Incidents involving the IOPC Funds

2012

International Oil Pollution Compensation Funds

Incidents involving the IOPC Funds – 2012

Incidents (in chronological order)

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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

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Opposite: Map of incidents involving the IOPC Funds as of October 2012.

Cover: The bow of the sunken tanker, *Alfa I*, Elefsis Bay, Piraeus, Greece.

Foreword

This Report provides information on incidents in which the Secretariat of the International Oil Pollution Compensation Funds (IOPC Funds) was involved in 2012. 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.iopcfunds.org/documentservices).

In April 2012, the Secretariat was informed of an incident (*Alfa I*) which took place in Greece in March 2012. Greece is a Party to the 1992 Civil Liability and Fund Conventions and the Supplementary Fund Protocol. The *Alfa I* is therefore the first incident taking place in a Member State of the Supplementary Fund. It is, however, very unlikely that the incident will exceed the limit under the 1992 Fund Convention. Details of this incident are contained on pages 52-55 under the section relating to incidents involving the 1992 Fund.

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 2012. 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 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 2012, the maximum amount payable for each incident was 203 million Special Drawing Rights (SDR) of the International Monetary Fund, equal to about US$312 million for incidents covered by the 1992 Fund and 750 million SDR (about US$ 1 154 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 145 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 2012, the 1992 Fund had 109 Member States, and two further States will become Members by July 2013. In addition, 28 of these States were Members of the Supplementary Fund. 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 pollution damage must result in an actual and quantifiable economic loss. The claimant must be able to demonstrate the amount of his loss or damage by producing accounts, tax records or other appropriate evidence.

An oil pollution incident can generally give rise to claims for five types of pollution 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
- Costs for reinstatement of the environment

Claims are assessed according to criteria established by the Governments of Member States. These criteria, which also apply to claims against the Supplementary Fund, are set out in the 1992 Fund's Claims Manual, which is a practical guide on how to present claims for compensation. The Claims Manual is available on the Publications page of the Funds' website: www.iopcfunds.org.

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.

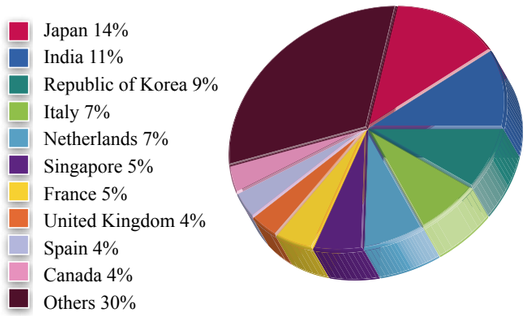
The 1992 Fund Assembly appoints the Director of the IOPC Funds, who is responsible for the operation of the three Funds and has extensive authority to take decisions regarding the settlement of claims. The Funds have their headquarters in London and are administered by a joint Secretariat.

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 2012:



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

109 States for which the 1992 Fund Convention is in force as at 31 December 2012. (States which are also Members of the Supplementary Fund are marked in **bold**):

Albania	Ghana	Panama
Algeria	**Greece**	Papua New Guinea
Angola	Grenada	Philippines
Antigua and Barbuda	Guinea	**Poland**
Argentina	**Hungary**	**Portugal**
Australia	Iceland	Qatar
Bahamas	India	**Republic of Korea**
Bahrain	**Ireland**	Russian Federation
Barbados	Islamic Republic of Iran	Saint Kitts and Nevis
Belgium	Israel	Saint Lucia
Belize	**Italy**	Saint Vincent and the Grenadines
Benin	Jamaica	Samoa
Brunei Darussalam	**Japan**	Senegal
Bulgaria	Kenya	Serbia
Cambodia	Kiribati	Seychelles
Cameroon	**Latvia**	Sierra Leone
Canada	Liberia	Singapore
Cape Verde	**Lithuania**	**Slovenia**
China[1]	Luxembourg	South Africa
Colombia	Madagascar	**Spain**
Comoros	Malaysia	Sri Lanka
Congo	Maldives	**Sweden**
Cook Islands	Malta	Switzerland
Croatia	Marshall Islands	Syrian Arab Republic
Cyprus	Mauritius	Tonga
Denmark	Mexico	Trinidad and Tobago
Djibouti	Monaco	Tunisia
Dominica	**Montenegro**	Turkey
Dominican Republic	**Morocco**	Tuvalu
Ecuador	Mozambique	United Arab Emirates
Estonia	Namibia	**United Kingdom**
Fiji	**Netherlands**	United Republic of Tanzania
Finland	New Zealand	Uruguay
France	Nigeria	Vanuatu
Gabon	**Norway**	Venezuela (Bolivarian Republic of)
Georgia	Oman	
Germany	Palau	

