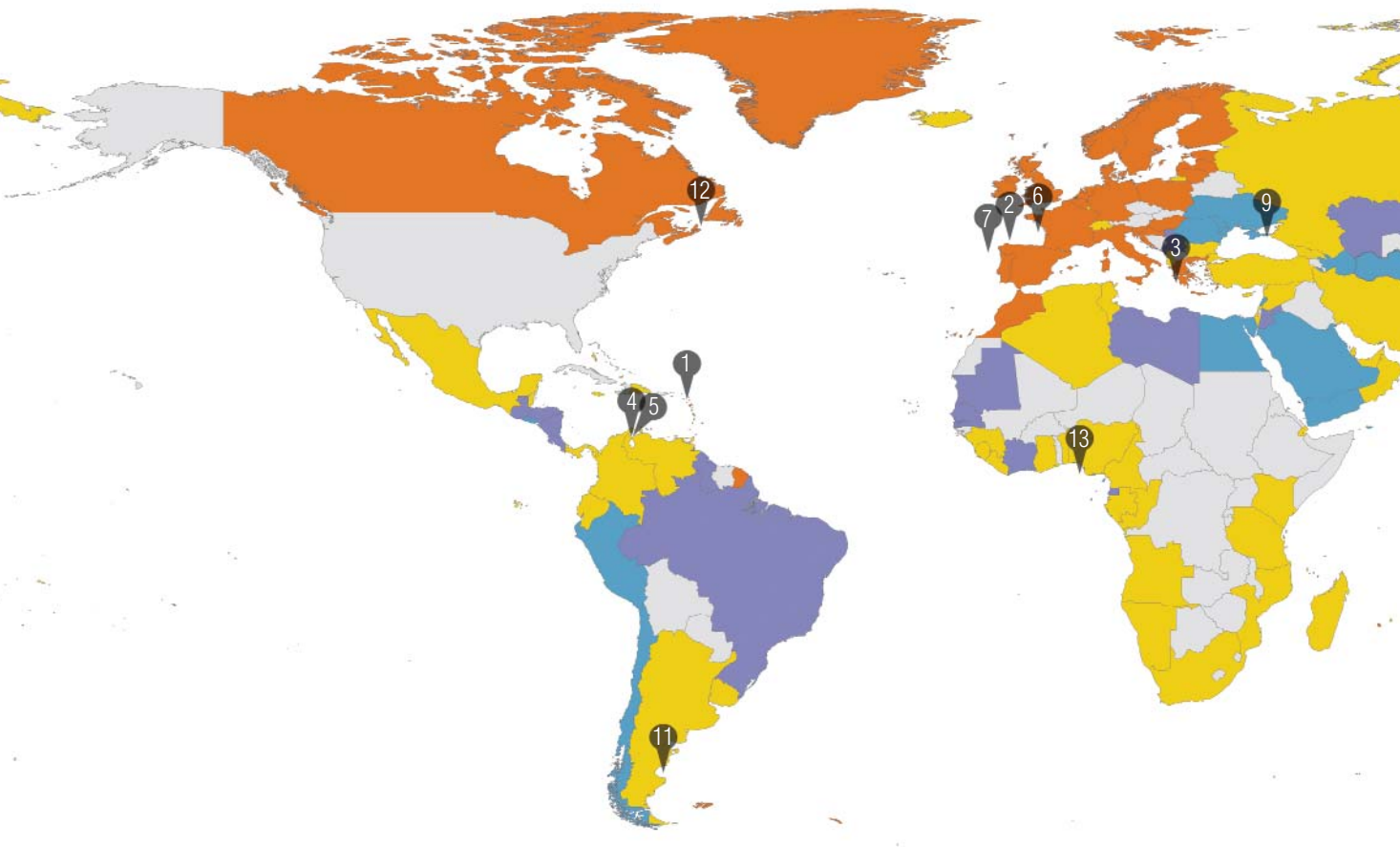
Incidents involving the IOPC Funds

2011

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 *Plate Princess*, 27.05.1997
6 *Erika*, 12.12.1999
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11 Incident in Argentina, 26.12.2007
12 *King Darwin*, 27.09.2008
13 *JS Amazing*, 06.06.2009

States Parties to the 1992 Fund Convention
States Parties to the Supplementary Fund Protocol
States Parties to the 1992 Civil Liability Convention
States Parties to the 1969 Civil Liability Convention

Incidents involving the IOPC Funds – 2011

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Opposite:
Map of incidents involving the IOPC Funds as of October 2011

Cover:
Pictures showing the different stages of the *Erika* incident, France

Foreword

This Report provides information on incidents in which the Secretariat of the International Oil Pollution Compensation Funds (IOPC Funds) was involved in 2011. 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' website (www.iopcfund.org/documentservices).

The Supplementary Fund was not involved in any incidents during 2011.

Disclaimer

While the Secretariat of the IOPC Funds has 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. For consistency, conversion into Pound sterling has been made on the basis of the exchange rate as at 31 October 2011. Figures relating to paid amounts are provided in the currency in which they were paid. In summary tables these figures are also provided in Pound sterling for comparison purposes only. Due to fluctuations in currencies over time, the figures in Pound sterling may vary significantly in some instances to the amounts actually paid on the date of payment.

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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.

Under the 1992 Civil Liability Convention, the shipowner has strict liability for any pollution damage caused by the oil, ie 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 Conventions only apply to tankers carrying persistent oil as cargo. However, under certain circumstances, the Conventions also apply to spills from unladen tankers.

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.

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 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 31 October 2011, the maximum amount payable for each incident was 203 million Special Drawing Rights (SDR) of the International Monetary Fund, equal to about US$ 322 million, with up to 89.7 million SDR (US$ 142 million) covered by the shipowner under the 1992 CLC, for incidents covered by the 1992 Fund and 750 million SDR (about US$ 1 189 million) for incidents which are also covered by the Supplementary Fund.

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.

Since their establishment, the 1992 Fund and the preceding 1971 Fund have been involved in some 143 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.

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

As at 31 December 2011, the 1992 Fund had 105 Member States, and four further States will become Members by September 2012. In addition, 27 of these States were Members of the Supplementary Fund and one further State, Montenegro, will become a Member of that Fund on 29 November 2012. All Member States are shown in the table on page 5.

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 the Governments of Member States. These criteria, which apply to all three Funds, 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 a regular 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 Governments of the Member States.

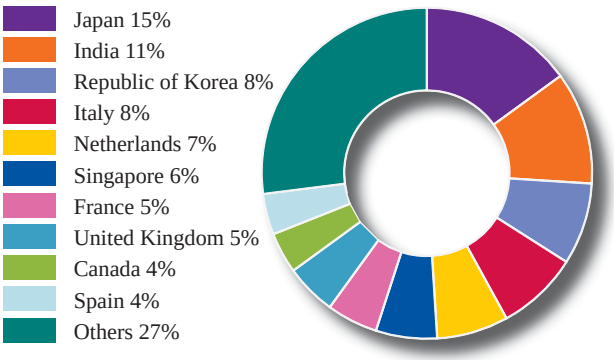
The 1992 Fund Assembly appoints the Director of the IOPC Funds, who is responsible for the operation of the three Funds and has extensive authority to take decisions regarding the settlement of claims. The Funds have their headquarters in London and are administered by a joint Secretariat.

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 2010:



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

105 States for which 1992 Fund Convention is in force (as at 31 December 2011) (States which are also Members of the Supplementary Fund are marked in **bold**):

Albania	Georgia	**Norway**
Algeria	**Germany**	Oman
Angola	Ghana	Panama
Antigua and Barbuda	**Greece**	Papua New Guinea
Argentina	Grenada	Philippines
Australia	Guinea	**Poland**
Bahamas	**Hungary**	**Portugal**
Bahrain	Iceland	Qatar
Barbados	India	**Republic of Korea**
Belgium	**Ireland**	Russian Federation
Belize	Islamic Republic of Iran	Saint Kitts and Nevis
Benin	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[1]	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 (Bolivarian Republic of)

In addition, instruments of accession to the 1992 Fund Convention were deposited during 2011 by Serbia, Senegal, Palau and Montenegro. The 1992 Fund Convention will enter into force for Serbia on 25 May 2012, Senegal on 2 August 2012 and Palau on 29 September 2012. Montenegro also deposited an instrument of accession to the Supplementary Fund Protocol. Both the 1992 Fund Convention and the Supplementary Fund Protocol will enter into force for Montenegro on 29 November 2012.

[1] The 1992 Fund Convention applies to the Hong Kong Special Administrative Region only

Erika

Date of incident	12 December 1999
Place of incident	Brittany, France
Cause of incident	Breakage, sinking
Quantity of oil spilled (approximate)	19 800 tonnes of heavy fuel oil
Area affected	West coast of France
Flag State of ship	Malta
Gross tonnage	19 666 GT
P&I insurer	Steamship Mutual Underwriting Association (Bermuda) Ltd (Steamship Mutual)
CLC limit	€12 843 484 (£11 101 869)
STOPIA/TOPIA applicable	No
CLC + Fund limit	€184 million (£159 million)
Compensation paid	€129.7 million (£112.1 million)
Legal proceedings	Thirteen actions remain pending. The total amount claimed in these actions is €19.9 million (£17.2 million).
Specific issues	A global settlement has been reached between the 1992 Fund, Steamship Mutual, Registro Italiano Navale (RINA) and Total.

Conversion into Pounds sterling has been made on the basis of the exchange rate as at 31 October 2011.

Map data ©2011 Europa Technologies, Google, Tele Atlas, GeoBasis-DE/BKG (©2009)

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.

Impact

Some 400 kilometres of shoreline were affected by oil.

Response operations

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.

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.

Applicability of the Conventions

At the time of the incident France was Party to the 1992 Civil Liability Convention (1992 CLC) and 1992 Fund Convention. In accordance with the 1992 CLC, the *Erika* was insured for oil pollution liability with the Steamship Mutual Underwriting Association (Bermuda) Ltd (Steamship Mutual). 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, 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.

The maximum amount available for compensation under the 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.

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 of payments from 50% to 60%, and in June 2001, to 80%. In April 2003, the level of payments was increased to 100%.

Claims for compensation

Undertakings by Total SA and the French Government

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

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

General claims

As of October 2011, 7 131 claims for compensation had been submitted for a total of €388.9 million. Payments of compensation had been made 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[<2>].

Legal issues

Criminal proceedings at the Criminal Court of First Instance in Paris

On the basis of a report by an expert appointed by a magistrate in the Criminal Court of First Instance 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 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, three companies of the Total Group (Total SA, and two subsidiaries, Total Transport Corporation (TTC), voyage charterer of the *Erika*, and Total Petroleum Services LTD (TPS), the agent of TTC) 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 Criminal Court of First Instance delivered its judgement in January 2008.

In its judgement, the Criminal Court of First Instance held the following four parties criminally liable for the offense 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:

[<2>] 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 the Annual Report 2008 (pages 79 and 80).

- 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; and
- Total SA was found guilty of imprudence when carrying out its vetting operations prior to the chartering of the *Erika*.

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.

Regarding civil liabilities, the judgement held the four condemned parties jointly and severally liable for the damage caused by the incident.

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 *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 internal law should be applied to the four parties and that therefore the four parties had civil liability for the consequences of the incident.

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 regime did not deprive the civil parties of their right to obtain compensation for their damage in the Criminal Courts and, in the proceedings, awarded claimants compensation for economic losses, damage to the image of several regions and municipalities, moral damages and damages to the environment. The Court assessed the total damages at the amount of €192 million.

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

Criminal proceedings at the Court of Appeal in Paris

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

In its decision, the Court of Appeal confirmed the judgement of the Criminal Court of First Instance who had held criminally liable for the offense 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.

Regarding civil liabilities, 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) and that, although, as such, he was 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;

Shoreline clean-up operations in the Baie de Bourgneuf, Bouin,Vendée

- The president of the management company (Panship) was the agent 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, cannot 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 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 in the proceedings; and
- Total SA was *'de facto'* the charterer of the *Erika* and could therefore benefit from the channelling provision 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.

Regarding reputation, image, moral and environmental damage, in its judgement, 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 has confirmed the compensation rights for moral damage awarded by the Criminal Court of First Instance to a number of local authorities and has in addition accepted claims for moral damage from other civil parties.

The Court of Appeal has also accepted the right to compensation for pure environmental damage, ie 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 has awarded compensation for pure environmental damage to local authorities and environmental associations.

The amounts awarded by the Court of Appeal are summarised in the table below.

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 French Supreme Court (Court of Cassation).

The Court of Cassation is expected to deliver its judgement in 2012.

Legal proceedings involving the 1992 Fund

Legal actions against the shipowner, Steamship Mutual and the 1992 Fund were taken by 796 claimants. As of October 2011, 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. Thirteen actions were still pending. The total amount claimed in the pending actions, excluding the claims by Total, is some €19.9 million.

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

Damage awarded	Criminal Court of First Instance (million €)	Criminal 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 (£166 million)**	**203.8 (£176 million)**

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[3].

As of October 2011, the Court of Appeal in Bordeaux had not yet rendered its decision. 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 2011.

Global settlement

At its July 2011 session the 1992 Fund Executive Committee authorised the Director to reach a global settlement between the 1992 Fund, Steamship Mutual (acting on its own behalf and also on behalf of the shipowner's interests), Registro Italiano Navale (RINA) and Total in respect of the *Erika* incident.

The main objective of the global settlement was to ensure that civil parties who had been awarded compensation by the judgement of the Criminal Court of Appeal in Paris received compensation as soon as possible.

In October 2011, the Secretariat was informed that 47 out of 58 civil parties (81%) who had been awarded compensation had either signed a protocol with RINA or expressed their agreement to be paid by RINA the amounts awarded by the Criminal Court of Appeal in Paris. These civil parties represent 99% of the total amounts awarded by the Court of Appeal.

Since the vast majority of civil parties who had been awarded compensation by the Criminal Court of Appeal in Paris had agreed to receive compensation, on 14 October 2011 the Director signed on behalf of the 1992 Fund a global settlement with Steamship Mutual, RINA and Total.

The global settlement has been formalised in four agreements as follows:

General four party agreement

Under the general four party agreement, the 1992 Fund, Steamship Mutual, RINA and Total have undertaken to withdraw all proceedings against the other parties to the agreement and, in addition, they have waived any rights to bring any claim or action which they might have in relation to the *Erika* incident against any of the other parties to the agreement.

Settlement agreement between Steamship Mutual and the 1992 Fund

A bilateral agreement was signed between Steamship Mutual and the 1992 Fund whereby:

- Steamship Mutual has undertaken to pay to the 1992 Fund a lump sum of €2.5 million as a contribution to the agreement;
- the 1992 Fund has undertaken to waive and renounce all claims against Steamship Mutual and discontinue all pending actions against Steamship Mutual;
- Steamship Mutual has undertaken to waive and renounce all claims against the 1992 Fund; and
- the 1992 Fund has undertaken to meet any judgements against Steamship Mutual and/or the 1992 Fund and has agreed to indemnify Steamship Mutual if the judgements are enforced against Steamship Mutual.

[3] 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.

Fish processing in Noirmoutier

Settlement agreement between RINA and the 1992 Fund

A bilateral agreement was signed between RINA and the 1992 Fund whereby:

- RINA has undertaken to pay to those civil parties who agree to settlement, the amounts awarded by the decision of the Criminal Court of Appeal in Paris;
- the 1992 Fund has undertaken to waive and renounce all claims against RINA. The 1992 Fund has also undertaken to discontinue all pending actions against RINA; and
- RINA has also undertaken to waive and renounce all claims against the 1992 Fund.

Settlement agreement between Total and the 1992 Fund

A bilateral agreement was signed between Total and the 1992 Fund whereby:

- Total has undertaken to waive and renounce all claims against the 1992 Fund and discontinue all pending actions against the Fund; and
- the 1992 Fund has undertaken to waive and renounce all claims against Total and discontinue all pending actions against Total.

Considerations

The main objective of the global settlement was to ensure that civil parties who had been awarded compensation by the judgement of the Criminal Court of Appeal in Paris received compensation as soon as possible. The vast majority, 47 out of 58 civil parties (81%) representing 99% of the amounts awarded by the Criminal Court of Appeal in Paris, agreed to receive compensation.

The total amount available to pay compensation for this incident under the 1992 Civil Liability and Fund Conventions is some €184.7 million. Payments of compensation have been made for a total of €129.7 million. Therefore, there now remains some €55 million available for compensation.

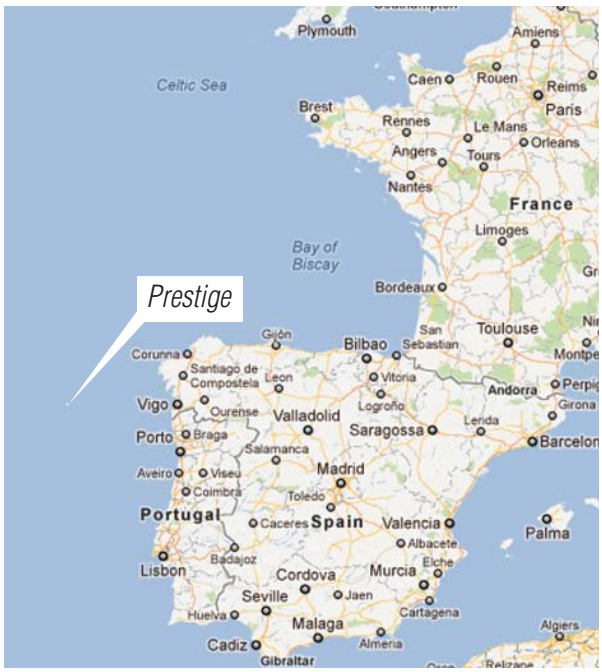
Under the global settlement the 1992 Fund will continue to handle the 13 pending legal actions brought against it totalling some €19.9 million and will pay in accordance with judgements.

As a result of the global settlement, and the various contributions of the settling parties, the 1992 Fund will be able to reimburse its contributors.

Prestige

Date of incident	13 November 2002
Place of incident	Galicia, Spain
Cause of incident	Breaking and sinking
Quantity of oil spilled (approximate)	63 200 tonnes of heavy fuel oil
Area affected	Spain, France and Portugal
Flag State of ship	Bahamas
Gross tonnage	42 820 GT
P&I insurer	London Steamship Owners' Mutual Insurance Association Ltd (London Club)
CLC limit	€22 777 986 (£19.7 million)
STOPIA/TOPIA applicable	No
CLC + Fund limit	€171.5 million (£148.2 million)
Compensation paid	€114 million (£99 million) to the Spanish Government €328 488 (£284 000) to the Portuguese Government
Legal proceedings	1. In Spain, in conjunction with an investigation into the cause of the incident, criminal proceedings have been brought against the master, Chief Officer and Chief Engineer of the *Prestige* and a civil servant involved in the decision not to allow the ship into a place of refuge. Some 2 285 claims for compensation have been submitted into the proceedings. 2. In France, civil actions by 123 claimants remain pending in various French courts. 3. In Portugal, legal proceedings were started but discontinued after settlement with the Portuguese Government. 4. In the United States, a court action has been brought by the Spanish State against ABS, the classification society that certified the *Prestige*.

Conversion into Pounds sterling has been made on the basis of the exchange rate as at 31 October 2011.



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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 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 63 272 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.

Impact

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).

Response operations

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.

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.

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 were combined with those in the Claims Handling Office in Lorient handling the *Erika* incident. The 1992 Fund also decided in 2006 to have the Claims Handling Office in La Coruña moved to the local expert's office nearby.

Applicability of the Conventions

At the time of the incident France, Portugal and Spain were Parties to the 1992 Civil Liability and Fund Conventions. The *Prestige* was insured for oil pollution liability with the London Steamship Owners' Mutual Insurance Association Ltd (London Club).

The limitation amount applicable to the *Prestige* under the 1992 Civil Liability Convention (1992 CLC) is approximately 18.9 million SDR or €22 777 986. In 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.

The maximum amount of compensation under the 1992 CLC and the 1992 Fund Convention is 135 million SDR per incident. This includes 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 Executive Committee's Record of Decisions of that session, ie 7 February 2003. As a result, 135 million SDR corresponds to €171 520 703.

Level of payments

Unlike the policy adopted by the insurers in previous IOPC Funds' 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.

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.

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	Estimated final admissible claims (€) (rounded figures)
Spain	500 million
France	70 million
Portugal	3 million
Total	**573 million (£495 million)**

The Director therefore considered that the level of payments could be increased to 30%[4] 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 with the Director's proposal.

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 would 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.

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

General overview - Spain

As of October 2011, the Claims Handling Office in La Coruña had received 845 claims totalling €1 037 million. These include 15 claims from the Spanish Government totalling €984.8 million. The table below provides a breakdown of the different categories of claims.

As of October 2011, 753 (90.72%) of the claims other than those of the Spanish Government had been assessed for €3.8 million. Interim payments totalling €564 976 had been made in respect of one hundred and seventy-five of the assessed claims, mainly at 30% of the assessed amount. Compensation payments made by the Spanish Government to claimants had been deducted when calculating the interim payments. Sixty-five claims were awaiting a response from the claimant and five were in progress. Four hundred and twenty-nine claims (totalling €38 million) had been rejected,

Category of claim	Claims submitted	Claimed amount (€)	Claims assessed	Assessed amount (€)	Claims paid	Paid amount (€)
Property damage	232	2 066 103	211	318 885	22	8 034
Clean up	17	3 011 744	11	351 037	2	1 191
Mariculture	14	20 198 328	14	518 469	2	144 263
Fishing and shellfish gathering	180	3 610 886	136	241 383	9	7 451
Tourism	14	688 303	14	17 742	4	5 323
Fish processors/vendors	299	20 836 857	294	2 111 945	115	359 108
Miscellaneous	74	1 775 068	73	231 809	21	39 606
Spanish Government	15	984 827 922	15	300 239 351	15	113 920 000
Total	**845**	**1 037 015 211 (£896 million)**	**768**	**304 030 621 (£263 million)**	**190**	**114 484 976 (£99 million)**

[4] €171.5 million / €573 million = 29.9%.

and nineteen had been withdrawn by the claimants. The remaining claims could not be assessed as the documentation submitted as of October 2011 was insufficient to carry out an assessment.

General overview - France

As of October 2011, 482 claims totalling €109.7 million had been received by the Claims Handling Office in Lorient. This includes the claims by the French Government totalling €67.5 million. The table below provides a breakdown of the different categories of claims.

