil Liability Convention as well as establish a second agreement to be known as the Tanker Oil Pollution Indemnification Agreement (TOPIA) through which the Clubs would indemnify the Supplementary Fund in respect of 50% of the amounts paid in compensation by that Fund. The Assembly instructed the Director to collaborate with the International Group of P&I Clubs, acting on behalf of the shipping industry, and the Oil Companies International Marine Forum (OCIMF) before the voluntary agreement package was submitted to the Assembly for consideration at its next session and provide technical and administrative advice with a view to consolidating the package and ensuring that it was legally enforceable.

At its February 2006 session, the 1992 Fund Assembly noted that the Director had facilitated meetings between the International Group of P&I Clubs and OCIMF, and that as a result of these meetings, the International Group had developed a revised STOPIA, to be referred to as Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006, and a second agreement, the Tanker Oil Pollution Indemnification Agreement (TOPIA) 2006. The agreements entered into force on 20 February 2006.

10.3 Overview of the voluntary agreements

STOPIA 2006

STOPIA 2006 applies to pollution damage in States for which the 1992 Fund Convention is in force. It is a contract between owners of small tankers and their respective P&I Club, which increases, on a voluntary basis, the limitation amount applicable to the tanker under the 1992 Civil Liability Convention. The contract applies to all small tankers entered in a P&I Club which is a member of the International Group and reinsured through the pooling arrangements of the International Group. Owners of ships insured by an International Group Club but not covered by the pooling arrangement may agree with the Club concerned to be covered by STOPIA 2006. Such agreements have been concluded in respect of certain Japanese coastal tankers. The effect of STOPIA 2006 is that the

maximum amount of compensation payable by owners of all ships of 29 548 GT or less is 20 million SDR. The 1992 Fund is not a party to the agreement, but the agreement confers legally enforceable rights on the 1992 Fund to indemnification from the shipowner involved.

In respect of ships covered by STOPIA 2006, the 1992 Fund continues to be liable to compensate claimants if and to the extent that the total amount of admissible claims exceeds the limitation amount applicable to the ship in question under the 1992 Civil Liability Convention. If the incident involves a ship to which STOPIA 2006 applies, the 1992 Fund is entitled to indemnification by the shipowner of the difference between the shipowner's liability under the 1992 Civil Liability Convention and 20 million SDR or the total amount of the established claims, whichever is the less.

TOPIA 2006

TOPIA 2006 applies to all tankers entered in a P&I Club which is a member of the International Group and reinsured through the pooling arrangements of the Group.

In respect of incidents covered by TOPIA 2006, the Supplementary Fund will continue to be liable to compensate claimants as provided in the Supplementary Fund Protocol. If the incident involves a ship to which TOPIA 2006 applies, the Supplementary Fund is entitled to indemnification from the shipowner of 50% of the compensation payment it had made to claimants.

The review process

STOPIA 2006 and TOPIA 2006 provide that a review shall be carried out in 2016 of the experience of pollution damage claims during the 10-year-period from 20 February 2006, and thereafter at five-yearly intervals, in consultation with representatives of oil receivers, the 1992 Fund and the Supplementary Fund, to establish the approximate proportions in which the overall cost of oil pollution claims under the international compensation system has been borne by shipowners and by oil receivers. The review would also consider the efficiency, operation and performance of the agreements. The agreements also provide that, if the review reveals that either shipowners or oil receivers have borne a proportion exceeding 60% of the overall costs of such claims, measures shall be taken for the purpose of maintaining an approximately equal apportionment. Examples of such measures are given in the agreements.

Entry into force and termination

STOPIA 2006 and TOPIA 2006 entered into force on 20 February 2006. The agreements are to continue until the current international compensation system is materially and significantly changed. There are also provisions for the termination of the agreements in certain circumstances which may be expected to make them no longer workable.

10.4 Number of ships covered by STOPIA 2006 and TOPIA 2006

The International Group is required to notify the 1992 Fund every six months of the names of all ships entered in each International Group Club which are also entered in STOPIA 2006, in accordance with Article 9D of the Memorandum of Understanding (MOU) between the Funds and the International Group of P&I Clubs regarding the operation of STOPIA 2006 and TOPIA 2006.

Number of ships regarding STOPIA 2006

In October 2008 the International Group provided the Fund with the total number of small tankers entered in the International Group of P&I Clubs and reinsured through the Group's pooling arrangements, and therefore automatically entered in STOPIA 2006, and those that are entered in one of the International Group Clubs but not entered in STOPIA 2006 because they are not reinsured through the pooling arrangements, as well as those reported in October 2007, as set out in the table on page 44.

Year	Number of tankers entered in STOPIA 2006	Number of tankers not entered in STOPIA 2006	Total	% of total entered in STOPIA 2006
2007/2008	4 540	361	4 901	92.6
2008/2009	5 451	248	5 699	95.6

Number of ships regarding TOPIA 2006

In September 2008 the International Group of P&I Clubs reported to the Funds that the number of 'Relevant Ships' entered in a P&I Club and not entered in TOPIA 2006 were nil, and that the number of 'Relevant Ships' entered in TOPIA 2006 which ceased to be entered in TOPIA 2006 whilst still insured by a P&I Club were also nil.

The International Group also reported to the Funds that it had been informed by the Japan P&I Club that the coastal tankers entered in the Japan P&I Club that had been entered in STOPIA 2006 by written agreement were not also entered in TOPIA 2006 because the size of these coastal tankers was generally so small that it was considered most unlikely that the costs of claims for pollution damage arising from an incident with such a tanker would exceed the 1992 Fund limit, ie 203 million SDR. The number of these tankers not entered in TOPIA 2006 because they were not participating in the pooling arrangements of the International Group was 589.

10.5 Incidents to which STOPIA 2006 applies

The *Solar 1* incident (see Section 15) which took place in the Philippines in August 2006 was the first involving a vessel entered in STOPIA 2006 and the 1992 Fund is receiving regular reimbursements from the Shipowner's P&I Club. It is difficult at this stage to predict whether the amount of compensation payable in respect of this incident will exceed the STOPIA 2006 limit of 20 million SDR.

11 PREPARATIONS FOR THE ENTRY INTO FORCE OF THE HNS CONVENTION

11.1 The HNS Convention

In 1996 a Diplomatic Conference adopted the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (HNS Convention). The Conference invited the Assembly of the 1992 Fund to assign to the Director of the 1992 Fund, in addition to his functions under the 1992 Fund Convention, the administrative tasks necessary for setting up the International Hazardous and Noxious Substances Fund (HNS Fund) in accordance with the HNS Convention. In 1996 the 1992 Fund Assembly instructed the Director to carry out the tasks requested by the HNS Conference on the basis that all expenses incurred would be repaid by the HNS Fund.

11.2 Status of the Convention

The HNS Convention will enter into force 18 months after ratification by at least 12 States, subject to two conditions, namely that four of those States must have ships with a total of at least 2 million units of gross tonnage and that in the previous calendar year a total of at least 40 million tonnes of cargo consisting of hazardous and noxious substances other than oils, liquefied natural gas (LNG) or liquefied petroleum gas (LPG) have been received in States which have ratified the Convention.

By 31 December 2008, thirteen States (Angola, Cyprus, Hungary, Liberia, Lithuania, Morocco, Russian Federation, Saint Kitts and Nevis, Samoa, Sierra Leone, Slovenia, Syrian Arab Republic and Tonga) had acceded to the HNS Convention. As only two of those States have ships with a total of at least 2 million units of gross tonnage (Cyprus and the Russian Federation) and only two States (Cyprus and Slovenia) have submitted reports on contributing cargo, the conditions for the entry into force of the HNS Convention are far from being fulfilled.

Alfred Popp QC

11.3 The HNS Focus Group

In October 2007, the 1992 Fund Assembly decided to establish an HNS Focus Group with the aim of facilitating the entry into force of the HNS Convention and appointed Mr Alfred Popp QC (Canada) as its Chairman. The HNS Focus Group had the following mandate:

(a) to examine the underlying causes of the issues which have been identified as inhibiting the entry into force of the HNS Convention, ie:
(i) Contributions to the LNG Account,
(ii) The concept of 'receiver', and
(iii) Non-submission of contributing cargo reports, on ratification of the Convention and annually thereafter;

(b) to examine any issues of an administrative ("house-keeping") nature as identified by the Secretariat which would facilitate the operation of the HNS Convention;

(c) to identify and develop legally-binding

The HNS Focus Group at its first meeting in Monaco, March 2008

solutions to these issues, taking into account *inter alia* the impact on developing countries, in the form of a draft protocol to the HNS Convention;

(d) to complete its work as quickly as possible in order to facilitate the rapid entry into force of the HNS Convention.

The complete Terms of Reference of the HNS Focus Group can be found in the 2007 Annual Report, pages 46-47.

The HNS Focus Group held two meetings: the first in Monaco in March 2008 and the second in London in June 2008.

At its meeting in June 2008, the Administrative Council, acting on behalf of the Assembly, noted that, in accordance with its Terms of Reference and based on the discussions at its two meetings, the HNS Focus Group had developed a draft text of a Protocol to the HNS Convention. The Council noted that the Group had reached a consensus on all outstanding issues, except that regarding the person liable to pay contributions to the LNG Account.

After a lengthy discussion, the HNS Focus Group had decided to maintain the wording of Article 7 of the draft Protocol, ie that the person liable for contributions to the LNG Account would be the receiver as defined in Article 1.4 of the Convention. However, whilst the majority of the Group had been in favour of maintaining that wording, a significant number of delegations had supported the concept of the titleholder being the primary person liable for contributions. It was noted that the differences between the two sides were of a political, economic and policy nature and not just a matter of drafting and that it was essential for efforts to be made to bridge the gap between the two sides in order to reach a consensus on this issue quickly.

It was noted that failure to reach a consensus by the time of the meeting of IMO's Legal Committee in October 2008 could threaten the viability of the Protocol, since the Legal Committee could only decide to recommend holding a Diplomatic Conference with the aim

of adopting a Protocol if it were clear that there would be a good chance of success. The delegation of Malaysia therefore offered to co-ordinate an informal correspondence group with the aim of developing a compromise proposal in respect of contributions to the LNG Account that would make the HNS Convention attractive to as many States as possible.

The Administrative Council approved the text of the draft Protocol. As instructed by the Council, the Director finalised the text of the draft Protocol, retaining footnotes of a technical or editorial nature in order to aid its interpretation and, by means of a letter dated 29 July 2008, submitted the text of the draft Protocol to the Secretary-General of IMO, requesting him to refer it to the Legal Committee for consideration with a view to convening a Diplomatic Conference to consider the draft Protocol at the earliest opportunity.

As further instructed, the Director included with his letter to the Secretary-General the Record of Decisions of the June 2008 session of the Administrative Council. He also brought the following topics to his attention, where consideration of amendments to the Protocol by the Legal Committee might be beneficial:

- The time periods for the amendment procedure in Article 19 of the draft Protocol, which might be brought into line with Article 24 of the Supplementary Fund Protocol.
- The entry into force conditions in Article 17 of the draft Protocol, since these would be crucial to ensuring the successful entry into force of the Convention.

11.4 Consideration by IMO's Legal Committee

The IMO Secretariat submitted the draft Protocol and related information for consideration by the Legal Committee during its 94th session in October 2008. The Legal Committee also considered a document submitted by Australia, Belgium, Canada, Denmark, France, Germany, Japan, Malaysia, the Netherlands, Norway, Sweden and the United Kingdom, which contained a compromise proposal in respect of contributions to the LNG Account that had been developed by the Correspondence Group co-ordinated by the delegation of Malaysia. Italy also supported this proposal.

The Legal Committee decided to inform the IMO Council of the unanimous wish of delegations to see the HNS Convention enter into force at the earliest possible time. Whilst many delegations were satisfied with the text of the Protocol as amended at that session, many other delegations considered that the Committee needed more time for further consideration of the text at its next session in March/April 2009. To facilitate this consideration, the Secretariat agreed to prepare a clean version of the Protocol incorporating all the amendments thus far agreed, together with a consolidated version of the 1996 Convention and the prospective Protocol.

The Legal Committee decided to recommend to the IMO Council that a Diplomatic Conference should be convened as soon as possible in 2010 to consider and adopt the prospective Protocol. At its meeting in November 2008, the IMO Council endorsed this recommendation.

12 SETTLEMENT OF CLAIMS

12.1 General

The governing bodies of the IOPC Funds have given general authority to the Director to settle claims and pay compensation if it is unlikely that the total payments by the respective Fund with regard to the incident in question will exceed 2.5 million SDR (£2.6 million). For incidents leading to larger claims, the Director in principle needs approval of the settlement by the governing body of the Fund in question (ie the Administrative Council of the 1971 Fund, the Executive Committee of the 1992 Fund or the Assembly of the Supplementary Fund). However, the governing bodies normally give the Director very extensive authority to settle claims by authorising him to make binding settlement of all claims arising from a particular incident, except where a specific claim gives rise to a question of principle which has not previously been decided by the governing bodies. The Director is permitted, in certain circumstances and within certain limits, to make provisional payment of compensation before a claim is settled, if this is necessary to mitigate undue financial hardship to victims of pollution incidents. These procedures are designed to expedite the payment of compensation.

Difficulties have arisen in some incidents involving the 1971 Fund and the 1992 Fund where the total amount of the claims arising from a given incident has exceeded the total amount available for compensation or where there was a risk that this might occur. Under the Fund Conventions, the Funds are obliged to ensure that all claimants are given equal treatment. The Funds have to strike a balance between the importance of paying compensation to victims as promptly as possible and the need to avoid an over-payment situation. In a number of cases the Funds have therefore had to limit payments to victims to a percentage of the agreed amount of their claims (so called 'pro-rating'). In most cases it eventually became possible to increase the level of payments to 100% once it was established that the total amount of admissible claims would not exceed the amount available for compensation.

One important effect of the establishment of the Supplementary Fund is that, in practically all cases, it should be possible from the outset to pay compensation for pollution damage in Supplementary Fund Member States at 100% of the amount of damage agreed between the Fund and the claimant. There will therefore be no need to pro-rate payments during the early stages of an incident.

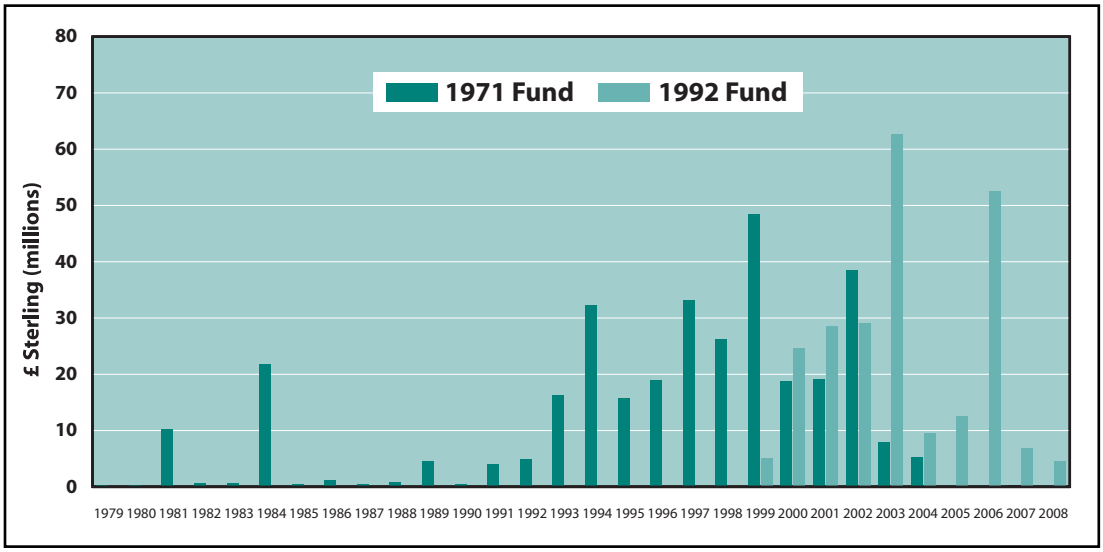
12.2 Admissibility of claims for compensation

The Funds can pay compensation to claimants only to the extent that their claims are justified and meet the criteria laid down in the applicable Fund Convention. To this end, claimants are required to support their claims by producing explanatory notes, invoices, receipts and other documents.

For a claim to be accepted by the Funds, the claim must be based on an expense actually incurred or a loss actually suffered and there must be a causal link between the expense or loss and the contamination. Any expense should have been incurred for reasonable purposes.

The IOPC Funds have acquired considerable experience with regard to the admissibility of claims. In connection with the settlement of claims they have developed certain principles as regards the meaning of the definition of 'pollution damage', which is specified as 'damage caused by contamination'. In 1994 a Working Group of the 1971 Fund developed and codified the criteria for the admissibility of claims for compensation within the scope of the 1969 Civil Liability Convention, the 1971 Fund Convention and the 1992 Conventions. The Report of the Working Group was endorsed by the 1971 Fund Assembly. The 1992 Fund Assembly has decided that this Report should form the basis of its policy on the criteria for the admissibility of claims.

The Assemblies of the three Funds have expressed the opinion that a uniform interpretation of the definition of 'pollution damage' is essential for the functioning of the compensation regime established by the Conventions. The IOPC Funds' position in this regard applies not only to questions of principle



1971 Fund and 1992 Fund: payment of claims

relating to the admissibility of claims but also to the assessment of the actual loss or damage where the claims do not give rise to any question of principle.

At its May 2003 session the 1992 Fund Administrative Council, acting on behalf of the Assembly, adopted a Resolution on the interpretation and application of the 1992 Civil Liability Convention and the 1992 Fund Convention (1992 Fund Resolution N°8). The Resolution drew attention to the importance for the proper and equitable functioning of the regime established by the 1992 Conventions, of these Conventions being implemented and applied uniformly in all States Parties and of claimants for oil pollution damage being given equal treatment as regards compensation in all States Parties. The Resolution also emphasised the importance of national courts in States Parties giving due consideration to the decisions by the governing bodies of the 1971 and 1992 Funds on the interpretation and application of the 1992 Conventions.

The Funds consider each claim on the basis of its own merits, in the light of the particular circumstances of the case. Whilst criteria for the admissibility of claims have been adopted, a certain flexibility is nevertheless allowed, enabling the Funds to take into account new situations and new types of claims. Generally the Funds follow a pragmatic approach, so as to facilitate out-of-court settlements.

The 1971 and 1992 Funds have published a Claims Manual containing general information on how claims should be presented and setting out the general criteria for the admissibility of various types of claims.

In June 2007, the 1992 Fund Administrative Council, acting on behalf of the 12th extraordinary session of the Assembly approved a set of sub-criteria relating to the admissibility of claims for costs of preventive measures, in particular for the removal of oil from sunken ships. This set of sub-criteria was included in a revised version of the 1992 Fund's Claims Manual, which was published in English, French and Spanish in December 2008. The revised Claims Manual largely follows in substance the previous version and does not amend the 1992 Fund's policy as regards the handling or admissibility of claims.

The Supplementary Fund will not normally become directly involved in the claims-handling process. The 1992 Fund's Claims Manual includes a statement that the criteria under which claims qualify for compensation from the Supplementary Fund are identical to those of the

Ship	Place of incident	Year	1971 Fund payments
Antonio Gramsci	Sweden	1979	£9.2 million
Tanio	France	1980	£18.7 million
Ondina	Federal Republic of Germany	1982	£3 million
Thuntank 5	Sweden	1986	£2.4 million
Rio Orinoco	Canada	1990	£6.2 million
Haven	Italy	1991	£30.3 million
Aegean Sea	Spain	1992	£34.1 million
Braer	United Kingdom	1993	£45.7 million
Taiko Maru	Japan	1993	£7.2 million
Keumdong N°5	Republic of Korea	1993	£11 million
Toyotaka Maru	Japan	1994	£5.1 million
Sea Prince	Republic of Korea	1995	£21.1 million
Yuil N°1	Republic of Korea	1995	£15.9 million
Senyo Maru	Japan	1995	£2.3 million
Sea Empress	United Kingdom	1996	£31.2 million
Nakhodka	Japan	1997	£49.6 million
Nissos Amorgos	Venezuela	1997	£11 million
Osung N°3	Republic of Korea/Japan	1997	£8.2 million

1992 Fund. In the light of the provisions of the Supplementary Fund Protocol, and for practical reasons, the Supplementary Fund Assembly decided in March 2005 that the Supplementary Fund did not need its own Claims Manual.

The Claims Manual is available on the Funds' website (www.iopcfund.org).

12.3 Incidents involving the 1971 Fund

Claims settlements 1978–2008

Since its establishment in October 1978, the 1971 Fund has, up to 31 December 2008, been involved in the settlement of claims arising out of 100 incidents. The total compensation paid by the 1971 Fund amounts to £329 million.

Annex XXIV to this Report contains a summary of all incidents for which the 1971 Fund has paid compensation or indemnification, or where it is possible that such payments may be made by the Fund. It also includes some incidents in which the 1971 Fund was involved but ultimately was not called upon to make any payments.

There has been a considerable increase in the amounts of compensation claimed from the

Ship	Place of incident	Year	Outstanding issue
Vistabella	Caribbean	1991	Recourse action pending
Aegean Sea	Spain	1992	Claims pending
Iliad	Greece	1993	Claims pending
Kriti Sea	Greece	1996	Claims pending
Nissos Amorgos	Venezuela	1997	Claims pending
Plate Princess	Venezuela	1997	Claims pending (time-barred)
Evoikos	Singapore	1997	Claims pending
Al Jaziah 1	United Arab Emirates	2000	Recourse action pending
Alambra	Estonia	2000	Claims pending

Ship	Place of incident	Year	1992 Fund payments
Nakhodka	Japan	1997	£61.1 million
Erika	France	1999	£77 million
Slops	Greece	2000	£3.2 million
Prestige	Spain	2002	£82.5 million
Solar 1	Philippines	2006	£6 million

1971 Fund over the years. In several cases the total amount of the claims submitted greatly exceeded the maximum amount available under the 1971 Fund Convention. In some cases claims have been presented which in the 1971 Fund's view do not fall within the definition of pollution damage laid down in the Conventions. There have also been many claims which, although admissible in principle, were for amounts which the Fund considered greatly exaggerated. As a result, the 1971 Fund and claimants have become involved in lengthy legal proceedings in respect of some incidents.

Listed on page 50 are the incidents in respect of which the 1971 Fund has made payments of compensation and indemnification of over £2 million.

Outstanding incidents

As at 31 December 2008 there were outstanding claims or recovery actions pending in respect of nine incidents involving the 1971 Fund. The situation in respect of these incidents is summarised in the table on page 50.

12.4 Incidents involving the 1992 Fund

Claims settlements 1996–2008

Since its creation in May 1996 there have been 34 incidents involving the 1992 Fund. The total compensation paid by the 1992 Fund amounts to £236.1 million

Annex XXV to this report contains a summary of all incidents for which the 1992 Fund has paid compensation or indemnification, or where it is possible that such payments may be made by the Fund. It also includes some incidents in which the 1992 Fund was involved but ultimately was not called upon to make any payments.

Listed above are the incidents in respect of which the 1992 Fund has made compensation payments of over £2 million.

Incident in 2008

During 2008 the 1992 Fund became involved in a new incident in Argentina which may give rise

Ship	Place of incident	Year	Outstanding issue
Erika	France	1999	Claims pending
Al Jaziah 1	United Arab Emirates	2000	Recourse action pending
Prestige	Spain	2002	Claims pending
No7 Kwang Min	Republic of Korea	2005	Recourse action pending
Solar 1	Philippines	2006	Claims pending
Shosei Maru	Japan	2006	Claims pending
Volgoneft 139	Russian Federation	2007	Claims pending
Hebei Spirit	Republic of Korea	2007	Claims pending
Incident in Argentina	Argentina	2007	Claims pending

to claims against the 1992 Fund. This incident took place on 26 December 2007 when a significant quantity of oil impacted 5.7 kilometres of the coast line. An investigation into the cause of the incident led to the tanker *Presidente Umberto Arturo Illia* (*Presidente Illia*) and revealed a fault its ballast system as well as residues of crude oil in three of its ballast tanks. The owner of the *President Illia* and his insurer deny liability for the spill, however the shipowner has requested the court to bring the 1992 Fund into the legal proceedings (see Section 15).

Outstanding incidents

As at 31 December 2008 there were outstanding claims or recovery actions pending in respect of nine incidents involving the 1992 Fund. The situation in respect of these incidents is summarised in the table on page 51.

PART 2

13 INCIDENTS DEALT WITH BY THE IOPC FUNDS DURING 2008

This part of the Report provides information on incidents in which the IOPC Funds have been involved in 2008. The Report sets out the developments in the various cases during 2008 and the position taken by the governing bodies in respect of claims. The Report is not intended to reflect in full the discussions of the governing bodies. These discussions are reflected in the Records of Decisions of the meetings of these bodies, which are available on the IOPC Funds' website (www.iopcfund.org).

The Supplementary Fund has not been involved in any incident during 2008.

Claim amounts have been rounded in this Report. The conversion of foreign currencies into Pounds Sterling is as at 31 December 2008, except in the case of claims paid by the 1971 Fund or the 1992 Fund where conversions have been made at the rate of exchange on the date when the currency was purchased.

Figures in the Report relating to claims, settlements and payments are given for the purpose of providing an overview of the situation for various incidents and may not correspond exactly to the figures given in the Funds' financial statements.

Hebei Spirit: Bulk oil stranding on a beach

14 1971 FUND INCIDENTS

14.1 VISTABELLA

(Caribbean, 7 March 1991)

The incident

While being towed, the sea-going barge *Vistabella* (1 090 GRT), registered in Trinidad and Tobago, sank to a depth of over 600 metres, 24 nautical miles south-east of Nevis. An unknown quantity of heavy fuel oil cargo was spilled as a result of the incident, and the quantity that remained in the barge is not known.

The *Vistabella* was not insured by any P&I Club but was covered by 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 (£263 000). No limitation fund was established. The shipowner and his insurer did not respond to invitations to co operate in the claims-settlement procedure.

Claims for compensation

The 1971 Fund paid compensation amounting to FFr8.2 million or €1.3 million (£955 000) 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.

Legal proceedings

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 subsequently withdrew from the proceedings.

In a judgement rendered in 1996 the Court of first instance 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 insurer appealed against the judgement.

The Court of Appeal rendered its judgement in March 1998. The Court of Appeal held that the 1969 Civil Liability Convention applied to the incident and that the Convention applied to the direct action by the 1971 Fund against the insurer even though in this particular case the shipowner had not been obliged to take out insurance since the ship was carrying less than 2 000 tonnes of oil in bulk as cargo. The case was referred back to the Court of first instance.

In a judgement rendered in March 2000 the Court of first instance ordered the insurer to pay FFr8.2 million or €1.3 million (£955 000) to the 1971 Fund plus interest. The insurer appealed against the judgement.

The Court of Appeal rendered its judgement in February 2004 in which it confirmed the judgement of the Court of first instance of March 2000. The insurer has not appealed to the Court of Cassation.

In consultation with the Fund's Trinidad and Tobago lawyers the Fund has commenced summary proceedings against the insurer in Trinidad and Tobago to enforce the judgement of the Court of Appeal.

The 1971 Fund has submitted an application for a summary execution of the judgement in the High Court in Trinidad and Tobago. The insurer has filed defence pleadings opposing the execution of the judgement on the grounds that it was issued in application of the 1969 Civil Liability Convention to which Trinidad and Tobago was not a Party.

The 1971 Fund has submitted a reply arguing that it was not requesting the Court to apply the 1969 Civil Liability Convention, but that it was seeking to enforce a foreign judgement under common law.

In March 2008, the Court delivered a judgement in the 1971 Fund's favour. The insurer has appealed against this judgement in the Court of Appeal in Trinidad and Tobago.

14.2 AEGEAN SEA

(Spain, 3 December 1992)

The incident

During heavy weather, the *Aegean Sea* (57 801 GRT) ran aground while approaching La Coruña harbour in the north-west of Spain. The ship, which was carrying approximately 80 000 tonnes of crude oil, broke in two and burnt fiercely for about 24 hours. The forward section sank some 50 metres from the coast. The stern section remained largely intact. The oil remaining in the aft section was removed by salvors working from the shore. The quantity of oil spilled was not known since most of the cargo was either dispersed in the sea or consumed by the fire on board the vessel, but it was estimated at some 73 500 tonnes. Several stretches of coastline east and north-east of La Coruña were contaminated, as well as the sheltered Ria de Ferrol. Extensive clean-up operations were carried out at sea and on shore.

Claims for compensation

Claims totalling Pts 48 187 million or €289.6 million (£280 million) were submitted before the criminal and civil courts. A large number of claims were settled out of court but many claimants pursued their claims in court.

Criminal proceedings

Criminal proceedings were initiated in the Criminal Court of first instance in La Coruña against the master of the *Aegean Sea* and the pilot in charge of the ship's entry into the port of La Coruña. The Court considered not only the criminal aspects of the case but also the claims for compensation which had been presented in the criminal proceedings against the shipowner, the master, the shipowner's insurer the United Kingdom Mutual Steamship Assurance Association (Bermuda) Limited (UK Club), the 1971 Fund, the owner of the cargo on board the *Aegean Sea* and the pilot.

In a judgement rendered in April 1996 the Criminal Court held that the master and the pilot were both liable for criminal negligence. They were each sentenced to pay a fine of Pts 300 000 or €1 803 (£1 700). The master, the pilot, the Spanish State, the 1971 Fund and the UK Club appealed against the judgement, but the Court of Appeal upheld the judgement in June 1997.

Global settlement

In June 2001 the Administrative Council authorised the Director to conclude and sign on behalf of the 1971 Fund an agreement with the Spanish State, the shipowner and the UK Club on a global solution of all outstanding issues in the *Aegean Sea* case, provided the agreement contained certain elements. In July 2001, the Director made the formal offer of such an agreement. This offer made the agreement conditional upon the withdrawal of the legal actions by claimants representing at least 90% of the total amount claimed in court.

On 17 October 2002 the Spanish Parliament adopted a Royal Decree ('Decreto-Ley') authorising the Minister of Finance to sign on behalf of the Spanish Government an agreement between Spain, the shipowner, the UK Club and the 1971 Fund. The Decree also authorised the Spanish Government to make out-of-court settlements with claimants in exchange for the withdrawal of their court actions. By 30 October 2002 the Spanish Government had reached agreement with claimants representing over 90% of the principal of the loss or damage claimed. The conditions laid down in the 1971 Fund's offer were therefore fulfilled.

On 30 October 2002 an agreement was concluded between the Spanish State, the 1971 Fund, the shipowner and the UK Club whereby the total amount due from the owner of the *Aegean Sea*, the UK Club and the 1971 Fund to the victims as a result of the distribution of liabilities determined by the Court of Appeal in La Coruña amounted to Pts 9 000 million or €54 million (£52.3 million). As a consequence of the distribution of liabilities determined by the Court of Appeal in La Coruña, the Spanish State

undertook to compensate all the victims who might obtain a final judgement by a Spanish court in their favour which condemned the shipowner, the UK Club or the 1971 Fund to pay compensation as a result of the incident.

On 1 November 2002, pursuant to the agreement, the 1971 Fund paid €38 386 172 corresponding to Pts 6 386 921 613 (£24 411 208) to the Spanish Government.

Developments in civil proceedings

Six claimants from the fisheries and mariculture sectors did not reach agreement with the Spanish Government on the amount of their losses and pursued their claims in the Court of first instance in La Coruña against the Spanish State and the 1971 Fund for a total amount of €3.7 million (£3.6 million). The Spanish State submitted pleadings contesting the claims both on procedural grounds and on the merits of the claims. The 1971 Fund submitted pleadings to the Court to the effect that the 1971 Fund was not liable to compensate these claimants since the Spanish Government had, in the above-mentioned agreement with the 1971 Fund, undertaken to compensate all the victims of the incident with outstanding claims and that this undertaking had been approved by a Royal Decree.

Judgements by the Court of first instance of La Coruña

In October and December 2005, the Court rendered judgements in respect of three claims, namely a boat fisherman, an association of mussel farmers and the owner of a fish pond. In the judgements the Court rejected the argument of the 1971 Fund on the grounds that the Royal Decree did not exonerate the 1971 Fund from liability *vis-à-vis* the victims since it related to a contract between the 1971 Fund and the Spanish State. The Court also held that the Spanish State had not been authorised by the victims to settle their claims with third parties. The Court held that the Government and the Fund had joint and several liability to the claimants but awarded amounts considerably lower than those claimed. All parties appealed against the judgements.

In October and November 2006 the Court rendered judgements in respect of two claims by a fish processor and a mussel depuration plant. The Court used largely the same arguments as in the three judgements mentioned above and awarded amounts lower than those claimed. The Spanish State, the 1971 Fund and one of the claimants appealed against the two judgements.

In March 2007 the Court rendered a judgement in respect of a claim by a fishing boat owner. The Court again used largely the same arguments as in the previous judgements. The judgement accepted the claim in part, and decided that the assessment of the losses would be decided in subsequent legal proceedings (execution of the judgement). The Spanish Government and the 1971 Fund appealed against the judgement.

Judgements by the Court of Appeal

In September and December 2006 the Court of Appeal issued two judgements in respect of the claims by the boat fisherman and the association of mussel farmers mentioned above, reducing the amounts awarded by the Court of first instance. The boat fisherman has requested leave to appeal to the Supreme Court.

In January 2007 the Court of Appeal issued a judgement in respect of the claim by the fish pond owner. In its judgement, the Court accepted a procedural argument raised by the Spanish Government and referred the case back to the Court of first instance for a decision. The procedural error has not been rectified by the claimant and therefore this claim has now been dismissed by the Court of first instance.

In June and July 2007 the Court of Appeal issued two judgements in respect of the claims by the mussel depuration plant and the fish processor respectively. The Court reduced the amount awarded in respect of the claim by the mussel depuration plant but upheld the judgement in respect of the fish processor. The fish processor has requested leave to appeal to the Supreme Court.

In September 2007 the Court of Appeal issued a judgement in respect of the claim by the fishing

Claimant	Amount claimed	Amount awarded (Court of Appeal)
Fishing boat owner	€122 334	Rejected
Association of mussel farmers	€635 036	€135 000
Fish pond owner	€799 921	File sent back to Court of First Instance
Fish processor (sea urchin)	€1 182 394	€ 43 453
Mussel depuration plant	€397 570	€55 640
Boat fisherman (sea urchin and octopus)	€503 538	€16 128
Total	**€3 640 793 (£3.5 million)**	**€250 221 (£242 000)**

boat owner. The Court rejected the claim on the grounds that the losses suffered by the claimant had already been compensated by the Spanish Government. The claimant requested leave to appeal to the Supreme Court.

The Spanish Government will, under the agreement with the 1971 Fund, pay any amounts awarded by these judgements.

The situation in respect of the claims in court is summarised in the table above.

Supreme Court
The boat fisherman, the fish processor and the fishing boat owner requested leave to appeal to the Supreme Court.

The Supreme Court has rejected the appeal by the fishing boat owner. No decision has been made on the remaining two requests.

Developments in criminal proceedings
Five additional claimants have not reached an agreement with the Spanish Government and have pursued their claims in the Criminal Court of La Coruña for very small amounts.

In November 2007 the Criminal Court in La Coruña decided on the execution of the judgement in respect of two of the claimants that had continued their compensation claims in the Criminal Court, for a total of €3 709 (£3 600) plus interest. As is the case with the civil proceedings, the Spanish Government will, under the agreement with the 1971 Fund, pay any amounts awarded by the Criminal Court.

14.3 ILIAD
(Greece, 9 October 1993)

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

Legal proceedings
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 (£2.2 million), also interrupted the time-bar period by taking legal action against the 1971 Fund. All other claims have become time-barred *vis-à-vis* the Fund.

Limitation proceedings

In March 1994 the shipowner's liability insurer established a limitation fund amounting to Drs 1 497 million or €4.4 million (£3.2 million) with the court in Nafplion by the deposit of a bank guarantee.

The Court decided that claims should be lodged by 20 January 1995. By that date, 527 claims had been presented in the limitation proceedings, totalling Drs 3 071 million or €9 million (£6.6 million) plus Drs 378 million or €1.1 million (£800 000) for compensation of 'moral damage'.

In March 1994 the Court appointed a liquidator to examine the claims in the limitation proceedings. The liquidator submitted his report to the Court in March 2006. In his report, the liquidator assessed the 527 claims at €2 125 755 (£1.6 million), which is below the limitation amount applicable to the shipowner. However, 446 of these claimants, including the shipowner and his insurer, have filed objections to the report. The Fund also filed pleadings to the Court in which it dealt with the criteria for the admissibility of claims for compensation under the 1969 Civil Liability Convention and the 1971 Fund Convention. The Fund, in its pleadings, argued that all claims except those submitted by the shipowner, his insurer and the owner of the fish farm were time-barred.

In October 2007 the Court in Nafplion decided that it did not have jurisdiction in respect of the proceedings and referred the case to the Court of Kalamata as the court closest to the area where the incident took place. A number of claimants have appealed against the decision.

The 1971 Fund, following advice received from its Greek lawyer, has joined in the appeal. It expected that the Court of Appeal will render its decision in 2009.

14.4 KRITI SEA

(Greece, 9 August 1996)

The incident

The Greek tanker *Kriti Sea* (62 678 GRT) spilled 20 to 50 tonnes of Arabian light crude oil while discharging at a terminal in the port of Agioi Theodori (Greece) some 22 nautical miles west of Piraeus, Greece. 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.

In December 1996 the shipowner established a limitation fund amounting to Drs 2 241 million or €6.6 million (£6.4 million) by means of a bank guarantee.

Claims for compensation

Most claims have been resolved. However, three claims – those of the Greek State, a fish farm and a seaside resort owner – remain unresolved. In judgements rendered in March 2006, the Supreme Court quashed the Court of Appeal's decisions which had upheld the claims of the Greek State and the fish farm, on the grounds of lack of proper legal reasoning, and also quashed the Court of Appeal's decision which had rejected the seaside resort owner's claim, on the grounds of improper application of the law. The Supreme Court referred these claims back to the Court of Appeal to rehear the cases on their merits and to deal with the issue of quantum.

A hearing took place at the Court of Appeal in March 2008. The Court is expected to issue its judgements in the near future.

Taking into account the interest which continues to accrue in relation to the pending cases, and costs which may be awarded by the Court, it is not certain whether the aggregate amount of the settled claims and the final adjudicated sums in respect of the pending cases will remain below the limitation threshold.

14.5 NISSOS AMORGOS

(Venezuela, 28 February 1997)

The incident

The Greek tanker *Nissos Amorgos* (50 563 GRT), carrying approximately 75 000 tonnes of Venezuelan crude oil, ran aground whilst passing through the Maracaibo Channel in the Gulf of Venezuela on 28 February 1997. The Venezuelan authorities have maintained that the actual grounding occurred outside the Channel itself. An estimated 3 600 tonnes of crude oil was spilled.

The incident has given rise to legal proceedings in a Criminal Court in Cabimas, Civil Courts in Caracas and Maracaibo, the Criminal Court of Appeal in Maracaibo and the Supreme Court. The great majority of claims have been settled out of court and the corresponding legal actions have been withdrawn.

Criminal proceedings

Criminal proceedings were brought against the master. In his pleadings to the Criminal Court in Cabimas the master maintained that the damage was substantially caused by deficiencies in Lake Maracaibo's navigation channel, amounting to negligence imputable to the Republic of Venezuela.

In a judgement rendered in May 2000, the Criminal Court dismissed the arguments made by the master and held him liable for the damage arising as a result of the incident and sentenced him to one year and four months in prison. The master appealed against the judgement before the Criminal Court of Appeal in Maracaibo.

In September 2000 the Criminal Court of Appeal decided not to consider the appeal but ordered the Criminal Court in Cabimas to send the file to the Supreme Court due to the fact that the Supreme Court was considering a request for 'avocamiento'[2]. The Court of Appeal's decision appeared to imply that the judgement of the first instance Court was null and void.

In August 2004 the Supreme Court decided to remit the file on the criminal action against the master to the Criminal Court of Appeal.

In a judgement rendered in February 2005, the Criminal Court of Appeal held that it had been proved that the master had incurred criminal liability due to negligence causing pollution damage to the environment. The Court decided, however, that, in accordance with Venezuelan procedural law, since more than four and a half years had passed since the date of the criminal act, the criminal action against the master was time-barred. In its judgement the Court stated that this decision was without prejudice to the civil liabilities which could arise from the criminal act dealt with in the judgement which was declared time-barred.

In October 2006 the public prosecutor requested the Supreme Court (Constitutional Section) to revise the judgement of the Criminal Court of Appeal on the grounds that the Court had not decided in respect of the claim for compensation submitted by the public prosecutor on behalf of the Republic of Venezuela.

In a judgement rendered in March 2007 the Supreme Court (Constitutional Section) decided to annul the judgement of the Court of Appeal and send back the criminal file to the Court of Appeal where a different section would render a new judgement. In its judgement the Supreme Court stated that the judgement of the Court of Appeal was unconstitutional since it had not decided on the claim for compensation submitted by the Republic of Venezuela that had been presented to obtain compensation for the Venezuelan State for the damage caused.

A different section of the Criminal Court of Appeal issued a new judgement in February 2008, confirming that the criminal action against the master was time-barred but preserving the civil action arising from the criminal act. In the judgement the Court of Appeal decided to send the file to a criminal court of first instance, in which the civil action filed by the Republic of Venezuela will be decided. As at 31 December 2008 no decision had been taken by this new court.

[2] *Under Venezuelan law, in exceptional circumstances, the Supreme Court may assume jurisdiction, 'avocamiento', and decide on the merits of a case. Such exceptional circumstances are defined as those which directly affect the 'public interest and social order' or where it is necessary to re-establish order in the judicial process because of the great importance of the case. If the request of 'avocamiento' is granted, the Supreme Court would act as a court of first instance and its judgement would be final.*

Claimant	Category	Claimed amount US$	Court	Fund's Position
Republic of Venezuela	Environmental damage	60 250 396	Criminal Court	Time-barred
Republic of Venezuela	Environmental damage	60 250 396	Civil Court	Time-barred
Three fish processors	Loss of income	30 000 000	Supreme Court	No loss proven
Total		**150 500 792 (£102.9 million)**		

The master has submitted pleadings to the Criminal Court of First Instance in which he has argued that the Court does not have jurisdiction and that the case should be transferred to the Maritime Court in Caracas. A decision by the Criminal Court is expected in early 2009.

Claims for compensation in court

There are significant claims for compensation pending before the Courts in Venezuela. The situation in respect of these claims is as follows:

Claims by the Republic of Venezuela

The Republic of Venezuela presented a claim for environmental damage for US$60 250 396 (£41.2 million) against the master, the shipowner and the Gard Club in the Criminal Court in Cabimas. The 1971 Fund was notified of the criminal action and submitted pleadings in the proceedings.

The Republic of Venezuela also presented a claim for environmental damage against the shipowner, the master of the *Nissos Amorgos* and the Gard Club before the Civil Court of Caracas for US$60 250 396 (£41.2 million). The 1971 Fund was not notified of this civil action.

In July 2003 the Administrative Council reiterated the 1971 Fund's position that the components of the claims by the Republic of Venezuela did not relate to pollution damage falling within the scope of the 1969 Civil Liability Convention and the 1971 Fund Convention, and that these claims should therefore be treated as not admissible.

The Administrative Council noted that the two claims presented by the Republic of Venezuela were duplications, since they related to the same items of damage. It was also noted that, in a note submitted to the 1971 Fund's Venezuelan lawyers in August 2001, the Procuraduria General de la Republica (Attorney General) had accepted this duplication.

Article 6.1 of the 1971 Fund Convention provides as follows:

> Rights to compensation under Article 4 or indemnification under Article 5 shall be extinguished unless an action is brought thereunder or a notification has been made pursuant to Article 7, paragraph 6, within three years from the date when the damage occurred. However, in no case shall an action be brought after six years from the date of the incident which caused the damage.