In addition, instruments of accession to the 1992 Fund Convention were deposited during 2012 by Mauritania and Niue. The 1992 Fund Convention will enter into force for Mauritania on 4 May 2013 and Niue on 27 June 2013.

[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 (£10 330 157)
STOPIA/TOPIA applicable	No
CLC + Fund limit	€184 million (£148 million)
Compensation paid	€129.7 million (£104.3 million)

Conversion into Pounds sterling has been made on the basis of the exchange rate as at 31 October 2012.

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 is believed to have been 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 2012, 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>].

Criminal proceedings

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.

Judgement by the Criminal Court of First Instance in Paris

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.

[<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 provisions of Article III.4(c) of the 1992 CLC since it was not the charterer of the *Erika*. The judgement considered that the charterer was one of Total SA's subsidiaries.

The judgement considered that the other three parties, RINA in particular, were not protected by the channelling provisions of the 1992 CLC either, since they did not fall into the category of persons performing services for the ship. The judgement concluded that French 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 €192.8 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.

Judgement by 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;
- 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 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 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 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 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) was €32.5 million.

Some 50 parties, including the representative of Tevere Shipping, Panship Management and Services, RINA and Total SA, appealed to the French Supreme Court (Court of Cassation).

Judgement by the Court of Cassation

On 25 September 2012 the Criminal Section of the Court of Cassation rendered its judgement. In a 320-page judgement the Court decided as set out below. The judgement is available in its original French language version via the Incidents section of the IOPC Funds' website: www.iopcfunds.org.

Jurisdiction

The Court of Cassation decided that French courts had jurisdiction to determine both criminal and civil liabilities arising from the *Erika* incident even though the sinking of the vessel had taken place in the Exclusive Economic Zone (EEZ) of France and not within its territory and/or territorial waters. In its judgement, the Court, based on a number of dispositions of the United Nations Convention on the Law of the Sea (10 December 1982, Montego Bay), justified France exercising its jurisdiction to impose ›

View of Paris Court of Appeal shortly before the opening of the Total trial, 30 March 2010.

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 (£155 million)**	**203.8 (£164 million)**

sanctions on those responsible for an oil spill from a foreign-flagged vessel in the EEZ of France causing serious damage in its territorial sea and to its coastline.

With respect to the classification society RINA, the Court of Cassation did not address the question of whether the classification society would have been entitled to take advantage of the immunity of jurisdiction, as would the Maltese State (the Flag State of the *Erika*), since RINA was deemed to have renounced such immunity by having taken part in the criminal proceedings.

The Court stated that, since the 1992 Fund had not taken part in the criminal proceedings, it would not be bound by any judgement or decision in the proceedings.

Criminal liabilities

The Court of Cassation confirmed the decision by the Criminal Court of First Instance and by the Court of Appeal which had 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.

Civil liabilities

Regarding civil liabilities, the Court of Cassation decided that under Article IX.2 of the 1992 CLC, it was entitled to exercise jurisdiction in respect of actions for compensation. In its judgement the Court held that RINA and Total SA were covered by the channelling provisions of the 1992 CLC. They could not, however, rely on this protection since the damage resulted from their personal acts or omissions, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

In relation to RINA, the Court of Cassation decided that the Court of Appeal had been wrong in deciding that a classification society could not benefit from the channelling provisions contained in Article III.4 of the 1992 CLC. The Court decided, however, that the damage had resulted from RINA's recklessness and that therefore RINA could not rely on the protection awarded by the 1992 CLC.