Of the 482 claims submitted to the Claims Handling Office, 94% had been assessed as of October 2011. Four hundred and fifty-five claims had been assessed for €57.5 million and interim payments totalling €5.6 million had been made at 30% of the assessed amounts in respect of 361 claims. The remaining claims were awaiting 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. Four claims totalling some €63 000 had been withdrawn by the claimants.

General overview - 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.

Claims submitted by the Spanish State

The Spanish State submitted a total of 15 claims for an amount of €984.8 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)[<5>], 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 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.

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

Category of claim	Claims submitted	Claimed amount (€)	Claims assessed	Assessed amount (€)	Claims paid	Paid amount (€)
Property damage	9	87 772	9	17 120	7	5 136
Clean up	61	10 512 569	53	4 550 317	47	1 286 237
Mariculture	126	2 336 501	120	460 011	90	131 955
Shellfish gathering	3	116 810	3	16 613	1	4 984
Fishing boats	59	1 601 717	59	624 163	49	182 983
Tourism	195	25 166 131	185	13 081 322	154	3 880 177
Fish processors/vendors	9	301 446	8	101 355	5	29 072
Miscellaneous	19	2 029 820	17	182 074	8	39 828
French Government	1	67 499 154	1	38 481 121	0	0
Total	**482**	**109 651 920 (£95 million)**	**455**	**57 514 096 (£50 million)**	**361**	**5 560 372 (£4.9 million)**

[<5>] 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.

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. Following the Executive Committee's decision, the claim was assessed at €9.5 million[6].

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 (ie €57 555 000) and 15% of the preliminarily assessed amount of the State's claim (ie €16 050 000). That payment was made against the provision by the Spanish State of a bank guarantee covering the above-mentioned difference (ie €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. In March 2006 the 1992 Fund made an additional payment of €56 365 000 to the Spanish State.

Assessment of the claims by the Spanish State

The claims by the Spanish State, totalling €984.8 million, have been assessed at €300.2 million.

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; and
- 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.

Claims submitted by the French State

The French Government submitted claims for €67.5 million in relation to the costs incurred for clean up and preventive measures. The 1992 Fund and the London Club assessed the claims at €38.5 million and a letter explaining the assessment was sent to the Government.

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

Legal issues

Investigations into the cause of the incident[7]

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.

The Spanish Ministry of Public Works (Ministerio de Fomento) also 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.

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 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.

[6] For details regarding the assessment of the claim in respect of the cost incurred in the removal of oil from the wreck see Annual Report 2006, pages 111 to 114.

[7] A summary of the findings of the investigations into the cause of the incident carried out by the Bahamas Maritime Authority, the Spanish Ministry of Works and the French Ministry of Transport and the Sea can be found in the Annual Report 2005 pages 116-119.

Legal proceedings

Criminal investigation in Spain

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. In July 2010 the Criminal Court in Corcubión 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 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 with 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 the persons that suffer pollution damage in accordance with the 1992 Fund Convention, that the Fund had already paid a great part of the claims arising from the *Prestige* incident and that there were still outstanding claims in France and Portugal that the Fund would have to compensate. The 1992 Fund had also argued that a request for the Fund to provide 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 Court of Appeal delivered a resolution in which it acknowledged the difficulties of combining the domestic procedural law with the provisions of the Convention and, while confirming the decision of the Court of Corcubión, stated that the amount already paid by the 1992 Fund would be excluded from the proceedings and that the Fund had the possibility to put security in place for the rest of its limits, if such security were to be finally requested of the Fund.

The proceedings will be transferred to another court, the Audiencia Provincial in La Coruña, who will conduct the criminal trial. It is expected that the hearing on the criminal and civil merits of the case will commence in late 2012.

Civil proceedings in Spain

As of October 2011, some 2 285 claims were lodged in the legal proceedings before the Criminal Court in Corcubión. This figure includes a legal action brought by the Spanish Government, 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. Included in the aforementioned figure are also 122 claims by French parties. Some of the claimants in the proceedings had also submitted claims in the Claims Handling Office in La Coruña.

The experts engaged by the 1992 Fund have assessed the claims submitted by individual claimants in Spain for a total of €1 144 334. Interim payments totalling €254 968 had been made at 30% of the assessed amount, taking into account the aid received, if applicable. Claimants in 407 of the court actions had received payments as a result of a settlement agreement with the Spanish Government. The assessment of these claims is included in the subrogated claim submitted by the Spanish Government. As of October 2011, the claims submitted by French claimants were being assessed.

The Criminal Court in Corcubión appointed court experts to examine the civil claims lodged in the criminal proceedings. In January 2010, the experts appointed by the Court submitted their assessment report. The experts engaged by the 1992 Fund examined the report and concluded that, in general, the Court experts have noticed 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 is 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 where possible and also in order to be ready to submit defence pleadings when the hearing commences.

General legal proceedings in France

Two hundred and thirty-two claimants, including the French Government, 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 Government.

One hundred and nine of these claimants have withdrawn their actions. Therefore, actions by 123 claimants remain pending in court amounting to a total of €83.6 million.

The courts have granted a stay of proceedings in 20 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 122 French claimants, including various communes, have joined the legal proceedings in Corcubión, Spain.

Judgement by the Court of Appeal in Rennes, France

Two owners of fishing vessels brought an action claiming €419 333 for loss of income allegedly incurred through a reduction in the anchovy population as a result of the *Prestige* incident and €81 000 for the replacement of a fishing net damaged by oil. The 1992 Fund had assessed the damage to the net at €3 000 and rejected the claim for loss of income since no sufficient link of causation was established between the contamination and the alleged loss. In a judgement rendered in May 2009 the Court agreed with the 1992 Fund's assessment of the claim for loss of income and rejected the claim. As to the claim for the fishing net, the Court assessed the damage at €6 000 to be paid at the current level (30%) of the payments as applied by the Fund. One of the claimants appealed against the judgement.

In a judgement rendered in January 2011, the Court of Appeal in Rennes upheld the rejection of the claim for loss of income. Regarding the claim for the replacement of the fishing net, the Court of Appeal overturned the judgement and agreed with the 1992 Fund's assessment at €3 000 to be paid at the current level (30%) of the payments applied by the Fund. The claimant has not appealed against the judgement.

Judgement by the Court of First Instance in Bordeaux, France

The owners of a campsite in the affected area submitted a claim totalling €914 966 for loss of income and costs incurred in measures to prevent economic losses, namely marketing activities. The 1992 Fund had initially assessed the claim at €595 831 and had paid to the claimant €178 749, ie 30% of the assessed amount. Following additional information the claim was reassessed at €738 716. The claimant did not agree with the assessment and brought an action against the shipowner, its insurer and the 1992 Fund in the Court of First Instance in Bordeaux.

In a judgement delivered in May 2011 the Court partially agreed with the Fund's assessment of the claim but considered that the total losses suffered by the claimant totalled €882 268. In its judgement the Court recognised that the Fund should pay 30% of that amount, after deducting the amounts already paid.

As the judgement did not involve a question of principle the 1992 Fund did not appeal, and paid the claimant the sum of €85 931 plus legal costs.

General legal proceedings in the United States

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 counterclaim 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.

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.

Impacted fishing fleet in the Puerto de Fisterra, Galicia

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

In August 2005 ABS submitted a request to the New York Court for a summary judgement dismissing the Spanish State's action. ABS argued that it was an agent or servant of the shipowner or 'other person who...performs services for the ship' and that, therefore, in accordance with Article III.4 (a) and (b) of the 1992 CLC no claim for compensation for pollution damage could be made against it unless the damage resulted from ABS's personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

ABS also maintained that under Article IX.1 of the 1992 CLC all actions for compensation, such as that pursued by the Spanish State in the New York Court, could only be brought in the courts of a Contracting State. Since the United States was not a Contracting State to the 1992 CLC and the pollution damage had occurred in Spain, ABS argued that the United States Courts were not competent to hear the case.

First judgement by the District Court in New York, United States

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[8].

Decision by the New York Court of Appeal, United States

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 FSIA.

With respect to Spain's claim, the Court of Appeal held that the 1992 CLC cannot divest a US 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 pointed out that the District Court should consider the equities in declining jurisdiction at this advanced stage in the litigation process. The Court of Appeal 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 in New York, United States

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 US Law governed in this case, primarily based on Spain's allegations that the critical wrongful act occurred in ABS' headquarters in the US 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 US legal precedent where a classification society had 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

[8] 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.

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.

Appeal against the second judgement of the District Court in New York, United States

The Spanish State appealed against the judgement of the District Court. In its pleadings, Spain argued that:

- the Spanish State had produced sufficient evidence so that, based on the facts, a Judge could find that ABS acted recklessly in its inspection and classification of the *Prestige*;
- the District Court erred in holding that a classification society should not be held liable for its own recklessness, as opposed to ordinary negligence; and
- reckless behaviour amounts to an intentional disregard for others, is simple to avoid and that a classification society should not be afforded the same protection for reckless behaviour that it receives for negligent acts.

In its defence pleadings ABS argued that:

- ABS, in performing specified duties to a shipowner, does not have an unlimited duty to all third parties with respect to its recklessness and that a shipowner's duty to provide a seaworthy vessel was non-delegable and should not be transferred to a classification society;
- ABS did not behave in a reckless manner, its rules were as stringent as those of any other classification society at the time of the *Prestige* incident and Spain is attempting to elevate allegations of negligence to recklessness;
- public policy considerations go against unlimited liability on the part of classification societies to all parties, as such liability would amount to an insurer-like liability, and would result in shipowners being held less accountable for the seaworthiness of their vessels; and
- Spanish Law, and therefore the 1992 CLC, should apply to this case and under Article III.4 (b) of the 1992 CLC, ABS has no liability. ABS points out that, except in the US, the CLC is the law of every other jurisdiction associated with the case, including China and the United Arab Emirates (UAE). Alternatively, ABS argues for the application of the Law of the Bahamas, under which they maintain that they are immune from liability. ABS also maintains that if the non-CLC domestic law of the Bahamas, China or the UAE is applied, they have no liability under those laws.

In its reply to the defence of ABS, Spain argued that:

- both the District Court and ABS had mis-stated the law on liability for reckless behaviour. Spain argues that reckless behaviour gives rise to liability to all those who could be foreseeably impacted by that behaviour;
- the shipowner is not a party to this case and that a finding of liability on the part of ABS in no way weakens the shipowner's non-delegable duty to provide a seaworthy vessel;
- ABS' alleged adherence to industry customs and standards does not insulate them from liability; and
- US Law is the correct law to govern the case, and even if foreign law applied, a classification society is not entitled to immunity under the CLC and, even if it were, such immunity would be defeated by the reckless behaviour of ABS in this case.

Two environmental organisations have filed a joint *amicus curiae* brief in favour of the Spanish State's position, arguing that:

- major oil spills have long-term negative effects on the environment;
- not only shipowners and marine insurers, but the maritime world in general, *inter alia*, shippers, charterers, flag states and coastal states, rely upon the representations made by classification societies; and
- economic pressures have caused classification societies to be more flexible and, as a result, they cannot be insulated from their own reckless behaviour.

Legal action by the French Government against ABS in France

In April 2010, the French State brought a legal action in the Court of First Instance in Bordeaux against three companies in the group of ABS. As of October 2011, there had been no developments in respect of this action.

Recourse action by the 1992 Fund against ABS

In October 2004 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 ongoing litigation in the United States, monitor the ongoing 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.

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 was advised by the 1992 Fund's Spanish lawyer that an action against ABS in Spain would face procedural difficulties. Criminal proceedings have been brought in Spain against four parties, 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. ABS was not a defendant in the proceedings. Under Spanish law, when a criminal action has been brought, any action for compensation based on the same or substantially the same facts as those forming the basis of the criminal action, whether against the defendants in the criminal proceedings or against other parties, cannot be pursued until the final judgement has been rendered in the criminal case. The criminal proceedings will probably take many years. On the basis of the Fund's Spanish lawyer's advice, the Director did not, for the time being, recommend bringing an action against ABS in Spain.

In the *Erika* incident the Criminal Court of Appeal in Paris decided that Registro Italiano Navale (RINA) (the classification society that certified the *Erika*), together with the representative of the shipowner (Tevere Shipping) and the president of the management company (Panship Management and Services Srl), were criminally liable for the offence of causing pollution. Regarding civil liabilities, the judgement held these three condemned parties jointly and severally liable for the damage caused by the incident.

RINA had argued that it could benefit from the channelling provisions under Article III.4 (b) of the 1992 CLC but the Criminal Court of Appeal in Paris held that RINA could not benefit from the channelling provisions in the CLC.

The Criminal Court of Appeal accepted that RINA was entitled to immunity from jurisdiction since, as a classification society, it provided a public service on behalf of the Maltese State, but the Court held that RINA had waived its immunity for not having pleaded it at the commencement of the proceedings.

The Director has been advised by the Fund's French lawyer that in a possible action against ABS in France in the context of the *Prestige* incident, the Court would most likely apply French Law. If, in the *Erika* incident, the Court of Cassation were to uphold the Criminal Court of Appeal's judgement, RINA would be held liable for the pollution arising from the *Erika* incident. This could be a precedent that would be followed by a French court in an action against ABS in the *Prestige* incident.

The question of sovereign immunity would be another uncertainty. In the *Erika* incident the Court recognised RINA's right to foreign state immunity of jurisdiction, but the Court removed that immunity due to RINA's behaviour in not invoking that right at the outset of the proceedings. It is uncertain whether a court, in the context of the *Prestige* incident, would hold that ABS has the right to immunity of jurisdiction.

Under French Law a ten-year time-bar period would be applicable for a recourse action, which means that the Fund would have until 13 November 2012 to bring an action against ABS in France.

Since the Court of Cassation is expected to deliver its judgement in early 2012, the Director considers that it would be best to wait for that judgement before deciding whether to bring an action against ABS.

Solar 1

Date of incident	11 August 2006
Place of incident	Guimaras Strait, the Philippines
Cause of incident	Sinking
Quantity of oil spilled (approximate)	2 000 tonnes of industrial fuel oil
Area affected	Guimaras Island and Iloilo Province, the Philippines
Flag State of ship	Republic of the Philippines
Gross tonnage	998 GT
P&I insurer	Shipowners' Mutual Protection and Indemnity Association (Luxembourg) (Shipowners' Club)
CLC limit	4.51 million SDR (£4.46 million)
STOPIA/TOPIA applicable	STOPIA 2006 limit of 20 million SDR (£19.8 million)
CLC + Fund limit	203 million SDR (£201 million)
Compensation paid	PHP 986 646 031 (£14.3 million)
Legal proceedings	There are three ongoing sets of legal proceedings currently against the 1992 Fund.

Conversion into Pounds sterling has been made on the basis of the exchange rate as at 31 October 2011.

Map data ©2011 Google

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

Impact

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.

Response operations

The Shipowners' Club and the 1992 Fund established a claims office in Iloilo to assist with the handling of claims. The office was closed in 2010 after the majority of claims had been dealt with.

Applicability of the Conventions

The Republic of the Philippines is Party to the 1992 Civil Liability Convention (1992 CLC) and the 1992 Fund Convention.

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

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 2006 (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 of the October 2011 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 on their claim form. Therefore the total claimed amount with respect to this incident cannot be established.

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.

Clean up and preventive measures

Twenty-eight claims were submitted in relation to clean up and preventive measures by individuals, clean-up contractors, Petron Corporation and government agencies. 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 775.22 million. 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. The other claimant received an offer of settlement but did not accept it. The claim is now considered time-barred.

Two claims submitted by the Philippine Coastguard (PCG) in respect of the preventive measures carried out in response to the incident have been received and assessed. A settlement offer for both claims for PHP 104.8 million, was made and has been accepted by the PCG.

Property Damage

A total of 3 260 claims have been received for damage to fishing gear, fishing boats and beach front properties, of which 631 have been paid for a total of PHP 5.12 million. As has been the case with uncollected cheques for compensation in the capture fishery sector, some 122 approved claims for property damage could not yet be paid to claimants. A consolidation of accounts has been undertaken with the bank in the Philippines and remaining compensation will be available directly from the 1992 Fund upon request. Some 2 507 claims have been rejected since claimants were unable to provide any evidence of having been affected.

Category of claim	Claims submitted	Claims assessed	Assessed amount (PHP)	Claims paid	Paid amount (PHP)	Claims rejected
Capture Fishery	27 812	27 812	207 678 149	25 940	190 392 018	598
Mariculture	771	771	3 704 266	198	3 308 273	465
Miscellaneous	170	170	6 934 644	11	6 852 074	157
Property Damage	3 260	3 260	5 341 587	631	5 117 154	2 507
Tourism	425	425	5 489 437	75	5 381 627	346
Clean up	28	28	885 668 092	15	775 594 885	13
Total	**32 466**	**32 466**	**1 114 816 175 (£16.2 million)**	**26 870**	**986 646 031 (£14.3 million)**	**4 086**

Economic losses in the capture fisheries sector

Of the 27 812 claims received from fisherfolk, some 25 940 have been settled and paid for PHP 190.4 million and 598 have been rejected. Over 250 claimants have failed so far to collect their compensation. Since cheques have a limited period of validity, the 1992 Fund has had to re-issue cheques which had expired. This created some discrepancies when payments made were reported, since figures relate to cheques issued but not necessarily collected. Since some payments had been re-issued several times without being collected, a consolidation of accounts has now 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.

Economic losses in the mariculture sector

The Shipowners' Club and the 1992 Fund have received 771 claims from seaweed farmers and fishpond operators for damage to their crops as a result of the contamination. Some 198 of these claims have been paid for a total of PHP 3.3 million with another ten additional payments not collected. A further 465 claims have been rejected on the grounds that the claimants could not credibly show that they had been involved in the claimed activities at the time of the incident or that their crops were actually affected by the contamination.

Some 98 seaweed farmers and one fishpond operator received offers of payment but chose not to accept the compensation, considering it inappropriately low. In the absence of additional corroborating evidence, the Shipowners' Club and 1992 Fund have been unable to resolve this issue and these claims are now considered time-barred.

Tourism and other economic losses

The Shipowners' Club and the 1992 Fund have received some 425 claims in the tourism sector from owners of small resorts, tour boat operators and various service providers. Overall, some 75 claims have been settled and paid for a total of PHP 5.38 million while 346 have been rejected because of insufficient proof that the claimants had suffered losses as a result of the pollution.

Several claimants submitted follow-up claims pertaining to additional losses throughout 2008/2009. 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.

Miscellaneous

Some 170 claims have been received for economic losses, incurred mainly by convenience stores and livestock farmers. The majority of these claims have been rejected as there was an insufficiently close link of causation between the contamination and the alleged damages.

Eleven claims for a total of PHP 6.85 million have been paid in respect of costs incurred by a number of government units, mainly to compensate for part of the fixed costs of salaries and overtime for staff involved in the response to the incident. Compensation of a further claim, also from a government unit, had been declined by the claimant after changes in the local administration.

Legal issues – civil proceedings

Legal proceedings by 967 fisherfolk

A civil action 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 from 967 of these fisherfolk totalling PHP 286.4 million for property damage as well as economic losses. The claimants rejected the 1992 Fund's assessment of a 12-week business interruption period as applied to all similar claims in this area, arguing that fisheries were disrupted for over 22 months, without however providing any evidence or support. The 1992 Fund has filed defence pleadings in response to the civil action and awaits developments in this regard.

Legal proceedings by the PCG

The PCG brought legal proceedings to ensure its rights were safeguarded in relation to the two claims for costs incurred during clean-up and pumping operations. Defence pleadings were filed by the 1992 Fund. An offer of settlement for PHP 104.8 million was made for both claims, and has been accepted by the PCG. The

Impacted southern coastline of Guimaras island

1992 Fund, the PCG, the Shipowners' Club and their respective lawyers are liaising with regard to the formal steps required in order to proceed with the proposed compromise agreement and withdraw the legal proceedings.

Legal proceedings by a group of municipal employees

Ninety-seven individuals employed by a municipality on Guimaras during the response to the incident have taken action in court against the mayor, the ship's captain, 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 paid to the municipality. After a thorough review of the legal documents received, the 1992 Fund filed pleadings of defence in court, noting in particular that the majority of claimants were not engaged in activities admissible in principle and that the claim by the municipality had been paid as assessed. The claimants have not submitted individual claims outside that presented by the municipality, and have taken no further steps to progress the case. The 1992 Fund awaits developments in the legal proceedings.

Legal proceedings by the 1992 Fund against the shipowner

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 the time bar provisions of STOPIA 2006, the 1992 Fund agreed not to serve the legal proceedings and to let the time expire. No further developments have taken place in this regard in 2011.

Considerations

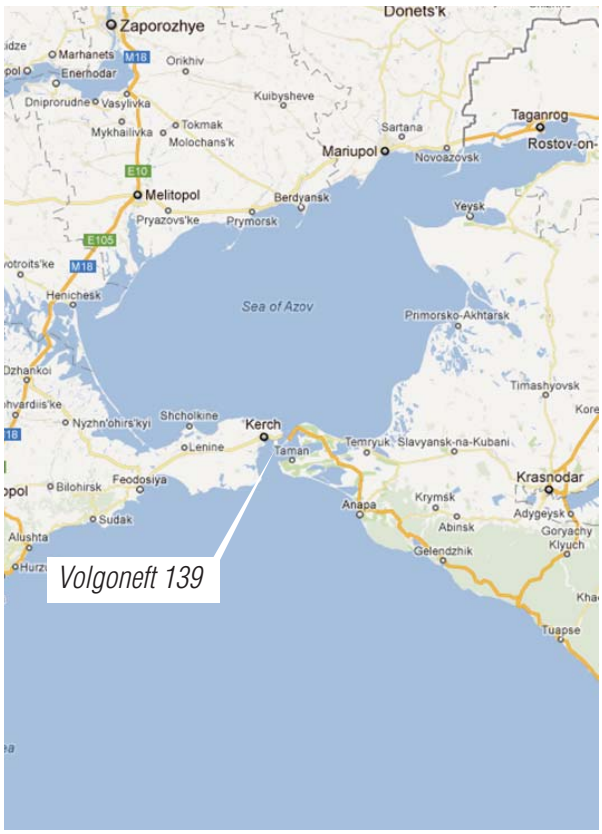
This is the first incident where STOPIA 2006 has applied and the 1992 Fund is receiving regular reimbursements from the Shipowners' Club. It is very unlikely that the amount of compensation payable in respect of this incident will exceed the STOPIA 2006 limit of 20 million SDR, and therefore very unlikely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

IOPC Funds' Claims Manager briefing claimants in Iloilo City

Volgoneft 139

Date of incident	11 November 2007
Place of incident	Kerch Strait, between the Sea of Azov and the Black Sea, Russian Federation and Ukraine
Cause of incident	Breaking
Quantity of oil spilled (approximate)	Up to 2 000 tonnes of fuel oil
Area affected	Taman Peninsula, Tuzla Spit and Chushka Spit, Russian Federation and Ukraine
Flag State of ship	Russian Federation
Gross tonnage	3 463 GT
P&I insurer	Ingosstrakh
P&I cover	3 million SDR or RUB 116.6 million (£2.4 million)
CLC limit	4.51 million SDR or RUB 175.3 million (£3.6 million)
Insurance gap	1.5 million SDR or RUB 58.7 million (£1.2 million)
CLC + Fund limit	203 million SDR (£201 million)
STOPIA/TOPIA applicable	No
Compensation paid	None
Specific issues	The CLC limit should be 4.5 million SDR. There is therefore an 'insurance gap' of some 1.5 million SDR.