The legal actions by the Republic of Venezuela in the Civil and Criminal Courts were brought against the shipowner and the Gard Club, not against the 1971 Fund. The Fund was therefore not a defendant in these actions, and although the Fund intervened in the proceedings brought before the Criminal Court in Cabimas, the actions could not have resulted in a judgement against the Fund. As set out above, Article 6.1 of the 1971 Fund Convention requires that in order to prevent a claim from becoming time-barred in respect of the 1971 Fund a legal action has to be brought against the Fund within six

years of the date of the incident. No legal action had been brought against the 1971 Fund by the Republic of Venezuela within the six-year period, which expired in February 2003. At its October 2005 session the Administrative Council endorsed the Director's view that the claims by the Republic of Venezuela were time-barred *vis-à-vis* the 1971 Fund.

Claims by fish processors

Three fish processors presented claims totalling US$30 million (£15 million) in the Supreme Court against the 1971 Fund and the Instituto Nacional de Canalizaciones (INC). These claims were presented in the Supreme Court because one of the defendants is an agency of the Republic of Venezuela and, under Venezuelan law, claims against the Republic have to be presented before the Supreme Court. The Supreme Court would in this case act as court of first and last instance. In July 2003 the Administrative Council noted that the claims had not been substantiated by supporting documentation and that they should therefore be treated as not admissible.

In August 2003 the 1971 Fund submitted pleadings to the Supreme Court arguing that, as the claimants had submitted and subsequently renounced claims in the Criminal Court in Cabimas and the Civil Court in Caracas against the master, the shipowner and the Gard Club for the same damage, they had implicitly renounced any claim against the 1971 Fund. The 1971 Fund also argued that not only had the claimants failed to demonstrate the extent of their loss but the evidence they had submitted indicated that the cause of any loss was not related to the pollution. There have been no developments in respect of these claims.

Maximum amount available for compensation

Immediately after the incident the *Nissos Amorgos* was detained pursuant to an order rendered by the Criminal Court of first instance in Cabimas. The shipowner provided a guarantee to the Cabimas Court for Bs3 473 million (£1.1 million), being the limitation amount applicable to the *Nissos Amorgos* under the 1969 Civil Liability Convention. The Cabimas Court ordered the release of the ship on 27 June 1997.

On 27 June 1997 the Cabimas Court issued an order which provided that the maximum amount payable under the 1969 Civil Liability Convention and the 1971 Fund Convention, namely 60 million SDR, corresponded to Bs39 738 million or US$83 221 800 (£56.9 million).

Level of payments

In view of the uncertainty as to the total amount of the claims arising from this incident, the Executive Committee and later the Administrative Council decided to limit payments to a percentage of the loss or damage actually suffered by each claimant.

At the Administrative Council's session held in May 2004, the Venezuelan delegation stated that the Republic of Venezuela had proposed that any claim by the Republic be dealt with after the victims had been fully indemnified so that the pending and settled claims against the Fund were compensated to the benefit of the victims, and that the Republic would stand 'last in the queue' and subject to the amount available for compensation from the Fund. The Council noted that the Vice-Minister of Foreign Affairs, in a letter to the Director, had stated that the Republic of Venezuela accepted that the claims by the Republic of Venezuela would be dealt with after the Fund had paid full compensation to claimants already recognised by it and those who would be recognised legally by a final court judgement, within the maximum amount available established by the Conventions.

The Council instructed the Director to seek the necessary assurance from the Republic of Venezuela as to whether its understanding of the meaning of the term 'standing last in the queue' coincided with his (namely that the Government undertook not to pursue or seek payment for its claims for compensation under the Conventions, or under its national legislation implementing the Conventions, until all other admissible claims had been paid in full, either for the amount agreed in out-of court settlements or as

Claimant	Category	Settlement amount Bs	Settlement amount US$
Petroleos de Venezuela S.A. (PDVSA)	Clean up		8 364 223
ICLAM[3]	Preventive measures	70 675 468	
Shrimp fishermen and processors	Loss of income		16 033 389
Other claims[4]	Property damage and loss of income	289 000 000	
Total		**359 675 468 (£81 900)**	**24 397 612 (£12.6 million)**

decided by a competent court in a final judgement) and authorised the Director to increase the level of payments to 100% of the established claims, when he had received the necessary assurance.

A letter from the Minister of Foreign Affairs of Venezuela received in August 2004 gave, in the Director's opinion, the necessary assurance that the Republic of Venezuela agreed with his interpretation of that notion. As a result, the Director decided to increase the level of payments to 100%.

Settled claims

The table above summarises the settled claims.

All settled claims have been paid in full.

Possible recourse action against Instituto Nacional de Canalizaciones (INC)

At its May 2004 session, the Administrative Council considered the issue of whether the 1971 Fund should take recourse action against INC, the agency responsible for the maintenance of the Lake Maracaibo navigation channel.

The Council noted that, having taken into account all available information, the Director had considered on balance that it was unlikely that a recourse action by the 1971 Fund against INC would succeed and that for this reason he had proposed that the Fund should not pursue such an action.

The Administrative Council at its October 2006 session decided, therefore, that the 1971 Fund should not take recourse action against INC. Reference is made to the Annual Report 2007 pages 65 and 66.

Attempts to resolve the outstanding issues

At the Administrative Council's October 2005 session, the Venezuelan delegation acknowledged that most outstanding claims resulting from the *Nissos Amorgos* incident were time-barred and requested the Administrative Council to authorise the Director to approach the Gard Club and the Attorney General and the Public Prosecutor of the Republic of Venezuela to facilitate the resolution of the outstanding issues arising from this incident. That delegation pointed out that a resolution of the outstanding issues would contribute to the winding up of the 1971 Fund. The Director indicated his willingness to make the suggested approaches. The Administrative Council invited the Director to approach the Gard Club and the Attorney General and the Public Prosecutor of the Republic of Venezuela for the purpose of assisting them in resolving the outstanding issues.

Since October 2005 there have been several meetings and discussions between the Venezuelan delegation and the 1971 Fund. During this period the 1971 Fund has also held meetings and discussions with the Gard Club. In February 2006

[3] *Instituto para el Control y la Conservación de la Cuenca del Lago de Maracaibo.*

[4] *Paid in full by the shipowner's insurer with the exception of the claim by Corpozulia, a tourism authority of the Republic of Venezuela.*

the 1971 Fund wrote to the Venezuelan delegation setting out possible solutions to the outstanding issues. In May 2006 a meeting took place in Caracas between the various interested parties including representatives of the Venezuelan Government. The 1971 Fund was represented at the meeting by its Venezuelan lawyers. The purpose of the meeting was to brief the various parties as regards the current situation concerning the outstanding claims.

In June 2006 a meeting was held in London between the Venezuelan delegation and the 1971 Fund at which time the Fund was informed that the Venezuelan authorities were well advanced in their internal discussions and that meetings would take place in Venezuela in the near future between the five government departments concerned and with representatives of the private claimants. The Venezuelan delegation stated that it would inform the 1971 Fund of the outcome. In discussions with the Venezuelan delegation in September 2006, the 1971 Fund was informed that a meeting had taken place in Caracas in August 2006 and that it would be helpful if representatives of the Gard Club and the 1971 Fund could visit Venezuela in the near future. The 1971 Fund visited Venezuela in October 2006 where a meeting was held at the Ministry of External Affairs attended by representatives of the Ministry of External Affairs, Ministry of the Environment, Public Prosecutor, Attorney General and the Instituto Nacional de los Espacios Acuaticos (National Institute of Aquatic Spaces). At the meeting the participants expressed a desire to resolve the outstanding issues without pursuing the claims in court.

In September 2007 the Director was informed by the Gard Club that it had decided not to pursue a recourse action against INC (Instituto Nacional de Canalizaciones).

At the October 2007 session of the Administrative Council, one delegation expressed its concern that the *Nissos Amorgos* case seemed to be back to the beginning and that therefore it would most probably be the case that would delay the winding up of the 1971 Fund for a considerable period of time. That delegation asked if there were any indications as to when a judgement could be expected. The delegation also enquired from the Secretariat and from the Venezuelan delegation what measures could be taken to resolve this case. Another delegation enquired whether there was any room to reach a compromise, in particular on the part of the Venezuelan Government.

The Venezuelan delegation informed the Council that it was not possible to provide any time frame as to when the court proceedings would be finalised and stated that it would inform the 1971 Fund of any developments.

The Chairperson invited the Venezuelan delegation to bring the concerns of the Administrative Council to the attention of the relevant authorities in Venezuela with a view to resolving the outstanding issues as soon as possible.

In December 2008 a meeting was held in Caracas between representatives of the 1971 Fund, visiting Venezuela on other business, and representatives of the Venezuelan Ministry of Foreign Affairs. The representatives conducted a general review of the outstanding issues.

With regards to the claims by the Republic of Venezuela, the representatives of the Ministry of External Affairs expressed surprise that the claim by the Procuraduria had not been withdrawn. It was suggested that the Ministry of Foreign Affairs would convene a meeting with the interested parties, including the Public Prosecutor, Attorney General and Ministry of the Environment, to examine whether a solution could be found.

With regard to the outstanding claims by three fish processors against the 1971 Fund and the Instituto Nacional de Canalizaciones, the representatives of the Ministry of External Affairs stated that the Government could not intervene since the plaintiffs were private companies.

The representatives of the Ministry of External Affairs were not able to convene a meeting while the representatives of the 1971 Fund were in Caracas but a meeting did take place later in December 2008 attended by only representatives of the Ministry of External Affairs. The 1971 Fund was represented by its Venezuelan Lawyers. At that meeting, the representatives of the Ministry of External Affairs expressed their intention to reactivate the case and to bring the matter to the attention of the Minister of Foreign Affairs. The representatives of the Ministry of Foreign Affairs stated that, once they had received instructions from the Minister, they would convene a meeting of all interested parties and the 1971 Fund would be invited to attend.

14.6 PLATE PRINCESS

(Venezuela, 27 May 1997)

The incident

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

The vessel was entered with the Standard Steamship Owners' Protection and Indemnity Association (Bermuda) Limited (the Standard Club).

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.

An expert engaged by the 1971 Fund and the 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 that was uninhabited. No fishery or other economic resources were known to have been contaminated or affected.

In June 1997 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.

Court proceedings

Immediately after the incident, the Criminal Court of Cabimas commenced an investigation into the cause of the incident. The Criminal Court decided that criminal proceedings should be brought against the master of the *Plate Princess* and subsequently found him responsible for the pollution. The master appealed and in June 1999 the Court of Appeal quashed the sentence.

In June 1997 a fishermen's trade union (FETRAPESCA) presented a claim in the Criminal Court of Cabimas on behalf of 1 692 fishing boat owners, claiming an estimated US$10 060 per boat (£7 000), ie a total of US$17 million (£12 million). The claim was for alleged damage to fishing boats and nets and for loss of earnings. There have been no developments on this claim.

FETRAPESCA also presented a claim against the shipowner and the master of the *Plate Princess* before the Civil Court of Caracas for an estimated amount of US$10 million (£6.8 million). The claim is for the fishermen's loss of income as a result of the spill.

Also in June 1997, another fishermen's union (Sindicato Único de Pescadores de Puerto Miranda) presented a claim in the Civil Court of Caracas against the shipowner and the master of the *Plate Princess* for an estimated amount of US$20 million (£13.7 million) plus legal costs.

Limitation proceedings

The limitation amount applicable to the *Plate Princess* under the 1969 Civil Liability Convention was estimated in 1998 at 3.6 million SDR or Bs 2 845 million (£907 000) and, in 1997, a bank guarantee for this amount was provided to the Criminal Court of Cabimas.

In December 2006, the claims in the Civil Court of Caracas by FETRAPESCA and the Sindicato Único de Pescadores de Puerto Miranda were transferred to the Maritime Court of Caracas.

In November 2008, the shipowner and the master of the *Plate Princess* presented pleadings to the Maritime Court of Caracas requesting the constitution of the limitation fund in the amount of the bank guarantee provided to the Criminal Court of Cabimas.

In December 2008 the Maritime Court of Caracas denied the request by the shipowner and the master of the *Plate Princess* to start limitation proceedings. The shipowner and the master have appealed against this decision.

Time bar

Time-bar provisions in the 1971 Fund Convention

In order to prevent a claim from becoming time-barred the claimant must, within three years of the date of the damage, **either** take legal action against the 1971 Fund **or** notify the Fund of an action against the shipowner and/or his insurer in accordance with Article 7.6 of the Convention (Article 6.1, first sentence). Even if the claimant has notified the 1971 Fund of an action against the shipowner and/or his insurer within that period, the claim is time-barred unless the claimant takes legal action against the 1971 Fund within six years of the date of the incident (Article 6.1, second sentence).

Consideration at the Administrative Council's October 2005 session

At the October 2005 session of the Administrative Council, the Venezuelan delegation stated that although it had been assumed that claims arising from this incident had become time-barred, its legal advisers were of the opinion that this was not the case by virtue of Article 7.6 of the 1971 Fund Convention. The Venezuelan delegation referred to a recent decision by the Venezuelan Supreme Court in respect of this incident.

Notification of the 1971 Fund in October 2005

Shortly after the Administrative Council's October 2005 session the 1971 Fund learned that both fishermen's unions had in 1997 requested the Court to notify the 1971 Fund of their actions. However, it was only on 31 October 2005 that the 1971 Fund was formally notified through diplomatic channels of the actions for compensation brought in the Civil Court of Caracas by FETRAPESCA and the Sindicato Único de Pescadores de Puerto Miranda against the shipowner and the master of the *Plate Princess* in June 1997.

Considerations at the Administrative Council's February/March 2006 session

At the Administrative Council's February/March 2006 session the Director submitted a document in which he stated the following:

Claims for compensation before the Venezuelan Courts were brought against the master and the shipowner in June 1997. The 1971 Fund was not named as a defendant in these actions. The 1971 Fund was not notified of the action against the shipowner until 31 October 2005, ie nearly seven and a half years after the damage occurred. Since the Fund was not notified of the claims against the shipowner within three years from the date when the damage occurred, in the Director's opinion these claims are time-barred under the 1971 Fund Convention pursuant to the first sentence of Article 6. They are, in his view, also time-barred under the second sentence

of that Article since no action was brought against the Fund within six years from the date of the incident.

The Director has examined the judgement by the Supreme Court referred to by the Venezuelan delegation at the Council's October 2005 session and has noted that it relates to an action by Sindicato Único de Pescadores de Puerto Miranda against BVC, the bank that issued the guarantee provided by the shipowner in connection with the incident. The issue dealt with in the judgement was whether the bank guarantee should be given back to BVC. In the Director's view, the judgement has no bearing on the 1971 Fund, since it relates to an action which is entirely different from those brought by the fishermen's unions against the shipowner.

At that session the Venezuelan delegation stated that it did not share the Director's view that the claim by the fishermen was time-barred, since legal action had been taken against the shipowner within the time set out in Articles 6 and 7.6 of the 1971 Fund Convention. The Venezuelan delegation also stated that Article 6 of the 1971 Fund Convention referred directly to Article 7.6 of that Convention which established that there had to be an action for compensation against the shipowner under the 1969 Civil Liability Convention or a notification to the 1971 Fund of such an action. The delegation further stated that both conditions did not have to be fulfilled; one of them was sufficient.

The Venezuelan delegation expressed the view that any decision by the Court was binding on the 1971 Fund and that the Fund had sufficient time to present its arguments before the courts since points of defence had not yet been submitted. The delegation requested the Administrative Council to instruct the Director to intervene in the proceedings, examine the claims for compensation presented and pay the compensation due to the victims.

The Administrative Council instructed the Director to take the necessary action to defend the 1971 Fund's position on time bar before the Venezuelan courts.

Consideration at the Administrative Council's May 2006 session

In a document submitted to the Administrative Council's May 2006 session the Director stated that while he recognised that the final decision on whether the claims were time-barred *vis-à-vis* the 1971 Fund was a matter for the Venezuelan courts, he disagreed with the analysis by the Venezuelan delegation of the provisions of the 1971 Fund Convention.

In that document the Director stated that the provisions on time bar were always brutal in their application since, if not respected, claimants lost their rights to obtain compensation but that the 1971 Fund and the 1992 Fund governing bodies had decided that the provisions on time bar of the Conventions should be strictly adhered to. The Director also stated that the 1971 Fund had not been notified of the action against the shipowner in accordance with the formalities required by the law of the relevant court and that, in his view, the claims were therefore time-barred under the first sentence of Article 6.1 of the 1971 Fund Convention. The Director further stated that, in his view, the claims were also time-barred under the second sentence of Article 6.1 since no action had been brought against the 1971 Fund within six years from the date when the incident occurred.

The Venezuelan delegation stated that it maintained its view that the claims had not become time-barred because a legal action had been brought against the shipowner in June 1997 fulfilling the requirements established by Article 6.1 and Article 7.6 of the 1971 Fund Convention. The delegation made the point that under Article 6.1 of the 1971 Fund Convention it was not necessary to fulfil the two requirements but that it was sufficient to comply with one of them.

A number of delegations, whilst expressing sympathy with the victims of the incident and regretting that the time-bar provisions had worked to their detriment, stated that it was necessary to adhere to the current text of the Conventions. The point was made that

knowledge of an incident by the Fund was not the same as formal notification in accordance with Article 6.1 of the 1971 Fund Convention. Those delegations agreed with the Director's interpretation of Articles 6.1 and 7.6 of the 1971 Fund Convention and expressed the view that the claims arising from the incident were time-barred.

The Administrative Council decided that the claims referred to above were time-barred in respect of the 1971 Fund.

The Venezuelan delegation stated that it intended to submit a document on the *Plate Princess* at a future session of the Administrative Council and asked that the incident should therefore remain on the Council's agenda.

Notification of the 1971 Fund in March 2007
In March 2007, following a request from the Maritime Court of Caracas, the 1971 Fund was formally notified through diplomatic channels for a second time of the actions for compensation brought against the shipowner and the master of the *Plate Princess*.

Further developments

Claim by FETRAPESCA
In July 2008, the shipowner and the master of the *Plate Princess* requested the Maritime Court of Caracas to declare the claim by FETRAPESCA time-barred (perencion de instancia) since the plaintiffs had not taken steps to duly pursue their claim in Court. In a decision published later that month the Court decided that the claim was not time-barred. The shipowner and the master appealed against this decision but, in October 2008, the Maritime Court of Appeal upheld the judgement of the Maritime Court of Caracas. There have been no further developments on the claim by FETRAPESCA.

Amended claim by the Sindicato Único de Pescadores de Puerto Miranda
In April 2008 the Sindicato Único de Pescadores de Puerto Miranda submitted an amended claim against the shipowner, master of the *Plate Princess* and the 1971 Fund. The amended claim which now totals BsF53.5 million (£17 million) is for losses suffered by some 650 fishermen in respect of damage to nets and boats and in respect of loss of income for a period of six months. The Maritime Court of Caracas accepted the amended claim.

In July 2008 the 1971 Fund submitted pleadings stating that the claim was time-barred since the 1971 Fund:

- had not been notified of the action against the shipowner within three years from the occurrence of the damage, as provided in Article 6 of the 1971 Fund Convention and in accordance with the decision by the Administrative Council at its May 2006 session and
- had not been named as defendant in the action within the six year period since the date of the incident as also provided in Article 6 of the 1971 Fund Convention.

The 1971 Fund engaged experts to examine the claim and requested the Court to provide copies of the documentation submitted by the claimants to demonstrate the losses. The documentation amounted to thousands of pages and was beyond the resources of the Maritime Court to copy. The Maritime Court therefore subcontracted the work. The documentation was only received by the 1971 Fund in August 2008.

The 1971 Fund's experts issued their report in early October 2008. In their report, the experts concluded that:

- the claimants had not demonstrated that any damage suffered by the fishermen had been caused by the spill from *Plate Princess*;
- the quantity of oil spilled was so small that it could not explain the extensive damage alleged;
- the inspection reports submitted to demonstrate the extent of damage to nets and boats were of doubtful accuracy; and that

- the documents submitted to support the claim for loss of income had in many instances been falsified and produced for the purpose of making the claim.

The 1971 Fund's experts' report was submitted to the Maritime Court in November 2008 but the Court decided that the report was not admissible since it had not been submitted within the time limit provided by Venezuelan law. The 1971 Fund appealed against this decision on the grounds that the time limit was not sufficient for the Court to provide the 1971 Fund with copies of the documentation and for their experts to review them. The Maritime Court of Appeal has not decided on this appeal yet.

In November 2008, the Head of the Claims department and one of the experts engaged by the 1971 Fund travelled to Caracas to assist the 1971 Fund's lawyers to prepare for the Maritime Court main hearing of the claim, scheduled to commence in early December 2008. Discussions were held with both the 1971 Fund's lawyers and the lawyers appointed by the master and shipowner. The hearing was, however, postponed and is now expected to take place in January 2009.

14.7 KATJA

(France, 7 August 1997)

The incident

The Bahamas-registered tanker *Katja* (52 079 GRT) struck a quay while manoeuvring into a berth at the port of Le Havre (France) resulting in a spill of 190 tonnes of heavy fuel oil from a bunker tank. Beaches both to the north and to the south of Le Havre were affected and approximately 15 kilometres of quay and other structures within the port were contaminated. Oil also entered a marina at the entrance to the port and many pleasure boats were polluted.

The limitation amount applicable to the *Katja* in accordance with the 1969 Civil Liability Convention is estimated at €7.3 million (£7 million).

Claims for compensation

A claim presented by the French Government for clean-up costs was settled in July 2000 at €207 000 (£200 000). Other claims relating to clean-up, property damage and loss of income in the fisheries sector were settled at a total of €2.3 million (£2.2 million).

Legal actions were taken against the shipowner, his liability 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 €1.4 million (£1.3 million). These actions included a claim by the Port Autonome du Havre (PAH) in respect of clean-up costs for €878 000 (£848 800).

The shipowner and his insurer brought proceedings against the PAH. 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 caused.

The PAH submitted pleadings rejecting the arguments submitted by the shipowner. The PAH referred to the report of its own expert which showed that the berth used by the *Katja* was not dangerous and that the response to the incident by the PAH had been appropriate.

In April 2008 a settlement agreement was concluded between the shipowner, his insurer and the PAH, whereby the shipowner and its insurer paid to PAH €70 000 (£67 700) and all parties to the agreement withdrew their legal actions.

This case is now closed.

14.8 EVOIKOS

(Singapore, 15 October 1997)

The incident

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 were 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 Province of Selangor.

At the time of the incident, Singapore was Party to the 1969 Civil Liability Convention but not to the 1971 Fund Convention, whereas Malaysia and Indonesia were Parties to the 1969 Civil Liability Convention and the 1971 Fund Convention.

Claims for compensation

All known admissible claims for compensation in Malaysia, Singapore and Indonesia have been settled by the shipowner.

In the limitation proceedings commenced by the shipowner in Singapore, the Court determined the limitation amount applicable to the *Evoikos* under the 1969 Civil Liability Convention at 8 846 942 SDR (£9.4 million).

The total compensation paid by the shipowner is below the level at which the 1971 Fund would make any payments in respect of compensation or indemnification.

The shipowner's insurer commenced legal actions against the 1971 Fund in London, Indonesia and Malaysia to protect its rights against the Fund. The action in Indonesia has been discontinued. The actions in London and in Malaysia were stayed by mutual consent. Although any further claims are time-barred under the Conventions, the insurer has informed the Fund that it is not prepared to withdraw its actions against the Fund in London and Malaysia until it has had the opportunity to establish that there are no outstanding claims against the shipowner which might result in the Fund becoming liable to pay compensation or indemnification.

There have been no developments in this case since 2003. This case cannot be closed until all pending litigation has been finalised.

14.9 PONTOON 300

(United Arab Emirates, 7 January 1998)

The incident

On 7 January 1998 the Saint Vincent and Grenadines barge *Pontoon 300* (4 233 GRT), which was being towed by the tug *Falcon 1*, sank at a depth of 21 metres off Hamriyah, in Sharjah (United Arab Emirates, UAE). An estimated 8 000 tonnes of intermediate fuel oil were spilled, which spread over 40 kilometres of coastline, affecting four Emirates. The worst affected Emirate was Umm Al Quwain.

Claims for compensation

All claims in respect of this incident have been settled for a total of Dhs 7.9 million (£1.2 million). This includes claims for the cost of clean-up and preventive measures that were settled for Dhs 6.3 million (£862 000), and a claim by a Marine Resource Research Centre (MRRC) that was settled for Dhs 1.6 million (£303 000).

Legal actions

For details of the criminal action against the master of the tug *Falcon 1*, the legal action by the Municipality of Umm Al Quwain and the withdrawal of the action by the 1971 Fund against the owner of the tug *Falcon 1*, reference is made to the Annual Report 2006, pages 71 to 74.

Level of the 1971 Fund's payments

In April 2000 the Executive Committee decided that, in view of the uncertainty regarding the total amount of claims for compensation, the 1971 Fund's payments should be limited to 75% of the loss or damage actually suffered by each claimant (cf Annual Report 2006, page 74).

At its October 2006 session the Administrative Council decided to increase the level of payments from 75% to 100% of all settled claims if the legal action by the Umm Al Quwain Municipality against the 1971 Fund were to be withdrawn. When the claim by the Umm Al Quwain Municipality was withdrawn in November 2006, the 1971 Fund increased the level of payments to 100% of all settled claims, in accordance with the Administrative Council's decision.

In early 2008 the 1971 Fund finalised payment of the remaining 25% of all agreed claims. This case is now closed.

14.10 AL JAZIAH 1

(United Arab Emirates, 24 January 2000)

The incident

The tanker *Al Jaziah 1* (reportedly of 681 GRT), laden with fuel oil, sank in about ten metres of water five nautical miles north-east of the port of Mina Zayed, Abu Dhabi (United Arab Emirates, UAE). It was estimated that approximately 100 to 200 tonnes of cargo escaped from the wreck. The oil drifted under the influence of strong winds towards the nearby shorelines, thereby polluting a number of small islands and sand banks. Some mangroves were also oiled. The sunken vessel was refloated by salvors and taken into the Abu Dhabi Freeport.

The vessel was not entered with any classification society and did not hold any liability insurance.

Application of the Conventions and the distribution of liability between the 1971 and 1992 Funds

The 1992 Fund Executive Committee and the 1971 Fund Administrative Council decided that since at the time of the *Al Jaziah 1* incident the United Arab Emirates was a Party to both the 1969/1971 Conventions and the 1992 Conventions, both sets of Conventions applied to the incident, and that the liabilities should be distributed between the 1971 Fund and 1992 Fund on a 50:50 basis.

Claims for compensation

Claims in various currencies totalling £1.1 million were submitted in respect of the costs of clean-up operations and preventive measures. These claims were settled and paid at Dhs 6.4 million (£875 400). The 1971 and 1992 Funds will not be required to make any further compensation payments.

Criminal proceedings

The Abu Dhabi Public Prosecutor brought criminal proceedings against the master of the *Al Jaziah 1*. In a statement given to the Public Prosecutor the master had stated that the vessel was designed as a water carrier and was in a dangerous condition and badly maintained.

The Court held, *inter alia*, that the vessel had caused damage to the environment and that it did not fulfil basic safety requirements, was not fit to sail, had many holes in the bottom and was not authorised by the UAE Ministry of Communications to carry oil. The Court concluded that the sinking of the vessel was due to these deficiencies.

The master was fined Dhs 5 000 (£950) for causing damage to the environment.

Recourse action

Consideration by the governing bodies of the 1971 and 1992 Funds in October 2002

At their October 2002 sessions, the governing bodies of the 1971 and 1992 Funds considered whether the Funds should take recourse action against the shipowner. It was noted that the Director had been advised by the Funds' UAE lawyers that there were reasonably good prospects for the Funds to obtain a favourable judgement against the person in question and that it was likely that he would not be entitled to limit his liability. It was also noted, however, that the Funds' lawyers had also advised the Director that the Funds might encounter considerable difficulties in enforcing a judgement against the assets of the defendant and that it was in any event uncertain whether the defendant would have sufficient assets to enable the Funds to recover any substantial amount.

Most delegations expressed the view that the question of whether or not to pursue a recourse action against the shipowner raised an important issue of principle and that the IOPC Funds should play a part in discouraging the operation of substandard ships and enforcing the 'polluter pays principle'. In recommending that the IOPC Funds should pursue a recourse action those delegations recognised that the prospects of enforcing a favourable judgement were limited, but that it was in their view nevertheless important for the Funds to take a stand. Some delegations considered, however, that the Funds should be realistic and not pursue a recourse action if the shipowner had no assets.

The governing bodies of the 1971 and 1992 Funds decided that the Funds should pursue recourse action against the owner of the *Al Jaziah 1*.

Legal action by the Funds
In January 2003 the Funds commenced legal action in the Abu Dhabi Court of first instance against the shipowning company and its sole proprietor, requesting that the defendants should pay Dhs 6.4 million (£875 400) to the Funds, the amount to be distributed equally between the 1971 Fund and the 1992 Fund.

In November 2003 the Abu Dhabi Court of first instance appointed an expert to investigate the nature of the incident and the payments made by the Funds. The Funds met with the expert on three occasions and provided supplementary information as requested by the expert.

In August 2005 the expert informed the Court that he could not complete his report due to other commitments and the Court appointed a new expert with the same mandate.

The new expert submitted his report to the Court in July 2006. In his report the expert confirmed the following:

- The incident had caused pollution damage to various parties within the Emirate of Abu Dhabi.
- The Funds had paid a total of Dhs 6.4 million (£875 400) in compensation to those affected by the pollution.
- The ship had not been registered as an oil tanker and its insurance policies had expired.
- The shipowner was liable for the damage caused by the incident.

For details of the exchange of information between the court expert, the shipowner and the Funds reference is made to the 2007 Annual Report pages 70 and 71.

In early 2008, the court expert submitted its final report confirming the conclusions reached in July 2006.

Judgement by the Abu Dhabi Court of first instance
In a judgement rendered in March 2008 the Court ordered the shipowner to pay the Funds an amount of Dhs 6 402 282 (£875 400) and that this amount should be distributed equally between the 1971 Fund and the 1992 Fund.

The shipowner has not appealed against the judgement and therefore it has become final.

Execution of the judgement
The Funds have requested the Court to enforce the judgement and at a hearing in July 2008 the Court bailiff informed the Funds' lawyers that the shipowner was in serious financial difficulties. It was suggested that the Funds would have to investigate whether the shipowner had other financial resources to pay the judgement.

The Funds' lawyers have been advised by the Court that the shipowner had a heavy burden of debts of some Dhs 63 million (£11.8 million) including the judgement awarded in favour of the Funds, that the shipowner had been in prison due to his inability to pay his debts and that he had been released recently from prison after having given an undertaking to pay an amount of Dhs 4 200 (£795) per month from his salary towards the

payment of his debts.

The Funds' lawyers have investigated whether the shipowner has additional assets available to pay the judgement but according to the investigation carried out the shipowner has no additional assets. Therefore it appears that it would be very difficult to execute the judgement against the shipowner.

Consideration by the governing bodies of the 1971 and 1992 Funds in October 2008
At their October 2008 sessions, the governing bodies of the 1971 and 1992 Funds instructed the Director to approach the shipowner to discuss a settlement, taking into account his financial situation.

The Funds, through their lawyers in the United Arab Emirates, have approached the shipowner in accordance with the instructions by the Funds' governing bodies.

14.11 ALAMBRA

(Estonia, 17 September 2000)

The incident

The Maltese tanker *Alambra* (75 366 GT) was loading a cargo of heavy fuel oil in the Port of Muuga, Tallinn (Estonia), when an alleged 300 tonnes of cargo escaped from a crack in the vessel's bottom plating. The *Alambra* remained in its berth whilst clean-up operations were carried out but was subsequently detained by the Estonian authorities pending a decision by the Tallinn Port Authority to allow the remaining 80 000 tonnes of cargo on board to be removed. The cargo transfer was eventually undertaken in February 2001, and in May 2001 the vessel finally left Estonia for scrapping.

Limitation of liability

The limitation amount applicable to the *Alambra* under the 1969 Civil Liability Convention is estimated at 7.6 million SDR (£7.1 million).

Claims for compensation

The shipowner and his insurer, the London Steam-Ship Owners Mutual Insurance Association Ltd (London Club), have settled claims for clean-up costs for a total of US$620 000 (£311 000). The Estonian Court of first instance approved this settlement in March 2004, and all court actions against the shipowner and the Club in relation to claims in respect of clean-up were terminated.

A claim by the Estonian State for EEK 45.1 million (£2.8 million), which had the character of a fine or charge, was settled by the shipowner and the London Club at US$655 000 (£456 000). The Court approved this settlement in March 2004, and the proceedings against the shipowner and the Club in relation to this claim were terminated.

A claim for US$100 000 (£69 550) was presented to the shipowner and the London Club by a charterer of a vessel said to have been delayed whilst clean-up operations were being undertaken.

The owner of the berth in the Port of Muuga from which the *Alambra* was loading cargo at the time of the incident, and a company contracted by the owner of the berth to carry out oil-loading activities on its behalf, have submitted claims to the shipowner and the London Club for EEK 29.1 million (£1.8 million) and EEK 9.7 million (£599 400), respectively, for loss of income due to the unavailability of the berth whilst clean-up operations were being undertaken.

Legal actions

In November 2000 the owner of the berth in the Port of Muuga and the company it had contracted to carry out oil-loading operations took legal action in the Court of first instance in Tallinn against the shipowner and the London Club and requested the Court to notify the 1971 Fund of the proceedings in accordance with Article 7.6 of the 1971 Fund Convention. Having been notified of the actions, the 1971 Fund intervened in the proceedings.

In the context of these legal actions, the question arose as to whether the 1969 Civil Liability

Convention and the 1971 Fund Convention had been correctly implemented into Estonian national law.

The constitutional issue

On 1 December 1992 Estonia deposited its instruments of ratification of the 1969 Civil Liability Convention and the 1971 Fund Convention with the International Maritime Organization. As a result, the Conventions entered into force for Estonia on 1 March 1993. However, the lawyers acting for the shipowner and the London Club, as well as the Estonian lawyers acting for the 1971 Fund, drew their clients' attention to the fact that, in their view, under the Estonian Constitution, ratification of the Conventions should not have taken place before the Estonian Parliament had given its approval and had adopted the necessary amendments to the national legislation. The Conventions were not submitted to Parliament and the necessary amendments to national law were not made. The Conventions had not been published in the Official Gazette. For these reasons these Conventions did not, in the view of these lawyers, form part of national law and could not be applied by the Estonian courts.

The shipowner and the London Club raised this issue in their pleadings in the Court of first instance, as did the 1971 Fund in order to protect its position.

On 1 December 2003 the Court of first instance rendered its decision on the constitutional issue. The Court held that since the Government had ratified the 1969 Civil Liability Convention without prior approval by Parliament, the ratification procedure had been a breach of the Estonian Constitution. For this reason the Court decided that the Convention could not be applied in the case under consideration and should be declared in conflict with the Constitution. The Court of first instance therefore ordered that constitutional review proceedings should be initiated before the Supreme Court.

Constitutional review

In a decision issued in April 2004, the Supreme Court held that it would not carry out the constitutional review requested by the Court of first instance. The reasons for the Supreme Court's decision can be summarised as follows:

> The Supreme Court referred to the fact that the Court of first instance had initiated constitutional review proceedings without making a substantial decision in the case. In earlier decisions the Supreme Court had held that when carrying out a constitutional review, it had first verified whether the provision declared contrary to the Constitution was relevant in resolving the case before the courts, because under the Code of Constitutional Review the Supreme Court should only declare provisions relevant in that sense contrary to the Constitution or invalid. The Supreme Court stated that the decisive factor in determining the issue of relevance was whether the provision in question was of decisive importance in the case, namely whether the case would be decided differently if the provision was considered contrary to the Constitution than if this were not to be the case. The Supreme Court noted that the Court of first instance had issued its decision without determining the facts of material importance to the case. The Supreme Court stated that the Court of first instance could not have been sure at the time of issuing its decision which regulation was applicable and of decisive importance in the case. The Supreme Court held that it could not assess which legal norm was relevant in solving the case and whether that norm was in accordance with the Constitution.

Other issues raised in the legal proceedings

In September 2002 the London Club filed pleadings in court in respect of the claims presented by the Port of Muuga and the contractor for the loading operations, maintaining that the shipowner had deliberately failed to make the necessary repairs to the

Alambra resulting in the ship becoming unseaworthy, and that therefore under the insurance contract as well as under the Merchant Shipping Act, the Club was not liable to pay compensation for the damage resulting from the incident.

The 1971 Fund filed pleadings arguing that under Estonian law the concept of wilful misconduct was to be interpreted as an intentional act, not only in respect of the incident but also in respect of the effect thereof, ie that the shipowner deliberately caused pollution damage. The Fund maintained that the evidence presented regarding the condition of the *Alambra* did not establish that the shipowner was guilty of wilful misconduct and that the insurer was therefore not exonerated from its liability for pollution damage.

As at 31 December 2008 the proceedings were ongoing in the Court of first instance and no date had been fixed for the next hearing.

15 1992 FUND INCIDENTS

15.1 ERIKA

(France, 12 December 1999)

The incident

On 12 December 1999 the Maltese-registered tanker *Erika* (19 666 GT) broke in two in the Bay of Biscay, some 60 nautical miles off the coast of Brittany, France. All members of the crew were rescued by the French marine rescue services.

The tanker was carrying a cargo of 31 000 tonnes of heavy fuel oil of which some 19 800 tonnes were spilled at the time of the incident. The bow section sank in about 100 metres of water. The stern section sank to a depth of 130 metres about 10 nautical miles from the bow section. Some 6 400 tonnes of cargo remained in the bow section and a further 4 700 tonnes in the stern section.

Clean-up operations

Some 400 kilometres of shoreline were affected by oil. Although the removal of the bulk of the oil from shorelines was completed quite rapidly, considerable secondary cleaning was still required in many areas in 2000. Operations to remove residual contamination began in spring 2001. By the summer tourist season of 2001, almost all of the secondary cleaning had been completed, apart from a small number of difficult sites in Loire Atlantique and the islands of Morbihan. Clean-up efforts continued at these sites in the autumn and most were completed by November 2001.

More than 250 000 tonnes of oily waste were collected from shorelines and temporarily stockpiled. Total SA, the French oil company, engaged a contractor to deal with the disposal of the recovered waste and the operation was completed in December 2003. The cost of the waste disposal was estimated at some €46 million (£44.5 million).

Removal of the oil remaining in the wreck

The French Government decided that the oil should be removed from the two sections of the wreck. The oil removal operations, which were funded by Total SA, were carried out by an international consortium during the period June to September 2000. No significant quantities of oil escaped during the operations.

Shipowner's limitation fund

At the request of the shipowner, the Commercial Court in Nantes issued an order on 14 March 2000 opening limitation proceedings. The Court determined the limitation amount applicable to the *Erika* at FFr84 247 733 corresponding to €12 843 484 (£12.4 million) and declared that the shipowner had constituted the limitation fund by means of a letter of guarantee issued by the shipowner's liability insurer, the Steamship Mutual Underwriting Association (Bermuda) Ltd (Steamship Mutual).

In 2002 the limitation fund was transferred from the Commercial Court in Nantes to the Commercial Court in Rennes. In 2006 the limitation fund was again transferred, this time to the Commercial Court in Saint-Brieuc.

Maximum amount available for compensation

The maximum amount available for compensation under the 1992 Civil Liability Convention and the 1992 Fund Convention for the *Erika* incident is 135 million SDR, including the sum paid by the shipowner and his insurer (Article 4.4 of the 1992 Fund Convention). This amount shall be converted into national currency on the basis of the value of that currency by reference to the SDR on the date of the decision by the Assembly as to the first date of payment of compensation.

Applying the principles laid down by the Assembly in the *Nakhodka* case, the Executive Committee decided in February 2000 that the conversion should be made using the rate of the SDR as at 15 February 2000 and instructed the Director to make the necessary calculations. The Director's calculations gave 135 million SDR = FFr1 211 966 811 which corresponded to €184 763 149 (£178.6 million).

Erika: Manual clean-up of emulsified fuel oil

Undertakings by Total SA and the French Government

Total SA undertook not to pursue claims against the 1992 Fund or against the limitation fund constituted by the shipowner or his insurer relating to its costs arising from operations in respect of the wreck, the clean-up of shorelines, the disposal of oily waste and from a publicity campaign to restore the image of the Atlantic coast if and to the extent that the presentation of such claims would result in the total amount of all claims arising out of this incident exceeding the maximum amount of compensation available for this incident under the 1992 Conventions, ie 135 million SDR.

The French Government also undertook not to pursue claims for compensation against the 1992 Fund or the limitation fund established by the shipowner or his insurer if and to the extent that the presentation of such claims would result in the maximum amount available under the 1992 Conventions being exceeded. However the French Government's claims would rank before any claims by Total SA if funds were available after all other claims had been paid in full.

Other sources of funds

The French Government introduced a scheme to provide emergency payments in the fishery sector, administered by OFIMER (Office national interprofessionnel des produits de la mer et de l'aquaculture), a government agency attached to the French Ministry of Agriculture and Fisheries. OFIMER stated that it based its payments on assessments made by Steamship Mutual and the 1992 Fund. OFIMER paid €4.2 million (£4 million) to claimants in the fishery sector and €2.1 million (£2 million) to salt producers.

The French Government also introduced a scheme to provide supplementary payments in the tourism sector. Payments totalling €10.1 million (£9.8 million) were made under that scheme.

Level of the 1992 Fund's payments

In view of the uncertainty as to the total amount of claims arising from the *Erika* incident, the Executive Committee decided in July 2000 that the payments by the 1992 Fund should be limited to 50% of the amount of the loss or

CLAIMS SITUATION AS AT 31 DECEMBER 2008

Category	Claims submitted	Claims assessed	Claims rejected	Payments made	
				Number of claims	Amounts €
Mariculture and oyster farming	1 007	1 004	89	846	7 763 339
Shellfish gathering	534	534	116	373	892 502
Fishing boats	319	319	30	282	1 099 551
Fish and shellfish processors	51	51	7	44	977 631
Tourism	3 696	3 693	457	3 210	76 108 170
Property damage	711	711	250	460	2 556 905
Clean-up operations	150	145	12	128	31 904 886
Miscellaneous	663	655	55	595	8 387 521
Total	**7 131**	**7 112**	**1 016**	**5 938**	**129 690 505**

damage actually suffered by the respective claimants, as assessed by the 1992 Fund's experts. The Committee decided in January 2001 to increase the level of the 1992 Fund's payments from 50% to 60% and in June 2001 to 80%. In February 2003 the Committee authorised the Director to increase the level of payments to 100% when he considered it safe to do so. In April 2003 the Director increased the level of payments to 100%.

Claims Handling Office

The Steamship Mutual and the 1992 Fund established a Claims Handling Office in Lorient to serve as a focal point for the claimants and the technical experts engaged to examine the claims for compensation.

Some 50 experts have been involved in the examination of the claims relating to clean-up, fishing, mariculture and tourism.

The Claims Handling Office was closed on 31 July 2004, although the office manager continues to deal with outstanding issues from his office in Lorient.

Claims handling

As at 31 December 2008, 7 131 claims for compensation had been submitted for a total of €389.9 million[5] (£377 million). By that date, 99.7% of the claims had been assessed. Some 1 016 claims, totalling €31.8 million (£30.7 million), had been rejected.

Payments of compensation had been made in respect of 5 938 claims for a total of €129.7 million (£95.1 million), out of which Steamship Mutual had paid €12.8 million (£9.4 million) and the 1992 Fund €116.9 million (£85.7 million).

The table above gives details of the situation in respect of claims in various categories.

Assessment of the French Government's claim for clean-up

The procedure for assessing the claim by the French State in respect of costs incurred by French authorities in the clean-up response was considered by the Executive Committee in February 2006. The claim, which comprised some 250 000 pages of documentation, was for a total of €178.8 million (£172.9 million).

On the basis of a broad assessment of the three major components of the claim by the French State, the minimum total admissible amount was estimated at some €81 million (£78.3 million), well in excess of the maximum amount that was likely to be available (some €65 million) to the French State after all other claims arising from the incident (except that of Total SA) had been settled and paid. Whilst a full assessment of the

[5] *This figure includes the amount of €178.8 million claimed by the French Government in respect of the costs incurred in the clean-up operations, although as mentioned above, the French State undertook to stand last in the queue. Following the payment by Total S.A. to the French State as a result of the judgement by the Criminal Court in Paris, the French State has withdrawn all its claims (see section dealing with the criminal proceedings below).*

claim by the French State would inevitably result in the admissible amount increasing substantially, in the Director's view such a full assessment would not be justified given the enormous amount of time that would be required to complete the work and the limited amount of money that would be available to pay the claim.

