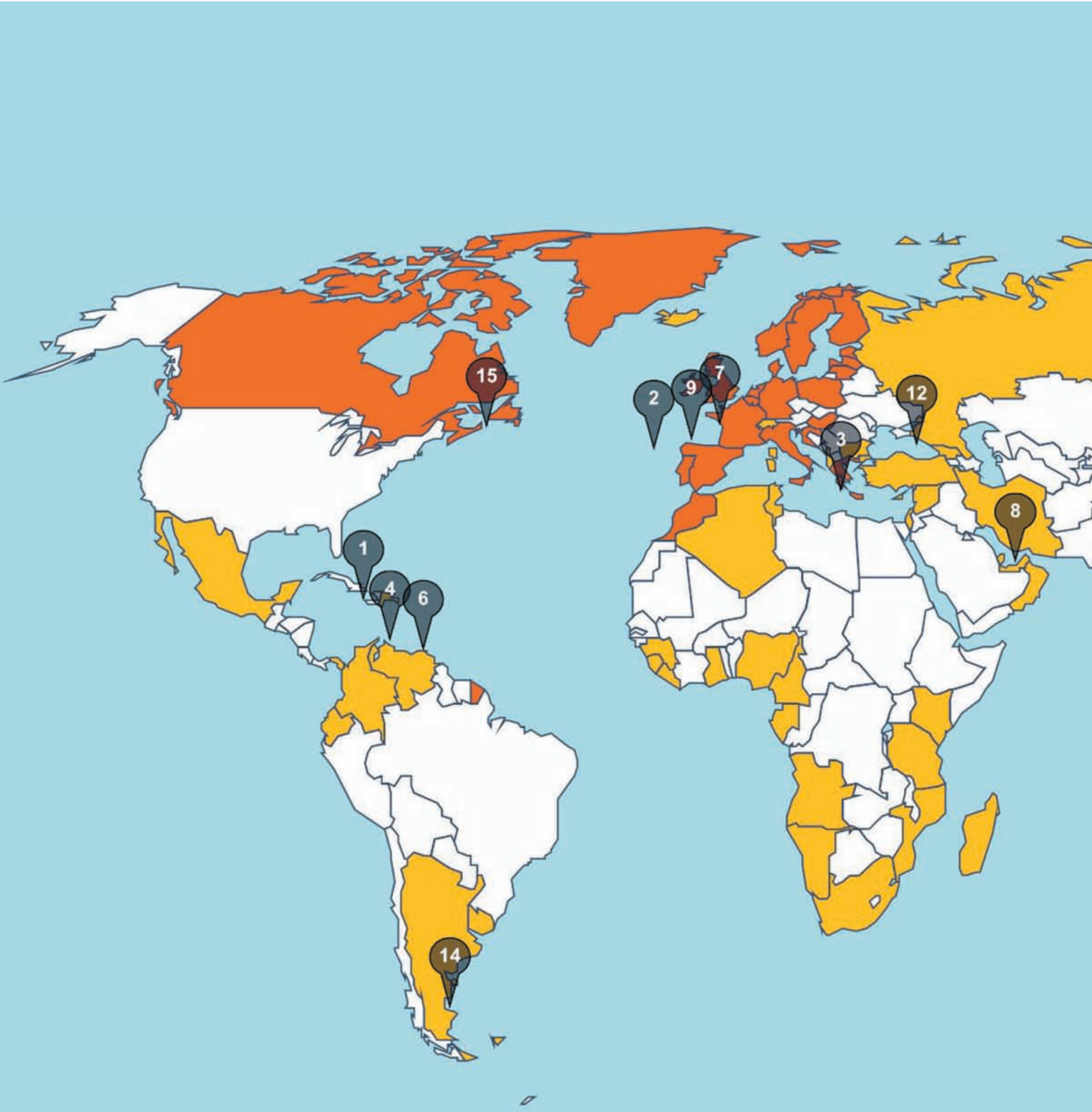
Incidents Involving the IOPC Funds 2010

INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS



Incidents (in chronological order)

1 *Vistabella*, 07.03.1991
2 *Aegean Sea*, 03.12.1992
3 *Iliad*, 09.10.1993
4 *Nissos Amorgos*, 28.02.1997
5 *Evoikos*, 15.10.1997
6 *Plate Princess*, 27.05.1997
7 *Erika*, 12.12.1999
8 *Al Jaziah 1*, 24.01.2000
9 *Prestige*, 13.11.2002
10 *Nº7 Kwang Min*, 24.11.2005
11 *Solar 1*, 11.08.2006
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13 *Hebei Spirit*, 07.12.2007
14 Incident in Argentina, 26.12.2007
15 *King Darwin*, 27.09.2008

1992 Fund Member States
Supplementary Fund Member States

Incidents involving the IOPC Funds – 2010

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Opposite:
Current map of incidents involving the IOPC Funds as at October 2010.

Cover:
Aerial view of the oil slicks following the *Hebei Spirit* incident reaching the beach near Mallipo, Republic of Korea

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Foreword

This Report provides information on incidents in which the Secretariat of the International Oil Pollution Compensation Funds (IOPC Funds) was involved in 2010. It sets out the developments in the various cases during the course of the year 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' document server which can be accessed through the Fund's website (**www.iopcfund.org**).

The Supplementary Fund was not involved in any incidents during 2010.

Disclaimer

While the Secretariat of the IOPC Funds has used its discretion and best judgement, and made every reasonable effort in compiling the information and figures in the Report relating to claims, settlements and payments, it may not be held liable for the accuracy of the figures. The reader should note that the figures in the Report are given for the purpose of providing an overview of the situation for various incidents and may therefore not correspond exactly to the figures given in the IOPC Funds' Financial Statements.

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Introduction

The International Regime

The IOPC Funds are three intergovernmental organisations (the 1992 Fund, the Supplementary Fund and the 1971 Fund) established by States for the purpose of providing compensation for victims of oil pollution damage resulting from spills of persistent oil from tankers.

The legal framework

The international regime of compensation for damage caused by oil pollution is currently based on two international conventions: the 1992 Civil Liability Convention and the 1992 Fund Convention. These Conventions were adopted under the auspices of the International Maritime Organization (IMO), a specialised agency of the United Nations.

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 in States Parties to the Convention after sea transport. The 1992 Fund was set up in 1996 when the 1992 Fund Convention entered into force.

An earlier Fund, the 1971 Fund, still exists but is in the process of being wound up and does not cover incidents occurring after 24 May 2002.

A Protocol to the 1992 Fund Convention adopted in 2003, the Supplementary Fund Protocol, provides an extra layer of compensation via the Supplementary Fund, which was set up in March 2005. Membership of this Fund is open to any State that is a Member of the 1992 Fund.

States which ratify these legal instruments must implement them into their national law.

The great majority of maritime States are Members of the IOPC Funds

As at 1 January 2011, the 1992 Fund had 104 Member States, and one further State will become a Member in February 2011. In addition, 27 of these States are Members of the Supplementary Fund. All Member States are shown in the table on page 5.

The shipowner has strict liability

Under the 1992 Civil Liability Convention, the shipowner has strict liability for any pollution damage caused by the oil, i.e. the owner is liable even if there was no fault on the part of the ship or its crew.

However, the shipowner can normally limit his financial liability to an amount that is determined by the tonnage of the ship. This amount is guaranteed by the shipowner's liability insurer.

Normally, the Convention only applies to tankers carrying persistent oil as cargo. However, under certain circumstances, the Convention also applies to spills from unladen tankers.

The role of the IOPC Funds

The 1992 Fund and, if applicable, the Supplementary Fund provide additional compensation when the amount payable by the shipowner and his insurer is insufficient to cover all the damage.

Amount of compensation available

The maximum amounts of compensation payable by the shipowner's insurer and the IOPC Funds were fixed by Governments at the Diplomatic Conferences that adopted the relevant international treaties. As at 2 December 2010, the maximum amount payable for each incident was 203 million Special Drawing Rights (SDR) of the International Monetary Fund, equal to about US$310.6 million, for incidents covered by the 1992 Fund and 750 million SDR (about US$1 147.5 million) for incidents which are also covered by the Supplementary Fund.

Since their establishment, the 1992 Fund and the preceding 1971 Fund have been involved in some 140 incidents (including two joint incidents) of varying sizes all over the world. In the great majority of cases, all claims have been settled out of court. No incidents have occurred so far which have involved or are likely to involve the Supplementary Fund.

Damage covered by the Conventions

Anyone in a Member State of the 1992 Fund who has suffered pollution damage caused by oil transported by a tanker can claim compensation from the shipowner/insurer, the 1992 Fund and, if applicable, the Supplementary Fund. This applies to individuals, businesses, local authorities and States.

To be entitled to compensation, the damage must result from oil pollution and have caused a quantifiable economic loss. The claimant must be able to show the amount of his loss or damage by producing accounting records or other appropriate evidence.

An oil pollution incident can generally give rise to claims for five types of damage:

- property damage;
- costs of clean-up operations at sea and on shore;
- economic losses by fishermen or those engaged in mariculture;
- economic losses in the tourism sector; and
- costs for reinstatement of the environment.

Claims against the 1992 Fund are assessed according to criteria established by representatives of the Governments of Member States. These criteria, which also apply to claims against the Supplementary Fund, are set out in the 1992 Fund's Claims Manual, which is a practical guide on how to present claims for compensation.

In a number of major incidents, the IOPC Funds and the shipowner's insurer have cooperated in establishing a local claims office in the country where the oil spill occurred. This has facilitated the handling of large numbers of claims.

Depending on the nature of the claims, the IOPC Funds use experts in different fields to assist in their assessment.

Structure of the IOPC Funds

The 1992 Fund is governed by an Assembly composed of representatives of the Governments of all its Member States. The Assembly holds an ordinary session once a year. It elects an Executive Committee made up of 15 Member States. The main function of the Executive Committee is to approve the settlement of claims for compensation.

The Supplementary Fund has its own Assembly which is composed of all States that are Members of that Fund whereas the 1971 Fund, which is in the process of being wound up, has an Administrative Council which is composed of all former Member States.

Organisations connected with the maritime transport of oil, such as those representing shipowners, marine insurers and the oil industry, as well as environmental organisations are represented as observers at the IOPC Funds' meetings. Decisions by the IOPC Funds' governing bodies are, however, taken solely by the representatives of the Governments of the Member States.

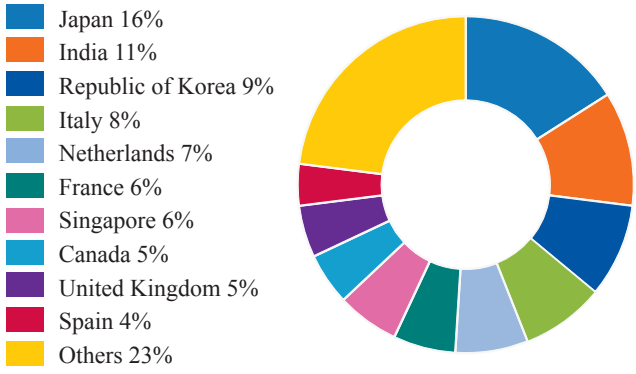
The 1992 Fund Assembly appoints the Director of the IOPC Funds, who is responsible for the operation of the three Funds and has extensive authority to take decisions regarding the settlement of claims. The Funds have their headquarters in London and are administered by a joint Secretariat.

Financing of the IOPC Funds

The IOPC Funds are financed by contributions levied on any entity that has received in the relevant calendar year more than 150 000 tonnes of contributing oil (ie crude and/or heavy fuel oil) in ports or terminal installations in a Member State, after carriage by sea.

The levy of contributions depends on reports of the amounts of oil received by individual contributors, which the Governments of Member States are obliged to submit annually to the Secretariat. These amounts are used as the basis of the levy, calculated to provide sufficient monies to administer the Funds and to pay claims approved by the governing bodies.

Contributing oil received in Member States in 2009:



External Relations

In addition to cooperating closely with other intergovernmental and non-governmental organisations, the Director and staff of the IOPC Funds regularly participate in seminars, conferences and workshops around the world in order to disseminate information on the Funds' activities and to promote awareness of the international compensation regime.

Member States of the 1992 Fund

States which are also Members of the Supplementary Fund are marked in **bold**.

104 States for which the 1992 Fund Convention is in force (as at 31 December 2010):		
Albania	**Germany**	Oman
Algeria	Ghana	Panama
Angola	**Greece**	Papua New Guinea
Antigua and Barbuda	Grenada	Philippines
Argentina	Guinea	**Poland**
Australia	**Hungary**	**Portugal**
Bahamas	Iceland	Qatar
Bahrain	India	**Republic of Korea**
Barbados	**Ireland**	Russian Federation
Belgium	Islamic Republic of Iran	Saint Kitts and Nevis
Belize	Israel	Saint Lucia
Brunei Darussalam	**Italy**	Saint Vincent and the Grenadines
Bulgaria	Jamaica	Samoa
Cambodia	**Japan**	Seychelles
Cameroon	Kenya	Sierra Leone
Canada	Kiribati	Singapore
Cape Verde	**Latvia**	**Slovenia**
China (Hong Kong Special Administrative Region)	Liberia	South Africa
Colombia	**Lithuania**	**Spain**
Comoros	Luxembourg	Sri Lanka
Congo	Madagascar	**Sweden**
Cook Islands	Malaysia	Switzerland
Croatia	Maldives	Syrian Arab Republic
Cyprus	Malta	Tonga
Denmark	Marshall Islands	Trinidad and Tobago
Djibouti	Mauritius	Tunisia
Dominica	Mexico	Turkey
Dominican Republic	Monaco	Tuvalu
Ecuador	**Morocco**	United Arab Emirates
Estonia	Mozambique	**United Kingdom**
Fiji	Namibia	United Republic of Tanzania
Finland	**Netherlands**	Uruguay
France	New Zealand	Vanuatu
Gabon	Nigeria	Venezuela
Georgia	**Norway**	

One State which has deposited an instrument of accession, but for which the 1992 Fund Convention does not enter into force until the date indicated:

Benin	5 February 2011

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 maritime 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 ten nautical miles from the bow section. Some 6 400 tonnes of cargo remained in the bow section and a further 4 800 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.

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 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

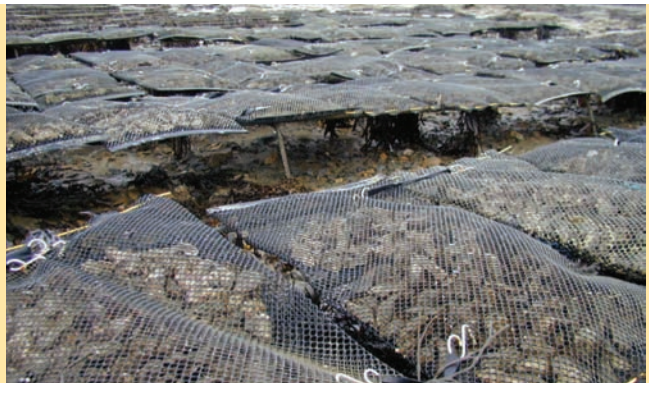
The maximum amount available for compensation under the 1992 Civil Liability Convention (1992 CLC) and the 1992 Fund Convention for the *Erika* incident is 135 million SDR, equal to FFr1 211 966 811 or €184 763 149.

For an explanation of the decision by the 1992 Fund Executive Committee on the conversion of the SDR into French Francs or Euros, reference is made to the Annual Report 2008 (page 77).

The level of payments by the 1992 Fund was initially limited to 50% of the amount of the loss or damage actually suffered by the respective claimants. The 1992 Fund Executive Committee decided in January 2001 to increase the level from 50% to 60%, and in June 2001, to 80%. In April 2003, the level of payments was increased to 100%.

Undertakings by Total SA and the French Government

For details of the undertakings by the French State and by Total SA to 'stand last in the queue', reference is made to the Annual Report 2008 (page 78).



Oyster trays covered with traces of oil following the *Erika* incident, France

Claims handling

As at the October 2010 session of the 1992 Fund Executive Committee, 7 131 claims for compensation had been submitted for a total of €388.9 million. Payments of compensation had been made in respect of 5 939 claims for a total of €129.7 million, out of which Steamship Mutual, the shipowner's insurer, had paid €12.8 million and the 1992 Fund €116.9 million. Some 1 016 claims, totalling €31.8 million, had been rejected.

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

A number of claims have been assessed but await agreement from the claimants as to the quantum of the assessed amounts before payments can be finalised.

Assessment and payment of the French State's claim for clean up

For details of the assessment and payment of the claim by the French State in respect of costs incurred in the clean-up response, reference is made to Annual Report 2008 (pages 79 and 80).

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.

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

Criminal Court of First Instance in Paris

In its judgement, delivered in January 2008, the Criminal Court held the following four parties criminally liable for the offence of causing pollution, 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, as follows:

- The representative of the shipowner and the president of the management company were found guilty for a lack of proper maintenance, leading to general corrosion of the ship.
- RINA was found guilty for its imprudence in renewing the *Erika's* classification certificate on the basis of an inspection that fell below the standards of the profession.
- Total SA was found guilty of imprudence when carrying out its vetting operations prior to the chartering of the *Erika.*

Claims situation as at the October 2010 session of the Executive Committee

Category	Claims submitted	Claims assessed	Claims rejected	Claims paid €	Payments made €
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	3 211	76 113 602
Property damage	711	711	250	460	2 556 905
Clean-up operations	150	145	12	128	31 907 991
Miscellaneous	663	655	55	595	8 387 521
Total	**7 131**	**7 112**	**1 016**	**5 939**	**129 699 042**

The representative of the shipowner and the president of the management company were sentenced to pay a fine of €75 000 each. RINA and Total SA were sentenced to pay a fine of €375 000 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 judgement considered that Total SA could not avail itself of the benefit of the channelling provision of Article III.4(c) of the 1992 CLC since it was not the charterer of the *Erika*. The judgement considered that the charterer was one of Total SA's subsidiaries.

The judgement considered that the other three parties, RINA in particular, were not protected by the channelling provisions of the 1992 CLC either, since they did not fall into the category of persons performing services for the ship. The judgement concluded that French domestic law should be applied to the four parties and that therefore the four parties had civil liability for the consequences of the incident.

For further details regarding the consideration by the 1992 Fund Executive Committee in March and June 2008, reference is made to the Annual Report 2009, pages 4 and 5.

Assessment of damages

The compensation awarded to the civil parties by the Criminal Court of First Instance was based on national law. The Court held that the 1992 Conventions did not deprive the civil parties of their right to obtain compensation for their damage in the Criminal Courts and awarded claimants in the proceedings compensation for economic loss, 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, including €153.9 million for the French State.

The Criminal Court of First Instance recognised the right to compensation for damage to the environment for a local authority with special powers for the protection, management and conservation of a territory. The judgement also recognised the right of an environmental protection association to claim compensation, not only for the moral damage caused to the collective interests which it was its purpose to defend, but also for the damage to the environment which affected the collective interests which it had a statutory mission to safeguard.

The four parties held criminally liable, and some 70 civil parties, appealed against the judgement.

Following the judgement, Total SA made voluntary payments to the majority of the civil parties, including the French Government, for a total of €171.3 million.

Court of Appeal in Paris

The Court of Appeal in Paris rendered its judgement in March 2010.

Criminal liability

The Court of Appeal confirmed the judgement of the Criminal Court of First Instance, and held criminally liable for the offence of causing pollution: 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 Court of Appeal also confirmed the fines imposed by the Court of First Instance.

Civil liability

In its judgement, the Court of Appeal ruled that:

- The representative of the registered owner of the *Erika* was an 'agent of the owner', as defined by Article III.4(a) of the 1992 CLC, and that, although he was as such theoretically entitled to benefit from the channelling provisions of the 1992 CLC, he had acted recklessly and with knowledge that damage would probably result, which deprived him of protection in the circumstances. Thus, the Court of Appeal confirmed the judgement on his civil liability.
- The president of the management company Panship Management and Services Srl was neither the agent nor servant of a company who performs services for the ship (Article III.4(b)), and, as such, was not protected by the channelling provisions of the 1992 CLC.
- The classification society, RINA, could not be considered as a 'person who performs services for the ship' as per the definition of Article III.4(b) of the 1992 CLC. Indeed, the Court ruled that, in issuing statutory and safety certificates, the classification society had acted as an agent of the Maltese State (the flag State). The Court also held that the classification society would have been entitled to take advantage of the immunity of jurisdiction, as would have the Maltese State, but that in the circumstances, it was deemed to have renounced such immunity by not having invoked it at an earlier stage of the proceedings.
- Total SA was *'de facto'* the charterer of the *Erika* and could therefore benefit from the channelling provisions of Article III.4(c) of the 1992 CLC, since the imprudence committed in its vetting of the *Erika* could not be considered as having been committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result. The Court of Appeal thus held that Total SA could benefit from the channelling provisions in the 1992 CLC, and therefore did not have civil liability. The

Court of Appeal also decided that the voluntary payments made by Total SA to the civil parties, including to the French Government following the judgement of the Criminal Court of First Instance, were final payments which could not be recovered from the civil parties.