Conversion into Pounds sterling has been made on the basis of the exchange rate as at 31 October 2011.



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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 other cargo vessels loaded with sulphur (*Volnogorsk*, *Nakhichevan* and *Kovel*) also sank in the same area within two hours of the incident.

Impact

Some 250 kilometres of shoreline, both in the Russian Federation and in Ukraine, are understood to have been affected by the oil and heavy bird casualties, numbering in excess of 30 000, were reported.

Response operations

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 undertaken by the Russian military and civil emergency forces, 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.

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.

Applicability of the Conventions

The Russian Federation is a Party to the 1992 Civil Liability Convention (1992 CLC) and 1992 Fund Convention. The Ukraine was not at the time of the incident Party to the 1992 Civil Liability or Fund Conventions. Although it had deposited an instrument of ratification to join the 1992 CLC with the Secretary-General of IMO on 28 November 2007, this did not enter into force in Ukraine until November 2008.

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, ie the minimum limit of liability under the 1992 CLC prior to November 2003. The minimum limit under the 1992 CLC after November 2003 is however 4.51 million SDR. There is therefore an 'insurance gap' of some 1.51 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.

Claims for compensation

General

The table below summarises the claims situation as of October 2011.

Category of claim	Claimant	Claimed amount (RUB)	Assessed amount (RUB)	Status
Clean up	Ministry of Emergencies	4 311 700	0	Time-barred
Clean up	Regional government	446 817 636	241 045 047	Agreed
Clean up	Local government	43 249 922	23 807 017	Agreed
Clean up	Port of Kerch (Ukraine)	9 170 697	1 739 454	Under discussion
Clean up	Contractor	63 926 933	50 766 549	Agreed
Clean up	Shipowner	27 706 290	8 755 555	Agreed
Clean up	Charterer	9 499 078	2 312 714	Agreed
Fisheries	Private Industry	15 381 895	0	Time-barred
Tourism	Private Industry	8 524 153	8 524 153	Agreed
Environmental restoration	Regional government	1 819 600 000	0	Time-barred
Environmental monitoring	Federal Agency	753 332	688 487	Under discussion
Total		**2 448 941 636 (£50.2 million)**	**337 638 976 (£6.9 million)**	

Clean up

The regional government has submitted claims for costs incurred in clean-up operations, including costs for treatment of oily waste collected, and environmental restoration. The regional government has also reimbursed a local authority in the affected area for most of the costs incurred by it in relation to the clean-up operations. The regional government has increased its claim amount to RUB 446.8 million to include the amounts claimed in subrogation of the local authority's rights. The regional government claims, including the subrogated claims, have been assessed at RUB 241 million. The claimant has agreed with the assessment. The remaining claims submitted by the regional government, including a claim for costs incurred in environmental restoration totalling RUB 1 819.6 million, lacked the necessary documentation required for assessment and, since the regional government did not protect its rights in respect of these claims, the claims have now become time-barred.

Since the regional government reimbursed most of the local authority's clean-up costs, the local authority's claim has been reduced to RUB 43.2 million. The claims by the local authority were assessed at RUB 23.8 million and the claimant agreed with the assessed amount.

The Port of Kerch in Ukraine submitted a claim, totalling RUB 9 170 697 for the costs incurred in clean up and preventive measures. Ukraine was not a Party to the 1992 CLC at the time of the incident and is not a member of the 1992 Fund. In the assessment of the claim at RUB 1 739 454, only a proportion of the costs for preventive measures carried out in Ukraine for the purpose of preventing pollution damage in the Russian Federation were taken into consideration. The claimant did not agree with the assessment.

A Russian clean-up contractor submitted a claim for the amount of RUB 63.9 million for the cost of clean-up operations, discharging oil from the aft part of the tanker, towage of the aft part to Kavkaz (Russian Federation) and removal of the oil from the sunken fore part. The claim was assessed at the amount of RUB 50.8 million and the claimant agreed with the assessment.

The charterer of the *Volgoneft 139*, a subsidiary company of the shipowner, has presented a claim for RUB 9.4 million for the cost of cleaning the aft section of the *Volgoneft 139* and for disposal of part of the oil collected from the wreck. The claim was assessed at RUB 2.3 million and the claimant agreed with the assessed amount.

The shipowner has also submitted a claim, totalling RUB 27.7 million, for the cost of cleaning the aft section of the *Volgoneft 139* and for disposal of part of the oil collected from the wreck. The claim was assessed at RUB 8.8 million and the claimant agreed with the assessment.

Fisheries/Aquaculture

Four companies in the fisheries sector submitted claims for losses allegedly related to the *Volgoneft 139* incident. The experts engaged by the Fund have examined two of the claims but the claimants have not shown to have suffered any losses as a result to the pollution. No documentation was submitted in support of the other two fisheries claims and these claims have become time-barred since the claimants have not protected their rights.

Tourism and other economic losses

A claim from a company in the tourism sector providing holidays for children at the seaside in the affected area has been assessed as claimed at RUB 8.5 million.

Environmental damage

The Federal Service on the Supervision in the Sphere of the use of Nature (Rosprirodnadzor (an agency of the Ministry of the Environment of the Russian Federation)) has submitted a claim totalling RUB 753 332 for costs incurred in environmental monitoring which has been assessed at RUB 688 487. As of October 2011, the 1992 Fund was awaiting a response from the claimant.

Legal issues

Metodika claim

At a meeting in May 2008 the Russian authorities informed the 1992 Fund that Rosprirodnadzor had submitted a claim for

The stern section of the *Volgoneft 139*

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 Rosprirodnadzor to combat oil pollution and to restore the environment to determine if and to what extent they qualified for compensation under the Conventions. The 1992 Fund has assessed the costs incurred by Rosprirodnadzor at RUB 688 487 (see paragraph above).

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.

Rosprirodnadzor has not appealed and the judgement is therefore final.

Force majeure

Ingosstrakh submitted a defence in Court arguing that the incident was wholly caused by a natural phenomenon of an exceptional, inevitable and irresistible character (*force majeure*) 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.

In summary[<9>], the conclusions of the experts were 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; and
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.

To fully understand the circumstances of the incident, the Secretariat and the 1992 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

[<9>] For details regarding the preliminary conclusions reached by the 1992 Fund's experts, reference is made to the Annual Report 2008, pages 119-122.

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.

Ingosstrakh has not appealed and the judgement is therefore final.

Limitation proceedings and the 'insurance gap'

In February 2008, the 1992 Fund received a notification from the Arbitration Court of Saint Petersburg and Leningrad Region of proceedings brought by a Russian clean-up contractor against the shipowner, Ingosstrakh and the 1992 Fund. A number of other claimants have also brought proceedings in the same Court.

In February 2008, in the context of these proceedings, the Court issued a ruling declaring that the shipowner's limitation fund had been constituted by means of an Ingosstrakh letter of guarantee for RUB 116 636 700, equivalent to 3 million SDR.

In April 2008, the 1992 Fund appealed against the Court's ruling. In its pleadings the 1992 Fund argued that at the time of the incident the limit of the shipowner's liability under the 1992 CLC was 4.51 million SDR (RUB 175.3 million) and that, under the Russian Constitution, international conventions to which the Russian Federation is Party take precedence over Russian internal law and that therefore the Court's ruling establishing the shipowner's limitation fund at only 3 million SDR (RUB 116.6 million) should be amended.

In September 2008 the Court of Cassation rendered a decision dismissing the 1992 Fund's appeal. In its reasoning, the Court of Cassation 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 (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.

At a hearing in March 2010 the Court decided to bring the Ministry of Transport as a third party into the proceedings since it could assist the Court and the parties to resolve the 'insurance gap' issue.

Judgement on 'the insurance gap'

In September 2010 the Arbitration Court of Saint Petersburg and Leningrad Region decided to maintain its original decision that the shipowner's limitation fund was 3 million SDR or RUB 116.6 million. The Court reached this decision 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 1992 Fund appealed to the Appeal Court against this decision on the grounds that, at the time this judgement was rendered, the new limit of the shipowner's liability, namely 4.51 million SDR, had been officially published in the Russian Official Gazette and therefore properly incorporated into Russian legislation.

The Appeal Court confirmed the decision by the Arbitration Court of Saint Petersburg. The 1992 Fund submitted a cassation complaint to the Supreme Court (Federal Arbitration Court).

In a ruling in April 2011 the Supreme Court (Federal Arbitration Court) decided to reject the appeal submitted by the Fund and to maintain the decision on the establishment of the shipowner's limitation fund of 3 million SDR.

The establishment of the shipowner's limitation fund at 3 million SDR may be appealed once the Arbitration Court of Saint Petersburg and Leningrad Region renders a judgement on the merits of the claims.

Quantum and merits of claims for compensation

At a hearing in January 2011, the Court requested that the 1992 Fund present a justification for its position on the relationship between the amount of oil spilled and the amount of waste collected, which was the main contentious issue in the assessment of some clean-up claims.

The 1992 Fund submitted its report to the Court at a hearing in March 2011. The report compared the amount of oily waste collected during the response to the incident and the oily waste collected in a number of other incidents. The report concluded that in the *Volgoneft 139* incident the amount of oily waste collected was some 40 times the amount of oil spilled whereas in other spills this proportion was between 2.5 times and 15 times.

The cost of this additional clean up and disposal of oily waste would therefore not be considered reasonable and therefore would not be admissible for compensation.

Hearings took place in May, July and October 2011. Further hearings of the Arbitration Court of Saint Petersburg and Leningrad Region were expected to take place in November and December 2011.

Meetings 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. The 1992 Fund offered to send experts 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 its experts could visit the affected area to monitor the clean-up operations.

During 2009, a number of meetings were held in London and Moscow between the Russian authorities, the Secretariat and the Fund's experts to facilitate the exchange of information and to monitor the progress of claims. The Secretariat and the Fund's experts visited Moscow, Krasnodar and the VTS in 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 Harbor Masters of Kavkaz and Temryuk and a claimant in the tourism sector.

The Secretariat and the Fund's experts visited Krasnodar in February 2011 to meet with claimants to try to solve the issues pending in the claims. Meetings were held with the regional and municipal authorities, whose claims, relating to clean up and preventive measures, constitute the majority of the claimed amount. The main point of disagreement with these claimants was the amount of waste collected, which, in the Fund's view, was not technically reasonable. A meeting was also held with a representative of the Port of Kerch, to discuss the claim submitted by the Port for clean up and preventive measures. During that visit, meetings also took place with representatives of some individual claimants in the fisheries and tourism sectors.

A meeting took place in London in late February 2011 between the 1992 Fund, its lawyer and experts and representatives of the Russian Ministry of Transport. The Fund and its experts made a further visit to Moscow in March 2011, to meet with representatives of the Russian Government and the insurer.

Considerations

At its March 2011 session the 1992 Fund Executive Committee decided not to authorise the Director to commence payments of established losses arising from the *Volgoneft 139* incident and instructed him to continue with the efforts to try to resolve the three outstanding issues, namely:

- payment by the insurer up to 3 million SDR;
- the submission of outstanding oil reports; and
- a solution to the 'insurance gap'.

Payment of compensation by the insurer

In a meeting in March 2011, the insurer confirmed to the 1992 Fund its intention to pay compensation once the Russian courts render a final judgement in respect of this incident.

Submission of oil reports

As of October 2011 the Russian Federation had submitted all its outstanding oil reports.

Insurance gap

A number of discussions have been held to investigate ways to resolve the insurance gap but without resolution. Efforts continue to identify a solution acceptable to all parties.

Conclusion

The Director is of the view that it is important to ensure that the 1992 Fund pays compensation to the victims of the *Volgoneft 139* incident as soon as possible. However, whilst claimants have cooperated with the 1992 Fund and its experts and almost four years have passed since the incident occurred, two issues remain which need to be addressed, namely the payment of compensation by the insurer and the 'insurance gap'.

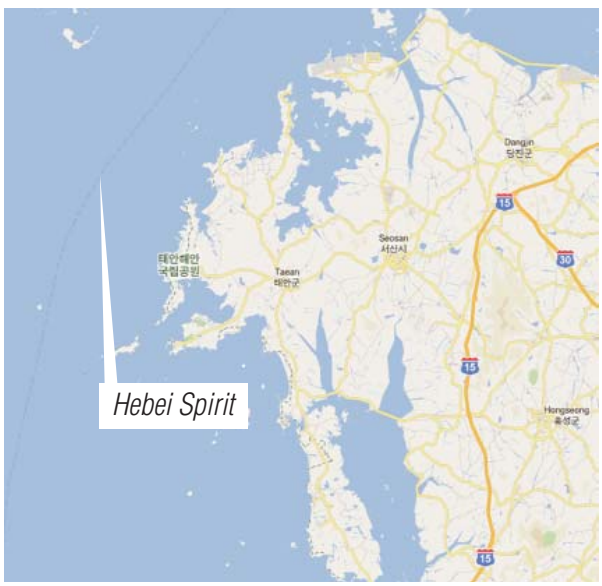
From the discussions with the shipowner's insurer, it seems that the payment of compensation by the insurer will only take place when the Russian courts have rendered a final judgement in respect of this incident.

The Director intends to pursue the discussions with the claimants and Russian authorities to explore a solution to the insurance gap and will revert to the Executive Committee with a proposal at a future session.

Hebei Spirit

Date of incident	7 December 2007
Place of incident	Taean, Republic of Korea
Cause of incident	Collision
Quantity of oil spilled (approximate)	10 900 tonnes of crude oil
Area affected	The three southerly provinces on the west coast of the Republic of Korea
Flag State of ship	People's Republic of China
Gross tonnage	146 848 GT
P&I insurer	China Shipowners Mutual Insurance Association (China P&I)/Assuranceföreningen Skuld (Gjensidig) (Skuld Club)
CLC limit	KRW 186.8 billion (£104.2 million)
STOPIA/TOPIA applicable	No
CLC + Fund limit	KRW 321.6 billion (£179.5 million)
Compensation paid	KRW 141.8 billion (£79 million)
Legal proceedings	1. Limitation proceedings of the owners of the *Hebei Spirit* in the Republic of Korea. 2. Limitation proceedings of SHI (the operators of the Marine Spread) in the Republic of Korea. 3. Recourse action by the 1992 Fund against Samsung C&T and SHI (the owners/operators of the Marine Spread) in the People's Republic of China. 4. Recourse action by the ship's interests against Samsung C&T and SHI in the People's Republic of China. 5. Action by one clean-up company against the owners and insurers of the *Hebei Spirit* and against the 1992 Fund. 6. Action by a number of fishermen and fish sellers against the 1992 Fund and the Republic of Korea. 7. Action by one shipowner against the owners of the *Hebei Spirit* and the 1992 Fund.
Specific issues	A number of Korean agencies and local authorities declared their intention to stand last in the queue with regard to their claims totalling KRW 444.8 billion (£248 million).

Conversion into Pounds sterling has been made on the basis of the exchange rate as at 31 October 2011.



Map data ©2011 SK M&C

Incident

The Hong Kong registered 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 had 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 *Hebei Spirit* is owned by Hebei Spirit Shipping Company Limited. It is insured by China Shipowners Mutual Insurance Association (China P&I) and 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.

Impact

Large parts of the Republic of Korea's western coast were affected to varying degrees. The 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, was 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.

Response 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 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.

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 Fund and the Skuld Club opened a Claims Handling Office (*Hebei Spirit* Centre) in Seoul to assist claimants in the presentation of their claims for compensation and 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.

Local volunteers carrying out clean-up operations north of Cheollipo, Taean County

Applicability of the Conventions

The Republic of Korea is a Party to the 1992 Civil Liability Convention (1992 CLC) and the 1992 Fund Convention 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

At its March 2008 session, the 1992 Fund Executive Committee 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 Executive Committee. The Executive Committee also decided that the conversion of 203 million SDR into Korean Won would be made on the basis of the value of that currency *vis-à-vis* the SDR on the date of the adoption of the Executive Committee's Record of Decisions of its 40th session, ie 13 March 2008, at the rate of 1 SDR = 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 the need to ensure equal treatment to all claimants, payments made by the 1992 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 payments at 35% of the established damages at its subsequent sessions in October 2008, as well as in March, June and October 2009, June and October 2010.

In March 2011, the 1992 Fund Executive Committee authorised the Director to increase the level of payments to 100% of the established claims, subject to a number of safeguards being in place before the 1992 Fund commenced making payments, and if these safeguards were not provided, the level of payments should be maintained at 35% of the established losses and that this should be reviewed at its next session.

In August 2011, the Korean Government informed the Acting Director that, in view of the significant administrative burden that the safeguards determined by the Executive Committee at its March 2011 session would place on the Korean Government, it did not intend to set up the guarantee as determined by the Executive Committee, with the understanding that this would likely result in the 1992 Fund not increasing the level of payments to 100% of the established claims.

In October 2011, the 1992 Fund Executive Committee decided to maintain the level of payments at 35% and that the level of payments should be reviewed at its next session.

Actions by the Korean Government

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 1992 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 1992 Fund within 14 days of the date they submitted proof of assessment to the Government.

The Korean Government also informed the 1992 Fund that under the Special Law, 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. The Special Law entered into force on 15 June 2008.

As at 21 September 2011, the Korean Government had made payments totalling KRW 34 220 million in respect of 479 claims in the clean-up, tourism and fisheries and aquaculture sectors based on assessments provided by the Skuld Club and the 1992 Fund, and submitted subrogated claims against the Skuld Club and the Fund. The Skuld Club had paid the Government KRW 28 855 million in respect of 434 of these claims.

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 1992 Fund but have not received an offer of compensation within six months. As at 21 September 2011, the Korean Government had granted 21 282 loans totalling KRW 50 661 million.

Decision of the Korean Government to 'stand last in the queue'

At the June 2008 session of the 1992 Fund Executive Committee, the Korean Government informed the Executive 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.

In August 2011, the Secretariat carried out an investigation into the claims submitted by the Korean authorities and identified 71 such claims submitted by 34 separate government agencies and local authorities, totalling some KRW 444.8 billion. The claims corresponded to selected costs incurred by the Government and local authorities in respect of clean up and preventive measures, environmental studies, restoration, marketing campaigns, tax relief and other expenses incurred in dealing with the pollution.

The 1992 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 Korea Marine Pollution Response Corporation (KMPRC). The 1992 Fund was consulted during the negotiations but was 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 1992 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 of 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 1992 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 for compensation

As of October 2011, 28 882 claims, representing 128 343 claimants and totalling KRW 2 611 billion, had been registered. Some 20 053 claims had been assessed at a total of KRW 166.6 billion, out of which 16 549 claims had been rejected. The Skuld Club had made payments totalling KRW 142 billion in respect of 2 639 claims, and the remaining claims were being assessed or additional information was being requested from the claimants.

Category of claim	Claims submitted	Claimed amount (KRW million)	Claims assessed	Assessed amount (KRW million)	Claims paid	Paid amount (KRW million)	Claims rejected
Clean up and preventive measures	299	544 829	216	97 820	181	89 656	28
Property damage	19	2 104	14	446	8	401	2
Fisheries and mariculture	10 800	1 582 825	1 125	44 695	414	29 477	5 187
Tourism and other economic damage	17 763	478 983	2 147	23 631	2 036	22 237	11 332
Environmental damage	1	2 195	-	-	-	-	-
Total	**28 882**	**2 610 935 (£1 456.9 million)**	**3 504**	**166 592 (£93 million)**	**2 639**	**141 771 (£79.1 million)**	**16 549**

Investigation 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 that 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 of October 2011, the decision of the Supreme Court was still pending.

Investigation in China

An investigation into the cause of the incident was also carried out by the ship's Flag State administration in China. 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.

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).

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.

In November 2009 the Supreme Court dismissed an appeal made by a number of claimants against the decision of the Limitation Court. Consequently, the Limitation Court's decision for the commencement of the limitation proceedings for the owner of the *Hebei Spirit* became final.

One hundred and twenty-seven thousand four hundred and fifty-nine claims totalling KRW 4 091 billion were submitted to the Limitation Court. In 2009, 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.

In February 2011, the Court appointed a court expert to review the evidence filed by both sides with the intention of issuing a decision by the end of 2011. The Court has scheduled its next hearing for August 2012. The court expert has not yet started to review the evidence.

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 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. As of October 2011, the appeal was still pending.

Civil proceedings by a clean-up company against the Republic of Korea

In July 2008, following the *Hebei Spirit* incident, a clean-up company which had been involved in clean-up operations at the instruction of the Incheon Coast Guard, took action in the Incheon District Court (Court of First Instance) against the Republic of Korea, claiming costs for KRW 727 578 150. The clean-up company argued that it had entered into a service contract with the Republic of Korea. It argued that even if the Court held that no such service contract existed, the clean-up company should nevertheless be compensated by the State, who should have borne the clean-up costs in any event, and who would otherwise gain unjust enrichment were it not to pay the company's costs.

In early 2010, the Court of First Instance decided that there was no service contract between the company and the Republic of Korea but accepted that the latter was still liable to compensate the company for the clean-up costs. The Court ordered the Republic of Korea to pay a sum of KRW 674 683 401 as reasonable compensation. Both parties appealed against the decision of the Court.

In July 2010, after two preliminary hearings, the Court of Appeal ordered a mediation session to explore a possibility of settlement between the parties. The 1992 Fund intervened in the proceedings as an interested party and participated in the mediation. At the mediation hearing, the Appeal Court Mediator requested the plaintiff to submit the claim for clean-up costs to the Club and the 1992 Fund for an assessment. The plaintiff submitted a claim to the Club and 1992 Fund in September 2010. The Club and 1992 Fund assessed the claim at KRW 344 177 512 and offered settlement to the claimant in April 2011.