In February 2006 the Executive Committee gave its unanimous support for the Director's approach to the assessment of the French State's claim for clean-up costs. The point was made that, in view of the size of the claim in relation to the maximum amount of money likely to be available for payment, a full assessment of the claim could not be justified.

Payments to the French State

In October 2003 the Executive Committee authorised the Director to make payments in respect of the French Government's claim if and to the extent that he considered there was a sufficient margin between the total amount of compensation available and the Fund's exposure in respect of other claims.

After having reviewed the assessment of the total level of admissible claims, the Director decided that there was a sufficient margin to commence payments to the French State and in December 2003 the 1992 Fund made an initial payment of €10.1 million (£6.8 million) to the French State, corresponding to the French Government's subrogated claim in respect of the supplementary payments to claimants in the tourism sector. In October 2004 the 1992 Fund paid a further €6 million (£4 million) to the French State relating to the French Government's supplementary payments made under the scheme to provide emergency payments to claimants in the fishery, mariculture and salt producing sectors administered by OFIMER. In December 2005 the 1992 Fund paid the French State €15 million (£10 million) towards the costs incurred by the French authorities in the clean-up response. In October 2006 the 1992 Fund paid the French State a further €10 million (£6.7 million) towards these costs.

Criminal proceedings

On the basis of a report by an expert appointed by a magistrate in the Criminal Court in Paris, criminal charges were brought in that Court against the master of the *Erika*, the representative of the registered owner (Tevere Shipping), the president of the management company (Panship Management and Services Srl), the management company itself, the deputy manager of Centre Régional Opérationnel de Surveillance et de Sauvetage (CROSS), three officers of the French Navy who were responsible for controlling the traffic off the coast of Brittany, the classification society Registro Italiano Navale (RINA), one of RINA's managers, Total SA and some of its senior staff.

A number of claimants, including the French Government and several local authorities, joined the criminal proceedings as civil parties, claiming compensation totalling €400 million (£386.8 million).

The trial lasted for four months and was concluded on 13 June 2007. The 1992 Fund, although not a party, followed the proceedings through its French lawyers.

In its judgement, delivered in January 2008, the Criminal Court held the following four parties criminally liable: the representative of the shipowner (Tevere Shipping), the president of the management company (Panship Management and Services Srl), the classification society (RINA) and Total SA. The representative of the shipowner and the president of the management company were sentenced to pay a fine of €75 000 (£72 500) each. RINA and Total SA were sentenced to pay a fine of €375 000 (£362 600) each. All the other accused parties were acquitted.

Regarding civil liabilities, the judgement held the four parties jointly and severally liable for the damage caused by the incident and awarded claimants in the proceedings compensation for economic losses, damage to the image of several regions and municipalities, moral damages and damages to the environment. The Court assessed

the total damages in the amount of €192.8 million (£186.4 million), including €153.9 million (£148.8 million) for the French State.

The four parties held criminally liable and a number of civil parties have appealed against the judgement.

Consideration by the Executive Committee in March and June 2008

At the Executive Committee's 40th session, held in March 2008, the French delegation stated that this was the first judgement in France where a court had awarded compensation for damage to the environment in favour of some claimants, such as the Department of Morbihan, which had been able to show actual damage to sensitive areas the Department was responsible to protect. That delegation also stated that the judgement recognised the right of environmental protection organisations to claim compensation for material, moral and also environmental damage caused to the collective interest, which it was their purpose to protect. That delegation pointed out that the judgement was subject to appeal and that, for this reason, the Fund would have to await the decision by the Court of Appeal.

Several delegations expressed concern that the Criminal Court in Paris had awarded compensation for moral and environmental damages when Article I.6 (a) of the 1992 Civil Liability Convention (1992 CLC) restricts compensation for impairment of the environment to the costs of reasonable measures of reinstatement actually undertaken or to be undertaken. The point was also made that the judgement had interpreted Article III.4 of the 1992 CLC in such a manner that parties which normally would have been covered by that provision were found not to fall within its scope. It was pointed out that the judgement could have serious consequences for the international compensation regime.

The Director stated that the Secretariat would have to study the judgement in detail to examine the implications it might have for the international compensation regime and for the 1992 Fund and that an examination of the possibilities of a recourse action against any of the parties found responsible for the damages caused by the incident would be part of such a study. The Director considered, however, that it would be difficult at this stage to ascertain what implications the judgement would have since it was subject to appeal and that it would be more efficient for the Secretariat to examine the implications once the Court of Appeal had rendered its judgement.

At the June 2008 session the French delegation informed the Committee that the French State had reached an agreement with Total SA, whereby Total SA had paid, in full and final settlement, the French State €153.9 million (£148.8 million), ie the amount awarded by the Criminal Court, which took into account the compensation amounts already received from the 1992 Fund. That delegation also stated that, as a result of this payment, the French State had withdrawn all its civil actions, including those against the Fund.

The hearing before the Court of Appeal is expected to take place in October 2009.

Recourse actions taken by the 1992 Fund

Although it was not possible for the 1992 Fund to take a final position as to whether the Fund should take recourse action to recover the amounts paid by it in compensation and, if so, against which parties, until the investigations into the cause of the incident had been completed, the Executive Committee considered in October 2002 whether the Fund should take such actions as were necessary to prevent its rights from becoming time-barred. The Committee decided that the 1992 Fund should challenge the shipowner's right to limit his liability under the 1992 Civil Liability Convention and that it should take recourse actions, as a protective measure before the expiry of the three-year time-bar period, against the following parties:

- Tevere Shipping Co Ltd (registered owner of the *Erika*)

- Steamship Mutual (liability insurer of the *Erika*)
- Panship Management and Services Srl (manager of the *Erika*)
- Selmont International Inc (time charterer of the *Erika*)
- TotalFinaElf SA (holding company)
- Total Raffinage Distribution SA (shipper)
- Total International Ltd (seller of cargo)
- Total Transport Corporation (voyage charterer of the *Erika*)
- RINA Spa/Registro Italiano Navale (classification society)

On 11 December 2002 the 1992 Fund brought actions in the Civil Court (Tribunal de Grande Instance) in Lorient against the parties listed above.

After the Committee's October 2002 session the Fund became aware of the fact that the classification society Bureau Veritas had inspected the *Erika* prior to the transfer of class to RINA. The Fund therefore took recourse action, as a protective measure, against Bureau Veritas, in the Civil Court in Lorient on 11 December 2002.

There were no developments in respect of these actions during 2008. The 1992 Fund has informed the Court that it will consider further steps as regards these actions when the criminal trial has been terminated.

The Executive Committee, at its October 2006 session, noted that, on the basis of the reports by the Malta Maritime Authority, the French Permanent Commission of Enquiry into Accidents at Sea and, in particular, the report of the panel of experts appointed by the Commercial Court in Dunkirk, the 1992 Fund would probably have grounds for pursuing the recourse actions it commenced in 2002 against some of the parties, whereas there appeared to be no such grounds for pursuing recourse actions against others.

The Committee noted however, that during the criminal proceedings before the Criminal Court in Paris, new evidence might come to light which could be important for the Fund in its decisions relating to recourse actions. Based on these considerations, the Committee decided, as proposed by the Director, to defer its decision as to whether to pursue recourse actions against all or some of those parties.

Given that, as mentioned above, the judgement of January 2008 by the Criminal Court in Paris has been appealed, the 1992 Fund will have to await the outcome of the appeal before deciding on recourse actions.

Legal proceedings

The Conseil Général of Vendée and a number of other public and private bodies brought actions in various courts against the shipowner, Steamship Mutual, companies in the Group Total SA and others requesting that the defendants should be held jointly and severally liable for any claims not covered by the 1992 Civil Liability Convention. The 1992 Fund requested to be allowed to intervene in the proceedings. As for the action brought by the Conseil Général of Vendée, the Commercial Court in Nantes has declared that the action has lapsed (périmée) since there has been no activity by the parties for more than two years.

The French State brought actions in the Civil Court in Lorient against Tevere Shipping Co Ltd, Panship Management and Services Srl, Steamship Mutual, Total Transport Corporation, Selmont International Inc, the shipowner's limitation fund referred to above and the1992 Fund, claiming €190.5 million (£184.2 million). These actions have now been withdrawn, following a payment to the French State by Total S.A. in compliance with a judgement by the criminal court in Paris (see section dealing with the criminal proceedings above).

Four companies in the Group Total SA took legal actions in the Commercial Court in Rennes against the shipowner, Steamship Mutual, the 1992 Fund and others claiming €143 million (£105 million).

Steamship Mutual brought action in the Commercial Court in Rennes against the 1992

Fund, requesting the Court *inter alia* to note that, in the fulfilment of its obligations under the 1992 Civil Liability Convention, Steamship Mutual had paid €12 843 484 (£12.4 million) corresponding to the limitation amount applicable to the shipowner, in agreement with the 1992 Fund and its Executive Committee. Steamship Mutual further requested the Court to declare that it had fulfilled all its obligations under the 1992 Civil Liability Convention, that the limitation amount had been paid and that the shipowner was exonerated from his liability under the Convention. Steamship Mutual also requested the Court to order the 1992 Fund to reimburse it any amount the shipowner's insurer will have paid in excess of the limitation amount.

Claims totalling €497 million (£480.5 million) were lodged against the shipowner's limitation fund constituted by Steamship Mutual. This amount includes the claims by the French Government and Total SA. However, most of these claims, other than those of the French Government and Total SA, have been settled and it appears therefore that these claims should be withdrawn against the limitation fund to the extent that they relate to the same loss or damage. The 1992 Fund received from the liquidator of the limitation fund formal notifications of the claims lodged against that fund.

Due to some disturbances by an individual during the hearings relating to the *Erika* incident in the Commercial Court in Rennes, all judges of that Court decided in January 2006 that they would no longer deal with any proceedings concerning that incident. This decision applies to 10 actions involving 63 claimants, including the actions against the 1992 Fund and the limitation fund, and the proceedings relating to the shipowner's limitation fund. The President of the Court of Appeal in Rennes decided on 12 January 2006 to transfer the actions and proceedings from the Commercial Court in Rennes to the Commercial Court in Saint-Brieuc. The Court in Saint-Brieuc accepted to deal with these actions and proceedings.

Legal actions against the shipowner, Steamship Mutual and the 1992 Fund were taken by 796 claimants. By 31 December 2008 out-of-court settlements had been reached with a great number of these claimants (443 actions) and the courts had rendered judgements in respect of 144 claims. Twenty-eight actions by 46 claimants were pending. The total amount claimed in the pending actions, excluding the claims by Total SA, is some €25 million (£24.2 million).

The 1992 Fund will continue the discussions with the claimants whose claims are not time-barred for the purpose of arriving at out-of-court settlements if appropriate.

Court judgements in respect of claims against the 1992 Fund

During 2008, 26 judgements were rendered in various French courts, the majority of which were in favour of the 1992 Fund. These judgements related mainly to issues of admissibility in respect of claims for loss of earnings suffered by persons whose property had not been polluted (so-called pure economic loss).

As mentioned in Section 12, the governing bodies of the 1971 and 1992 Funds have adopted criteria for the admissibility of claims, including those for pure economic loss, which are laid down in the 1992 Fund's Claims Manual.

Some courts expressly applied the 1992 Fund's admissibility criteria, some others made the point that the criteria were not binding on the courts but provided a useful reference and others did not mention the criteria but generally reached the same conclusion as they would have reached on the basis of the criteria. In some cases, the courts agreed with the Fund's assessment of the losses or assessed the losses at amounts very close to the Fund's assessments, although these were significantly lower than the amounts claimed.

All judgements rendered in respect of claims against the 1992 Fund in 2008 are reported in documents submitted to the Executive Committee which are available on the IOPC Funds' website (www.iopcfund.org).

Summaries of some judgements rendered in 2008 that are of particular interest because of the issues addressed or the statements made by the courts are summarised below.[6]

As to judgements rendered before 1 January 2008, reference is made to the Annual Reports 2003, 2004, 2005, 2006 and 2007.

Commercial Court in Lorient

Food products merchant
A company selling frozen and vacuum-wrapped food products to restaurants, submitted a claim for €136 339 (£131 800) for economic losses allegedly suffered as a consequence of the *Erika* incident. The 1992 Fund rejected the claim on the grounds that the claimant did not deal directly with tourists but dealt instead with other businesses (so called 'second degree' claims), and that the claimant had not proved the existence of a sufficiently close link of causation between the loss and the pollution that arose from the *Erika* incident.

In May 2008 the Court delivered its judgement, considering that the possible losses suffered by the claimant were of an indirect character, that the difficulty in selling the food products to the restaurants could not be considered with certainty as a direct consequence of the pollution, but that it could be linked to other causes. The Court concluded that the claimant had not proved to have suffered losses as a direct consequence of the *Erika* incident and for that reason rejected the claim.

The claimant did not appeal against the judgement.

Court of Appeal in Rennes

Claim by a co-operative of salt producers
In May 2007 the Civil Court in Saint Nazaire rendered a judgement in respect of a claim by a co operative of salt producers in Guérande who had submitted a claim for commercial loss, loss of image and additional costs incurred as a result of the *Erika* incident.

The 1992 Fund had considered that salt production had been possible in Guérande in 2000 and that since the co-operative had a stock of salt available sufficient to maintain sales in 2000, the losses claimed by the co-operative were not admissible for compensation under the Conventions.

The Court decided that the co-operative had not been able to demonstrate that it had suffered a commercial loss as a result of the *Erika* incident and, for this reason, rejected this item claimed. It granted the co-operative an amount of €378 042 (£365 500) as the cost of a reasonable measure to mitigate loss of image.

The Court granted an amount of €21 347 (£20 600) for reasonable measures to prevent pollution damage but rejected other additional costs incurred in the amount of €136 345 (£131 800) as not directly linked to the *Erika* incident.

The Court also granted the co-operative the amount of €12 000 (£9 500) to cover the legal and other costs incurred and ordered the provisional execution of the judgement.

Both the claimant and the 1992 Fund appealed against the judgement.

The Court of Appeal in Rennes delivered its judgement in June 2008. In its judgement, the Court considered that the commercial losses suffered by the co-operative were only due to its decision to put a quota on its sales in order to preserve its stock and that the available stock was sufficient to maintain the level of sales for at least two years. The Court considered therefore that the commercial losses suffered by the co-operative were a consequence of the sales quota self imposed by the co-operative, which was an administrative decision, and not a direct consequence of the *Erika* incident. The Court concluded that the claimant had not shown that there was a sufficiently close link of causation between the commercial losses and the pollution and therefore rejected that part of the claim.

[6] *The judgements were also rendered against the shipowner and Steamship Mutual. In order not to complicate the text, reference is made only to the 1992 Fund.*

Item	Claim (€)	Fund's assessment	Court of First instance	Court of Appeal
Commercial loss	7 148 164	Rejected	Rejected	Rejected
Loss of image/ marketing campaign	378 308	Rejected	378 042	Rejected
Additional costs incurred	157 692	Rejected	21 347	Rejected
Procedural costs	75 000	Rejected	12 000	Rejected
Total	**7 759 164**	**0**	**411 389**	**0**

Regarding the claim for the costs incurred in a marketing campaign, the Court considered expressly that the Fund's Claims Manual established that, in order to be admissible for compensation, a claim for the costs of marketing campaigns must be related to measures addressed to prevent or minimise losses that, if suffered, would have themselves been admissible for compensation under the Conventions. The Court also considered that since the commercial losses claimed by the co-operative were not eligible for compensation under the 1992 Conventions, it followed that the cost of the marketing campaign aimed at minimising those losses would not be admissible either. The Court further considered that the marketing costs claimed formed part of the regular budget apportioned for marketing purposes. For these reasons the Court decided to reject the claim for costs incurred in the marketing campaign and decided to reject also other additional costs claimed by the co-operative.

The claims and the judgements are summarised in the table above.

The claimant has appealed to the Court of Cassation.

Fish wholesaler

A fish wholesaler had submitted a claim for €1 005 356 (£972 000) for alleged losses suffered in 2000. The claimant alleged that the pollution had spoiled the image of the quality of the products sold by the claimant. The 1992 Fund had rejected the claim since the claimant had not proved to have suffered any loss. The Fund had also argued that there was no link of causation between the alleged losses and the contamination since the claimant's business was located outside the affected area, there was no dependence on the affected resources and the claimant had alternative sources of supply.

The Commercial Court in Quimper delivered its judgement in April 2007. It considered that even if the claimant's business was not strictly located in the area affected by the pollution, an official study had indicated that there had been a market disaffection towards sea produce and therefore a loss of income in the related sector. The Court concluded, however, that the claimant had not proved to have suffered any losses and for that reason rejected the claim.

The claimant appealed against the judgement.

The Court of Appeal delivered its judgement in July 2008, confirming the judgement of the Commercial Court. The Court of Appeal considered the criteria set out in the Fund's Claims Manual and stated that even if the Fund's criteria are not binding on national courts, the judge may use those criteria as a reference. The Court estimated that the claimant exercised its activities in areas outside those affected by the pollution (lack of geographic proximity), that the claimant's purchases came mainly from regions not affected by the pollution (weak degree of economic dependence) and that the claimant's clients were distributed over the whole of France (alternative business opportunities). The Court decided that there was not a sufficiently close link of causation between the

alleged losses and the pollution and that the claimant was not entitled to receive compensation from the Fund.

The claimant has appealed to the Court of Cassation.

Tour operator
A tour operator in the United Kingdom specialising in selling holidays in various European countries submitted a claim for £2 582 673 for losses suffered in 2000 and 2001 as a result of the *Erika* incident. The 1992 Fund assessed the claim for losses suffered in 2000 for the amount of £751 935 and this amount was paid to the claimant. The Fund, however, rejected the claim for losses in 2001 since it considered that the claimant had not established a link of causation between the alleged damage and the contamination caused by the incident. The claimant brought proceedings before the Commercial Court in Lorient.

In a judgement rendered in February 2007 the Commercial Court decided that the claimant had not provided evidence of the alleged loss nor of a link of causation between the alleged loss and the *Erika* incident and for these reasons rejected the claim.

The claimant appealed against the judgement.

The Court of Appeal delivered its judgement in July 2008. In its judgement, the Court agreed with the 1992 Fund. The Court considered that it was not proved that the *Erika* incident had negatively affected the number of tourists in 2001, when the incident had occurred in December 1999. The Court also considered that there were other factors explaining that in 2001 some businesses in the tourism sector may not have reached the results obtained before the *Erika* incident. For all those reasons the Court decided to reject the appeal.

The claimant has not further appealed against the judgement.

Another tour operator
A tour operator in the United Kingdom specialising in selling holidays in various European countries submitted a claim for £2 360 393 for losses suffered in 2000 and 2001 as a result of the *Erika* incident. The 1992 Fund had assessed the claim for losses suffered in 2000 in the amount of £756 052. This amount was paid to the claimant. The Fund had rejected the claim for losses in 2001 since it considered that the claimant had not established a link of causation between the alleged loss and the contamination. The claimant brought proceedings before the Commercial Court in Lorient.

In a judgement rendered in February 2007 the Commercial Court in Lorient held that the claimant had not established that there was a link of causation between the loss and the incident and for this reason rejected the claim.

The claimant appealed against the judgement.

The Court of Appeal delivered its judgement in July 2008, confirming the judgement of the Commercial Court. In the judgement the Court of Appeal considered the Fund's criteria and rejected the claim for lack of proof of a link of causation between the loss and the *Erika* incident.

The claimant has not further appealed against the judgement.

Court of Appeal in Paris

Aerial advertiser
A claim for €142 185 (£137 500) had been submitted by a company whose main activity was construction and sales of ultra light aircraft and sales of equipment for such aircraft. As a secondary activity, the company undertook aerial towing of advertising banners in Loire-Atlantique. The claim related to loss of income from the latter activity allegedly suffered from 2000 to 2003 as a result of the *Erika* incident. This claim had been rejected by the 1992 Fund on the ground that the claimant supplied goods and services to other businesses in the tourism sector but not directly to tourists, and that therefore there was not a sufficiently close link of

causation between the contamination and the alleged loss.

In a judgement rendered in September 2005, the Civil Court in Paris specifically referred to the Fund's criteria for admissibility of claims for pure economic loss. The Court noted that the 1992 Fund distinguished between, on the one hand, claimants who sold goods or services directly to tourists and whose businesses were directly affected by a reduction in visitors to the area affected by an oil spill and, on the other hand, those who provided goods or services to other businesses in the tourist industry, but not directly to tourists. The Court referred to the fact in the latter case the 1992 Fund considered that there was generally not a sufficient degree of proximity between the contamination and the losses allegedly suffered by the claimants and that claims of this type would normally not be admissible in principle. The Court stated that although the Fund's criteria for admissibility were not binding for the national courts, they nonetheless could be used as a reference and that in any event they did not constitute an obstacle to compensation if a link of causation between the alleged damage and the contamination resulting from the *Erika* incident was proven. The Court noted that the claimant had as a basis for his claim invoked cancellation of contracts for the aerial towing of advertising banners without providing any evidence of such cancellations. The Court considered that since the claimant did not sell its services directly to tourists but only to other businesses in the tourism sector (such as casinos and leisure parks), the claimant had not proven that there was a direct link of causation between the alleged decrease in aerial towing of such banners and the contamination and that the claimant had not shown that the pollution had had any impact on tourism beyond 2000. For these reasons the Court rejected the claim.

The claimant appealed against the judgement.

The Court of Appeal in Paris delivered its judgement in October 2008. In its judgement the court acknowledged that the distinction made between claimants that deal directly with tourists and are therefore directly affected by a reduction in the number of tourists, and the claimants that sell goods or provide services to other companies in the tourism sector but not directly to tourists, is justified in order to avoid that the victims more affected by the pollution, namely claimants in the fisheries sector, receive a reduced compensation for their losses to the benefit of claimants whose claims had a more remote link of causation with the resource affected by the pollution. The Court concluded that the claimant had not proved to have suffered losses nor the existence of a link of causation between the alleged losses and the pollution caused by the *Erika* and for that reason rejected the claim.

The Claimant has not appealed against the judgement.

Court of Cassation

Cancellation of millennium party

An insurer had made a subrogated claim against the 1992 Fund for €630 000 (£609 000) in respect of a claim it had paid to a group of hotels in La Baule for losses incurred as a result of the cancellation of a major millennium party which was to have taken place on the local beach. This payment had been made pursuant to an insurance policy covering costs incurred in organising the cancelled party. The Mayor of La Baule had issued a decree on 27 December 1999 prohibiting all access to the beaches, as a result of which the party had to be cancelled.

The 1992 Fund rejected the claim on the grounds that the claimant had not submitted sufficient information to enable the Fund to assess the losses and that the insurer had not taken into account the income received by the hotels for the period of the millennium festivities, which should have been deducted from the amount claimed for losses due to the cancellation of the event.

In a judgement rendered in December 2004 the Commercial Court in Saint-Nazaire estimated the income over the period of the millennium festivities at €200 000 (£193 400). The Court

ordered the shipowner, Steamship Mutual and the 1992 Fund to pay the insurer the balance of €430 000 (£415 800).

The 1992 Fund appealed against this judgement.

In November 2006 the Court of Appeal in Rennes overturned the judgement by the Commercial Court and rejected the claim. It stated that it was not bound by the criteria for admissibility laid down by the 1992 Fund but that they could provide a useful point of reference for national courts. The Court referred to the fact that the decision by the Municipal Council of La Baule in December 1999, before the oil spill occurred, to reduce the permitted area of the marquees under which the festivities were to be held from 1 400 m^2 to 800 m^2, which had reduced by some 50% the potential income from the festivities, had made them non-profitable. The Court also stated that the severe storm which occurred on 26 and 27 December 1999 had made it impossible to erect the marquees and that the storm had caused damage to the roof of the hotel in front of which the festivities were to take place, which had constituted a risk to participants in the festivities. The Court considered it evident that, due to the damage caused by the storm, the festivities could not have been held on that beach for safety reasons. The Court held that, although in the Mayor's decision to prohibit access to the beach reference was made to the oil on the beach, this did not in itself constitute an obstacle to holding the festivities under the marquees and the fact that the marquees could not be erected was due to the storm. In the Court's view, the decision to cancel the festivities was due to the storm and not to the pollution. The Court of Appeal therefore considered that there was no link of causation between the cancellation of the festivities and the *Erika* incident and that the insurer had not established any direct and certain relationship between his obligation to indemnify the hotel group and the *Erika* incident.

The claimant lodged an appeal before the Court of Cassation.

The Court of Cassation rendered its judgement in May 2008, rejecting the claimant's appeal. In its judgement the Court agreed with the reasons given by the Court of Appeal and concluded that the cancellation of the millennium party was due to the irreparable material damage caused by the storm that occurred on 26 and 27 December 1999, and that there was no link of causation between this cancellation and the pollution caused by the *Erika* incident.

Legal proceedings by the Commune de Mesquer against Total

Considerations by the Executive Committee in June and October 2007

At its June 2007 session, the Committee was informed that a legal action had been brought by the Commune de Mesquer against Total before the French Courts, where it had argued that the cargo on board the *Erika* was in fact a waste under European law. It was also mentioned that the Court of Cassation had referred this question to the European Court of Justice for an opinion. The Director was asked to explain what impact, if any, these legal proceedings would have on the 1992 Fund.

The Director informed the Committee that the Court of Cassation had referred three questions to the European Court of Justice (ECJ) for an opinion, namely:

- Whether the fuel oil transported as cargo on board the *Erika* was in fact a waste under European law.

- Whether a cargo of fuel oil that accidentally escaped from a ship would, once it had been mixed with seawater and sediments, become a waste under European law.

- If the cargo on board the *Erika* was not a waste but became a waste after accidentally escaping from the ship, should the companies of the Total group be considered responsible for the waste under European law even though the cargo was being transported by a third party?

Considerations by the Executive Committee in June 2008

At its June 2008 session the Committee took note of the legal opinion delivered by Advocate-General Kokott of the European Court of Justice, that stated, *inter alia*, that heavy fuel oil must be treated as a waste when it was discharged as a result of an incident and became mixed with seawater and sediments, but that, in her opinion, this provision of European law was compatible with the provisions of the 1992 Civil Liability and Fund Conventions.

Considerations by the Executive Committee in October 2008

At its October 2008 session the Committee took note of the judgement delivered by the European Court of Justice (ECJ) on 24 June 2008.

The ECJ concluded that the fuel oil transported as cargo on board the *Erika* did not constitute a waste within the meaning of Directive 75/442 on waste[7], but that a cargo of fuel oil that accidentally escaped from a ship, once it had been mixed with seawater and sediments, must be considered as waste within the meaning of the Directive.

In its answer to the third question, namely whether, in the event of the sinking of an oil tanker, the producer of the heavy fuel oil spilled at sea and/or the seller of the fuel and charterer of the ship carrying the fuel may be required to bear the cost of disposing of the waste thus generated, even though the substance spilled at sea was transported by a third party, the ECJ stated that the national court may regard the seller of those hydrocarbons and charterer of the ship carrying them as a producer of that waste within the meaning of the Directive, and thereby as a 'previous holder' for the purposes of applying that Directive, if that court reached the conclusion that the seller-charterer had contributed to the risk that the pollution caused by the shipwreck would occur, in particular if he had failed to take measures to prevent such an incident, such as measures concerning the choice of ship.

The Director, after studying the judgement by the ECJ and discussing it with the 1992 Fund's French lawyer, considered that, although it might be too early to reach a conclusion on the possible consequences that the judgement by the ECJ could have for the 1992 Civil Liability and Fund Conventions, the judgement appeared to have taken into account all the relevant international commitments of the EU Member States, including the 1992 Civil Liability and Fund Conventions and that therefore it would appear that the judgement would not affect the applicability of these Conventions.

Judgement by the Court of Cassation

The Court of Cassation rendered its decision in December 2008. In its decision the Court of Cassation followed the advice delivered by the ECJ in its judgement of June 2008. The Court of Cassation quashed in part an earlier judgement by the Court of Appeal in Rennes in which, although the Court of Appeal had considered as "waste" the fuel oil spilled mixed with sand and water, had rejected the claim by the Commune de Mesquer on the ground that Total could not be considered as a holder or producer of that "waste" within the meaning of Directive 75/442 on "waste". The Court of Cassation concluded that the fuel oil spilled and mixed with seawater and sediment was a "waste", that Total could be considered as "previous holder" and/or "producer" of the waste under the circumstances set out by the ECJ and that the producer of the "waste" could be required to bear the cost of disposing of the "waste" if it was established that it had contributed to the risk that the pollution caused by the shipwreck would occur.

The Court of Cassation has transferred the case to the Court of Appeal in Bordeaux for a decision on whether Total contributed or not to the occurrence of the pollution caused by the *Erika* incident. As some questions thereto related will be examined by the Court of Appeal in Paris, which will decide on the appeal of the judgment delivered by the Criminal Court in Paris in January 2008 (see section dealing with the

[7] *Directive 75/442/EEC of 15 July 1975 on waste, as amended by Commission Decision 96/350/EC of 24 May 1996.*

criminal proceedings above), it is likely that the Court of Appeal in Bordeaux will postpone its decision until the Court of Appeal in Paris has delivered its judgement.

15.2 AL JAZIAH 1

(United Arab Emirates, 24 January 2000)

See pages 72-74.

15.3 SLOPS

(Greece, 15 June 2000)

The incident

On 15 June 2000, the Greek-registered waste oil reception facility *Slops* (10 815 GT), laden with some 5 000m³ of oily water, of which 1 000 – 2 500m³ was believed to be oil, suffered an explosion and caught fire at an anchorage in the port of Piraeus (Greece). An unknown but substantial quantity of oil was spilled from the *Slops*, some of which burned in the ensuing fire. The *Slops* had no liability insurance in accordance with Article VII.1 of the 1992 Civil Liability Convention (1992 CLC).

Port berths, dry docks and repair yards to the north of the anchorage were impacted before the oil moved southwards out of the port area and stranded on a number of islands. A local contractor carried out clean-up operations at sea and on shore.

Applicability of the 1992 Civil Liability Convention and the 1992 Fund Convention

The *Slops*, which was registered with the Piraeus Ships Registry in 1994, was originally designed and constructed for the carriage of oil in bulk as cargo. In 1995 it underwent a major conversion in the course of which its propeller was removed and its engine was deactivated and officially sealed. It was indicated that the purpose of the sealing of the engine and the removal of the propeller was to convert the status of the craft from a ship to a floating oily waste receiving and processing facility. Since its conversion, the *Slops* appeared to have remained permanently at anchor at the location where the incident took place and had been used exclusively as a waste oil storage and processing unit. It was understood that the oil residues recovered from the processed slops were sold as low-grade fuel oil.

In July 2000 the Executive Committee decided that the *Slops* should not be considered a 'ship' for the purpose of the 1992 CLC and 1992 Fund Convention and that therefore these Conventions did not apply to this incident.

Claims for compensation

In October 2000 two Greek companies submitted claims for costs of clean-up operations and preventive measures for €1 536 528 (£1.5 million) and €786 832 (£760 800) plus interest, respectively. The companies stated that they had requested the owner of the *Slops* to pay the above-mentioned costs but that he had failed to do so.

In August 2007, the Fund received a letter from a third Greek company requesting compensation for a sum of US$985 000 (£685 000) in respect of preventive measures carried out in response to the incident. Since the incident had occurred in 2000, ie more than six years since the date of the incident and the claimant had not commenced legal action against the 1992 Fund during that time to prevent his right to compensation becoming time-barred (Article 6 of the 1992 Fund Convention), it was communicated to him that his claim was time-barred.

Legal actions

Legal proceedings against the owner of the *Slops*

In October 2001 the two companies referred to above took legal action against the registered owner of the *Slops* in the Court of first instance in Piraeus. The companies alleged that they had been instructed by the owner of the *Slops* to carry out clean-up operations and to take preventive measures in response to the oil spill. The companies stated that they had requested the

owner of the *Slops* to pay the above-mentioned costs but that he had failed to do so.

A hearing took place in October 2002. The owner of the *Slops* did not appear at the court hearing and the Court rendered judgement by default against him on 13 December 2002 for the amounts claimed plus interest.

The owner of the *Slops* appealed against the judgement alleging that the assessment of the claims was arbitrary, unilateral and unfair. However, he withdrew his appeal in October 2007.

Legal proceedings against the 1992 Fund
In February 2002 the two companies took a separate legal action against the 1992 Fund, also in the Court of first instance in Piraeus. The companies stated that the registered owner had no assets apart from the *Slops*, which had been destroyed by fire and did not even have scrap value. They argued that they had taken all reasonable measures against the owner of the *Slops*, namely legal action against the owner, investigation into the owner's financial situation, requesting the court to arrest the assets belonging to the owner, and that the owner should be declared bankrupt. They maintained that, since the owner was manifestly incapable of satisfying their claims, they were entitled to compensation from the 1992 Fund.

The 1992 Fund pleaded in its defence that the *Slops* should not be considered a 'ship' for the purpose of the 1992 Civil Liability and Fund Conventions.

This action was dealt with by the Court at the same hearing of October 2002 as mentioned above. The Court also rendered its judgement on the same date, i.e. 13 December 2002.

Judgement by the Court of first instance in Piraeus
In its judgement, the Court held that the *Slops* fell within the definition of 'ship' laid down in the 1992 CLC and the 1992 Fund Convention. The Court considered that the owner of the *Slops* did not have any assets and that, in view of the financial incapacity of the owner of the *Slops*, the claimants were entitled to claim from the 1992 Fund. The Court ordered the 1992 Fund to pay the companies €1 536 528 (£1.5 million) and €786 832 (£768 800) respectively, ie the amounts claimed, plus legal interest from the date of service of the writ (12 February 2002) to the date of payment, and costs of €93 000 (£89 900). The Fund appealed against this decision.

Judgement by the Court of Appeal in Piraeus
The Court of Appeal rendered its judgement in February 2004. The Court held that the *Slops* did not meet the criteria required by the 1992 CLC and the 1992 Fund Convention and rejected the claims. The Court interpreted the word 'ship' as defined in Article I.1 of the 1992 CLC as a seaborne unit which carries oil from place A to place B. The claimants appealed against this decision to the Greek Supreme Court.

Judgement by the Supreme Court
The Supreme Court issued its judgement in June 2006. The majority of the judges held that the Court of Appeal had contravened the substantive law provisions of the 1992 Conventions pertaining to the definition of 'ship'. Consequently, the majority held that at the time of the incident, the *Slops* should be regarded as a 'ship' as defined in the 1992 Conventions as it had the character of a seaborne craft which, following its modification into a floating storage unit (FSU), stored oil products in bulk and, furthermore, it had the ability to move by being towed with a consequent pollution risk, without it being necessary for an incident to take place during the carriage of the oil in bulk as cargo, i.e. during a voyage.

The Supreme Court, having decided that the 1992 Conventions were applicable to the incident, held that the Court of Appeal's judgement should be set aside and the case be referred back to that Court to examine the merits of the case, ie the quantum of the claim etc, taking into account the decision of the Supreme Court.

Judgement by the Court of Appeal on the merits of the claims

In February 2008 the Court of Appeal rendered its judgement confirming the judgement of the Court of first instance which awarded the claimants the claimed amount, ie €2 323 360 (£2.2 million) plus legal interest from the date of service of the writ (12 February 2002) to the date of payment and costs of €93 000 (£89 900).

The judgement by the Court of Appeal was final (ie is a final decision as meant in Article 8 of the 1992 Fund Convention) and therefore it was enforceable against the 1992 Fund.

In July 2008 the 1992 Fund paid €4 022 099 (£3.2 million) to the two companies as principal, legal interests and costs.

Considerations of the Executive Committee at its June 2008 session

In June 2008 the Executive Committee considered whether the 1992 Fund should take recourse action against the Greek State to recover the amounts the Fund would have to pay in execution of the judgement as a result of this incident.

The Committee noted that the *Slops* was registered in Greece, a Contracting State to the 1992 Conventions. It was also noted that the *Slops* was laden with some 5 000m³ of oily water, of which 1 000-2 500m³ was believed to be oil and that, therefore, according to the highest estimation, the *Slops* was, at the time of the incident, carrying more than 2 000 tonnes of oil. It was noted that in any event, although Article VII.1 required that the ship be insured at any time when it was actually carrying more than 2 000 tonnes of oil in bulk as cargo, the capacity of the ship should also be taken into account, since in practice a ship would be insured to cover its capacity to carry rather than to cover what it was actually carrying at any given moment. It was noted that since the *Slops*, with 10 815 GT, was capable of carrying up to some 5 800 tonnes of oil as cargo, the fact that at least half the contents were reportedly water would not necessarily have a bearing on the obligation to carry insurance and that it could therefore be argued that the *Slops* should have carried insurance for oil pollution liability in accordance with the 1992 CLC.

It was also noted that the Director had considered that it followed from Article VII of the 1992 CLC, as interpreted by the Greek Supreme Court, that the Greek authorities should have ensured that the *Slops* carried insurance as required under that Convention but that the Greek authorities had permitted the *Slops* to trade without a certificate of insurance in contravention of Article VII.10. It was further noted that, for that reason, the Director was of the opinion that the Greek State was in breach of its obligations under the 1992 CLC.

It was noted that the total amount claimed as a result of this incident, ie €2 323 360 (£2.2 million) and US$985 000 (£685 000), was well below the estimated limit of the *Slops* under Article V of the 1992 CLC, ie some 8.2 million SDR (£7.7 million). It was also noted, however, that it appeared that the owner was financially incapable of meeting his obligations and that, as a result, the 1992 Fund would have to pay compensation which would have otherwise been covered by the *Slops*' insurer and would therefore suffer a loss.

It was noted that in view of the above, the Director recommended that the Executive Committee instruct him to examine further the possibility of bringing a recourse action against the Greek State to recover the sums that the 1992 Fund would have to pay in compensation as a result of this incident and to take all necessary steps to protect the interests of the Fund in the meantime.

The Greek delegation recalled that at the Executive Committee session in October 2007, it had stated that at the time of the *Slops* incident in 2000 there was no requirement under Greek law for FSUs to have compulsory insurance. That delegation added, however, that under Greek legislation which entered into force in 2001, any coastal oil tanker which was actually carrying less than 2 000 tonnes of persistent oil as cargo, as well as any Greek-registered FSUs,

permanent or not, within Greek territorial waters, irrespective of the quantity of persistent oil stored in bulk on board, were required to maintain adequate insurance or other financial guarantee for oil pollution damage.

The Greek delegation also recalled that it had stated that the competent Greek authorities had not been called upon to intervene in the legal proceedings which had been initiated by the two Greek anti-pollution companies in 2002 and that the Greek State had no legitimate interest in intervening in such legal proceedings. That delegation recalled that, in its view, the legal uncertainty had been clarified in the legal proceedings which ended with the judgement rendered by the Greek Supreme Court which, according to Article 7.6 of the 1992 Fund Convention, was binding on the parties involved in such proceedings, namely the 1992 Fund and the two anti-pollution companies but not on the Greek Government since it was not a party to these proceedings. It further recalled that it had underlined that, by virtue of Article 6 of the 1992 Fund Convention, no action could be brought after six years from the date of the incident which had caused the damage.

The Greek delegation stated again the points made in October 2007, summarised above, and added that, on the basis of those arguments, it believed that the Greek authorities were not in breach of their obligations under the 1992 CLC and that, therefore, there were no solid grounds for bringing a recourse action against the Greek State.

Several delegations expressed doubts as to whether a recourse action was justified in this particular case. These delegations recalled that the Executive Committee had decided in July 2000 that the *Slops* was not a 'ship' under the 1992 Civil Liability and Fund Conventions and that, therefore, those Conventions did not apply to this incident. Those delegations stated that, given the earlier decision adopted by the Committee, it would not be consistent for the 1992 Fund to pursue a recourse action against the Greek State on the grounds that the *Slops* was a 'ship'. It was pointed out that in this case the decision as to whether to take a recourse action against the Greek State had policy implications in that the Committee would have to review its decision regarding the definition of 'ship'.

Some delegations pointed out that at the time of the incident the Greek State could not be blamed for not requiring the *Slops* to carry insurance.

A number of delegations stated that they had not been in agreement with the interpretation of the definition of 'ship' adopted by the Assembly in October 1999, that they welcomed the decision by the Greek Supreme Court and that the definition of 'ship' in the Conventions should be reconsidered to include FSU's not on a voyage.

Most delegations agreed that the Secretariat should further examine the matter before taking a decision as to whether the 1992 Fund should bring a recourse action in this case. The Executive Committee instructed the Director to further examine this matter, taking into account all the policy implications, in particular the earlier decisions by the 1992 Fund governing bodies regarding the definition of 'ship', and to report to the Committee at its next meeting in October 2008.

Considerations of the Executive Committee at its October 2008 session

At its October 2008 session the Committee considered the Director's analysis of the issue of a possible recourse action against the Greek State, taking into account the legal advice obtained from the 1992 Fund's Greek lawyer and the Fund's policies in respect of recourse actions and the definition of 'ship'.

Proposal for an integrated solution: interpretation of the Fund's policy regarding recourse action

It was noted that, having studied the situation and taken into account the earlier decisions by the governing bodies regarding the definition of 'ship' as well as the views expressed by Member States at the previous sessions of the Executive

Committee, the Director had proposed that the policy of the 1992 Fund regarding taking recourse action, as laid down in April 1995 by the Executive Committee of the 1971 Fund in connection with the *Rio Orinoco* incident, be maintained, but with the interpretation that it should not normally be considered 'appropriate' to take recourse action against a Member State where its actions have, in all relevant respects, been in accordance with an established policy of the 1992 Fund.

It was also noted that if the Executive Committee were to adopt such an interpretation of the policy regarding recourse action, it would be for the Executive Committee to decide whether the application of the policy to the *Slops* case would lead to the conclusion that the 1992 Fund should take recourse action against the Greek State, but that it was the Director's view that, on the basis of that interpretation, the 1992 Fund should not take recourse action against the Greek State.

Some delegations stated that in their view there was no need to change the 1992 Fund's policy regarding recourse actions, since in their opinion the current policy implied that no action would be taken against a Contracting State that had respected the various policies established by the Fund. Those delegations considered that since the Greek State had acted in accordance with the 1992 Fund's policy on the definition of 'ship', the Fund should not bring a recourse action against the Greek State.

All delegations that took the floor agreed with the 1992 Fund's policy of taking recourse action whenever possible, however, they also considered that if a State had, in all relevant respects, acted in accordance with the 1992 Fund's policy, it would not be appropriate for the 1992 Fund to bring a recourse action against that State.

The Executive Committee supported the interpretation of the 1992 Fund's policy regarding recourse action proposed by the Director and decided not to bring a recourse action against the Greek State.

Wider policy consideration: the definition of 'ship'

The Committee noted that in the Director's view, there was potential for unequal treatment as a result of courts in some Member States applying the definition of 'ship' in accordance with the 1992 Fund's policy, whereas in other Member States courts would apply the wider definition of 'ship', as the Greek Supreme Court had done.

It was noted that, in the Director's view, where the 1992 Fund has, in determining its policy in this respect, a choice between a wider and a narrower interpretation of the definition of 'ship', a choice for the narrower interpretation would most likely give rise to a situation whereby in some Member States the Fund's restrictive policy on the definition of 'ship' would be upheld by the courts, denying cover in certain incidents, whereas in other Member States the courts would take the wider view and consider similar incidents covered by the regime. The Committee also noted that since it could be expected that governments of Member States based their requirements regarding insurance, reporting of oil receipts etc, on the 1992 Fund's official policy, such a situation would lead to unequal treatment of claimants as well as unequal treatment of shipowners and oil receivers, depending on the Member State where the damage occurred, where the ship was operating or where the oil was received and that the *Slops* case was an example of this.

It was also noted that adopting the wider interpretation of the definition of 'ship' would, in the Director's view, avoid this situation and put, for insurance, contributions and coverage purposes, shipowners, contributors and claimants in all Member States on a level playing field.

For the reasons set out above, the Director suggested that the governing bodies consider whether it would be advisable to revise the policy of the 1992 Fund on the definition of 'ship'.