Reputation, image, moral and environmental damage

The Court of Appeal accepted not only material damages (clean up, restoration measures and property damage) and economic losses, but also accepted moral damage resulting from the pollution, including loss of enjoyment, damage to reputation and brand image, and moral damage arising from damage to the natural heritage. The Court of Appeal's judgement confirmed the compensation rights for moral damage awarded by the Criminal Court of First Instance to a number of local authorities and in addition, accepted claims for moral damage from other civil parties.

The Court of Appeal also accepted the right to compensation for pure environmental damage, i.e. damage to non-marketable environmental resources that constitute a legitimate collective interest. The Court of Appeal considered that it was sufficient that the pollution touched the territory of a local authority for these authorities to be able to claim for the direct or indirect damage caused to them by the pollution. The Court of Appeal awarded compensation for pure environmental damage to local authorities and environmental associations.

Amounts awarded

The amounts awarded by the Court of Appeal are summarised below:

Damage awarded	Criminal Court of First Instance (million €)	Court of Appeal (million €)
Material damage	163.91	165.4
Moral damage (loss of enjoyment, damage to reputation and brand image, moral damage arising from damage to the natural heritage)	26.92	34.1
Pure environmental damage	1.32	4.3
Total	**192.15**	**203.8**

Taking into account the amounts paid in compensation by Total SA following the judgement of the Criminal Court of First Instance, the balance remaining to be compensated by the representative of the shipowner (Tevere Shipping), the president of the management company (Panship Management and Services Srl) and the classification society (RINA) is €32.5 million.

Some 50 parties, including the representative of Tevere Shipping, RINA and Total SA, have appealed to the Court of Cassation. A judgement is expected in 2011.

Recourse actions taken by the 1992 Fund

For details of the recourse actions taken by the 1992 Fund in the Civil Court (Tribunal de Grande Instance) in Lorient against various parties, reference is made to the Annual Report 2008 (pages 81 and 82).

Given that, as detailed above, some 50 parties have appealed to the Court of Cassation, the 1992 Fund will have to await the outcome of the appeal before making any further decisions regarding these recourse actions.

Legal proceedings involving the 1992 Fund

With regard to the legal proceedings brought as a result of the incident, reference is made to the Annual Report 2008, pages 82 and 83.

Legal actions against the shipowner, Steamship Mutual and the 1992 Fund were taken by 796 claimants. By 22 October 2010, out-of-court settlements had been reached with a great number of these claimants and the courts had rendered judgements in respect of most of the other claims. Seventeen actions are still pending. The total amount claimed in the pending actions, excluding the claims by Total SA, is some €20.9 million.

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

Court judgements during 2010 in respect of claims against the 1992 Fund

During 2010, one judgement was rendered by French courts in respect of claims against the 1992 Fund. This judgement related mainly to issues of admissibility of claims for economic loss and is summarised overleaf. As for judgements rendered before 22 October 2010, reference is made to the Annual Reports 2003, 2004, 2005, 2006, 2007, 2008 and 2009.

Civil Court of Saint Nazaire

In May 2007, the Civil Court of Saint Nazaire rendered a judgement in respect of a claim by a co-operative of salt producers in Guérande for commercial loss, costs incurred in a marketing campaign, 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 1992 CLC and 1992 Fund Convention.

The Court made a statement that it was not bound by the Fund's criteria for admissibility of claims. The Court also stated that it was not the co-operative but the salt producers who actually produced salt, and that the claim by the co-operative could not therefore be for loss of production but for loss of sales, and that it was for the co-operative to prove that it had suffered a loss of profit as a result of the pollution. The Court considered that the co-operative had held sufficient stock to be able to maintain sales at a normal level, even in the absence of salt production in 2000. 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 the claim for this item.

With regard to the claims for costs incurred in a marketing campaign, the Court stated that the co-operative's decision to run a marketing campaign to inform the public that it held a substantial stock of salt available for sale and to reassure consumers had been a reasonable measure to mitigate its loss which had been effective, since the co-operative had not experienced a substantial reduction in sales. For this reason, the Court granted the co-operative the amount of €378 042.

With regard to the claim for additional costs incurred to minimise pollution damage (costs of monitoring the booms, filtration devices, analysis of water etc.), the Court decided that these measures were reasonable and had been taken to prevent pollution damage, and the Court therefore granted the co-operative the amount of €21 347.

The Court rejected other additional costs incurred amounting to €136 345, since they related to the time spent by the salt producers defending their interests and coordinating their activities which were not directly linked to the *Erika* incident.

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

Both the co-operative and the 1992 Fund appealed the judgement.

Court of Appeal

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.

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 CLC and Fund 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 claimant appealed to the Court of Cassation.

Court of Cassation

The Court of Cassation delivered its judgement in March 2010. The claims and the judgements rendered are summarised in the table on the opposite page.

In its judgement, the Court of Cassation rejected the claimant's appeal in respect of two items claimed, namely commercial loss and costs incurred in the marketing campaign, confirming the decision by the Court of Appeal.

The Court of Cassation, however, quashed the decision of the Court of Appeal in relation to the additional costs incurred by the claimant, since the Court of Cassation was of the opinion that the Court of Appeal had failed to notice that those additional costs claimed were related to pollution prevention measures. The case has been sent back to the Court of Appeal for a decision on that point.

Item	Claim	Fund's assessment	Court of First Instance (€)	Court of Appeal	Court of Cassation (€)
Commercial loss	7 148 164	Rejected	Rejected	Rejected	Rejected
Costs incurred in marketing campaign	378 308	Rejected	378 042	Rejected	Rejected
Additional costs incurred	157 692	Rejected	21 347	Rejected	Quashes Court of Appeal's decision and sends case back to Court of Appeal
Procedural costs	75 000	Rejected	12 000	Rejected	2 500
Total	**7 759 164**	**0**	**411 389**	**0**	**2 500**

In addition, the Court of Cassation has condemned the Fund and the Club to pay €2 500 for procedural costs.

Legal proceedings by the Commune de Mesquer against Total SA

A legal action was brought by the Commune de Mesquer against Total SA before the French courts where it argued that the cargo onboard the *Erika* was in fact a waste product under European law. The Court of Cassation transferred the case to the Court of Appeal in Bordeaux for a decision on whether or not Total SA contributed to the occurrence of the pollution caused by the *Erika* incident.

For details about considerations by the 1992 Fund Executive Committee in 2007 and 2008, and the decision rendered by the Court of Cassation in December 2008, reference is made to the Annual Report 2008, pages 88 to 90.

The Court of Appeal in Bordeaux has not yet rendered its decision and it is expected that the Court will await the decision by the Court of Cassation in relation to the criminal proceedings.

There were no further developments in these legal proceedings during 2010.

Al Jaziah 1

United Arab Emirates, 24 January 2000

See pages 69–71.

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. Over the following weeks oil continued to leak from the wreck at a declining rate. It was subsequently estimated by the Spanish State 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 to 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 fore part 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 in 2006 to have the Claims Handling Office in La Coruña moved to the local expert's office nearby.

Shipowner's liability

The limitation amount applicable to the *Prestige* under the 1992 CLC is approximately 18.9 million SDR. 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 CLC.

Maximum amount available under the 1992 Fund Convention

The maximum amount of compensation under the 1992 CLC 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), 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, i.e. 7 February 2003. As a result, 135 million SDR corresponds to €171 520 703.

The hull of the Bahamas-registered *Prestige* oil tanker broke in two before sinking in the Atlantic Ocean, 150 miles off the Spanish coast

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.

May 2003 session of the 1992 Fund Executive Committee

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 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. The Executive 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.

October 2005 session of the 1992 Fund Executive Committee

In October 2005, the Executive Committee considered a proposal by the Director for an increase in 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 States of France, Portugal and Spain.

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, 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	€ (rounded figures)
Spain	500 million
France	70 million
Portugal	3 million
Total	**573 million**

The Director therefore considered that the level of payments could be increased to 30% <1> 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 to 106).

Developments after the October 2005 session of the 1992 Fund Executive Committee

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 was made in March 2006. As requested by the Spanish State, 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 State 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 State. 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 undertook to make payments to these claimants up to 30% of the amount assessed by the London Club and the 1992 Fund.

<1> €171.5 million / €573 million = 29.9%.

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 with effect from 5 April 2006.

Claims for compensation

Spain

As at the October 2010 session of the 1992 Fund Executive Committee, the Claims Handling Office in La Coruña had received 844 claims totalling €1 020.7 million. These include 14 claims from the Spanish State totalling €968.5 million. The table below provides a breakdown of the different categories of claims:

Category of claim	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<2>	180	3 610 886
Tourism	14	688 303
Fish processors/ vendors	299	20 838 322
Miscellaneous	74	1 775 068
Spanish State	14	968 524 084
Total	**844**	**1 020 712 838**

Other than those of the Spanish State, 752 (91%) of the 844 claims had been assessed for €3.9 million. Interim payments totalling €527 327<3> had been made in respect of 173 of the assessed claims, mainly at 30% of the assessed amount. Sixty-six claims were awaiting a response from the claimant and nine were in progress. Four hundred and twenty-five claims (totalling €38 million) had been rejected and 19 had been withdrawn by the claimants. The remaining 60 claims could not be assessed as the documentation submitted so far was insufficient to carry out an assessment.

France

As at the October 2010 session of the 1992 Fund Executive Committee, 482 claims totalling €109.7 million had been received. This includes the claim by the French State totalling €67.5 million. The following table provides a breakdown of the different categories of claims:

Category of claim	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 State	1	67 499 154
Total	**482**	**109 651 920**

Of the claims submitted to the Claims Handling Office, 454 (94%) had been assessed for €58 million and interim payments totalling €5.6 million had been made at 30% of the assessed amounts in respect of 361 claims. The remaining 93 assessed claims awaited a response from the claimants or were being re-examined following the claimants' disagreement with the assessed amount. Fifty-eight claims totalling €3.8 million had been rejected because the claimants had not demonstrated that a loss had been suffered due to the incident. Three claims totalling some €6 000 had been withdrawn by the claimants.

Portugal

In December 2003, the Portuguese Government submitted a claim for €3.3 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, also in respect of clean-up and preventive measures. The claims were finally assessed at €2.2 million. The Portuguese Government accepted this assessment. In August 2006 the 1992 Fund made a payment of €328 488, corresponding to 15% of the final assessment. This payment does not preclude a further payment to the Portuguese State if the 1992 Fund Executive Committee were to increase the level of payments unconditionally.

<2> One claim totalling €132 million from a group of 58 associations has been withdrawn following a settlement with the Spanish Government.

<3> Compensation payments made by the Spanish State to claimants have been deducted when calculating the interim payments.

Claims by the Spanish State

Claims submitted

The Spanish State submitted a total of 14 claims for an amount of €968.5 million. The claims by the Spanish State 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)[<4>], tax relief for businesses affected by the spill, administration costs, costs relating to publicity campaigns, costs incurred by local authorities and paid by the State, costs incurred in the payment of claims based on national legislation (Royal Decrees), costs incurred by 67 towns that had been paid by the State, 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, was reduced to €24.2 million to take account of funding obtained from another source.

At its February 2006 session, the Executive Committee decided that some of the costs incurred in 2003 prior to the removal of the oil 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 (c.f. Annual Report 2006, pages 111 to 114). Following the Executive Committee's decision, the claim was assessed at €9.5 million.

Payments to the Spanish State

The first claim received from the Spanish State in October 2003 for €383.7 million was assessed on an interim basis in December 2003 at €107 million, and the 1992 Fund made a payment of €16 050 000, 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. On that basis, and as authorised by the Assembly, the Director made an additional payment of €41 505 000, corresponding to the difference between 15% of €383.7 million (i.e. €57 555 000) and 15% of the preliminarily assessed amount of the State's claim (€16 050 000). That payment was made against the provision by the Spanish State of a bank guarantee covering the above-mentioned difference (i.e. €41 505 000) from the Instituto de Crédito Oficial, a Spanish bank with high standing in the financial market, and an undertaking by the Spanish State to repay any amount of the payment decided by the Executive Committee or the Assembly.

As mentioned above, in March 2006 the 1992 Fund made an additional payment of €56 365 000[<5>] to the Spanish State.

Assessment of the claims by the Spanish State

The claims by the Spanish State, totalling €968.5 million, were provisionally assessed at €266.5 million. The 1992 Fund's experts have examined further documentation recently submitted in support of compensation payments made in relation to the spill on the basis of national legislation and have finalised the assessment of the costs incurred by one of the affected regions. As a consequence, the total assessed amount for the claims submitted by the Spanish State is now €287.7 million. A letter has been sent to the Spanish State to communicate the latest assessment of their claims.

The reasons for the difference between the claimed and assessed amounts in respect of the claims by the Spanish State are principally as follows:

- Costs incurred in clean-up operations: applying the Fund's criteria of technical reasonableness, there was found to be a disproportion between the response carried out by the Spanish State and the pollution and threat thereof, both with regard to the human and material resources employed and to the length of the operations.
- Subrogated claim for the compensation payments made in the fisheries sector in relation to the spill on the basis of national legislation, including tax relief for businesses affected by the spill: some of these payments and tax relief had the character of aid and were paid to the population in the affected areas without consideration of the damage or losses suffered by the recipients of the payments. The Fund's assessment of these claims was based on an estimation of the losses actually suffered by the fisheries sector.
- VAT: the amount claimed by the Spanish State included VAT. Since the State recovers the VAT, the corresponding amounts have been deducted.
- Removal of oil from the wreck: as noted above, the assessed amount was limited to some of the costs incurred in 2003, prior to the removal of the oil 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.

<4> For details regarding the scheme of compensation set up by the Spanish Government reference is made to the Annual Report 2006, pages 109 to 111.

<5> See section on the level of payments, pages 13 and 14.

Claim by the French State

In May 2004, the French State submitted a claim for €67.5 million in relation to the costs incurred for clean-up and preventive measures. The 1992 Fund and the London Club made a provisional assessment of the claim at €31.2 million. After the analysis of further documentation submitted by the French State, the claim has been reassessed at €38.5 million and a letter explaining the assessment has been sent to the State.

The amount claimed by the French State includes VAT and, as in the claim by the Spanish State, this amount has been deducted from the claim.

Part of the difference between the claimed and assessed amounts lies in the lack of sufficient supporting documentation for some items of the claim. Therefore, it is possible that the assessed amount could increase if the French State were to submit the required information. Other parts of the claim have been rejected for being not admissible according to the Fund's criteria.

A meeting took place in November 2009 between the Secretariat, its experts, and the French State, to discuss the assessment of the State's claim. At the meeting, the Secretariat undertook to provide further details of the assessment to the French State. As requested, a letter has been sent to the French State providing a detailed breakdown of the assessment of the claim.

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 the Annual Report 2006 (pages 109 to 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 (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 and 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 to 119).

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 and 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.

Legal proceedings in Spain

Criminal investigation

Shortly after the incident, the Criminal Court in Corcubión (Spain) started an investigation into the cause of the incident to determine whether any criminal liability could arise from the events. The Court was investigating the role of the Master, Chief Officer and Chief Engineer of the *Prestige* and of a civil servant who had been involved in the decision not to allow the ship into a place of refuge in Spain.

In March 2009, the Criminal Court in Corcubión exonerated from liability the civil servant who had been involved in the decision not to allow the ship into a place of refuge in Spain and decided to continue the proceedings against the Master, Chief Officer and Chief Engineer of the *Prestige*.

Some of the parties to the criminal proceedings appealed against that decision, pleading that the Appeal Court declare the nullity of the Corcubión Court's decision in respect of the non-liability of the civil servant mentioned above. The French State also appealed, pleading that some employees of the classification society that certified the *Prestige*, American Bureau of Shipping (ABS), should be incriminated and that proceedings should be initiated against them as well.

In October 2009, the Court of Appeal in La Coruña (Audiencia Provincial) overturned the Criminal Court's decision and ordered the Court to reinstate the proceedings against the civil servant who had been involved in the decision not to allow the ship into a place of refuge in Spain.

In May 2010, the Criminal Court in Corcubión declared the investigative stage of the case concluded. In July 2010 the Court decided that four persons should stand trial for criminal and civil liability as a result of the *Prestige* oil spill, namely, the Master, the Chief Officer and the Chief Engineer of the *Prestige* and the civil servant who had been involved in the decision not to allow the ship into a place of refuge in Spain. In the decision, the Court stated that the London Club and the 1992 Fund were directly liable for the damages arising from the incident and that their liability was joint and several. The Court also decided that the shipowner, the management company and the Spanish State were vicariously liable. In the decision, the Court requested the parties with civil liability to provide security to cover their liabilities up to their respective legal limits.

The 1992 Fund has requested the Court to reconsider the above decision on the grounds of public policy, since a request to the 1992 Fund to deposit a guarantee in Court was in contravention of the spirit of the 1992 Fund Convention and the treaty obligations incurred by Spain. In its pleadings the 1992 Fund argued that the Fund's mission was to compensate persons that suffered pollution damage, in accordance with the 1992 Fund Convention, that the Fund had already paid a great part of the claims arising for the *Prestige* incident and that there were still outstanding claims in France and Portugal that the Fund would have to compensate. The 1992 Fund has also argued that a request for the Fund to provide a security would impede the Fund in compensating the victims that were not party to the criminal proceedings and therefore it would prevent the Fund from complying with its mission.

The proceedings will be transferred to another court, the Audiencia Provincial in La Coruña. It is expected that the hearing on the criminal and civil merits of the case will commence in 2011.

Civil claims

As at 10 September 2010, some 2 122 claims, out of which 31 were by French claimants, were lodged in the legal proceedings before the Criminal Court in Corcubión (Spain). The experts engaged by the 1992 Fund have examined the vast majority of those claims.

As at 10 September 2010, excluding the claims by the Spanish State and the French claimants, 119 of those claims have been assessed for €796 721. Interim payments totalling €606 142 have been made at 30% of the assessed amount, taking into account the aid received where applicable. Of the remaining claims, 420 have received payments as a result of a settlement agreement with the Spanish State and 1 551 have received aid from the Spanish State. The assessment of these claims is included in the subrogated claim submitted by the Spanish State.

The Spanish State has taken legal action, not only on its own behalf but also on behalf of regional and local authorities and a number of other claimants or groups of claimants.

Court experts' report

The Criminal Court in Corcubión appointed court experts to examine the civil claims lodged in the criminal proceedings. In January 2010, the court experts submitted their report.

The experts engaged by the 1992 Fund have examined the report. They have concluded that, in general, the Court experts have noted the lack of supporting documentation submitted in most claims. In their assessments the court experts have not, in most cases, examined the link of causation between the damage and the pollution. In some cases, the amount assessed by the 1992 Fund was higher than the court experts' assessment due to the fact that the 1992 Fund's experts had more information available to them, allowing a more detailed assessment of the claims.

The 1992 Fund's experts are finalising the assessment of the civil claims submitted to the Criminal Court, in order to try to reach out-of-court settlements with claimants when possible and also in order to be ready to submit defence pleadings when the hearing commences.

Legal proceedings in France

Two hundred and thirty-two claimants, including the French State, brought legal actions against the shipowner, the London Club and the 1992 Fund in 16 courts in France, requesting compensation totalling some €111 million, including €67.7 million claimed by the State.

One hundred and three of these claimants have since withdrawn their actions, thus actions by 129 claimants remain pending in court for compensation claims amounting to a total of €85.6 million.

The courts have granted a stay of proceedings in 19 legal actions, either in order to give the parties time to discuss their claims out of court, or until the outcome of the criminal proceedings in Corcubión is known.

Some 31 French claimants, including various communes, have joined the legal proceedings in Corcubión.

Court actions in the 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 and estimated later to exceed US$1 000 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 Spanish 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 Spanish 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.

Defence of sovereign immunity

ABS' counterclaim was dismissed based on the Foreign Sovereign Immunities Act (FSIA). The District Court held that ABS' counterclaim did not arise from the same transaction as Spain's claim and, therefore, did not fall under the FSIA exception permitting counterclaims against a foreign sovereign entity if they arose out of the same transaction as the sovereign entity's original claim.

Discovery

For details about the discovery of e-mail communications, reference is made to Annual Report 2007, pages 101 to 104 and Annual Report 2008, page 104.

ABS's defence that it acted as 'the pilot or any other person, (…), who performs services for the ship'

For details about ABS's request for a summary judgement dismissing the Spanish State's action and the counterarguments by the Spanish State, reference is made to Annual Report 2008, page 104.

First judgement by the District Court

In January 2008 the District Court accepted ABS's argument that ABS fell into the category of 'any other person who performs services for the ship' under Article III.4(b) of the 1992 CLC. The Court further ruled 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 District Court also denied all pending motions as now being non-actionable, except for the pending motions over sanctions for Spain's failure to comply with the discovery requests relating to e-mails.