The Court held a number of hearings in summer 2011 where an amicable settlement was discussed between the Government and the plaintiff without success.

In September 2011, the Court suggested that the plaintiff should receive the amount assessed by the Club and 1992 Fund and decided that once the assessed amount had been paid, it would consider whether to continue the mediation for the remainder of their claim for clean-up costs.

Civil proceedings by a clean-up company against the Club and the 1992 Fund

In November 2010, a contractor who was engaged in clean-up operations after the *Hebei Spirit* incident filed a claim against the owners and insurers of the *Hebei Spirit* and the 1992 Fund in the Seoul Central District Court.

The contractor had submitted a claim totalling KRW 889 427 355 for costs incurred in clean-up operations from January to June 2008. The Club and the 1992 Fund assessed the claim for the period January to March 2008 at KRW 233 158 549. The Club and the 1992 Fund rejected the claim for costs for part of March 2008 and the remaining period, since the area in which the claimant operated was cleaned by mid-March 2008 and therefore further clean-up operations were considered not technically reasonable.

The contractor has claimed in Court for the balance between the amount claimed and assessed, ie KRW 656 268 806. In January 2011, the 1992 Fund's lawyers filed an answer in court on behalf of the 1992 Fund stating the 1992 Fund's position that it would not be liable unless, and until, it was proved that the amount of the shipowner's liability was insufficient to fully cover the loss arising from the *Hebei Spirit* incident.

Court hearings were held in summer 2011 where the Court considered primarily whether to proceed with or stay the current proceedings until the limitation proceedings at Seosan Court were finalised.

The contractor argued that the work carried out after March 2008 was technically reasonable. The 1992 Fund filed a submission to rebut the contractor's attempt to challenge the Club and the 1992 Fund's assessment. In its submission, the Fund stressed that its experts had visited the affected area several times from early February to late March 2008 and found that further clean-up work was technically not required. The contractor was at the time recommended not to continue further work and also reminded that no compensation would be available from the international compensation regime for technically unreasonable work.

Civil proceedings by a group of fishermen and sellers of marine products

In December 2010, a group of some 50 residents in two villages in the area affected by the *Hebei Spirit* incident filed a lawsuit against the 1992 Fund and the Republic of Korea. The 50 claimants, all engaged in fishery activities or selling marine products, requested compensation totalling KRW 150 milion. It is unclear on what basis this claim has been presented.

At its first hearing in March 2011, the Court decided to adjourn the proceedings until the limitation proceedings by the owners of the *Hebei Spirit* have been finalised.

Civil proceedings by the owner of a vessel

In February 2011, a vessel owner filed a lawsuit against the owners of the *Hebei Spirit* and the 1992 Fund. At the time the vessel owner had not submitted a claim to the Fund although a claim was presented in the *Hebei Spirit* limitation proceedings. The vessel owner argued that their vessel was polluted by the oil leaked by the *Hebei Spirit* and that they had incurred cleaning costs. The vessel owner claimed KRW 99 878 861 and interest of 5% per annum from 11 December 2007, reserving their right to increase the claim amount to cover the loss of income during the period of cleaning work. The 1992 Fund argued that it would not be liable unless, and until, it was proved that the amount of the owner's liability was insufficient to fully cover the loss arising from the *Hebei Spirit* incident.

The vessel owner has since submitted the claim to the Club and the 1992 Fund for assessment. The Court decided to stay the proceedings until the Club and the Fund have assessed the claim.

Civil proceedings by the owner of an abalone farm

In March 2011, the former owner of an abalone farm filed a lawsuit against the 1992 Fund in court. He alleged in his claim that he had sold his farm in August 2007 and that the buyer had agreed to pay the purchase price with the proceeds from the sale of the first crop of abalone, which he failed to do due to the *Hebei Spirit* incident. The new owner had claimed compensation for the lost crop from the Club and the 1992 Fund, and to secure his claim for the outstanding price of the farm, the former owner obtained a Court Order in 2010 to transfer the compensation obtained by the new owner to him. The former owner requested the Court to order the 1992 Fund to pay KRW 121 million, together with interest.

In May 2011, the 1992 Fund's position in Court was that it would not be liable unless, and until, it was proved that the amount of the owner's liability was insufficient to fully cover the loss arising from the *Hebei Spirit* incident.

In September 2011, the former farm owner discontinued his lawsuit against the 1992 Fund, reserving his right to file a lawsuit again against the Fund once the current limitation proceedings have been finalised.

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

Oyster cultivation structures in Chungnam Province

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 1992 Fund arranged for the deposit of the required countersecurity, corresponding to 10% of the amount claimed 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 Executive Committee also decided that the 1992 Fund should continue the recourse action.

The 1992 Fund then signed an agreement with the ship's interests in connection with the recourse action under which the 1992 Fund and the ship's interests will continue their actions separately, sharing the costs of the recourse actions and the proceeds of any recovery by court judgement or settlement on a 50/50 basis.

Service of proceedings on both Samsung C&T and SHI was effected in September 2009 but both 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 Ningbo Maritime Court dismissed the applications. In October 2010, Samsung C&T and SHI lodged an appeal against the decision of the Ningbo Maritime Court.

In February 2011, the Court of Appeal issued its decision. In the decision the Court of Appeal accepted the appeal by Samsung C&T and SHI that the Court of Ningbo was a '*forum non-conveniens*' and that a recourse action should be pursued in a Korean Court.

In March 2011, both the 1992 Fund and the owner and insurers of the *Hebei Spirit* lodged separate applications for retrial with the Supreme Court in Beijing. The Supreme Court agreed to hear the applications and the Court documents were served on Samsung C&T and SHI. The Court ordered an adjournment of any application to set aside the attachment order pending the hearing of the application for a retrial.

In July 2011, the Supreme Court held a reconciliation hearing with the parties, with the aim of exploring a possible settlement of their dispute. The 1992 Fund took part in the hearing. As of October 2011, the 1992 Fund was awaiting the Court's decision as to whether to hold another reconciliation hearing.

Incident in Argentina

Date of incident	25 and 26 December 2007
Place of incident	Chubut Province, Argentina
Cause of incident	Probably occurred during deballasting as a result of a technical failure
Quantity of oil spilled (approximate)	50 to 200 tonnes of crude oil
Area affected	Caleta Córdova, Chubut Province, Argentina
Flag State of ship	Argentina
Gross tonnage	35 995 GT
P&I insurer	West of England Ship Owners Mutual Insurance Association (Luxembourg) (West of England Club)
CLC limit	24 million SDR (£23.8 million)
STOPIA/TOPIA applicable	No
CLC + Fund limit	203 million SDR (£201 million)
Compensation paid	AR$ 2.8 million (£410 000) and US$ 70 949 (£45 000) (paid by the West of England Club)
Specific issues	The Federal Court in Comodoro Rivadavia has reached a preliminary decision that the spill originated from the *Presidente Arturo Umberto Illia* (*Presidente Illia*). The owner of the *Presidente Illia* and its insurer deny liability for the spill and the shipowner has requested the Court to bring the 1992 Fund into the proceedings. If successful in their appeal against the Court's decision, and it is established nevertheless that the spill came from a 'ship' as defined in the 1992 Civil Liability and Fund Conventions, the 1992 Fund would have to pay compensation from the outset.

Conversion into Pounds sterling has been made on the basis of the exchange rate as at 31 October 2011.

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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 km of coast was reported to have been affected.

Response 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.

Impact

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.

Applicability of the Conventions

Argentina is a Party to the 1992 Civil Liability Convention (1992 CLC) and 1992 Fund Convention. 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).

Claims for compensation

Handling of claims

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. Between May 2009 and March 2010, meetings between the expert acting as the focal point for the Club and Fund and the claimants took place in Caleta Córdova to gather additional information. A further meeting took place in August 2010 to coordinate the claims assessment process.

Meetings took place in Buenos Aires in April 2011 between representatives of the 1992 Fund, its lawyers and the experts to discuss the assessment of the outstanding claims.

Claims for compensation

General claims overview

As of October 2011, 257 claims[10] for compensation for a total of AR$ 49.9 million and US$ 126 617 had been submitted by 320 individuals. One hundred and twenty-eight claims had been assessed at a total of AR$ 3.5 million and US$ 115 949. Payments totalling AR$ 2.8 million and US$ 70 949 had been made by the Club. Among the 128 assessed claims, 31 had been rejected. The remaining claims were being assessed.

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

Clean up claims

As of October 2011, eight claims for clean up and preventive measures had been received, including two claims from animal welfare organisations, one from the operator of the loading buoy and two from local authorities. The claims from animal welfare organisations for AR$ 101 210 and US$ 81 615, relating to the costs of treating wildlife affected by the pollution, have been settled at AR$ 58 988 and US$ 70 949 respectively. The claim by the operator of the loading buoy, for US$ 45 000, for costs incurred in shoreline clean up, was assessed as claimed. The assessment of the claims from the local authorities was being finalised.

Category of claim	Claims submitted	Claimed amount (AR$)	Claimed amount (US$)	Claims approved	Approved amount (AR$)	Approved amount (US$)	Claims paid by Club	Paid amount (AR$)	Paid amount (US$)
Tourism	11	1 644 366	0	3	12 000	0	2	12 000	0
Clean up and preventive measures	8	2 532 801	126 617	3	58 988	115 949	2	58 988	70 949
Fisheries	238	45 704 815	0	122	3 404 296	0	74	2 752 446	0
Total	**257**	**49 881 982 (£7 300 000)**	**126 617 (£78 500)**	**128**	**3 475 284 (£509 000)**	**115 949 (£72 000)**	**78**	**2 823 434 (£410 000)**	**70 949 (£44 million)**

[10] The majority of claims were originally submitted by individuals. Investigations have revealed that many of these individuals work in groups and their claims have therefore been consolidated, as appropriate, into group claims.

Claims in the Fisheries/Aquaculture sector

The claimants in the fisheries sector are mainly individuals and comprise artisanal foot and boat fishermen, processors and sellers, and 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 labourers they use. Of the 238 claims submitted in the fisheries sector, 122 claims had been assessed as of October 2011 for a total of AR$ 3.4 million, but 30 claims had been rejected since the claimants had not proved to have suffered losses related to the pollution. The remaining claims were being assessed. Payments totalling AR$ 2.8 million had been made in respect of 74 claims.

Claims related to tourism and other economic losses

Claims from the tourism sector are from grocery store workers, hotels, a restaurant and a tourist/fishing tour operator. As of October 2011, of the 11 claims in the tourism sector, two claims had been provisionally assessed and paid at AR$ 12 000 and one claim had been rejected. The remaining claims were being assessed.

Legal issues

Investigations into the cause of the incident

Soon after the spill the Argentine Coast Guard (Prefectura Naval) started an investigation into the incident. The Coast Guard inspected the *Presidente Illia* both in Caleta Córdova and in the port of discharge, Campana. These inspections revealed a fault in the ballast system and the presence of residues of crude oil in three ballast tanks.

A number of other vessels in the area were inspected by the Argentine Coast Guard but all were allowed to continue on their passage.

Criminal proceedings

The 1992 Fund has appointed an Argentine lawyer to follow the legal proceedings initiated as a result of this incident.

An investigation into the cause of the incident was commenced by the Federal Court of Comodoro Rivadavia. Following a court order, the *Presidente Illia* was detained in Campana in January 2008. An inspection of the ship revealed a leak in the ballast line passing through Nº1 centre cargo tank. In a second inspection residues of crude oil were found in three ballast tanks. The Court investigated in particular the role of the shipowner's representative (Superintendente), the master and several other officers of the *Presidente Illia*, the operator of the loading buoy and the cargo inspector.

In March 2008 the Federal 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 during the deballasting process.

The Court stated that its conclusions were 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 type of 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 coming from the ballast-discharging pipe. Moreover, 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 ship 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 had reached the coast must therefore have come from another source. The shipowner and the insurer also argue

Shoreline clean-up operations near Caleta Córdova

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 Federal Court of Comodoro Rivadavia. The Court dismissed the request for security on procedural grounds.

The province of Chubut has also submitted a claim in the Court of Comodoro Rivadavia for compensation for the damage caused by the incident, including damage to the environment. The claim has not been quantified. The shipowner has submitted points of defence denying his liability for the spill and requesting the Court to bring the 1992 Fund into the proceedings.

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 stayed pending notification of the 1992 Fund. The Fund was formally served the proceedings 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*. However, in its pleadings the 1992 Fund also considers the possibility that the source of the spill could have been another ship, the *San Julian*, which was close to the area at the time of the incident.

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 have access to the file and take a full set of copies. This was initially denied but was subsequently granted and a full set of documents was obtained.

Several claimants (some 18 individual claims, including governmental bodies, and some 20 group claims) have brought action against the shipowner and the West of England Club in the Courts in Comodoro Rivadavia and Buenos Aires. Some of these actions also include the 1992 Fund as a defendant. Since the Court does not allow public access to their records of actions, the exact number of the claimants is still unknown.

In December 2010 the 1992 Fund brought an action in the Civil Court of Buenos Aires against the owner of the *San Julian* and its insurer, in order to protect its compensation rights in case the Argentine courts were to find that the spilling vessel was not the *Presidente Illia* but the *San Julian*. The proceedings have been stayed pending a decision on which court is competent to hear the case.

An action has also been brought by the owner of the *Presidente Illia* and the West of England Club against the 1992 Fund in Buenos Aires, in order to protect their compensation rights against the Fund in case it was finally established that the spill originated from a tanker other than the *Presidente Illia*.

Time bar

Under the 1992 CLC, rights to compensation from the shipowner and his insurer are extinguished (time-barred) unless legal action is brought within three years of the date when the damage occurred (Article VIII of the 1992 CLC). 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 of the 1992 Fund Convention). Both Conventions also provide that in no case shall legal actions be brought after six years from the date of the incident.

In November 2010, individual letters about the time-bar issue were sent to all out of court claimants with whom settlements had not been reached by that time. In respect of this incident it may be uncertain as to which day the three-year time-bar period starts to run for the individual claimant (ie the day when the loss occurred). In view of the uncertainty as to the starting point of the time-bar period, it was suggested in the letters that the claimants should assume that the time-bar period commenced on the day of the incident (ie 26 December 2007). It was also made clear that, even if claimants had taken legal action, this would not prevent further discussions concerning their claims for the purpose of reaching an out-of-court settlement.

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.

King Darwin

Date of incident	27 September 2008
Place of incident	New Brunswick, Canada
Cause of incident	Oil spilled during discharge into port facility
Quantity of oil spilled (approximate)	64 tonnes of bunker C fuel oil
Area affected	Port of Dalhousie, New Brunswick, Canada
Flag State of ship	Marshall Islands
Gross tonnage	42 010 GT
P&I insurer	Steamship Mutual Underwriting Association (Bermuda) Limited (Steamship Mutual)
CLC limit	27.9 million SDR (£27.6 million)
STOPIA/TOPIA applicable	No
CLC + Fund limit	203 million SDR (£201 million)
Compensation paid	Two claims have been settled at the claimed amount for a total of US$ 1 332 488 (£826 000) (paid by Steamship Mutual).
Legal proceedings	In September 2009, a dredging company filed an action in the Federal Court in Halifax, Nova Scotia, against the owner of the *King Darwin*, Steamship Mutual, the Canadian Ship Source Oil Pollution Fund (SOPF) and the 1992 Fund. The proceedings were later discontinued against SOPF.

Conversion into Pounds sterling has been made on the basis of the exchange rate as at 31 October 2011.

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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 into the waters of the Restigouche River during discharge operations in the Port of Dalhousie, New Brunswick, Canada.

Response operations

Initial oil spill response operations were carried out by the terminal. Operations included containment of the oil within the port area through the use of booms and adding straw to absorb the oil. The owner 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 section of the wharf closest to where the *King Darwin* was berthed, which was also contaminated following the spill. The Canadian authorities considered that the only acceptable level of cleaning of the area was to bring it back to a state where no sheen was observed emanating from the wharf in order to protect migratory birds which came to the area in springtime. The private contractor engaged by the owner of the *King Darwin* carried out the

necessary cleaning of the jetty to the standard ordered by the authorities before the winter season. 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 completed by September 2009.

Applicability of the Conventions

At the time of the incident, Canada was a Party to the 1992 Civil Liability Convention (1992 CLC) and 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 Steamship Mutual Underwriting Association (Bermuda) Limited (Steamship Mutual).

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 ship's 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 for clean up or for expenses not related to the incident. The claim was therefore queried by Steamship Mutual.

A dredging company operating in the Port of Dalhousie at the time of the incident submitted a claim for losses, alleging that the company had had to interrupt its work whilst clean up of the dock 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 had 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 issues

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 owner of the *King Darwin*, Steamship Mutual, the Canadian Ship Source Oil Pollution Fund (SOPF) 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. Since then, the plaintiff has discontinued its action against SOPF.

The Federal Court in Halifax has not yet set the date of the hearing.

Since the damage caused appears to be well within the 1992 CLC limit, it is unlikely that the 1992 Fund will be called upon to pay compensation.

JS Amazing

Date of incident	6 June 2009
Place of incident	Ijala, Warri River, Delta State, Nigeria
Cause of incident	Unknown although it is alleged that the tanker capsized due to hitting an object in the water
Quantity of oil spilled	Unknown
Area affected	Warri River, Delta State, Nigeria
Flag State of ship	Nigeria
Gross tonnage	3 384 GT
P&I insurer	Unknown
CLC limit	4.51 million SDR (£4.46 million)
STOPIA/TOPIA applicable	No
CLC + Fund limit	203 million SDR (£201 million)
Compensation paid	None
Legal proceedings	None

Conversion into Pounds sterling has been made on the basis of the exchange rate as at 31 October 2011.

Map data ©2011 Europa Technologies, Google

Incident

In May 2011, the 1992 Fund was informed of a spill which had occurred in June 2009, when the tanker *JS Amazing* spilled an unknown quantity of low pour fuel oil, into the Warri River, Delta State, Nigeria.

The 1992 Fund was also informed that in May 2009, approximately two weeks prior to the spill from the *JS Amazing*, an oil spill had occurred from a vandalised Nigerian National Petroleum Corporation (NNPC)/Pipeline Products Marketing Corporation (PPMC) oil pipeline, in the same area.

Neither incident was widely reported outside of Nigeria and preliminary investigations by the 1992 Fund failed to reveal a great deal of information regarding the spill from the *JS Amazing*, or the identity of the shipowner. No records of any cover for the vessel could be found with a P&I Club from the International Group.

Response operations

The 1992 Fund appointed Nigerian lawyers to conduct preliminary investigations, which revealed that in June 2009, the Nigerian Oil Spill Detection and Response Agency (NOSDRA), a Nigerian Federal Government agency, conducted a joint investigation visit with PPMC (a subsidiary of NNPC and in charge of the installation and maintenance of pipelines for NNPC) to assess the impact of the spill from the *JS Amazing* on the environment, and communities affected.

As a result of the joint investigation visit, NOSDRA requested PPMC to take immediate steps to clean up the impacted areas. NOSDRA believed at the time that the loading berth where the incident occurred was owned by NNPC. This was subsequently denied by PPMC.

NOSDRA claimed that PPMC did not comply with their request to clean up the impacted areas, as a result of which NOSDRA fined PPMC the sum of NGN 1 million (US$ 6 420). PPMC failed to pay the fine, so NOSDRA commenced legal proceedings at the Federal High Court in Nigeria, for PPMC's failure to pay the fine and clean up the affected area.

In its defence, PPMC pleaded that they did take steps to contact the authorities who in turn contacted the Clean Nigeria Association (a consortium of oil companies) to mobilise equipment to the spill site, in order to contain and recover the spilled oil. PPMC pleaded that these actions effectively contained the spill within the area surrounding a private jetty at Ijala, Warri, Delta State.

PPMC also stated that the *JS Amazing* incident did not impact upon any site requiring clean up and remediation, but that the area had previously been heavily polluted in May 2009 when the NNPC/PPMC pipeline carrying crude oil was vandalised and crude oil had spilled into the river.

Impact

As of October 2011, no details had been provided to the 1992 Fund regarding the impact of the spill from the *JS Amazing* on local communities.

Applicability of the Conventions

Nigeria is a party to the 1992 Civil Liability Convention (1992 CLC) and 1992 Fund Convention. The limit of liability of the owner of the *JS Amazing* under the 1992 CLC is estimated to be 4.51 million SDR (£4.5 million).

Claims for compensation

The 1992 Fund was contacted by two surveyors representing claimants affected by the incident who were seeking compensation for their losses. As of October 2011, no claims had been presented.

Legal issues

Investigation into the incident – contact with the shipowner

The 1992 Fund's Nigerian lawyers contacted the shipowner, Equitorial Energy Ltd, who accepted that an oil spill took place in Ijala in June 2009. The shipowner stated, however, that they had resolved the problem but they refused to divulge any information regarding either the actual steps they had taken or the identity of their insurers.

Civil Proceedings

Legal proceedings were commenced in the Nigerian Federal High Court by NOSDRA for PPMC's alleged failure to clean up the oil spill and/or to pay the fine imposed by NOSDRA.

As of October 2011, no proceedings had been commenced by any claimants against the shipowner, NNPC/PPMC or the 1992 Fund.

Considerations

Very little information is available regarding the incident, including whether the shipowner had pollution liability insurance as required under Article VII.1 of the 1992 CLC at the time of the incident and if any compensation has been paid by the shipowner or his insurer.

The 1992 Fund will continue to monitor the situation, although it appears unlikely that the Fund will be called upon to pay compensation.