In relation to Total SA, the Court of Cassation quashed the decision by the Court of Appeal and decided that, since the damage had resulted from Total SA's recklessness, it could not rely on the protection awarded by the 1992 CLC.

Material, moral and pure environmental damages

The Court of Cassation confirmed the decision by the Court of Appeal which had awarded the amounts set out in the table on page 9.

Civil proceedings involving the 1992 Fund

Legal actions against the shipowner, Steamship Mutual and the 1992 Fund were taken by 796 claimants. As of October 2012, 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. Five actions were still pending. The total amount claimed in the pending actions, is some €9.9 million.

Civil 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.

As of October 2012, the Court of Appeal in Bordeaux had not yet rendered its decision. It is expected that, in light of the decision by the Court of Cassation in relation to the criminal proceedings, these proceedings will now continue.

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.

Shoreline clean-up operations following 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.

In accordance with the general agreement the parties have made the necessary submissions to withdraw their actions. It was expected that the judgements recording these withdrawals would be rendered by the end of 2012.

Settlement agreement between Steamship Mutual and the 1992 Fund

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

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

In accordance with that agreement, Steamship Mutual has paid the 1992 Fund a lump sum of €2.5 million.

Settlement agreement between RINA and the 1992 Fund

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

- RINA undertook 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 undertook to waive and renounce all claims against RINA. The 1992 Fund also undertook to discontinue all pending actions against RINA; and
- RINA also undertook to waive and renounce all claims against the 1992 Fund.

In accordance with that agreement, RINA paid all civil parties who agreed to settlement the amounts awarded by the decision of the Criminal Court of Appeal in Paris.

Settlement agreement between Total and the 1992 Fund

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

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

Under the global settlement the 1992 Fund will continue to handle the five pending legal actions brought against it totalling some €9.9 million and will pay in accordance with judgements.

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 (£18.3 million)
STOPIA/TOPIA applicable	No
CLC + Fund limit	€171.5 million (£138 million)
Compensation paid	€114 million (£92 million) to the Spanish Government €5.6 million (£4.5 million) to individual claimants in France €328 488 (£264 200) to the Portuguese Government

Conversion into Pounds sterling has been made on the basis of the exchange rate as at 31 October 2012.

Map data ©2011 Europa Technologies, GIS Innovatsia, GEoBasis-DE/BKG (©2009), Google, Tele Atlas, Transnavicom

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 Government that approximately 13 700 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 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). In September 2006 the 1992 Fund decided to close the Claims Handling Office in Bordeaux . The Claims Handling Office in La Coruña remains open.

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 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 which 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. The proposed increase was also subject to 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 (£461 million)**

The Director therefore considered that the level of payments could be increased to 30%[3] 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 as a consequence would only request payment of 15% of the assessed amount of its claim.

[3] €171.5 million/€573 million = 29.9%.

In January 2006 the French Government gave the required undertaking to 'stand last in the queue' in respect of its own claim, until all other claimants in France had been compensated.

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

Spain

General overview

The claims handling office in La Coruña received 845 claims totalling €1 037 million. These include 15 claims from the Spanish Government totalling €984.8 million. The claims excluding those of the Spanish Government have been assessed for €3.9 million. Interim payments totalling €564 976 have been made in respect of 175 of the assessed claims, mainly at 30% of the assessed amount. Compensation payments made by the Spanish Government to claimants have been deducted when calculating the interim payments. Some claims were either rejected or could not be assessed due to lack of documentation and no response to the repeated requests by the 1992 Fund.

Claims submitted by the Spanish Government

The Spanish Government submitted a total of 15 claims for an amount of €984.8 million. The claims by the Spanish Government relate to costs incurred in respect of at sea and on shore clean-up operations, removal of the oil from the wreck, compensation payments made in relation to the spill on the basis of national legislation (Royal Decrees)[4], tax relief for businesses affected by the spill, administration costs, costs relating to publicity campaigns, costs incurred by local authorities and paid by the State, costs incurred by 67 towns that had been paid by the State, costs incurred by the regions of Galicia, Asturias, Cantabria and Basque Country and costs incurred in respect of the treatment of the oily residues.