The Spanish State appealed. ABS also filed an appeal against the Court's decision to dismiss its counterclaims for lack of jurisdiction. The Spanish State also filed a motion with the Court of Appeal seeking to dismiss ABS's appeal. For details about the appeal by the Spanish State, its request that the Fund present an *amicus curiae* brief and ABS's counter appeal, reference is made to Annual Report 2008, pages 104 to 106.

Court of Appeal's decision

The Court of Appeal rendered its decision in June 2009, reversing both the dismissal of Spain's case and the dismissal of ABS's counterclaims, which the District Court had held did not fall under an exception to the Foreign Sovereign Immunities Act (FSIA).

With respect to Spain's claim, the Court of Appeal held that the 1992 CLC cannot divest a U.S. federal court of subject matter jurisdiction. However, in sending the case to the District Court, the Court of Appeal stated that the District Court may still exercise its discretion to decline jurisdiction based on *forum non conveniens* or principles of international comity. The Court of Appeal's decision made the point that ABS' willingness to fully submit to jurisdiction in Spain was a relevant factor in any decision to decline jurisdiction. The Court of Appeal also points out that the District Court should consider the equities in declining jurisdiction at this advanced stage in the litigation process. The Court of Appeal has instructed the District Court, if the District Court decided to retain jurisdiction, to conduct a conflict of laws analysis to determine which law should govern this case.

The Court of Appeal reinstated the original counterclaims by ABS that had been dismissed under the FSIA, holding that ABS's counterclaims did arise out of issues of duty and causation which were 'similar, if not identical' to the issues raised by Spain's claim.

The case was sent to the District Court for further consideration.

Second judgement by the District Court

The District Court issued its second judgement in August 2010, granting ABS' motion for summary judgement and again dismissing Spain's claims against ABS.

The Court held that the determinative factors in the choice of law analysis in this case were: the place of the wrongful act; the domicile of the injured party and the domicile of the defendant. The Court decided that U.S. law governed in this case, primarily based on Spain's allegations that the critical wrongful act occurred in ABS' headquarters in the U.S. and based on the fact that ABS headquarters did set central standards for the certification of vessels and that at least one of the operative certificates in place at the time of the *Prestige* incident was issued from those headquarters.

The Court noted that Spain did not cite, nor could the Court locate in its own research, any U.S. legal precedent where a classification society has been held liable to a third party for damages caused by the failure of a vessel and that Spain had submitted no evidence that it had specifically relied upon the

class certificate issued to the *Prestige*. The Court also noted the 'great disparity' between the fee earned by ABS for the survey conducted in China and the damages sought by Spain.

The Court finally stated that it was unwilling to accept Spain's proposed rule 'that a classification society owes a duty to refrain from reckless behaviour to all coastal States that could foreseeably be harmed by failures of classified ships', finding that that would amount to an 'unwarranted expansion of the existing scope of tort liability'. The Court also held that such an expansion would be inconsistent with a shipowner's non-delegable duty to provide a seaworthy vessel.

The Spanish State has appealed against the judgement.

Recourse action by the 1992 Fund against ABS

Considerations in October 2004

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 to 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 Executive Committee stated that this decision was without prejudice to the Fund's position *vis-à-vis* legal actions against other parties.

Considerations in June 2010

At its June 2010 session the Executive Committee noted that in April 2010 the French State had brought a legal action against three companies in the ABS group in the Court of First Instance in Bordeaux. The Executive Committee considered whether this and other developments would give rise to reconsidering the position of the 1992 Fund regarding recourse action in connection with this incident.

The Director considered, after consultation with the 1992 Fund's French lawyer, that there appeared to be a number of relevant developments that required further study with a view to determining the prospects and legal implications of a possible recourse action of the 1992 Fund against ABS in France, in particular:

- the publication of two expert reports submitted in the criminal proceedings in Spain, which concluded that the defects of the *Prestige* were due to the negligence of ABS;
- the request by the French State in 2009, that some employees of ABS be incriminated in the legal proceedings in the Criminal Court in Corcubión, and the fact that this request was denied;
- recent jurisprudence in France attaching civil liability to a classification society for the damage caused by the pollution resulting from the *Erika* incident; and
- that the French State had recently brought a legal action against ABS in France.

The Executive Committee noted that, in view of the above considerations, the Director intended to further examine, in consultation with the 1992 Fund's French lawyer, the prospects and legal implications of a possible recourse action of the 1992 Fund against ABS in France, with a view to making a recommendation to the Executive Committee at a future session.

As regards a possible recourse action in Spain, the Director considered, after consultation with the 1992 Fund's Spanish lawyer, that the advice regarding such action received in 2004 was still valid and on that basis, the Director did not, for the time being, recommend bringing an action against ABS in Spain.

Nº7 Kwang Min

Republic of Korea, 24 November 2005

The incident

The Korean tanker *Nº7 Kwang Min* (161 GT) collided with the fishing vessel *Nº1 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 *Nº7 Kwang Min* was transferred to a number of other vessels. The *Nº7 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. 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 *Nº7 Kwang Min* under the 1992 CLC is 4.51 million SDR.

In December 2005, the Korean Ministry of Maritime Affairs and Fisheries informed the 1992 Fund that the owner of the *Nº7 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

All claims arising from this incident except for two have been settled for a total of KRW 1.9 billion (£1.1 million).

Two seaweed culturists who had initially agreed with the assessed amount, later refused to accept it and commenced legal actions against the two vessels involved in the incident.

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 *Nº7 Kwang Min* and the owner of the fishing vessel *Nº1 Chil Yang* was 40:60.

Upon investigating the financial status of the owner of the fishing vessel *Nº1 Chil Yang*, it emerged that he owned a building, the value of which was unknown, but it was estimated to exceed the limitation amount applicable to the vessel under the Korean Commercial Code, i.e. 83 000 SDR or KRW 126 million.

The holed *Nº7 Kwang Min* lying alongside in Busan after collision with the vessel *Nº1 Chil Yang*

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

Limitation proceedings by the owner of the fishing vessel

In January 2007 the owner of the *Nº1 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, i.e. 83 000 SDR or KRW 126 million.

The 1992 Fund intervened as a claimant in the limitation proceedings in order to recover, to the extent possible, the sums paid in compensation for this incident and registered its claim with the Limitation Court.

In August 2007 the Limitation Court delivered its decision. The Limitation Court assessed the claim by the 1992 Fund in the amount of KRW 1.3 billion, and the losses by the two seaweed cultivators at the amount assessed by the 1992 Fund, namely KRW 9.9 million, plus interest. The Limitation Court also assessed the claim of the *Nº7 Kwang Min* against the *Nº1 Chil Yang* at KRW 26 million. The two seaweed cultivator claimants appealed.

In July 2008, the Court of Appeal decided to consolidate the legal action of the two seaweed cultivators against the *Nº7 Kwang Min* and the *Nº1 Chil Yang,* and their action against the *Nº1 Chil Yang* and the 1992 Fund to set aside the decision of the Limitation Court.

In August 2008, the Court of Appeal 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 cultivators as assessed by the Limitation Court, plus interest. The Court also decided that, if the owner of the *Nº7 Kwang Min* were unable to pay the two claimants, the 1992 Fund would be liable to pay compensation to them. The two claimants appealed.

In September 2009, the Supreme Court delivered its judgement upholding the decision made by the Court of Appeal and dismissed the appeal of the two claimants.

In December 2009, the Administrator of the Limitation Fund of the *Nº1 Chil Yang* distributed the money amongst the claimants. The 1992 Fund received the total amount of KRW 127 929 338 (£70 610.75), i.e. the amount of KRW 122 555 497 awarded by the Limitation Court plus the accrued interests. The owner of the *Nº7 Kwang Min* deposited into the *Limitation Court* the amount awarded by the Court to the two claimants.

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 had priority over any other creditors, it was unlikely that the 1992 Fund could recover any sums in respect of these properties.

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

Application for a retrial

In October 2009, the two seaweed cultivators filed an application for retrial to the Busan High Court.

In March 2010, the Busan High Court dismissed the application. As the claimants failed to appeal against the decision of the Court in the time limit available under Korean law, the decision of the Court was final and conclusive.

This incident was therefore closed in July 2010.

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 ten nautical miles south of Guimaras Island, Republic of the Philippines.

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 the Annual Report 2006, pages 120 to 125.

The Shipowners' Club and the Fund established a claims office in Iloilo to assist with the handling of claims. Throughout 2009, the office continued to be managed by the Club's correspondent in the Philippines with a view to closing it in early 2010 after the majority of claims had been dealt with.

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 CLC is 4.51 million SDR, 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. 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 applicable to the *Solar 1* under the 1992 CLC. 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 CLC and the total amount of admissible claims up to 20 million SDR.

The Fund and the Shipowners' Club agreed that the 1992 Fund would make compensation payments once the limitation amount under the 1992 CLC had been reached and that the Club would reimburse the Fund any payments made within two weeks of being invoiced by the Fund, an arrangement that has worked smoothly throughout the handling of the incident.

Claims for compensation

The claims situation as at the October 2010 session of the 1992 Fund Executive Committee is summarised in the table below.

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.

Category	Claims presented	Assessments		Total paid		Rejected claims
		Claims	Amount PHP	Claims	Amount PHP	
Capture fishery	27 812	27 812	206 457 198	25 940	190 392 018	598
Mariculture	771	771	3 682 488	198	3 308 273	465
Miscellaneous	170	169	6 893 874	11	6 852 074	157
Property damage	3 260	3 260	5 310 184	631	5 117 154	2 507
Tourism	425	425	5 457 164	75	5 381 627	346
Clean up and preventive measures	28	28	880 461 200	15	775 594 885	13
Total	**32 466**	**32 465**	**1 108 262 108**	**26 870**	**986 646 031 (£10.8 million)**	**4 086**

The Shipowners' Club and the 1992 Fund received a further 132 642 claims, not included in the table, mainly from fisherfolk and seaweed producers in Guimaras Island and in the Province of Iloilo. The majority of the associated 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, the Club and Fund decided not to process further those forms that did not relate to valid claims.

Economic losses in the capture fishery sector

The Shipowners' Club and the 1992 Fund received 27 812 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. Some 25 940 claimants have received a total of PHP 190 396 758 in compensation.

A further 248 claimants have failed so far to collect their compensation. For safety reasons, cheque payments have a limited period of validity, requiring claimants to request re-issue of their payment after the expiry of that period. This creates some fluctuation when payments made are reported as in the table on the opposite page, since figures relate to cheques issued, not necessarily collected. After some payments had been reissued several times without being collected, a consolidation of accounts has been undertaken as far as possible. Remaining claimants will be able to collect their compensation at any time by making contact with the 1992 Fund directly.

Five hundred and ninety-eight of the claims submitted have been rejected.

Economic losses in the mariculture sector

The Club and Fund received 771 claims predominantly from seaweed farmers and fishpond operators for alleged damage to their crops and structures as a result of the contamination. Some 198 claims for a total of PHP 3.3 million (£41 110) have been paid for losses incurred following losses of harvestable produce. Another ten additional payments have not been collected.

Some 98 seaweed farmers and one fishpond operator received offers of payment but chose not to accept the compensation, considering it inappropriately low. Significant efforts have been made to assist claimants in supporting the quantum of their losses, however in the absence of additional corroborating evidence, the Club and Fund have been unable to resolve this issue to the satisfaction of the claimants, and these claims are now considered time-barred.

A further 465 claims in this category have had to be rejected in the light of very poor documentation, the absence of necessary licences and tenureship documents and often a complete lack of evidence that the resources supposedly damaged were actually affected by oil or existed at all.

Miscellaneous claims

Some 170 claims have been received in this category of which 157 have had to be rejected since the Club and Fund considered that they related to damages not sufficiently closely linked to the contamination, or had not been proven even at the most basic level. This applied in particular to a number of claims from retail businesses on Guimaras Island.

Eleven claims for a total of PHP 6.85 million (£85 357) have been paid in respect of costs incurred by a number of provincial government units chiefly to compensate for part of the fixed costs of salaries and overtime for municipal staff involved in the response to the incident. An offer which was made relating to a twelfth claim from a local municipality has been declined by the claimant after changes in the local administration.

Improvised oil boom being rigged during clean-up operation following the *Solar 1* incident, Philippines

Property damage

The Shipowners' Club and the 1992 Fund received some 3 260 claims for damage to fishing gear and boats, as well as beach front properties directly affected by oil. Compensation payments were made to 631 claimants for a total of PHP 5.12 million (£61 147) for the costs of cleaning and in some cases replacing oiled property. The majority of the remaining claims had to be rejected since claimants were unable to provide any evidence of having been affected. Some 122 approved claims for property damage could not be paid to claimants due to cheques remaining uncollected. A consolidation of accounts was undertaken with the bank in the Philippines and remaining compensation will be available directly from the Fund upon request. Some 2 507 claims have had to be rejected since claimants were unable to provide any evidence of having been affected.

Tourism

The Club and Fund received some 425 claims in the tourism sector from owners of small resorts, tour boat operators and service providers (e.g. tour guides) to the tourism industry. Seventy-five claims have been settled and paid for a total of PHP 5 381 627 (£63 904) relating mainly to a reduction in beach tourism following the incident. Several claimants submitted follow-up claims pertaining to additional losses several months after the incident which were caused by public perception rather than physical contamination of the beaches. These have been assessed in the light of corroborating evidence such as visitor numbers to the island and ferry receipts and were settled and paid where appropriate. In the absence of supporting evidence, some 346 claims had to be rejected despite best efforts by experts engaged by the Club and the Fund to assess alleged losses.

Clean up and preventive measures

Claims from contractors and Petron Corporation for clean up at sea and on shore, as well as underwater surveys and oil recovery operations, have been settled for a total of PHP 775 220 967 (£8 493 106). Seven individual claims for small-scale additional clean-up measures have also been assessed as reasonable and six thereof have now been settled for PHP 373 918 (£4 682). The seventh offer of settlement has not been accepted despite extensive contact with the claimant, and is now considered time-barred.

Two claims submitted by the Philippine Coastguard (PCG) in respect of its role in incident response at sea, on shore and during oil removal operations have been received and assessed. The settlement offer made by the Club and the Fund is pending.

Claims in Court

Legal proceedings by 967 fisherfolk

A civil suit was filed in August 2009 by a law firm in Manila that had previously represented a group of fisherfolk from Guimaras Island. The suit pertains to claims of 967 of these fisherfolk for damages totalling PHP 286.4 million (£4.1 million) for property damage as well as economic losses. The claimants rejected the 1992 Fund's assessment of a 12-week business interruption as applied to all similar claims in this area, arguing that fisheries were disrupted for over 22 months without, however, providing any factual evidence or support. The 1992 Fund has filed pleadings of defence in court, noting in particular that no evidence had been submitted by the 967 fisherfolk to support their claim, and noting also that at no time was there ever a ban on fishing imposed by the authorities as a result of the incident. Under the law of the Philippines the claimants have to prove their losses and it is therefore expected that additional information will be submitted. If and when that information is provided, it will be examined and assessments reviewed if required. The 1992 Fund awaits developments in this regard.

Legal proceedings by the Philippine Coastguard

The Philippine Coastguard (PCG) has brought legal proceedings to ensure its rights are safeguarded in relation to the two claims for costs incurred during clean-up and pumping operations. Since an offer of settlement for PHP 104.8 million has been made for both claims, the Club and the Fund are awaiting a decision from the PCG. If the settlement offer is accepted, it is expected that the proceedings will be withdrawn. Despite regular contact with the Philippine foreign office, no formal acceptance of the offer has as yet been received.

Legal proceedings by a group of municipal employees

Ninety-seven individuals, employed by a municipality on Guimaras Island during the response to the incident, have taken action in court against the Mayor, the ship's master, various agents, ship and cargo owners and the 1992 Fund on the grounds of not having been paid for their services. A claim by the municipality for overtime payments, including those rendered by the plaintiffs, has been assessed and has been paid to the municipality. After a thorough review of the legal documents received, the Fund has filed pleadings of defence in court, noting in particular that the majority of plaintiffs were not engaged in activities admissible in principle and that the claim by the municipality had been paid as assessed. The plaintiffs had not submitted individual claims outside that presented by the municipality. The 1992 Fund awaits developments in the legal proceedings.

Time bar provisions under STOPIA 2006

Clause VI of STOPIA 2006 provides:

> 'Any rights of the 1992 Fund to Indemnification under this Agreement shall be extinguished unless an action is brought hereunder within four years from the date when the Pollution Damage occurred. However, in no case, shall an action be brought after seven years from the date of the Incident which caused the damage. Where this Incident consists of a series of occurrences, the seven years' period shall run from the date of the first such occurrence'

In September 2010, in order to protect its claims against the shipowner under STOPIA 2006, the 1992 Fund brought legal proceedings against the shipowner before the English courts. Following an agreement reached with the shipowner's insurer, not to invoke clause VI of STOPIA 2006, the 1992 Fund agreed not to serve the legal proceedings and to let the time expire.

Director's considerations

This is the first incident where STOPIA 2006 has applied and the 1992 Fund is receiving regular reimbursements from the Shipowners' Club. It is very unlikely that the amount of compensation payable in respect of this incident will exceed the STOPIA 2006 limit of 20 million SDR and therefore very unlikely that the 1992 Fund will be called upon to pay compensation.

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 Ukraine. The tanker was at anchor when it was caught in a severe storm and heavy seas. After the vessel had broken in two, the stern section 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 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, from where it was eventually sold. A month after the incident, the fore part was temporarily raised and 1 200 tonnes of a mixture of fuel oil and water were recovered from tanks one and two. In August 2008 the fore part of the wreck was raised again and towed to the Port of Kavkaz where it was dismantled for scrap.

It was reported that three 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 joint crisis centre was set up to coordinate the response between the Russian Federation and Ukraine and operations at sea were reported to have recovered some 200 tonnes of heavy fuel oil.

In the Russian Federation significant parts of the shorelines of the Taman peninsula and the Tuzla and Chushka Spits were affected by the oil. Shoreline clean-up was understood to have been undertaken by the Russian military and civil emergency forces under the supervision of the Prime Minister, Mr Viktor Subkov, and some 70 000 tonnes of oily debris, sand and sea-grass were taken away for disposal.

In Ukraine some 6 500 tonnes of oily waste were collected, mainly from Tuzla Island, and were transferred to the Port of Kerch prior to disposal.

Heavy bird casualties, numbering 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. This Convention did not, therefore, enter into force in Ukraine until November 2008. Ukraine has not acceded to, or ratified, the 1992 Fund Convention.

The shipowner and his insurer

The *Volgoneft 139* was owned by JSC Volgotanker. In March 2008, JSC Volgotanker was declared bankrupt by the Commercial Court in Moscow.

The *Volgoneft 139* was insured by Ingosstrakh (Russian Federation) for 3 million SDR, i.e. 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. There is therefore an 'insurance gap' of some 1.5 million SDR.

The *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 Oil Pollution Indemnification Agreement (STOPIA) 2006.

Sunken *Volgoneft 139* tanker in Kerch Strait, Russian Federation

Initial contacts between the Russian authorities and the Secretariat

In November and December 2007, the Secretariat contacted the Russian Embassy in London and the Ministry of Transport in Moscow, offering the help of the 1992 Fund to the Russian authorities in dealing with the incident. A number of meetings took place at the 1992 Fund Secretariat's offices at which the compensation regime was explained in detail and the 1992 Fund offered to send experts from the International Tanker Owners Pollution Federation (ITOPF) to the Russian Federation to monitor the situation and provide advice to the Russian authorities. 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.

Further meetings between the Russian Government, claimants and the Secretariat took place in London and in the Russian Federation during 2008 and 2009. Details can be found in the Annual Report 2008 (pages 117 and 118) and in Part 2 of the Annual Report 2009, 'Incidents involving the IOPC Funds October 2009' (page 30).

Cause of the incident

Ingosstrakh 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 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. In June 2008 the experts visited the area where the incident took place and inspected the aft part of the wreck in the Port of Kavkaz.

For details regarding the preliminary conclusions reached by the 1992 Fund's experts, reference is made to the Annual Report 2008, pages 119–122. In summary, the conclusion of the experts was as follows:

i. The storm of 11 November 2007 was not exceptional since there are records of similar and comparable storms being experienced in the region four times in the past 20 years.
ii. It was not inevitable that the *Volgoneft 139* would be caught in the storm, since there were timely forecasts of the storm and conditions were accurately predicted, so that there had been sufficient opportunities to avoid the vessel being exposed to the storm in the way it had been.
iii. The storm of 11 November 2007 was irresistible in so far as the *Volgoneft 139* was concerned, as the conditions associated with the storm were in excess of the vessel's design criteria.

Visit to the Kerch and Kavkaz VTS by the 1992 Fund and its experts in November 2009 and February 2010

To fully understand the circumstances of the incident, the Secretariat and the Fund's experts visited the Kerch Vessel Traffic System (VTS) in Ukraine in November 2009 and the VTS in Kavkaz, Russian Federation, in February 2010.