A number of delegations stated that the 1992 Fund should not change its policy

regarding the definition of 'ship' since that policy had been adopted by the Assembly following a recommendation by the Working Group and that that policy was in their view appropriate. These delegations pointed out that to change the Fund's policy would not guarantee that courts in all Member States would apply the new policy and that it would not be appropriate to change it as a result of an occasional judgement issued by a court in a Contracting State. It was pointed out that for a change in the definition of 'ship' to be taken into account by national courts it would have to be as a modification of the text of the 1992 Conventions since national courts are only bound by the Conventions themselves.

Most delegations however recalled that, when discussing the definition of 'ship', the 1992 Fund 2nd intersessional Working Group, established by the Assembly at its 3rd session in October 1998, had been split in its views. These delegations stated that the Fund's policy should evolve and that the decision of the Greek Supreme Court was a precedent, which was not in agreement with the 1992 Fund's policy. These delegations added that in their opinion the 1992 Fund should take the decisions of national courts into account.

On balance, the majority of delegations agreed that the Director should examine the matter further and submit a document to the 1992 Fund's Assembly at its October 2009 session and that it would be for the Assembly to take a decision.

The Executive Committee instructed the Director to further examine the 1992 Fund's policy of the definition of 'ship' and to present a document for consideration by the Assembly at its October 2009 session.

15.4 PRESTIGE

(Spain, 13 November 2002)

The incident

On 13 November 2002 the Bahamas registered tanker *Prestige* (42 820 GT), carrying 76 972 tonnes of heavy fuel oil, began listing and leaking oil while some 30 kilometres off Cabo Finisterre (Galicia, Spain). On 19 November, whilst under tow away from the coast, the vessel broke in two and sank some 260 kilometres west of Vigo (Spain), the bow section to a depth of 3 500 metres and the stern section to a depth of 3 830 metres. The break-up and sinking released an estimated 63 000 tonnes of cargo. It was subsequently estimated by the Spanish Government that approximately 13 800 tonnes of cargo remained in the wreck.

Due to the highly persistent nature of the *Prestige*'s cargo, released oil drifted for extended periods with winds and currents, travelling great distances. The west coast of Galicia was heavily contaminated and oil eventually moved into the Bay of Biscay, affecting the north coast of Spain and France. Traces of oil were detected in the United Kingdom (the Channel Islands, the Isle of Wight and Kent).

Major clean-up operations were carried out at sea and on shore in Spain. Significant clean-up operations were also undertaken in France. Clean-up operations at sea were undertaken off Portugal.

For details of the clean-up operations and the impact of the spill reference is made to the Annual Report 2003, pages 106-109.

The *Prestige* had insurance for oil pollution liability with the London Steamship Owners' Mutual Insurance Association Ltd (London Club).

Between May 2004 and September 2004 some 13 000 tonnes of cargo were removed from the forepart of the wreck. Approximately 700 tonnes were left in the aft section.

Claims Handling Offices

In anticipation of a large number of claims, and after consultation with the Spanish and French authorities, the London Club and the 1992 Fund established Claims Handling Offices in La Coruña (Spain) and Bordeaux (France).

The 1992 Fund decided to close the Claims Handling Office in Bordeaux on 30 September 2006. The activities of that Office are now carried out from Lorient by the person who managed the *Erika* Claims Handling Office. The 1992 Fund also decided to have the Claims Handling Office in La Coruña moved to the local expert's office which is nearby.

Shipowner's liability

The limitation amount applicable to the *Prestige* under the 1992 Civil Liability Convention is approximately 18.9 million SDR or €22 777 986 (£22 million). On 28 May 2003 the shipowner deposited this amount with the Criminal Court in Corcubión (Spain) for the purpose of constituting the limitation fund required under the 1992 Civil Liability Convention.

Maximum amount available under the 1992 Fund Convention

The maximum amount of compensation under the 1992 Civil Liability Convention and the 1992 Fund Convention is 135 million SDR per incident, including the sum paid by the shipowner and his insurer (Article 4.4 of the 1992 Fund Convention). This amount should be converted into the national currency on the basis of the value of that currency by reference to the SDR on the date of the decision of the Assembly as to the first date of payment of compensation.

Applying the principles laid down in the *Nakhodka* case, the Executive Committee decided in February 2003 that the conversion in the *Prestige* case should be made on the basis of the value of that currency *vis-à-vis* the SDR on the date of the adoption of the Committee's Record of Decisions of that session, ie 7 February 2003. As a result, 135 million SDR corresponds to €171 520 703 (£165.8 million).

Level of payments

London Club's position

Unlike the policy adopted by the insurers in previous Fund cases, the London Club decided not to make individual compensation payments up to the shipowner's limitation amount. This position was taken following legal advice that if the Club were to make payments to claimants in line with past practice, it was likely that these payments would not be taken into account by the Spanish courts when the shipowner set up the limitation fund, with the result that the Club could end up paying twice the limitation amount.

Consideration by the Executive Committee in May 2003

In May 2003 the Executive Committee decided that the 1992 Fund's payments should for the time being be limited to 15% of the loss or damage actually suffered by the respective claimants as assessed by the experts engaged by the Fund and the London Club. The decision was taken in the light of the figures provided by the delegations of the three affected States and an assessment by the 1992 Fund's experts, which indicated that the total amount of the damage could be as high as €1 000 million (£966.9 million). The Committee further decided that the 1992 Fund should, in view of the particular circumstances of the *Prestige* case, make payments to claimants, although the London Club would not pay compensation directly to them.

Consideration in October 2005

In October 2005 the Executive Committee considered a proposal by the Director for an increase of the level of payments. This proposal was based on a provisional apportionment between the three States concerned of the maximum amount payable by the 1992 Fund on the basis of the total amount of the admissible claims as established by the assessment which had been carried out at that time and the provision of certain undertakings and guarantees by the Governments of France, Portugal and Spain.

In the past the level of the Fund's payments had been determined on the basis of the total amount of presented and possible future claims against the Fund and not on the basis of the Fund's assessment of the admissible losses. On the basis of the figures presented by the

Governments of the three States affected by the incident, which indicated that the total amount of the claims could be as high as €1 050 million (£1 015 million), it was likely that the level of payments would have to be maintained at 15% for several years unless a new approach could be taken. The Director therefore proposed that, instead of the usual practice of determining the level of payments on the basis of the total amount of claims already presented and possible future claims, it should be determined on an estimate of the final amount of admissible claims against the 1992 Fund, established either as a result of agreements with claimants or by final judgements of a competent court.

On the basis of an analysis of the opinions of the joint experts engaged by the London Club and the 1992 Fund, the Director considered that it was unlikely that the final admissible claims would exceed the following amounts:

State	Amount (rounded figures)
Spain	€500 000 000
France	€70 000 000
Portugal	€3 000 000
Total	**€573 000 000**

The Director therefore considered that the level of payments could be increased to 30%[8] if the 1992 Fund was provided with appropriate undertakings and guarantees from the three States concerned to ensure that it was protected against an overpayment situation and that the principle of equal treatment of victims was respected.

The Executive Committee agreed to the Director's proposal. For details regarding the Executive Committee's decision and the apportionment of the amounts payable by the Fund to the affected States reference is made to the Annual Report 2006, pages 103-106.

Developments after the October 2005 session
In December 2005 the Portuguese Government informed the 1992 Fund that it would not provide a bank guarantee and would as a consequence only request payment of 15% of the assessed amount of its claim.

In January 2006 the French Government gave the required undertaking in respect of its own claim.

In March 2006 the Spanish Government gave the required undertaking and bank guarantee, and as a consequence a payment of €56 365 000 (£38.5 million) was made in March 2006. As requested by the Spanish Government, the 1992 Fund retained €1 million in order to make payments at the level of 30% of the assessed amounts in respect of the individual claims that had been submitted to the Claims Handling Office in Spain. These payments will be made on behalf of the Spanish Government in compliance with its undertaking, and any amount left after paying all the claimants in the Claims Handling Office would be returned to the Spanish Government. If the amount of €1 million were to be insufficient to pay all the claimants who submitted claims to the Claims Handling Office, the Spanish Government had undertook to make payments to these claimants up to 30% of the amount assessed by the London Club and the 1992 Fund.

Since the conditions set by the Executive Committee had been met, the Director increased the level of payments to 30% of the established claims for damage in Spain and in France (except in respect of the French Government's claim), with effect from 5 April 2006.

Claims for compensation

Spain
As at 31 December 2008, the Claims Handling Office in La Coruña had received 844 claims totalling €1 020.7 million (£986.9 million). These include 14 claims from the Spanish Government totalling €968.5 million (£936.4 million). The table on page 98 provides a breakdown of the different categories of claims received by the Claims Handling Office in La Coruña as at 31 December 2008.

[8] *€171.5 million / €573 million = 29.9%*

Category of claim (Spain)	No. of claims	Amount claimed €
Property damage	232	2 066 103
Clean up	17	3 011 744
Mariculture	14	20 198 328
Fishing and shellfish gathering	180	3 610 886[9]
Tourism	14	688 303
Fish processors/vendors	299	20 830 377
Miscellaneous	74	1 775 068
Spanish Government	14	968 524 084
Total	**844**	**1 020 704 893**

As at 31 December 2008, 761 (91.69%) of the claims other than those of the Spanish Government had been assessed for €3.9 million (£3.8 million). Interim payments totalling €523 243 (£506 000)[10] had been made in respect of 171 of the assessed claims, mainly at 30% of the assessed amount. Of the remaining claims 3 were pending clarification, 171 were awaiting a response from the claimant, 53 were awaiting further documentation, 413 (totalling €29.9 million (£28.2 million)) had been rejected and 19 had been withdrawn by the claimants.

France

As at 31 December 2008, 482 claims totalling €109.6 million (£87.4 million) had been received by the Claims Handling Office in Lorient. The table below provides a breakdown of the different categories of claims received by the Claims Handling Office in Lorient as at 31 December 2008.

Of the 482 claims submitted to the Claims Handling Office, 94% had been assessed by 31 December 2008. Many of the remaining claims lack sufficient supporting documentation and such documentation has been requested from the claimants. Four hundred and fifty two claims had been assessed for €49.9 million (£48.2 million) and interim payments totalling €5 million (£4.8 million) had been made at 30% of the assessed amounts in respect of 336 claims. The remaining claims await a response from the claimants or are being re-examined following the claimants' disagreement with the assessed amount. Fifty-four claims totalling €3.7 million

Category of claim (France)	No. of claims	Amount claimed €
Property damage	9	87 772
Clean up	61	10 512 569
Mariculture	126	2 336 501
Shellfish gathering	3	116 810
Fishing boats	59	1 601 717
Tourism	195	25 166 131
Fish processors/vendors	9	301 446
Miscellaneous	19	2 029 820
French Government	1	67 499 154
Total	**482**	**109 651 920**

[9] *One claim totalling €132 million (£105.2 million) from a group of 58 associations has been withdrawn following a settlement with the Spanish Government.*

[10] *Compensation payments made by the Spanish Government to claimants have been deducted when calculating the interim payments.*

(£3.6 million) had been rejected because the claimants had not demonstrated that a loss had been suffered due to the incident.

In May 2004 the French Government submitted a claim for €67.5 million (£65.3 million) in relation to the costs incurred for clean up and preventive measures. The 1992 Fund and the London Club have provisionally assessed the claim at €31.2 million (£30.2 million). Further documentation has since been provided by the French Government. The Fund's experts are carrying out a detailed further assessment of the claim.

A further 61 claims, totalling €10.5 million (£10.2 million), have been submitted by local authorities for costs of clean-up operations. Fifty-two of these claims have been assessed at €4.4 million (£4.3 million). Interim payments totalling €1.2 million (£1.16 million) have been made in respect of 37 claims at 30% of the assessed amounts.

One hundred and twenty-six claims have been submitted by oyster farmers totalling €2.3 million (£2.2 million) for losses allegedly suffered as a result of market resistance due to the pollution. The experts engaged by the London Club and the 1992 Fund have examined these claims and as at 31 December 2008, 120 of them, totalling €1.9 million (£1.8 million), had been assessed at €468 231 (£453 000). Payments totalling €127 539 (£123 000) have been made in respect of 85 of these claims at 30% of the assessed amounts.

As at 31 December 2008 the Claims Handling Office had received 195 tourism-related claims totalling €25.2 million (£24.2 million). One hundred and eighty-five of these claims had been assessed at a total of €12.9 million (£12.5 million) and interim payments totalling €3.6 million (£3.5 million) had been made at 30% of the assessed amounts in respect of 144 claims.

Portugal

In December 2003 the Portuguese Government submitted a claim for €3.3 million (£2.9 million) in respect of the costs incurred for clean-up and preventive measures. Additional documentation submitted in February 2005 included a supplementary claim for €1 million (£967 000), also in respect of clean-up and preventive measures. The claims were finally assessed at €2.2 million (£2.1 million). The Portuguese Government accepted this assessment. In August 2006 the 1992 Fund made a payment of €328 488 (£222 600), corresponding to 15% of the final assessment. This payment does not preclude a further payment to the Portuguese Government if the Executive Committee were to increase the level of payments unconditionally.

Claims by the Spanish Government

Claims submitted

The Spanish Government submitted a total of 14 claims for an amount of €968.5 million (£936.5 million). The claims by the Spanish Government relate to costs incurred in respect of at sea and on shore clean-up operations, removal of the oil from the wreck, compensation payments made in relation to the spill on the basis of national legislation (Royal Decrees), tax relief for businesses affected by the spill, administration costs, costs relating to publicity campaigns, costs incurred by local authorities and paid by the Government, costs incurred in the payment of claims based on national legislation (Royal Decrees)[11], costs incurred by 67 towns that had been paid by the Government, costs incurred by the regions of Galicia, Asturias, Cantabria, Basque Country and costs incurred in respect of the treatment of the oily residues.

Removal of oil from the wreck

The claim for the removal of the oil from the wreck, initially for €109.2 million (£105.6 million), was reduced to €24.2 million (£23.4 million) to take account of funding obtained from another source (see below).

At its February 2006 session the Executive Committee decided that some of the costs incurred in 2003 prior to the removal of the oil

[11] *For details regarding the scheme of compensation set up by the Spanish Government reference is made to the Annual Report 2006, pages 109-111.*

Prestige: Low tide with remnants of oil on rocks and the upper intertidal zone

from the wreck, in respect of sealing the oil leaking from the wreck and various surveys and studies that had a bearing on the assessment of the pollution risk posed, were admissible in principle, but that the claim for costs incurred in 2004 relating to the removal of oil from the wreck was inadmissible (cf Annual Report 2006, pages 111-114). Following the Executive Committee's decision, the claim has been assessed at €9 487 996.83 (£9.2 million).

Payments to the Spanish Government

The first claim received from the Spanish Government in October 2003 for €383.7 million (£371 million) was assessed on an interim basis in December 2003 at €107 million (£103.5 million), and the 1992 Fund made a payment of €16 050 000 (£11.1 million), corresponding to 15% of the interim assessment. The 1992 Fund also made a general assessment of the total of the admissible damage in Spain, and concluded that the admissible damage would be at least €303 million (£293 million). On that basis, and as authorised by the Assembly, the Director made an additional payment of €41 505 000 (£28.5 million), corresponding to the difference between 15% of €383.7 million (ie €57 555 000) and 15% of the preliminarily assessed amount of the Government's claim (€16 050 000). That payment was made against the provision by the Spanish Government of a bank guarantee covering the above-mentioned difference (ie €41 505 000) from the Instituto de Credito Oficial, a Spanish bank with high standing in the financial market, and an undertaking by the Spanish Government to repay any amount of the payment decided by the Executive Committee or the Assembly.

As already mentioned, in March 2006 the 1992 Fund made an additional payment of €56 365 000[12] (£38.5 million) to the Spanish Government.

Progress on the assessment

Many meetings have been held between representatives of the Spanish Government and of the 1992 Fund, and a considerable amount of further information has been provided in support of the Government's claims. Co-operation with representatives of the Spanish Government is continuing and progress is being

[12] *See section on the level of payments, pages 96 to 97.*

made on the assessment of all the claims submitted by the Government.

In May 2007 a meeting was held with representatives of the Spanish Government to discuss a provisional assessment carried out in relation to the at sea and on-shore clean-up operations by the Ministries of Defence, of the Environment and of Public Works (Fomento). As a result of the queries raised in this provisional assessment, the Spanish Government has submitted further information which has been analysed by the 1992 Fund's experts, and a re-assessment has been made by the 1992 Fund.

In June 2007 the 1992 Fund received further information from the Spanish Government regarding the amount of European funding it had received following the incident. The Fund is examining the information provided and its bearing on the assessment of the claims by the Spanish Government.

In November 2007 a meeting was held with representatives of the Spanish Government to discuss a provisional assessment carried out in relation to the losses suffered in the fisheries sector as a result of the incident. A number of queries were raised by the Spanish Government, which were examined by the 1992 Fund's experts. In February 2008 the queries raised by the Spanish Government were discussed with representatives of the Government.

Further discussions between representatives of the Spanish Government and the 1992 Fund are on-going.

Time bar

Under the 1992 Civil Liability Convention, rights to compensation from the shipowner and his insurer are extinguished (time-barred) unless legal action is brought within three years of the date when the damage occurred (Article VIII). As regards the 1992 Fund Convention, rights to compensation from the 1992 Fund are extinguished unless the claimant either brings legal action against the Fund within this three-year period or notifies the Fund within that period of an action against the shipowner or his insurer (Article 6). Both Conventions also provide that in no case shall legal actions be brought after six years from the date of the incident.

In September 2005 the Claims Handling Offices in Spain and France sent letters to all those who had submitted but not settled their claims explaining them the implications of the time-bar provisions. Advertisements were also placed in the national and local press in Spain and France drawing attention to the time-bar issue.

Payments and other financial assistance by the Spanish and French Authorities

For details regarding payments and other financial assistance by the Spanish and French Authorities reference is made to Annual Report 2006 (pages 109-111).

Investigations into the cause of the incident

Bahamas Maritime Authority

An investigation into the cause of the incident was carried out by the Bahamas Maritime Authority (ie the authority of the flag State). The report of the investigation was published in November 2004. A summary of the findings is set out in the Annual Report 2005 (pages 116-117).

Spanish Ministry of Public Works

The Spanish Ministry of Public Works (Ministerio de Fomento) carried out an investigation into the cause of the incident through the Permanent Commission on the Investigation of Maritime Casualties, which is tasked with determining the technical causes of maritime accidents. For a brief summary of the conclusions of the investigation, reference is made to the Annual Report 2005 (pages 117-119).

Criminal Court in Corcubión

The Criminal Court in Corcubión in Spain is carrying out an investigation into the cause of the incident in the context of criminal proceedings. The Court is investigating the role of the master of the *Prestige* and of a civil servant

who was involved in the decision not to allow the ship into a place of refuge in Spain.

French Ministry of Transport and the Sea
The French Ministry of Transport and the Sea (Secrétariat d'État aux Transports et à La Mer) carried out a preliminary investigation into the cause of the incident through the General Inspectorate of Maritime Affairs – Investigations Bureau – accidents/sea (Inspection générale des services des affaires maritimes – Bureau enquêtes – accidents / mer (BEAmer)). A brief summary of the report on the investigation is included in the Annual Report 2005 (pages 120-121).

Examining magistrate in Brest
A criminal investigation into the cause of the incident had been commenced by an examining magistrate in Brest. Subsequently the magistrate reached an agreement with the Criminal Court in Corcubión by which the criminal file was transferred from Brest to Corcubión.

1992 Fund's involvement
The 1992 Fund continues to follow the on-going investigations through its Spanish and French lawyers.

Court actions in Spain

Some 3 780 claims have been lodged in the legal proceedings before the Criminal Court in Corcubión (Spain). Six hundred and eight of these claims involve persons who have submitted claims directly to the 1992 Fund through the Claims Handling Office in La Coruña. Details of the claims made in some of these court actions have been provided by the Court and are being examined by the experts engaged by the 1992 Fund. The Claims Handling Office has dealt with 161 of the claims submitted in court, out of which two have been settled and paid for an amount of €2 140 (£2 000).

One thousand nine hundred and sixty nine of these claims have been paid by the Spanish Government under the Royal Decrees[13] or by the 1992 Fund through the Claims Handling Office in La Coruña. A number of claimants who have been paid by the Spanish Government under the Royal Decrees have withdrawn their claims from the court proceedings. It is expected that more claimants will withdraw their court actions for the same reason.

The Spanish Government has taken legal action in the Criminal Court in Corcubión on its own behalf and on behalf of regional and local authorities as well as on behalf of 1 878 other claimants or groups of claimants. A number of other claimants have also taken legal actions and the Court is assessing whether these claimants are eligible to join the proceedings.

Court actions in France

Two hundred and thirty-two claimants have taken legal action against the shipowner, the London Club and the 1992 Fund in 16 courts in France requesting compensation totalling some €131 million (£126.7 million), including €67.7 million (£65.5 million) claimed by the French Government.

The courts have granted the stay of proceedings in 29 legal actions in order to give the parties time to discuss the claims out of court. The courts have rendered two judgements in 2008 (see below) and 31 claimants have withdrawn their actions since 2005. Therefore 199 claimants remain with actions pending in courts, requesting compensation totalling €93.4 million (£90.3 million).

Some one hundred and forty French claimants, including various communes, have joined the legal proceedings in Corcubión, Spain.

Judgements by Courts in France

Court of first instance in Mont-de-Marsan
The owner of a bed and breakfast hotel brought an action in the Court of first instance of Mont-de-Marsan claiming €25 501 (£24 660) for loss of income incurred as a result of the *Prestige* incident. The hotel opened in March 2003 but had closed down in the same year. The 1992 Fund had assessed the losses by the claimant in the amount of €451 (£436) on the basis of the results recorded by other companies

[13] *Some 397 claims under the Royal Decrees have been rejected by the Spanish Government.*

in the same area having a similar activity. The claimant who had based the claim on a business plan did not agree with the Fund's assessment.

In a judgement rendered in March 2008, the Court agreed with the 1992 Fund's assessment of the claim.

At the date when this document was issued the claimant had not appealed against the judgement.

Civil Court of Rochefort-sur-Mer

Two oyster farmers associations and an association for the defence of the professionals of the sea brought a legal action in the Civil Court of Rochefort-sur-Mer against the 1992 Fund, the shipowner, its insurer, the Spanish State and ABS claiming €100 million (£96.7 million), reduced later to €10 million (£9.7 million). The claim was for economic losses and damage to their profession's image. The 1992 Fund rejected the claim as being not admissible under the 1992 Civil Liability and Fund Conventions. The Fund also argued in Court that the claims were time-barred since the claimants had failed to bring a legal action against the 1992 Fund within three years of the date when the damage occurred, nor had they notified the 1992 Fund of an action against the shipowner, within this period.

In a judgement rendered in May 2008 the Court agreed with the 1992 Fund's arguments and rejected the claim.

Court actions in Portugal

The Portuguese Government took legal action in the Maritime Court in Lisbon against the shipowner, the London Club and the 1992 Fund claiming compensation for €4.3 million (£4.2 million). Following the settlement of the claim referred to above, the Portuguese State withdrew its action in December 2006.

Court actions in United States

Claim and counter-claim

The Spanish State has taken legal action against the classification society of the *Prestige*, namely the American Bureau of Shipping (ABS), before the Federal Court of first instance in New York requesting compensation for all damage caused by the incident, estimated initially to exceed US$700 million (£486.9 million) and estimated later to exceed US$1 000 million (£695.5 million). The Spanish State has maintained, *inter alia*, that ABS had been negligent in the inspection of the *Prestige* and had failed to detect corrosion, permanent deformation, defective materials and fatigue in the vessel and had been negligent in granting classification.

ABS denied the allegation made by the Spanish State and in its turn took action against the State, arguing that if the State had suffered damage this was caused in whole or in part by its own negligence. ABS made a counter-claim and requested that the State should be ordered to indemnify ABS for any amount that ABS may be obliged to pay pursuant to any judgement against it in relation to the *Prestige* incident. The New York Court dismissed the counter-claim by ABS on the ground that the Spanish State was entitled to sovereign immunity. ABS sought reconsideration by the Court or permission to appeal.

In July 2006 the New York Court confirmed its decision on the Spanish State's entitlement to sovereign immunity, but granted ABS permission to resubmit its counter-claim on different grounds.

In July 2006 ABS resubmitted its counter-claim, designed to fall within the sovereign immunity exception in that it did not seek relief exceeding in amount or different in kind from that sought by Spain. ABS sought indemnity from the Spanish State in case any third party obtained a judgement against ABS as a result of the incident. In September 2006 the Spanish State requested that the ABS counter-claim be dismissed on the grounds that the Court lacked subject matter jurisdiction. The New York Court has not yet taken any decision on this request.

For details about the defence of sovereign immunity, the discovery of the criminal file in

Corcubión and of financial records reference is made to Annual Report 2007, pages 101 to 104.

Discovery of e-mail communications

The judge assigned to supervise discovery in the District Court case in New York, granted a motion by ABS to compel the Spanish State to produce certain electronic documents. As Spain did not, in the judge's view, fully comply, the judge imposed sanctions against Spain by awarding ABS its legal fees associated with the motion. Spain filed objections to the judge's rulings, requiring them to be reviewed by the District Court judge assigned to the case. In August 2008 the District Court judge overruled Spain's objections and upheld the decisions of the judge assigned to supervise discovery.

ABS acting as 'the pilot or any other person, (…), who performs services for the ship'

In August 2005 ABS submitted a request to the New York Court for a summary judgement dismissing the Spanish State's action. ABS argued that it was an agent or servant of the shipowner or an 'other person who...performs services for the ship' and that, therefore, in accordance with Article III.4(a) and (b) of the 1992 Civil Liability Convention no claim for compensation for pollution damage could be made against it unless the damage resulted from ABS's personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result. ABS also maintained that under Article IX.1 of the 1992 Civil Liability Convention all actions for compensation, such as that pursued by the Spanish State in the New York Court, could only be brought in the courts of a Contracting State. Since the United States was not a Contracting State to the 1992 Civil Liability Convention and the pollution damage had occurred in Spain, ABS argued that the United States Courts were not competent to hear the case.

The Spanish State opposed the request by ABS, arguing that classification societies could not be considered either agents or servants of the shipowner or a person who performs services for the ship, within the meaning of Article III.4(a) and (b) of the 1992 Civil Liability Convention respectively. Spain denied that ABS fitted within Article III.4(b) as 'the pilot or any other person who, without being a member of the crew, performs services for the ship', arguing that 'any other person' referred to any other person similar to a pilot or a member of the crew in their relationship with the owner, and who performs services of the kind performed by a pilot or a member of the crew of the ship, and that 'any other person' as used in Article III.4(b) referred to persons involved in the navigation or operation of the vessel on the incident voyage in question. In support of its argument, the Spanish State relied upon the ejusdem generis rule of construction, which provides that when a general word or phrase follows a list of specific persons or things, the general word or phrase will be interpreted to include only persons or things of the same type as those listed.

In support of its motion, Spain submitted declarations from legal experts that had attended the 1969 and 1984 diplomatic conferences. Both experts' declarations take the position that classification societies were not intended to be covered by Article III.4(b).

The Spanish State further argued that since the United States was not a signatory to the 1992 Civil Liability Convention, the jurisdictional provisions of Article IX.1 of the Convention were not binding on its courts.

In January 2008 the New York Court accepted ABS's argument that ABS fell into the category of 'other persons' performing services for the ship under Article III.4(b) of the 1992 CLC. The Court argued that the text of the treaty had to be interpreted in accordance with the ordinary meaning given to the terms of the treaty in their context and in light of its object and purpose. It further argued that the ejusdem generis rule of construction did not apply because it was only to be used where there was uncertainty as to the meaning of a particular clause in a statute. The court found no uncertainty or ambiguity in the wording of Article III.4(b) and, therefore, held it did not need to refer to ejusdem generis, negotiation history or other extrinsic sources.

The Court further argued that under Article IX.1 of the 1992 CLC Spain could only make claims against ABS in its own courts and it therefore granted ABS's motion for summary judgement, dismissing the Spanish State's claim.

In its decision, the Court also denied all pending motions as now being non actionable, except for the motions over sanctions for Spain's failure to comply with discovery requests relating to e-mails.

The Spanish State appealed against the Court's decision. ABS also filed an appeal against the court's decision to dismiss its counterclaims for lack of jurisdiction. The Spanish State further filed a motion with the Court of Appeal seeking to dismiss ABS's appeal.

In its appeal Spain argued that since the United States is not a party to the 1992 CLC, ABS as a United States national had no standing to assert rights under the 1992 CLC in a court of the United States, that the 1992 CLC could not deny jurisdiction to a federal court, and that Article IX.1 of the 1992 CLC applied only to claims under the 1992 CLC compensation regime and not to Spain's claims against ABS, which were governed by other law. The Spanish State also argued that principles of treaty interpretation required consideration of the text, drafter's intent, judicial rulings from 1992 CLC Contracting States and other authorities, all of which showed that Article III.4(b) of the 1992 CLC did not provide immunity to classification societies such as ABS. The Spanish State further argued that even if Article III.4(b) did apply to classification societies, its immunity did not cover the reckless conduct alleged against ABS.

ABS opposed Spain's appeal and cross-appealed, arguing that if Spain was allowed to pursue its claim against ABS in the United States, the counterclaims of ABS, which had been dismissed by the District Court as not logically related to Spain's claim, should be reinstated. The Spanish State made a motion to the Court of Appeal to dismiss the cross-appeal of ABS but that motion was denied.

In its reply to the appeal by the Spanish State, ABS argued that Article IX.1 of the 1992 CLC clearly stated that 'actions for compensation may only be brought in the courts of such Contracting State or States' and that the District Court chose not to execute its jurisdiction so as not to allow Spain to ignore its obligation under the 1992 CLC to seek compensation in the courts of Spain. ABS further argued that there is no evidence of intentional or reckless conduct on its part leading to pollution.

The Spanish State submitted a reply to ABS arguing that ABS's location in the United States and the presence of key witnesses and documents there, legitimised Spain's choice of forum and that since the United States had not ratified the 1992 CLC, its courts had no obligation to apply the 1992 CLC. In its reply Spain also renewed its argument that Clause III(4) only applies to persons who provide services to the vessel on the 'incident voyage' and not to persons like ABS, who provided its services many months before, and supported its argument by pointing to the decision by the Criminal Court in Paris regarding the *Erika* incident (see pages 80 to 81).

A hearing at the Court of Appeal has been scheduled for March 2009.

Request for the filing of an *amicus curiae* brief in support of the Spanish State appeal

The Spanish State requested the 1992 Fund to file an *amicus curiae* brief before the New York Court of Appeal. The Executive Committee, at its 40th session held in March 2008, considered whether the Fund should file such a brief. The Director was of the opinion that the decision taken by the Court that ABS fell under the provision of Article III.4(b) of the 1992 CLC, could well be criticised since it appeared questionable whether a classification society, which carries out a technical survey of the ship at certain, usually quite long, intervals, should be considered such a person by simply relying on the very general part of the language of the provision ('…any other person who…performs services to the ship'). It was also noted that, in a similar situation, the Criminal Court in Paris

Prestige: Workers clearing oily debris from a beach

during the *Erika* trial, had recently come to the opposite conclusion, ie that RINA could not be considered to fall under Article III.4(b) of the 1992 CLC.

The Director was of the view that other considerations should also be taken into account, namely

- whether it would be appropriate for the 1992 Fund as an intergovernmental organisation to get involved in legal proceedings in a non-Member State on issues outside the scope of the Convention;

- whether it would be appropriate for the 1992 Fund to get involved in legal proceedings not directly related to the fulfilment of its core functions under the Conventions, ie the payment of compensation to victims of oil pollution incidents in Member States;

- that the decision had been taken in a lower court which would probably limit the value of the decision as a precedent for future cases to be judged in a Member State on the basis of the Conventions; and

- that it would represent a diversion from the decision made by the Executive Committee not to take recourse action against ABS in the United States.

Some delegations expressed support and some expressed doubts as to the Director's interpretation of Article III.4(b). Several delegations expressed concern that if the 1992 Fund were to file an *amicus curiae* brief, it would set a precedent for the future. Other delegations pointed out that if the 1992 Fund were to file an *amicus curiae* brief it would in fact depart from the decision made by the Executive Committee not to take recourse action against ABS in the United States.

On the basis of the considerations set out by the Director and the views expressed during the debate, the Executive Committee decided not to file an *amicus curiae* brief.

Recourse action by the 1992 Fund against ABS

In October 2004 the Executive Committee considered whether the 1992 Fund should take recourse action against ABS. As for the Executive Committee's considerations, reference is made to the Annual Report 2004, pages 102-104.

The Executive Committee decided that the 1992 Fund should not take recourse action against ABS in the United States. It further decided to defer any decision on recourse action against ABS in Spain until further details surrounding the cause of the *Prestige* incident came to light. The Director was instructed to follow the on-going litigation in the United States, monitor the on-going investigations into the cause of the incident and take any steps necessary to protect the 1992 Fund's interests in any relevant jurisdiction. The Committee stated that this decision was without prejudice to the Fund's position *vis-à-vis* legal actions against other parties.

15.5 N°7 KWANG MIN

(Republic of Korea, 24 November 2005)

The incident

The Korean tanker *N°7 Kwang Min* (161 GT) collided with the fishing vessel *N°1 Chil Yang* (139 GT) in the port of Busan, Republic of Korea. A total of 37 tonnes of heavy fuel oil escaped into the sea from a damaged cargo tank. The remaining oil on board the *N°7 Kwang Min* was transferred to a number of other vessels. The *N°7 Kwang Min* was subsequently taken to a shipyard in Busan.

The 1992 Fund appointed a team of Korean surveyors to monitor the clean-up operations and investigate the potential impact of the pollution on fisheries and mariculture.

Clean-up operations

The Korean Coast Guard, the Korean Marine Pollution Response Corporation and seven private clean-up contractors promptly mobilised 36 pollution response vessels. Defensive booms were deployed to protect port installations such as shipyards and fish markets as well as the hulls of a number of ships berthed in the port. As a result of this rapid response, serious property damage and consequential economic losses were prevented. Most of the on-water clean-up resources were withdrawn on 27 November 2005.

The remaining spilt oil, as well as considerable quantities of oiled debris, stranded on the shorelines to the west and south of the island of Yeongdo. Four private clean-up contractors were appointed by the shipowner to undertake shoreline clean-up operations using predominantly manual methods to remove bulk oil, followed by high pressure water washing to remove oil stains. Shoreline clean-up operations were completed in early 2006.

Impact of the spill

Drifting oil at sea contaminated the hulls of a number of vessels, including those engaged in the clean-up operations. Some of the affected shorelines supported village fishing grounds, and the activities of 81 female divers engaged in the gathering of sub-tidal species of plants and animals were interrupted.

The oil also affected a number of seaweed (sea mustard) cultivation farms as it passed through the supporting structures, contaminating buoys and ropes. However, as a result of oiled equipment having been cleaned or replaced quickly, there was no serious damage to the seaweed products.

Six seafood restaurants reported alleged mortalities of fish as a result of oil entering the sub-surface intakes supplying seawater to the aquaria in which they were being kept.

Applicability of the 1992 Fund Convention

The limitation amount applicable to the *N°7 Kwang Min* under the 1992 Civil Liability Convention is 4.51 million SDR (£4.8 million).

In December 2005 the Korean Ministry of Maritime Affairs and Fisheries informed the 1992

Fund that the owner of the *N°7 Kwang Min* was not insured for pollution liabilities and had insufficient financial assets to cover the claims for compensation for pollution damage arising from the incident.

Claims for compensation

Twelve claims in respect of the cost of clean-up and preventive measures were settled for a total of Won 1.9 billion (£1.1 million). One claim was rejected.

The owners of six live seafood restaurants located in the polluted area submitted claims for alleged mortalities of fish as a result of oil entering their aquaria via submerged seawater intakes, and for loss of earnings as a result of the cancellation of bookings and other unspecified damages. The claims were settled at Won 3.1 million (£1 860).

Claims by 81 women divers for loss of earnings due to the interruption of their shellfish harvesting and sales activities were settled for Won 36 million (£20 000).

Further fishery claims by ten boat owners were settled at Won 51 million (£28 000).

Claims by nine seaweed (sea mustard) cultivators were assessed at Won 42 million (£23 000). All claimants agreed with the assessment apart from two claimants who had initially agreed with the assessed amount but later refused to accept it and commenced legal actions against the owners of the two vessels involved in the incident.

No further claims are expected.

Legal actions

The investigation into the cause of the incident by the Busan Maritime Safety Tribunal led to the conclusion that the liability ratio between the owner of the *N°7 Kwang Min* and the owner of the fishing vessel *N°1 Chil Yang* was 40:60.

Upon investigating the financial status of the owner of the fishing vessel *N°1Chil Yang*, it has emerged that he owns a building, the value of which is unknown, but it is estimated to exceed the limitation amount applicable to the vessel under the Korean Commercial Code, ie 83 000 SDR or Won 160 million (£78 600).

As mentioned above, two seaweed cultivators commenced legal actions against the owners of the two vessels involved in the incident. The Fund has intervened in these legal actions in order to explore the possibility of recovering the sums paid in compensation for this incident.

Limitation proceedings by owner of fishing vessel

In January 2007 the owner of the *N°1 Chil Yang* made an application to the Busan District Court (Limitation Court) for the commencement of proceedings in order to limit his liability to the applicable limitation amount under the Korean Commercial Code, ie 83 000 SDR or Won 160 761 780 (£78 600).

The Director instructed the Fund's lawyers to take steps for the Fund to intervene as a claimant in the limitation proceedings in order to recover, to the extent possible, the sums paid in compensation for this incident. In April 2007 the claims of the 1992 Fund were registered with the Limitation Court.

In August 2007 the Limitation Court delivered its decision in relation to the limitation proceedings. The Limitation Court assessed the claim by the 1992 Fund in the amount of Won 1 327 million (£723 000), and the claim by the two seaweed cultivators at the amount assessed by the 1992 Fund. The Limitation Court also assessed the claim of the *N°7 Kwang Min* owner against the *N°1 Chil Yang* owner at Won 26 million (£14 400). The seaweed cultivators appealed.

In July 2008 the Busan District Court decided to consolidate the legal action of the two seaweed culturists against the owners of the *N°7 Kwang Min* and the *N°1 Chil Yang* and their action against the owner of the *N°1 Chil Yang* and the Fund to set aside the decision of the Limitation Court.

In August 2008, the Court delivered its judgement in relation to both lawsuits. The Court upheld the assessment decision made by the Limitation Court, which had confirmed the Fund's assessment of the claims. The Court further ordered the owners of the two vessels to pay the losses of the two seaweed culturists as assessed by the Limitation Court plus interest. If the owner of the *No7 Kwang Min* were unable to pay the losses of the two claimants, the Fund would still be liable to pay compensation in the amount decided by the court. The two seaweed cultivators appealed against the judgement.

The first hearing of the appeal was held in December 2008. A further hearing is expected in the course of 2009.

Recourse action against the owner of *No7 Kwang Min*

Investigation into the financial status of the owner of the *No7 Kwang Min* revealed that he had very few assets, namely an apartment and the *No7 Kwang Min* tanker, both of which were mortgaged for substantial amounts. Since the mortgage lenders have priority over any other creditors, it would be unlikely that the 1992 Fund could recover any sums in respect of these properties.

The owner of the *No7 Kwang Min* also had, as a result of the collision, a claim against the owner of the *No1 Chil Yang* that was assessed by the Limitation Court at Won 26 million (£14 400). If the limitation fund were to be distributed in proportion with the court assessment, the owner of the *No7 Kwang Min* would be entitled to some Won 2 400 000 (£1 3200) and therefore the only amount which the 1992 Fund could recover would be limited to this figure.

In view of the fact that the legal costs of a possible recourse action against the owner of the *No7 Kwang Min* would exceed by far any sum that the 1992 Fund might be able to recover, in October 2007 the Executive Committee instructed the Director not to pursue recourse action against the owner of the *No7 Kwang Min*.

15.6 SOLAR 1

(Philippines, 11 August 2006)

The incident

The Philippines registered tanker *Solar 1* (998 GT), laden with a cargo of 2 081 tonnes of industrial fuel oil, sank in heavy weather in the Guimaras Straits, some 10 nautical miles south of Guimaras Island, Republic of the Philippines (see map).

At the time of the incident an unknown, but substantial quantity of oil was released from the vessel after it sank and the sunken wreck continued to release oil, albeit in ever decreasing quantities. Following an operation to remove the remaining oil from the wreck it was found that virtually the entire cargo had been spilled at the time of the incident.

The *Solar 1* was entered with the Shipowners' Mutual Protection and Indemnity Association (Luxembourg) (Shipowners' Club).

For details of the impact of the spill and the clean-up operations reference is made to Annual Report 2007, pages 106-115.

The Shipowners' Club and the Fund established a claims office in Iloilo to assist with the handling of claims. The office is being managed by the Club's correspondent in the Philippines.

The 1992 Conventions and STOPIA 2006

The Republic of the Philippines is a Party to the 1992 Civil Liability and Fund Conventions.

The limitation amount applicable to the *Solar 1* in accordance with the 1992 Civil Liability Convention is 4.51 million SDR (£4.8 million), but the owner of the *Solar 1* is a party to the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006 whereby the limitation amount applicable to the tanker is increased, on a voluntary basis, to 20 million SDR (£21.3 million). However, the 1992 Fund continues to be liable to compensate claimants if and to the extent that the total amount of admissible claims exceeds the limitation amount

Location of the Solar 1 incident

applicable to the *Solar 1* under the 1992 Civil Liability Convention. Under STOPIA 2006, the 1992 Fund has legally enforceable rights of indemnification from the shipowner of the difference between the limitation amount applicable to the tanker under the 1992 Civil Liability Convention and the total amount of admissible claims up to 20 million SDR (£21.3 million).

The Fund and the Shipowners' Club agreed that the 1992 Fund would make compensation payments once the limitation amount under the 1992 Civil Liability Convention had been reached and that the Club would reimburse the Fund any payments made within two weeks of being invoiced by the Fund.

Operation to remove the remaining cargo from the vessel

As regards the operation to remove the remaining cargo from the vessel reference is made to Annual Report 2007, page 108-109.

Claims for compensation

The claims situation up to 31 December 2008 is summarised in the table on page 111.

It should be noted that many claimants did not indicate a claimed amount in their respective claim form. Therefore, the total claimed amount with respect to this incident cannot be established.

The Shipowners' Club and the 1992 Fund have received a further 132 642 claim forms, not included in the table, mainly from fisherfolk and seaweed producers in Guimaras Island and in the Province of Iloilo. The majority of the claim forms were incomplete and a significant number were from people under the age of 18 years, which is the minimum age at which people are allowed to engage in fishing in the Philippines. After a detailed screening process which included comparison of the details on the claims forms with the electoral register, a small number of claims were identified that merited further

Category	Claims presented	Assessments		Total Paid		Rejected
		No	Amount PHP	No	Amount PHP	No
Capture Fishery	27 762	25 050	198 395 255	23 217	183 625 385	590
Mariculture	733	425	2 425 134	27	2 425 134	398
Miscellaneous	170	18	2 846 882	1	2 846 881	17
Property Damage	3 260	2 762	3 651 876	292	3 580 562	2 417
Tourism	408	361	3 963 160	68	3 887 623	293
Clean-up	26	19	774 771 073	12	751 069 099	9
Totals	**32 359**	**28 635**	**986 053 380 (£14.4 million)**	**23 617**	**947 434 684 (£13.8 million)**	**3 724**

assessment. These claims are included in the table above. The Club and Fund decided not to process further the remaining claim forms in this batch, since it was clear that they did not relate to valid claims.

Economic losses in the capture fishery sector

The Shipowners' Club and the 1992 Fund received 27 762 claims from fisherfolk living in the five municipalities on Guimaras Island and the coastal areas of Iloilo province. In view of the fact that the claimants were not represented by any fishery association or co-operative that could act on their behalf, the Shipowners' Club and the 1992 Fund decided to pay each claimant individually. A total of 23 217 claimants have received a total of PHP 183 625 385 (£2.7 million) in compensation. Five hundred and ninety of the claims submitted have been rejected. The remaining claimants have been offered compensation and the payments will be made shortly.