Removal of oil from the wreck

The claim for the removal of the oil from the wreck, initially for €109.2 million, was reduced to €24.2 million to take account of funding obtained from another source.

At its February 2006 session, the Executive Committee decided that some of the costs incurred in 2003 prior to the removal of the oil from the wreck, including sealing the oil leaking from the wreck and various surveys and studies that had a bearing on the assessment of the pollution risk posed, were admissible in principle, but that the claim for costs incurred in 2004 relating to the removal of oil from the wreck was inadmissible. Following the Executive Committee's decision, the claim was assessed at €9.5 million[5].

Payments to the Spanish Government

The first claim received from the Spanish Government in October 2003 for €383.7 million was assessed on an interim basis in December 2003 at €107 million. 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 admissible damage in Spain and concluded that the admissible damage would be at least €303 million. On that basis, and as authorised by the 1992 Fund 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 Government 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 Government 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 Government.

Assessment of the claims by the Spanish Government

The claims by the Spanish Government, totalling €984.8 million, were assessed at €300.2 million.

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

[5] 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.

The reasons for the difference between the claimed and assessed amounts in respect of the claims by the Spanish Government 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 Government 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 Government included VAT. Since the Government 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.

France

General overview

The claims handling office in Lorient received 482 claims totalling €109.7 million. This includes the claims by the French Government totalling €67.5 million. The claims submitted to the Claims Handling Office were assessed at €57.5 million and interim payments totalling €5.6 million had been made at 30% of the assessed amounts in respect of 361 claims. Some claims were either rejected or could not be assessed due to lack of documentation and no response to the repeated requests by the 1992 Fund.

Claim submitted by the French Government

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.

Meetings have taken place, most recently in September 2012, between the Secretariat, its experts, and the French Government to discuss the assessment of the Government's claims. No payment has been made as the Government is standing last in the queue.

Portugal

The Portuguese Government submitted a claim totalling €4.3 million in respect of the costs incurred in clean up and preventive measures. The claim was finally assessed at €2.2 million and the 1992 Fund made a payment of €328 488, corresponding to 15% of the final assessment.

Legal issues

Investigations into the cause of the incident[6]

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.

Legal proceedings - Spain

Criminal liability

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 ❯

[6] 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.

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 ship's management company and the Spanish Government were vicariously liable.

The proceedings were transferred to another court, the Audiencia Provincial in La Coruña, to conduct the criminal trial. In June 2012 the Criminal Court in La Coruña decided that the hearing would start on 16 October 2012 and was expected to continue until May 2013. The Court will review the criminal liabilities and decide on the compensation due in respect of this incident.

Civil liability

As of October 2012, some 2 518 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 174 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 €2 116 407. Interim payments totalling €364 135 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 2012, 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 had noticed the lack of supporting documentation submitted in most claims. In their assessments the Court experts had 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.

As mentioned, the proceedings were transferred to another court, the Audiencia Provincial in La Coruña (Criminal Court), to conduct the criminal trial which would deal with both criminal and civil liabilities. The hearing commenced on 16 October 2012 and is expected to continue until May 2013. After dealing with the criminal liabilities the Court will also decide on the compensation due in respect of this incident.

Legal proceedings - France

General

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 eleven of these claimants have withdrawn their actions. Therefore, actions by 121 claimants remain pending in court amounting to a total of €79.1 million.

The courts have granted a stay of proceedings in 17 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 174 French claimants, including the French Government and various communes, have joined the legal proceedings in Corcubión, Spain.

Legal proceedings - United States

Legal proceedings brought by Spain against ABS

Spain 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. Spain 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 Spain and in its turn took action against Spain, arguing that if Spain had suffered damage this was caused in whole or in part by its own negligence. ABS made a counterclaim and requested that Spain 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's counterclaim was dismissed based on the Foreign Sovereign Immunities Act (FSIA). The District Court held that ABS's 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.

First judgement by the District Court in New York

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 Spain's claim.

Spain appealed. ABS also filed an appeal against the Court's decision to dismiss its counterclaims for lack of jurisdiction.