On the basis of the additional information made available during the visits, the Fund's experts broadly confirmed their preliminary conclusions that the storm of 11 November 2007 was not exceptional. They concluded that it was not inevitable that the *Volgoneft 139* would be caught in the storm, since there had been sufficient opportunities to avoid the vessel being exposed to the storm in the way it had been. The experts also confirmed their initial view that the *Volgoneft 139* should not have been in the area at the time of the incident since the conditions associated with the storm were in excess of the vessel's design criteria.

However, whereas the Fund's experts' initial view had been that the Kerch Strait anchorage was considered as a commercial port, the experts understood from their visits in November 2009 and February 2010 that the Strait was not operated as a port. During the visits to the VTS in Kerch and in Kavkaz, the experts learned that none of the port authorities had powers to close the anchorage in case of a storm warning or to direct vessels to vacate the anchorage. It was therefore the conclusion of the experts that it was the responsibility of the master and the shipowner to take action to avoid the casualty.

Administrative proceedings before Arbitration Court of Krasnodar

Shortly after the incident the Russian authorities imposed an administrative sanction on the shipowner for having caused pollution damage in breach of Russian law and imposed a fine of RUB 40 000. The shipowner appealed against the fine before the Arbitration Court of Krasnodar.

In February 2008, the Arbitration Court of Krasnodar decided to reject the appeal and confirmed the sanction. In its reasoning the Court stated that no evidence had been provided to the Court that the storm of 11 November 2007 had a special or abnormal character. The Court stated that the incident was not unavoidable and that the master had not taken all possible measures to avoid the breaking of the vessel and the pollution.

It can be inferred from this decision that the Court in Krasnodar considered that this was not a case of *force majeure*.

Judgement of the Arbitration Court of Saint Petersburg and Leningrad Region

At a hearing in September 2010 the Arbitration Court decided that the shipowner and its insurer had not provided evidence that the oil spill resulted from an act of God, exceptional and unavoidable. The Court concluded that the master, having had all the necessary storm warnings, had not taken all necessary measures to avoid the incident and that therefore the incident was not unavoidable for the vessel. The Court also concluded that the storm was not exceptional since there was data of comparable storms in the area. In its judgement the Court decided that the spill did not result from a natural phenomenon of an exceptional nor inevitable character and that the shipowner and his insurer were therefore liable for the pollution damage caused by the spill.

It is not known whether Ingosstrakh will appeal against this judgement.

Claims for compensation

The table opposite summarises the claims situation as at October 2010.

Metodika 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. This claim was based on the quantity of oil spilled, multiplied by an amount of Roubles per ton ('Metodika'). 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.

Judgement of the Arbitration Court of Saint Petersburg and Leningrad Region

At the hearing in September 2010 the Arbitration Court of Saint Petersburg and Leningrad Region issued a judgement rejecting the 'Metodika' claim. In its judgement the Court noted that, under Article I.6 of the 1992 CLC, compensation for damage to the environment, other than loss of benefit caused by such damage, should be limited to the expenses for the reasonable reinstatement measures, as well as the expenses for the preventive measures and subsequent damage caused by such measures. The Court also noted that the expenses included in the other claims arising from the incident covered any preventive and reinstatement measures actually taken as a result of the incident.

It is not known whether the Federal Service on the Supervision in the Sphere of the Use of Nature (Rosprirodnadzor) will appeal against the judgement.

Limitation proceedings and the 'insurance gap'

Court hearings: February 2008 – August 2010

In February 2008 legal proceedings were brought by a Russian clean-up contractor against the shipowner, the P&I insurer and the 1992 Fund before the Arbitration Court of Saint Petersburg and Leningrad Region. A number of other claimants also brought proceedings in the same court.

In February 2008, in the context of these proceedings, the Court issued an interim 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.

In April 2008 the 1992 Fund appealed against the Court's ruling. In its pleadings the 1992 Fund argued that the current limit of the shipowner's liability under the 1992 CLC was 4.51 million SDR and that, under the Russian constitution, international conventions to which the Russian Federation was Party took precedence over Russian domestic law and that therefore the Court's ruling establishing the shipowner's limitation fund at only 3 million SDR should be amended.

In May 2008 the Court of Appeal rendered a decision dismissing the 1992 Fund's request and confirming the interim ruling by the Arbitration Court of Saint Petersburg and Leningrad Region.

The 1992 Fund appealed 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, it was for Russian courts to apply the limits of liability as published in the Russian Official Gazette.

The 1992 Fund appealed to 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.

In December 2008 the Supreme Court confirmed the decision by the Court of Cassation.

Category	Claimant	Claim RUB	Assessed RUB	Status
Clean up	Ministry of Emergencies	4.3 million	–	No supporting documentation submitted.
Clean up	Regional Government	112.2 million	60.9 million	Preliminary assessment. Advanced assessment is being completed. No documentation provided in respect of one of the claims.
Clean up	Local Government	408.1 million	1.9 million	Agreement reached with one claimant. Proposal letter sent to one claimant. One claim being assessed. No documentation provided in support of two claims. Two fisheries claims by individual claimants have now been included in the local authority claims.
Clean up	Port of Kerch (Ukraine)	9.2 million	1.0 million	Proposal letter sent to claimant and claimant has agreed with the assessment. Ukraine was not a Party to 1992 CLC at the time of the incident and not a Party to the 1992 Fund Convention. Preventive measures carried out in Ukraine for the purpose of preventing pollution damage in the Russian Federation would be admissible.
Clean up	Contractor	63.9 million	50.8 million	Proposal letter sent to claimant and claimant has agreed with the assessment.
Clean up	Shipowner	27.7 million	–	Further documentation and increased revised claim provided. Under consideration by expert.
Clean up	Charterer	9.4 million	2.3 million	Claimant agrees with the assessment.
Fisheries	Private industry	4.5 million	–	One claim being assessed. No supporting documentation provided in respect of the other claim. Two fisheries claims have now been included in the local authority claim.
Tourism	Private industry	21.5 million	–	With expert.
Environmental restoration	Regional Government	1 819.6 million	–	Letter sent to claimant asking for more information.
Environmental monitoring	Federal Agency	0.8 million	0.5 million	Proposal letter sent to claimant.
Environmental damage	Federal Agency	6 048.6 million	Rejected	Claim calculated on basis of 'Metodika' rejected by the Arbitration Court.
TOTAL		**8 529.8 million**	**117.4 million**	

Court hearings took place in December 2008 and March, June, September and December 2009 before the Arbitration Court of Saint Petersburg and Leningrad Region where the Court agreed to postpone its consideration of the merits of the claims until the 1992 Fund and the claimants had had time to discuss the merits and quantum of the claims.

The Fund also used the hearings to ask the Court to reconsider its earlier decision on the shipowner's limitation fund, on the grounds that the amendments to the limits of the amount available under the 1992 CLC and 1992 Fund Convention had been officially published in the Russian Federation in October 2008 and that therefore the amended limits were now officially part of Russian national law. The Court stated that it would take a decision on the issue of the increase of the limitation fund when it rendered its judgement on the merits of the claims.

A hearing took place in March 2010, at which the Fund was granted more time to continue the assessment of claims. At the hearing the Court decided to bring the Ministry of Transport into the proceedings as a third party since it could assist the Court and the parties to resolve the 'insurance gap' issue. Hearings took place in April and June 2010.

At a hearing in August 2010, the Court decided to separate some claims and divided the proceedings in two in order to speed up the resolution of certain issues.

Hearings in September 2010

Hearings took place in September 2010 in respect of the two separate proceedings.

One of the proceedings dealt with the issue of the amount of the limitation fund, the defence of *force majeure* by the shipowner's insurer and the 'Metodika' claim. With regard to the amount of the limitation fund, the Court decided to maintain the shipowner's limitation fund at only 3 million SDR (RUB 116.6 million) on the grounds that the amendments to the limits available under the 1992 CLC and 1992 Fund Convention had not been published in the Russian Official Gazette at the time of the incident. The Fund will appeal against the decision on the CLC limit on the grounds that, at the time this judgement was rendered, the new limits of the shipowner's liability were officially published and therefore properly incorporated into Russian legislation.

In separate proceedings, a hearing took place in respect of all the remaining claims. The Court decided to adjourn these proceedings to give more time for the parties to reach an agreement on the assessments.

Meetings between the Russian authorities and the Secretariat

The Russian authorities, the Secretariat and the Fund's experts held a number of meetings between November 2009 and October 2010 to facilitate the exchange of information and to monitor the progress of claims. These meetings took place in the Russian Federation and in Ukraine.

Meetings in Kyiv and Kerch (Ukraine) in November 2009

The Secretariat and the Fund's experts had planned to visit Moscow, Kavkaz (Russian Federation) and Kerch (Ukraine) in November 2009. Since no visas were obtained in time for the visit to the Russian Federation, it was decided to accept the offer of a claimant to hold the meeting in Kyiv (Ukraine).

As noted above, the Secretariat and the Fund's experts also visited the Kerch VTS where a number of questions were put to the officers in the VTS regarding the general organisation of the VTS and communications with the *Volgoneft 139* at the time of the incident.

Meetings in Moscow, Krasnodar and Kavkaz in February 2010

The Secretariat and the Fund's experts visited Moscow, Krasnodar and Kavkaz in February 2010, where they held meetings with the Ministry of Transport, a representative of the owner and the charterer of the *Volgoneft 139,* several local authorities in the Krasnodar area, the VTS in Kavkaz and a claimant in the tourism sector.

At the meeting with the Ministry of Transport, a possible solution to the 'insurance gap' was discussed. The costs of response operations undertaken by central government had not been claimed and part of the cost of the clean-up operations carried out by the Krasnodar Regional Administration and by a local authority had been funded by the Ministry of Finance. If the Ministry of Finance were to submit a claim in respect of these costs to the 1992 Fund and if the assessment of this claim were to cover the insurance gap of approximately RUB 59 million, the Government could decide to waive its compensation rights to cover the 'insurance gap'. It was stressed that this possible solution would involve the Ministry of Finance submitting the claim and the Fund examining the supporting documentation, with the assessed amount having to reach at least the amount of the 'insurance gap'. The representative of the Ministry of Transport undertook to consider this possible solution.

Time bar

Under the 1992 CLC, rights to compensation from the shipowner and his insurer are extinguished 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 July 2010, letters about the time-bar issue were sent to the claimants who had not submitted their claims in court and with whom settlements had not been reached by that time. Since the *Volgoneft 139* incident occurred on 11 November 2007, although the date of the damage may be different for each claimant, the letters recommend that date as a point of reference, in which case the three-year time-bar period would end on 11 November 2010.

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 N°1* 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 N°5* 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 of 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 Shipping Company Limited. It is insured by Assuranceföreningen Skuld (Gjensidig) (Skuld Club) and managed by V-Ships Limited. The crane barge and the two tugs are owned and/or operated by Samsung Corporation and its subsidiary Samsung Heavy Industries (SHI), which belong to the Samsung Group, the Republic of 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 the Republic of Korea's western coast was 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 the Republic 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 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.

Bulk oil stranding on a beach following the *Hebei Spirit* incident, Republic of Korea

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 the Republic of Korea. Local villagers, army and navy cadets and volunteers from all over the Republic of 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 Civil Liability and Fund Conventions but, at the time of the spill, had not ratified the Supplementary Fund Protocol.

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. The total amount available for compensation under the 1992 CLC and the 1992 Fund Convention is 203 million SDR.

Level of payments

The 1992 Fund 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 KRW 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, i.e. 13 March 2008, at the rate of 1 SDR = KRW 1 584.330, giving a total amount available for compensation of KRW 321 618 990 000.

At the same session the 1992 Fund Executive 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 1992 Fund Executive 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 greater than initially estimated in March 2008. At that session, the 1992 Fund Executive 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.

The 1992 Fund Executive Committee decided to maintain the level of payment at 35% of the established damages in its subsequent sessions of October 2008, as well as of March, June and October 2009 and June and October 2010 and to review the situation at its next session.

As at October 2010, the latest estimate of the total amount of the losses caused by the spill was KRW 438.5 billion.

Actions by the Korean Government

Hardship payments made by the Korean Government

The Korean Government informed the Fund that payments totalling KRW 117.2 billion had been made to residents in the affected areas. Out of this amount, the Central Government provided KRW 76.8 billion, the Chungcheongnam Province KRW 15 billion and private donors KRW 25.4 billion. The local authorities in the affected provinces 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 of between KRW 746 862 and KRW 2 916 600.

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 1992 Fund Convention.

Payments by local authorities

A number of local authorities in the affected provinces have made payments totalling KRW 4 770 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. A number of local authorities in the affected provinces have also made payments totalling KRW 9 569 million to claimants in the clean-up sector for similar costs incurred during the period March to June 2008, corresponding to the amounts claimed against the Skuld Club and the Fund. One local authority has made payments totalling KRW 23.5 million to claimants for villagers' labour costs incurred in the period after August 2008. All these local authorities have submitted claims in respect of these payments.

Special Law for the support of the victims of the *Hebei Spirit* incident

At the June 2008 session of the 1992 Fund 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 in full to claimants based on the assessments made by the Skuld Club and the Fund within 14 days from the date they submitted 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 the October 2010 session of the 1992 Fund Executive Committee, the Korean Government had made payments totalling KRW 32 596 million to 377 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.

The Korean Government has, under the Special Law, set up a scheme to provide loans to victims of pollution damage for an amount fixed in advance if they have submitted a claim to the Skuld Club and the Fund but have not received an offer of compensation within six months. As at the October 2010 session of the 1992 Fund Executive Committee, the Korean Government had granted loans totalling KRW 48 462 million to 19 613 claimants.

Other 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 KRW 1 330 million 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 1992 Fund 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 KRW 115.3 billion, 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

First Cooperation Agreement

In January 2008, discussions took place on compensation issues which resulted in the First Cooperation Agreement concluded between the shipowner, Skuld Club, the Korean Government and KMPRC. The Fund was consulted during the negotiations but is not a party to the Agreement. By the Agreement, in exchange for the Club's expedited payment to large numbers of individuals engaged by clean-up contractors as labour in shoreline response operations, the Korean Government undertook to facilitate cooperation with the experts appointed by the Club and the Fund, and KMPRC undertook to request the release of the *Hebei Spirit* from arrest.

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.

Second Cooperation Agreement

In July 2008, a Second Cooperation Agreement was concluded between the shipowner, Skuld Club and the Korean Government (Ministry Land, Transport and Maritime Affairs (MLTM), which had incorporated part of the functions of MOMAF). Under this Agreement, the Skuld 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. In return, to ensure that all claimants would receive compensation in full, the Korean Government undertook to pay in full all claims as assessed by the Club and Fund once the 1992 CLC and Fund Convention limits were reached as well as all amounts awarded by judgements under the 1992 CLC and 1992 Fund Convention in excess of the limit. The Korean Government further undertook to deposit the amount already paid out by the Skuld Club to claimants into court should the Limitation Court order 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 office became fully operational on 22 January 2008. The *Hebei Spirit* Centre has two managers and six supporting staff members.

Claims for compensation

As at the October 2010 session of the 1992 Fund Executive Committee, the Skuld Club and the Fund had received 27 268 claims totalling KRW 2 194 billion on behalf of 126 331 claimants.

Out of all the claims reviewed by the Skuld Club and the Fund, 2 062 claims on behalf of 10 290 claimants had been approved for KRW 128 297 million and 5 816 claims on behalf of 5 990 claimants had been rejected. Interim payments totalling KRW 112 342 million (£62.54 million) had been made by the Skuld Club in respect of 1 926 claims, including payments made to the Korean Government in respect of claims paid under the Special Law. These payments had been made at 100% of the assessed amount.

The remaining claims had been queried and were awaiting response from the claimant. Most claims were submitted with very poor or no supporting documentation.

Fisheries restrictions

Following the incident, the Korean Government established a number of fisheries restrictions. The restrictions began to be lifted in some areas in April 2008. The last restrictions were lifted in September 2008.

Examination of the data provided by the Korean Government regarding the criteria upon which the fisheries restrictions were imposed and lifted indicated, in the Secretariat's view, that on the basis of the scientific and technical information available, all of the fisheries should reasonably have been reopened before the date when the restrictions were actually lifted.

Category of claim	Number of claims	Claimed amount (KRW million)	Claims assessed > 0	Assessed amount (KRW million)	Claims paid	Paid amount (KRW million)	Claims rejected
Clean up and preventive measures	274	197 221	204	90 419	172	85 708	28
Property damage	22	3 042	12	440	7	393	4
Fisheries and mariculture	10 624	1 606 605	207	19 982	188	9 969	997
Tourism and other economic damage	16 347	385 748	1 639	17 456	1 559	16 272	4 787
Environmental damage	1	2 195	-	-	-	-	-
Total	**27 268**	**2 194 811**	**2 062**	**128 297**	**1 926**	**112 342**	**5 816**

In June 2009, the 1992 Fund Executive Committee decided that the assessment of claims in the fisheries sector should be based on conclusive scientific information available to the Fund. Therefore, any losses suffered by fishermen after a point in time when the Korean Government could have reasonably had the opportunity to lift the restrictions should not be considered due to the contamination caused by the incident and should, in principle, not be considered admissible for compensation. The Skuld Club and the Fund began assessing claims from fishermen affected by the fisheries restrictions in accordance with the Executive Committee decision.

In 2010, in accordance with the Executive Committee's instructions to resolve the remaining differences of opinion with the Korean Government, the Fund and its experts conducted another thorough review of the information provided and the circumstances and conditions following the incident. The Fund's experts considered that there were two adjustments that should be made to the initially proposed dates when fisheries restrictions could have been safely lifted without departing from existing Fund policy as set out in the 1992 Fund's Claims Manual, namely:

- Varying reasonable dates had originally been suggested for a group of small islands due to the extremely patchy nature of contamination by oil from the incident. On review, it became apparent that the proximity of the islands to each other and the absence of clear delineations of fishing grounds between them would have made it impossible in practice to impose closures specific to some island fisheries but not to others. The closures suggested as technically reasonable were therefore standardised for the entire group of islands without distinction.
- Taking into consideration the size of the incident and areas affected, as well as the importance of seafood for the Korean population and economy, the sampling and decision making processes to ensure seafood safety were reviewed again in detail. The experts concluded on the basis of chemical analysis and knowledge of ongoing clean-up operations in some areas, that fisheries restrictions could only have been lifted after the absence of seafood contamination had been firmly established and the Korean fishery authorities had had the opportunity to consider this information. A review of the above confirmed that the restrictions could have reasonably been in place until the end of February 2008. After that time no further risk of renewed contamination from remaining pollutant remained and relevant data confirmed the absence of contamination in seafood samples.

The changes described above represented only a minor adjustment to the position initially taken by the Fund on this matter and are well within the existing Fund policy. A meeting took place in June 2010 in London between representatives of the Korean Government and the Fund. At that meeting the Director laid out the considerations described above, and the fact that they were in accordance with the decision of the 1992 Fund Executive Committee taken in June 2009. As a result of that meeting, the differences between the Korean Government and the Fund on the fisheries restrictions were narrowed.

In June 2010, the 1992 Fund Executive Committee noted that the Secretariat and the Republic of Korea had narrowed their differences of opinion and had reached a mutual understanding on the reasonable dates for lifting the fisheries restrictions within the 1992 Fund's policy on admissibility and on the basis of the instructions given by the Committee in June 2009. Following the finalisation of the clean-up assessments, the reasonable dates for reopening the fisheries in the Republic of Korea after the *Hebei Spirit* incident were further revised, extending the period in some limited areas.

Investigations into the cause of the incident

Investigation in the Republic of Korea

An investigation into the cause of the incident was initiated soon after the incident by the Incheon District Maritime Safety Tribunal in the Republic of 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 SHI, the masters of the tugboats and the master and duty officer of the *Hebei Spirit* 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 was 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*.

The owners of the two tugs and the owner of the *Hebei Spirit* appealed to the Supreme Court against the decision of the Central Maritime Safety Tribunal. As at October 2010, the decision of the Supreme Court was still pending.

Investigation in China (Hong Kong Special Administrative Region) (China (HKSAR))

An investigation into the cause of the incident was also carried out by the ship's flag State administration in China (HKSAR). The investigation found that the decision by the operator of the tugboats and of the crane barge (the Marine Spread), to undertake the towing voyage when adverse weather had been forecast was the main contributory factor to this accident. Moreover, the delay by the Marine Spread in notifying the

Vessel Traffic Information Station (VTIS), and other ships in the vicinity resulted in insufficient time being given to the *Hebei Spirit* to take all necessary actions to avoid the collision. The investigation further indicated that the actions taken by the master and the crew of the *Hebei Spirit* after the collision had fully complied with the provisions as set out in the ship's Shipboard Oil Pollution Emergency Plan.

Legal proceedings

Criminal proceedings

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 the master and chief officer of the *Hebei Spirit* who were not arrested, but 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 KRW 2 million, (ii) the master of the other tugboat was sentenced to one year imprisonment, (iii) the owners of the two tugboats (SHI), were sentenced to a fine of KRW 30 million, (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 owners of the tugboats appealed against the judgement.