In February 2007 a law firm in Manila informed the Fund that it represented some 1 211 fisherfolk from Guimaras Island in the pursuit of their claims totalling PHP 280.3 million (£4.1 million). The Club and the Fund examined the documentation provided by the law firm on behalf of their clients. A total of 1 024 claims have been approved for a total of PHP 13 542 682 (£198 000) using the same principles as similar claims for the same activity. One hundred and seventy four claims have been rejected as these claimants had already agreed to a full and final settlement of their claim. Eleven claims have been submitted by claimants under the age of 18 who were not legally able to engage in fishing at the time of the incident and have been rejected. Two claims have been submitted for loss of activity by fishpond operators. As for all other fishpond claimants the Club and the Fund have requested further documentation to confirm that these two claimants had beneficial use of the ponds at the time of the incident.

Economic losses in the mariculture sector

The Club and Fund have received 729 claims from seaweed farmers and fishpond operators for alleged damage to their crop as a result of the contamination.

The Club and Fund have received 429 claims from fishpond operators. The nature of the losses differs among the claimants, with some alleging that oil entered their ponds through broken dykes or open sluices (gates) causing fish mortalities, others claiming losses due to their decision to harvest their fish early to avoid contamination and others claiming for losses due to a reduction in fish prices. The claims were poorly documented with many claimants being unable to prove that they had the necessary licenses, ownership or tenureship to operate the ponds legally or that the ponds were in operation at the time of the incident. Twenty seven claims

Solar 1: Application of chemical dispersant from a ship-mounted spray arm

have been paid for a total of PHP 2 425 134 (£35 500). Most other claims have been rejected on the basis that the fishponds to which the claims related were not impacted by the contamination.

Three hundred claims from seaweed farmers are being examined by the Club and Fund experts. Additionally, some 6 000 claims from seaweed farmers from Guimaras Island have been received. While investigating these claims, it became apparent that a large number of these claimants were not involved in seaweed farming at the time of the incident. As a result the Club and Fund have rejected these claims on the basis that the individuals who submitted the claims did not belong to a seaweed association and there were no records of their having harvested seaweed prior to the incident. The claims lacked detailed information in respect of the amount of seaweed harvested prior to the incident and the experts appointed by the Club and Fund are continuing their investigation to determine who are bona fide seaweed farmers and what loss they have sustained due to the contamination.

The Club and the Fund have also received two claims from abalone producers, one claim from a lobster farmer and one claim from an association of fishermen. These claims are being examined.

Miscellaneous claims

A claim submitted by the Regional Department of Social Welfare (DSWD) in respect of costs of providing relief assistance to the 5 400 households whose livelihoods were most adversely affected by the incident has been settled and paid at PHP 2 846 881 (£41 600).

Claims have been submitted by owners of convenience stores in Guimaras Island alleging reduction in sales as a result of the incident. The Club and Fund considered that these claims related to damage that was not sufficiently closely linked to the contamination and for this reason the claims have been rejected.

The local government units in several municipalities in Guimaras and Iloilo province have submitted claims in respect of costs and salaries of the municipal staff who were involved

in the response to the incident. These claims are being examined.

Property damage
The Shipowners' Club and the 1992 Fund received some 3 260 claims for damage to fishing gear and fishing boats. Compensation payments were made to some 292 claimants for a total of PHP 3 580 562 (£52 300). The majority of the remaining claims were rejected due to lack of evidence.

Claims were also received from 69 owners of beach front properties in the Municipality of Nueva Valencia. Eight of these claimants have received compensation for a total of PHP 97 710 (£1 200). Many of these property claims related to the removal of sand during the shoreline clean-up operations. During subsequent site inspections it was reported that on beaches where sand had been removed, the sand had been replaced by natural accretion. Sixteen of these claims have been rejected and the remaining 45 claims are being examined.

Tourism
The Club and Fund have received some 408 claims in the tourism sector from owners of small resorts, tour boat operators and service providers (eg tour guides) to the tourism industry. Sixty-eight claims have been settled and paid for a total of PHP 3 887 623 (£57 000). Some of the small resort owners have submitted claims for further losses during the first half of 2007. These claims are being examined.

Clean-up and preventive measures
Five claimants who were involved in operations at sea responding to the incident submitted claims for some US$15 million (£10.4 million). This included the costs of the underwater survey conducted in September 2006 and the subsequent oil removal operation that was conducted in April 2007. Four of these claimants have been paid a total of US$11.3 million (£5.7 million) in full and final settlement of their claims. The fifth claimant has accepted an interim payment of US$2 million (£1 million) and has been offered a further payment of US$209 472 (£145 000).

A claim by Petron Corporation for PHP 210 million (£3 million) for the cost of shoreline clean-up was provisionally assessed for a total of PHP 118 million (£1.7 million) and an interim payment for this amount was made. Further details have been requested from Petron in order to complete the assessment of their claim.

The Philippine Coastguard submitted a claim for PHP 440 million (£6.4 million) in respect of its role in the response to the spill for both at sea and shoreline cleaning. The claim did not have sufficient supporting information to allow the Club and the Fund to carry out an assessment. The Club and the Fund have written to the Coastguard requesting detailed supporting information in respect of its claim. A claim was also submitted by the Coastguard in respect of its involvement in the oil removal operation for an amount of PHP 38 718 229 (£566 000). Pending some clarifications requested from the Coastguard, the claim has been provisionally assessed at PHP 14 111 939 (£206 000) and a payment for that amount has been offered to the Coastguard.

Seven claims for a total of PHP 838 000 (£12 200) were received for hardship and inconvenience due to enforced evacuation by local authorities. These claimants had been evacuated by the authorities due to concerns on their part about possibly dangerous levels of hydrogen sulphide in the vicinity of their homes. Since expert advice has shown that the alleged hydrogen sulphide could not have originated from the oil spilt from the *Solar 1* the Fund has taken the view that the claims for the economic consequences of the evacuation were not admissible. These claims have therefore been rejected.

Director's considerations

This is the first incident where STOPIA 2006 applies and the 1992 Fund is receiving regular reimbursements from the Shipowner's Club. It is difficult at this stage however to predict whether the amount of compensation payable in respect of this incident will exceed the STOPIA 2006 limit of 20 million SDR (£21.3 million). It is

therefore not yet known whether the 1992 Fund will be called to pay compensation in excess of that limit.

15.7 SHOSEI MARU

(Japan, 28 November 2006)

The incident

The Japanese tanker *Shosei Maru* (153 GT) collided with the Korean cargo vessel *Trust Busan* (4 690 GT) three kilometres off the port of Teshima, in the Seto Inland Sea in Japan. About 60 tonnes of heavy fuel oil and bunker diesel oil escaped into the sea from a damaged cargo tank and the bunker oil tank of the *Shosei Maru*. The remaining oil onboard was transferred to another vessel. The *Shosei Maru* was subsequently towed to the port of Tonosho in Shodoshima.

The 1992 Fund and the insurer of the *Shosei Maru*, the Japan Ship Owners' Mutual Protection and Indemnity Association (Japan P&I Club), appointed a team of surveyors to monitor the clean-up operations and investigate the potential impact of the pollution on fisheries and mariculture.

Impact of the spill

Approximately five kilometres of shoreline composed of rocks, boulders and pebbles, as well as port installations, were polluted to varying degrees. Drifting oil at sea contaminated the hulls of a number of commercial and fishing vessels, including those engaged in the clean-up operations. The oil also affected a number of seaweed cultivation farms as it passed through the supporting structures contaminating the seaweed growing on the nets. The supporting structures, buoys, ropes and nets had to be destroyed and replaced.

Clean-up operations

The owner of the *Shosei Maru* requested the Japan Maritime Disaster Prevention Centre to organise clean-up operations by using a number of private contractors. The Kagawa Prefectural Government and several local authorities also participated in the operations. Several vessels were deployed to apply chemical dispersants on the oil in the water.

On-shore clean-up operations were carried out in four locations in the Kagawa Prefecture. Private contractors were appointed by the Japan P&I Club to undertake shoreline clean-up operations using predominantly manual methods to remove bulk oil, followed by high-pressure water washing to remove oil stains. Several oil-stained piers, wharves and sea walls were cleaned by means of high-pressure hot water guns using chemical solvents.

Applicability of the 1992 Conventions and STOPIA 2006

The limitation amount applicable to the *Shosei Maru* under the 1992 Civil Liability Convention (1992 CLC) is 4.51 million SDR (£4.2 million). The ship is not entered in STOPIA 2006. As a consequence, the Fund is liable to pay the difference between the total amount paid in compensation and the limitation amount.

Claims for compensation

All the claims submitted with regard to this incident were assessed jointly by the 1992 Fund and the Japan P&I Club at a total amount of ¥899 693 953 (£6.9 million). These claims have been paid by the Japan P&I Club.

No further claims are expected to arise out of this incident.

Legal proceedings

Investigation into the cause of the incident

In November 2007 the Kobe Marine Accident Inquiry Agency delivered its report in which it concluded that the collision occurred mainly because the *Trust Busan* failed to maintain a proper lookout and turned to port contrary to the regulation under which she was required to alter her course to starboard. However, the *Shosei Maru* also failed to take early action to alter her course to starboard. No decision was made as to the apportionment of liabilities between the *Shosei Maru* and the *Trust Busan*.

Shosei Maru: Deployment of sorbent boom

Limitation proceedings of the *Shosei Maru*

In March 2008 the owner of the *Shosei Maru* established a limitation fund in the Takamatsu District Court in accordance with the 1992 CLC, and the Court commenced the limitation proceedings in April 2008. The 1992 Fund intervened in the limitation proceedings with respect to the *Shosei Maru*.

The Japan P&I Club filed a subrogated claim totalling ¥961 651 431 (£7.4 million), which included pollution damages and the survey fees. The Japan P&I Club was the only claimant who brought claims against the limitation fund, and its claims became definite and established since no objection was filed at the creditors' meeting held in July 2008 at the Takamatsu District Court.

Soon after, the 1992 Fund and the Japan P&I Club signed an agreement, by which the Fund recognised that it was liable to pay the difference between the total amount paid in compensation by the Japan P&I Club and the limitation amount in accordance with the 1992 Civil Liability Convention. Pursuant to the agreement, on 30 July 2008 the 1992 Fund paid to the Japan P&I Club ¥161 064 193 (£794 823) for the pollution damage in excess of the 1992 CLC limit, and also paid to the Japan P&I Club the corresponding share of the survey fees totalling ¥11 091 695 (£51 981). As a consequence, the Fund has acquired by subrogation the rights that each of the original claimants had against any third party including the owners/demise charterers of the *Trust Busan*.

The owners of the *Shosei Maru* filed a notice of termination of the proceedings in the Court in August 2008. The Court's Order of termination became definite and effective in October 2008.

Limitation proceedings of the Trust Busan

In November 2007 the bareboat charterer of the *Trust Busan* made an application to the Okayama District Court for the commencement of the limitation proceedings in order to limit his liability to the applicable limit in accordance with Japanese law, ie 2 076 000 SDR (£1.9 million).

The Court commenced the limitation proceedings in respect of the *Trust Busan* in

December 2007. The 1992 Fund intervened as a claimant in the limitation proceedings in respect of the *Trust Busan* in order to recover, to the extent possible, the sums the Fund will have to pay in compensation for this incident.

By the end of the designated period, three claims had been made against the limitation fund of the *Trust Busan* by the owner of the *Shosei Maru*, the 1992 Fund and Sompo Japan Insurance Inc., the underwriters of the cargo onboard the *Shosei Maru* at the time of the incident, for a total of ¥1 349 120 495 (£10.4 million).

Creditors' meetings were held in April and October 2008 at the Okayama District Court. It is expected that the limitation proceedings for the *Trust Busan* will be completed some time in 2009.

15.8 VOLGONEFT 139

(Russian Federation, 11 November 2007)

The incident

On 11 November 2007 the Russian-registered tanker *Volgoneft 139* (3 463 GT, built in 1978) broke in two in the Strait of Kerch linking the Sea of Azov and the Black Sea between the Russian Federation and the Ukraine. The tanker was at anchor when a severe storm caused rough seas with heavy swell. The aft part of the vessel remained afloat and using the casualty's own engines, the captain managed to beach it on a nearby sand bank. The crew were then rescued and taken to the nearby port of Kavkaz (Russian Federation). The fore part remained afloat at anchor for a while and then sank.

The tanker was loaded with 4 077 tonnes of heavy fuel oil. It is understood that between 1 200 and 2 000 tonnes of fuel oil were spilt. Following removal of 913 tonnes of heavy fuel oil, the aft section was towed to Kavkaz, where it remains for inspection. A month after the incident, the fore part was temporarily raised and 1 200 tonnes of fuel oil from tanks one and two were recovered. In August 2008 the fore part of the wreck was raised again and towed to the port of Kavkaz to prevent further pollution.

It was reported that three other vessels loaded with sulphur (*Volnogorsk*, *Nakhichevan* and *Kovel*) also sank in the area within two hours of the incident.

Clean-up operations and response

Some 250 kilometres of shoreline both in the Russian Federation and in Ukraine are understood to have been affected by the oil. A significant part of the shoreline of the Taman Peninsula, the Tuzla Spit, Chushka Spit and the beaches near the village of Ilyich were allegedly affected by the oil (see map on page 117). A joint crisis centre was set up to coordinate the response between the Russian Federation and Ukraine and attempts were made to contain and recover the oil at sea. Shoreline clean up in the Russian Federation is understood to have been undertaken by the Russian military and civil emergency forces under the supervision of the Prime Minister, Mr Viktor Subkov.

During at-sea operations, 200 tonnes of heavy fuel oil are reported to have been recovered. The Ukrainian authorities have indicated that an unknown amount of oil sank to the sea bed. However, officials of the Regional Administration of the Krasnodar Region believe this is unlikely. During the shoreline clean up in the Russian Federation some 70 000 tonnes of oily debris with a mixture of soil, sand and sea grass are said to have been recovered.

Heavy bird casualties, in excess of 30 000, were reported and a representative of the Sea Alarm Foundation, an environmental agency based in Belgium, travelled to the Russian Federation in an attempt to assist with wildlife rehabilitation efforts.

1992 Civil Liability and Fund Conventions

The Russian Federation is a party to the 1992 Civil Liability and Fund Conventions. Ukraine deposited an instrument of ratification to the 1992 CLC with the Secretary-General of IMO on 28 November 2007 and this Convention did not, therefore, enter into force in Ukraine until November 2008. Ukraine has not acceded to, or ratified, the 1992 Fund Convention.

Location of the Volgoneft 139 incident

The shipowner and his insurer

Volgoneft 139 was owned by JSC Volgotanker. In March 2008, Volgotanker was declared bankrupt by the Commercial Court in Moscow.

Volgoneft 139 was insured by Ingosstrakh for 3 million SDR (£2.6 million), ie the minimum limit of liability under the 1992 CLC prior to November 2003. The minimum limit under the 1992 CLC after November 2003 is however 4 510 000 SDR (£3.9 million). There is therefore an 'insurance gap' of some 1.5 million SDR (£1.3 million).

Volgoneft 139 was not insured by a P&I Club belonging to the International Group of P&I Clubs and was therefore not covered by the Small Tanker Owners Pollution Indemnification Agreement (STOPIA) 2006.

Meetings between the Russian authorities and the Secretariat

In November and December 2007, the Director and the Head of the Claims Department contacted the Russian Embassy in London and the Ministry of Transport in Moscow offering the help of the 1992 Fund to the Russian authorities to deal with the incident. A number of meetings took place at the 1992 Fund offices at which the compensation regime was explained in detail and information was provided to the Russian authorities. In particular, the 1992 Fund offered to send experts from the International Tanker Owner's Pollution Federation (ITOPF) who were on stand-by, ready to travel to the Russian Federation to monitor the situation and provide advice to the Russian authorities in the event claims for compensation were to be made in the future. However, no official reply was received from the Russian authorities and without the required letters of invitation and visas neither the representatives of the 1992 Fund nor the experts from ITOPF could visit the affected area to monitor the clean-up operations.

In April 2008, a meeting took place in London between representatives of the Russian Government, one of the Russian claimants, the shipowner, the Fund Secretariat and the 1992 Funds' experts. Ingosstrakh was invited but did not attend the meeting. At the meeting it was agreed that the claimant and the 1992 Fund would jointly request the Court to grant the

parties sufficient time to examine the documentation and to discuss its contents. It was also agreed that the 1992 Fund's representatives and experts should visit Moscow to discuss the claims arising from the incident.

In May 2008, meetings took place in Moscow at the Ministry of Transport where further claims were submitted. At the meetings the Russian delegation informed the 1992 Fund that, as per order of the Government of the Russian Federation, the Ministry of Transport would be the main speaker on behalf of all Russian Central and Regional Government claimants. The Russian delegation stated that they were preparing the supporting documentation required which would be presented to the 1992 Fund, with translations in English, in the near future. The 'insurance gap' issue was discussed at the meeting. The Russian delegation stated that they understood the problem and that, with goodwill from all the parties, a solution would be found. The delegation pointed out that, under Russian law, international agreements take precedence over national law and that the Russian authorities would examine who should pay for the 'insurance gap' (Ingosstrakh or the Russian Government). It was mentioned that the Russian authorities intended to submit a document to the 1992 Fund with their legal analysis. It was agreed that the 1992 Fund's representatives and experts should also visit the area affected by the spill and hold discussions with the regional authorities.

In June 2008 a team of 1992 Fund's representatives and experts travelled to Moscow, Krasnodar and Novorossiysk to hold discussions with the central and regional authorities and another claimant, and to visit the area affected by the spill. During the visit, meetings took place with representatives of the Ministry of Transport, Ministry of Natural Resources (Rosprirodnadsor), Krasnodar Regional Administration and a clean up contractor based in Novorossiysk. A field trip also took place to the port of Kavkaz where the Fund's representatives and experts inspected the aft part of the *Volgoneft 139* tied up at a berth outside the main port. The 1992 Fund's representatives were also transported by boat to the location in the Strait of Kerch in which the fore part lay submerged. It was observed that some seven months after the incident, oil was still coming out from the fore part of the wreck being visible as sheen on the surface of the water. During the visit valuable information in respect of the cause of the incident was provided and additional information in respect of claims was requested. It was agreed that the Fund's representatives and experts would visit the Russian Federation again to hold further meetings with the national and regional authorities.

A further visit to Moscow, Krasnodar, Novorossiysk and Temryuk took place in September 2008. During this visit the 1992 Fund's representatives met with representatives of the Ministry of Transport, the Ministry of Natural Resources, the Krasnodar Regional Government and claimants. The Russian authorities provided assistance to the 1992 Fund's representatives and experts during the three visits to the Russian Federation.

It is expected that further visits to the Russian Federation will take place in 2009.

Limitation proceedings and the 'insurance gap'

In February 2008 the Fund received a notification from the Arbitration Court of Saint Petersburg and Leningrad Region of proceedings brought by a Russian clean up contractor against the shipowner, the P&I insurer and the 1992 Fund. A number of other claimants have also brought proceedings in the same court.

In February 2008, in the context of these proceedings, the Court issued a ruling declaring that the shipowner's limitation fund had been constituted by means of an Ingosstrakh letter of guarantee for RUB 116 636 700 equivalent to 3 million SDR (£2.6 million).

At a hearing in April 2008 the 1992 Fund presented pleadings, requesting the Court to allow time for the 1992 Fund to examine the claims and enter into discussions with the

claimants. In its pleadings the 1992 Fund argued that the current limit of the shipowner's liability under the 1992 CLC is 4.51 million SDR (£3.9 million) and that, under the Russian constitution, international conventions to which the Russian Federation is party take precedence over Russian internal law and that therefore the Court's ruling establishing the shipowner's limitation fund at only 3 million SDR (£2.6 million) should be amended.

In May 2008 the Court of Appeal rendered a decision dismissing the 1992 Fund's request and confirming the ruling by the Arbitration Court of Saint Petersburg and Leningrad Region establishing the shipowner's limitation fund in the RUB equivalent to 3 million SDR.

The 1992 Fund, after having examined the Court's decision, decided to appeal to the Second Appeal Court (Court of Cassation).

In September 2008 the Court of Cassation rendered a decision dismissing the 1992 Fund's appeal. The Court of Cassation in its reasoning considered that, since Russian law still provided that the shipowner's limit of liability under the 1992 CLC was, in the case of the *Volgoneft 139*, RUB 116 636 700 equivalent to 3 million SDR (£2.6 million), it was for Russian Courts to apply the limits of liability as published in the Russian official Gazette.

The 1992 Fund has appealed against this judgement before the Supreme Court in Moscow, since the Court's decision was in clear contravention of the 1992 CLC as amended with effect from 1 November 2003.

The Executive Committee considered this issue in March, June and October 2008. At the Committee's October 2008 session many delegations expressed their deep concern and disappointment with the fact that the Russian Government had not been prepared to acknowledge that it had failed to correctly implement the Conventions. These delegations stated that they would expect the Russian Government to pay the 'insurance gap' since it was the Government, and not the insurance company, who was responsible for the correct implementation of the Conventions. Two delegations suggested that if the Russian Government did not accept its responsibility for the 'insurance gap', the 1992 Fund, which had an overall responsibility to pay compensation to victims of pollution damage caused by oil spill incidents, would have to pay the missing amount and would then have to take a recourse action against the Russian Government. It was also suggested that another solution could be that the 1992 Fund deducted the amount corresponding to the 'insurance gap' from the compensation due to the Russian Government.

At a hearing in December 2008 before the Arbitration Court of Saint Petersburg and Leningrad Region, the 1992 Fund again requested the Court to allow the Fund's experts additional time to examine the claims and enter into discussions with the claimants. The Court in an interim decision agreed to postpone its consideration of the merits of the claims until a hearing fixed for the end of March 2009. At the same hearing, the Fund submitted pleadings asking the Arbitration Court to reconsider its earlier decision on the shipowner's limitation fund, on the ground that the amendments to the limits of the amount available under the 1992 Civil Liability and Fund Conventions as from November 2003 had been officially published in Russia in October 2008 and that therefore those amendments were now officially part of Russian national law. The Court stated that it was not ready to take a decision on the issue of the increase of the limitation fund at that point in time but that it would do so later.

In December 2008 the Supreme Court confirmed the decision by the Court of Cassation. The Fund will now have to wait for the consideration by the Arbitration court in Saint Petersburg and Leningrad Region on the Fund's pleadings on this subject, which will take place in March 2009

Cause of the incident

Ingosstrakh has submitted a defence in Court arguing that the incident was wholly caused by a natural phenomenon of an exceptional,

inevitable and irresistible character and that therefore no liability should be attached to the owner of the *Volgoneft 139* (Article III.2(a) of the 1992 CLC). If this argument were to be accepted by the Court, the shipowner and its insurer would be exonerated from liability and the 1992 Fund would have to pay compensation to the victims of the spill from the outset (Article 4.1(a) of the 1992 Fund Convention).

The 1992 Fund has appointed a team of experts to examine the weather conditions in the area and the circumstances at the time of the incident to determine the validity of the shipowner's defence. The experts have visited the area where the incident took place and have inspected the aft part of the wreck in the port of Kavkaz.

In summary the preliminary conclusions reached by the 1992 Fund's experts are:

(i) The storm of 11 November 2007 was not exceptional. There are records of similar and comparable storms being experienced in the region four times in the past twenty years.

(ii) There were timely forecasts of the storm and conditions were accurately predicted.

(iii) The storm of 11 November 2007 was irresistible insofar as the *Volgoneft 139* was concerned. The conditions associated with the storm were in excess of the vessel's design criteria. Their analysis shows that the hull would have been overloaded if waves of a length similar to that of the Volgoneft 139 and in excess of four metres height were encountered.

(iv) It was not inevitable that the *Volgoneft 139* would be caught in the storm for the following reasons:

(a) According to the certificate of class as modified by a 'condition of class' of 6 July 2007, the vessel was restricted from trading south of the Kerch Straits. This restriction was confirmed in an enquiry report by the Russian authorities that stated that: 'for navigation in the Kerch Strait to the south of the sand bank of Tuzla the season is restricted from April to October inclusive. Thus the tanker was in this area beyond the limits of the period of navigation allowed by the Register.' The casualty would have been avoided if the *Volgoneft 139* had been operating within the limits prescribed in her certificate of class as valid at the material time.

(b) Before the vessel reached the exposed area the master received information that made it clear that there would be at least 36 hours before the envisaged ship-to-ship transfer would take place. The master should have acted on this information and returned to a place where shelter could be obtained from the southerly winds which were forecast. Had he done so the casualty would have been avoided.

(c) By early afternoon of 10 November, the forecasts were indicating severe weather with winds from the South East. The Kerch Straits provide no shelter to South Easterly winds and therefore to avoid exposure to strong winds and rough seas it was necessary to proceed back to the north immediately.

(d) Investigations indicate that the Kerch Straits anchorage is regarded as a commercial port. The port functions with commercial and administrative facilities such as agency and customs and it is administered and monitored by a Vessel Traffic Service and Traffic Control. A proper system of control and monitoring of vessels in the Kerch Straits anchorage should have provided storm warnings and advisory notices or notices of direction for vessels posing a particular risk if exposed to extreme

Volgoneft 139: Oil recovery using an ocean boom sweep system

weather, such as river tankers awaiting ship-to-ship transfer operations. A proper system would have provided for such vessels being advised or directed to vacate the southern anchorage and proceed north with priority for transit through the Kerch channel in advance of a storm. A proper system would have closed the anchorage to such vessels approaching from the north when a storm warning was in force. The casualty would have been avoided had the vessel been directed to proceed to the north in advance of the storm.

The Executive Committee considered this issue at its June and October 2008 sessions. At the Committee's October session most delegations agreed with the Director's preliminary conclusion that the incident was not caused by a natural phenomenon of an exceptional, inevitable and irresistible character and expressed the view that in this case the shipowner should not be exonerated from liability in accordance with Article III.2 (a) of the 1992 CLC.

Some delegations asked whether the 1992 Fund should consider challenging the shipowner's right to limit his liability since the *Volgoneft 139* was in the Kerch Strait in November 2007, in breach of the certificate of class. The Director replied that the Secretariat, when handling incidents, always considered whether the 1992 Fund should challenge the shipowner's right to limit its liability and that this would also be considered in this case.

The Russian delegation stated that it did not agree with the information provided by the Director that the storm of 11 November 2007 was not exceptional, since according to official reports the weather conditions in the Kerch Strait on that date were absolutely abnormal and had not been encountered in the area for 50 years. The Russian delegation stated that it also disagreed with the information provided in item (iv) of the preliminary conclusions of the 1992 Fund's experts since the *Volgoneft 139* was not restricted for navigation in the Kerch Strait between November and March. That delegation offered to provide additional information in this respect.

One delegation asked what was meant in the

1992 CLC by 'natural phenomenon of an exceptional, inevitable and irresistible character' and whether, in the interpretation of these words, account would be taken of subjective considerations such as the size of the ship. The Director replied that the concept of 'natural phenomenon of an exceptional, inevitable and irresistible character' was equivalent to what was called 'force majeure' or 'act of god' in most jurisdictions and that it was meant to be an objective test that would not take into account considerations such as the size of a ship.

Claims for compensation

The claims situation as at 31 December 2008 is summarised in the table below:

The Russian Central and Regional Governments have presented claims totalling RUB 8 080.9 million (£186.3 million). These claims relate to the costs of clean up and preventive measures and the costs of reinstatement of the marine environment.

In January 2008 the 1992 Fund received a claim for compensation from a Russian clean-up contractor for the amount of RUB 73.5 million (£1.7 million) for the cost of clean-up operations, discharging oil from the aft part of the tanker, towage of the aft part to Kavkaz (Russian Federation) and removal of the oil from the sunken fore part. Following an examination of the documentation submitted, the 1992 Fund

Category	Claimant	Claim	Claim	Current situation
Cleanup	Contractor	RUB 73.5 million	£1.7 million	Interim assessment completed
Cleanup	Regional Government	RUB 207.9 million	£4.8 million	Documentation submitted being examined
Environmental damage	Ministry of Natural Resources	RUB 6 048.6 million	£139.5 million	No supporting documentation submitted. Claim calculated on the basis of 'Methodika'
Environmental monitoring	Ministry of Natural Resources	RUB 0.5 million	£11 500	Documentation submitted being examined
Cleanup	Ministry of Emergencies	RUB 4.3 million	£99 000	No supporting documentation submitted
Reinstatement measures	Regional Government	RUB 1 819.6 million	£42 million	Documentation submitted being examined
Cleanup	Shipowner	RUB 5.2 million	£120 000	Documentation submitted being examined
Tourism	Private industry	RUB 21.5 million	£496 000	Documentation submitted being examined
Fisheries	Private industry	RUB 22.4 million	£515 000	Documentation submitted being examined
Total		**RUB 8 203.5 million**	**£189.2 million**	

approved an interim assessment of this claim in the amount of RUB 30 million (£692 000). The difference between the claimed and assessed amounts is largely accounted for by the apparent duplication of a number of items claimed, and the fact that the salvage operations had a dual purpose (salvage and preventive measures).

The Kerch Merchant Port (Ukraine) has submitted a claim before the Arbitration Court in Saint Petersburg and Leningrad Region totalling RUB 15 341 177 (£354 000) in respect of damage to property and costs incurred in clean-up operations. This claim relates to damage caused in Ukraine, which was not party to the 1992 CLC at the time of the incident and is not party to the 1992 Fund Convention. The 1992 Fund will therefore not have to pay compensation in respect of this claim.

In September 2008, the Regional Government provided documentation to the 1992 Fund in support of the claims it had submitted. The documentation is being examined by the 1992 Fund's experts.

The shipowner has presented a claim for RUB 5.2 million (£120 000) for the cost of cleaning the aft section of *Volgoneft 139* and for disposal of part of the oil collected from the wreck. The documentation is being examined by the 1992 Fund's experts.

Four claims, totalling RUB 22.4 million (£515 000), have been received from the fisheries sector, and one claim, for RUB 21.5 million (£496 000) from the tourism sector. In September 2008, the 1992 Fund's representatives held a meeting with representatives of two of the fisheries claimants and the tourism claimant. Documentation has been provided by two of the claimants and is being examined by the 1992 Fund's experts.

At the 42nd session of the Executive Committee, held in October 2008, the Russian delegation stated that, with regard to the claim from a Russian clean-up contractor for RUB 73.5 million (£1.7 million), the measures taken by the clean-up contractor had had as its only purpose the prevention of pollution damage since the vessel was completely lost and the cargo recovered was a mixture of oil and water and had no residual value.

Methodika claim

At a meeting in May 2008 the Russian authorities informed the 1992 Fund that the Ministry of Natural Resources had submitted a claim for environmental damage for some RUB 6 048.6 million (£133 million). This claim is based on the quantity of oil spilled, multiplied by an amount of Roubles per ton ('Methodika'). The Secretariat informed the Russian authorities that a claim based on an abstract quantification of damages calculated in accordance with a theoretical model was in contravention of Article I.6 of the 1992 CLC and therefore not admissible for compensation, but that the 1992 Fund was prepared to examine the activities undertaken by the Ministry of Natural Resources to combat oil pollution and to restore the environment to determine if and to what extent they qualified for compensation under the Conventions.

At the Executive Committee session in October 2008, many delegations expressed deep concern about the use of the 'Methodika' formula. These delegations stated that the 1992 Fund's criteria for admissibility of claims were clear in that only claims for loss or damage actually incurred, or to be incurred, which were substantiated, were admissible under the Conventions and that claims based on an abstract quantification calculated in accordance with a theoretical model were not admissible. It was pointed out that the Russian Government had the obligation to implement the 1992 Civil Liability and Fund Conventions and that apparently the provisions of Russian internal law were in conflict with these Conventions. Some delegations suggested that the Russian Government should amend its internal law in order to comply with its obligations under the Conventions.

Statement by the Russian Delegation at the Executive Committee session in October 2008

At the Executive Committee session in October

2008, the Russian delegation stated that the *Volgoneft 139* incident was the biggest oil spill incident that had ever happened in the Russian Federation and that the Russian Government had made all possible efforts to save lives and to reduce the level of pollution and further damage to the environment.

The delegation stated that the Russian Federation had fulfilled its obligations as a contracting party to the 1992 Civil Liability and Fund Conventions and that the Russian Federation had enacted relevant legislation, which included a procedure for the issuing of certificates of insurance to ships in accordance with the 1992 CLC. The delegation also stated that the insurance certificates were issued by the harbour master on the basis of statements (Blue Cards) by insurance companies which provided that the ship was insured for pollution liabilities up to the level required by the 1992 CLC and that this procedure had also been followed for the *Volgoneft 139*. The delegation also stated that Ingosstrakh had issued the Blue Card with the statement of full and proper insurance for the *Volgoneft 139* but that it had later found that the insurance cover was less than that required under the current limits of the 1992 CLC.

The Russian delegation also stated that efforts were being made by the Russian Federation to find a solution to the 'insurance gap' problem. It was pointed out, however, that Ingosstrakh was a private company not under instructions from the Russian Government.

It was stated that, after the *Volgoneft 139* incident, the Russian authorities had checked the certificates of insurance for all oil tankers registered under Russian flag, including those insured by Ingosstrakh, and that all tankers now had insurance cover in accordance with the current 1992 CLC limits.

The Russian delegation informed the Executive Committee that the Russian Government had established a Commission under the leadership of the Ministry of Transport to investigate the incident, and that the official report of the Commission had concluded that the weather conditions on the date of the incident at the Kerch Strait were absolutely abnormal and unexpected for the region and the season and that the weather forecast available had not predicted the winds and waves actually encountered.

The Russian delegation expressed its concern about the perceived slowness of the compensation system in general since, although the Secretariat had fully cooperated with the Russian authorities, the incident had happened almost one year before and the victims had not yet received compensation for the losses suffered.

The Russian delegation stated that, in its view, the Russian Government had provided sufficient information to the Secretariat and added that it was willing to provide whatever additional information the Executive Committee required. That delegation also stated that the Russian Government as such had not submitted a claim and that the different Ministries and companies submitting claims had the responsibility of providing information in support of their claims.

Interventions by delegations at the Executive Committee meeting in October 2008

At the Executive Committee meeting in October 2008, many delegations stated that they would need to have more information from the Russian delegation, in particular transparent and convincing explanations regarding issues such as the cause of the incident, clean-up operations and a map showing the affected area. It was their strong view that the 1992 Fund should not start paying claims until the Fund had received much more information regarding the incident.

Several delegations expressed deep concern about the fact that the Conventions appeared not to have been correctly implemented in the Russian Federation and that Russian courts so far seemed to be giving priority to domestic legislation rather than to the country's international obligations. The point was made that one of the weaknesses of the international system was that national courts could decide to apply national law instead of giving priority to international

commitments. It was pointed out that the correct implementation of the Conventions into national legislation was the responsibility of Member States.

A number of delegations asked the Director whether the 1992 Fund had taken into account that the damages could have also been caused by sulphur from the other ships which had sank in the area as a result of the storm. It was stressed that the 1992 Fund should only pay compensation for damage caused by oil, not by sulphur. The Director replied that determining the cause of the damage was always part of the investigation by the 1992 Fund when assessing claims for compensation.

One delegation expressed concern about the fact that the 1992 Fund's experts had not been able to visit the Russian Federation immediately after the incident had occurred and that it had only been in June 2008, some seven months after the incident, that the experts had had an opportunity to visit the affected area. That delegation enquired whether that could cause problems with the assessment of claims.

The Director replied that the Secretariat had from the beginning offered its help to the Russian authorities and had provided them with information on the operation of the compensation regime. He stated that at the beginning of the incident there had, however, been no cooperation from the Russian authorities, that valuable time had therefore been lost and that it was always a handicap if experts were not in the affected area from the outset.

In summing up the discussion, the Chairman concluded that the Executive Committee still considered that the information submitted by the Russian authorities was inadequate and that the Committee could not authorise payment of claims until it was satisfied with the information provided. He also pointed out the differences between the information available to the Secretariat and that referred to by the Russian delegation regarding the weather conditions at the time of the incident and the restrictions imposed upon the *Volgoneft 139* for navigation in the Kerch Strait at the time of the incident. The Chairman asked the Russian authorities and the Secretariat to work together to resolve the points of difference.

15.9 HEBEI SPIRIT

(Republic of Korea, 7 December 2007)

The incident

The Hong Kong flag tanker *Hebei Spirit* (146 848 GT) was struck by the crane barge *Samsung Nº1* while at anchor about five nautical miles off Taean on the west coast of the Republic of Korea. The crane barge was being towed by two tugs (*Samsung Nº5* and *Samho T3*) when the tow line broke. Weather conditions were poor and it was reported that the crane barge drifted into the tanker, puncturing three of its port cargo tanks.

The *Hebei Spirit* was laden with about 209 000 tonnes of four different crude oils. Due to inclement weather conditions, repairs of the punctured tanks took four days to complete. In the meantime, the crew of the *Hebei Spirit* tried to limit the quantity of cargo spilled through holes in the damaged tanks by making it list and transferring cargo between tanks. However, as the tanker was almost fully laden, the possibilities for such actions were limited. As a result of the collision a total 10 900 tonnes of oil (a mix of Iranian Heavy, Upper Zakum and Kuwait Export) escaped into the sea. The remaining oil in the damaged tanks was transferred to other tanks on board and to another vessel. Once stabilised, the *Hebei Spirit* proceeded to the Hyundai Oilbank terminal in the port of Daesan (Republic of Korea), where the cargo was discharged.

Shortly after the incident the Korean Government declared it a national disaster and on 24 December 2007 the *Hebei Spirit* was arrested at the suit of the Korean Marine Pollution Response Corporation (KMPRC), a state-owned pollution response agency.

The *Hebei Spirit* is owned by Hebei Spirit

Hebei Spirit: Temporary storage of oil in a lined pit above the high tide line

Shipping Company Limited. It is insured by Assuranceföreningen Skuld (Gjensidig) (Skuld Club) and managed by V-Ships Limited. It is understood that the crane barge and the two tugs are owned and/or operated by Samsung Corporation and its subsidiary Samsung Heavy Industries, which belong to the Samsung Group, Korea's largest industrial conglomerate.

The Fund and the Skuld Club appointed a team of Korean and international surveyors to monitor the clean-up operations and investigate the potential impact of the pollution on fisheries, mariculture and tourism activities.

Impact of the spill

Much of Korea's western coast has been affected to varying degrees. Shoreline composed of rocks, boulders and pebbles, as well as long sand amenity beaches and port installations in the Taean Peninsula and in the nearby islands, were polluted. Over a period of several weeks, mainland shorelines and islands further south also became contaminated by emulsified oil and tar balls. A total of some 375 kilometres of shoreline were affected along the west coast of Korea. A considerable number of commercial vessels were also contaminated.

The west coast of the Republic of Korea hosts a large number of mariculture facilities, including several thousand hectares of seaweed cultivation. It is also an important area for shellfish cultivation and for large-scale hatchery production facilities. The area is also exploited by small and large-scale fisheries. The oil affected a large number of these mariculture facilities, as it passed through the supporting structures, contaminating buoys, ropes, nets and the produce. The Korean Government financed the removal operations of the most affected oyster farms in two bays in the Taean Peninsula. The removal operations were completed in early August 2008.

The oil has also impacted amenity beaches and other areas of the Taean National Park. The Taean Peninsula is a favourite tourist destination for visitors from the Seoul metropolitan area, with an estimated 20 million visitors every year, mostly in the months of July and August.

Clean-up operations

The Korea National Coast Guard Agency, a department of the Ministry of Maritime Affairs and Fisheries (MOMAF), has overall responsibility for marine pollution response in the waters under the jurisdiction of the Republic of Korea. By the first quarter of 2008, responsibility for overseeing onshore clean up had been passed on to the affected local governments.

The Coast Guard coordinated the response at sea. Over 100 vessels of the Coast Guard, the Navy and KMPRC were deployed to carry out clean-up operations. Over 1 500 fishing vessels were also deployed. The Coast Guard applied dispersants from vessels and later helicopters over patches of floating oil. Tens of kilometres of booms were also deployed at sea and along coastal areas.

The government-led response at sea was completed within two weeks although a large number of fishing vessels were still deployed in the following weeks to tow sorbent booms and collect tar balls. Some were used to transport manpower and materials to offshore islands in support of clean-up operations until later in the year.

The Korean Coast Guard tasked a total of 21 licensed clean up contractors, supported by local authorities and fisheries cooperatives to undertake shoreline clean-up operations. Onshore clean-up operations were carried out at numerous locations along the western coast of Korea. Local villagers, army and navy cadets and volunteers from all over Korea also participated in the clean-up operations. In excess of one million man-days were worked during the first two months. Clean-up operations involved both manual and mechanical removal of bulk oil and the work of a large number of volunteers wiping rocks and pebbles using sorbent materials.

The removal of the bulk oil was completed by the end of March 2008. The major part of secondary clean-up operations, involving, among other techniques, surf washing, flushing and hot water high-pressure treatment, were completed by the end of June 2008. Some clean-up operations in remote areas continued until October 2008.

The 1992 Civil Liability and Fund Conventions

The Republic of Korea is a party to the 1992 CLC and a Member State of the 1992 Fund, but not a Member State of the Supplementary Fund.

As a consequence, since it is very likely that the total amount of damages will exceed the limitation amount applicable under the 1992 CLC, the Fund will be liable to pay compensation to the victims of the spill.

The tonnage of the *Hebei Spirit* (146 848 GT) is in excess of 140 000 GT. The limitation amount applicable is therefore the maximum under the 1992 CLC, namely 89.77 million SDR (£84 million). The total amount available for compensation under the 1992 CLC and the 1992 Fund Convention is 203 million SDR (£178 million).

Level of payments

The Executive Committee at its March 2008 session authorised the Director to settle and pay claims arising from this incident to the extent that they did not give rise to questions of principle not previously decided by the Committee. The Executive Committee also decided that the conversion of 203 million SDR into Korean Won would be made on the basis of the value of that currency *vis-à-vis* the SDR on the date of the adoption of the Executive Committee's Record of Decisions of its 40th session, ie 13 March 2008 at the rate of 1 SDR = Won 1 584.330, giving a total amount available for compensation of Won 321 618 990 000 (£178 million).

At the same session the Committee noted that, based on a preliminary estimation by the Fund's experts, the total amount of the losses arising as a result of the *Hebei Spirit* incident was likely to exceed the amount available under the 1992 Civil Liability and Fund Conventions. In view of

the uncertainty as to the total amount of the losses, the Committee decided that payments should for the time being be limited to 60% of the established damages.

In June 2008 the Executive Committee took note of new information which indicated that the extent of the damage was likely to be superior to that initially estimated in March 2008. At that session, the Committee decided that, in view of the increased uncertainty as to the total amount of the potential claims, and in view of the need to ensure equal treatment to all claimants, payments made by the Fund should for the time being be limited to 35% of the established damages.

In October 2008, the Executive Committee decided to maintain the level of payment at 35% of the amount of the established damages, and to review the situation at its next session.

Actions by the Korean Government

Hardship payments made by the Korean Government

The Korean Government informed the Fund that payments totalling Won 117.2 billion (£58 million) have been made to residents in the affected areas. Out of this amount, the Central Government has provided Won 76.8 billion (£38 million), the Chungcheongnam Province Won 15 billion (£7.4 million) and private donors Won 25.4 billion (£12.5 million). The local authorities in the affected provinces have distributed the payments.

It has been reported in the press that in Taean County, which is one of the most affected areas, a total of 18 757 households received payments between Won 746 862 (£369) and Won 2 916 600 (£1 440).

In June 2008 the Korean Government informed the Executive Committee that these payments were made as donations to the affected residents. The payments therefore did not constitute payment for compensation of pollution damage and would not fall within the scope of Article 9.3 of the Fund Convention.

Payments by local authorities

It is understood that the Taean County Government and Boryeong City Government have made payments totalling Won 4 421 357 479 (£2.4 million) to claimants in the clean-up sector in respect of the cost of villagers' labour in January and February 2008, corresponding to the difference between the amount claimed against the Fund and the Skuld Club and the amount assessed. It is expected that Taean County Government will submit a subrogated claim in respect of the payments made.

Special Law for the support of the victims of the *Hebei Spirit* incident

At the June 2008 session of the Executive Committee the Korean Government informed the Fund that a Special Law for the Support of Affected Inhabitants and the Restoration of the Marine Environment in respect of the *Hebei Spirit* Oil Pollution Incident was approved by the National Assembly in March 2008. Under the provisions of the Special Law, the Korean Government was authorised to make payments to claimants based on the assessments made by the Skuld Club and the Fund within 14 days from the date they submit proof of assessment to the government. Claimants could therefore receive compensation in full for the losses suffered as a result of the incident based on the assessments of claims by the Fund and the Skuld Club. The Special Law entered into force on 15 June 2008.