Decision by the Court of Appeals for the second circuit

The Court of Appeals 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 Appeals 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 Appeals stated that the District Court might still exercise its discretion to decline jurisdiction based on *forum non conveniens* or principles of international comity.

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

Second judgement by the District Court in New York

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

The Court 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.

Spain appealed against the judgement of the District Court.

Judgement by the Court of Appeals for the second circuit

The Court of Appeals for the second circuit delivered its judgement in August 2012, dismissing the claim by Spain. In its judgement the Court held that Spain had not produced sufficient evidence to establish that ABS had acted in a reckless manner.

In the absence of such evidence of reckless behaviour, the Court avoided ruling on whether ABS owed a duty to coastal states to avoid reckless behaviour.

In reaching its decision, the Court of Appeals took note of the following facts:

- In addition to its functions as a not-for-profit classification society, ABS had a for-profit subsidiary that conducted computer analysis of vessels (the SafeHull program) to assess and predict possible areas of future structural failure. The owners of two sister ships[<7>] of the *Prestige* had SafeHull analyses done on those vessels, but the owners of the *Prestige* did not. The results of the computer analyses of the sister ships were not shared with the *Prestige*'s owners nor with the ABS surveyors inspecting the *Prestige*;
- Following the *Erika* incident, ABS proposed that it and other classification societies enact classification rules changes, which would have included the use of the SafeHull computer analysis. The proposals were never implemented. ABS also stated at the time that it was engaged in a review of all vessels it classed which were over 20 years old. However, the evidence showed that no meaningful review was ever conducted;
- In December 2000 the *Castor*, a small tanker classed by ABS, suffered serious structural damage. As a result, in October 2001 ABS stated that certain changes in the classification rules were required, particularly with respect to ballast tanks on older tankers. However, no rule changes had been implemented by the time of the *Prestige*'s final annual survey in May 2002; and
- The *Prestige*'s final Special Survey took place in China in April/May 2001 and its final annual survey was conducted in the United Arab Emirates in May 2002. In both cases the vessel remained in class. Spain contended, and ABS disputed, that in August 2002 the master of the *Prestige* had sent a fax to ABS giving notice of serious structural and mechanical problems. However, Spain was never able to prove that ABS received that fax.

On the issue of applicable law, the Court examined the traditional choice of law factors applied in maritime law and concluded that the place of the alleged negligence/recklessness by ABS (the US headquarters of ABS) was the most significant factor and that this justified the District Court's application of US maritime law.

The Court of Appeals did not address the legal issue of whether ABS owed a duty to coastal states to avoid reckless behaviour. Instead, the Court held that Spain had not proved that ABS had acted in a reckless manner. This approach by the Court of Appeals ›

[<7>] Sister ships are those built to the same design, although there may be small differences.

has left the possibility for that legal issue to be decided in another case.

Had the Court of Appeals affirmed the District Court's ruling that there was no duty, not even for reckless behaviour, that might have barred the possibility of a future recovery by a third party in a case with strong evidence of reckless behaviour by a classification society. The policy adopted by the District Court that ABS did not owe a duty to Spain to avoid recklessness, is a ruling for this case only and is only persuasive, but not binding, as a precedent.

As of October 2012, Spain had not appealed against the judgement.

Legal action by France against ABS in France

In April 2010, France brought a legal action in the Court of First Instance in Bordeaux against three companies in the group of ABS. The defendants opposed this action relying on the defence of sovereign immunity. The Judge has referred the case for a preliminary ruling by the Court on the question of whether ABS was entitled to sovereign immunity from legal proceedings.

Recourse action by the 1992 Fund against ABS

United States

In October 2004 the Executive Committee decided that the 1992 Fund should not take recourse action against ABS in the United States. 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.

Spain

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 recommend bringing an action against ABS in Spain.

France

At its June 2010 session the Executive Committee noted that in April 2010 France 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 France 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 France had recently brought a legal action against ABS in France.

The Executive Committee had 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. 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.

The judgement of the French Court of Cassation in respect of the *Erika* incident was rendered on 25 September 2012.