In December 2008, the Criminal Court of Appeal (Daejeon Court) rendered its judgement. In its judgement, the Court reduced the sentence against the masters of the two tugboats. The judgement overturned the non-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 KRW 30 million and the master and chief officer of the *Hebei Spirit* were arrested. The *Hebei Spirit* interests appealed to the Supreme Court.

In April 2009, the Korean Supreme Court annulled the Court of Appeal's decision to arrest the crew members of the *Hebei Spirit* and they were allowed to leave the Republic of Korea. The Supreme Court, however, upheld the decision to arrest the masters of one of the towing tugs and of the crane barge and confirmed the fines imposed by the Court of Appeal.

In June 2009, the master and chief officer of the *Hebei Spirit* were released from arrest and left the Republic of Korea.

Civil proceedings

Limitation proceedings by the owner of the *Hebei Spirit*

In February 2008, the owner 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 shipowner's right to limit its liability since the shipowner 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 the victims of the oil spill time to register their claims.

In February 2009, the Limitation Court rendered an order for the commencement of the limitation proceedings. According to the Limitation Order, the persons who had claims against the owner of the *Hebei Spirit* had to register their claims by 8 May 2009, failing which the claimants would lose their rights against the limitation fund. Also in February 2009 a number of claimants appealed to the Daejeon Court of Appeal against the decision of the Limitation Court to commence limitation proceedings. In July 2009 the appeal was dismissed. A number of claimants appealed to the Supreme Court. As at October 2010 the appeal was still pending.

One hundred and twenty-six thousand three hundred and sixteen claims totalling KRW 3 597 billion were submitted to the Limitation Court. The Limitation Court indicated that it would not accept further claims. The claimants would, however, still have time to modify the amount of their claim until such time as the Limitation Court would complete the assessment of the claims.

The Limitation Court held a first hearing in June 2009. The Korean lawyers acting for the Skuld Club, the Fund and for a number of claimants, attended the hearing. It was agreed among the parties present that the court administrator would review the assessments by experts engaged by the Skuld Club and the Fund as well as the assessments by the experts engaged by the claimants, rather than appointing court experts.

In subsequent hearings in 2010 the Limitation Court indicated that, whilst continuing to monitor on a regular basis the progress in the assessment of claims, it intended to hold its first hearing to consider the merits of the claims in the course of 2011.

The 1992 Fund, through its Korean lawyers, is following the developments in the limitation proceedings.

Limitation proceedings by the bareboat charterer of the Marine Spread

In December 2008, the bareboat charterer of the Marine Spread, SHI, 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.

In March 2009, the Limitation Court rendered the order for the commencement of the limitation proceedings. The Court decided to grant SHI the right to limit its liability and set the limitation fund at KRW 5 600 million (£2.9 million) including legal interest. SHI deposited this amount in court. The Limitation Court also decided that claims against the limitation fund should be registered with the Court by 19 June 2009.

In June 2009 a number of claimants appealed to the Seoul Court of Appeal against the decision of the Limitation Court to grant to the bareboat charterer the right to limit its liability. On 20 January 2010, the Court of Appeal dismissed the appeal and confirmed the Limitation Court's decision. The claimants appealed to the Supreme Court.

Claims by fishery interests

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 Courts of Seosan and Hongsung appointed the Maritime Research Institute of Pukyong National University and the Fishery Science Institute of the Jeonnam University, respectively, as the court experts tasked with the assessment of the damages arising from the *Hebei Spirit* incident. The Courts ordered that any material that the court experts received from the claimants be 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 the 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.

In March 2009, the Seoul Court of Appeal rejected the appeal and confirmed the decision by the Seoul Central District Court. In April 2009, the claimants appealed against the decision to the Supreme Court.

In July 2009, the appeal was dismissed by the Supreme Court.

Recourse action against Samsung C&T Corporation (Samsung C&T) and SHI

The owner and insurer of the *Hebei Spirit* commenced a recourse action in January 2009, against Samsung C&T and SHI, the owner and operator/bareboat charterer of the Marine Spread, in the Court of Ningbo in the People's Republic of China, combined with an attachment of SHI's shares in shipyards in the People's Republic of China as security.

In January 2009, the Director decided that in order to protect the interests of the 1992 Fund, the Fund should also commence its own recourse action against Samsung C&T and SHI in the Court of Ningbo in the People's Republic of China, combined with an attachment of SHI's shares in the shipyards in the People's Republic of China as security.

In January 2009, the Ningbo Maritime Court accepted the two recourse actions filed by the owner/Skuld Club and the 1992 Fund. The total amount claimed in each action is RMB 1 367 million or US$200 million. The Court also accepted the two applications for attachment of SHI's shares in the shipyards and issued orders accordingly.

In relation to the attachment of SHI's shares, the Fund arranged for the deposit of the required countersecurity, corresponding to 10% of the amount claimed or US$20 million (£12.3 million) by a letter of undertaking issued by the Skuld Club.

At its session in March 2009, the 1992 Fund Executive Committee endorsed the decision taken by the Director in January 2009 to commence recourse action against Samsung C&T and SHI in the Ningbo Maritime Court in China at the same time as the owner and the insurer of the *Hebei Spirit*. The Committee also decided that the Fund should continue the recourse action.

Service of proceedings on both Samsung C&T and SHI was effected in September 2009 but both have filed applications objecting to the jurisdiction of the Court of Ningbo and, in the case of SHI, objecting to the attachment. Submissions in response to the applications were lodged on behalf of the 1992 Fund.

In September 2010, the Court of Ningbo rejected the applications of Samsung C&T and SHI and decided that it had jurisdiction in the case. In October 2010 Samsung C&T and SHI appealed. The decision of the Court of Appeal is expected soon.

Agreement between the 1992 Fund, the shipowner, Skuld P&I Club and China P&I Club (the ship's interests)

In February 2010, the Fund signed an agreement with the ship's interests in connection with the recourse action under which the Fund and the ship's interests will continue their actions separately in the Ningbo Maritime Court, sharing the costs of the recourse actions on a 50/50 basis and sharing the proceeds of any recovery by court judgement or settlement also on a 50/50 basis.

In accordance with the agreement, the Fund has paid US$3 million (£1.8 million) to the Skuld Club, corresponding to half of the costs incurred by the Club in collecting evidence for the recourse action. In February 2010, the Fund also paid the Club for the cost of the security provided by the Skuld Club in relation to the attachment of SHI's shares in the shipyards in the People's Republic of China.

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 Arturo Umberto 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 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 were 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 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. Nevertheless, the fisheries sector suffered economic losses.

The area affected by the spill is also used for recreational purposes and claims for losses in the tourism sector were expected.

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.

1992 Civil Liability and Fund Conventions

Argentina is a Party to the 1992 Civil Liability 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.

The *Presidente Illia* was insured for pollution liabilities with the West of England Ship Owners Mutual Insurance Association (Luxembourg) (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.

Oiled cormorants waiting to be cleaned following an oil spill incident in December 2007, near Caleta Córdova, Argentina

A number of other vessels in the area were inspected by the maritime authorities but none of them were detained.

Legal proceedings

The Secretariat was informed about this incident in May 2008. The 1992 Fund has appointed an Argentine lawyer to follow the legal proceedings initiated in Argentina as a result of this incident.

Criminal proceedings

Following a court order, the *Presidente Illia* was detained at Campana in January 2008. The ship remained under detention in connection with the investigation into the cause of the incident until March 2009. 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.

In March 2008 the Criminal Court rendered a preliminary decision that named 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 and 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.

Civil proceedings

Shortly after the spill, the province of Chubut submitted a request for security for US$50 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. Additionally, 32 inhabitants of the area have so far been admitted by the Court as claimants.

The shipowner submitted points of defence denying his liability for the spill and requesting the Court to bring the 1992 Fund into the proceedings.

In October 2008 the master submitted pleadings as a co-defendant in the claim by the province of Chubut and also asked that the Court summon the 1992 Fund. The plaintiffs were in agreement and the Court decided that the 1992 Fund should be brought into the proceedings and that the proceedings should be halted pending notification of the 1992 Fund. The Fund was formally served with the notification in London on 19 October 2009.

The 1992 Fund, based on the investigations of its experts, has submitted pleadings arguing that the most likely source of the spill was the *Presidente Illia*.

To ensure prompt access to the file in the criminal proceedings for the purpose of preparing the defence, the 1992 Fund requested that the Court allow the Fund to take part in the criminal proceedings. This was denied. The 1992 Fund appealed the decision but, in December 2009, the appeal was denied.

Claims handling

Representatives of the shipowner, the West of England Club and the 1992 Fund met in Buenos Aires with their lawyers and experts in April 2009. It was agreed that there would be three joint experts to cooperate in the claims handling process and that one of the experts would also act as a focal point to coordinate the claims process.

The Fund, with the experts and lawyer, also visited the area affected by the spill. During that visit, meetings took place with a representative of the province of Chubut, small groups of fishermen in Caleta Córdova and a representative of the Municipality of Comodoro Rivadavia, who stated that the Municipality would likely make a claim for costs incurred following the incident, in relation to aid paid to fishermen. At these meetings, the compensation regime was explained and claims forms were handed out to the fishermen.

Since the majority of the affected economic activity in the area is of an artisanal nature, there is little documentary evidence available to assist in the assessment of losses. To overcome this problem, a series of meetings to gather additional information took place in Caleta Córdova between the Club's and Fund's expert acting as the focal point and the claimants.

Claims for compensation

As at 2 September 2010, 170 claims for compensation for a total of AR$41.5 million and one claim for US$126 617 had been submitted. Sixty-eight claims had been approved at AR$1.9 million and interim payments totalling AR$484 000 have been made by the Club. The remaining claims were being assessed.

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

Four claims for clean-up and preventive measures have been received, including two claims from animal welfare organisations.

The claimants in the fisheries sector are mainly individuals and comprise artisanal foot and boat fishermen, processors and sellers while others are buyers and resellers of fish. Many of the claimants carry out more than one of these activities and work in groups. There are three claims from the owners of fish processing plants and further claims from the casual labourers they use. A municipal agency has claimed for various costs incurred as a result of the incident.

Claims from the tourism sector are from grocery store workers, hotels and a tourist/fishing tours operator.

The lack of records available to assist the claimants in quantifying their losses has unavoidably extended the time required to make assessments of the losses. In view of this, the West of England Club agreed to make interim payments of AR$4 000 to each claimant considered to have an admissible claim for at least that amount. In accordance with these criteria, in June 2010 the Club made interim payments totalling AR$484 000 in respect of 66 claims in the fisheries sector and two claims in the tourism sector. These claims are being assessed in more detail and, as a result, it is expected that the claimants will in the near future receive payments of the balance owed to them.

Director's considerations

The limit of liability of the owner of the *Presidente Illia* under the 1992 CLC is estimated to be 24 million SDR 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 were successful in their appeal, but it was 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.

Claim category	Claims submitted			Claims approved		Paid by Club	
	Claims	Amount AR$	Amount US$	Claims	Amount AR$	Claims	Amount AR$
Clean-up and preventive measures	4	526 470	126 617	0	0	0	0
Fisheries	156	38 693 617	0	66	1 924 708	66	472 000
Miscellaneous	1	1 080 957	0	0	0	0	
Tourism	9	1 243 744	0	2	12 000	2	12 000
Total	**170**	**41 544 788**	**126 617**	**68**	**1 936 708**	**68**	**484 000**

King Darwin

Canada, 27 September 2008

The incident

On 27 September 2008, the Marshall Islands-registered oil tanker *King Darwin* (42 010 GT) released approximately 64 tonnes of bunker C fuel oil during discharge operations in the Port of Dalhousie, New Brunswick, Canada.

Some of the spill was contained on the tanker's deck, but an unknown quantity of oil spilled in the waters of the Restigouche River and contaminated the shoreline and port structures in the immediate vicinity.

1992 Civil Liability and Fund Conventions

Canada is a Party to the 1992 CLC and the 1992 Fund Convention. The limit of liability of the owner of the *King Darwin* under the 1992 CLC is estimated to be 27 863 310 SDR.

The *King Darwin* was insured for pollution liabilities with the Steamship Mutual Underwriting Association (Bermuda) Limited (Steamship Mutual).

Clean-up operations

Initial oil spill response operations were carried out within the port area by the terminal. The owners of the *King Darwin* engaged a private contractor to conduct clean-up operations on the shoreline, ice defences, exterior cladding and the port structures. The majority of the clean-up operations were completed by 5 October 2008.

The final area to be cleaned related to the area of the wharf closest to where the *King Darwin* was berthed, which was also contaminated. The private contractor engaged by the owners of the *King Darwin* carried out the necessary cleaning of the jetty to the standard ordered by the authorities before the winter season in order to protect migratory birds which come to the area in springtime. Monitoring of the area for release of oil after the winter season continued in the following months. The local authorities declared the clean-up operations complete by September 2009.

Claims for compensation

Two claims were submitted for the costs of the clean-up operations carried out. The total amount paid by Steamship Mutual for these two claims was US$1 332 488, well within the limitation amount.

One claim was submitted by the Port authorities for additional expenses. From the analysis of the supporting documents provided, it appeared, however, that the expenses were either a duplication of costs already submitted or paid on the clean up, or for expenses not related to the incident. The claim was queried by Steamship Mutual.

A dredging company, operating in the Port of Dalhousie at the time of the incident, submitted a claim for losses since the company had to interrupt their work whilst dock clean-up was undertaken. However, on the basis of the supporting documentation provided, it appeared that the contracted work was finalised within the scheduled timeframe, that the company incurred no penalty under the contract terms and that no other loss was established. Steamship Mutual requested further information which was not provided.

No further claims are expected.

Legal actions

The *King Darwin* was arrested in September 2009 in connection with the claim by the dredging company. The vessel was released upon submission of a bank guarantee by the shipowner.

In September 2009, the dredging company also filed an action in the Federal Court in Halifax, Nova Scotia, against the owners of the *King Darwin*, Steamship Mutual, the Canadian Ship Source Oil Pollution Fund and the 1992 Fund, claiming property damage due to fouling of the equipment caused by the spilled oil and consequential losses totalling Can$143 417.

The 1992 Fund has appointed a lawyer in Canada and has submitted a statement of defence. The Federal Court in Halifax has not yet set the date of the hearing.

Director's considerations

The 1992 Fund was informed of this spill in November 2009 when it was notified of the action brought by the dredging company. From the information available to the 1992 Fund, it seems that this was a small operational spill, well contained within the Port of Dalhousie and the damage caused appears to be well within the 1992 CLC limit. It is therefore unlikely that the 1992 Fund will be called upon to pay compensation.

1992 Fund: Summary of Incidents

	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GT)	Limit of shipowner's liability under CLC
1	Incident in Germany	20.06.1996	North Sea coast, Germany	Unknown	Unknown	Unknown
2	*Nakhodka*	02.01.1997	Oki Islands, Japan	Russian Federation	13 159	1 588 000 SDR
3	*Osung N°3*	03.04.1997	Tunggado, Republic of Korea	Republic of Korea	786	104 500 SDR
4	Incident in United Kingdom	28.09.1997	Essex, United Kingdom	Unknown	Unknown	Unknown
5	*Santa Anna*	01.01.1998	Devon, United Kingdom	Panama	17 134	10 196 280 SDR
6	*Milad 1*	05.03.1998	Bahrain	Belize	801	Not available
7	*Mary Anne*	22.07.1999	Philippines	Philippines	465	3 million SDR
8	*Dolly*	05.11.1999	Martinique	Dominican Republic	289	3 million SDR
9	*Erika*	12.12.1999	Brittany, France	Malta	19 666	€12 843 484

Cause of incident	Estimated quantity of oil spilled (tonnes)	Types of claims paid by insurer and/or IOPC Funds	Compensation paid by the 1992 Fund up to 22.10.10 (£)	Notes
Unknown	Unknown	Clean-up & preventive measures	961 364	Following out-of-court settlement, shipowner/insurer paid 20% and 1992 Fund paid 80% of final assessment amount.
Breaking	6 200	Clean-up & preventive measures Fishery-related Tourism-related Causeway	61 136 355	A global settlement agreement was reached between shipowner/insurer and IOPC Funds whereby insurer paid ¥10 956 930 000 and IOPC Funds paid ¥15 130 970 000, of which 1992 Fund paid ¥7 422 192 000 and 1971 Fund paid ¥7 708 778 000.
Grounding	Unknown	Clean-up & preventive measures Oil removal operation Fishery-related	Nil	1992 Fund paid ¥340 million to claimants. This amount was later reimbursed by 1971 Fund.
Unknown	Unknown	Clean-up & preventive measures	Nil	Claim not pursued.
Grounding	280	Clean-up & preventive measures	Nil	Claim paid by shipowner's insurer.
Damage to hull	0	Pre-spill preventive measures	35 145	
Sinking	Unknown	Clean-up & preventive measures	Nil	Claim paid by shipowner's insurer.
Sinking	Unknown	Clean-up & preventive measures	1 029 174	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 & preventive measures Fishery-related Property damage Tourism-related Loss of income	77 023 629	Total SA paid the French State €153.9 million, i.e. the amount awarded by the Criminal Court which took into account the compensation amounts already received from the Fund.

	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GT)	Limit of shipowner's liability under CLC
10	*Al Jaziah 1*	24.01.2000	Abu Dhabi, United Arab Emirates	Honduras	681	3 million SDR
11	*Slops*	15.06.2000	Piraeus, Greece	Greece	10 815	8.2 million SDR
12	Incident in Spain	05.09.2000	Spain	Unknown	Unknown	Unknown
13	Incident in Sweden	23.09.2000	Sweden	Unknown	Unknown	Unknown
14	*Natuna Sea*	03.10.2000	Indonesia	Panama	51 095	22 400 000 SDR

Cause of incident	Estimated quantity of oil spilled (tonnes)	Types of claims paid by insurer and/or IOPC Funds	Compensation paid by the 1992 Fund up to 22.10.10 (£)	Notes
Sinking	100–200	Clean-up & preventive measures	566 166	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 would be very difficult to execute the judgement since the shipowner does not have sufficient assets. Since the costs incurred by the Fund in executing the judgement would exceed the amount recovered, the Funds have discontinued the execution of the judgement and will write off the debt.
Fire	1 000–2 500	Clean-up & preventive measures	3 217 421	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 & preventive measures	Nil	Spanish authorities have recovered their costs from alleged source of the pollution.
Unknown	Unknown	Clean-up & preventive measures	Nil	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	*Singapore*: Clean-up & preventive measures Fishery-related *Malaysia*: Clean-up & preventive measures Fishery-related *Indonesia*: Clean-up & preventive measures Fishery-related	Nil	All claims have been paid by shipowner's insurer.

	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GT)	Limit of shipowner's liability under CLC
15	*Baltic Carrier*	29.03.2001	Denmark	Marshall Islands	23 235	DKr118 million
16	*Zeinab*	14.04.2001	United Arab Emirates	Georgia	2 178	3 million SDR
17	Incident in Guadeloupe	30.06.2002	Guadeloupe	Unknown	Unknown	Unknown
18	Incident in United Kingdom	29.09.2002	United Kingdom	Unknown	Unknown	Unknown
19	*Prestige*	13.11.2002	Spain	Bahamas	42 820	€22 777 986

Cause of incident	Estimated quantity of oil spilled (tonnes)	Types of claims paid by insurer and/or IOPC Funds	Compensation paid by the 1992 Fund up to 22.10.10 (£)	Notes
Collision	2 500	Clean-up & preventive measures Oil disposal Economic loss Fishery-related Environmental monitoring	Nil	All claims paid by shipowner's insurer.
Sinking	400	Clean-up & preventive measures	496 022	1971 and 1992 Funds have each contributed 50% of the amounts paid.
Unknown	Unknown	Clean-up & preventive measures	Nil	Source of spill appears to have been a general cargo vessel. 1992 Fund will not therefore be called upon to make any compensation payments.
Unknown	Unknown	Clean-up & preventive measures	5 949	
Breaking	63 200	*Spain*: Clean-up & preventive measures Property damage Mariculture Fishing and shellfish gathering Tourism-related Fish processors/vendors Miscellaneous Spanish Government *France*: Clean-up & preventive measures Property damage Mariculture Shellfish gathering Fishing boats Tourism-related Fish processors/vendors Miscellaneous French Government *Portugal*: Clean-up & preventive measures	82 812 138	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.