At the same session the Korean Government also informed the Fund that if the Fund and the Skuld Club paid claimants compensation on a pro-rata basis, the Korean Government would pay the claimants the remaining percentage so that all claimants would receive 100% of the assessment.

As at 31 December 2008 the Korean Government has made payments totalling Won 19 477 385 700 (£11 million) to 34 claimants in the clean-up sector based on assessments by the Fund and the Skuld Club. The Korean Government has submitted a subrogated claim for these payments.

Loans granted by the Korean Government
As a measure to assist victims of pollution damage as a result of the incident, the Korean Government has granted loans totalling Won 1 330 million (£730 000) to 16 clean up contractors through an agreement with the National Federation of Fisheries Cooperative.

Korean Government decision to 'stand last in the queue'
At the June 2008 Session of the Executive Committee the Korean Government informed the Committee of its decision to 'stand last in the queue' in respect of compensation for clean-up costs and other expenses incurred by the central and local governments. The Korean Government further informed the Executive Committee that it expected its claims for which it would 'stand last in the queue' to be in the region of Won 75 billion (£41 million), but that this figure was likely to increase as the Government continued to incur costs in order to regenerate the local economy, including works to reinstate the environment and promote consumer spending.

The Fund and the Skuld Club are in frequent contact with the Korean Government to maintain a coordinated system for the exchange of information regarding compensation in order to avoid duplication of payments.

Cooperation Agreements between the Korean Government, the shipowner and the Skuld Club

In January 2008, discussions took place on compensation issues which resulted in the First Cooperation Agreement concluded between the shipowner, Skuld Club, KMPRC and MOMAF. The Fund was consulted during the negotiations but is not a party to the Agreement. Details on the contents of the First Cooperation Agreement can be found in document 92FUND/EXC.40/9.

The Skuld Club also entered into discussions with the Korean Government in order to resolve its concern that Korean courts dealing with the limitation proceedings might not fully take into account payments made by the Skuld Club and that the Club would therefore run the risk of paying compensation in excess of the limitation amount.

In July 2008 a Second Cooperation Agreement was concluded between the shipowner, Skuld Club and the Korean Government (Ministry of Land, Transport and Maritime Affairs (MLTM), which had incorporated part of the functions of MOMAF). Under this Agreement, the Club undertook to pay claimants 100% of the assessed amounts up to the shipowner's limit of liability under the 1992 CLC, namely 89.77 million SDR (£84 million). In return, the Korean Government undertook to pay all claims in full, as assessed by the Club and Fund, as well as all amounts awarded by judgements under the 1992 CLC and 1992 Fund Convention in excess of the limit so as to ensure that all claimants would receive compensation in full. The Korean Government further undertook to deposit the amount already paid out by the Skuld Club to claimants into court should the Limitation Court ordered a deposit of the limitation fund.

Claims office

In January 2008, in anticipation of receiving a large number of claims, and after consultation with the Korean Government, the Fund and the Skuld Club opened a Claims Office (the *Hebei Spirit* Centre) in Seoul to assist claimants in the presentation of their claims for compensation. The Centre has a manager and three supporting staff members. The office became fully operational on 22 January 2008.

Claims for compensation

As at 31 December 2008 the Skuld Club and the Fund had received 2625 claims totalling Won 329 billion (£181 million). The table on page 130 provides a breakdown of the different categories of claims received.

Two hundred and twenty four claims had been approved for Won 36 857 million (£20 million). Interim payments totalling Won 17 112 703 535 (£9 million) had been made by the Skuld Club in respect of 65 claims. The payments had been made at 100% of the assessed amount. The remaining claims had been queried and were

Category of claim	Number of claims	Claimed amount (Won million)	Claims assessed	Assessed amount (Won million)	Claims paid	Paid amount (Won million)	Claims rejected
Clean up and preventive measures	222	150 934	111	36 596	63	17 056	1
Property damage	16	2 619	-	-	-	-	-
Fisheries and mariculture	289	108 275	1	-	-	-	1
Tourism and other economic damage claims	2097	64 803	112	261	2	57	42
Environmental damage	1	2 195	-	-	-	-	-
Total	**2 625**	**328 826**	**224**	**36 857**	**65**	**17 113**	**44**
Total (£ million)		**181.58**		**20.36**		**9.45**	

awaiting response from the claimant. Most claims were submitted with very poor or no supporting documentation.

The Fund and Club's experts have been working in close contact with the Korean Government in order to explore the possibility of supplementing the information available with official statistics and other data that might help assess the claims.

Investigations into the cause of the incident

Investigation in Korea
An investigation into the cause of the incident was initiated soon after the incident by the Incheon District Maritime Safety Tribunal in Korea.

In September 2008, in a decision rendered by the Incheon Tribunal both the two tugs and the *Hebei Spirit* were considered at fault for causing the collision. The Tribunal found that the Master and the Duty Officer of the *Hebei Spirit* were also partly liable for the collision between the crane barge and the *Hebei Spirit*.

A number of defendants, including Samsung Heavy Industries, the Masters of the tug boats and the Master and Duty Officer of the *Hebei Spirit* have appealed against the decision to the Central Maritime Safety Tribunal.

In December 2008 the Central Maritime Safety Tribunal delivered its decision. The decision of the Central Tribunal is similar to the one of the Incheon Tribunal in that the two tugs were found mainly responsible and the Master and the Duty Officer of the *Hebei Spirit* were also found partly liable for the collision between the crane barge and the *Hebei Spirit*.

Investigation in Hong Kong, China
An investigation into the cause of the incident had also been initiated by the ship's flag state administration in Hong Kong, China. As at 31 December 2008 the investigation was still ongoing.

Legal proceedings

Criminal proceedings

Court of first instance
In January 2008, the Public Prosecutor of the Seosan Branch of the Daejeon District Court (Seosan Court) brought criminal charges against the Masters of the crane barge and the two tugs. The Masters of the two tugs were arrested. Criminal proceedings were also brought against

Hebei Spirit: Temporary storage tanks at the beach head

the Master and Chief Officer of the *Hebei Spirit*. The Master and Chief Officer of the *Hebei Spirit* were not arrested, but they were not permitted to leave the Republic of Korea.

In June 2008, the Seosan Court delivered its judgement to the effect that (i) the Master of one of the tugboats was sentenced to three years imprisonment and a fine of Won 2 million (£1 000), (ii) the Master of the other tug boat was sentenced to one year imprisonment, (iii) the owner of the two tug boats (Samsung Heavy Industries), was sentenced to a fine of Won 30 million (£16 600), (iv) the Master of the crane barge was found not guilty and (v) the Master and Chief Officer of the *Hebei Spirit* were also found not guilty.

The Public Prosecutor and the owner of the tug boats filed an appeal against the judgement, pending which the Master and Chief Officer of the *Hebei Spirit* were still not permitted to leave the Republic of Korea.

Court of Appeal

In December 2008, the Criminal Court of Appeal (Daejeon Court) rendered its judgment. In its judgment, the Daejeon Court reduced the sentence against the Masters of the two tugboats. The judgement overturned the not-guilty judgements for the Master of the crane barge and the Master and Chief Officer of the *Hebei Spirit*. The owner of the *Hebei Spirit* was also given a fine of Won 30 million (£16 600) and the Master and Chief Officer of the *Hebei Spirit* were arrested.

Civil Proceedings

Limitation proceedings by the owners of the *Hebei Spirit*

In February 2008, the owners of the *Hebei Spirit* made an application to commence limitation proceedings before the Seosan Branch of the Daejeon District Court (Limitation Court). The Limitation Court decided to postpone its decision on the shipowners' right to limit his liability since the shipowners had not provided evidence that claims in excess of the limitation amount had been submitted and since the results of the criminal investigation had not been presented to the Court.

In August 2008, at a hearing, the owner of the *Hebei Spirit* requested the Court to issue an order granting the shipowner's right to limit its liability. The Court however, decided not to grant the request and to give time to the victims of the oil spill to register their claims.

Limitation proceedings by the owners of the two tugboats and the owner of the crane barge
In December 2008, the owner of the two tug boats and of the crane barge (Samsung Heavy Industries) filed a petition requesting the Seoul Central District Court to issue an order granting the right to limit its liability in the amount of 2.2 million SDR (£2 million). A decision is expected in 2009.

Appointment of Court experts
In December 2007, a group of fishery claimants belonging to the Seosan Fisheries Cooperatives made an application to Seosan Court requesting the Court to order the preservation of evidence and to appoint a court expert to assess the losses.

In March 2008, another group of fishery claimants from the area of Boryeong City and Hongsung County made a similar application to the Hongsung Court.

The 1992 Fund has instructed its Korean lawyers to intervene in the proceedings to ensure that the interests of the Fund are protected.

In January and April 2008 respectively, the two Courts appointed the Maritime Research Institute of Pukyong National University and the Fishery Science Institute of the Jeonnam University as the court expert tasked with the assessment of the damages arising from the *Hebei Spirit* incident. The Courts ordered that any material that the court experts receive from the claimants is made available to the experts engaged by the Skuld Club and the Fund who should have unrestricted access to any material necessary to conduct the assessment of losses.

Injunction against the experts engaged by the Club and Fund
In March 2008, three fishermen and two owners of raw-fish restaurants filed an application for an injunction with the Seoul Central District Court. This was aimed at preventing the experts appointed by the Club and Fund from carrying out the assessments on the grounds that they were not qualified under Korean Law to carry out such work.

In April 2008, the Court dismissed the application since the claimants still had the right to bring the claims into court if they did not agree with the assessment. The Court stated that under Korean law the experts engaged by the Club and Fund were authorised to carry out the investigation and assessment of damages arising from an oil pollution incident.

The claimants appealed against the decision. A decision by the Court of Appeal is expected in 2009.

15.10 INCIDENT IN ARGENTINA

(Argentina, 25/26 December 2007)

The incident

Following reports of oil at sea on 26 December 2007 the Argentine authorities undertook over-flights of the coastal area off Caleta Córdova, Chubut Province, Argentina, and reported a slick covering about 14 km^2 and estimated to contain about 50-200 tonnes of crude oil. Later the same day, a significant quantity of oil impacted the shoreline in Caleta Córdova. A total of 5.7 kilometres of coast was reported to have been affected and shoreline clean-up operations were undertaken by local contractors under the supervision of the provincial government.

An investigation into the cause of the incident was commenced by the Criminal Court of Comodoro Rivadavia (Argentina). Shortly before the pollution was discovered, the Argentine tanker *Presidente Umberto Arturo Illia* (*Presidente Illia*) (35 995 GT) had been loading oil at a loading buoy off Caleta Córdova. The vessel was detained by the Court and an inspection of the ship was carried out by the

Incident in Argentina: Tide lines of stranded oil on a shoreline

maritime authorities. This revealed a fault in the vessel's ballast system and an inspection carried out subsequently at the port of discharge also revealed that there were residues of crude oil in three ballast tanks.

The owner of the *Presidente Illia* and its insurer however contest liability and argue that the oil which impacted the coast must have come from another source.

Impact of the spill

Some 400 birds are reported to have died as a result of the spill. Animal welfare and environmental associations, together with some 250 volunteers, undertook bird rescue and rehabilitation. A bird recovery centre was set up in an abandoned poultry farm.

Local fishing activities were disrupted, although it is understood that the operator of the loading buoy arranged for transport of the subsistence fishermen to alternative sites further along the coastline to enable them to continue their fishing operations. It is expected that there will be economic losses in the fisheries sector.

The area affected by the spill is used for recreational purposes and it is therefore expected that there will be losses in the tourism sector.

Clean-up operations

Clean-up operations on the shoreline were undertaken from 27 December 2007 to 22 February 2008 by local contractors under the supervision of the local government.

Clean up was concentrated on the 1.5 kilometres of coastline most heavily oiled and involved, *inter alia*, the removal of some oiled beach substrate. Local environmental scientists advised against this measure and less intrusive methods of clean up were used thereafter.

Approximately 160 m^3 of oily water and 900 m^3 of oily debris were collected during the clean-up operations.

A Crisis Committee was established shortly after the incident, comprising local, provincial and

federal authorities, fishermen, affected persons, and the operator of the loading buoy. The Crisis Committee recommended that a risk assessment be conducted to establish the social and environmental consequences of the incident and to make recommendations on any remediation measures needed.

1992 Civil Liability and Fund Conventions

Argentina is party to the 1992 Civil Liability (1992 CLC) and Fund Conventions. The limit of liability of the owner of the *Presidente Illia* under the 1992 CLC is estimated to be 24 067 845 SDR (£22.8 million).

The *Presidente Illia* was insured for pollution liabilities with the West of England Ship Owners Mutual Insurance Association (Luxemburg) (West of England Club).

Investigations into the cause of the incident

Soon after the spill the Prefectura Naval (maritime authorities) started an investigation into the incident. The maritime authorities inspected the *Presidente Illia*, both in Caleta Córdova and in the port of discharge, Campana. These inspections revealed a fault in the ballast system, residues of crude oil in three ballast tanks and traces of crude oil in the ballast-discharging line. In addition, measurement reports allegedly showed that the quantity received ashore at the discharge port was notably less than the quantity transferred to the vessel at the loading port.

A number of other vessels in the area were inspected by the maritime authorities but none was detained.

Legal proceedings

The 1992 Fund has appointed an Argentine lawyer to follow the legal proceedings initiated in Argentina as a result of this incident.

Following a court order, the *Presidente Illia* was detained at Campana in January 2008. The ship remains under detention in connection with the investigation into the cause of the incident. An inspection of the ship revealed a leak in the ballast line passing through Nº1 Centre cargo tank. In a second inspection, residues of crude oil were found in three ballast tanks. The Court investigated in particular the role of the shipowner's representative (superintendente), the master and several other officers of the *Presidente Illia*, the operator of the loading buoy and the inspector of the cargo.

In March 2008 the Criminal Court rendered a preliminary decision that names the shipowner's representative (superintendente), the master and several other officers of the *Presidente Illia*, as parties responsible for the incident.

The Court considered that whilst the *Presidente Illia* was loading Escalante crude oil on 25 and 26 December 2007 at a loading buoy off Caleta Córdova, an unknown quantity of the oil that was being loaded had entered the ballast system due to a fault in the ballast line, and had subsequently been spilled emulsified with water during the deballasting process.

The conclusions of the Court are supported by chemical analyses which show that remains of hydrocarbons were found in the ballast pipes as well as in the pump of segregated ballast from the *Presidente Illia*, and that these remains matched the Escalante type oil loaded at the loading buoy, and were also substantially similar to the samples taken on the shore in Caleta Córdova. When the authorities carried out their inspection and took samples upon the vessel's arrival at the port of discharge, they observed the dripping of hydrocarbon from the ballast-discharging pipe. Moreover, the information contained in the relevant reports by the cargo inspector allegedly indicates that the quantity received ashore at the discharge port was notably less than the quantity transferred to the vessel at the loading port.

The accused parties have appealed.

The shipowner and the insurer maintain that the *Presidente Illia* was unlikely to have caused the damage. They argue that any spill caused by the *Presidente Illia* was very minor and highly unlikely to have reached the coast and that the

oil that reached the coast must therefore have come from another source. The shipowner and the insurer also argue that anonymous oil spills are frequent in Caleta Córdova and question the validity of the analysis carried out by the laboratory appointed by the Court.

Claims for compensation in Court

Shortly after the spill, the province of Chubut submitted a request for security for US$50 million (£28 million) to the Criminal Court of Comodoro Rivadavia. The Court dismissed the request for security on procedural grounds.

The province of Chubut has also submitted a claim in the Court of Comodoro Rivadavia for compensation for the damage caused by the incident, including damage to the environment. The claim has not been quantified. The shipowner has submitted points of defence denying his liability for the spill and requesting the Court to bring the 1992 Fund into the proceedings.

Thirty-two inhabitants of the area have so far been admitted by the Court as claimants. It is expected that they will also claim damages at a later stage.

Expected claims

The 1992 Fund has been informed that the experts appointed by the shipowner have estimated the cost of the clean-up operations at US$ 1 250 000 (£855 000) and the costs of the birds rescue and recovery operation at US$1 300 000 (£889 000).

Several mollusc gatherers and artisanal fishermen have received subsidies from a Council during a period of about three or four months, when all fishing activities were prohibited.

An artisanal fisherman has also indicated that he will claim for economic losses during the fishing ban.

The affected area is used for local tourism and sport fishing, and there are small restaurants. Thus, further claims for losses can be expected.

Actions taken by the 1992 Fund

The Secretariat was informed about this incident in May 2008 and has since been following the investigations into the cause of the incident carried out by the Criminal Court of Comodoro Rivadavia. The Secretariat has learnt that the preliminary decision by that Court point to the *Presidente Illia* as the origin of the pollution.

The limit of liability of the owner of the *Presidente Illia* under the 1992 CLC is estimated to be 24 million SDR (£22.8 million) and although the admissible quantum of the damages as a result of the incident is still uncertain, according to the initial estimates it is likely that the total amount of the damage will be within the shipowner's limit, in which case the 1992 Fund would not be called upon to pay compensation.

The shipowner and his insurer, however, maintain that the *Presidente Illia* did not cause the spill that impacted the coast and have appealed against the Court's decision. If they are successful in their appeal, but it is established nevertheless that the spill came from a 'ship' as defined in the 1992 Civil Liability and Fund Conventions, the 1992 Fund would have to pay compensation from the outset.

The Secretariat, through the 1992 Fund's Argentine lawyer, is following the developments with regard to this incident.

ANNEXES

ANNEX I

STRUCTURE OF THE IOPC FUNDS

1992 FUND GOVERNING BODIES

ASSEMBLY

Composed of all Member States

13th extraordinary session

Chairman:	Mr Jerry Rysanek (Canada)
Vice-Chairmen:	Professor Seiichi Ochiai (Japan)
	Mr Edward K. Tawiah (Ghana)

13th session

Chairman:	Mr Jerry Rysanek (Canada)
Vice-Chairmen:	Mr Edward K Tawiah (Ghana)
	Mr Ichiro Shimizu (Japan)

EXECUTIVE COMMITTEE

40th to 42nd sessions

Chairman:	Mr John Gillies (Australia)
Vice-Chairman:	Mr Léonce Michel Ogandaga Agondjo (Gabon)

Australia	India	Netherlands
Bahamas	Italy	Qatar
Denmark	Japan	Republic of Korea
Gabon	Lithuania	United Kingdom
Germany	Malaysia	Venezuela

43rd session

Chairman:	Mr Daniel Kjellgren (Sweden)
Vice-Chairman:	Mr Patrick Tso Chi-hung (China (Hong Kong Special Administrative Region))

Canada	Italy	Sweden
China (Hong Kong Special Administrative Region)	Liberia	Trinidad and Tobago
	Philippines	United Kingdom
Cyprus	Qatar	Uruguay
France	Republic of Korea	
India	Spain	

1971 FUND ADMINISTRATIVE COUNCIL

Composed of all States having at any time been Members of the 1971 Fund

23rd session

Chairman:	Captain David J. F. Bruce (Marshall Islands)
Vice-Chairman:	Mr Victor Koyoc Cauich (Mexico)

SUPPLEMENTARY FUND ASSEMBLY

Composed of all Member States

4th session

Chairman:	Rear-Admiral Giancarlo Olimbo (Italy)
First Vice-Chairman:	Mrs Birgit Sølling Olsen (Denmark)
Second Vice-Chairman:	Mr Yukio Yamashita (Japan)

JOINT SECRETARIAT

Director:	Mr Willem Oosterveen
Legal Counsel:	Mr Nobuhiro Tsuyuki
Personal Assistant to the Director:	Mrs Jill Martinez
Administrative Assistant to the Legal Counsel:	Ms Astrid Richardson
Head, Claims Department:	Mr José Maura
Claims Manager:	Ms Chiara Della Mea
Claims Administrator:	Ms Chrystelle Clément
Claims Administrator:	Ms Ana Cuesta
Claims Assistant:	Ms Kirsty Manahan (to 30 May 2008)
Head, Finance and Administration Department:	Mr Ranjit Pillai
IT Manager:	Mr Robert Owen
Finance Manager:	Mrs Latha Srinivasan
Human Resources Manager:	Ms Miriam Blugh (from 7 January 2008)
Office Manager:	Mr Modesto Zotti
IT Administrator:	Mr Stuart Colman
Finance Assistant:	Mrs Elisabeth Galobardes
Finance Assistant:	Ms Kathy McBride
Finance Assistant:	Mrs Paloma Scolari de Oliveira
Office Assistant:	Mr Paul Davis
Receptionist/Travel Assistant:	Ms Alexandra Hardman

Head, External Relations & Conference Department:	Ms Catherine Grey
External Relations & Conference Coordinator:	Mrs Victoria Turner
Conference Administrator:	Ms Christine Geffert
Translation Administrator (Spanish):	Mrs Natalia Ormrod
Translation Administrator (French):	Ms Françoise Ploux
Translation Administrator (French):	Ms Aurélie Chollat (to 12 September 2008)

AUDITORS OF THE 1971 FUND, THE 1992 FUND AND THE SUPPLEMENTARY FUND

Mr Tim Burr
Comptroller and Auditor General, United Kingdom

JOINT AUDIT BODY

Until October 2008

Mr Charles Coppolani (France) (Chairman)
Mr Maurice Jaques (Canada)
Mr Mendim Me Nko'o (Cameroon)
Dr Reinhard Renger (Germany)
Mr Wayne Stuart (Australia)
Professor Hisashi Tanikawa (Japan)
Mr Nigel Macdonald (External expert)

From October 2008

Mr Emile di Sanza (Canada)
Mr Thomas Johansson (Sweden)
Mr Mendim Me Nko'o (Cameroon)
Professor Seiichi Ochiai (Japan)
Mr Wayne Stuart (Australia) (Chairman)
Mr John Wren (United Kingdom)
Mr Nigel Macdonald (External expert)

JOINT INVESTMENT ADVISORY BODY

Mr David Jude
Mr Brian Turner
Mr Simon Whitney-Long

ANNEX II

NOTE ON IOPC FUNDS' PUBLISHED FINANCIAL STATEMENTS FOR 2007

The financial statements reproduced in Annexes V to VIII, XI to XIV and XVI to XVIII are an extract of information contained in the audited financial statements of the International Oil Pollution Compensation Funds 1971, 1992 and Supplementary Fund for the year ended 31 December 2007, approved by the Administrative Council of the 1971 Fund at its 23rd session, by the Assembly of the 1992 Fund at its 13th session and by the Assembly of the Supplementary Fund at its 4th session.

External Auditor's Statement

The extracts of the financial statements set out in Annexes V to VIII, XI to XIV and XVI to XVIII are consistent with the audited financial statements of the International Oil Pollution Compensation Funds 1971, 1992 and Supplementary Fund for the year ended 31 December 2007.

G Miller
Director
for the Comptroller and Auditor General
National Audit Office, United Kingdom
31 January 2009

ANNEX III

REPORT OF THE EXTERNAL AUDITOR ON THE FINANCIAL STATEMENTS OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1971 FOR THE FINANCIAL PERIOD 1 JANUARY TO 31 DECEMBER 2007

CONTENTS

EXECUTIVE SUMMARY

- *An unqualified audit opinion on the 2007 financial statements*
- *A shortfall of income over expenditure in comparison to prior years, consistent with the winding down of the 1971 Fund*
- *No major claims funds were closed during the period, and there was a fall in estimated contingent liabilities*
- *Progress towards the formal adoption of International Public Sector Accounting Standards*

Overall results of the Audit

1 We have audited the Financial Statements of the International Oil Pollution Compensation Fund 1971 in accordance with the Financial Regulations and in conformity with International Standards on Auditing. We have provided a separate audit opinion and report in relation to the Financial Statements of the International Oil Pollution Compensation Fund 1992 and an opinion in relation to the financial statements of the Supplementary Fund.

2 The audit examination revealed no weaknesses or errors which we considered material to the accuracy, completeness and validity of the financial statements and the audit opinion confirms that these financial statements present fairly, in all material respects, the financial position as at 31 December 2007, and the results of operations and cash flows for the period then ended, in accordance with United Nations System Accounting Standards and the IOPC Funds' stated accounting policies.

3 The main observations and recommendations from our audit are summarised below, with a further commentary in the section on Detailed Findings. Action taken by management in response to our previous year's recommendations, for 2006, is discussed in a separate section of the report; and the scope and approach of the audit, which were communicated to the Secretariat in a detailed audit strategy, is summarised at Annex A.

Main findings and recommendations

Financial reporting

4 The detailed findings of this report provide a commentary on the Fund's financial position. For the financial year ended 31 December 2007, the 1971 Fund reported shortfall of income over expenditure of £290,975 compared with a shortfall of £463,025 in 2006.

5 Overall we found that internal financial controls operated effectively in each of the account areas that we audited; and combined with assurance gained from tests of detail there was sufficient reliable evidence to support our audit opinion.

6 The Fund is preparing to adopt International Public Sector Accounting Standards (IPSAS) by 2010. We have reviewed progress towards this, including review of the Fund's timetable and plans for adoption of IPSAS which will be submitted to the Assemblies for approval. We encourage the Funds to develop a project plan for implementation once the Assemblies have approved the adoption of IPSAS in principle.

Financial management issues

7 In addition to the work necessary to provide audit assurance on the financial statements, we reviewed the major areas of the Secretariat's operations in the audit period and provided guidance and support to the Secretariat as required.

8 We also carried out a follow-up on the recommendations in our 2006 audit report and confirmed that the Secretariat had taken steps to address all the audit recommendations.

DETAILED REPORT FINDINGS

Financial reporting

Income and expenditure

9 During the financial period 2007, the 1971 Fund reported a General Fund operating deficit of £338,668 compared with the previous year when the deficit had been £376,833. The deficit is explained by claims-related expenditure and the fact that no contributions were levied in the period. When the respective surpluses and deficits on the General Fund and Major Claims Funds are taken into account, the 1971 Fund reported an overall deficit for the year of £290,975 (2006: £463,025 deficit).

Contributions income

10 The 1971 Fund did not levy any contributions for receipt in 2007. The only movements on contributions related to prior year contributions waived during 2006 (£17,555). There were no reimbursements of contributions in the period arising from closure of any Major Claims Fund.

Miscellaneous income

11 Miscellaneous income received in 2007 amounted to £525,379 (£455,420 in 2006). Interest from investments accounted for £509,818 of total miscellaneous income, which represents an 18 percent increase on the previous year, mainly as a result of a higher than normal number of maturing investments during the period. The value of interest income reflects the accounting policy of recording interest on the basis of cash received, rather than on an accruals basis when income is due.

Secretariat expenses

12 Secretariat expenses relating only to the 1971 Fund amounted to £285,000 which represented a reduction on the 2006 figure of £290,640. This cost comprises mainly the agreed management fee paid to the 1992 Fund of £275,000. This payment was disclosed to and approved by the 1971 Fund Administrative Council and the 1992 Fund Assembly.

Claims and claims related expenses

13 Levels of compensation payments made during 2007 were at similar levels to previous years, totalling £209,105 (2006: 224,052).

14 Claims related expenditure reduced by a quarter during the period. Sustained levels of claims related expenditure reflects the fact that there are several Major Claims Funds which have been closed and this expenditure is now incurred by the General Fund.

Assets and liabilities

15 Cash held by the 1971 Fund amounted to £11,414,259 at 31 December 2007, compared with £11,666,191 for the previous year. This reduction reflected the deficit of income over expenditure seen in the period.

16 The level of outstanding assessed contributions fell in 2007 to £311,004 from £328,558. The decrease was as a result of the write-off of contributions rather than the receipt of long-overdue contributions. Even though outstanding contributions remained low in percentage terms, we would continue to encourage all Member States to assist the Funds in obtaining outstanding amounts from contributors in their respective States; and for the Fund's Secretariat to continue to actively seek the payment of these outstanding balances.

17 The contributors' account balance has increased slightly to £1,887,976 in 2007 from £1,836,738 in 2006. This balance relates to amounts held by the Fund as credit balances pending allocation to future levies or requests for repayment. The increase mainly represents interest that has accrued to the contributor's account during the period.

Contingent liabilities

18 Schedule III to the financial statements discloses the contingent liabilities of the 1971 Fund, which are defined in the accounting policies as all known or likely claims against the 1971 Fund and claims-related expenditures estimated for the next financial year. Contingent liabilities as at 31st December 2007 have been estimated at £38,894,200 compared to £39,155,000 in 2006.

19 Such liabilities would need to be funded through further levies of contributions to Major Claims Funds. As at 31st December 2007, the *Nissos Amorgos* Major Claims Fund recorded a balance of £3,060,911 but has a disclosed contingent liability of £29,900,000.

Other financial matters: fraud, presumptive fraud or money laundering

20 No cases of fraud, presumptive fraud or money laundering were reported to us by the Secretariat or identified in the items examined as part of our audit of the 2007 financial period.

Adoption of International Public Sector Accounting Standards (IPSAS)

21 In 2007 we reviewed the Fund's current alignment with United Nations System Accounting Standards (UNSAS) and their continued applicability. The Fund continues to provide timely and

well presented financial statements supported by well maintained accounting records in accordance with its Financial Regulations.

22 In our report to the 2006 Financial Statements we recommended that the Secretariat should submit a proposal to the Assembly seeking approval of the adoption of the International Public Sector Accounting Standards (IPSAS). We have been assisting the Secretariat during 2007 and early 2008 in preparing for this move. Part of this preparation has been to assess the likely implications that a move to IPSAS will entail, and the planned timetable to ensure a smooth transition. The Secretariat have now developed a proposal for submission to the 2008 session of the Administrative Council to seek its formal approval for the adoption of IPSAS. The time line for the move to IPSAS is as follows:

- **Mid-2008 to mid-2009**
  Develop IPSAS-compliant Financial Regulations and accounting policies as appropriate for the Funds.

- **Autumn 2009**
  An accounts manual will be produced to provide guidance to staff in the Finance Department on the appropriate accounting treatment of income, expenditure, assets and liabilities.

- **From 1 January 2010**
  Re-working of 2009 financial statements in IPSAS format for comparative purposes.

23 The Secretariat's initial analysis has also identified the key changes arising as a result of adopting IPSAS and have identified the key issues as follows:

Change in format and content of accounts

(a) Fixed Assets – Presently, the purchase of fixed assets (that is, those assets which have a useful life of more than one year) are shown as expenditure in the year of purchase. IPSAS, in common with generally-accepted accounting practice, requires that these assets be shown on the balance sheet, and an annual charge for depreciation of the assets be made in the expenditure statement, effectively spreading the cost of the assets over their useful life. A threshold for capitalisation of assets will have to be determined;

(b) Intangible Assets – A valuation methodology will need to be decided which takes into account fully the cost of developing any of the Funds' bespoke IT packages, such as the web-based claims management system;

(c) Financial instruments – These are currently explained by way of note to the Financial Statements. Accounting, disclosure and presentation requirements will need to follow International Accounting Standards and International Financial Reporting Standards under IPSAS in terms of recognising and measuring any value changes and accounting and reporting these changes in the financial statements;

(d) Recognition of income from investments – Investment income under IPSAS will not be recorded on maturity of the investment as is current practice, but accrued during the financial period;

(e) Recognition of interest on outstanding contributions – Interest on outstanding contributions will need to be accrued as income up to the financial year-end and not when outstanding contributions are received, as is the present treatment;

(f) Liabilities – There is likely to be a requirement to show as a liability on the Balance Sheet items which are presently simply disclosed in notes to the accounts. This will have the impact of directly reducing the Fund's accumulated surplus, to more accurately show the position of the various Funds. Examples of those which may require inclusion in the Balance Sheet are accrued annual leave and repatriation costs for existing staff; and

(g) Recognition of expenditure – Expenditure will be recorded on the basis of services (or goods) actually received or due to be received in the accounting period, rather than at the time of contracting, as was the case under UNSAS. This will simplify the existing unliquidated obligations (ULO) recording procedure.

With respect to claims-related expenditure such as technical fees, lawyers' fees etc., recording of expenditure on the basis of services (or goods) actually received in the accounting period should not pose a problem for the Funds. The recording of compensation expenditure in the accounting period will require further review.

24 We have worked closely with the Secretariat to identify the key issues and we welcome the positive progress made to formalise the adoption of IPSAS. We also welcome the foresight in building in the capacity in to its accounting system FUNDMAN to accommodate IPSAS, while recognising that some further additions may need to be made to the system as full adoption evolves. We encourage the Funds to establish a formal project plan for the adoption of IPSAS once they have obtained approval from the Governing Bodies. Such a project plan should incorporate milestones for implementation and progress against the plan should be regularly reviewed by the Secretariat and also the Governing Bodies.

Recommendation 1: We recommend that the Secretariat establish a formal project plan for the adoption of IPSAS once they have obtained approval from the Governing Bodies. Such a project plan should incorporate milestones for implementation and progress against the plan should be regularly reviewed by the Secretariat and also the Governing Bodies.

Financial management issues

Internal controls

25 As part of our audit we reviewed the Fund's internal controls, established by management to ensure the regularity of transactions and to provide effective stewardship of resources. We found the controls in operation to be effective for the purpose of supporting our audit opinion.

PROGRESS ON PREVIOUS AUDIT RECOMMENDATIONS

26 As part of our responsibilities as external auditors, we routinely report to the Administrative Council on management's implementation of prior year audit recommendations. This serves to provide assurance to the Administrative Council that appropriate action is taken in response to audit recommendations.

Preparation for the move to IPSAS

27 We reviewed progress towards this target and are satisfied that the Funds are preparing for this change adequately and we have commented further in this report.

Improvements to budgeting

28 In 2006 we recommended that the secretariat prepare budgets that include staff time for the execution of project work. There were no significant projects during 2007 that would necessitate the use of project budgeting of this complexity and therefore the issue has not arisen in this year.

Contributor's account

29 In 2005 we identified one contributor owed almost £1 million from the Funds (1971:£487,209 and 1992: £509,071). This had not been repaid, as the contributor was a dissolved joint venture between two oil companies. We recommended that the Secretariat address this issue and repay the balance.

30 Our follow-up concluded that the Fund has been vigorous in pursuing the repayment of this money, and the Secretariat is in negotiation with the relevant parties. We encourage the Secretariat to continue its work to return this outstanding balance.

Contribution recoverability

31 In 2005 we also recommended that the Secretariat review the recoverability of all contributions outstanding (Financial Regulation 11.5). We can confirm that the Secretariat has also performed such a review in 2007, which resulted in the write off of £17,555 on the 1971 Fund, and we were satisfied with the Secretariat's rationale for doing so.

Service supplier selection

32 In our previous reports we highlighted the need for competitive tendering and selection of suppliers from a wider pool to obtain better value for money. We have noted that in 2007 quotes had been obtained for some recurring expenditure during the year, and cost savings had been achieved when alternative suppliers were used as a result and we welcome the positive progress made by the Funds in this regard.

ACKNOWLEDGEMENT

33 We are grateful for the continued assistance and co-operation provided by the Director and Secretariat staff during our audit.

T J Burr
Comptroller and Auditor General, United Kingdom
External Auditor

ANNEX A: SCOPE AND AUDIT APPROACH

Audit scope and objectives

Our audit examined the financial statements of the International Oil Pollution Compensation Fund 1971 (1971 Fund) for the financial period ended 31 December 2007 in accordance with Financial Regulation 14. The main purpose of the audit was to enable us to form an opinion on whether the financial statements fairly presented the Fund's financial position, its surplus, funds and cash flows for the year ended 31 December 2007; and whether they had been properly prepared in accordance with the Financial Regulations.

Audit standards

Our audit was conducted in accordance with International Standards on Auditing as issued by the International Auditing and Assurance Standards Board. These standards required us to plan and carry out the audit so as to obtain reasonable assurance that the financial statements are free from material misstatement. Management were responsible for preparing these financial statements and the External Auditor is responsible for expressing an opinion on them, based on evidence obtained during the audit.

Audit approach

Our audit included a general review of the accounting systems and such tests of the accounting records and internal control procedures as we considered necessary in the circumstances. The audit procedures are designed primarily for the purpose of forming an opinion on the Fund's financial statements. Consequently our work did not involve detailed review of all aspects of financial and budgetary systems from a management perspective, and the results should not be regarded as a comprehensive statement of all weaknesses that exist or all improvements that might be made.

Our audit also included focused work in which all material areas of the financial statements were subject to direct substantive testing. A final examination was carried out to ensure that the financial statements accurately reflected the Fund's accounting records; that the transactions conformed to the relevant financial regulations and governing body directives; and that the audited accounts were fairly presented.

ANNEX IV

FINANCIAL STATEMENTS OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1971 FOR THE YEAR ENDED 31 DECEMBER 2007 OPINION OF THE EXTERNAL AUDITOR

To: the Assembly of the International Oil Pollution Compensation Fund 1971

I have audited the accompanying financial statements, comprising Statements I to VI, Schedules I to III and the supporting Notes of the International Oil Pollution Compensation Fund 1971 for the financial period ended 31 December 2007. These financial statements are the responsibility of the Director. My responsibility is to express an opinion on these financial statements based on my audit.

I conducted my audit in accordance with the International Standards on Auditing (ISAs) as issued by the International Auditing and Assurance Standards Board (IAASB). Those standards require that I plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, and as considered by the auditor to be necessary in the circumstances, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by the Director, as well as evaluating the overall financial statement presentation. I believe that my audit provides a reasonable basis for the audit opinion.

Opinion

In my opinion, these financial statements present fairly, in all material respects, the financial position as at 31 December 2007 and the results of operations and cash flows for the period then ended in accordance with the 1971 Fund's stated accounting policies set out in Note 1 of the financial statements, which were applied on a basis consistent with that of the preceding financial period.

Further, in my opinion, the transactions of the 1971 Fund, which I have tested as part of my audit have in all significant respects been in accordance with the Financial Regulations and legislative authority.

In accordance with Financial Regulation 14, I have also issued a long-form Report on my audit of the Fund's financial statements.

T J Burr
Comptroller and Auditor General, United Kingdom
External Auditor
National Audit Office
London, 20 June 2008

ANNEX V

GENERAL FUND
1971 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 2007

	2007		2006	
	£	£	£	£
INCOME				
Contributions				
Contributions waived	(17 555)		(2 283)	
Total contributions		(17 555)		(2 283)
Miscellaneous				
Sundry income	20 001		-	
Interest on overdue contributions	-		27 013	
Less interest on overdue contributions waived	(4 440)		(3 111)	
Interest on investments	229 356		200 538	
Total miscellaneous		**244 917**		**224 440**
TOTAL INCOME		**227 362**		**222 157**
EXPENDITURE				
Secretariat expenses				
Obligations incurred		**285 000**		**290 640**
Claims				
Compensation		-		-
Claims-related expenses				
Fees	280 872		308 286	
Miscellaneous	158		64	
Total claims-related expenses		**281 030**		**308 350**
TOTAL EXPENDITURE		**566 030**		**598 990**
(Shortfall)/excess of income over expenditure		(338 668)		(376 833)
Balance b/f: 1 January		4 872 661		5 249 494
Balance as at 31 December		**4 533 993**		**4 872 661**

ANNEX VI

MAJOR CLAIMS FUNDS
1971 FUND: INCOME AND EXPENDITURE ACCOUNT
FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 2007

	Nissos Amorgos		*Vistabella*	
	2007	**2006**	**2007**	**2006**
	£	**£**	**£**	**£**
INCOME				
Contributions				
Contributions waived	-	-	-	(682)
Total contributions	**-**	**-**	-	**(682)**
Miscellaneous				
Interest on investments	154 098	119 181	2 103	2 487
Total miscellaneous	**154 098**	**119 181**	**2 103**	**2 487**
TOTAL INCOME	**154 098**	**119 181**	**2 103**	**1 805**
EXPENDITURE				
Compensation/Indemnification	-	-	-	-
Fees	1 946	21 482	18 506	16 351
Travel	-	2 293	-	-
Miscellaneous	49	24	57	51
TOTAL EXPENDITURE	**1 995**	**23 799**	**18 563**	**16 402**
(Shortfall)/excess of income over expenditure	152 103	95 382	(16 460)	(14 597)
Balance b/f: 1 January	2 908 808	2 813 426	58 799	73 396
Balance as at 31 December	**3 060 911**	**2 908 808**	**42 339**	**58 799**

	Pontoon 300	
	2007	**2006**
	£	**£**
	-	-
	-	-
	124 261	109 312
	124 261	**109 312**
	124 261	**109 312**
	209 105	224 052
	2 951	52 135
	-	-
	155	102
	212 211	**276 289**
	(87 950)	(166 977)
	2 425 408	2 592 385
	2 337 458	**2 425 408**

ANNEX VII

BALANCE SHEET OF THE 1971 FUND AS AT 31 DECEMBER 2007

	General Fund £	*Vistabella* £
ASSETS		
Cash at banks and in hand	5 984 927	35 189
Contributions outstanding	299 843	7 150
Interest on overdue contributions outstanding	122 350	-
Due from 1992 Fund	13 095	-
Tax recoverable	1 754	-
TOTAL ASSETS	**6 421 969**	**42 339**
LIABILITIES		
Accounts payable	-	-
Contributors' account	1 887 976	-
Due to 1992 Fund	-	-
TOTAL LIABILITIES	**1 887 976**	**-**
FUNDS' BALANCES		
Working Capital	5 000 000	-
Surplus / (Deficit)	(466 007)	42 339
GENERAL FUND & MAJOR CLAIMS FUNDS (MCFs) BALANCES	**4 533 993**	**42 339**
TOTAL LIABILITIES, GENERAL FUND & MCFs BALANCES	**6 421 969**	**42 339**

Pontoon 300 £	*Nissos Amorgos* £	2007 Total £	2006 Total £
2 336 168	3 057 975	11 414 259	11 666 191
1 290	2 721	311 004	328 558
-	215	122 565	127 006
-	-	13 095	-
-	-	1 754	4 266
2 337 458	**3 060 911**	**11 862 677**	**12 126 021**
-	-	-	817
-	-	1 887 976	1 836 738
-	-	-	22 790
-	**-**	**1 887 976**	**1 860 345**
-	-	5 000 000	5 000 000
2 337 458	3 060 911	4 974 701	5 265 676
2 337 458	**3 060 911**	**9 974 701**	**10 265 676**
2 337 458	**3 060 911**	**11 862 677**	**12 126 021**

ANNEX VIII

CASH FLOW STATEMENT OF THE 1971 FUND FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 2007

	2007		2006	
	£	£	£	£
Cash as at 1 January		11 666 191		12 301 681
OPERATING ACTIVITIES				
Operating Deficit	(800 793)		(894 543)	
Decrease/(Increase) in Debtors	11 412		13 005	
Increase/(Decrease) in Creditors	(71 243)		(271 184)	
Net cash flow from operating activities		(860 624)		(1 152 722)
RETURNS ON INVESTMENTS				
Interest on investments	608 692		517 232	
Net cash inflow from returns on investments		608 692		517 232
Cash as at 31 December		**11 414 259**		**11 666 191**

ANNEX IX

REPORT OF THE EXTERNAL AUDITOR ON THE FINANCIAL STATEMENTS OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1992 FOR THE FINANCIAL PERIOD 1 JANUARY TO 31 DECEMBER 2007

CONTENTS

EXECUTIVE SUMMARY

- *An unqualified audit opinion on the 2007 financial statements*
- *There was a shortfall of income over expenditure of £252,553*
- *Higher miscellaneous income due to higher receipts of investment income, a contributions levy and recoveries of claims income through court appeals (£379k) and income under the Small Tankers Oil Pollution Indemnification Agreement (STOPIA) 2006 (£4.5m)*
- *Contingent liabilities increased significantly with two large oil spills near the end of the period*
- *Progress towards the formal adoption of International Public Sector Accounting Standards*
- *Audit recommendations to improve progress in implementing risk management*
- *Follow up to prior year audit recommendations*

Overall results of the audit

1 We have audited the Financial Statements of the International Oil Pollution Compensation Fund 1992 in accordance with the Financial Regulations and in conformity with International Standards on Auditing. We have provided a separate audit opinion and report in relation to the Financial Statements of the International Oil Pollution Compensation Fund 1971 and an audit opinion in relation to the financial statements of the Supplementary Fund.