The Court of Cassation confirmed the judgement by the Court of Appeal except in relation to the classification society, RINA, where it decided that the Court of Appeal had been wrong in deciding that a classification society could not benefit from the channelling provisions contained in Article III.4 of the 1992 CLC. The Court of Cassation decided, however, that the damage had resulted from RINA's recklessness and that therefore RINA could not rely on the protection awarded by the 1992 CLC.

At its October 2012 session, the 1992 Fund Executive Committee authorised the Director to bring a recourse action against ABS in France prior to 13 November 2012 as an interim measure to avoid the action becoming time-barred under French law.

In October 2012 the 1992 Fund initiated the recourse action against ABS in France. A decision will be taken at a future session of the 1992 Fund Executive Committee whether to continue the recourse action or withdraw it on the basis of an analysis of the judgement of the Court of Cassation and other additional information received.

The Prestige, leaving a trail of oil, off the north-west coast of Spain, before sinking on 13 November 2002.

Solar I

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 (£4.3 million)
STOPIA/TOPIA applicable	STOPIA 2006 limit of 20 million SDR (£19.1 million)
CLC + Fund limit	203 million SDR (£194 million)
Compensation paid	PHP 986 646 031 (£14.8 million)
Legal proceedings	Three 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 2012.

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

As at 1 October 2012, some 32 466 claims had been received and payments totalling PHP 987 million (£14.3 million) had been made in respect of 26 870 claims, mainly in the fisheries sector. All claims have now been assessed and the local claims office has closed.

Some PHP 987 million had been paid in compensation as of October 2012 and had been reimbursed by the Shipowner's Club to the 1992 Fund in accordance with STOPIA 2006.

The claims situation as at the October 2012 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 of those claims 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. Some 122 approved claims for property damage could not yet be paid to claimants, since, as with the capture fishery sector, cheques for compensation have not been collected. A consolidation of accounts has been undertaken with the bank in the Philippines and remaining ›

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 (£16.8 million)**	**26 870**	**986 646 031 (£14.8 million)**	**4 086**

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.

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 related 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 and 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 for a further claim, also from a government unit, was 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 action 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 filed defence pleadings in response to the civil action.

A pre-trial hearing took place in July 2012 in order to explore the possibility of an amicable settlement. The Court ordered that mediation hearings should take place in August and September 2012 before a court-accredited Mediator. The 1992 Fund's lawyer met with the claimants' lawyers before the first mediation hearing in August, in an attempt to settle the matter and to minimise the costs that would otherwise be incurred by attending the mediation hearings. During that meeting, the claimants' lawyers had not prepared any formal documentation furthering their case and no progress had been made in settling the matter at the first mediation meeting in August 2012. A proposal for an amicable settlement was expected to be put forward by the claimants' lawyers but, in the absence of such submissions, the matter proceeded to an initial pre-trial hearing in October 2012.

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 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 to withdraw the legal proceedings. Specifically, the 1992 Fund's lawyers are liaising with the PCG's lawyer with regard to obtaining the signature required on the settlement documentation but, due to a number of changes in personnel at the PCG, matters have been delayed.

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. 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. Furthermore, a number of the claimants had already been included in a claim submitted and settled by the Municipality of Guimaras.

A pre-trial hearing took place in July 2012 in order to explore the possibility of an amicable settlement but it was not successful. The Court ordered that the parties enter into a series of pre-hearings and mediation meetings which commenced in October 2012. The mediation process is likely to last some months.

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 2012.

Considerations

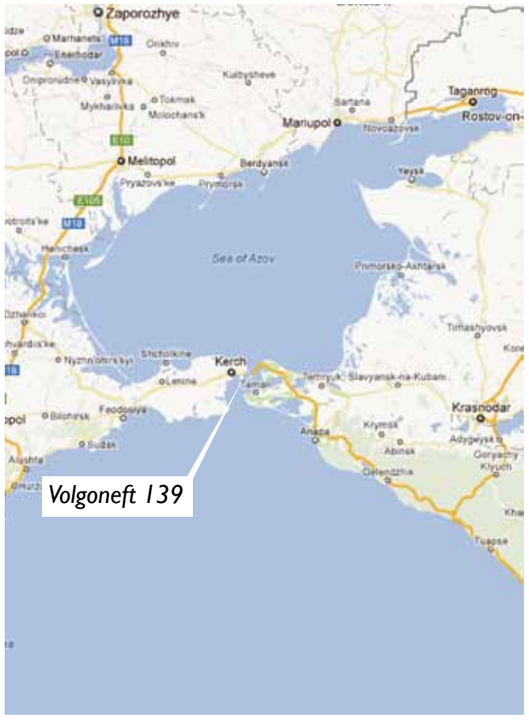
This is the first incident where STOPIA 2006 has applied and the 1992 Fund is receiving regular reimbursements from the Shipowners' Club. It is very unlikely that the amount of compensation payable in respect of this incident will exceed the STOPIA 2006 limit of 20 million SDR, and therefore very unlikely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