	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GT)	Limit of shipowner's liability under CLC
20	*Spabunker IV*	21.01.2003	Spain	Spain	647	3 million SDR
21	Incident in Bahrain	15.03.2003	Bahrain	Unknown	Unknown	Unknown
22	*Buyang*	22.04.2003	Geoje, Republic of Korea	Republic of Korea	187	3 million SDR
23	*Hana*	13.05.2003	Busan, Republic of Korea	Republic of Korea	196	3 million SDR
24	*Victoriya*	30.08.2003	Syzran, Russian Federation	Russian Federation	2 003	3 million SDR
25	*Duck Yang*	12.09.2003	Busan, Republic of Korea	Republic of Korea	149	3 million SDR
26	*Kyung Won*	12.09.2003	Namhae, Republic of Korea	Republic of Korea	144	3 million SDR
27	*Jeong Yang*	23.12.2003	Yeosu, Republic of Korea	Republic of Korea	4 061	4 510 000 SDR
28	*N°11 Hae Woon*	22.07.2004	Geoje, Republic of Korea	Republic of Korea	110	4 510 000 SDR
29	*N°7 Kwang Min*	24.11.2005	Busan, Republic of Korea	Republic of Korea	161	4 510 000 SDR

Cause of incident	Estimated quantity of oil spilled (tonnes)	Types of claims paid by insurer and/or IOPC Funds	Compensation paid by the 1992 Fund up to 22.10.10 (£)	Notes
Sinking	Unknown	*Spain*: Preventive measures and wreck removal Clean-up & preventive measures *Gibraltar*: Clean-up & preventive measures	Nil	
Unknown	Unknown	Clean-up & preventive measures Fishery-related	667 599	All claims paid by 1992 Fund.
Grounding	35–40	Clean-up & preventive measures Fishery-related	Nil	All claims paid by shipowner's insurer.
Collision	34	Clean-up & preventive measures Fishery-related Property damage	Nil	All claims paid by shipowner's insurer.
Fire	Unknown	Clean-up & preventive measures	Nil	Since total amount claimed is well below limitation amount applicable to *Victoriya*, the 1992 Fund will not be required to make any compensation payments.
Sinking	300	Clean-up & preventive measures Economic loss	Nil	All claims paid by shipowner's insurer.
Stranding	100	Clean-up & preventive measures Fishery-related	1 567 229	
Collision	700	Clean-up & preventive measures Fishery-related Economic loss Post-spill studies	Nil	All claims paid by shipowner's insurer.
Collision	12	Clean-up & preventive measures	Nil	All claims paid by shipowner's insurer.
Collision	37	Clean-up & preventive measures Fishery-related Tourism-related	1 164 982	All litigation was finalised in July 2010.

	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GT)	Limit of shipowner's liability under CLC
30	*Solar 1*	11.08.2006	Guimaras Straits, Philippines	Philippines	998	4 510 000 SDR
31	*Shosei Maru*	28.11.2006	Seto Inland Sea, Japan	Japan	153	4 510 000 SDR
32	*Volgoneft 139*	11.11.2007	Strait of Kerch, between Russian Federation and Ukraine	Russian Federation	3 463	4 510 000 SDR
33	*Hebei Spirit*	07.12.2007	Off Taean, Republic of Korea	China (Hong Kong Special Administrative Region)	146 848	89 770 000 SDR
34	Incident in Argentina *(Presidente Illia)*	26.12.2007	Caleta Córdova, Argentina	Argentina	35 995	24 067 845 SDR
35	*King Darwin*	27.09.2008	Port of Dalhousie, New Brunswick, Canada	Canada	42 010	27 863 310 SDR

Cause of incident	Estimated quantity of oil spilled (tonnes)	Types of claims paid by insurer and/or IOPC Funds	Compensation paid by the 1992 Fund up to 22.10.10 (£)	Notes
Sinking	2 100	Clean-up & preventive measures Property damage Fishery-related Tourism-related	6 491 622.97	Since STOPIA 2006 applies, 1992 Fund is receiving regular reimbursements from shipowner's insurer up to 20 million SDR.
Collision	60	Clean-up & preventive measures Fishery-related Property damage	754 823	In 2009 the shipowner, the 1992 Fund and the colliding ship's interests reached a settlement agreement and the Fund received ¥74 553 897 (£494 063) from the colliding ship.
Breaking	1 200–2 000	Clean-up & preventive measures Fishery-related Tourism-related Environmental damage and reinstatement	Nil	
Collision	10 900	Clean-up & preventive measures Fishery-related Tourism-related Property damage Environmental damage	Nil	Claims totalling KRW 2 194 billion on behalf of 126 331 claimants have been submitted. Further claims are expected. The insurer has so far paid KRW 112 342 million (£62.54 million) in compensation and the 1992 Fund will start paying compensation as soon as the CLC limit has been reached.
Unknown	50–200	Clean-up & preventive measures Environmental damage	Nil	The shipowner and its insurer contest liability and argue that the oil which impacted the coast must have come from another source. The 1992 Fund has however investigated the events and has reached the view that the oil spill came from the *Presidente Illia*.
Discharge	64	Clean-up & preventive measures Property damage	Nil	

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. 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 in Guadeloupe

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.

Legal proceedings in Trinidad and Tobago

In 2006, in consultation with the Fund's Trinidad and Tobago lawyers, the Fund commenced summary proceedings in the High Court in Trinidad and Tobago against the insurer to enforce the judgement of the Court of Appeal and submitted an application for a summary execution of the judgement.

The insurer 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 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 appealed against this judgement in the Court of Appeal in Trinidad and Tobago.

Oiled crab caught following the *Vistabella* incident, Nevis, British Virgin Islands

Aegean Sea

Hearings at the Court of Appeal took place in January and July 2010. At the hearing in July 2010 the Court indicated that it wished to hear further submissions from the parties on the issue pleaded by the insurer of whether enforcement of the judgement would be against public policy. The insurer filed its written submissions in August 2010. The 1971 Fund submitted its reply in September 2010.

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 Ría del Ferrol. Extensive clean-up operations were carried out at sea and on shore.

Maximum amount payable under the 1971 Fund Convention

The maximum amount of compensation payable in respect of the *Aegean Sea* incident under the 1969 Civil Liability Convention and the 1971 Fund Convention (60 million SDR) converted into pesetas using the rate applied for the conversion of the shipowner's limitation amount is Pts 9 513 473 400 or €57.2 million.

Claims for compensation

Claims totalling Pts 48 187 million or €289.6 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 Greek-registered tanker *Aegean Sea* burning hours after it ran aground in heavy seas at La Coruña, Spain

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. 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 1971 Fund 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. 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, namely a fishing boat owner, an association of mussel farmers, a fish pond owner, a fish processor, a mussel depuration plant and a boat fisherman, did not reach agreement with the Spanish Government on the amount of their losses. These claimants 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. 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

Between October 2005 and March 2007 the Court rendered judgements in respect of the six claims mentioned above. 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. The Spanish Government, the 1971 Fund and most of the claimants appealed against the judgements.

Judgements by the Court of Appeal

In September and December 2006 the Court of Appeal issued 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 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 was not rectified by the claimant and therefore this claim was dismissed by the Court of First Instance. The claimant has appealed against this dismissal.

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 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 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 has requested the Court to amend its decision.

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

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

Supreme Court

The boat fisherman, the fish processor and the fishing boat owner requested leave to appeal to the Supreme Court but by July 2009 the Court had denied the leave to appeal in all three cases. The fish processor has appealed to the Constitutional Court. The judgements by the Court of Appeal in respect of the fishing boat owner and the boat fisherman have become final.

No developments in the civil proceedings have taken place during 2010.

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 plus interest.

No developments in the criminal proceedings have taken place during 2010.

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.

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**	**€250 221**

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, 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 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 plus Drs 378 million or €1.1 million 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, which is below the limitation amount applicable to the shipowner. However, 446 of these claimants, including the shipowner and his insurer, 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 appealed against the decision. The 1971 Fund, following advice received from its Greek lawyer, joined in the appeal.

A hearing took place in March 2010 and in April 2010 the Court of Kalamata decided that the Court of Nafplion had jurisdiction in respect of the limitation proceedings and that therefore these proceedings should be referred back to that Court.

Taking into account the total claim amount approved by the Liquidator (€2 125 755) and applicable interest, it seems unlikely that the final adjudicated amount will exceed the limitation sum of €4.4 million. Moreover, all claims other than the claim by the shipowner and his insurer and that by the owner of a fish farm, representing together approximately one third of the liquidator-approved amount, may well be found to be time-barred by the Court. However, although the likelihood of the Fund having to pay compensation appears to be slim, 446 claimants have filed appeals against the Liquidator's Report and the total claim amount has yet to be assessed by the Court. The Fund will, therefore, continue monitoring the legal proceedings.

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. 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.

Settled claims

The table below summarises the settled claims.

Level of payments

In August 2004 the Director increased the level of payments in respect of this incident to 100%. Reference is made to the Annual Report 2008 (pages 63 and 64). All settled claims have, therefore, been paid in full.

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 summarised in the table overleaf.

Claims by the Republic of Venezuela

The Republic of Venezuela presented a claim for environmental damage for US$60 250 396 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 progress of this action is detailed in the section on the criminal proceedings, below.

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. The 1971 Fund was not notified of this civil action.

In July 2003 the 1971 Fund 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 1971 Fund 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 that this duplication existed.

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

Claimant	Category	Settlement amount Bs	Settlement amount US$
Petróleos de Venezuela, S.A. (PDVSA)	Clean up		8 364 223
ICLAM[<6>]	Preventive measures	70 675 468	
Shrimp fishermen and processors	Loss of income		16 033 389
Other claims[<7>]	Property damage and loss of income	289 000 000	
Total		**359 675 468**	**24 397 612**

[<6>] Instituto para el Control y la Conservación de la Cuenca del Lago de Maracaibo.

[<7>] Paid in full by the shipowner's insurer with the exception of the claim by Corpozulia, a tourism authority of the Republic of Venezuela.

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 1971 Fund 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 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 1971 Fund 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. As at October 2010 there had been no developments in respect of these claims.

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'[<8>]. The Court of Appeal's decision appeared to imply that the judgement of the Court of First Instance 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. In October 2006 the public prosecutor requested the

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**		

[<8>] 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 for 'avocamiento' is granted, the Supreme Court would act as a court of first instance and its judgement would be final.

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 would be decided. The master submitted pleadings to the Criminal Court of First Instance in which he argued that the Court did not have jurisdiction and that the case should be transferred to the Maritime Court in Caracas.

In March 2009 the Criminal Court of First Instance issued a decision rejecting the plea of lack of jurisdiction. This decision was notified to the master, but not to the shipowner and his insurer or the 1971 Fund.

The 1971 Fund submitted pleadings arguing that by not notifying the 1971 Fund of the decision the Court had denied the Fund a proper defence. In its pleadings the Fund also submitted its conclusions, as follows:

- The claims by the Republic of Venezuela were time-barred in respect of the 1971 Fund.
- All admissible claims for pollution damage had already been compensated by the Club and the Fund.
- The claim by the Republic of Venezuela was not admissible under the 1969 Civil Liability Convention and 1971 Fund Convention and the alleged damage was not proved.

In a judgement rendered in February 2010 the Criminal Court of First Instance in Maracaibo held that the master, the shipowner and the Gard Club had incurred a civil liability derived from the criminal action and ordered them to pay to the Venezuelan State the amount claimed, namely US$60 250 396.

The master, the shipowner and the Gard Club have appealed against the judgement. The 1971 Fund, although not notified of the judgement, has also appealed. The judgement by the Court of Appeal in Maracaibo is expected in the near future.

Attempts to resolve the outstanding issues

At the 1971 Fund Administrative Council's October 2005 session, the Venezuelan delegation 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 also held meetings and discussions with the Gard Club. In February 2006 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.

The shores of the Gulf of Venezuela after the *Nissos Amorgos* incident

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 Foreign Affairs attended by representatives of the Ministry of Foreign Affairs, Ministry of the Environment, Public Prosecutor, Attorney General and the Instituto Nacional de los Espacios Acuáticos (National Institute of Aquatic Spaces). At the meeting the participants expressed a desire to resolve the outstanding issues without pursuing the claims in court.

At the October 2007 session of the Administrative Council, one delegation expressed its concern that the *Nissos Amorgos* case would most probably delay the winding up of the 1971 Fund for a considerable period. That delegation asked if there were any indications as to when a judgement could be expected. That delegation also questioned the Secretariat and the Venezuelan delegation as to 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 Chairman 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.

At that meeting, the representatives of the Ministry of Foreign Affairs expressed surprise that the claim by the Procuraduria on behalf of the Republic of Venezuela 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 Foreign Affairs stated that the Government could not intervene since the plaintiffs were private companies.

The representatives of the Ministry of Foreign 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 Foreign Affairs. The 1971 Fund was represented by its Venezuelan lawyers. At that meeting, the representatives of the Ministry of Foreign 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.

As at October 2010 there had been no developments since December 2008.

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 into Lake Maracaibo and mixed with clean ballast water being discharged at the time.

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

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. 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 1971 Fund 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 apparently escaped into the ballast tanks 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.

Limitation proceedings

The limitation amount applicable to the *Plate Princess* under the 1969 Civil Liability Convention (CLC) is estimated in 1998 at 3.6 million SDR or Bs 2 845 million.

In 1997, a bank guarantee for this amount was provided to the Criminal Court of Cabimas. In a judgement delivered in February 2009, the Maritime Court of First Instance in Caracas decided that the shipowner was entitled to limit his liability under the 1969 CLC to the amount of BsF 2.8 million, being the amount of the bank guarantee provided. This judgement was upheld by the Maritime Court of Appeal in September 2009, and the Venezuelan Supreme Court in 2010.

Claims by FETRAPESCA

Criminal proceedings

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, i.e. a total of US$17 million. The claim was for alleged damage to fishing boats and nets and for loss of earnings. As at October 2010 there had been no developments on this claim.

Civil proceedings

In June 1997 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. The claim is for the fishermen's loss of income as a result of the spill.

There were no developments in respect of this claim between 1997 and October 2005, when the 1971 Fund was formally notified through diplomatic channels of the claim presented in the Civil Court in Caracas.

In December 2006 the claim was transferred to the Maritime Court of Caracas.

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 (perención 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.

In a judgement rendered in February 2009 the Court accepted the claim by FETRAPESCA and ordered the payment of the damages suffered by the claimant, to be quantified by a court expert. The Fund has not been formally notified of the judgement.

Claim by the Sindicato Único de Pescadores de Puerto Miranda

Civil Court of Caracas

In June 1997, another fishermen's union, Sindicato Único de Pescadores de Puerto Miranda (Sindicato 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 plus legal costs.

There were no developments in this claim, between 1997 and December 2006, when the claim was transferred to the Maritime Court of Caracas.

Maritime Court of First Instance in Caracas

In April 2008, the Sindicato 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, 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. The Fund requested copies of the documents in support of the claim submitted by the claimants.

In July 2008 the 1971 Fund, although not having received copies of the supporting documents and to comply with the time requirement under Venezuelan procedural law, 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 date when the damage occurred, 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 from 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 the *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
- The documents submitted to support the claim for loss of income had in many instances been falsified.

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 five days from the date of filing the defence to the claim and once preliminary issues had been amended and decided, as provided by Venezuelan law. This time limit had expired in June 2008. 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, but the appeal was rejected.

The main hearing of the claim took place in January 2009 and the Court issued its decision in February 2009. In its decision, the Court accepted the claim by the Sindicato Miranda and ordered the master, the shipowner and the 1971 Fund, to pay the damages suffered by the claimant, to be quantified by a court expert, together with interest from the date of the incident until the date of execution of the judgement. In its decision the Court also rejected the fraud allegations submitted by the Fund.

The master, the shipowner and the 1971 Fund appealed against the judgement to the Maritime Court of Appeal in Caracas. The master also submitted pleadings alleging lack of due process (desorden judicial).

Maritime Court of Appeal in Caracas

On 24 September 2009, the Maritime Court of Appeal issued its decision, dismissing the appeals by the master, shipowner and 1971 Fund, and ordering the defendants to compensate the claimants in an amount to be determined by three experts to be appointed by the Maritime Court.

The Maritime Court of Appeal held that the claim against the 1971 Fund was not time-barred. In the judgement:

- The Court stated that the 1971 Fund had not been called to be a party to the legal proceedings brought by the victims against the shipowner since it merely provided a second level of compensation and it was, therefore, sufficient to bring an action against the shipowner or its guarantor;
- The Court further stated that, if the legal action was brought against the shipowner within the time limit established, as it happened in this case, it is not possible for the claim to be time-barred. The Court pointed out that the Sindicato Miranda had brought a legal action against the shipowner in July 1997, 38 days after the spill, and that therefore they had exercised their legal rights and that, as a result, their rights must be protected;
- The Court also pointed out that the Fund was notified of the legal action brought by the victims in sufficient time in accordance with the provisions of Articles 6 and 7 of the 1971 Fund Convention. The Court stated that the intention of notifying the Fund was not to prevent the claim becoming time-barred, since the submission of the claim in July 1997 had been sufficient to prevent the time bar from applying, but to allow the Fund sufficient time to intervene in the proceedings so that the judgement of the Court would be complete, definitive and binding on the Fund; and
- The Court stated that the attitude of the 1971 Fund, in opposing payment of compensation by using a hypothetical lack of notification, was not complying with its obligations. It further stated that, in the view of the Court, the 1971 Fund was using procedural arguments and defences in an opportunistic manner to damage the interests of the poor fishermen.

In November 2009 the 1971 Fund appealed to the Cassation Division of the Supreme Court. The shipowner and master of the *Plate Princess* also appealed.

Venezuelan Supreme Court Cassation Division

In October 2010, the Venezuelan Supreme Court rejected the appeals by the master, shipowner and the 1971 Fund. The 1971 Fund is studying the judgement.

Analysis of the judgement of the Maritime Court of Appeal

From the point of view of the 1971 Fund, the three most significant issues dealt with in the judgement of the Maritime Court of Appeal are: the time bar, the link of causation, and the falsified evidence relating to the quantum of loss of income. This section summarises the findings of the judgement in respect of these three issues.

Time bar issue

The 1971 Fund was first notified of this claim in October 2005, more than eight years after the spill had occurred, and again in March 2007, nearly ten years after the incident. The 1971 Fund, in its defence to the claim, argued that since the two notifications of the claim were made more than three years after damage occurred and since an action had not been taken against the 1971 Fund within six years of the incident, the claim was time-barred under Articles 7.6 and 6 respectively of the 1971 Fund Convention.

The Maritime Court of Appeal rejected the argument, *inter alia*, on the following grounds:

- The full, complete, final and enforceable decision of the Court is binding on the 1971 Fund if an action is filed against the shipowner within three years from the occurrence of the damage, and the 1971 Fund is notified in accordance with Article 7.6 of the 1971 Fund Convention. It can therefore be inferred that the Maritime Court of Appeal has interpreted Article 7.6 of the 1971 Fund Convention to mean that a notification to the 1971 Fund is sufficient to prevent a claim from becoming time-barred even though it might take place after the three years stated therein.
- Article 7.6 of the Fund Convention does not make reference to the victims of an oil spill having to initiate a claim against the 1971 Fund, a situation which would give the 1971 Fund the status of a defendant. Rather, the Article anticipates that the 1971 Fund might be called as a third party through a mere notification where the defendants are the shipowner and/or his guarantor.
- The Maritime Appeal Court adopted the Plaintiff's arguments concerning Article 6 of the 1971 Fund Convention, which it quoted, as follows:

  'If the victim has exercised his/her right [to take an action against the shipowner] within three years, it is logical to conclude that it is impossible for the action to be time-barred, as court action has been brought; that is to say, the victim had already been to the court and requested the protection of his/her rights. But, if a victim had not notified the Fund within the three years, according to the author of the rule, the time bar of the action would operate, which is not logical, since [as] the victim had already brought a legal action and requested the protection of the State, the time bar would not be able to operate'

- The claim is not time-barred since the Plaintiff had filed an action against the shipowner on 4 July 1997, i.e. 38 days after the spill.
- The notice served on the 1971 Fund was not aimed at avoiding the claim becoming time-barred, since the lawsuit filed on 4 July 1997 effectively did that already. The purpose of serving the notice was to allow the 1971 Fund sufficient time to intervene in the proceedings, as it did, in such a way that the full, complete and definitive judgement rendered by the Court would be binding on the 1971 Fund.

Link of causation

The Maritime Court of Appeal held that there was a link of causation between the damage suffered by the fishermen and the spill from the *Plate Princess.* The grounds cited included:

- There had been a spill from the vessel;
- The fishermen's union had lodged a complaint with the Ministry of Energy and Mines on the day following the incident;
- The local press had reported that the spill had affected the hulls and gear of more than 700 boats;
- An inspection carried out by the Ministry of Energy and Mines and the Ministry of Agriculture together with the claimants concluded that the boats, nets and engines were contaminated;
- No evidence had been presented to show that there had been any other spill at the time that could have caused the damage;
- The shipowner had provided a bank guarantee to limit its liability under the 1969 Civil Liability Convention (1969 CLC); and
- The 1971 Fund had made reference to the spill in its 1997 Annual Report.

Evidence of quantum of the loss of income – Falsified documents

The Maritime Court of Appeal accepted as valid evidence some 200 sets of invoices. These invoices were formally identified by witnesses in the hearing before the Maritime Court of First Instance. The Maritime Court of Appeal did not give any

value to the statements made by the witnesses under cross examination during the First Instance Court hearing, that the invoices although dated prior to the spill, had in fact been drafted after the event.

The Maritime Court of Appeal rejected some 260 sets of invoices as they had not been formally identified by witnesses.