2 The audit examination revealed no weaknesses or errors which we considered to be material to the accuracy, completeness and validity of the financial statements; and the audit opinion confirms that these financial statements present fairly, in all material respects, the financial position as at 31 December 2007 and the results of operations and cash flows for the period then ended, in accordance with United Nations System Accounting Standards and the IOPC Funds' stated accounting policies.

3 The main observations and recommendations from our audit are summarised below, with a more detailed commentary in the section on Detailed Findings. Action taken by management in response to our previous year's recommendations, for 2006, is discussed in a separate section of the report; and the scope and approach of the audit, which were communicated to the Secretariat in a detailed audit strategy, is summarised at Annex A.

Main findings and recommendations

Financial reporting

4 For the financial year ended 31 December 2007, the 1992 Fund reported shortfall of income over expenditure of £252,553, compared with a deficit of £53,269,676 in 2006. The large difference between years is explained by the comparatively low level of compensation payments made in 2007. In respect of the *Prestige* incident in particular, there were compensation payments totalling £40,537,569 in 2006, compared to payments of only £1,109,424 in 2007.

5 We confirmed that internal financial controls had operated effectively in each of the account areas that we audited and, combined with assurance gained from tests of detail, we gained sufficient reliable evidence to support our audit opinion.

6 The Fund is preparing to adopt International Public Sector Accounting Standards (IPSAS) by 2010. We reviewed progress towards this aim, including a review of the Fund's timetable and intentions for adoption of IPSAS, which will be submitted to the Assemblies for approval. We encourage the Funds to develop a detailed project plan for implementation once the Assemblies have approved adoption of IPSAS.

Financial management issues

7 In addition to the work necessary to provide assurance on the financial statements, we reviewed the major areas of the Secretariat's operations in the audit period and provided guidance and support to the Secretariat as required.

8 In 2007 the Fund invoiced and received £4.5m from the P&I Club in respect of payments made to claimants affected by the *Solar 1* incident under the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006. We reviewed a number of these invoices, and the systems and controls in place to identify and recover amounts paid to claimants. We found that the controls had been operating effectively during the period and that payments from the P&I Club had been timely.

9 Our interrogation of claims transactions revealed that there had been a significant repayment of claims in respect of the *Erika* incident. Payments totalling £379,000 made in prior years had been repaid to the Fund, following favourable court appeals. The refund had been included as a reduction in claims expenditure reported in Statement II and Statement IV.I. We have recommended that such material amounts should be disclosed separately on the face of the financial statements, to help users of the accounts interpret total claims expenditure for the year more accurately by removing the significant reduction in such expenditure as a result of this refund.

10 For 2007 we carried out some further work on risk management to assess the progress made; and we have made some further recommendations for the Funds to embed risk management into routine business processes by establishing a risk register and prioritising risk to support a focus on key risks.

11 We also carried out a follow-up to the audit recommendations made in our 2006 audit report, and confirmed that the Secretariat has taken steps to address the areas for action. We noted that the Funds had made some progress with resolving outstanding payments to the Contributor's account.

DETAILED REPORT FINDINGS

Financial reporting

Income and expenditure

12 During the financial period 2007, the 1992 Fund reported a General Fund operating surplus of £1,254,505, in significant contrast to the deficit of £4,733,325 reported in 2006. Contributions amounting to £3 million were levied in 2007, partially explaining the difference between years. Net General Fund expenditure in 2007, taking into account STOPIA 2006 reimbursements, was £3.5 million in 2007 compared to £6.4 million in 2006. The Fund reported an overall deficit of £83,179 (excluding the Staff Provident Fund, but including the Major Claims Funds), in comparison to an overall deficit of £52,770,943 for the previous year. This result underlines the variable nature of the Fund's activities and highlights the importance of effective management of both contributions and the Fund's investments in Sterling and Euros to meet ongoing requirements to pay claims.

Contributions income

13 The 1992 Fund levied contributions of £3 million in 2007 and the Fund had received 94 percent of these contributions by the year end. The Fund received late oil reports from four countries, enabling them to make adjustments to prior year's assessments to levy £164,492 to the General Fund and the *Prestige* Major Claims Fund.

Miscellaneous income

14 Miscellaneous income totalled £10,223,525, an increase of some £3.3 million on the previous year. This increase is largely explained by the increase in receipts under STOPIA 2006, but also an increase in investment income on the prior year. This increased level of miscellaneous income is likely to continue in future years.

Secretariat expenses

15 Obligations incurred by the 1992 Fund for joint Secretariat expenditure totalled £2,927,628, representing an underspend of £663,122 against the approved budgetary appropriations. This underspend is accounted for mainly by lower than expected personnel costs (£295,469), lower than expected public information costs (£113,829), and lower than expected costs for office machines (£48,707).

16 There was no significant increase in budget between 2006 and 2007, and the Secretariat expended £361,057 less in 2007 than in 2006.

Claims and claims related expenses

17 Compensation payments showed a marked decrease in 2007 totalling only £7.3 million (£52.6 million in 2006), further emphasising the variability of cash demands on the Funds in consecutive years. No new Major Claims Funds were established during the period, although two new incidents occurred near to the year-end that may result in MCF's being established in the future.

18 Claims related expenditure remained relatively constant and totalled £3.3 million in 2007 (£4.2 million in 2006).

Assets and liabilities

19 Cash balances held by the Fund increased from £91,445,476 in 2006 to £94,025,283 in 2007. This reflects additional funds due to contributions levied in 2007 and additional investment income.

Contingent liabilities

20 The accounts report a significant increase in the 1992 Fund's contingent liabilities as a result of the two new incidents that occurred late in 2007, the *Volgoneft 139* and the *Hebei Spirit.* Contingent liabilities are now estimated at £326.6 million compared to only £67.4 million in 2006.

Other financial matters: fraud, presumptive fraud or money laundering

21 No cases of fraud, presumptive fraud or money laundering were reported to us by the Secretariat or identified in the items examined as part of our audit of the 2007 financial period.

Adoption of International Public Sector Accounting Standards (IPSAS)

22 In 2007 we reviewed the Fund's current alignment with United Nations System Accounting Standards (UNSAS) and their continued applicability. The Fund continues to provide timely and well presented financial statements supported by well maintained accounting records in accordance with its Financial Regulations.

23 In our report to the 2006 Financial Statements, we recommended that the Secretariat should submit a proposal to the Assembly seeking approval of the adoption of International Public Sector Accounting Standards (IPSAS), which are being adopted elsewhere and by the United Nations system in replacement for UNSAS. We have been assisting the Fund during 2007 and early 2008 in preparing for this move. Part of this preparation has been to assess the likely implications of a move to IPSAS, and the required timetable to ensure a smooth transition. The Secretariat have now developed a proposal for submission to the 2008 session of the Assembly to request formal approval for the adoption of IPSAS. The timeline for the move to IPSAS is as follows:

- **Mid-2008 to mid-2009**
  Develop IPSAS-compliant Financial Regulations and accounting policies as appropriate for the Funds.

- **Autumn 2009**
  An accounts manual will be produced to provide guidance to staff in the Finance Department on the appropriate accounting treatment of income, expenditure, assets and liabilities.

- **From 1 January 2010**
  Re-working of the 2009 financial statements in IPSAS format for comparative purposes.

24 The Secretariat's initial analysis has also identified the key changes arising as a result of adopting IPSAS, and have identified key issues as follows:

(a) Fixed Assets – Presently, the purchase of fixed assets (that is, those assets which have a useful life of more than one year), are shown as expenditure in the year of purchase. In common

with generally-accepted accounting practice, IPSAS requires that these assets be shown on the balance sheet, and an annual charge for depreciation of the assets be made in the expenditure statement, effectively spreading the cost of the assets over their useful life. A threshold for capitalisation of assets will have to be determined;

(b) Intangible Assets – A valuation methodology will need to be decided which fully takes into account the cost of developing any of the Funds' bespoke IT packages, such as the web-based claims management system;

(c) Financial instruments - These are currently explained by way of note to the Financial Statements. Accounting, disclosure and presentation requirements will need to follow International Accounting Standards and International Financial Reporting Standards under IPSAS in terms of recognising and measuring any value changes and accounting and reporting these changes in the financial statements;

(d) Recognition of income from investments – Investment income under IPSAS will not be recorded on maturity of the investment as is current practice, but accrued during the financial period;

(e) Recognition of interest on outstanding contributions – Interest on outstanding contributions will need to be accrued as income up to the financial year end and not only when outstanding contributions are received, as at present;

(f) Liabilities – There is likely to be a requirement to show as a liability on the balance sheet items which are presently disclosed in Notes to the accounts. This will have the impact of directly reducing the Fund's accumulated surplus, to more accurately show the position of the various Funds. Examples of liabilities which may require inclusion in the balance sheet are accrued annual leave and repatriation costs for existing staff; and

(g) Recognition of expenditure – Expenditure will be recorded on the basis of services (or goods) actually received or due to be received in the accounting period, rather than at the time of contracting, as is the case under UNSAS. This will simplify the existing recording procedure for unliquidated obligations.

With respect to claims-related expenditure such as technical fees, lawyers' fees and so on, recording of expenditure on the basis of services (or goods) actually received in the accounting period should not pose a problem for the Funds. The recording of compensation expenditure in the accounting period will require further review.

25 We have worked closely with the Secretariat to identify the key issues and we welcome the positive progress made to formalise the adoption of IPSAS. We also welcome the foresight in building in the capacity in to its accounting system FUNDMAN to accommodate IPSAS, while recognising that some further additions may need to be made to the system as full adoption evolves. We encourage the Funds to establish a formal project plan for the adoption of IPSAS once they have obtained approval from the Governing Bodies. Such a project plan should incorporate milestones for implementation and progress against the plan should be regularly reviewed by the Secretariat and also the Governing Bodies.

Recommendation 1: We recommend that the Secretariat establish a formal project plan for the adoption of IPSAS once they have obtained approval from the Governing Bodies. Such a project plan should incorporate milestones for implementation and progress against the plan should be regularly reviewed by the Secretariat and also the Governing Bodies.

Financial management issues

Internal controls

26 As part of our audit we reviewed the Fund's internal controls, established by management to ensure the regularity of transactions and to provide effective stewardship of resources. We found the controls in operation to be effective for the purpose of supporting our audit opinion.

Accounting treatment of compensation recovered from claimants

27 During 2007, some £379,000 was recovered from claimants for claims that had been paid in prior years in respect of the *Erika* incident. These amounts were refunded after a successful appeal by the 1992 Fund against the original court ruling awarding this compensation. Given the amount of time elapsed since the original payments were made, we considered that the Secretariat's original intention to offset this recovery against claims expenditure in the 2007 Financial Statements would be insufficiently clear and we recommended that the recovery of these funds should be separately disclosed in the financial statements to provide greater transparency and to show the full value of actual claims paid in 2007 rather than the net amount taking account of this recovery. These changes were agreed by the Secretariat.

Recommendation 2: We recommend that in future years, where previous compensation payments made by the Funds are refunded at any time after the year of account, these recoveries should be disclosed separately from claims expenditure in the accounts.

Income received under STOPIA 2006

28 During our 2006 audit, we had reviewed the accounting treatment for income received under the STOPIA 2006 agreement. At that time, £1.3 million had been recovered from the P&I Club. The Fund has since recovered a further £4.5 million from the P&I Club in respect of the *Solar 1* incident in 2007 and we can confirm that this has been properly accounted for in the Fund's financial statements.

29 This year we carried out a review of controls over this income stream, to confirm that they were operating effectively and to ensure that the Fund was reimbursed in a timely fashion. We reviewed a sample of invoices that had been raised by the Fund and tracked the progress of each invoice. All invoices to the P&I Club had been paid within 14 days and this represents a very positive result for the Funds, demonstrating that controls were operating as designed and worked effectively during this period.

Payments made in the Philippines (*Solar 1*)

30 We also reviewed a sample of payments made to independent fishermen in the Philippines. Almost 20,000 claimants had been paid during 2007. The volume and nature of claims arising means that the Fund has had to adapt their claims assessment and payment processes accordingly. We selected a sample of claimants and requested documentary evidence from the Philippines to substantiate both the claim and the release of the payment.

31 In all cases, supporting evidence of the assessed value of the claim, the identity of the claimant and receipt of the payment was provided to us; and we were satisfied that the controls in operation during the period were sufficient and had resulted in a clear and fair claims process.

Review of risk management

32 In our 2006 audit report we recommended that the Secretariat should prioritise the completion of a risk register. Progress continued in 2007. The Secretariat have successfully completed the first

stages of introducing systematic risk management arrangements by identifying, evaluating and recording key risks. The Secretariat have developed a risk register which records the key risks to the Funds' activities and this has been presented to the Audit Body for review. We welcome the positive progress that has been made to prioritise the large number of risks initially identified into a manageable number of key risks. However, we encourage the Secretariat to embed risk management into routine business processes and use the risk register as an effective diagnostic and monitoring tool on an ongoing basis.

33 To progress this further, the Funds may wish to use a risk rating matrix, an example of which is shown in Figure 1 further below, as part of its risk register. Such a matrix helps to summarise and graphically highlight the business critical risks where both the impact and likelihood of the risk occurring is high. The example below also indicates the nature of the overarching actions required for each category of risk, as follows:

- **High** – Risks requiring positive action to mitigate and monitor the exposure;
- **Cost Effective Mitigation** – As these risks have less impact on the organisation, these risks will be managed and mitigated as cost effectively as possible;
- **Watching Brief** – Such risks are less likely to arise and consequently monitoring will be focussed on the possibility of them occurring; and
- **Low** – Risks of low impact and unlikely to arise which do not need to be actively managed.

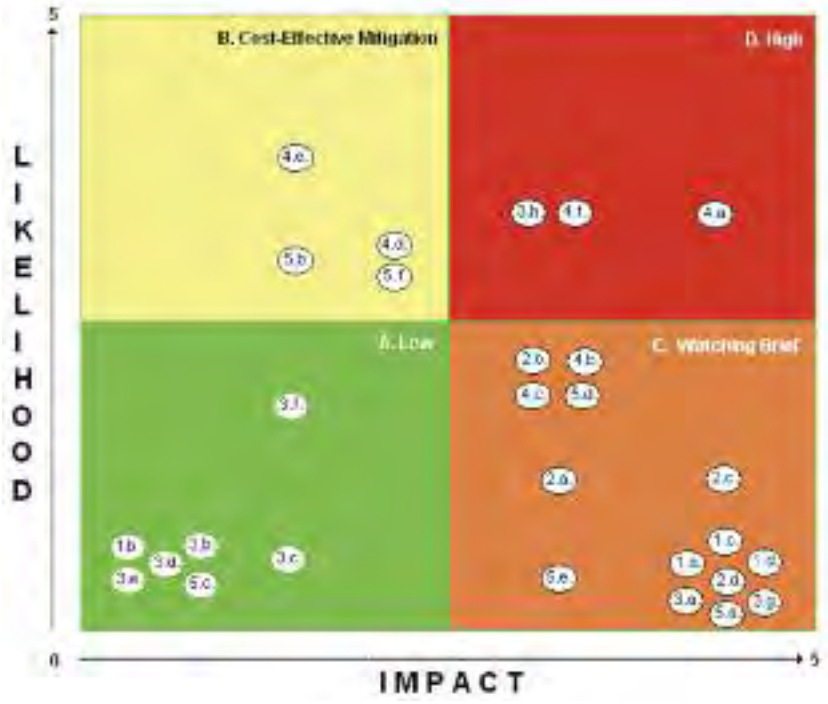


Figure 1: Risk Rating Matrix showing the impact and likelihood of key risks

***Recommendation 3:** In order to realise the full benefits an operational risk register can offer, the Funds should focus on integrating it into their standard business practices. The risk register will be most effective when it is a living document that is constantly reviewed, updated and evolves with the Funds. We further recommend that Secretariat continue to record all new emerging risks in this risk register and that all risks be reviewed and evaluated by the management team on an ongoing basis.*

Recommendation 4: We recommend that the Funds' Audit Body consider the key risks assessed with both high impact and high likelihood, in particular to determine whether risks are required to be escalated to governing body level for action.

PROGRESS ON PREVIOUS AUDIT RECOMMENDATIONS

34 As part of our responsibilities as external auditors, we routinely report to the Fund Assembly on management's implementation of prior year audit recommendations. This serves to provide assurance to the Assembly that appropriate action is taken in response to audit recommendations.

Preparation for the move to IPSAS

35 We reviewed progress and are satisfied that the Funds are preparing for this change adequately. We have commented further in this present report.

Improvements to budgeting

36 In 2006 we recommended that the Secretariat prepare budgets that include staff time for the execution of project work. There were no significant projects during 2007 that would necessitate the use of project budgeting of this complexity and therefore the issue has not arisen in this year.

Contributor's account

37 In 2005 we identified one contributor owed almost £1 million from the Funds (1971: £487,209 and 1992: £509,071). This had not been repaid, as the contributor was a dissolved joint venture between two oil companies. We recommended that the Secretariat address this issue and repay the balance.

38 Our follow-up concluded that the Fund had been vigorous in pursuing the repayment of this money, and the Secretariat is in negotiation with the relevant parties. We encourage the Secretariat to continue its work to return this outstanding balance.

Recoverability of contributions

39 In 2005 we also recommended that the Secretariat review the recoverability of all contributions outstanding (Financial Regulation 11.5). We can confirm that the Secretariat has also performed such a review in 2007, which resulted in the write off of £17,555 on the 1971 Fund, and we were satisfied with the Secretariat's rationale for doing so.

Selection of service suppliers

40 In our previous reports we highlighted the need for competitive tendering and selection of suppliers from a wider pool to obtain better value for money. We noted in 2007 that quotes had been obtained for some recurring expenditure during the year, and cost savings had been achieved when alternative suppliers were used as a result. We welcome the positive progress made by the Funds in this regard.

ACKNOWLEDGEMENT

41 We are grateful for the continued assistance and co-operation provided by the Director and Secretariat staff during our audit.

T J Burr
Comptroller and Auditor General, United Kingdom
External Auditor

ANNEX A: SCOPE AND AUDIT APPROACH

Audit scope and objectives

Our audit examined the financial statements of the International Oil Pollution Compensation Fund 1992 (1992 Fund) for the financial period ended 31 December 2007 in accordance with Financial Regulation 14. The main purpose of the audit was to enable us to form an opinion on whether the financial statements fairly presented the Fund's financial position, its surplus, funds and cash flows for the year ended 31 December 2007; and whether they had been properly prepared in accordance with the Financial Regulations.

Audit standards

Our audit was conducted in accordance with International Standards on Auditing as issued by the International Auditing and Assurance Standards Board. These standards required us to plan and carry out the audit so as to obtain reasonable assurance that the financial statements are free from material misstatement. Management were responsible for preparing these financial statements and the External Auditor is responsible for expressing an opinion on them, based on evidence obtained during the audit.

Audit approach

Our audit included a general review of the accounting systems and such tests of the accounting records and internal control procedures as we considered necessary in the circumstances. The audit procedures are designed primarily for the purpose of forming an opinion on the Fund's financial statements. Consequently our work did not involve detailed review of all aspects of financial and budgetary systems from a management perspective, and the results should not be regarded as a comprehensive statement of all weaknesses that exist or all improvements that might be made.

Our audit also included focused work in which all material areas of the financial statements were subject to direct substantive testing. A final examination was carried out to ensure that the financial statements accurately reflected the Fund's accounting records; that the transactions conformed to the relevant financial regulations and governing body directives; and that the audited accounts were fairly presented.

ANNEX X

FINANCIAL STATEMENTS OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1992 FOR THE YEAR ENDED 31 DECEMBER 2007 OPINION OF THE EXTERNAL AUDITOR

To: the Assembly of the International Oil Pollution Compensation Fund 1992

I have audited the accompanying financial statements, comprising Statements I to VII, Schedules I to III and the supporting Notes of the International Oil Pollution Compensation Fund 1992 for the financial period ended 31 December 2007. These financial statements are the responsibility of the Director. My responsibility is to express an opinion on these financial statements based on my audit.

I conducted my audit in accordance with the International Standards on Auditing (ISAs) as issued by the International Auditing and Assurance Standards Board (IAASB). Those standards require that I plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, and as considered by the auditor to be necessary in the circumstances, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by the Director, as well as evaluating the overall financial statement presentation. I believe that my audit provides a reasonable basis for the audit opinion.

Opinion

In my opinion, these financial statements present fairly, in all material respects, the financial position as at 31 December 2007 and the results of operations and cash flows for the period then ended in accordance with the 1992 Fund's stated accounting policies set out in Note 1 of the financial statements, which were applied on a basis consistent with that of the preceding financial period.

Further, in my opinion, the transactions of the 1992 Fund, which I have tested as part of my audit have in all significant respects been in accordance with the Financial Regulations and legislative authority.

In accordance with Financial Regulation 14, I have also issued a long-form Report on my audit of the Fund's financial statements.

T J Burr
Comptroller and Auditor General, United Kingdom
External Auditor
National Audit Office
London, 20 June 2008

ANNEX XI

GENERAL FUND
1992 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 2007

	2007		2006	
	£	£	£	£
INCOME				
Contributions				
Contributions	2 826 375		-	
Adjustment to prior years' assessment	15 000		28 794	
Total contributions		**2 841 375**		**28 794**
Miscellaneous				
Management fee	345 000		345 000	
Recovery under STOPIA 2006 (*Solar 1* incident)	4 487 986		1 337 568	
Sundry income	3 209		2 465	
Interest on loan to HNS Fund	6 165		4 331	
Interest on loan to Supplementary Fund	788		8 496	
Interest on overdue contributions	2 329		165	
Interest on investments	1 620 550		1 248 120	
Total miscellaneous		**6 466 027**		**2 946 145**
TOTAL INCOME		**9 307 402**		**2 974 939**
EXPENDITURE				
Secretariat expenses				
Obligations incurred		**2 914 128**		**3 275 185**
Claims				
Compensation		**4 796 896**		**4 160 033**
Claims-related expenses				
Fees	258 158		233 916	
Travel	49 374		35 031	
Miscellaneous	34 341		4 099	
Total claims-related expenses		**341 873**		**273 046**
TOTAL EXPENDITURE		**8 052 897**		**7 708 264**
(Shortfall)/excess of income over expenditure		1 254 505		(4 733 325)
Exchange adjustment		48		(28)
Balance b/f: 1 January		24 639 049		29 372 402
Balance as at 31 December		**25 893 602**		**24 639 049**

ANNEX XII

MAJOR CLAIMS FUNDS
1992 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 2007

	Erika		*Prestige*	
	2007	**2006**	**2007**	**2006**
	£	**£**	**£**	**£**
INCOME				
Contributions				
Adjustment to prior years' assessment	-	-	149 492	-
Less contributions waived	-	-	-	(6 277)
Total contributions	**-**	**-**	**149 492**	**(6 277)**
Miscellaneous				
Sundry income	4 220	-	-	-
Interest on overdue contributions	-	-	119	2 482
Less interest on overdue contributions waived	-	-	-	(336)
Interest on investments	2 350 639	2 089 653	1 271 566	1 307 521
Total miscellaneous	**2 354 859**	**2 089 653**	**1 271 685**	**1 309 667**
TOTAL INCOME	**2 354 859**	**2 089 653**	**1 421 177**	**1 303 390**
EXPENDITURE				
Compensation	1 389 031	7 921 605	1 109 424	40 537 569
Less compensation recovered following court of appeal decision	(379 287)	-	-	-
Fees	1 066 945	1 480 682	1 934 927	2 463 784
Reimbursement of joint costs from P&I Club	-	-	(20 153)	(1 000 000)
Travel	3 771	1 706	5 989	19 286
Miscellaneous	574	2 090	2 499	3 939
TOTAL EXPENDITURE	**2 081 034**	**9 406 083**	**3 032 686**	**42 024 578**
Excess/(Shortfall) of income over expenditure	273 825	(7 316 430)	(1 611 509)	(40 721 188)
Exchange adjustment	1 281 852	(310 757)	508 899	(302 581)
Balance b/f: 1 January	42 032 556	49 659 743	24 106 692	65 130 461
Balance as at 31 December	**43 588 233**	**42 032 556**	**23 004 082**	**24 106 692**

ANNEX XIII

BALANCE SHEET OF THE 1992 FUND AS AT 31 DECEMBER 2007

	General Fund £	*Erika* £
ASSETS		
Cash at banks and in hand	28 138 803	43 573 208
Contributions outstanding	102 639	-
Interest on overdue contributions outstanding	4 852	-
Due from HNS Fund	127 279	-
Due from Supplementary Fund	-	-
Due from 1971 Fund	-	-
Tax recoverable	117 719	15 025
Receivable from P&I Club under STOPIA 2006 (*Solar 1* incident)	-	-
Miscellaneous receivable	35 562	-
TOTAL ASSETS	**28 526 854**	**43 588 233**
LIABILITIES		
Staff Provident Fund	1 714 266	-
Payable to P&I Club under STOPIA 2006 (*Solar 1* incident)	-	-
Due to 1971 Fund	13 095	-
Accounts payable	25 850	-
Unliquidated obligations	128 496	-
Prepaid contributions	4 259	-
Contributors' account	747 286	-
TOTAL LIABILITIES	**2 633 252**	**-**
FUNDS' BALANCES		
Working capital	22 000 000	-
Surplus / (Deficit)	3 893 602	43 588 233
GENERAL FUNDS & MAJOR CLAIMS FUNDS (MCFs) BALANCES	**25 893 602**	**43 588 233**
TOTAL LIABILITIES, GENERAL FUND & MCFs BALANCES	**28 526 854**	**43 588 233**

Prestige	2007 Total	2006 Total
22 313 272	94 025 283	91 445 476
283 537	386 176	328 916
21 784	26 636	35 074
-	127 279	114 537
-	-	259 738
-	-	22 790
385 489	518 233	460 383
-	-	845 491
-	35 562	57 994
23 004 082	**95 119 169**	**93 570 399**
-	1 714 266	1 883 640
-	-	8 603
-	13 095	-
-	25 850	44 247
-	128 496	136 685
-	4 259	-
-	747 286	718 927
-	**2 633 252**	**2 792 102**
-	22 000 000	22 000 000
23 004 082	70 485 917	68 778 297
23 004 082	**92 485 917**	**90 778 297**
23 004 082	**95 119 169**	**93 570 399**

ANNEX XIV

CASH FLOW STATEMENT OF THE 1992 FUND FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 2007

	2007		2006	
	£	£	£	£
Cash as at 1 January		91 445 476		146 305 576
OPERATING ACTIVITIES				
Operating Deficit	(3 535 136)		(58 029 603)	
Decrease/(Increase) in Debtors	1 031 037		(699 183)	
Increase/(Decrease) in Creditors	(328 845)		(972 661)	
Net cash flow from operating activities		(2 832 944)		(59 701 447)
RETURNS ON INVESTMENTS				
Interest on investments	5 412 751		4 841 347	
Net cash inflow from returns on investments		5 412 751		4 841 347
Cash as at 31 December		**94 025 283**		**91 445 476**

ANNEX XV

FINANCIAL STATEMENTS OF THE INTERNATIONAL OIL POLLUTION COMPENSATION SUPPLEMENTARY FUND FOR THE PERIOD 1 JANUARY TO 31 DECEMBER 2007: OPINION OF THE EXTERNAL AUDITOR

To: the Assembly of the International Oil Pollution Compensation Supplementary Fund

I have audited the accompanying financial statements, comprising Statements I to III and the supporting Notes of the International Oil Pollution Compensation Supplementary Fund for the financial period ended 31 December 2007. These financial statements are the responsibility of the Director. My responsibility is to express an opinion on these financial statements based on my audit.

I conducted my audit in accordance with the International Standards on Auditing (ISAs) as issued by the International Auditing and Assurance Standards Board (IAASB). Those standards require that I plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, and as considered by the auditor to be necessary in the circumstances, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by the Director, as well as evaluating the overall financial statement presentation. I believe that my audit provides a reasonable basis for the audit opinion.

Opinion

In my opinion, these financial statements present fairly, in all material respects, the financial position as at 31 December 2007 and the results of operations for the period then ended in accordance with the Supplementary Fund's stated accounting policies set out in Note 1 of the financial statements.

Further, in my opinion, the transactions of the Supplementary Fund, which I have tested as part of my audit have in all significant respects been in accordance with the Financial Regulations and legislative authority.

I have no observations to make on these financial statements.

T J Burr
Comptroller and Auditor General, United Kingdom
External Auditor
National Audit Office
London, 20 June 2008

ANNEX XVI

GENERAL FUND
SUPPLEMENTARY FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 2007

	2007		2006	
	£	£	£	£
INCOME				
Contributions				
Contributions	1 386 636		-	
Total contributions		**1 386 636**		**-**
Miscellaneous				
Interest on overdue contributions	1 837		-	
Interest on investments	52 569		-	
Total miscellaneous		**54 406**		**-**
TOTAL INCOME		**1 441 042**		**-**
EXPENDITURE				
Secretariat expenses				
Obligations incurred	74 288		81 996	
TOTAL EXPENDITURE		**74 288**		**81 996**
(Shortfall)/excess of income over expenditure		1 366 754		(81 996)
Balance b/f: 1 January		(259 738)		(177 742)
Balance as at 31 December		**1 107 016**		**(259 738)**

ANNEX XVII

BALANCE SHEET OF THE SUPPLEMENTARY FUND AS AT 31 DECEMBER 2007

	2007 £	2006 £
ASSETS		
Cash at banks and in hand	1 106 232	-
Interest on overdue contributions outstanding	784	-
TOTAL ASSETS	**1 107 016**	
LIABILITIES		
Due to 1992 Fund	-	259 738
TOTAL LIABILITIES	**-**	**259 738**
GENERAL FUND BALANCE	**1 107 016**	**(259 738)**
TOTAL LIABILITIES AND GENERAL FUND BALANCE	**1 107 016**	**-**

ANNEX XVIII

CASH FLOW STATEMENT OF THE SUPPLEMENTARY FUND FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 2007

		2007
	£	£
Cash as at 1 January		-
OPERATING ACTIVITIES		
Operating Surplus	1 314 185	
Decrease/(Increase) in Debtors	(784)	
Increase/(Decrease) in Creditors	(259 738)	
Net cash flow from operating activities		1 053 663
RETURNS ON INVESTMENTS		
Interest on investments	52 569	
Net cash inflow from returns on investments		52 569
Cash as at 31 December		**1 106 232**

ANNEX XIX

1971 FUND: KEY FINANCIAL FIGURES FOR 2008
(2008 INCOME/EXPENDITURE FIGURES ROUNDED AND SUBJECT TO AUDIT BY THE EXTERNAL AUDITOR)

INCOME

	2008 £
Annual Contributions due in 2008	-
Other income:	
Interest on investments	469 000
TOTAL INCOME	**469 000**
Reimbursement to contributors to *Pontoon 300* Major Claims Fund	2 200 000

ADMINISTRATIVE COSTS

	2008 £	2007 £
Only 1971 Fund		
Management fee payable to 1992 Fund	210 000	275 000
External Audit	10 000	10 000
Winding up		
Budget	250 000	250 000
Expenditure	-	-

CLAIMS EXPENDITURE

Incident	2008 £ Compensation	2008 £ Claims-related expenditure	2008 £ Total
Iliad	-	41 000	41 000
Kriti Sea	-	14 000	14 000
Plate Princess	-	46 000	46 000
Pontoon 300	9 000	3 000	12 000
Other incidents	-	45 300	45 300
TOTAL CLAIMS EXPENDITURE	**9 000**	**149 300**	**158 300**

ANNEX XX

1992 FUND: KEY FINANCIAL FIGURES FOR 2008

(2008 INCOME/EXPENDITURE FIGURES ROUNDED AND SUBJECT TO AUDIT BY THE EXTERNAL AUDITOR)

INCOME

	2008 £
Annual Contributions due in 2008:	
General Fund	3 000 000
Hebei Spirit Major Claims Fund	50 000 000
Other income:	
Interest on investments	5 400 000
Management fee payable by 1971 Fund	210 000
Management fee payable by Supplementary Fund	50 000
Reimbursement of compensation payments by Club under STOPIA 2006[14]	283 000
TOTAL INCOME	**58 943 000**

ADMINISTRATIVE COSTS

	2008 £	2007 £
Joint Secretariat		
Budget (excluding external auditor's fees for respective IOPC Funds)	3 584 000	3 530 250
Expenditure (excluding external auditor's fees for respective IOPC Funds)	2 784 600	2 867 100
External Auditor's fees in respect of 1992 Fund	47 000	47 000

CLAIMS EXPENDITURE

Incident	2008 £ Compensation	2008 £ Claims-related expenditure	2008 £ Total
Erika	121 100	837 400	958 500
Slops	3 217 400	29 600	3 247 000
Prestige (including interim reimbursement of £171 600 from P&I Club for joint costs)	251 600	1 807 500	2 059 100
Solar 1 (including interim reimbursement of £131 800 from P&I Club for joint costs)	281 900	(121 000)	160 900
Shosei Maru	754 800	52 700	807 500
Volgoneft 139	-	202 600	202 600
Hebei Spirit	-	3 249 000	3 249 000
Other incidents	-	31 200	31 200
TOTAL CLAIMS EXPENDITURE	**4 626 800**	**6 089 000**	**10 715 800**

[14] *Under the STOPIA 2006 agreement the 1992 Fund is entitled to indemnification by the shipowner involved of the difference between the limitation amount applicable to the ship under the 1992 Civil Liability Convention and the total amount of the admissible claims or 20 million SDR, whichever is the less.*

ANNEX XXI

SUPPLEMENTARY FUND: KEY FINANCIAL FIGURES FOR 2008

(2008 INCOME/EXPENDITURE FIGURES ROUNDED AND SUBJECT TO AUDIT BY THE EXTERNAL AUDITOR)

INCOME

	2008 £
Annual Contributions due in 2008:	
General Fund	-
Other income:	
Interest on investments	58 200
TOTAL INCOME	**58 200**

ADMINISTRATIVE COSTS

	2008 £	2007 £
External Auditor's fees	3 500	3 500
Management fee payable to 1992 Fund	50 000	70 000

ANNEX XXII

1992 FUND: CONTRIBUTING OIL RECEIVED IN THE CALENDAR YEAR 2007 IN THE TERRITORIES OF STATES WHICH WERE MEMBERS OF THE 1992 FUND ON 31 DECEMBER 2008

As reported by 31 December 2008

Member State	Contributing Oil (Tonnes)	% of Total
Japan	248 786 178	16.76%
Italy	134 332 754	9.05%
India	122 534 643	8.25%
Republic of Korea	121 228 997	8.16%
Netherlands	101 090 068	6.81%
France	97 862 372	6.59%
Singapore	85 132 124	5.73%
Canada	73 331 740	4.94%
United Kingdom	72 174 986	4.86%
Spain	63 045 759	4.25%
Germany	40 025 175	2.70%
Malaysia	35 889 729	2.42%
Australia	30 238 200	2.04%
Turkey	26 428 283	1.78%
Greece	23 930 006	1.61%
Sweden	21 482 963	1.45%
Argentina	18 004 478	1.21%
Norway	16 354 519	1.10%
Portugal	13 939 351	0.94%
Finland	12 831 675	0.86%
Israel	11 890 379	0.80%
Philippines	11 087 038	0.75%
Bahamas	10 540 881	0.71%
Mexico	8 820 395	0.59%
China (Hong Kong Special Administrative Region)	7 137 856	0.48%
Bulgaria	7 082 445	0.48%
Morocco	6 268 208	0.42%
Denmark	5 623 184	0.38%
Belgium	5 246 856	0.35%
Trinidad and Tobago	4 817 564	0.32%
Russian Federation	4 793 047	0.32%
Lithuania	4 576 628	0.31%
New Zealand	4 479 761	0.30%
Croatia	3 937 952	0.27%
Ireland	3 886 161	0.26%
Panama	3 703 234	0.25%
Tunisia	3 609 307	0.24%
Malta	3 240 682	0.22%
Jamaica	2 839 967	0.19%
Sri Lanka	2 130 565	0.14%
Ghana	1 974 993	0.13%
Angola	1 823 248	0.12%
Uruguay	1 561 783	0.11%
Cameroon	1 491 152	0.10%
Poland	1 339 565	0.09%
Cyprus	1 158 564	0.08%
Algeria	581 815	0.04%
Barbados	269 495	0.02%
Estonia	224 836	0.02%
	1 484 781 561	**100.00%**

Notes

Nil return from 25 States: Albania, Antigua and Barbuda, Bahrain, Brunei Darussalam, Cape Verde, Dominica, Fiji, Gabon, Georgia, Iceland, Latvia, Liberia, Luxembourg, Madagascar, Marshall Islands, Monaco, Namibia, Qatar, Seychelles, Slovenia, Saint Vincent and the Grenadines, Switzerland, Tonga, United Arab Emirates and Vanuatu.

No report from 28 States: Belize, Cambodia, Colombia, Comoros, Congo, Cook Islands, Djibouti, Dominican Republic, Ecuador, Grenada, Guinea, Hungary, Kenya, Kiribati, Maldives, Mauritius, Mozambique, Nigeria, Oman, Papua New Guinea, Saint Kitts and Nevis, Saint Lucia, Samoa, Sierra Leone, South Africa, Tuvalu, United Republic of Tanzania and Venezuela.

ANNEX XXIII

SUPPLEMENTARY FUND: CONTRIBUTING OIL RECEIVED IN THE CALENDAR YEAR 2007 IN THE TERRITORIES OF STATES WHICH WERE MEMBERS OF THE SUPPLEMENTARY FUND ON 31 DECEMBER 2008

As reported by 31 December 2008

Member State	Contributing Oil (Tonnes)	% of Total
Japan	248 786 178	28.62%
Italy	134 332 754	15.45%
Netherlands	101 090 068	11.63%
France	97 862 372	11.26%
United Kingdom	72 174 986	8.30%
Spain	63 045 759	7.25%
Germany	40 025 175	4.60%
Greece	23 930 006	2.75%
Sweden	21 482 963	2.47%
Norway	16 354 519	1.88%
Portugal	13 939 351	1.60%
Finland	12 831 675	1.47%
Denmark	5 623 184	0.65%
Belgium	5 246 856	0.60%
Lithuania	4 576 628	0.52%
Croatia	3 937 952	0.45%
Ireland	3 886 161	0.45%
Barbados[15]	269 495	0.03%
Latvia[15]	0	0.00%
Slovenia[15]	0	0.00%
Hungary[16]	-	0.00%
	869 396 082	**100.00%**

[15] *Deemed to have received a total of 1 million tonnes for the purposes of contributions to the Supplementary Fund.*

[16] *Report not yet submitted.*

ANNEX XXIV

1971 FUND: SUMMARY OF INCIDENTS (31 DECEMBER 2008)

For this table, damage has been grouped into the following categories:

- Clean-up
- Preventive measures
- Fishery-related
- Tourism-related
- Farming-related
- Other loss of income
- Other damage to property
- Environmental damage/studies

Where claims are shown in the table as settled this means that the amounts have been agreed with the claimants, but not necessarily that the claims have been paid or paid in full.

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
1	*Irving Whale*	7.9.70	Gulf of St Lawrence, Canada	Canada	2 261	Unknown
2	*Antonio Gramsci*	27.2.79	Ventspils, USSR	USSR	27 694	RUB 2 431 584
3	*Miya Maru N°8*	22.3.79	Bisan Seto, Japan	Japan	997	¥37 710 340
4	*Tarpenbek*	21.6.79	Selsey Bill, United Kingdom	Federal Republic of Germany	999	£64 356
5	*Mebaruzaki Maru N°5*	8.12.79	Mebaru, Japan	Japan	19	¥845 480
6	*Showa Maru*	9.1.80	Naruto Strait, Japan	Japan	199	¥8 123 140
7	*Unsei Maru*	9.1.80	Akune, Japan	Japan	99	¥3 143 180
8	*Tanio*	7.3.80	Brittany, France	Madagascar	18 048	FFr11 833 718

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1971 Fund, unless indicated to the contrary)		Notes
Sinking	Unknown			*Irving Whale* refloated in 1996. Canadian Court dismissed action against 1971 Fund as Fund could not be held liable for events which occurred prior to entry into force of 1971 Fund Convention for Canada.
Grounding	5 500	Clean-up	SKr95 707 157	
Collision	540	Clean-up Fishery-related Indemnification	¥108 589 104 ¥31 521 478 ¥9 427 585 **¥149 538 167**	¥5 438 909 recovered by way of recourse.
Collision	Unknown	Clean-up	£363 550	
Sinking	10	Clean-up Fishery-related Indemnification	¥7 477 481 ¥2 710 854 ¥211 370 **¥10 399 705**	
Collision	100	Clean-up Fishery-related Indemnification	¥10 408 369 ¥92 696 505 ¥2 030 785 **¥105 135 659**	¥9 893 496 recovered by way of recourse.
Collision	<140			Because of the distribution of liability between the two colliding ships, 1971 Fund not called upon to pay any compensation.
Breaking	13 500	Clean-up Tourism-related Fishery-related Other loss of income	FFr219 164 465 FFr2 429 338 FFr52 024 FFr494 816 **FFr222 140 643**	Total payment equalled limit of compensation available under 1971 Fund Convention; payments by 1971 Fund represented 63.85% of accepted amounts. US$17 480 028 recovered by way of recourse.