View of one of the numerous oil installations in the Niger Delta

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
Incident in Germany	20.06.1996	North Sea coast, Germany	Unknown	Unknown	Unknown
Nakhodka	02.01.1997	Oki Islands, Japan	Russian Federation	13 159	1 588 000 SDR
Osung N°3	03.04.1997	Tunggado, Republic of Korea	Republic of Korea	786	104 500 SDR
Incident in United Kingdom	28.09.1997	Essex, United Kingdom	Unknown	Unknown	Unknown
Santa Anna	01.01.1998	Devon, United Kingdom	Panama	17 134	10 196 280 SDR
Milad 1	05.03.1998	Bahrain	Belize	801	Unknown
Mary Anne	22.07.1999	Philippines	Philippines	465	3 million SDR
Dolly	05.11.1999	Martinique	Dominican Republic	289	3 million SDR
Erika	12.12.1999	Brittany, France	Malta	19 666	€12 843 484
Al Jaziah 1	24.01.2000	Abu Dhabi, United Arab Emirates	Honduras	681	3 million SDR
Slops	15.06.2000	Piraeus, Greece	Greece	10 815	8.2 million SDR

Cause of incident	Estimated quantity of oil spilled (tonnes)	Compensation paid by the 1992 Fund up to 31.10.11	Notes
Unknown	Unknown	€1 284 905	Following out-of-court settlement, shipowner/insurer paid 20% and 1992 Fund paid 80% of final assessment amount.
Breaking	6 200	¥26 089 893 000	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	Nil	1992 Fund paid ¥340 million to claimants. This amount was later reimbursed by 1971 Fund.
Unknown	Unknown	Nil	Claim not pursued.
Grounding	280	Nil	Claim paid by shipowner's insurer.
Damage to hull	Unknown	BD 21 168	1992 Fund did not pursue recourse action against shipowner.
Sinking	Unknown	Nil	Claim paid by shipowner's insurer.
Sinking	Unknown	€1 457 753	1992 Fund paid €1 457 753 to French Government in full settlement of all its losses as a result of the incident.
Breaking	19 800	€116.9 million	Total SA paid the French State €153.9 million, ie, the amount awarded by the Criminal Court which took into account the compensation amounts already received from the Fund. In October 2011 a global settlement was reached between the 1992 Fund, Steamship Mutual, Registro Italiano Navale (RINA) and Total.
Sinking	100-200	Dhs 6 400 000	The 1971 and 1992 Funds took recourse action against shipowner claiming reimbursement of Dhs 6.4 million. The Court decided in favour of the Funds, however, it would have been very difficult to execute the judgement since the shipowner did not have sufficient assets. Since the costs incurred by the Fund in executing the judgement would have exceeded the amount recovered, the Funds discontinued the execution of the judgement and wrote off the debt.
Fire	1 000-2 500	€4 022 099	The Executive Committee decided in 2000 that the *Slops* should not be considered a 'ship' for the purpose of the 1992 Conventions and that therefore these Conventions did not apply to this incident. However, the Greek Supreme Court ultimately decided that the *Slops* was a 'ship' as defined in the 1992 Conventions.

Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GT)	Limit of shipowner's liability under CLC
Incident in Spain	05.09.2000	Spain	Unknown	Unknown	Unknown
Incident in Sweden	23.09.2000	Sweden	Unknown	Unknown	Unknown
Natuna Sea	03.10.2000	Indonesia	Panama	51 095	22 400 000 SDR
Baltic Carrier	29.03.2001	Denmark	Marshall Islands	23 235	DKr118 million
Zeinab	14.04.2001	United Arab Emirates	Georgia	2 178	3 million SDR
Incident in Guadeloupe	30.06.2002	Guadeloupe	Unknown	Unknown	Unknown
Incident in United Kingdom	29.09.2002	United Kingdom	Unknown	Unknown	Unknown
Prestige	13.11.2002	Spain	Bahamas	42 820	€22 777 986
Spabunker IV	21.01.2003	Spain	Spain	647	3 million SDR
Incident in Bahrain	15.03.2003	Bahrain	Unknown	Unknown	Unknown
Buyang	22.04.2003	Geoje, Republic of Korea	Republic of Korea	187	3 million SDR
Hana	13.05.2003	Busan, Republic of Korea	Republic of Korea	196	3 million SDR
Victoriya	30.08.2003	Syzran, Russian Federation	Russian Federation	2 003	3 million SDR
Duck Yang	12.09.2003	Busan, Republic of Korea	Republic of Korea	149	3 million SDR
Kyung Won	12.09.2003	Namhae, Republic of Korea	Republic of Korea	144	3 million SDR

Cause of incident	Estimated quantity of oil spilled (tonnes)	Compensation paid by the 1992 Fund up to 31.10.11	Notes
Unknown	Unknown	Nil	Spanish authorities have recovered their costs from alleged source of the pollution.
Unknown	Unknown	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	Nil	All claims have been paid by shipowner's insurer.
Collision	2 500	Nil	All claims paid by shipowner's insurer.
Sinking	400	US$ 844 000 Dhs2 480 000	1971 and 1992 Funds each contributed 50% of the amounts paid.
Unknown	Unknown	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	£5 400	
Breaking	63 200	€114 484 976	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.
Sinking	Unknown	Nil	
Unknown	Unknown	US$ 1 231 000	All claims paid by 1992 Fund.
Grounding	35-40	Nil	All claims paid by shipowner's insurer.
Collision	34	Nil	All claims paid by shipowner's insurer.
Fire	Unknown	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	Nil	All claims paid by shipowner's insurer.
Stranding	100	KRW 3 328 000 000	

Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GT)	Limit of shipowner's liability under CLC
Jeong Yang	23.12.2003	Yeosu, Republic of Korea	Republic of Korea	4 061	4 510 000 SDR
N°11 Hae Woon	22.07.2004	Geoje, Republic of Korea	Republic of Korea	110	4 510 000 SDR
N°7 Kwang Min	24.11.2005	Busan, Republic of Korea	Republic of Korea	161	4 510 000 SDR
Solar 1	11.08.2006	Guimaras Strait, Philippines	Philippines	998	4 510 000 SDR
Shosei Maru	28.11.2006	Seto Inland Sea, Japan	Japan	153	4 510 000 SDR
Volgoneft 139	11.11.2007	Strait of Kerch, between Russian Federation and Ukraine	Russian Federation	3 463	4 510 000 SDR
Hebei Spirit	07.12.2007	Off Taean, Republic of Korea	China	146 848	KRW 186.8 billion
Incident in Argentina	26.12.2007	Caleta Córdova	Argentina	35 995	24 067 845 SDR
King Darwin	27.09.2008	Port of Dalhousie, New Brunswick, Canada	Canada	42 010	27 863 310 SDR
JS Amazing	06.06.2009	Ijala, Warri River, Delta State, Nigeria	Nigeria	3 384	4 510 000 SDR

Cause of incident	Estimated quantity of oil spilled (tonnes)	Compensation paid by the 1992 Fund up to 31.10.11	Notes
Collision	700	Nil	All claims paid by shipowner's insurer.
Collision	12	Nil	All claims paid by shipowner's insurer.
Collision	37	KRW 2 032 100 000	All litigation was finalised in July 2010.
Sinking	2 100	PHP 986 646 031	Since STOPIA 2006 applies, 1992 Fund is receiving regular reimbursements from shipowner's insurer up to 20 million SDR.
Collision	60	¥899 693 953	In 2009 the shipowner, the 1992 Fund and the colliding ship's interests reached a settlement agreement and the Fund received ¥74 553 897 from the colliding ship.
Breaking	1 200-2 000	Nil	In 2008 the Court issued a ruling declaring that the shipowner's limit of liability calculated on information as published in the Russian Official Gazette was RUB 116 636 700, equivalent to 3 million SDR. The 1992 Fund appealed against the Court's ruling and argued that at the time of the incident the limit of the shipowner's liability under the 1992 CLC was 4.51 million SDR (RUB 175.3 million). The Supreme Court has since confirmed the decision of the Court of Cassation. A further appeal may be made once the Arbitration Court renders a judgement on the merits of the claims. A number of discussions have been held to investigate ways to resolve the resulting insurance gap but without resolution.
Collision	10 900	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 141 771 million in compensation and the 1992 Fund will start paying compensation as soon as the CLC limit has been reached.
Unknown	50-200	Nil	The indicated shipowner's limit of liability is determined based on the GT of the *Presidente Illia* and may change should another or no vessel be found to be liable. 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	Nil	
Unknown	Unknown	Nil	The 1992 Fund was not informed of the incident until May 2011.

Vistabella

Date of incident	7 March 1991
Place of incident	Guadeloupe (France)
Cause of incident	Sinking
Quantity of oil spilled	Unknown
Area affected	Guadeloupe
Flag State of ship	Trinidad and Tobago
Gross tonnage	1 090 GRT
P&I insurer	Maritime General Insurance Company Limited
CLC limit	€359 000 (£310 318)
CLC+Fund limit	60 million SDR (£59 million)
Compensation paid	€1.3 million (£1.1 million) (paid by the 1971 Fund)
Legal proceedings	The 1971 Fund brought recourse action against the shipowner's insurer. The Court of Appeal in Guadeloupe rendered a judgement in favour of the Fund for €1 289 483 plus interest and costs. The 1971 Fund brought summary legal proceedings against the insurer in Trinidad and Tobago to enforce the judgement. The shipowner's insurer is opposing the enforcement.

Conversion into Pounds sterling has been made on the basis of the exchange rate as at 31 October 2011.

Map data ©2011 Europa Technologies, Google, LeadDog Consulting

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, 15 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.

Applicability of the Conventions

At the time of the incident France was Party to both the 1969 Civil Liability Convention and the 1971 Fund Convention. The *Vistabella* was not entered in 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. It was unlikely that the shipowner would be able to meet his obligations under the 1969 Civil Liability Convention (1969 CLC) without effective insurance cover. The shipowner and his insurer did not respond to invitations to cooperate in the claims settlement process.

Claims for compensation

The 1971 Fund paid compensation amounting to FFr8.2 million or €1.3 million 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 issues

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 CLC 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 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 1971 Fund's Trinidad and Tobago lawyers, the 1971 Fund commenced summary proceedings against the insurer in Trinidad and Tobago to enforce the judgement of the Court of Appeal in Guadeloupe.

The 1971 Fund submitted an application for a summary execution of the judgement to the High Court in Trinidad and Tobago. The insurer filed defence pleadings opposing the execution of the judgement on the grounds that it was issued in application of the 1969 CLC 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 CLC, but that it was seeking to enforce a foreign judgement under common law.

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

At a 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, arguing that the judgement had not allowed the insurer to defend itself under the contract of insurance, that it offended the fundamental principle of justice or good morals and that therefore an enforcement of that judgement would be contrary to public policy.

The 1971 Fund filed its submissions in September 2010, arguing that the judgement by the Appeal Court in Guadeloupe did not offend a fundamental principle of justice or morality and that therefore the public policy exception, which is very narrow in its application, could not apply in this case.

Separate proceedings between the owners of the *Vistabella* and the insurer which commenced in 1992 have now been finalised. In a ruling in 2011 the High Court in Trinidad and Tobago dismissed a claim by the shipowners for indemnity, decided in favour of the insurer and declared that the insurer was not liable to the owners of the *Vistabella* under the policy of insurance. The 1971 Fund was never a party to those proceedings. This ruling was brought to the attention of the Court of Appeal by the insurers.

The 1971 Fund has questioned the relevance of the High Court ruling on the proceedings brought by the 1971 Fund against the insurer in Trinidad and Tobago to enforce the judgement of the Court of Appeal in Guadeloupe.

As of October 2011, the Court of Appeal in Trinidad and Tobago had not yet delivered its decision.

Aegean Sea

Date of incident	3 December 1992
Place of incident	La Coruña, Spain
Cause of incident	Grounding
Quantity of oil spilled (approximate)	73 500 tonnes of crude oil
Area affected	North-west coast of Spain
Flag State of ship	Greece
Gross tonnage	57 801 GRT
P&I insurer	United Kingdom Mutual Steamship Assurance Association (Bermuda) Limited (UK Club)
CLC limit	€6.7 million (£5.8 million)
CLC + Fund limit	€57.2 million (£49.4 million)
Compensation paid	€38 386 172 corresponding to Pts 6 386 921 613 (£33 180 891) paid to the Spanish Government
Legal proceedings	There are two claims by a fish pond owner and a fish processor that are still pending in the civil proceedings.

Conversion into Pounds sterling has been made on the basis of the exchange rate as at 31 October 2011.

Map data ©2012 Google, Tele Atlas

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.

Impact

The quantity of oil spilled was not known, since most of the cargo was either dispersed in the sea or consumed by the fire on board the vessel, but it was estimated at some 73 500 tonnes. Several stretches of coastline east and north-east of La Coruña were contaminated, as well as the sheltered Ria de Ferrol.

Response operations

The oil remaining in the aft section of the *Aegean Sea* was removed by salvors working from the shore. Extensive clean-up operations were carried out at sea and on shore.

Applicability of the Conventions

The maximum amount of compensation payable in respect of the *Aegean Sea* incident under the 1969 Civil Liability Convention (1969 CLC) and the 1971 Fund Convention is 60 million SDR. When converted into pesetas using the rate applied for the conversion of the shipowner's limitation, the maximum amount of compensation payable 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.

Legal issues

Global settlement

In June 2001, the 1971 Fund Administrative Council authorised the Director to conclude, 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.

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 to the victims from the owner of the *Aegean Sea*, the UK Club and the 1971 Fund 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 to the Spanish Government.

Civil proceedings

Civil proceedings were initiated by six claimants from the fisheries and mariculture sectors who did not reach agreement with the Spanish State on the amount of their losses.

The Court of Appeal rejected one of the claims and awarded amounts considerably lower than those claimed in respect of three of the claims. These judgements became final and the Spanish State has, under the agreement with the 1971 Fund, paid all the amounts awarded by the Court.

There are two claims by a fish pond owner and a fish processor that are still pending in the civil proceedings.

With regard to the claim by the fish pond owner totalling €799 921, in a judgement rendered in January 2007, the Court of Appeal accepted a procedural argument raised by the Spanish Government and referred the case back to the Court of First Instance for a decision. As of October 2011, the Court had not yet delivered its judgement.

Concerning the claim by the fish processor totalling €1 182 394, in July 2007, the Court of Appeal awarded an amount of €43 453. The claimant requested leave to appeal to the Supreme Court but the Court denied the leave to appeal. The claimant has appealed to the Constitutional Court. As of October 2011, the Court had not yet issued a decision.

The Spanish State will, under the agreement with the 1971 Fund, pay all the amounts awarded by the Courts. There have been no developments in the civil proceedings during 2011.

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.

There have been no further developments in respect of the criminal proceedings during 2011.

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.

Smoke from the burning cargo rising above La Coruña

Iliad

Date of incident	9 October 1993
Place of incident	Pylos, Greece
Cause of incident	Grounding
Quantity of oil spilled (approximate)	200 tonnes of light crude oil
Area affected	Sfaktiria Island and vicinity
Flag State of ship	Greece
Gross tonnage	33 837 GRT
P&I insurer	North of England Protection and Indemnity Association Limited
CLC limit	€4.4 million (£3.8 million)
CLC + Fund limit	60 million SDR (£59 million)
Compensation paid	None
Legal proceedings	1. Limitation proceedings of the owner and insurer of the *Iliad*; 2. Action by the shipowner and ship's insurer in respect of reimbursement for any compensation payments in excess of the shipowner's limitation amount and for indemnification under Article 5.1 of the 1971 Fund Convention; and 3. Action by the owner of a fish farm.
Specific issues	All claims filed in the limitation proceedings are time-barred against the 1971 Fund except for the claims mentioned above.

Conversion into Pounds sterling has been made on the basis of the exchange rate as at 31 October 2011.

Map data ©2011 Basarsoft, Google, Tele Atlas

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.

Applicability of the Conventions

At the time of the incident Greece was Party to the 1969 Civil Liability Convention (1969 CLC) and the 1971 Fund Convention.

Claims for compensation

All claims filed in the limitation proceedings are time-barred against the 1971 Fund except for two: a claim from the shipowner and his insurer in respect of reimbursement for any compensation payments in excess of the shipowner's limitation amount and for indemnification under Article 5.1 of the 1971 Fund Convention; and a claim from the owner of a fish farm for €3 million.

Legal issues

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 for '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 1971 Fund also filed pleadings to the Court in which it dealt with the criteria for the admissibility of claims for compensation under the 1969 CLC 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.

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 a claim 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 1971 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 1971 Fund will, therefore, continue monitoring the legal proceedings.

Civil 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 their rights 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 €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 1971 Fund.

The Port of Pylos, Greece

Nissos Amorgos

Date of incident	28 February 1997
Place of incident	Maracaibo, Bolivarian Republic of Venezuela
Cause of incident	Grounding
Quantity of oil spilled	3 600 tonnes of crude oil
Area affected	Lake Maracaibo
Flag State of ship	Greece
Gross tonnage	50 563 GRT
P&I insurer	Assuranceföreningen Gard (Gard Club)
CLC limit	BsF 3.5 million <11><12> (£505 000)
CLC + Fund limit	60 million SDR (£59 million)
Compensation paid	Bs359 700 000 (£51 870 597) and US$ 24 397 612 (£15 million)
Legal proceedings	1. Two claims by the Republic of Venezuela, for US$ 60 million each. These claims are duplicated and time-barred. 2. One claim by three fish processors for US$ 30 million. 3. In February 2010 the Maracaibo Criminal Court of Appeal upheld the decision of the Maracaibo Court of First Instance that rejected the shipowner's request to limit its liability but decided that it would be for the shipowner and its insurer to obtain reimbursement of the amount paid in compensation to the Venezuelan State from the 1971 Fund.

Conversion into Pounds sterling has been made on the basis of the exchange rate as at 31 October 2011.

Map data ©2012 Europa Technologies, Google, INEGI, LeadDog Consulting, MapLink

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.

Applicability of the Conventions

At the time of the incident Venezuela was Party to the 1969 Civil Liability Convention (1969 CLC) and the 1971 Fund Convention. In June 1997, the Cabimas Criminal Court held that the shipowner's liability was limited to Bs3 473 million and that the 1971 Fund's limit of liability was 60 million SDR (Bs39 738 million or US$ 83 million). The shipowner provided to the Court a bank guarantee in the sum of Bs3 473 million. The Court accepted the guarantee as establishing a limitation fund under Article V of the 1969 CLC. This decision was subsequently rendered null and void by the Maracaibo Criminal Court of First Instance in a judgement

<11> In January 2008 the Bolivar Fuerte (BsF) replaced the Bolivar (Bs) at the rate of 1 BsF = 1000 Bs.

<12> The decision on the limitation fund by the Cabimas Criminal Court in 1997 was reversed by the Maracaibo Criminal Court in February 2010 and the reversal was upheld by the Maracaibo Court of Appeal in March 2011.

Claimant	Category of claim	Settled and paid amount (Bs)	Settled and paid amount (US$)
Petroleos de Venezuela S.A. (PDVSA)	Clean up		8 364 223
Instituto para el Control y la Conservación de la Cuenca del Lago de Maracaibo (ICLAM)	Preventive measures	70 675 468	
Shrimp fishermen and processors	Loss of income		16 033 389
Others	Property damage and loss of income	289 000 000	
Total		**359 675 468 (£51 870 597)**	**24 397 612 (£15 million)**

of February 2010. That judgement was subsequently upheld by the Maracaibo Criminal Court of Appeal in March 2011.

Claims for compensation

In April 1997, the Gard Club and the 1971 Fund set up a claims handling office in Maracaibo. Between 1997 and 2002, claims received by the office were settled for a total of Bs360 million plus US$ 24 397 612 and these amounts were paid to the claimants.

The table above summarises the settled claims, which have all been paid in full.

Legal issues

Civil Proceedings

Three claims for compensation totalling US$ 151 million, summarised in the table below, are pending before the courts in Venezuela.

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 claim was based on a report on the economic consequences of the pollution, written by a Venezuelan university, in which the amount of damage had been calculated by the use of theoretical models. Compensation was claimed for:

- damage to the communities of clams living in the inter-tidal zone affected by the spill – US$ 37 301 942;
- the cost of restoring the quality of the water in the vicinity of the affected coasts – US$ 5 000 000;
- the cost of replacing sand removed from the beach during the clean-up operations – US$ 1 000 000; and
- damage to the beach at a tourist resort – US$ 16 948 454.

The 1971 Fund was notified of the criminal action and submitted pleadings in the proceedings. The progress of this action is detailed below.

In March 1999 the 1971 Fund, the shipowner and the Gard Club presented to the Court a report prepared by their experts on the various items of the claim by the Republic of Venezuela which concluded that the claim had no merit.

At the request of the shipowner, the Gard Club and the 1971 Fund, the Criminal Court appointed a panel of three experts to advise the Court on the technical merits of the claim presented by the Republic of Venezuela. In its report presented in July 1999, the panel unanimously agreed with the findings of the 1971 Fund's experts that the claim had no merit.

Claimant	Category of claim	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 (£93 million)**		

The Republic of Venezuela has also presented a claim against the shipowner, the master of the *Nissos Amorgos* and the Gard Club before the Civil Court of Caracas for an estimated amount of US$ 20 million, later increased to US$ 60 250 396. The 1971 Fund was not notified of this civil action.

The two claims presented by the Republic of Venezuela were duplications, since they were based on the same university report and relate to the same items of damage. The Procuraduria General de la Republica (Attorney General) admitted this duplication in a note submitted to the 1971 Fund's Venezuelan lawyers in August 2001.

At the 1971 Fund Administrative Council's 8th session held in June 2001, the Venezuelan delegation stated that the Republic of Venezuela had decided to withdraw the claim by the Republic of Venezuela that had been presented in the Civil Court of Caracas and that the withdrawal would take place as soon as the necessary documents had been signed by the shipowner and its insurer. It was stated that the withdrawal of that claim had been decided for the purpose of contributing to the resolution of the *Nissos Amorgos* case and to assist the victims, especially the fishermen, who had suffered and were still suffering the economic consequences of the incident. This claim has not yet been withdrawn.

In July 2003, the 1971 Fund Administrative Council recalled the position taken by the governing bodies of the 1971 and 1992 Funds as regards the admissibility of claims relating to damage to the environment. In particular it was recalled that the IOPC Funds had consistently taken the view that claims for compensation for damage to the marine environment calculated on the basis of theoretical models were not admissible, that compensation could be granted only if a claimant had suffered a quantifiable economic loss and that damages of a punitive nature were not admissible. The 1971 Fund Administrative Council considered that the claims by the Republic of Venezuela did not relate to pollution damage falling within the scope of the 1969 CLC and the 1971 Fund Convention and that these claims should therefore be treated as not admissible.

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 and that the Procuraduria General de la Republica (Attorney General) had accepted that this duplication existed, as stated above.

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 since Article 6.1 of the 1971 Fund Convention requires that, in order to prevent a claim from becoming time-barred in respect of the 1971 Fund, a legal action has to be brought against the Fund within six years of the date of the incident and 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.

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). The 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.

In November 2002, the Supreme Court decided to consolidate all civil claims pending in relation to the *Nissos Amorgos* incident. Therefore the civil claim by the Republic of Venezuela is now in the Supreme Court (Civil Section), together with the claims by the three fish processors. The Supreme Court will act as a Court of First Instance and its judgement will be final.