The information contained in the 200 sets of invoices accepted as valid evidence of loss of income by the Maritime Court of Appeal was used in the judgement to establish the method and the values to be used in the quantification of the loss, to be carried out by experts appointed by the Court at a later stage.

Consideration of the decision of the Maritime Court of Appeal at the 1971 Fund Administrative Council's October 2010 session

At the Administrative Council's October 2010 session, the Director submitted a document in which he commented upon the three most significant issues addressed in the judgement by the Maritime Court of Appeal, and on the enforceability of that judgement. In the document, the Director informed the Administrative Council as follows:

Time bar issue

The Director shared the view of the 1971 Fund Administrative Council that claims for compensation arising from the *Plate Princess* incident were time-barred because although Article 6.1 of the 1971 Fund Convention states only that an action must be brought or notification made pursuant to Article 7.6 within three years from the date when the damage occurred without stating against whom the action is to be brought or to whom the notification is to be given, Article 7.6 states that it was the Fund that must be notified and, in the Director's view, this left no doubt that both the notification and the action referred to in Article 6.1 must refer to the 1971 Fund.

The Director pointed out that since the 1971 Fund was neither formally notified in accordance with Venezuelan legal requirements within three years from the date when the damage occurred, nor was an action taken against the 1971 Fund within six years, the claim was, in his view, clearly time-barred.

For further analysis of the issue of time bar, reference is made to the Annual Report 2009 (pages 62 and 63).

Link of causation

In relation to the issue of link of causation the Director took the view in his document that although it was for the national courts to ultimately decide whether there was a sufficiently close link of causation between the damage suffered and the contamination, the arguments used in the judgement of the Maritime Court of Appeal were weak and did not serve to prove that there was a link of causation in this case.

Evidence of quantum of the loss of income – Falsified documents

The Director stated in his document to the Administrative Council that it was of great concern that the judgement of the Maritime Court of Appeal had accepted documentation in support of the claim which was known not to be genuine and to have been falsified for the purposes of obtaining compensation from the shipowner, its insurer and the 1971 Fund. He took the view that if other national courts were to follow a similar line, the international compensation regime would not function as intended and would face difficulties surviving.

Recognition and enforceability of a final judgement (Article 8, 1971 Fund Convention and Article X, 1969 CLC)

In relation to the issue of recognition and enforceability of a final judgement, the Director noted that Article 8 of the 1971 Fund Convention states:

> ' ..., any judgement given against the Fund by a court having jurisdiction in accordance with Article 7, paragraphs 1 and 3, shall, ...be recognized and enforceable in each Contracting State on the same conditions as are prescribed in Article X of the [1969 Civil] Liability Convention.'

and Article X.1 of the 1969 CLC states:

> 'Any judgement given by a Court with jurisdiction in accordance with Article IX which is enforceable in the State of origin where it is no longer subject to ordinary forms of review, shall be recognized in any Contracting State except:
>
> a. Where the judgement was obtained by fraud; or
> b. Where the defendant was not given reasonable notice and a fair opportunity to present his case.'

The Director stated he was of the opinion that the shipowner, its insurer and the 1971 Fund, were not given reasonable notice and a fair opportunity to present their case, pointing out that when the original claim was made against the master and owner of the *Plate Princess* in July 1997, no details of the losses were provided and a provisional amount of US$20 million was quoted in the claim. Shortly after the spill, the 1971 Fund had appointed an expert who visited the terminal where the incident occurred. The expert reported to the 1971 Fund that he had been unable to establish any losses resulting from the spill.

The Director also noted that the judgement by the Maritime Court of Appeal drew attention to local press articles reporting the damage and the inspections taking place. The judgement implied that the 1971 Fund experts should have seen these press articles and should have attended the inspections. The Director considered this suggestion unreasonable, since it should not be expected that the 1971 Fund send experts to attend inspections on the basis

of press articles, nor was it reasonable that the Fund experts should react to these articles. The Director noted that, although the 1971 Fund experts and Secretariat were present in Venezuela in 1997 and there was a claims office open in Maracaibo in connection with the *Nissos Amorgos* incident, neither the 1971 Fund nor its experts were informed that inspections of damaged fishing boats and gear were to take place, in relation to the *Plate Princess* incident. Had the 1971 Fund or its experts been informed of these inspections, the 1971 Fund experts would, without doubt, have attended.

The Director further noted that the 1971 Fund had no indication as to the nature and extent of the alleged damage and loss until April 2008 when the amended claim was submitted to the Maritime Court of First Instance. By that time there was no possibility of the 1971 Fund carrying out any meaningful investigation into the alleged damages detailed in the amended claim. When the amended claim was submitted in April 2008, the only way in which the 1971 Fund could have investigated the extent of the loss was by analysing the documentary evidence presented by the claimants. However, this documentary evidence was not provided before the Points of Defence had to be filed at Court.

For the reasons mentioned above, in the Director's opinion, the 1971 Fund was not given reasonable notice and a fair opportunity to present its case.

At the October 2009 session of the 1971 Fund Administrative Council, the Director had taken the view that if a final judgement by the Venezuelan courts was entered against the 1971 Fund, the 1971 Fund had, under Article 8 of the 1971 Fund Convention, the obligation to comply with the provisions of the judgement.

However, having now reviewed the judgement of the Maritime Court of Appeal, he was of the opinion that it was possible that an exception in Article X of the 1969 CLC might apply, in which case, a final judgement might not be enforceable against the 1971 Fund.

1971 Fund Administrative Council's October 2010 session

Following the submission of the Director's document at the October 2010 sessions of the 1971 Fund Administrative Council, the Venezuelan delegation made a statement, stating that in 1997 an application had been made which had interrupted the running of the time bar, and in that action a request was made to notify the Fund. The Venezuelan delegation therefore submitted that from that point on the Fund was informed by means of the same documents which had been presented at previous sessions of the 1971 Fund Administrative Council and which related to the *Plate Princess* incident.

The Venezuelan delegation stated that subsequently the shipowner's lawyers sought to withdraw the bank guarantee which limited the shipowner's liability and an 'avocamiento'[<9>] was requested. This 'avocamiento' resulted in the Supreme Court of Justice considering whether the bank guarantee should be maintained or not. The Venezuelan delegation continued by stating that the decision on the bank guarantee was finally rendered in 2005, which explained why the Fund was only notified after that date, but that the Fund had been notified in 1997.

With regard to the Director's comments on the falsified documents, the Venezuelan delegation stated that whether or not the documents were fraudulent was a matter for decision by a court and that already in three instances the Venezuelan courts had decided that the documents were legitimate.

In response to an offer by the Venezuelan delegation to submit a formal document to be considered at the next meeting of the 1971 Fund Administrative Council, several other delegations requested the Venezuelan delegation to provide a detailed document and stated that this had been promised on several occasions before. In those delegations' opinion, it was important that the Venezuelan delegation formally stated its position in writing.

Several delegations stated that in light of the fact that the 1971 Fund had not been named as a defendant in the claims brought by FETRAPESCA and Sindicato Miranda, the 1971 Fund Administrative Council faced a difficult decision as to whether to instruct the Secretariat to pay compensation in accordance with a final judgement of a competent court or to invoke Article 8 of the 1971 Fund Convention and Article X.1 of the 1969 CLC.

The 1971 Fund Administrative Council instructed the Secretariat to examine the Supreme Court Judgement and, if appropriate, to appeal the Judgement to the Constitutional Court. The 1971 Fund Administrative Council further instructed the Secretariat to provide the analysis of the Judgement by the Supreme Court at its next session, and not to take any further action without further instruction from the Administrative Council.

[<9>] Under Venezuelan law, in exceptional circumstances, the Supreme Court may assume jurisdiction, 'avocamiento', and may 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 for 'avocamiento' is granted, the Supreme Court would act as a court of first instance and its judgement would be final.

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 oil slicks also later 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.

The *Evoikos* was insured for pollution liabilities by the United Kingdom Mutual Insurance Association (Bermuda) Limited (UK Club).

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.

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 UK Club 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 were time-barred under the Conventions, the insurer informed the Fund in 2003 that it was not prepared to withdraw its actions against the Fund in London and Malaysia until it had had the opportunity to establish that there were no outstanding claims against the shipowner which might result in the Fund becoming liable to pay compensation or indemnification.

In October 2009 the UK Club gave instructions to its lawyers to discontinue the legal action in Malaysia and in August 2010 informed the 1971 Fund that the legal action against the Fund in London had been discontinued. This case is therefore now closed.

The damaged tanker *Evoikos* following a collision with another tanker, anchored near Sentosa Island, Singapore

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 UAE 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 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.

Aerial view of the affected area following the *Al Jaziah 1* incident, UAE

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 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; and
- The shipowner was liable for the damage caused by the incident.

In early 2008, the court expert submitted his 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 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 that the Court 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 were advised by the Court that the shipowner had a heavy burden of debts of some Dhs 63 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 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.

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, approached the shipowner in accordance with the instructions by the Funds' governing bodies.

In September 2009, the Funds' United Arab Emirates lawyers informed the Funds that the negotiations with the shipowner had not progressed and that recently the Execution Judge had decided to transfer the file to the United Arab Emirates' nationals department where other debts would be added. The Funds' lawyers advised that the Funds would have to compete with other creditors and that a certain amount would be set monthly to be distributed *pro rata* between the creditors. In their view, the best-case scenario for the Funds now would be to receive between Dhs 2 000 and Dhs 3 000 per month. The Funds' lawyers also advised the Funds to appeal the Execution Judge's decision.

At their October 2009 sessions, the governing bodies took note of the Director's view that, since there was not a matter of principle involved in this case, it was not in the interest of the 1971 Fund, the 1992 Fund or their contributors to continue to incur costs in executing the judgement which might well exceed the amounts which would be recovered. The governing bodies endorsed the Director's proposal that the Funds should continue to try to recover what they could from the shipowner, and authorised him to discontinue the execution of the judgement once it was clear that the costs would exceed the recoverable amount and that the Funds should then write off the debt.

In November 2009, the Funds instructed their UAE lawyers to appeal the Execution Judge's decision. However, the Funds' appeal was rejected, meaning that the Funds could only try to recover any amount owed through the UAE nationals' department, along with other creditors.

The Funds' lawyers advised that it might be some time before the UAE nationals' department would reach a decision on the distribution of the shipowner's assets and that when the department eventually reached its decision, the Funds might be able to recover, in the best case scenario, between Dhs 2 000 and Dhs 3 000 per month. The Funds would meanwhile have to maintain its lawyers in order to deal with the payments.

In view of the advice from the Funds' UAE lawyers, the Director considered that it would take many years for the Funds to recover a meaningful amount and that it was clear that the costs incurred by the Fund in executing the judgement would exceed the amount recovered. In accordance with the decisions taken by the governing bodies in October 2009, the Director therefore decided in September 2010 to discontinue the execution of the judgement and to write off the debt.

1971 Fund: Summary of Incidents

	Ship	Date of incident	Place of incident	Flag State of ship	Gross register tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
1	*Irving Whale*	07.09.1970	Gulf of St. Lawrence, Canada	Canada	2 261	Unknown
2	*Antonio Gramsci*	27.02.1979	Ventspils, USSR	USSR	27 694	RUB 2 431 584
3	*Miya Maru N°8*	22.03.1979	Bisan Seto, Japan	Japan	997	¥37 710 340
4	*Tarpenbek*	21.06.1979	Selsey Bill, United Kingdom	Germany	999	£63 356
5	*Mebaruzaki Maru N°5*	08.12.1979	Mebaru, Japan	Japan	19	¥845 480
6	*Showa Maru*	09.01.1980	Naruto Strait, Japan	Japan	199	¥8 123 140
7	*Unsei Maru*	09.01.1980	Akune, Japan	Japan	99	¥3 143 180
8	*Tanio*	07.03.1980	Brittany, France	Madagascar	18 048	FFr11 833 718
9	*Furenäs*	03.06.1980	Oresund, Sweden	Sweden	999	SKr612 443

Cause of incident	Estimated quantity of oil spilled (tonnes)	Types of claims paid by insurer and/or 1971 Fund	Compensation (and/or indemnification where applicable) paid by the 1971 Fund up to 22.10.2010 (£)	Notes
Sinking	Unknown	Clean-up & preventive measures Refloating operations	Nil	*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 & preventive measures	9 247 068	
Collision	540	Clean-up & preventive measures Fishery-related Indemnification	300 533	¥5 438 909 recovered by way of recourse.
Collision	Unknown	Clean-up & preventive measures	363 550	
Sinking	10		21 138	
Collision	100	Clean-up & preventive measures Fishery-related Indemnification	199 359	¥9 893 496 recovered by way of recourse.
Collision	<140	Clean-up & preventive measures	Nil	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 & preventive measures Tourism-related Fishery-related Economic loss	18 340 766	US$17 480 028 recovered by way of recourse.
Collision	200	Clean-up & preventive measures (Sweden) Clean-up & preventive measures (Denmark) Indemnification	342 557	SKr449 961 recovered by way of recourse.

	Ship	Date of incident	Place of incident	Flag State of ship	Gross register tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
10	*Hosei Maru*	21.08.1980	Miyagi, Japan	Japan	983	¥35 765 920
11	*Jose Marti*	07.01.1981	Dalarö, Sweden	USSR	27 706	SKr23 844 593
12	*Suma Maru N°11*	21.11.1981	Karatsu, Japan	Japan	199	¥7 396 340
13	*Globe Asimi*	22.11.1981	Klaipeda, USSR	Gibraltar	12 404	RUB 1 350 324
14	*Ondina*	03.03.1982	Hamburg, Germany	Netherlands	31 030	DM10 080 383
15	*Shiota Maru N°2*	31.03.1982	Takashima Island, Japan	Japan	161	¥6 304 300
16	*Fukutoko Maru N°8*	03.04.1982	Tachibana Bay, Japan	Japan	499	¥20 844 440
17	*Kifuku Maru N°35*	01.12.1982	Ishinomaki, Japan	Japan	107	¥4 271 560
18	*Shinkai Maru N°3*	21.06.1983	Ichikawa, Japan	Japan	48	¥1 880 940
19	*Eiko Maru N°1*	13.08.1983	Karakuwazaki, Japan	Japan	999	¥39 445 920
20	*Koei Maru N°3*	22.12.1983	Nagoya, Japan	Japan	82	¥3 091 660
21	*Tsunehisa Maru N°8*	26.08.1984	Osaka, Japan	Japan	38	¥964 800

Cause of incident	Estimated quantity of oil spilled (tonnes)	Types of claims paid by insurer and/or 1971 Fund	Compensation (and/or indemnification where applicable) paid by the 1971 Fund up to 22.10.2010 (£)	Notes
Collision	270	Clean-up & preventive measures Fishery-related Indemnification	443 505	¥18 221 905 recovered by way of recourse.
Grounding	1 000	Clean-up & preventive measures	Nil	Shipowner's defence that he should be exonerated from liability rejected in final court judgement.
Grounding	10	Clean-up & preventive measures Indemnification	17 608	
Grounding	>16 000	Indemnification	326 509	
Discharge	200–300	Clean-up & preventive measures	3 004 900	
Grounding	20	Clean-up & preventive measures Fishery-related Indemnification	234 706	
Collision	85	Clean-up & preventive measures Fishery-related Indemnification	1 058 460	
Sinking	33	Indemnification	1 587	
Discharge	3.5	Clean-up & preventive measures Indemnification	4 836	
Collision	357	Clean-up & preventive measures Fishery-related Indemnification	113 465	¥14 843 746 recovered by way of recourse.
Collision	49	Clean-up & preventive measures Fishery-related Indemnification	92 098	¥8 994 083 recovered by way of recourse.
Sinking	30	Clean-up & preventive measures Indemnification	55 036	

	Ship	Date of incident	Place of incident	Flag State of ship	Gross register tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
22	*Koho Maru N°3*	05.11.1984	Hiroshima, Japan	Japan	199	¥5 385 920
23	*Koshun Maru N°1*	05.03.1985	Tokyo Bay, Japan	Japan	68	¥1 896 320
24	*Patmos*	21.03.1985	Straits of Messina, Italy	Greece	51 627	Lit 13 263 703 650
25	*Jan*	02.08.1985	Aalborg, Denmark	Germany	1 400	DKr1 576 170
26	*Rose Garden Maru*	26.12.1985	Umm al Qaiwain, United Arab Emirates	Panama	2 621	US$364 182
27	*Brady Maria*	03.01.1986	Elbe Estuary, Germany	Panama	996	DM324 629
28	*Take Maru N°6*	09.01.1986	Sakai-Senboku, Japan	Japan	83	¥3 876 800
29	*Oued Gueterini*	18.12.1986	Algiers, Algeria	Algeria	1 576	Din1 175 064
30	*Thuntank 5*	21.12.1986	Gävle, Sweden	Sweden	2 866	SKr2 741 746
31	*Antonio Gramsci*	06.02.1987	Borgå, Finland	USSR	27 706	RUB 2 431 854
32	*Southern Eagle*	15.06.1987	Sada Misaki, Japan	Panama	4 461	¥93 874 528
33	*El Hani*	22.07.1987	Indonesia	Libya	81 412	£7 900 000

Cause of incident	Estimated quantity of oil spilled (tonnes)	Types of claims paid by insurer and/or 1971 Fund	Compensation (and/or indemnification where applicable) paid by the 1971 Fund up to 22.10.2010 (£)	Notes
Grounding	20	Clean-up & preventive measures Fishery-related Indemnification	299 966	
Collision	80	Clean-up & preventive measures Indemnification	83 384	¥8 866 222 recovered by way of recourse.
Collision	700	Clean-up & preventive measures Salvage Damage to the marine environment	Nil	
Grounding	300	Clean-up & preventive measures Indemnification	827 518	
Mishandling of oil discharge	Unknown	Fishery-related Environmental damage	Nil	
Collision	200	Clean-up & preventive measures	1 106 289	DM333 027 recovered by way of recourse.
Discharge of oil	0.1	Indemnification	Nil	
Discharge	15	Clean-up & preventive measures Economic loss Indemnification	222 949	
Grounding	150–200	Clean-up & preventive measures Fishery-related Indemnification	2 364 575	
Grounding	600–700	Clean-up & preventive measures	268 982	Clean-up claims in USSR (RUB 1 417 448) not paid by 1971 Fund since USSR not Member of 1971 Fund at time of incident.
Collision	15	Clean up & preventive measures Fishery-related	Nil	
Grounding	3 000	Clean-up & preventive measures	Nil	

	Ship	Date of incident	Place of incident	Flag State of ship	Gross register tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
34	*Akari*	25.08.1987	Dubai, United Arab Emirates	Panama	1 345	£92 800
35	*Tolmiros*	11.09.1987	West coast, Sweden	Greece	48 914	SKr50 million
36	*Hinode Maru N°1*	18.12.1987	Yawatahama, Japan	Japan	19	¥608 000
37	*Amazzone*	31.01.1988	Brittany, France	Italy	18 325	FFr13 860 369
38	*Taiyo Maru N°13*	12.03.1988	Yokohama, Japan	Japan	86	¥2 476 800
39	*Czantoria*	08.05.1988	St. Romuald, Canada	Canada	81 197	Unknown
40	*Kasuga Maru N°1*	10.12.1988	Kyoga Misaki, Japan	Japan	480	¥17 015 040
41	*Nestucca*	23.12.1988	Vancouver Island, Canada	United States of America	1 612	Unknown
42	*Fukkol Maru N°12*	15.05.1989	Shiogama, Japan	Japan	94	¥2 198 400
43	*Tsubame Maru N°58*	18.05.1989	Shiogama, Japan	Japan	74	¥2 971 520
44	*Tsubame Maru N°16*	15.06.1989	Kushiro, Japan	Japan	56	¥1 613 120
45	*Kifuku Maru N°103*	28.06.1989	Otsuji, Japan	Japan	59	¥1 727 040
46	*Nancy Orr Gaucher*	25.07.1989	Hamilton, Canada	Liberia	2 829	Can$473 766

Cause of incident	Estimated quantity of oil spilled (tonnes)	Types of claims paid by insurer and/or 1971 Fund	Compensation (and/or indemnification where applicable) paid by the 1971 Fund up to 22.10.2010 (£)	Notes
Fire	1 000	Clean-up & preventive measures	240 351	US$160 000 refunded by shipowner's insurer.
Unknown	200	Clean-up & preventive measures	Nil	
Mishandling of cargo	25	Clean-up & preventive measures Indemnification	8 786	
Storm damage to tanks	2 000	Clean-up & preventive measures Fishery-related	164 724	FFr1 000 000 recovered from shipowner's insurer.
Discharge	6	Clean-up & preventive measures Indemnification	29 999	
Collision with berth	Unknown	Clean-up & preventive measures	Nil	1971 Fund Convention not applicable, as incident occurred before entry into force of Convention for Canada.
Sinking	1 100	Clean-up & preventive measures Fishery-related Indemnification	1 904 632	
Collision	Unknown	Clean-up & preventive measures	Nil	1971 Fund Convention not applicable, as incident occurred before entry into force of Convention for Canada.
Overflow from supply pipe	0.5	Clean-up & preventive measures Indemnification	4 317	
Mishandling of oil transfer	7	Damage to property Indemnification	77 256	
Discharge	Unknown	Damage to property Indemnification	2 582	
Mishandling of cargo	Unknown	Clean-up & preventive measures Indemnification	36 113	
Overflow during discharge	250	Clean-up & preventive measures	Nil	