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
9	*Furenas*	3.6.80	Oresund, Sweden	Sweden	999	SKr612 443
10	*Hosei Maru*	21.8.80	Miyagi, Japan	Japan	983	¥35 765 920
11	*Jose Marti*	7.1.81	Dalarö, Sweden	USSR	27 706	SKr23 844 593
12	*Suma Maru N°11*	21.11.81	Karatsu, Japan	Japan	199	¥7 396 340
13	*Globe Asimi*	22.11.81	Klaipeda, USSR	Gibraltar	12 404	RUB 1 350 324
14	*Ondina*	3.3.82	Hamburg, Federal Republic of Germany	Netherlands	31 030	DM10 080 383
15	*Shiota Maru N°2*	31.3.82	Takashima Island, Japan	Japan	161	¥6 304 300
16	*Fukutoko Maru N°8*	3.4.82	Tachibana Bay, Japan	Japan	499	¥20 844 440
17	*Kifuku Maru N°35*	1.12.82	Ishinomaki, Japan	Japan	107	¥4 271 560
18	*Shinkai Maru N°3*	21.6.83	Ichikawa, Japan	Japan	48	¥1 880 940
19	*Eiko Maru N°1*	13.8.83	Karakuwazaki, Japan	Japan	999	¥39 445 920
20	*Koei Maru N°3*	22.12.83	Nagoya, Japan	Japan	82	¥3 091 660
21	*Tsunehisa Maru N°8*	26.8.84	Osaka, Japan	Japan	38	¥964 800

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1971 Fund, unless indicated to the contrary)		Notes
Collision	200	Clean-up Clean-up Indemnification	SKr3 187 687 DKr418 589 SKr153 111	SKr449 961 recovered by way of recourse.
Collision	270	Clean-up Fishery-related Indemnification	¥163 051 598 ¥50 271 267 ¥8 941 480 **¥222 264 345**	¥18 221 905 recovered by way of recourse.
Grounding	1 000			Total damage less than shipowner's liability (clean-up SKr20 361 000 claimed). Shipowner's defence that he should be exonerated from liability rejected in final court judgement.
Grounding	10	Clean-up Indemnification	¥6 426 857 ¥1 849 085 **¥8 275 942**	
Grounding	>16 000	Indemnification	US$467 953	No damage in 1971 Fund Member State.
Discharge	200-300	Clean-up	DM11 345 174	
Grounding	20	Clean-up Fishery-related Indemnification	¥46 524 524 ¥24 571 190 ¥1 576 075 **¥72 671 789**	
Collision	85	Clean-up Fishery-related Indemnification	¥200 476 274 ¥163 255 481 ¥5 211 110 **¥368 942 865**	
Sinking	33	Indemnification	¥598 181	Total damage less than shipowner's liability.
Discharge	3.5	Clean-up Indemnification	¥1 005 160 ¥470 235 **¥1 475 395**	
Collision	357	Clean-up Fishery-related Indemnification	¥23 193 525 ¥1 541 584 ¥9 861 480 **¥34 596 589**	¥14 843 746 recovered by way of recourse.
Collision	49	Clean-up Fishery-related Indemnification	¥18 010 269 ¥8 971 979 ¥772 915 **¥27 755 163**	¥8 994 083 recovered by way of recourse.
Sinking	30	Clean-up Indemnification	¥16 610 200 ¥241 200 **¥16 851 400**	

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
22	*Koho Maru N°3*	5.11.84	Hiroshima, Japan	Japan	199	¥5 385 920
23	*Koshun Maru N°1*	5.3.85	Tokyo Bay, Japan	Japan	68	¥1 896 320
24	*Patmos*	21.3.85	Straits of Messina, Italy	Greece	51 627	LIt 13 263 703 650
25	*Jan*	2.8.85	Aalborg, Denmark	Federal Republic of Germany	1 400	DKr1 576 170
26	*Rose Garden Maru*	26.12.85	Umm Al Quwain, United Arab Emirates	Panama	2 621	US$364 182 (estimate)
27	*Brady Maria*	3.1.86	Elbe Estuary, Federal Republic of Germany	Panama	996	DM324 629
28	*Take Maru N°6*	9.1.86	Sakai-Senboku, Japan	Japan	83	¥3 876 800
29	*Oued Gueterini*	18.12.86	Algiers, Algeria	Algeria	1 576	Din1 175 064
30	*Thuntank 5*	21.12.86	Gävle, Sweden	Sweden	2 866	SKr2 741 746
31	*Antonio Gramsci*	6.2.87	Borgå, Finland	USSR	27 706	RUB 2 431 854
1971						
32	*Southern Eagle*	15.6.87	Sada Misaki, Japan	Panama	4 461	¥93 874 528
33	*El Hani*	22.7.87	Indonesia	Libya	81 412	£7 900 000 (estimate)
34	*Akari*	25.8.87	Dubai, United Arab Emirates	Panama	1 345	£92 800 (estimate)

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1971 Fund, unless indicated to the contrary)		Notes
Grounding	20	Clean-up Fishery-related Indemnification	¥68 609 674 ¥25 502 144 ¥1 346 480 **¥95 458 298**	
Collision	80	Clean-up Indemnification	¥26 124 589 ¥474 080 **¥26 598 669**	¥8 866 222 recovered by way of recourse.
Collision	700			Total damage agreed out of court or decided by court (LIt11 583 298 650) less than shipowner's liability.
Grounding	300	Clean-up Indemnification	DKr9 455 661 DKr394 043 **DKr9 849 704**	
Discharge of oil	Unknown			Claim against 1971 Fund (US$44 204) withdrawn.
Collision	200	Clean-up	DM3 220 511	DM333 027 recovered by way of recourse.
Discharge of oil	0.1	Indemnification	¥104 987	Total damage less than shipowner's liability.
Discharge	15	Clean-up Clean-up Clean-up Other loss of income Indemnification	US$1 133 FFr708 824 Din5 650 £126 120 Din293 766	
Grounding	150-200	Clean-up Fishery-related Indemnification	SKr23 168 271 SKr49 361 SKr685 437 **SKr23 903 069**	
Grounding	600-700	Clean-up	FM1 849 924	USSR clean-up claims (RUB 1 417 448) not paid by Fund since USSR not Member of 1971 Fund at time of incident.
Collision	15			Total damage less than shipowner's liability (¥35 346 679 clean-up and ¥51 521 183 fishery-related agreed).
Grounding	3 000			Clean-up claim (US$242 800) not pursued.
Fire	1 000	Clean-up Clean-up	Dhs 864 293 US$187 165	US$160 000 refunded by shipowner's insurer.

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
35	*Tolmiros*	11.9.87	West coast, Sweden	Greece	48 914	SKr50 000 000 (estimate)
36	*Hinode Maru Nº1*	18.12.87	Yawatahama, Japan	Japan	19	¥608 000
37	*Amazzone*	31.1.88	Brittany, France	Italy	18 325	FFr13 860 369
38	*Taiyo Maru Nº13*	12.3.88	Yokohama, Japan	Japan	86	¥2 476 800
39	*Czantoria*	8.5.88	St Romuald, Canada	Canada	81 197	Unknown
40	*Kasuga Maru Nº1*	10.12.88	Kyoga Misaki, Japan	Japan	480	¥17 015 040
41	*Nestucca*	23.12.88	Vancouver Island, Canada	United States of America	1 612	Unknown
42	*Fukkol Maru Nº12*	15.5.89	Shiogama, Japan	Japan	94	¥2 198 400
43	*Tsubame Maru Nº58*	18.5.89	Shiogama, Japan	Japan	74	¥2 971 520
44	*Tsubame Maru Nº16*	15.6.89	Kushiro, Japan	Japan	56	¥1 613 120
45	*Kifuku Maru Nº103*	28.6.89	Otsuji, Japan	Japan	59	¥1 727 040
46	*Nancy Orr Gaucher*	25.7.89	Hamilton, Canada	Liberia	2 829	Can$473 766

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1971 Fund, unless indicated to the contrary)		Notes
Unknown	200			Clean-up claim (SKr100 639 999) not pursued, since legal action by Swedish Government against shipowner and 1971 Fund withdrawn.
Mishandling of cargo	25	Clean-up Indemnification	¥1 847 225 ¥152 000 **¥1 999 225**	
Storm damage to tanks	2 000	Clean-up Fishery-related	FFr1 141 185 FFr145 792 **FFr1 286 977**	FFr1 000 000 recovered from shipowner's insurer.
Discharge	6	Clean-up Indemnification	¥6 134 885 ¥619 200 **¥6 754 085**	
Collision with berth	Unknown			1971 Fund Convention not applicable, as incident occurred before entry into force of Convention for Canada. Clean-up claims (Can$1 787 771) not pursued.
Sinking	1 100	Clean-up Fishery-related Indemnification	¥371 865 167 ¥53 500 000 ¥4 253 760 **¥429 618 927**	
Collision	Unknown			1971 Fund Convention not applicable, as incident occurred before entry into force of Convention for Canada. Clean-up claims (Can$10 475) not pursued.
Overflow from supply pipe	0.5	Clean-up Indemnification	¥492 635 ¥549 600 **¥1 042 235**	
Mishandling of oil transfer	7	Other damage to property Indemnification	¥19 159 905 ¥742 880 **¥19 902 785**	
Discharge	Unknown	Other damage to property Indemnification	¥273 580 ¥403 280 **¥676 860**	
Mishandling of cargo	Unknown	Clean-up Indemnification	¥8 285 960 ¥431 761 **¥8 717 721**	
Overflow during discharge	250			Total damage less than shipowner's liability (clean-up Can$292 110 agreed).

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
47	*Dainichi Maru N°5*	28.10.89	Yaizu, Japan	Japan	174	¥4 199 680
48	*Daito Maru N°3*	5.4.90	Yokohama, Japan	Japan	93	¥2 495 360
49	*Kazuei Maru N°10*	11.4.90	Osaka, Japan	Japan	121	¥3 476 160
50	*Fuji Maru N°3*	12.4.90	Yokohama, Japan	Japan	199	¥5 352 000
51	*Volgoneft 263*	14.5.90	Karlskrona, Sweden	USSR	3 566	SKr3 205 204
52	*Hato Maru N°2*	27.7.90	Kobe, Japan	Japan	31	¥803 200
53	*Bonito*	12.10.90	River Thames, United Kingdom	Sweden	2 866	£241 000 (estimate)
54	*Rio Orinoco*	16.10.90	Anticosti Island, Canada	Cayman Islands	5 999	Can$1 182 617
55	*Portfield*	5.11.90	Pembroke, Wales, United Kingdom	United Kingdom	481	£69 141
56	*Vistabella*	7.3.91	Caribbean	Trinidad and Tobago	1 090	€358 865 (estimate)
57	*Hokunan Maru N°12*	5.4.91	Okushiri Island, Japan	Japan	209	¥3 523 520
58	*Agip Abruzzo*	10.4.91	Livorno, Italy	Italy	98 544	LIt 21 800 000 000 (estimate)

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1971 Fund, unless indicated to the contrary)		Notes
Mishandling of cargo	0.2	Fishery-related Clean-up Indemnification	¥1 792 100 ¥368 510 ¥1 049 920 **¥3 210 530**	
Mishandling of cargo	3	Clean-up Indemnification	¥5 490 570 ¥623 840 **¥6 114 410**	
Collision	30	Clean-up Fishery-related Indemnification	¥48 883 038 ¥560 588 ¥869 040 **¥50 312 666**	¥45 038 833 recovered by way of recourse.
Overflow during supply operation	Unknown	Clean-up Indemnification	¥96 431 ¥1 338 000 **¥1 434 431**	¥430 329 recovered by way of recourse.
Collision	800	Clean-up Fishery-related Indemnification	SKr15 523 813 SKr530 239 SKr795 276 **SKr16 849 328**	
Mishandling of cargo	Unknown	Other damage to property Indemnification	¥1 087 700 ¥200 800 **¥1 288 500**	
Mishandling of cargo	20			Total damage less than shipowner's liability (clean-up £130 000 agreed).
Grounding	185	Clean-up	Can$12 831 892	
Sinking	110	Clean-up Fishery-related Indemnification	£249 630 £9 879 £17 155 **£276 664**	
Sinking	Unknown	Clean-up Clean-up	€1 255 803 £14 250	1971 Fund brought recourse action against shipowner's insurer and Court of Appeal in Guadeloupe rendered judgement in favour of Fund for €1 289 483 plus interest and costs. Fund has applied for summary judgement in Trinidad and Tobago in execution of Court of Appeal's judgement. In March 2008 the Court in Trinidad & Tobago delivered a judgement in the 1971 Fund's favour. The insurer has appealed.
Grounding	Unknown	Clean-up Fishery-related Indemnification	¥2 119 966 ¥4 024 863 ¥880 880 **¥7 025 709**	
Collision	2 000	Indemnification	LIt 1 666 031 931	Total damage less than shipowner's liability.

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
59	*Haven*	11.4.91	Genoa, Italy	Cyprus	109 977	LIt 23 950 220 000
60	*Kaiko Maru N°86*	12.4.91	Nomazaki, Japan	Japan	499	¥14 660 480
61	*Kumi Maru N°12*	27.12.91	Tokyo Bay, Japan	Japan	113	¥3 058 560
62	*Fukkol Maru N°12*	9.6.92	Ishinomaki, Japan	Japan	94	¥2 198 400
63	*Aegean Sea*	3.12.92	La Coruña, Spain	Greece	57 801	Pts 1 121 219 450
64	*Braer*	5.1.93	Shetland, United Kingdom	Liberia	44 989	£4 883 840
65	*Kihnu*	16.1.93	Tallinn, Estonia	Estonia	949	113 000 SDR (estimate)
66	*Sambo N°11*	12.4.93	Seoul, Republic of Korea	Republic of Korea	520	Won 77 786 224 (estimate)

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1971 Fund, unless indicated to the contrary)		Notes
Fire and explosion	Unknown	Italian State Two Italian contractors **LIt 71 584 970 783** French State Other French public bodies Principality of Monaco **FFr23 510 228** Indemnification	LIt 70 002 629 093 LIt 1 582 341 690 FFr12 580 724 FFr10 659 469 FFr270 035 £2 500 000	Agreement on a global settlement of all outstanding claims between Italian State, shipowner/Club and 1971 Fund was signed in Rome on 4 March 1999. 1971 Fund's payments are set out in previous column. Shipowner's insurer paid LIt47 597 370 907 to Italian State. Shipowner/insurer paid all accepted claims by other Italian public bodies and private claimants.
Collision	25	Clean-up Fishery-related Indemnification **¥96 732 933**	¥53 513 992 ¥39 553 821 ¥3 665 120	
Collision	5	Clean-up Indemnification **¥1 821 159**	¥1 056 519 ¥764 640	¥650 522 recovered by way of recourse.
Mishandling of oil supply	Unknown	Other damage to property Indemnification **¥4 793 597**	¥4 243 997 ¥549 600	
Grounding	73 500 (estimate)	Fishery-related Clean-up Preventive measures Tourism Financial costs Amounts awarded by criminal court Previously settled claims Miscellaneous **Pts 13 928 783 000** Indemnification	Pts 8 696 000 000 Pts 1 729 240 000 Pts 708 033 000 Pts 13 810 000 Pts 371 680 000 Pts 893 880 000 Pts 1 263 150 000 Pts 252 990 000 Pts 278 197 307	Shipowner/insurer paid Pts 840 000 000. Pursuant to agreement between Spanish State, shipowner/insurer and 1971 Fund, Fund paid the Spanish State Pts 6 386 921 613. Fund also paid Pts 1 263 150 000 to claimants that had settled their claims at an early stage and were not included in the above agreement.
Grounding	84 000	Clean-up Fishery-related Tourism-related Farming-related Other damage to property Other loss of income **£51 938 938**	£593 883 £38 538 451 £77 375 £3 572 392 £8 904 047 £252 790	£6 213 497 paid by shipowner's insurer. 1971 Fund paid £45 725 441 in compensation. The last outstanding claim that was the subject of litigation has been withdrawn following settlement agreement between claimant, shipowner's insurer and 1971 Fund. In accordance with the agreement, the claimant has paid £75 000 to shipowner's insurer and £20 000 to 1971 Fund as a contribution to the costs incurred in respect of the court action.
Grounding	140	Clean-up	FM543 618	
Grounding	4	Clean-up Fishery-related **Won 219 714 755**	Won 176 866 632 Won 42 848 123	US$22 504 recovered from shipowner's insurer.

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
67	*Taiko Maru*	31.5.93	Shioyazaki, Japan	Japan	699	¥29 205 120
68	*Ryoyo Maru*	23.7.93	Izu Peninsula, Japan	Japan	699	¥28 105 920
69	*Keumdong N°5*	27.9.93	Yeosu, Republic of Korea	Republic of Korea	481	Won 77 417 210
70	*Iliad*	9.10.93	Pylos, Greece	Greece	33 837	Drs 1 496 533 000
71	*Seki*	30.3.94	Fujairah, United Arab Emirates, and Oman	Panama	153 506	14 million SDR
72	*Daito Maru N°5*	11.6.94	Yokohama, Japan	Japan	116	¥3 386 560
73	*Toyotaka Maru*	17.10.94	Kainan, Japan	Japan	2 960	¥81 823 680
74	*Hoyu Maru N°53*	31.10.94	Monbetsu, Japan	Japan	43	¥1 089 280
75	*Sung Il N°1*	8.11.94	Onsan, Republic of Korea	Republic of Korea	150	Won 23 000 000 (estimate)
76	Spill from unknown source	30.11.94	Mohammédia, Morocco	-	-	-

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1971 Fund, unless indicated to the contrary)		Notes
Collision	520	Clean-up Fishery-related Indemnification	¥756 780 796 ¥336 404 259 ¥7 301 280 **¥1 100 486 335**	¥49 104 248 recovered by way of recourse.
Collision	500	Clean-up Indemnification	¥8 433 001 ¥7 026 480 **¥15 459 481**	¥10 455 440 recovered by way of recourse.
Collision	1 280	Clean-up Fishery-related Indemnification	Won 5 602 021 858 Won 10 673 130 111 **Won 16 275 151 969** Won 12 857 130	Won 64 560 080 paid by the shipowner's insurer.
Grounding	200	Clean-up (paid by shipowner) Fishery-related (claimed) Other loss of income (claimed) Moral damages (claimed)	Drs 356 204 011 Drs 1 044 000 000 Drs 1 671 000 000 Drs 378 000 000 **Drs 3 449 204 011** **(€10 100 000)**	All claims filed in the limitation proceedings are time-barred against 1971 Fund except for two: a claim from shipowner and his insurer in respect of reimbursement for any compensation payments in excess of shipowner's limitation amount and for indemnification under Article 5.1 of 1971 Fund Convention, and a claim from owner of a fish farm for Drs 1 044 million.
Collision	16 000			Settlement outside the Conventions concluded between Government of Fujairah and shipowner. Terms of settlement not known to 1971 Fund. 1971 Fund will not be called upon to pay any compensation.
Overflow during loading operation	0.5	Clean-up Indemnification	¥1 187 304 ¥846 640 **¥2 033 944**	
Collision	560	Clean-up Fishery-related Other loss of income Indemnification	¥629 516 429 ¥50 730 359 ¥15 490 030 ¥20 455 920 **¥716 192 738**	¥31 021 717 recovered by way of recourse.
Mishandling of oil supply	Unknown	Other damage to property Clean-up Indemnification	¥3 954 861 ¥202 854 ¥272 320 **¥4 430 035**	
Grounding	18	Clean-up Fishery-related	Won 9 401 293 Won 28 378 819 **Won 37 780 112**	Shipowner lost right to limit his liability because proceedings not commenced within period specified under Korean law.
Unknown	Unknown	Clean-up (claimed)	Mor Dhr 2 600 000	Not established that oil originated from a ship as defined in 1971 Fund Convention.

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
77	*Boyang N°51*	25.5.95	Sandbaeg Do, Republic of Korea	Republic of Korea	149	19 817 SDR
78	*Dae Woong*	27.6.95	Kojung, Republic of Korea	Republic of Korea	642	Won 95 000 000 (estimate)
79	*Sea Prince*	23.7.95	Yeosu, Republic of Korea	Cyprus	144 567	Won 18 308 275 906
80	*Yeo Myung*	3.8.95	Yeosu, Republic of Korea	Republic of Korea	138	Won 21 465 434
81	*Shinryu Maru N°8*	4.8.95	Chita, Japan	Japan	198	¥3 967 138
82	*Senyo Maru*	3.9.95	Ube, Japan	Japan	895	¥20 203 325
83	*Yuil N°1*	21.9.95	Busan, Republic of Korea	Republic of Korea	1 591	Won 351 924 060
84	*Honam Sapphire*	17.11.95	Yeosu, Republic of Korea	Panama	142 488	14 000 000 SDR
85	*Toko Maru*	23.1.96	Anegasaki, Japan	Japan	699	¥18 769 567 (estimate)
86	*Sea Empress*	15.2.96	Milford Haven, Wales, United Kingdom	Liberia	77 356	£7 395 748

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1971 Fund, unless indicated to the contrary)		Notes
Collision	160			Clean-up claim (Won 142 million) time-barred as necessary legal action not taken.
Grounding	1	Clean-up	Won 43 517 127	
Grounding	5 035	Clean-up	Won 20 709 245 359	Won 18 308 275 906 paid by shipowner's insurer.
		Fishery-related	Won 19 836 456 445	
		Tourism-related	Won 538 000 000	
		Oil removal	Won 8 420 123 382	
		Environmental studies	Won 723 490 410	
			Won 50 227 315 596	
		Clean-up	¥357 214	
		Indemnification	Won 7 410 928 540	
Collision	40	Clean-up	Won 684 000 000	Won 560 945 437 paid by shipowner's insurer.
		Fishery-related	Won 600 000 000	
		Tourism-related	Won 269 029 739	
			Won 1 553 029 739	
Mishandling of oil supply	0.5	Clean-up	¥8 650 249	¥3 718 455 paid by shipowner's insurer.
		Indemnification	¥984 327	
			¥9 634 576	
		Other damage to property	US$3 103	
		Other loss of income (agreed)	US$2 560	
			US$5 663	
Collision	94	Clean-up	¥314 838 937	¥279 973 101 recovered by way of recourse action.
		Fishery-related	¥46 726 661	
		Indemnification	¥5 012 855	
			¥366 578 453	
Sinking	Unknown	Clean-up	Won 12 393 138 987	
		Fishery-related	Won 7 960 494 932	
		Oil removal operation	Won 6 824 362 810	
			Won 27 177 996 729	
Contact with fender	1 800	Clean-up	Won 9 033 000 000	US$13.5 million paid by shipowner's insurer.
		Fishery-related	Won 1 112 000 000	
		Environmental studies (claimed)	Won 114 000 000	
			Won 10 259 000 000	
Collision	4			Total damage less than owner's liability. Indemnification not requested.
Grounding	72 360	Clean-up	£22 773 470	£7 395 748 paid by shipowner's insurer. £20 million recovered from Milford Haven Port Authority by 1971 Fund by way of recourse action.
		Other damage to property	£443 972	
		Fishery-related	£10 154 314	
		Tourism-related	£ 2 389 943	
		Other loss of income	£1 044 785	
			£36 806 484	
		Indemnification	£1 835 035	

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
87	*Kugenuma Maru*	6.3.96	Kawasaki, Japan	Japan	57	¥1 175 055 (estimate)
88	*Kriti Sea*	9.8.96	Agioi Theodoroi, Greece	Greece	62 678 (estimate)	€6 576 100
89	*N° 1 Yung Jung*	15.8.96	Busan, Republic of Korea	Republic of Korea	560	Won 122 million
90	*Nakhodka*	2.1.97	Oki Island, Japan	Russian Federation	13 159	1 588 000 SDR
91	*Tsubame Maru N°31*	25.1.97	Otaru, Japan	Japan	89	¥1 843 849
92	*Nissos Amorgos*	28.2.97	Maracaibo, Venezuela	Greece	50 563	Bs3 473 million
93	*Daiwa Maru N°18*	27.3.97	Kawasaki, Japan	Japan	186	¥3 372 368 (estimate)
94	*Jeong Jin N°101*	1.4.97	Busan, Republic of Korea	Republic of Korea	896	Won 246 million

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1971 Fund, unless indicated to the contrary)		Notes
Mishandling of oil supply	0.3	Clean-up Indemnification	¥1 981 403 ¥297 066 **¥2 278 469**	¥1 197 267 recovered by way of recourse action.
Mishandling of oil supply	20-50	Clean-up and property damage Fishery-related Tourism Miscellaneous	€2 500 000 €1 100 000 €150 000 €24 000 **€3 774 000**	All settled claims paid by shipowner's insurer. Three claims totalling €3.4 million pending in court. These claims are from the Greek State, a fish farm and a seaside resort owner.
Grounding	28	Clean-up Salvage Fishery-related Loss of income Cargo transhipment Indemnification	Won 689 829 037 Won 20 376 927 Won 16 769 424 Won 6 161 710 Won 10 000 000 Won 28 071 490 **Won 771 208 588**	Won 690 million paid by shipowner's insurer.
Breaking	6 200	Clean-up Fishery-related Tourism-related Causeway	¥20 928 412 000 ¥1 769 172 000 ¥1 344 157 000 ¥2 048 152 000 **¥26 089 893 000**	All claims have been settled and paid. A global settlement agreement was reached between the shipowner/insurer and the IOPC Funds whereby the insurer paid ¥10 956 930 000 and the Funds paid ¥15 130 970 000, of which the 1971 Fund paid ¥7 422 192 000 and the 1992 Fund paid ¥7 708 778 000.
Overflow during loading operation	0.6	Clean-up Indemnification	¥7 673 830 ¥457 497 **¥8 131 327**	¥1 710 173 paid by shipowner's insurer.
Grounding	3 600	Clean-up (paid) Loss of income (paid)	US$8 364 223 US$16 033 389 **US$24 397 612**	Bs1 254 619 385 and US$4 008 347 paid by shipowner's insurer.
		Preventive measures (paid) Property damage and loss of income (paid)	Bs70 675 468 Bs289 000 000 **Bs359 675 468**	
		Environmental damage (claimed) Fisheries (claimed)	US$60 250 396 US$30 000 000 **US$90 250 396**	
Mishandling of oil supply	1	Clean-up Indemnification	¥415 600 000 ¥865 406 **¥416 465 406**	
Overflow during loading operation	124	Clean-up Indemnification	Won 418 000 000 Won 58 000 000 **Won 476 000 000**	

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
95	*Osung N° 3*	3.4.97	Tunggado, Republic of Korea	Republic of Korea	786	104 500 SDR (estimate)
96	*Plate Princess*	27.5.97	Puerto Miranda, Venezuela	Malta	30 423	3.6 million SDR (estimate)
97	*Diamond Grace*	2.7.97	Tokyo Bay, Japan	Panama	147 012	14 million SDR
98	*Katja*	7.8.97	Le Havre, France	Bahamas	52 079	€7.3 million (estimate)
99	*Evoikos*	15.10.97	Strait of Singapore	Cyprus	80 823	8 846 942 SDR
100	*Kyungnam N° 1*	7.11.97	Ulsan, Republic of Korea	Republic of Korea	168	Won 43 543 015
101	*Pontoon 300*	7.1.98	Hamriyah, Sharjah, United Arab Emirates	Saint Vincent and the Grenadines	4 233	Not available
102	*Maritza Sayalero*	8.6.98	Carenero Bay, Venezuela	Panama	28 338	3 000 000 SDR (estimate)

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1971 Fund, unless indicated to the contrary)		Notes
Grounding	Unknown	Clean-up Fishery-related Oil removal operation **Won 7 674 268 001** Clean-up Fishery-related **¥851 039 365** Indemnification	Won 866 906 355 Won 68 795 729 Won 6 738 565 917 ¥669 252 879 ¥181 786 486 Won 37 963 635	1992 Fund paid ¥340 million to claimants. This amount was later reimbursed by 1971 Fund.
Overflow during loading operation	3.2	Fishery-related (claimed)	US$51 000 000	Claims against the 1971 Fund time-barred. However, they are being pursued before the Venezuelan Courts.
Grounding	1 500	Clean-up Fishery-related Tourism-related Other loss of income Miscellaneous (agreed) **¥1 416 000 000**	¥1 100 000 000 ¥263 000 000 ¥23 000 000 ¥8 000 000 ¥22 000 000	Total amount of established claims did not exceed shipowner's liability.
Striking a quay	190	Clean-up Other claims **€3 974 000**	€274 000 €3 700 000	Total amount of established claims did not exceed the shipowner's liability. 1971 Fund will not be called to pay compensation.
Collision	29 000	*Singapore* Clean-up Other damage to property Other damage to property (claimed) **S$11 567 000** *Malaysia* Clean-up Fishery-related **RM2 624 000** *Indonesia* Clean-up (claimed) Environmental damage (claimed) Fishery-related (claimed) **US$3 363 000**	 S$10 000 000 S$1 500 000 S$67 000 RM1 424 000 RM1 200 000 US$152 000 US$3 200 000 US$11 000	All settled claims in Singapore and Malaysia paid by shipowner. All claims in Indonesia dismissed by limitation court in Singapore. Although any further claims are time-barred under the Conventions, insurer has informed Fund that it is not prepared to withdraw its actions against 1971 Fund in Malaysia and London until it has had the opportunity to establish that there are no outstanding claims against shipowner which might result in 1971 Fund being liable to pay compensation or indemnification.
Grounding	15-20	Clean-up Fishery-related **Won 272 033 170**	Won 189 214 535 Won 82 818 635	Shipowner has paid Won 26 622 030.
Sinking	8 000	Clean-up Fishery-related **Dhs 7 900 000**	Dhs 6 300 000 Dhs 1 600 000	1971 Fund has settled and paid all claims.
Ruptured discharge pipe	262	*Claims against shipowner pending in court:* Clean-up and environmental damage (claimed)	Bs10 000 000	1971 Fund considers that the Conventions do not apply to this incident. Claims against Fund time-barred.

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
103	*Al Jaziah 1*	24.1.00	Abu Dhabi, United Arab Emirates	Honduras	681	3 000 000 SDR
104	*Alambra*	17.9.00	Estonia	Malta	75 366	7 600 000 SDR (estimate)
105	*Natuna Sea*	3.10.00	Indonesia	Panama	51 095	6 100 000 SDR (estimate)
106	*Zeinab*	14.4.01	United Arab Emirates	Georgia	2 178	3 000 000 SDR
107	*Singapura Timur*	28.5.01	Malaysia	Panama	1 369	102 000 SDR (estimate)

Notes

See page 214.

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1971 Fund, unless indicated to the contrary)		Notes
Sinking	100-200	Clean-up/preventive measures	Dhs 6 400 000	The 1971 and 1992 Funds have taken recourse action against shipowner claiming reimbursement of Dhs 6.4 million. The Court has decided in favour of the Funds, but it will be very difficult to execute the judgement since the shipowner has no sufficient assets.
Corrosion	300 (estimate)	Clean-up (settled) Economic loss (claimed) **US$720 000** Economic loss (claimed) **EEK38 800 000**	US$620 000 US$100 000 EEK38 800 000	All settled claims paid by the shipowner's insurer. Claims subject to legal proceedings. Claims arising from this incident are below the 1969 CLC limit.
Grounding	7 000 (estimate)	*Singapore* Clean-up and fisheries **US$8 400 000** *Malaysia* Clean-up Fishery-related **RM2 205 000** *Indonesia* Clean-up and fisheries **US$2 800 000**	 US$8 400 000 RM1 300 000 RM905 000 US$2 800 000	All claims paid by shipowner's insurer.
Sinking	400	Clean-up Clean-up	US$844 000 Dhs2 480 000	1971 and 1992 Funds have each contributed 50% of the amounts paid.
Collision	Unknown	Clean-up Preventive measures Preventive measures/environmental risk assessment Indemnification	US$62 896 ¥11 436 000 US$783 500 US$25 000	US$103 378 paid by shipowner's insurer. 1971 Fund has recovered £317 317 from shipowner's insurer. Insurer has recovered £185 000 from colliding vessel interests.

ANNEX XXV

1992 FUND: SUMMARY OF INCIDENTS (31 DECEMBER 2008)

For this table, damage has been grouped into the following categories:

- Clean-up
- Preventive measures
- Fishery-related
- Tourism-related
- Other damage to property
- Environmental damage/studies

Where claims are shown in the table as settled this means that the amounts have been agreed with the claimants, but not necessarily that the claims have been paid or paid in full.

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GT)	Limit of shipowner's liability under applicable CLC
1	Incident in Germany	20.6.96	North Sea coast, Germany	Unknown	Unknown	Unknown
2	*Nakhodka*	2.1.97	Oki Island, Japan	Russian Federation	13 159	1 588 000 SDR
3	*Osung N°3*	3.4.97	Tunggado, Republic of Korea	Republic of Korea	786	104 500 SDR (estimate)
4	Incident in United Kingdom	28.9.97	Essex, United Kingdom	Unknown	Unknown	Unknown
5	*Santa Anna*	1.1.98	Devon, United Kingdom	Panama	17 134	10 196 280 SDR
6	*Milad 1*	5.3.98	Bahrain	Belize	801	Not available
7	*Mary Anne*	22.7.99	Philippines	Philippines	465	3 000 000 SDR

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1992 Fund, unless indicated to the contrary)		Notes
Unknown	Unknown	Clean-up	€1 284 905	Following out-of-court settlement, shipowner/insurer paid 20% and 1992 Fund paid 80% of final assessment amount.
Breaking	6 200	Clean-up Fishery-related Tourism-related Causeway	¥20 928 412 000 ¥1 769 172 000 ¥1 344 157 000 ¥2 048 152 000 **¥26 089 893 000**	All claims have been settled and paid. A global settlement agreement was reached between the shipowner/insurer and the IOPC Funds whereby the insurer paid ¥10 956 930 000 and the Funds paid ¥15 130 970 000, of which the 1992 Fund paid ¥7 422 192 000 and the 1971 Fund paid ¥7 708 778 000.
Grounding	Unknown	Clean-up Fishery-related Oil removal operation Clean-up Fishery-related	Won 866 906 355 Won 68 795 729 Won 6 738 565 917 **Won 7 674 268 001** ¥669 252 879 ¥181 786 486 **¥851 039 365**	All claims have been settled and paid. 1992 Fund paid ¥340 million to claimants. This amount was later reimbursed by 1971 Fund.
Unknown	Unknown	Clean-up (claimed)	£10 000	Claim not pursued.
Grounding	280	Clean-up (settled)	£30 000	Claim paid by shipowner's insurer.
Damage to hull	0	Pre-spill preventive measures	BD 21 168	1992 Fund did not pursue recourse action against shipowner.
Sinking	Unknown	Clean-up Clean-up	US$2 500 000 PHP 1 800 000	Claims settled by shipowner's insurer without 1992 Fund's involvement.

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GT)	Limit of shipowner's liability under applicable CLC
8	*Dolly*	5.11.99	Martinique	Dominican Republic	289	3 000 000 SDR
9	*Erika*	12.12.99	Brittany, France	Malta	19 666	€12 843 484
10	*Al Jaziah 1*	24.1.00	Abu Dhabi, United Arab Emirates	Honduras	681	3 000 000 SDR
11	*Slops*	15.6.00	Piraeus, Greece	Greece	10 815	8.2 million SDR (estimated)
12	Incident in Spain	5.9.00	Spain	Unknown	Unknown	Unknown
13	Incident in Sweden	23.9.00	Sweden	Unknown	Unknown	Unknown
14	*Natuna Sea*	3.10.00	Indonesia	Panama	51 095	22 400 000 SDR (estimate)

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1992 Fund, unless indicated to the contrary)		Notes
Sinking	Unknown	Preventive measures	€1 457 753	1992 Fund paid €1 457 753 to French Government in full settlement of all its losses as a result of the incident.
Breaking	19 800	Clean-up Fishery-related Property damage Tourism Other loss of income Claims in court (pending)	€31 887 782 €10 733 023 €2 556 905 €76 094 076 €8 387 521 **€129 659 307** €25 500 000	Payments made by shipowner's insurer for €12.8 million and by 1992 Fund for €116.9 million. Total paid the French State €153.9 million, ie the amount awarded by the Criminal Court which took into account the compensation amounts already received from the Fund.
Sinking	1 000-2 000	Clean-up/preventive measures	Dhs 6 400 000	The 1971 and 1992 Funds have taken recourse action against shipowner claiming reimbursement of Dhs 6.4 million. The Court has decided in favour of the Funds, but it will be very difficult to execute the judgement since the shipowner has no sufficient assets.
Fire	1 000-2 000	Clean-up (settled)	€4 022 099	The Executive Committee decided in 2000 that the *Slops* should not be considered a 'ship' for the purpose of the 1992 Conventions and that therefore these Conventions did not apply to this incident. However, the Greek Supreme Court ultimately decided that the *Slops* was a 'ship' as defined in the 1992 Conventions.
Unknown	Unknown	Clean-up (settled)	€6 000	Spanish authorities have recovered their costs from alleged source of the pollution.
Unknown	Unknown	Clean-up (claimed)	SKr5 260 000	Swedish State brought legal action against owner of the *Alambra*, his insurer and 1992 Fund. Following out-of-court settlement between the State and shipowner/ insurer, action against Fund was withdrawn.
Grounding	7 000 (estimate)	*Singapore* Clean-up and fisheries *Malaysia* Clean-up Fishery-related *Indonesia* Clean-up and fisheries	 US$8 400 000 RM1 300 000 RM905 000 **RM2 205 000** US$2 800 000	All claims have been paid by shipowner's insurer.

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GT)	Limit of shipowner's liability under applicable CLC
15	*Baltic Carrier*	29.3.01	Denmark	Marshall Islands	23 235	DKr118 million
16	*Zeinab*	14.4.01	United Arab Emirates	Georgia	2 178	3 000 000 SDR
17	Incident in Guadeloupe	30.6.02	Guadeloupe	Unknown	Unknown	Unknown
18	Incident in United Kingdom	29.9.02	United Kingdom	Unknown	Unknown	Unknown
19	*Prestige*	13.11.02	Spain	Bahamas	42 820	€22 777 986
20	*Spabunker IV*	21.1.03	Spain	Spain	647	3 000 000 SDR
21	Incident in Bahrain	15.3.03	Bahrain	Unknown	Unknown	Unknown

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1992 Fund, unless indicated to the contrary)		Notes
Collision	2 500	Clean-up	DKr65 900 000	All claims paid by shipowner's insurer. 1992 Fund unlikely to be called upon to make any compensation payments.
		Oil disposal	DKr17 400 000	
		Property damage/economic loss	DKr1 600 000	
		Fishery-related	DKr19 700 000	
		Environmental monitoring	DKr258 000	
			DKr104 858 000	
Sinking	400	Clean-up	US$844 000	1971 and 1992 Funds have each contributed 50% of the amounts paid.
		Clean-up	Dhs2 480 000	
Unknown	Unknown	Clean-up (claimed)	€340 000	Source of the spill appears to have been a general cargo vessel. Therefore unlikely that 1992 Fund will be called upon to make any compensation payments.
Unknown	Unknown	Clean-up	£5 400	
Breaking	63 272 (estimate)	*Spain*		Shipowner has deposited limitation amount (€22 777 986) with competent Spanish Court. 1992 Fund has paid €113 920 000 to Spanish Government and €523 243 to claimants in Spain, €5 million to claimants in France and €328 448 to Portuguese Government.
		Clean-up/preventive measures (claimed)	€3 011 744	
		Property damage (claimed)	€2 066 103	
		Mariculture (claimed)	€20 198 328	
		Fishing and shellfish gathering (claimed)	€3 610 886	
		Tourism (claimed)	€688 303	
		Fish processors/vendors (claimed)	€20 830 377	
		Miscellaneous (claimed)	€1 775 068	
		Spanish Government	€968 524 084	
			€1 020 704 893	
		France		
		Clean-up (claimed)	€10 512 569	
		Property damage (claimed)	€87 772	
		Mariculture (claimed)	€2 336 501	
		Shellfish gathering (claimed)	€116 810	
		Fishing boats (claimed)	€1 601 717	
		Tourism (claimed)	€25 166 131	
		Fish processors/vendors (claimed)	€301 446	
		Miscellaneous (claimed)	€2 029 820	
		French Government (claimed)	€67 499 154	
			€109 651 920	
		Portugal		
		Clean-up (settled)	€2 189 923	
			€2 189 923	
Sinking	Unknown	*Spain*		
		Preventive measures and wreck removal	€5 400 000	
		Clean-up	€628 000	
			€6 028 000	
		Gibraltar		
		Clean-up	£18 350	
Unknown	Unknown	Clean-up/preventive measures	US$689 000	All claims paid by 1992 Fund.
		Fisheries	US$542 000	
			US$1 231 000	

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GT)	Limit of shipowner's liability under applicable CLC
22	*Buyang*	22.4.03	Geoje, Republic of Korea	Republic of Korea	187	3 000 000 SDR
23	*Hana*	13.5.03	Busan, Republic of Korea	Republic of Korea	196	3 000 000 SDR
24	*Victoriya*	30.8.03	Syzran, Russian Federation	Russian Federation	2 003	3 000 000 SDR
25	*Duck Yang*	12.9.03	Busan, Republic of Korea	Republic of Korea	149	3 000 000 SDR
26	*Kyung Won*	12.9.03	Namhae, Republic of Korea	Republic of Korea	144	3 000 000 SDR
27	*Jeong Yang*	23.12.03	Yeosu, Republic of Korea	Republic of Korea	4 061	4 510 000 SDR
28	*№11 Hae Woon*	22.7.04	Geoje, Republic of Korea	Republic of Korea	110	4 510 000 SDR
29	*№7 Kwang Min*	24.11.05	Busan, Republic of Korea	Republic of Korea	161	4 510 000 SDR
30	*Solar 1*	11.8.06	Guimaras Straits, Philippines	Philippines	998	4 510 000 SDR
31	*Shosei Maru*	28.11.06	Seto Inland Sea, Japan	Japan	153	4 510 000 SDR

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1992 Fund, unless indicated to the contrary)		Notes
Grounding	35-40	Clean-up/preventive measures Fisheries **Won 1 335 000 000**	Won 1 007 000 000 Won 328 000 000	All claims paid by shipowner's insurer.
Collision	34	Clean-up/preventive measures Fisheries Property damage **Won 1 283 650 000**	Won 1 242 000 000 Won 22 500 000 Won 19 150 000	All claims paid by shipowner's insurer.
Fire	Unknown	Clean-up/preventive measures (claimed)	US$500 000	Since total amount claimed is well below limitation amount applicable to *Victoriya* under 1992 Civil Liability Convention, 1992 Fund will not be required to make any compensation payments.
Sinking	300	Clean-up/preventive measures Property damage/economic loss **Won 2 926 000 000**	Won 2 883 000 000 Won 43 000 000	All claims paid by shipowner's insurer.
Stranding	100	Clean-up/preventive measures Fisheries **Won 3 328 000 000**	Won 2 921 000 000 Won 407 000 000	
Collision	700	Clean-up/preventive measures Fisheries Post-spill studies Economic loss **Won 4 325 400 000**	Won 3 992 000 000 Won 78 400 000 Won 140 000 000 Won 115 000 000	All claims paid by shipowner's insurer.
Collision	12	Clean-up/preventive measures **Won 354 000 000**	Won 354 000 000	All claims paid by shipowner's insurer.
Collision	37	Clean-up/preventive measures Fishery-related Tourism **Won 2 032 100 00**	Won 1 900 000 000 Won 129 000 000 Won 3 100 000	1992 Fund has taken recourse action against fishing vessel that collided with tanker.
Sinking	2 072 (estimate)	Clean-up/preventive measures Property damage Fishery-related Tourism-related Miscellaneous **PHP 947 434 684**	PHP 751 069 099 PHP 3 580 562 PHP 186 050 519 PHP 3 887 623 PHP 2 846 881	Since STOPIA 2006 applies, 1992 Fund is receiving regular reimbursements from shipowner's insurer up to 20 million SDR (£21.3 million).
Collision	60	Clean-up/preventive measures Fishery-related Property damage **¥899 693 953**	¥618 861 152 ¥270 500 000 ¥10 332 801	The 1992 Fund has paid ¥161 064 193 (£754 823) in compensation to victims. Since the ship is not entered in STOPIA 2006, the 1992 Fund will not recover any amount from the insurer.

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GT)	Limit of shipowner's liability under applicable CLC
32	*Volgoneft 139*	11.11.07	Strait of Kerch, between Russian Federation and Ukraine	Russian Federation	3 463	4 510 000 SDR
33	*Hebei Spirit*	7.12.07	Off Taean, Republic of Korea	China (Hong Kong Special Administrative Region)	146 848	89 770 000 SDR
34	Incident in Argentina (*Presidente Illia*)	26.12.07	Caleta Córdova, Argentina	Argentina	35 995	24 067 845 SDR

Notes

See page 214.

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1992 Fund, unless indicated to the contrary)		Notes
Breaking	1 200-2 000 (estimate)	Clean-up/preventive measures (claimed)	RUB 290 900 000	
		Fishery-related (claimed)	RUB 22 400 000	
		Tourism (claimed)	RUB 21 500 000	
		Environmental damage and reinstatement (claimed)	RUB 7 868 700 000	
			RUB 8 203 500 000	
Collision	10 900	Clean-up/preventive measures (claimed)	Won 150 934 000 000	More claims are expected.
		Fishery-related (claimed)	Won 108 275 000 000	
		Tourism-related (claimed)	Won 64 803 000 000	
		Property damage (claimed)	Won 2 619 000 000	
		Environmental damage (claimed)	Won 2 195 000 000	
			Won 328 826 000 000	
Unknown	50-200	Clean-up/preventive measures/ environmental damage (claimed)	unquantified	

Notes to Annexes XXIV and XXV

1 Amounts are given in national currencies. The relevant conversion rates as at 31 December 2008 are as follows:

£1 =

Algerian Dinar	Din	101.538	Philippines Peso	PHP	68.3651
Bahrain Dinar	BD	0.5421	Republic of Korea	Won	1810.92
Canadian Dollar	Can$	1.7749	Russian Rouble	RUB	43.9017
Danish Krone	DKr	7.6987	Singapore Dollar	S$	2.0715
Estonian Kroon	EEK	16.1835	Swedish Krona	SKr	11.3697
Euro	€	1.0344	UAE Dirham	Dhs	5.2810
Japanese Yen	¥	130.332	United States Dollar	US$	1.4378
Malaysian Ringgit	RM	4.9746	Venezuelan Bolivar Fuerte	BsF	3.0873
Moroccan Dirham	Mor Dhr	11.6281			

£1 = 0.9465 SDR or 1 SDR = £1.05657

2 In January 2008 the Bolivar Fuerte (BsF) replaced the Bolivar (Bs) at the rate of 1 BsF = 1 000 Bs.

3 The following currencies were replaced by the Euro on 1 January 2002 at the following conversion rates. The equivalent values relative to the Pound Sterling, as at 31 December 2008, are also given.

		€1=	£1=
Finnish Markka	FM	5.9457	6.1502
French Franc	FFr	6.5596	6.7853
German Mark	DM	1.9558	2.0231
Greek Drachma	Drs	340.75	352.47
Italian Lira	LIt	1936.27	2002.88
Spanish Peseta	Pts	166.386	172.110

4 The inclusion of claimed amounts is not to be understood as indicating that either the claim or the amount is accepted by the 1971 or 1992 Funds.

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