Oiled shoreline following the *Nissos Amorgos* incident

In July 2003 the 1971 Fund Administrative Council noted that the claims by the fish processors had not been substantiated by supporting documentation and that they should therefore be treated as inadmissible.

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 of October 2011 there had been no developments in respect of these claims.

Criminal Proceedings

Criminal proceedings were brought against the master of the *Nissos Amorgos*. 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'[<13>].

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 Maracaibo.

In a judgement rendered in February 2005, the Criminal Court of Appeal in Maracaibo 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 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 Maracaibo 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; and
- 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.

[<13>] 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.

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 Fund was eventually notified of the judgement in April 2010.

Judgement by the Maracaibo Criminal Court of Appeal

In February 2011, the Maracaibo Criminal Court of Appeal upheld the judgement of the Maracaibo Criminal Court of First Instance and dismissed the appeals by the Master, the shipowner, the Gard Club and the submission by the 1971 Fund. In its judgement the Maracaibo Criminal Court of Appeal dealt mainly with the issues set out below.

Shipowner's limitation of liability

In its appeal, the master, shipowner and the Gard Club requested that the Court recognised the shipowner's right to limit its liability, as set out in Article V, paragraph 1 of the 1969 CLC.

In its judgement, the Maracaibo Criminal Court of Appeal upheld the judgement of the Maracaibo Criminal Court of First Instance, stating that the Criminal Court of Cabimas was not a suitable forum for admitting a liability limitation fund since, at that time, it was not certain that a criminal offence had been committed and the damage had not been quantified. The judgement rejected the shipowner's request to limit its liability but decided that it would be for the shipowner and its insurer to obtain reimbursement of the amount paid in compensation to the Venezuelan State from the 1971 Fund.

Time bar

In its appeal, the 1971 Fund pointed out that, under Article 6.1 of the 1971 Fund Convention, rights to compensation became time-barred unless an action had been brought under Article 4, or a notification made pursuant to Article 7.6, within three years of the date when the damage occurred but that in no case should an action be brought after six years from the date of the incident. The 1971 Fund further pointed out that no action had been brought against the 1971 Fund within six years and that the claim by the Republic of Venezuela was, therefore, time-barred.

The Maracaibo Criminal Court of Appeal dismissed this argument on the grounds that the 1971 Fund had been given notice within three years of the date when the damage occurred. The Court also pointed out that the lawyers of the 1971 Fund had attended hearings of the Criminal Court of Cabimas in 1997 and that it had been in a position to effectively intervene throughout the entire proceedings.

In its judgement, the Maracaibo Criminal Court of Appeal stated as follows:

> "… when Article 6 of the Convention states 'rights to compensation under Article 4 shall be extinguished unless action is brought thereunder or a notification has been made pursuant to Article 7, paragraph 6, within three years 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…' it uses the term 'or' as a disjunctive conjunction thereby denoting 'difference, separation or alternative between two or more persons, things or ideas…'. From this it may be taken that the civil action would be time-barred three years from the date of the incident if no legal action or notification was made pursuant to Article 7 of the Fund Convention in the meantime, meaning that the civil action would be time barred in one case or the other. However, in the case in hand one of the circumstances established in the Article arises and it is not then possible to declare the time-bar of the civil action."

Implementation of the Conventions

The 1971 Fund appealed the judgement of the Maracaibo Criminal Court of First Instance on the grounds that those persons and organisations (private individuals, companies and State organisations) who had suffered a loss as a result of the pollution had been compensated for their losses by the Gard Club and the 1971 Fund. The Venezuelan State itself did not have an admissible claim since it had not suffered any loss and was not, therefore, entitled to compensation as claimed and as awarded by the Criminal Court of First Instance in Maracaibo. The 1971 Fund also appealed on the grounds that the amounts of compensation paid to victims had not been taken into consideration.

In its judgement, the Maracaibo Criminal Court of Appeal pointed out that the Maracaibo Criminal Court of First Instance had differentiated between 'direct' and 'indirect' victims, as established by the Environmental Criminal Law of Venezuela (Ley Penal del Ambiente), which provided that the Venezuelan State was the direct victim whereas those natural or corporate persons affected by the pollution were indirect victims. The Court stated that the Venezuelan State, as a direct victim, should be compensated for the environmental damage caused without making any pronouncement with respect to the indirect victims, since their claims had already been satisfied.

Award of compensation to Instituto para el Control y la Conservación de la Cuenca del Lago de Maracaibo (ICLAM)

In 1998, ICLAM, a Venezuelan State organisation responsible for monitoring and environmental control of Lake Maracaibo, submitted a claim in court for the cost incurred in carrying out

a program of water, sediment and marine animal life inspection, sampling and testing following the spill. The claim was assessed by the Gard Club and 1971 Fund at Bs70 675 467 and that amount was paid by the 1971 Fund. Following payment of the claim, ICLAM withdrew their claim from Court and in 2005 the Court confirmed (homologised) the withdrawal.

Notwithstanding the payment made to ICLAM by the 1971 Fund and the subsequent withdrawal of its claim from the Court, the Maracaibo Criminal Court condemned the master, shipowner and Gard Club to pay Bs57.7 million (BsF 57 732). The 1971 Fund appealed on the ground that ICLAM had already been compensated.

The Maracaibo Criminal Court of Appeal rejected this appeal stating that a certain amount of money should be paid for the systematic monitoring of the affected area as, even though it was for the same purpose (as the payments made by the 1971 Fund), it was not for the same item, since one sum was paid in a transaction made in civil proceedings and the other for estimated court costs relating to the reparation of damages arising from the committing of a criminal offence.

The calculation of losses

The 1971 Fund also appealed on the grounds that the method of calculation of losses was not applicable under the 1969 CLC and 1971 Fund Convention in that, even if changes in the ecology of the area had occurred, it had not been demonstrated that these were due to the spill and that an abstract mathematical formula had been used in the calculation of the amount claimed and awarded.

The Maracaibo Criminal Court of Appeal stated that this argument constituted a strategy to transfer the civil proceedings derived from a criminal offence to one of purely maritime scope ignoring the pre-eminence of criminal law and the civil proceedings which arise from the establishment of criminal liability as a result of the committing of a crime.

The Maracaibo Criminal Court of Appeal dismissed the appeal on the grounds that the 1971 Fund should have indicated at the right time its disagreement with the methodology employed by the experts in whose report the amount of the alleged loss had been calculated. It should, however, be noted that the report submitted by the Public Prosecutor had been contested at the time by the 1971 Fund when the Fund had presented its expert's report at the Criminal Court in Cabimas.

The failure to examine the evidence submitted by the 1971 Fund

The 1971 Fund additionally appealed on the grounds that the Maracaibo Criminal Court of First Instance had not examined the evidence submitted by the defendants and the 1971 Fund but had taken into account only the experts' report submitted by the Public Prosecutor in 1997.

The Maracaibo Criminal Court of Appeal dismissed the appeal on the grounds that the Maracaibo Criminal Court of First Instance had examined all the elements on the record and that the judgement was in keeping with the Law.

Considerations on the judgement by the Maracaibo Criminal Court of Appeal

Shipowner's limitation

The Maracaibo Criminal Court of Appeal overturned the decision of the Cabimas Criminal Court of First Instance to grant the shipowner the right to limit its liability under the 1969 CLC. Article V.2 of the 1969 CLC provides that the shipowner is not entitled to limit its liability if the incident has occurred as a result of his actual fault or privity. Neither the Maracaibo Criminal Court of First Instance nor the Maracaibo Criminal Court of Appeal have held in their judgements that there had been actual fault or privity of the shipowner. There are therefore no grounds under the 1969 CLC upon which the shipowner should be denied the right to limit its liability. Nevertheless, as the proceedings stand at present, the shipowner has not established its right to limit its liability.

Shoreline clean-up operations near Maracaibo

The judgement by the Maritime Court of Appeal also stated that it was for the shipowner and its insurer to obtain reimbursement of the amount paid in compensation to the Venezuelan State from the 1971 Fund. It could be inferred from the above, that the Court of Appeal considered that there was no need to hold the 1971 Fund liable, which would not be possible since the 1971 Fund was not a defendant in the proceedings, and that, in the Court's view, the shipowner and its insurer would subsequently approach the 1971 Fund to obtain reimbursement.

The Court's decision therefore appears not to be in accordance with the International Conventions.

Time bar

The Maracaibo Criminal Court of Appeal had concluded that the act of notification of the 1971 Fund and presence of the lawyers acting on behalf of the Fund at hearings that took place in 1997 was sufficient to interrupt the time bar, irrespective of the fact that no action had been taken against the 1971 Fund within six years of the incident occurring as required under Article 6.1 of the 1971 Fund Convention. The Maracaibo Criminal Court of Appeal had also concluded that, providing notice is given as specified in the first sentence of Article 6.1 of the 1971 Fund Convention, it is not necessary for the provisions of the second sentence to be fulfilled in order for the time bar to be avoided. In other words, providing the 1971 Fund had been formally notified of an action against the shipowner within three years of the damage occurring, it was not necessary for an action to be brought against the 1971 Fund within six years.

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 1971 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. 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 since Article 6.1 of the 1971 Fund Convention requires that, in order to prevent a claim from becoming time-barred in respect of the 1971 Fund, a legal action has to be brought against the Fund within six years of the date of the incident. No legal action had been brought against the 1971 Fund by the Republic of Venezuela within the six-year period, which expired in February 2003.

Implementation of the Conventions

The decisions of the Maracaibo Criminal Court of First Instance and Criminal Court of Appeal appear to be based on consideration of the Environmental Criminal Law of Venezuela (Ley Penal del Ambiente) rather than on the provisions of the 1969 CLC and 1971 Fund Convention.

Award of compensation to ICLAM

ICLAM had incurred costs in connection with the incident and the claim submitted by them in this connection had been settled, paid and withdrawn from court. The payment to ICLAM ordered by the Court was also described as 'court costs relating to the reparation of damages arising from the commission of a crime'. Since ICLAM had not, as far as the 1971 Fund is aware, suffered any costs in connection with the court action here concerned, it would appear that the payment ordered was equivalent to a fine and, as such, was not admissible for compensation under the Conventions.

Liability of the 1971 Fund to pay compensation

The judgement of the Maracaibo Criminal Court of First Instance, as upheld by the Maracaibo Criminal Court of Appeal, was a judgement against the master of the *Nissos Amorgos*, the shipowner and the Gard Club. It was not a judgement against the 1971 Fund, which was only a third party to the proceedings, and the judgement did not order the 1971 Fund to pay compensation.

The judgement was subject to appeal to the Supreme Tribunal and, potentially, to the Constitutional Section of the Supreme Tribunal. If, however, the judgement of the Venezuelan courts became enforceable on the shipowner and the Gard Club, the question would arise as to whether any compensation is payable by the 1971 Fund. In this connection, the purpose of the 1971 Fund Convention is, *inter alia*, that the 1971 Fund pays victims of oil pollution compensation of established losses in excess of the amount available under the 1969 CLC. The Venezuelan courts have, however, denied the shipowner the right to limit its liability and ordered the shipowner to pay the full amount of the loss established by the Maracaibo Criminal Court of First Instance. It can be inferred from the judgement that the shipowner and its insurer would subsequently approach the 1971 Fund to obtain reimbursement.

The 1971 Fund Administrative Council may, therefore, have to decide, in the future, whether the shipowner or its insurer has the right to seek compensation from the 1971 Fund in excess of the shipowner's limitation amount as calculated under the 1969 CLC.

That judgement is not yet final and the master, the shipowner, the Gard Club and the 1971 Fund have appealed to the Supreme Tribunal.

Plate Princess

Date of incident	27 May 1997
Place of incident	Puerto Miranda, Lake Maracaibo, Bolivarian Republic of Venezuela
Cause of incident	Leakage of crude oil cargo into ballast during loading operation
Quantity of oil spilled (approximate)	3.2 tonnes of crude oil
Area affected	Unknown
Flag State of ship	Malta
Gross tonnage	30 423 GRT
P&I insurer	The Standard Steamship Owner's Protection & Indemnity Association (Bermuda) Ltd (Standard Club)
CLC limit	BsF 2 844 983 (£410 000)
CLC + Fund limit	60 million SDR (£59 million)
Compensation paid	None
Legal proceedings	1. Claim by the Sindicato Unico de Pescadores de Puerto Miranda (Puerto Miranda Union) (Fishermen's Union) against the shipowner and master of the *Plate Princess*. The 1971 Fund, not a defendant in the proceedings, participated as a third interested party. 2. Claim by FETRAPESCA (Fishermen's Union) against the shipowner and master of the Plate Princess. The 1971 Fund is not a defendant in the proceedings.
Specific issues	A judgement by the Maritime Court of Appeal in Caracas, ordered the 1971 Fund to pay BsF 400 628 022. The 1971 Fund Administrative Council decided in March 2011 that since due process of law had not been followed, the Director should not pay in accordance with the judgement.

Conversion into Pounds sterling has been made on the basis of the exchange rate as at 31 October 2011.

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Incident

On 27 May 1997, the *Plate Princess* spilled some 3.2 tonnes of crude oil whilst loading cargo at an oil terminal in Puerto Miranda (Venezuela). A report from a Maraven/Lagoven helicopter over-flight on the morning of the spill, less than three hours after the spill had been detected on the vessel, stated that no oil was seen at or near the terminal.

An expert from the International Tanker Owners Pollution Federation Ltd (ITOPF) attended the site on 7 June 1997, 11 days after the spill, on behalf of the 1971 Fund and the Standard Steamship Owner's Protection & Indemnity Association (Bermuda) Ltd (Standard Club). The expert informed the 1971 Fund that there were no signs of oil pollution in the immediate vicinity of where the *Plate Princess* had been berthed at the time of the incident.

Impact

The expert was informed that 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.

Response operations

No clean-up work was carried out and it is understood that no fishery or other economic resources were known to have been contaminated.

At the time of the incident, and for several years afterwards, the 1971 Fund had a claims handling office open in Maracaibo, not far from the allegedly affected area, dealing with claims arising out of the *Nissos Amorgos* incident. Throughout that time, the staff of the office had extensive contact with the local fishermen and their union representatives. At no time were the staff of the claims handling office or the 1971 Fund informed that extensive, or indeed any, losses had been suffered by the fishermen as a result of the spill from the *Plate Princess*.

Applicability of the Conventions

At the time of the incident Venezuela was Party to the 1969 Civil Liability Convention (1969 CLC) and the 1971 Fund Convention. In June 1997, the 1971 Fund Executive Committee considered that if it were confirmed that the spilled oil was the same Lagotreco crude oil 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 Executive Committee took the view that the incident would in principle, therefore fall within the scope of the Conventions, as the oil was carried on board as cargo.

Claims for compensation

In June 1997, two fishermen's trade unions namely, FETRAPESCA and the Sindicato Unico de Pescadores de Puerto Miranda (Puerto Miranda Union), presented claims in the Civil Court of Caracas against the shipowner and the master of the *Plate Princess* for estimated amounts of US$ 10 million and US$ 20 million respectively. Neither claim provided details of the losses covered. The claimed amounts were described in both claims as being included for procedural purposes, solely to comply with the requirements of Venezuelan legislation.

In their claims, both FETRAPESCA and Puerto Miranda Union requested the Court to officially notify the Director of the 1971 Fund of the action in court. No such notification was made at that time and there were no developments in respect of these claims between 1997 and 2005. In view of the passage of time and the lack of developments, the 1971 Fund instructed its Caracas lawyers to close their file.

Legal issues

Limitation Proceedings

The limitation amount applicable to the *Plate Princess* under the 1969 CLC was estimated in 1998 to be SDR 3.6 million 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

In June 1997, 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, ie a total of US$ 17 million. The claim was for alleged damage to fishing boats and nets and for loss of earnings. As of October 2011, there had been no developments on this claim.

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 was for the fishermens' loss of income as a result of the spill.

View of a tanker passing Maracaibo

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 in 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.

First Instance judgement in respect of claim by FETRAPESCA

In February 2009, the Maritime Court of First Instance also accepted the claim by FETRAPESCA against the shipowner and the master of the *Plate Princess* even though no documentation had been provided in support of the claim and the losses had not been quantified. The Court ordered the payment of the damages suffered by the claimant, to be quantified by court experts. As of October 2011, the 1971 Fund had not been notified of the judgement.

Claim by the Puerto Miranda Union

In October 2005, the 1971 Fund was formally notified as an interested third party, through diplomatic channels, of the claims presented in the Civil Court in Caracas. No information was provided with the notifications as to the nature or extent of the losses alleged.

In view of the notifications received, the 1971 Fund Administrative Council reviewed the details of the incident at its May 2006 session, ie nine years after the incident took place. Whilst expressing sympathy to the victims of the incident and regretting that the time bar provisions had worked to their detriment, the Administrative Council stated that it was necessary to adhere to the current text of the Conventions and decided that both claims were time-barred in respect of the 1971 Fund.

In December 2006, both claims were transferred to the Maritime Court of First Instance, also in Caracas.

Maritime Court of First Instance in Caracas

In March 2007, nearly ten years after the incident, and following a request by the Maritime Court of First Instance, the 1971 Fund was formally notified as an interested third party of both claims for a second time. The notification did not provide any details of the alleged losses.

Amendment of Puerto Miranda Union claim

There were no further developments until 4 April 2008 when the Puerto Miranda Union submitted an amended claim against the master and the shipowner. The 1971 Fund was not named as a defendant. The lawyers representing the claimants in connection with the amended claim were not those who had been involved in the formulation of the original claim. At that time there were a number of submissions by the lawyers acting for the Puerto Miranda Union, attempting to notify the shipowner and master.

The amended claim set out in detail the nature, extent and quantification of the losses alleged. The claim was for the cost of cleaning 849 boats and replacing some 7 814 packs of nets and two outboard motors. The nets were alleged to have been contaminated by oil to the extent that they were no longer usable. The claimant also alleged that the owners of the 849 boats and 304 foot-fishermen had suffered a total loss of income for a period of 187 calendar days (six months) as a result of being unable to fish because of a lack of equipment. The amended claim was for BsF 3.5 million. The Maritime Court of First Instance of Caracas accepted the amended claim on 10 April 2008.

The amended claim made reference to a large number of documents submitted as evidence of the alleged loss and damage. Without access to these documents it was not possible for the 1971 Fund to review the claim. Through its Caracas lawyers, the 1971 Fund requested that the Court provide copies of the documents submitted by the claimants. However, the number of documents involved was such that it was beyond the capacity of the Court to copy them and the Court put the work in the hands of an outside contractor.

Venezuelan legislation provides time limits for the submission of a defence and, to comply with these requirements, the 1971 Fund was forced to submit defence pleadings on 12 June 2008, despite not having received the copies of the documents submitted by the claimants. The defence submitted by the 1971 Fund stated, *inter alia*, that the claim was time-barred *vis-a-vis* the 1971 Fund.

On 4 August 2008 copies of the documents (16 bundles in total) were received by the 1971 Fund. The 1971 Fund appointed experts to examine the claim and the supporting documents. On the basis of the report issued by its experts, the 1971 Fund submitted further pleadings in November 2008. In these pleadings the 1971 Fund argued that the documentation provided by the claimants did not demonstrate that damage allegedly suffered by the fishermen had been caused by the spill from the *Plate Princess* and that the documentation provided in support of the claim was of doubtful accuracy and had in many instances been falsified. The 1971 Fund also requested that the report by its experts be accepted as evidence. The Court rejected the request on the grounds that the report had not been submitted within the time limit provided by Venezuelan

law. The 1971 Fund appealed against this decision on the grounds that the time limit was not sufficient for the Court to provide copies of the documentation and for the Fund's experts to review them. The appeal was rejected.

Hearing in respect of the claim by the Puerto Miranda Union

In January 2009 the hearing in connection with the revised claim took place. At the hearing, oral evidence was provided by a number of witnesses who were called by the plaintiffs to verify documents submitted as evidence with the amended claim and, in particular, receipts provided to support quantities of fish caught and prices of fish sold. During the hearing, the witnesses accepted that the receipts, which were dated February 1997, were not genuine and had in fact been created after the spill. The majority of witnesses nominated by the plaintiffs in their pleadings to support documents submitted in evidence, did not appear at the hearing. This prevented the master, shipowner and 1971 Fund from either challenging or obtaining confirmation of that evidence.

First Instance judgement in respect of claim by the Puerto Miranda Union

In February 2009, the Maritime Court of First Instance issued its judgement in which it accepted the claim and ordered the master, shipowner and 1971 Fund, although not a defendant[<14>], to pay the damages suffered by the claimant, to be quantified by court experts. The master, the shipowner and the 1971 Fund appealed against the judgement to the Maritime Court of Appeal.

Judgement by the Maritime Court of Appeal in respect of the claim by the Puerto Miranda Union

In September 2009, the Maritime Court of Appeal of Caracas dismissed the appeal by the master, shipowner and 1971 Fund and ordered the defendants to pay compensation to the fishermen affected by the oil spill, to be quantified by three court experts to be appointed. The method to be followed by the experts was set out in detail in the judgement. The method was based on data obtained from the receipts presented by the claimants to support their losses. The judgement also ordered the defendants to pay interest and costs. The master, the shipowner and the 1971 Fund appealed against the judgement to the Supreme Tribunal. [<15>]

Judgement by the Supreme Tribunal

In October 2010, the Supreme Tribunal rendered its judgement, rejecting the 1971 Fund's appeal and confirming the judgement of the Maritime Court of Appeal. Of the five judges comprising the Supreme Tribunal, four voted to reject the appeal and one abstained. The Supreme Tribunal judgement confirmed the decision that the losses should be determined by three court experts to be appointed.

Appeal to the Constitutional Section of the Supreme Tribunal

In February 2011, the 1971 Fund submitted an appeal to the Constitutional Section of the Supreme Tribunal. In its appeal the 1971 Fund requested that the decisions of the Supreme Tribunal and the Maritime Court of Appeal be overturned on the grounds that they contravened the applicable Venezuelan Law, principles and constitutional doctrine with regards to, *inter alia*, the time bar of the action against the 1971 Fund, the time bar due to the claim lapsing for lack of prosecution and the evaluation of the evidence.