	Ship	Date of incident	Place of incident	Flag State of ship	Gross register tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
47	*Dainichi Maru N°5*	28.10.1989	Yaizu, Japan	Japan	174	¥4 199 680
48	*Daito Maru N°3*	05.04.1990	Yokohama, Japan	Japan	93	¥2 495 360
49	*Kazuei Maru N°10*	11.04.1990	Osaka, Japan	Japan	121	¥3 476 160
50	*Fuji Maru N°3*	12.04.1990	Yokohama, Japan	Japan	199	¥5 352 000
51	*Volgoneft 263*	14.05.1990	Karlskrona, Sweden	USSR	3 566	SKr3 205 204
52	*Hato Maru N°2*	27.07.1990	Kobe, Japan	Japan	31	¥803 200
53	*Bonito*	12.10.1990	River Thames, United Kingdom	Sweden	2 866	£241 000
54	*Rio Orinoco*	16.10.1990	Anticosti Island, Canada	Cayman Islands	5 999	Can$1 182 617
55	*Portfield*	05.11.1990	Pembroke, Wales, United Kingdom	United Kingdom	481	£39 970

Cause of incident	Estimated quantity of oil spilled (tonnes)	Types of claims paid by insurer and/or 1971 Fund	Compensation (and/or indemnification where applicable) paid by the 1971 Fund up to 22.10.2010 (£)	Notes
Mishandling of cargo	0.2	Clean-up & preventive measures Fishery-related Indemnification	12 748	
Mishandling of cargo	3	Clean-up & preventive measures Indemnification	36 679	
Collision	30	Clean-up & preventive measures Fishery-related Indemnification	195 454	¥45 038 833 recovered by way of recourse.
Overflow during supply operation	Unknown	Clean-up & preventive measures Indemnification	5 843	¥430 329 recovered by way of recourse.
Collision	800	Clean-up & preventive measures Fishery-related Indemnification	1 523 103	
Mishandling of cargo	Unknown	Damage to property Indemnification	5 093	
Mishandling of cargo	20	Clean-up & preventive measures	Nil	
Grounding	185	Clean-up & preventive measures	6 151 887	
Sinking	110	Clean-up & preventive measures Fishery-related Indemnification	276 671	

	Ship	Date of incident	Place of incident	Flag State of ship	Gross register tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
56	*Vistabella*	07.03.1991	Caribbean British Virgin Islands	Trinidad and Tobago	1 090	€358 865
57	*Hokunan Maru N°12*	05.04.1991	Okushiri Island, Japan	Japan	209	¥3 523 520
58	*Agip Abruzzo*	10.04.1991	Livorno, Italy	Italy	98 544	Lit 22 525 million
59	*Haven*	11.04.1991	Genoa, Italy	Cyprus	109 977	Lit 23 950 220 000
60	*Kaiko Maru N°86*	12.04.1991	Nomazaki, Japan	Japan	499	¥14 660 480
61	*Kumi Maru N°12*	27.12.1991	Tokyo Bay, Japan	Japan	113	¥3 058 560

Cause of incident	Estimated quantity of oil spilled (tonnes)	Types of claims paid by insurer and/or 1971 Fund	Compensation (and/or indemnification where applicable) paid by the 1971 Fund up to 22.10.2010 (£)	Notes
Sinking	Unknown	Clean-up & preventive measures Loss of income	1 002 512	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 & 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 in the Court of Appeal in Trinidad and Tobago.
Grounding	Unknown	Clean-up & preventive measures Fishery-related Indemnification	31 844	
Collision	2 000	Indemnification	635 290	Total damages less than shipowner's liability.
Fire and explosion	Unknown	Clean-up & preventive measures Tourism-related Fishery-related Environmental damage Indemnification	30 285 784	Agreement on a global settlement of all outstanding claims between Italian State, shipowner/Club and 1971 Fund signed in Rome on 4 March 1999. 1971 Fund's payments are set out in previous column. Shipowner's insurer paid Lit 47 597 370 907 to Italian State. Shipowner/insurer paid all accepted claims by other Italian public bodies and private claimants.
Collision	25	Clean-up & preventive measures Fishery-related Indemnification	396 184	
Collision	5	Clean-up & preventive measures Indemnification	11 264	¥650 522 recovered by way of recourse.

	Ship	Date of incident	Place of incident	Flag State of ship	Gross register tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
62	*Fukkol Maru N°12*	09.06.1992	Ishinomaki, Japan	Japan	94	¥2 198 400
63	*Aegean Sea*	03.12.1992	La Coruña, Spain	Greece	57 801	Pts 1 121 219 450
64	*Braer*	05.01.1993	Shetland, United Kingdom	Liberia	44 989	£4 883 840
65	*Kihnu*	16.01.1993	Tallinn, Estonia	Estonia	949	113 000 SDR
66	*Sambo N°11*	12.04.1993	Seoul, Republic of Korea	Republic of Korea	520	KRW 77 786 224
67	*Taiko Maru*	31.05.1993	Shioyazaki, Japan	Japan	699	¥29 205 120
68	*Ryoyo Maru*	23.07.1993	Izu Peninsula, Japan	Japan	699	¥28 105 920
69	*Keumdong N°5*	27.09.1993	Yeosu, Republic of Korea	Republic of Korea	481	KRW 77 417 210

Cause of incident	Estimated quantity of oil spilled (tonnes)	Types of claims paid by insurer and/or 1971 Fund	Compensation (and/or indemnification where applicable) paid by the 1971 Fund up to 22.10.2010 (£)	Notes
Mishandling of oil supply	Unknown	Damage to property Indemnification	27 392	
Grounding	73 500	Clean-up & preventive measures Fishery-related Tourism-related Economic loss Indemnification	34 162 518	Global settlement reached between shipowner insurer/1971 Fund and Spanish State. Pursuant to agreement Fund paid the Spanish State Pts 6 386 921 613.
Grounding	84 000	Clean-up & preventive measures Fishery-related Farming-related Tourism-related Damage to property Loss of income	46 947 721	
Grounding	140	Clean-up & preventive measures	65 093	
Grounding	4	Clean-up & preventive measures Fishery-related	168 426	US$22 504 recovered from shipowner's insurer.
Collision	520	Clean-up & preventive measures Fishery-related Indemnification	7 230 641	¥49 104 248 recovered by way of recourse.
Collision	500	Clean-up & preventive measures Indemnification	106 491	¥10 455 440 recovered by way of recourse.
Collision	1 280	Clean-up & preventive measures Fishery-related Indemnification	10 988 946	KRW 64 560 080 paid by the shipowner's insurer.

	Ship	Date of incident	Place of incident	Flag State of ship	Gross register tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
70	*Iliad*	09.10.1993	Pylos, Greece	Greece	33 837	Drs 1 496 533 000
71	*Seki*	30.03.1994	Fujairah, United Arab Emirates and Oman	Panama	153 506	14 million SDR
72	*Daito Maru N°5*	11.06.1994	Yokohama, Japan	Japan	116	¥3 386 560
73	*Toyotaka Maru*	17.10.1994	Kainan, Japan	Japan	2 960	¥81 823 680
74	*Hoyu Maru N°53*	31.10.1994	Monbetsu, Japan	Japan	43	¥1 089 280
75	*Sung Il N°1*	08.11.1994	Onsan, Republic of Korea	Republic of Korea	150	KRW 23 million

Cause of incident	Estimated quantity of oil spilled (tonnes)	Types of claims paid by insurer and/or 1971 Fund	Compensation (and/or indemnification where applicable) paid by the 1971 Fund up to 22.10.2010 (£)	Notes
Grounding	200	Clean-up & preventive measures Fishery-related Loss of income Indemnification	Nil	Taking into account the total claim amount approved by the liquidator (€2 125 755) and applicable interest, it seems unlikely that the final adjudicated amount will exceed the limitation sum of Drs 1 496 533 000 or €4.4 million. All claims other than the claim by the shipowner and his insurer and that by the owner of a fish farm, may well be found to be time-barred by the Court. However, although the likelihood of the Fund having to pay compensation appears to be slim, 446 claimants have filed appeals against the Liquidator's Report and the total claim amount has yet to be assessed by the Court.
Collision	16 000	Clean-up & preventive measures Fishery-related Tourism-related Loss of income Environmental damage	Nil	Settlement outside 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 & preventive measures Indemnification	Nil	
Collision	560	Clean-up & preventive measures Fishery-related Loss of income Indemnification	5 206 943	¥31 021 717 recovered by way of recourse.
Mishandling of oil supply	Unknown	Clean-up & preventive measures Damage to property Indemnification	27 722	
Grounding	18	Clean-up & preventive measures Fishery-related	30 919	Shipowner lost right to limit his liability because limitation proceedings not commenced within period specified under Korean law.

	Ship	Date of incident	Place of incident	Flag State of ship	Gross register tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
76	Spill from unknown source	30.11.1994	Mohammédia, Morocco	–	–	–
77	*Boyang N°51*	25.05.1995	Sandbaeg Do, Republic of Korea	Republic of Korea	149	19 817 SDR
78	*Dae Woong*	27.06.1995	Kojung, Republic of Korea	Republic of Korea	642	KRW 95 million
79	*Sea Prince*	23.07.1995	Yosu, Republic of Korea	Cyprus	144 567	KRW 18 308 275 906
80	*Yeo Myung*	03.08.1995	Yosu, Republic of Korea	Republic of Korea	138	KRW 21 465 434
81	*Shinryu Maru N°8*	04.08.1995	Chita, Japan	Japan	198	¥3 967 138
82	*Senyo Maru*	03.09.1995	Ube, Japan	Japan	895	¥20 203 325
83	*Yuil N°1*	21.09.1995	Pusan, Republic of Korea	Republic of Korea	1 591	KRW 351 924 060
84	*Honam Sapphire*	17.11.1995	Yosu, Republic of Korea	Panama	142 488	14 million SDR

Cause of incident	Estimated quantity of oil spilled (tonnes)	Types of claims paid by insurer and/or 1971 Fund	Compensation (and/or indemnification where applicable) paid by the 1971 Fund up to 22.10.2010 (£)	Notes
Unknown	Unknown	Clean-up & preventive measures	Nil	Not established that oil originated from a ship as defined in 1971 Fund Convention.
Collision	160	Clean-up & preventive measures	Nil	Clean up claim (KRW 142 million) time-barred as necessary legal action not taken.
Grounding	1	Clean-up & preventive measures	395 926	
Grounding	5 035	Clean-up & preventive measures Removal of oil and vessel Fishery-related Tourism-related Environmental studies Indemnification	21 088 059	KRW 18 308 275 906 paid by shipowner's insurer.
Collision	40	Clean-up & preventive measures Fishery-related Tourism-related	1 037 502	KRW 560 945 437 paid by shipowner's insurer.
Mishandling of oil supply	0.5	Clean-up & preventive measures Damage to property Loss of income Indemnification	31 129	¥3 718 455 paid by shipowner's insurer.
Collision	94	Clean-up & preventive measures Fishery-related Indemnification	2 273 118	¥279 973 101 recovered by way of recourse.
Sinking	Unknown	Clean-up & preventive measures Oil removal operation Fishery-related	15 936 615	
Contact with fender	1 800	Clean-up & preventive measures Fishery-related Environmental studies	Nil	US$13.5 million paid by shipowner's insurer.

	Ship	Date of incident	Place of incident	Flag State of ship	Gross register tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
85	*Toko Maru*	23.01.1996	Anegasaki, Japan	Japan	699	¥18 769 567
86	*Sea Empress*	15.02.1996	Milford Haven, Wales, United Kingdom	Liberia	77 356	£7 395 748
87	*Kugenuma Maru*	06.03.1996	Kawasaki, Japan	Japan	57	¥1 175 055
88	*Kriti Sea*	09.08.1996	Agioi Theodoroi, Greece	Greece	62 678	€6 576 100
89	*N°1 Yung Jung*	15.08.1996	Pusan, Republic of Korea	Republic of Korea	560	KRW 122 million
90	*Nakhodka*	02.01.1997	Oki Islands, Japan	Russian Federation	13 159	1 588 000 SDR
91	*Tsubame Maru N°31*	25.01.1997	Otaru, Japan	Japan	89	¥1 843 849

Cause of incident	Estimated quantity of oil spilled (tonnes)	Types of claims paid by insurer and/or 1971 Fund	Compensation (and/or indemnification where applicable) paid by the 1971 Fund up to 22.10.2010 (£)	Notes
Collision	4	Clean-up & preventive measures	Nil	Total damage less than owner's liability.
Grounding	72 360	Clean-up & preventive measures Damage to property Fishery-related Tourism-related Loss of income Indemnification	31 243 826	£20 million recovered from Milford Haven Port Authority by 1971 Fund by way of recourse.
Mishandling of oil supply	0.3	Clean-up & preventive measures Indemnification	5 435	¥1 197 267 recovered by way of recourse.
Mishandling of oil supply	30	Clean-up & preventive measures Property damage Fishery-related Tourism-related	Nil	The aggregate amount of all claims falls within the limitation amount.
Grounding	28	Clean-up & preventive measures Cargo transhipment Salvage Fishery-related Loss of income Indemnification	293 032	KRW 690 million paid by shipowner's insurer.
Breaking	6 200	Clean-up & preventive measures Causeway Fishery-related Tourism-related	49 629 799	A global settlement agreement was reached between shipowner/insurer and IOPC Funds whereby the insurer paid ¥10 956 930 000 and Funds paid ¥15 130 970 000, of which 1971 Fund paid ¥7 422 192 000 and 1992 Fund paid ¥7 708 778 000.
Overflow during loading operation	0.6	Clean-up & preventive measures Indemnification	31 984	¥1 710 173 paid by shipowner's insurer.

	Ship	Date of incident	Place of incident	Flag State of ship	Gross register tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
92	*Nissos Amorgos*	28.02.1997	Maracaibo, Venezuela	Greece	50 563	Bs3 473 million
93	*Daiwa Maru N°18*	27.03.1997	Kawasaki, Japan	Japan	186	¥3 372 368
94	*Jeong Jin N°101*	01.04.1997	Pusan, Republic of Korea	Republic of Korea	896	KRW 246 million
95	*Osung N°3*	03.04.1997	Tunggado, Republic of Korea	Republic of Korea	786	104 500 SDR
96	*Plate Princess*	27.05.1997	Puerto Miranda, Venezuela	Malta	30 423	3.6 million SDR
97	*Diamond Grace*	02.07.1997	Tokyo Bay, Japan	Panama	147 012	14 million SDR
98	*Katja*	07.08.1997	Le Havre, France	Bahamas	52 079	€7.3 million

Cause of incident	Estimated quantity of oil spilled (tonnes)	Types of claims paid by insurer and/or 1971 Fund	Compensation (and/or indemnification where applicable) paid by the 1971 Fund up to 22.10.2010 (£)	Notes
Grounding	3 600	Clean up & preventive measures Fishery-related Tourism-related Property damage Environmental damage Indemnification	10 979 550	There are still three outstanding claims against the 1971 Fund totalling US$ 150 million pending before the Venezuelan courts. The Fund's position in respect of these claims is that they are either time-barred *vis-a vis* the Fund or no loss proven.
Mishandling of oil supply	1	Clean-up & preventive measures Indemnification	54 970	
Overflow during loading operation	124	Clean-up & preventive measures Indemnification	100 645	
Grounding	Unknown	Clean-up & preventive measures Oil removal operation Fishery-related Indemnification	8 193 887	1992 Fund paid ¥340 million to claimants. This amount was later reimbursed by 1971 Fund.
Overflow during loading operation	3.2	Fishery-related	Nil	Claims against 1971 Fund are time-barred however, two claims have been accepted by the Venezuelan courts. The Fund appealed to the Supreme Court. The Supreme Court rendered its judgement in October 2010, rejecting the 1971 Fund's appeal.
Grounding	1 500	Clean-up & preventive measures Fishery-related Tourism-related Loss of income	Nil	Total amount of established claims did not exceed shipowner's liability.
Striking a quay	190	Clean-up & preventive measures	Nil	Total amount of established claims did not exceed the shipowner's liability.

	Ship	Date of incident	Place of incident	Flag State of ship	Gross register tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
99	*Evoikos*	15.10.1997	Strait of Singapore	Cyprus	80 823	8 846 942 SDR
100	*Kyungnam N°1*	07.11.1997	Ulsan, Republic of Korea	Republic of Korea	168	KRW 43 543 015
101	*Pontoon 300*	07.01.1998	Hamriyah, Sharjah, United Arab Emirates	Saint Vincent and the Grenadines	4 233	*Not available*
102	*Maritza Sayalero*	08.06.1998	Carenero Bay, Venezuela	Panama	28 338	3 million SDR
103	*Al Jaziah 1*	24.01.2000	Abu Dhabi, United Arab Emirates	Honduras	681	3 million SDR

Cause of incident	Estimated quantity of oil spilled (tonnes)	Types of claims paid by insurer and/or 1971 Fund	Compensation (and/or indemnification where applicable) paid by the 1971 Fund up to 22.10.2010 (£)	Notes
Collision	29 000	*Singapore*: Clean-up & preventive measures Damage to property *Malaysia*: Clean-up & preventive measures Fishery-related *Indonesia*: Clean-up & preventive measures Fishery-related Environmental damage	Nil	All settled claims in Singapore and Malaysia paid by shipowner. All claims in Indonesia dismissed by limitation court in Singapore. The 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. In 2009, the insurer gave instructions to its lawyers to discontinue the legal action in Malaysia. The legal action in London has also been discontinued.
Grounding	15–20	Clean-up & preventive measures Fishery-related	122 633	Shipowner has paid KRW 26 622 030.
Sinking	8 000	Clean-up & preventive measures Fishery-related	1 250 365	The 1971 Fund has settled and paid all claims.
Ruptured discharge pipe	262	Clean-up & preventive measures Environmental damage	Nil	1971 Fund considers that the Conventions do not apply to this incident.
Sinking	100–200	Clean-up & preventive measures	566 166	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 would be very difficult to execute the judgement since the shipowner does not have sufficient assets. Since the costs incurred by the Fund in executing the judgement would exceed the amount recovered, the Funds have discontinued the execution of the judgement and will write off the debt.

	Ship	Date of incident	Place of incident	Flag State of ship	Gross register tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
104	*Alambra*	17.09.2000	Estonia	Malta	75 366	7 600 000 SDR
105	*Natuna Sea*	03.10.2000	Indonesia	Panama	51 095	6 100 000 SDR
106	*Zeinab*	14.04.2001	United Arab Emirates	Georgia	2 178	3 million SDR
107	*Singapura Timur*	28.05.2001	Malaysia	Panama	1 369	102 000 SDR

Cause of incident	Estimated quantity of oil spilled (tonnes)	Types of claims paid by insurer and/or 1971 Fund	Compensation (and/or indemnification where applicable) paid by the 1971 Fund up to 22.10.2010 (£)	Notes
Corrosion	300	Clean-up & preventive measures Economic loss	Nil	In 2009 following a settlement agreement concluded between the two claimants who took legal actions, the shipowner and the insurer, the claims have been withdrawn and the insurer and the 1971 Fund have been released of any obligations arising from the incident.
Grounding	7 000	*Singapore*: Clean-up & preventive measures Fishery-related *Malaysia*: Clean-up & preventive measures Fishery-related *Indonesia*: Clean-up & preventive measures Fishery-related	Nil	All claims paid by shipowner's insurer.
Sinking	400	Clean-up & preventive measures	496 022	1971 and 1992 Funds have each contributed 50% of the amounts paid.
Collision	Unknown	Clean-up & preventive measures Environmental risk assessment Indemnification	538 486	US$103 378 paid by shipowner's insurer. The 1971 Fund has recovered £317 317 from shipowner's insurer. Insurer has recovered £185 000 from colliding vessel interests.

List of currencies

Algerian Dinar	Din
Canadian Dollar	Can$
Danish Krone	DKr
Euro	€
French Franc*	FFr
German Mark*	DM
Greek Drachma*	Drs
Italian Lira*	Lit
Japanese Yen	¥
Malaysian Ringgit	RM
Philippines Peso	PHP
Republic of Korea Won	KRW
Russian Rouble	RUB
Spanish Peseta*	Pts
Special Drawing Rights	SDR
Swedish Krona	SKr
United Arab Emirates Dirham	Dhs
UK Pound Sterling	£
US Dollar	US$
Venezuelan Bolivar Fuerte**	BsF

* Replaced by the Euro (€) on 1 January 2002.

** The Bolivar (Bs) was replaced by the Bolivar Fuerte (BsF) on 1 January 2008.

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