Appointment of court experts

At a hearing in November 2010, the Maritime Court of First Instance appointed three experts to carry out the quantification of compensation to be paid to the claimant using the method established by the Maritime Court of Appeal. At the hearing, the master and shipowner nominated one expert and the claimant a second expert. The Court nominated the third expert. Since it was not a defendant, the 1971 Fund could not nominate an expert. The nomination by the master and shipowner was rejected by the Maritime Court of First Instance. The master and shipowner nominated an alternative expert; this nomination was also rejected. The master and shipowner appealed against this decision. The appeal was rejected. The Court then nominated the expert who should have been nominated by the master and shipowner.

Report by the court experts

In January 2011, the court experts presented their report in which they concluded that the compensation to be paid to the claimants was BsF 769 892 085, including interest. This is summarised in the table opposite.

The experts also stated that the total amount available for compensation under the Conventions (60 million SDR) was equivalent to BsF 403 473 005. This was calculated on the basis of the exchange rate applicable on 8 October 2010. The experts further noted that, in its judgement, the Maritime Court of Appeal had fixed the limit of liability of the shipowner at BsF 2 844 983, this being the amount of the Civil Liability limitation fund established in 1997. On that basis, the experts declared that the compensation payable by the 1971 Fund was BsF 400 628 022.

The 1971 Fund requested the Maritime Court of First Instance to reconsider the court experts' report on the grounds that the assessed

[<14>] The Venezuelan Court, in its interpretation of the Conventions, assumes that the 1971 Fund, having been notified, is obliged automatically to pay compensation.

[<15>] For an analysis of the considerations of the decision of the Maritime Court of Appeal at the 1971 Fund Administrative Council's October 2010 session, reference is made to Incidents Involving the IOPC Funds 2010, pages 66-67.

compensation was excessive and exceeded the limits set in the judgement of the Maritime Court of Appeal. In January 2011, the Maritime Court of First Instance upheld the request and appointed two new experts to review the first experts' report.

Shortly thereafter, in February 2011, the 1971 Fund appealed against the judgement of the Supreme Tribunal on liability to the Constitutional Section of the Supreme Tribunal of Venezuela.

In March 2011, the new experts appointed by the Maritime Court of First Instance issued their report. In that report they confirmed the findings of the three original experts.

Judgement of Maritime Court of First Instance on quantum

Also in March 2011, the Maritime Court of First Instance issued its judgement on the quantum of the loss. In that judgement the Maritime Court of First Instance dismissed the appeals by the master, shipowner and the 1971 Fund against the reports issued by the three experts originally appointed by the Court and fixed the quantum of the loss at BsF 769 892 085. The Court ordered the master, as agent of the shipowner, to pay BsF 2 844 983 and the 1971 Fund to pay BsF 400 628 022. The Court also ordered the master and the 1971 Fund to pay costs. The master and the 1971 Fund appealed the judgement on the quantum of compensation to be paid to the Maritime Court of Appeal.

Judgement of the Constitutional Section of the Supreme Tribunal

In June 2011, the Constitutional Section of the Supreme Tribunal dismissed the 1971 Fund's appeal against the judgement of the Supreme Tribunal on liability.

The issues dealt with in the judgement of the Constitutional Section of the Supreme Tribunal can be subdivided as follows:

- Time bar
- The requirement for the Courts to use logic and judgement (*sana critica*)
- Other issues

Time bar

The Constitutional Section of the Supreme Tribunal upheld the interpretation by the Supreme Tribunal of the time-bar provisions of the 1971 Fund Convention. The Constitutional Section of the Supreme Tribunal argued as follows:

> "...analysing the content of Article 6.1 of the 1971 Fund Convention as well as the reasoning of the Supreme Court, this Constitutional Court notes that the Article referred to allows three different possibilities to be presented for the time bar of the claim and, at least as far as the first of these is concerned, its content is not so clear as to proceed with its automatic application - as the appellant suggests in its appeal - since there is an inconsistency as to against whom the time bar operates.
>
> In effect, the Article referred to indicates in its first part that the right to obtain indemnification or compensation will expire '…unless an action is brought thereunder or a notification has been made pursuant to such Articles within three years from the date when the damage occurred …', but does not state against whom this is referring, if it is the owner of the ship, its guarantor or the Fund, so that to consider that it refers to the latter is not correct, since, had it been the intention of the States Party at the time of drafting the Article referred to, this would have been expressly established.
>
> In view of this lack of precision, and since there is no other provision in the 1971 Fund Convention that defines the time bar point, it was reasonable to proceed - as the Supreme Court rightly considered - to interpret the Article concerned considering, in the first instance, the content of Articles 2, 4 and 7 of the Convention, due to the mention that these make to that provision, as well as the contents of Articles III and VII (1) of the CLC, since the payment of compensation anticipated in the Fund Convention originates from the situation that the victims of an oil spill at sea have not obtained full compensation from those obliged to pay under the CLC, in this case the shipowner, its insurer or any person that provided a financial guarantee.

Item	Assessed amount (BsF)
Cost of replacing 7 540 nets	8 713 150
Cost of replacing one outboard motor	17 000
Loss of income fin-fish boat fishermen	704 664 482
Loss of income shrimp boat fishermen	21 624 680
Loss of income shrimp foot fishermen	6 708 064
Interest on cost of replacing nets and motor	28 164 709
Total	**769 892 085 (£111 million)**

This being the case, and seeing that the right of compensation provided in Article 4 of the Fund Convention relates to the right of the victim to obtain from the Fund full compensation when this has not been provided by those who caused the damage (the shipowner or the insurer), and taking into consideration that Article 6.1 *eiusdem* indicates that the time bar on the right to compensation occurs if the legal action in the application of those Articles has not been taken within three (3) years of the damage occurring; it is logical to conclude - as the Supreme Court and lower courts rightly indicated - that the time bar referred to in the Article concerned operates only if the victim had not taken any action against the shipowner or his insurer within three (3) years of the damage occurring in which case the Fund would not be responsible for the complementary compensation required by the lack of financial capacity or reduced compensation obtained from the party that directly caused the damage.

Consequently, if the victim takes its action within the three (3) years counting from the occurrence of the incident (oil spill) against the shipowner or his insurer, the Fund will not be able to use the time bar as a defence against the action taken for full payment of compensation for the damage suffered.

In view of the reasoning set out, this Constitutional Court concludes that the Supreme Tribunal's interpretation of Article 6.1 of the 1971 Fund Convention, was correct in law. For that reason, the allegation of supposed violation of the rights to the defence, to due process and the principle of safe law used by the appellant, lacks foundation."

In its appeal to the Constitutional Section of the Supreme Tribunal, the 1971 Fund had also argued that, in addition to being time-barred under the provisions of the 1971 Fund Convention, the claim by the Puerto Miranda Union was in any event time-barred under Venezuelan law as a result of lack of action by the claimant for a period of twelve months (*perención de instancia).*

The Constitutional Section of the Supreme Tribunal stated that the analysis of this argument was unnecessary since the use of time bar was inadmissible in the type of legal process concerned on the grounds that the action concerned environmental matters. In this connection, the Constitutional Section of the Supreme Tribunal stated:

"… taking into consideration that spillage of oil in the sea is an undoubted factor in upsetting the ecological balance which totally changes the biodiversity of the various species which inhabit that environment, in the majority of cases causing irreparable damage to the ecosystem concerned, this Constitutional Section considers that legal proceedings instituted for the purpose of obtaining compensation or indemnification for the damage suffered on the occasion of such incidents, in essence involve judgements which concern aspects relating to the environment, which touches on a human right recognized in the Constitution.

In this respect, Article 95 (ex Article 19, paragraph 16 of the Act of 2004) of the Organic Law of the Supreme Court of Justice states, as one of the grounds for inadmissibility of the time bar, proceedings which involve environmental matters. In this respect, the provision in question states:

'Article 95. Proceedings shall not be declared time-barred in cases involving environmental matters; or in the cases of claims which are intended to punish offences against human rights, public assets or trafficking in narcotic drugs and psychotropic substances.'

This being the case, and taking into consideration that the subject of the claim in these proceedings derives from an incident in which environmental matters are involved (spillage of oil in the sea) this Constitutional Section considers it unnecessary to analyse the claim for time bar argued by the requesting party, since in this type of proceedings, this form of time bar of the proceedings, as an anomalous mechanism for terminating the proceedings, is inadmissible."

The requirement for the Courts to use 'logic and judgement' (*sana critica*)

The 1971 Fund also appealed to the Constitutional Section of the Supreme Tribunal on the grounds that its right to the protection of the courts had been violated since the Court had ignored the requirement under Venezuelan maritime procedural law for the Court to exercise logic and judgement (*sana critica*) when evaluating the evidence, since documents had been accepted as valid when clearly they were not, while other documents had been rejected on technicalities when clearly they were valid.

The Constitutional Section of the Supreme Court dismissed this argument on the grounds that the system of evaluating the evidence using logic and judgement (*sana critica*) was not the only system that should be used. The Court stated that the Judge, at the time of examining a particular item of evidence, should abide by any special regulations concerning the evaluation of the particular form of evidence or, in the absence of a special

regulation, follow the requirements set out in the Civil Procedure Code. Only in the absence of an express rule for its evaluation is the system of logic and judgement (*sana critica*) applicable.

The Court went on to say that the Supreme Tribunal acted correctly when rejecting the appeal in this connection since the public documents, the private administrative documents, and the documents emanating from third parties accepted during the process, did not have to be evaluated by the rules of the logic and judgement (*sana critica*) alluded to in maritime procedural law, but by the specific rules established in the Civil Procedure Code, which were applicable in preference to maritime procedural law.

Other issues

The 1971 Fund had also appealed on the grounds that the lower instance courts had accepted information contained in certain documents presented by the claimants as evidence without question, had failed to take into account the oral evidence given by witnesses who had appeared at the hearing of the Maritime Court of First Instance in February 2009 and had evaluated the losses in an amount exceeding the amount claimed.

The Constitutional Section of the Supreme Tribunal dismissed these arguments on the grounds that it considered that there had not been any 'grotesque infractions' of interpretation of the Constitution. It stated further that it considered that the requested revision of the judgement of the Supreme Tribunal would not contribute to the uniformity of the interpretation of the rules and principles of the Constitution.

Judgement of Maritime Court of Appeal on quantum

In July 2011, the Maritime Court of Appeal dismissed the appeals submitted by the master and 1971 Fund against the judgement of the Maritime Court of First Instance on the quantum of compensation. The 1971 Fund argued in its appeal, *inter alia*, that the quantum was excessive in relation to the normal income earned by fishermen in 1997 and violated Venezuelan procedural law (time bar arising from lack of prosecution (*perención de instancia*)). The Maritime Court of Appeal rejected the arguments, stating that the experts had followed the parameters specified in its decision of September 2009, and instead confirmed the March 2011 judgement of the Maritime Court of First Instance, which had ordered the 1971 Fund to pay BsF 400 628 022[<16>], plus costs.

The master, shipowner and the 1971 Fund applied to the Maritime Court of Appeal for leave to appeal to the Supreme Tribunal. This was denied. The 1971 Fund has appealed this decision.

Considerations by the 1971 Fund Administrative Council

March 2011

At the March 2011 session of the 1971 Fund Administrative Council, the Director submitted a document reporting on developments in the *Plate Princess* incident and requested the 1971 Fund Administrative Council to give the Director such instructions as it deemed appropriate. Also in March 2011, the Venezuelan delegation submitted two documents requesting the Director to make prompt payments. A decision was, therefore, required from the Administrative Council as to whether the Director should be instructed to make prompt payment of compensation.

A lengthy debate took place in response to the three documents presented to the Administrative Council and a number of clarifications were sought from the Director. Amongst these clarifications was the Director's explanation that, although the 1971 Fund Executive Committee had agreed in 1997 to make payments in respect of this case, the intention of Internal Regulations 7.4 and 7.5, which governed the grant of the Director's authority to make payments, was to give the Director authority to settle claims up to a certain level if a spill occurred between meetings of the governing bodies. The Director stressed that the decision of the 1971 Fund Executive Committee was not related to specific claims.

During the debate it was emphasised that this was a very important case, with implications for the entire compensation regime. Pointing out that the Fund regime represented an act of solidarity amongst Member States to provide compensation payments to victims of oil spill incidents, one delegation recalled that, on the previous day, the Director had drawn attention to the necessity for uniform application of the Conventions by national Courts, and had stressed that it was necessary for the various Conventions to be properly implemented and applied in the Member States which were signatories.

Noting the importance of Article X of the 1969 CLC, that delegation pointed out that sometimes national courts did not agree with the deliberations of the governing bodies and that it was accepted that this would occur. However, that delegation continued, in accepting the principle that the decisions of national courts were binding on the Funds, the governing bodies also had to be satisfied that due process had been followed, and that the Court procedures had been fair. In this instance, there was considerable doubt that this had been the case.

<16> The court experts calculated that the total amount available for compensation under the 1969 CLC and the 1971 Fund Convention (SDR 60 million) was equivalent to BsF 403 473 004.80 and that the compensation payable by the 1971 Fund should be BsF 400 628 022 (BsF 403 473 004.80 minus BsF 2 844 983).

Concern was expressed by a large majority of delegations who considered that due process of law had not been followed in arriving at the judgements reached by the Venezuelan courts, and furthermore that the 1971 Fund had not been given reasonable notice and a fair opportunity to present its case in accordance with Article 8 of the 1971 Fund Convention, and Article X of the 1969 CLC.

Other points of view were also expressed, including a statement that the Court procedures for requesting copies of documents provided to support the claim should have been known to the 1971 Fund's lawyers, and that the lawyers should have taken this into account; that the claim could not be time-barred if there had already been an agreement to pay; and that Article 7.6 of the 1971 Fund Convention stated that the Fund could not challenge a final judgement, even if it had not intervened in the proceedings.

The question was raised as to why there was no money available to pay compensation, since Article 44.1(a) of the 1971 Fund Convention required that, if the Convention ceased to be in force, the Fund should meet its obligations in respect of any incident occurring before the Convention ceased to be in force. The request by Venezuela that payment to the claimants should proceed received support from a few delegations.

Decision by the 1971 Fund Administrative Council in March 2011

The 1971 Fund Administrative Council decided to instruct the Director not to make any payments in respect of the *Plate Princess* incident, and to keep the Administrative Council advised of developments in the legal proceedings in the Venezuelan courts.

October 2011

At the 1971 Fund Administrative Council's October 2011 session, the Director submitted a document in which he commented upon the most significant issues addressed in the judgement by the Constitutional Section of the Supreme Court Tribunal which had been given in June 2011, and on the enforceability of that judgement. In the document, the Director informed the Administrative Council as set out below.

Time-bar issue

In its judgement, the Constitutional Section of the Supreme Tribunal had rejected the appeal by the 1971 Fund concerning the time bar on the same grounds as those employed by the Supreme Tribunal and the Maritime Court of Appeal, namely that, to avoid the time bar, it was necessary only to take a legal action against the shipowner or his insurer within three years from the date of the damage.

The Director maintained his view that the action to which Article 6, paragraph 1 of the 1971 Fund Convention referred, could be taken either against the 1971 Fund or against the shipowner. If the action was against the shipowner then the claimant, to prevent the claim becoming time-barred must formally notify the 1971 Fund of that action within three years.

In the Director's opinion, the interpretation of Article 6 of the 1971 Fund Convention established by the Venezuelan courts could not be correct since, if all a claimant had to do to avoid the time bar was take an action against the shipowner within three years of the damage occurring, there would have been no need to include a clause requiring him to formally notify the 1971 Fund of that action within the same time period.

The Director accepted that Article 6, paragraph 1 of the 1971 Fund Convention did not stipulate against whom the action referred to must be taken within three years. However, since the 1969 CLC set out the relationship between the victim of pollution damage and the shipowner and his insurer, it was logical that any legal action required under that Convention would be actions against the shipowner and/or his insurer. Similarly, since the 1971 Fund Convention set out the relationship between the victim of pollution damage and the 1971 Fund, it was logical that any legal action required under that Convention would be against the 1971 Fund.

The Director agreed with the view of the Administrative Council that the correct interpretation of Article 6, paragraph 1 of the 1971 Fund Convention was that the action to be brought within three years was an action against the 1971 Fund and that the notification to be made was of the action against the shipowner or its insurer referred to in Article 7, paragraph 6.

The application by the Courts of 'logic and judgement' (*sana critica*)

In his document, the Director noted with concern that the Constitutional Section of the Supreme Tribunal considered that logic and judgement (*sana critica*) should only be employed by the Court when determining the quantum of the loss in the absence of any special regulations concerning the evaluation of evidence or, in the absence of any special regulations, those set out in the Civil Procedure Code.

The quantum of the assessment

The court experts appointed by the Maritime Court of First Instance assessed the compensation to be paid to the fishermen represented by the Puerto Miranda Union as BsF 769 892 085. Of this amount, BsF 726.3 million concerned six months' loss of catch income from 849 boats. The Director noted that this was equivalent to an

income for each boat of BsF 1 669 756 per year. Assessment of the claims in the *Nissos Amorgos* incident indicated that, in 1997, the average annual catch sale income per shrimp boat was US$ 17 400. The amount calculated by the Court experts in the *Plate Princess* was therefore 22 times higher than in the *Nissos Amorgos*. Since the fishing concerned was an artisanal activity (the boats are small (in the majority less than 10m in length) and are normally crewed by two persons), the Director considered that the assessed loss far exceeded any real loss that could have occurred, even if activity had been suspended.

Calculation of the amount to be paid by the 1971 Fund

The limit of liability of the shipowner and the total amount available for compensation under the Conventions had been calculated by the Maritime Court using SDR/Bolivar exchange rates applicable on dates differing by 14 years. Since the Bolivar had depreciated relative to the SDR by some 750% in the intervening period, the amounts ordered by the Court to be paid by the shipowner or his insurer and the 1971 Fund differed substantially from the amounts that would have applied had the shipowners' limitation amount and the amount of compensation available under the Conventions been converted from SDR to the national currency using exchange rates applicable on the same date.

The provision of reasonable notice and a fair opportunity for the 1971 Fund to present its case

The Director recalled that at the 1971 Fund Administrative Council's March 2011 session, a number of delegations expressed doubt that the 1971 Fund had been given reasonable notice and a fair opportunity to present its case, as required under Article X of the 1969 CLC. The Director agreed with those delegations, not only because the documents provided as evidence by the claimants in support of their claim were not available to the 1971 Fund prior to the time limit for submission of defence pleadings but because it would have been impossible to adequately investigate and defend a claim submitted in detail some 11 years after the damage occurred even if sufficient time had been allowed by the Court for the documentary evidence to be analysed prior to submission of defence pleadings. The Director considered this to be particularly the case since, in the view of the expert who had examined the documentation, it was clear that many of those documents submitted in evidence had been falsified.

Director's considerations

Having reviewed the judgement of the Constitutional Section of the Supreme Court Tribunal, the Director agreed with the 1971 Fund Administrative Council that the claim by the Puerto Miranda Union was time-barred, that the 1971 Fund was not given reasonable notice and a fair opportunity to present its case and that sub-paragraph (b) of Article X, paragraph 1 of the 1969 CLC applied, as a result of which, a final judgement would not be enforceable against the 1971 Fund.

The Director, therefore, concluded that there were no grounds for the Administrative Council to change their previous instructions to the Director not to make any payments in respect of the *Plate Princess* incident.

The Director also highlighted that the 1971 Fund had appealed to the Maritime Court of Appeal against its decision to refuse leave of appeal to the Supreme Tribunal in connection with the quantification of loss, and was awaiting its decision.

In this regard, the Director noted that, in any event, no payment of compensation to the Puerto Miranda Union would be possible until the losses suffered by FETRAPESCA had been established by a final judgement from a competent court. Since the 1971 Fund had not yet been notified of the judgement of the Maritime Court of First Instance in respect of that claim and since it was likely that this judgement would be appealed by the 1971 Fund, the Director considered that it was not likely that any compensation payments would be made in respect of this incident for some time.

Statement by the Venezuelan delegation

Following the submission of the Director's document, the delegation of Venezuela made a statement which was annexed to the Record of Decisions of the October 2011 sessions of the 1971 Fund Administrative Council, where a number of points of detail were raised.

Decision by the 1971 Fund Administrative Council in October 2011

The 1971 Fund Administrative Council decided to confirm its instructions given in March 2011 not to make any payments in respect of the *Plate Princess* incident and instructed the Director to continue to monitor the outcome of the legal actions in Venezuela.

The 1971 Fund Administrative Council also instructed the Director to prepare a report on the points raised in the intervention by the Venezuelan delegation and a report on the legal basis for the 1971 Fund to refuse payment under Article X of the 1969 CLC and to report back to the 1971 Fund Administrative Council at its next session.

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	Cause of incident
Irving Whale	07.09.1970	Gulf of St. Lawrence, Canada	Canada	2 261	Unknown	Sinking
Antonio Gramsci	27.02.1979	Ventspils, USSR	USSR	27 694	RUB 2 431 584	Grounding
Miya Maru N°8	22.03.1979	Bisan Seto, Japan	Japan	997	¥37 710 340	Collision
Tarpenbek	21.06.1979	Selsey Bill, United Kingdom	Germany	999	£63 356	Collision
Mebaruzaki Maru N°5	08.12.1979	Mebaru, Japan	Japan	19	¥845 480	Sinking
Showa Maru	09.01.1980	Naruto Strait, Japan	Japan	199	¥8 123 140	Collision
Unsei Maru	09.01.1980	Akune, Japan	Japan	99	¥3 143 180	Collision
Tanio	07.03.1980	Brittany, France	Madagascar	18 048	FFr11 833 718	Breaking
Furenäs	03.06.1980	Oresund, Sweden	Sweden	999	SKr612 443	Collision
Hosei Maru	21.08.1980	Miyagi, Japan	Japan	983	¥35 765 920	Collision
Jose Marti	07.01.1981	Dalarö, Sweden	USSR	27 706	SKr23 844 593	Grounding
Suma Maru N°11	21.11.1981	Karatsu, Japan	Japan	199	¥7 396 340	Grounding
Globe Asimi	22.11.1981	Klaipeda, USSR	Gibraltar	12 404	RUB 1 350 324	Grounding
Ondina	03.03.1982	Hamburg, Germany	Netherlands	31 030	DM10 080 383	Discharge
Shiota Maru N°2	31.03.1982	Takashima Island, Japan	Japan	161	¥6 304 300	Grounding
Fukutoko Maru N°8	03.04.1982	Tachibana Bay, Japan	Japan	499	¥20 844 440	Collision

Estimated quantity of oil spilled (tonnes)	Compensation paid by the 1971 Fund up to 31.10.11	Indemnification paid by the 1971 Fund	Notes
Unknown	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.
5 500	SKr95 707 157		
540	¥140 110 582	¥9 427 585	¥5 438 909 recovered by way of recourse.
Unknown	£363 550		
10	¥10 188 335	¥211 370	
100	¥103 104 874	¥2 030 785	¥9 893 496 recovered by way of recourse.
<140	Nil		
13 500	FFr222 140 643		US$ 17 480 028 recovered by way of recourse.
200	SKr3 187 687 DKr 418 589	SKr153 111	SKr449 961 recovered by way of recourse.
270	¥213 322 865	¥8 941 480	¥18 221 905 recovered by way of recourse.
1 000	Nil		Shipowner's defence that he should be exonerated from liability rejected in final court judgement.
10	¥6 426 857	¥1 849 085	
>16 000		US$ 467 953	
200-300	DM11 345 174		
20	¥72 671 789		
85	¥363 731 755	¥5 211 110	

Ship	Date of incident	Place of incident	Flag State of ship	Gross register tonnage (GRT)	Limit of shipowner's liability under 1969 CLC	Cause of incident
Kifuku Maru N°35	01.12.1982	Ishinomaki, Japan	Japan	107	¥4 271 560	Sinking
Shinkai Maru N°3	21.06.1983	Ichikawa, Japan	Japan	48	¥1 880 940	Discharge
Eiko Maru N°1	13.08.1983	Karakuwazaki, Japan	Japan	999	¥39 445 920	Collision
Koei Maru N°3	22.12.1983	Nagoya, Japan	Japan	82	¥3 091 660	Collision
Tsunehisa Maru N°8	26.08.1984	Osaka, Japan	Japan	38	¥964 800	Sinking
Koho Maru N°3	05.11.1984	Hiroshima, Japan	Japan	199	¥5 385 920	Grounding
Koshun Maru N°1	05.03.1985	Tokyo Bay, Japan	Japan	68	¥1 896 320	Collision
Patmos	21.03.1985	Strait of Messina, Italy	Greece	51 627	Lit 13 263 703 650	Collision
Jan	02.08.1985	Aalborg, Denmark	Germany	1 400	DKr1 576 170	Grounding
Rose Garden Maru	26.12.1985	Umm al Qaiwain, United Arab Emirates	Panama	2 621	US$ 364 182	Mishandling of oil discharge
Brady Maria	03.01.1986	Elbe Estuary, Germany	Panama	996	DM324 629	Collision
Take Maru N°6	09.01.1986	Sakai-Senboku, Japan	Japan	83	¥3 876 800	Discharge
Oued Gueterini	18.12.1986	Algiers, Algeria	Algeria	1 576	Din1 175 064	Discharge
Thuntank 5	21.12.1986	Gävle, Sweden	Sweden	2 866	SKr2 741 746	Grounding
Antonio Gramsci	06.02.1987	Borgå, Finland	USSR	27 706	RUB 2 431 854	Grounding

Estimated quantity of oil spilled (tonnes)	Compensation paid by the 1971 Fund up to 31.10.11	Indemnification paid by the 1971 Fund	Notes
33	¥598 181		
3.5	¥1 005 160	¥470 235	
357	¥24 735 109	¥9 861 480	¥14 843 746 recovered by way of recourse.
49	¥26 982 248	¥772 915	¥8 994 083 recovered by way of recourse.
30	¥16 610 200	¥241 200	
20	¥94 111 818	¥1 346 480	
80	¥26 124 589	¥474 080	¥8 866 222 recovered by way of recourse.
700	Nil		
300	DKr9 455 661	DKr 394 043	
Unknown	Nil		
200	DM3 220 511		DM333 027 recovered by way of recourse.
0.1		¥104 987	
15	US$ 1 133 FFr708 824 Din 5 650 £126 120	Din 293 766	
150-200	SKr23 217 632	SKr 685 437	
600-700	FM1 849 924		Clean-up claims in USRR (RUB 1 417 448) not paid by 1971 Fund since USSR not Member of 1971 Fund at time of incident.

Ship	Date of incident	Place of incident	Flag State of ship	Gross register tonnage (GRT)	Limit of shipowner's liability under 1969 CLC	Cause of incident
Southern Eagle	15.06.1987	Sada Misaki, Japan	Panama	4 461	¥93 874 528	Collision
El Hani	22.07.1987	Indonesia	Libya	81 412	£7 900 000	Grounding
Akari	25.08.1987	Dubai, United Arab Emirates	Panama	1 345	£92 800	Fire
Tolmiros	11.09.1987	West coast, Sweden	Greece	48 914	SKr50 million	Unknown
Hinode Maru N°1	18.12.1987	Yawatahama, Japan	Japan	19	¥608 000	Mishandling of cargo
Amazzone	31.01.1988	Brittany, France	Italy	18 325	FFr13 860 369	Storm damage to tanks
Taiyo Maru N°13	12.03.1988	Yokohama, Japan	Japan	86	¥2 476 800	Discharge
Czantoria	08.05.1988	St. Romuald, Canada	Canada	81 197	Unknown	Collision with berth
Kasuga Maru N°1	10.12.1988	Kyoga Misaki, Japan	Japan	480	¥17 015 040	Sinking
Nestucca	23.12.1988	Vancouver Island, Canada	United States of America	1 612	Unknown	Collision
Fukkol Maru N°12	15.05.1989	Shiogama, Japan	Japan	94	¥2 198 400	Overflow from supply pipe
Tsubame Maru N°58	18.05.1989	Shiogama, Japan	Japan	74	¥2 971 520	Mishandling of oil transfer
Tsubame Maru N°16	15.06.1989	Kushiro, Japan	Japan	56	¥1 613 120	Discharge
Kifuku Maru N°103	28.06.1989	Otsuji, Japan	Japan	59	¥1 727 040	Mishandling of cargo

Estimated quantity of oil spilled (tonnes)	Compensation paid by the 1971 Fund up to 31.10.11	Indemnification paid by the 1971 Fund	Notes
15	Nil		
3 000	Nil		
1 000	Dhs 864 292 US$ 187 165		US$ 160 000 refunded by shipowner's insurer.
200	Nil		
25	¥1 847 225	¥152 000	
2 000	FFr1 286 977		FFr1 000 000 recovered from shipowner's insurer.
6	¥6 134 885	¥619 200	
Unknown	Nil		1971 Fund Convention not applicable, as incident occurred before entry into force of Convention for Canada.
1 100	¥425 365 167	¥4 253 760	
Unknown	Nil		1971 Fund Convention not applicable, as incident occurred before entry into force of Convention for Canada.
0.5	¥492 635	¥549 600	
7	¥19 159 905	¥742 880	
Unknown	¥273 580	¥403 880	
Unknown	¥8 285 960	¥431 761	

Ship	Date of incident	Place of incident	Flag State of ship	Gross register tonnage (GRT)	Limit of shipowner's liability under 1969 CLC	Cause of incident
Nancy Orr Gaucher	25.07.1989	Hamilton, Canada	Liberia	2 829	Can$473 766	Overflow during discharge
Dainichi Maru N°5	28.10.1989	Yaizu, Japan	Japan	174	¥4 199 680	Mishandling of cargo
Daito Maru N°3	05.04.1990	Yokohama, Japan	Japan	93	¥2 495 360	Mishandling of cargo
Kazuei Maru N°10	11.04.1990	Osaka, Japan	Japan	121	¥3 476 160	Collision
Fuji Maru N°3	12.04.1990	Yokohama, Japan	Japan	199	¥5 352 000	Overflow during supply operation
Volgoneft 263	14.05.1990	Karlskrona, Sweden	USSR	3 566	SKr3 205 204	Collision
Hato Maru N°2	27.07.1990	Kobe, Japan	Japan	31	¥803 200	Mishandling of cargo
Bonito	12.10.1990	River Thames, United Kingdom	Sweden	2 866	£241 000	Mishandling of cargo
Rio Orinoco	16.10.1990	Anticosti Island, Canada	Cayman Islands	5 999	Can$1 182 617	Grounding
Portfield	05.11.1990	Pembroke, Wales, United Kingdom	United Kingdom	481	£39 970	Sinking
Vistabella	07.03.1991	Caribbean	Trinidad and Tobago	1 090	144 970 SDR	Sinking

Estimated quantity of oil spilled (tonnes)	Compensation paid by the 1971 Fund up to 31.10.11	Indemnification paid by the 1971 Fund	Notes
250	Nil		
0.2	¥2 160 610	¥1 049 920	
3	¥ 5 490 570	¥623 840	
30	¥49 443 626	¥869 040	¥45 038 833 recovered by way of recourse.
Unknown	¥ 96 431	¥1 338 000	¥430 329 recovered by way of recourse.
800	SKr16 849 328		
Unknown	¥1 087 700	¥200 800	
20	Nil		
185	Can$12 831 891		
110	£259 509	£17 155	
Unknown	€1 255 803 £14 250		1971 Fund brought recourse action against shipowner's insurer and Court of Appeal in Guadeloupe rendered judgement in favour of Fund for €1 289 483 plus interest and costs. Fund has applied for summary judgement in Trinidad and Tobago in execution of Court of Appeal's judgement. In March 2008 the Court in Trinidad and Tobago delivered a judgement in the 1971 Fund's favour. The insurer has appealed in the Court of Appeal in Trinidad and Tobago. The limit of shipowners liability has not been confirmed and the figure quoted is based on the reported GRT.

Ship	Date of incident	Place of incident	Flag State of ship	Gross register tonnage (GRT)	Limit of shipowner's liability under 1969 CLC	Cause of incident
Hokunan Maru N°12	05.04.1991	Okushiri Island, Japan	Japan	209	¥3 523 520	Grounding
Agip Abruzzo	10.04.1991	Livorno, Italy	Italy	98 544	Lit 22 525 million	Collision
Haven	11.04.1991	Genoa, Italy	Cyprus	109 977	Lit 23 950 220 000	Fire and explosion
Kaiko Maru N°86	12.04.1991	Nomazaki, Japan	Japan	499	¥14 660 480	Collision
Kumi Maru N°12	27.12.1991	Tokyo Bay, Japan	Japan	113	¥3 058 560	Collision
Fukkol Maru N°12	09.06.1992	Ishinomaki, Japan	Japan	94	¥2 198 400	Mishandling of oil supply
Aegean Sea	03.12.1992	La Coruña, Spain	Greece	57 801	Pts 1 121 219 450	Grounding
Braer	05.01.1993	Shetland, United Kingdom	Liberia	44 989	£4 883 840	Grounding
Kihnu	16.01.1993	Tallinn, Estonia	Estonia	949	113 000 SDR	Grounding
Sambo N°11	12.04.1993	Seoul, Republic of Korea	Republic of Korea	520	KRW 77 786 224	Grounding
Taiko Maru	31.05.1993	Shioyazaki, Japan	Japan	699	¥29 205 120	Collision
Ryoyo Maru	23.07.1993	Izu Peninsula, Japan	Japan	699	¥28 105 920	Collision
Keumdong N°5	27.09.1993	Yeosu, Republic of Korea	Republic of Korea	481	KRW 77 417 210	Collision

Estimated quantity of oil spilled (tonnes)	Compensation paid by the 1971 Fund up to 31.10.11	Indemnification paid by the 1971 Fund	Notes
Unknown	¥ 6 144 829	¥880 880	
2 000	Nil	Lit 1 666 031 931	Total damages less than shipowner's liability.
Unknown	Lit 71 584 970 783 FFr23 510 228	£2 500 000	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.
25	¥93 067 813	¥3 665 120	
5	¥1 056 518	¥764 640	¥650 522 recovered by way of recourse.
Unknown	¥4 243 997	¥549 600	
73 500	Pts 6 386 921 613	Pts 278 197 307	Global settlement reached between shipowner insurer/1971 Fund and Spanish State. Pursuant to agreement shipowner/insurer paid Pts 840 000 000 and 1971 Fund paid Pts 6 386 921 613.
84 000	£51 938 938		
140	FM543 618		
4	KRW 219 714 755		US$ 22 504 recovered from shipowner's insurer.
520	¥1 093185 055	¥7 301 280	¥49 104 248 recovered by way of recourse.
500	¥8 433 001	¥7 026 480	¥10 455 440 recovered by way of recourse.
1 280	KRW 16 275 151 969	KRW 12 857 130	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	Cause of incident
Iliad	09.10.1993	Pylos, Greece	Greece	33 837	Drs 1 496 533 000	Grounding
Seki	30.03.1994	Fujairah, United Arab Emirates and Oman	Panama	153 506	14 million SDR	Collision
Daito Maru N°5	11.06.1994	Yokohama, Japan	Japan	116	¥3 386 560	Overflow during loading operation
Toyotaka Maru	17.10.1994	Kainan, Japan	Japan	2 960	¥81 823 680	Collision
Hoyu Maru N°53	31.10.1994	Monbetsu, Japan	Japan	43	¥1 089 280	Mishandling of oil supply
Sung Il N°1	08.11.1994	Onsan, Republic of Korea	Republic of Korea	150	KRW 23 million	Grounding
Spill from unknown source	30.11.1994	Mohammédia, Morocco	-	-	-	Unknown
Boyang N°51	25.05.1995	Sandbaeg Do, Republic of Korea	Republic of Korea	149	19 817 SDR	Collision
Dae Woong	27.06.1995	Kojung, Republic of Korea	Republic of Korea	642	KRW 95 million	Grounding
Sea Prince	23.07.1995	Yosu, Republic of Korea	Cyprus	144 567	KRW 18 308 275 906	Grounding

Estimated quantity of oil spilled (tonnes)	Compensation paid by the 1971 Fund up to 31.10.11	Indemnification paid by the 1971 Fund	Notes
200	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.
16 000	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.
0.5	¥1 187 304	¥846 640	
560	¥695 736 817	¥20 455 920	¥31 021 717 recovered by way of recourse.
Unknown	¥4 157 715	¥272 320	
18	KRW 37 780 112		Shipowner lost right to limit his liability because limitation proceedings not commenced within period specified under Korean law.
Unknown	Mor Dhr 2 600 000		Not established that oil originated from a ship as defined in 1971 Fund Convention.
160	Nil		Clean up claim (KRW 142 million) time-barred as necessary legal action not taken.
1	KRW 43 517 127		
5 035	KRW 50 227 315 595	KRW 7 410 928 540	KRW 18 308 275 906 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	Cause of incident
Yeo Myung	03.08.1995	Yosu, Republic of Korea	Republic of Korea	138	KRW 21 465 434	Collision
Shinryu Maru N°8	04.08.1995	Chita, Japan	Japan	198	¥3 967 138	Mishandling of oil supply
Senyo Maru	03.09.1995	Ube, Japan	Japan	895	¥20 203 325	Collision
Yuil N°1	21.09.1995	Busan, Republic of Korea	Republic of Korea	1 591	KRW 351 924 060	Sinking
Honam Sapphire	17.11.1995	Yosu, Republic of Korea	Panama	142 488	14 million SDR	Contact with fender
Toko Maru	23.01.1996	Anegasaki, Japan	Japan	699	¥18 769 567	Collision
Sea Empress	15.02.1996	Milford Haven, Wales, United Kingdom	Liberia	77 356	£7 395 748	Grounding
Kugenuma Maru	06.03.1996	Kawasaki, Japan	Japan	57	¥1 175 055	Mishandling of oil supply
Kriti Sea	09.08.1996	Agioi Theodoroi, Greece	Greece	62 678	€6 576 100	Mishandling of oil supply
N°1 Yung Jung	15.08.1996	Busan, Republic of Korea	Republic of Korea	560	KRW 122 million	Grounding
Nakhodka	02.01.1997	Oki Islands, Japan	Russian Federation	13 159	1 588 000 SDR	Breaking
Tsubame Maru N°31	25.01.1997	Otaru, Japan	Japan	89	¥1 843 849	Overflow during loading operation

Estimated quantity of oil spilled (tonnes)	Compensation paid by the 1971 Fund up to 31.10.11	Indemnification paid by the 1971 Fund	Notes
40	KRW 1 553 029 739		KRW 560 945 437 paid by shipowner's insurer.
0.5	¥9 634 576 US$ 5 663		¥3 718 455 paid by shipowner's insurer.
94	¥366 578 453		¥279 973 101 recovered by way of recourse.
Unknown	KRW 27 177 996 728		
1 800	KRW 10 259 000 000		US$ 13.5 million paid by shipowner's insurer.
4	Nil		Total damage less than owner's liability.
72 360	£36 806 484	£1 835 035	£20 million recovered from Milford Haven Port Authority by 1971 Fund by way of recourse.
0.3	¥2 278 468		¥1 197 267 recovered by way of recourse.
30	€3 774 000		The aggregate amount of all claims falls within the limitation amount.
28	KRW 771 208 587		KRW 690 million paid by shipowner's insurer.
6 200	¥26 089 893 000		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.
0.6	¥8 131 327		¥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	Cause of incident
Nissos Amorgos	28.02.1997	Maracaibo, Venezuela	Greece	50 563	BsF 3.5 million	Grounding
Daiwa Maru N°18	27.03.1997	Kawasaki, Japan	Japan	186	¥3 372 368	Mishandling of oil supply
Jeong Jin N°101	01.04.1997	Busan, Republic of Korea	Republic of Korea	896	KRW 246 million	Overflow during loading operation
Osung N°3	03.04.1997	Tunggado, Republic of Korea	Republic of Korea	786	104 500 SDR	Grounding
Plate Princess	27.05.1997	Puerto Miranda, Venezuela	Malta	30 423	3.6 million SDR	Overflow during loading operation
Diamond Grace	02.07.1997	Tokyo Bay, Japan	Panama	147 012	14 million SDR	Grounding
Katja	07.08.1997	Le Havre, France	Bahamas	52 079	€7.3 million	Striking a quay
Evoikos	15.10.1997	Strait of Singapore	Cyprus	80 823	8 846 942 SDR	Collision

Estimated quantity of oil spilled (tonnes)	Compensation paid by the 1971 Fund up to 31.10.11	Indemnification paid by the 1971 Fund	Notes
3 600	US$ 24 397 612 Bs 359 675 468	US$ 1 804 893	There are still three outstanding claims against the 1971 Fund totalling US$ 150 million pending before the Venezuelan courts. While the shipowner limit of liabilty had previously been established as BsF 3.5 million, in February 2010 the Maracaibo Criminal Court of Appeal upheld an earlier decision of the Maracaibo Court of First Instance that rejected the shipowner's request to limit its liability but decided that it would be for the shipowner and its insurer to obtain reimbursement of the amount paid in compensation to the Venezuelan State from the 1971 Fund.
1	¥415 600 000	¥865 406	
124	KRW 418 000 000	KRW 58 000 000	
Unknown	KRW 7 674 268 000 ¥851 039 365	KRW 37 963 635	1992 Fund paid ¥340 million to claimants. This amount was later reimbursed by 1971 Fund.
3.2	Nil		A judgement by the Maritime Court of Appeal in Caracas, ordered the 1971 Fund to pay £57.2 million. The 1971 Fund Administrative Council decided in March 2011 that since due process of law had not been followed, the Director should not pay in accordance with the judgement.
1 500	Nil		Total amount of established claims did not exceed shipowner's liability.
190	Nil		Total amount of established claims did not exceed the shipowner's liability.
29 000	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.

Ship	Date of incident	Place of incident	Flag State of ship	Gross register tonnage (GRT)	Limit of shipowner's liability under 1969 CLC	Cause of incident
Kyungnam N°1	07.11.1997	Ulsan, Republic of Korea	Republic of Korea	168	KRW 43 543 015	Grounding
Pontoon 300	07.01.1998	Hamriyah, Sharjah, United Arab Emirates	Saint Vincent and the Grenadines	4 233	*Not available*	Sinking
Maritza Sayalero	08.06.1998	Carenero Bay, Venezuela	Panama	28 338	3 million SDR	Ruptured discharge pipe
Al Jaziah 1	24.01.2000	Abu Dhabi, United Arab Emirates	Honduras	681	3 million SDR	Sinking
Alambra	17.09.2000	Estonia	Malta	75 366	7 600 000 SDR	Corrosion
Natuna Sea	03.10.2000	Indonesia	Panama	51 095	6 100 000 SDR	Grounding
Zeinab	14.04.2001	United Arab Emirates	Georgia	2 178	3 million SDR	Sinking
Singapura Timur	28.05.2001	Malaysia	Panama	1 369	102 000 SDR	Collision

Estimated quantity of oil spilled (tonnes)	Compensation paid by the 1971 Fund up to 31.10.11	Indemnification paid by the 1971 Fund	Notes
15-20	KRW 272 033 170		Shipowner has paid KRW 26 622 030.
8 000	Dhs 7 900 000		The 1971 Fund has settled and paid all claims.
262	Nil		1971 Fund considers that the Conventions do not apply to this incident.
100-200	Dhs 6 400 000		The 1971 and 1992 Funds took recourse action against shipowner claiming reimbursement of Dhs 6.4 million. The Court decided in favour of the Funds, however, it would have been very difficult to execute the judgement since the shipowner did not have sufficient assets. Since the costs incurred by the Fund in executing the judgement would have exceeded the amount recovered, the Funds discontinued the execution of the judgement and wrote off the debt.
300	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.
7 000	Nil		All claims paid by shipowner's insurer.
400	US$ 884 000 Dhs 2 480 000		1971 and 1992 Funds have each contributed 50% of the amounts paid.
Unknown	US$ 846 396 ¥11 436 000	US$ 25 000	US$ 103 378 paid by shipowner's insurer. 1971 Fund has recovered £317 317 from shipowner's insurer. Insurer has recovered £185 000 from colliding vessel interests.

List of Currencies

Currency	Symbol	£ per unit of currency as at 31 October 2011, where applicable
Algerian Dinar	Din	
Argentine Peso	AR$	0.146343
Canadian Dollar	Can$	0.622861
Danish Krone	DKr	
Euro	€	0.864397
French Franc*	FFr	
German Mark*	DM	
Greek Drachma*	Drs	
Italian Lira*	Lit	
Japanese Yen	¥	
Malaysian Ringgit	RM	
Nigerian Naira	NGN	
Philippines Peso	PHP	0.014539
Republic of Korea Won	KRW	0.000558
Russian Rouble	RUB	0.020492
Spanish Peseta*	Pts	
Special Drawing Rights	SDR	0.989707
Swedish Krona	SKr	
UK Pound Sterling	£	
US Dollar	US$	0.620127
Venezuelan Bolivar Fuerte**	BsF	0.144215

***** 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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