Oil sheen from the Solar I, Guimaras Island, Philippines.

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 116.3 million (£2.5 million)
CLC limit	4.51 million SDR or RUB 175.3 million (£3.7 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 2012.



Map data ©2011 Basarsoft, GIS Innovatsia, Google, Tele Atlas, Transnavicom

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 section 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 section 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 section 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.

1992 FUND • Volgoneft 139

Impact

Some 250 kilometres of shoreline, both in the Russian Federation and in Ukraine, are understood to have been affected by the oil. 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.

Applicability of the Conventions

The Russian Federation is a Party to the 1992 Civil Liability Convention (1992 CLC) and 1992 Fund Convention. 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 of the 1992 CLC with the Secretary-General of the International Maritime Organization (IMO) on 28 November 2007, this did not enter into force in Ukraine until 28 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

The table below summarises the claims situation as of October 2012.

Legal issues

'Metodika' claim

At a meeting in May 2008 the Russian authorities informed the 1992 Fund that Rosprirodnadzor had submitted a claim for environmental damage for some RUB 6 048.6 million. This claim was based on the quantity of oil spilled, multiplied by an amount of Roubles per ton ('Metodika'). The Secretariat informed the Russian authorities that a claim based on an abstract quantification of damages calculated in accordance with a theoretical model was in contravention of Article I.6 of the 1992 CLC and therefore not admissible for compensation, but that the 1992 Fund was prepared to examine the activities undertaken by 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.

Judgement of the Arbitration Court of Saint Petersburg and Leningrad Region

In September 2010, the Arbitration Court of Saint Petersburg and Leningrad Region rendered 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, ›

	Claimed amount (RUB)	1992 Fund assessment (RUB)
Clean up contractor	63 926 933	50 766 549
Regional government	434 687 072	241 045 047
Local government	42 960 768	24 949 162
Port of Kerch (Ukraine)	9 170 697	1 739 454
Charterer	9 499 078	2 312 714
Tourist operator (private)	8 524 153	8 524 153
Shipowner	27 706 290	8 755 555
Federal agency (Rosprirodnadzor)	753 332	688 487
Total	**597 228 323 (£11 840 347)**	**338 781 121 (£6 716 503)**

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 section of the wreck in the Port of Kavkaz[<8>].

In summary, the conclusions of the experts were as follows:

- 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;
- 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
- 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 1992 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 1992 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.

Judgement of the Arbitration Court of Saint Petersburg and Leningrad Region

In September 2010 the Arbitration Court of Saint Petersburg and Leningrad Region 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.

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 116 280 000, 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 116.3 million) should be amended. In May 2008, the Court of Appeal rejected the 1992 Fund's appeal.

The 1992 Fund lodged another appeal. In September 2008 the Court of Cassation rendered a decision dismissing the 1992 Fund's appeal. In its reasoning, the Court 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 116 280 000 (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 November 2008 the Supreme Court confirmed the decision by the Court of Cassation.

Court decisions on the insurance gap

In September 2010 the Arbitration Court of the city 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 Court of Cassation.

In its decree in April 2011 the Court of Cassation rejected the appeal submitted by the 1992 Fund and upheld the decision on the establishment of the shipowner's limitation fund of 3 million SDR. The 1992 Fund appealed to the Supreme Court.

The Supreme Court sustained the decisions of the Arbitration Court of the city of Saint Petersburg and Leningrad Region, the Court of Appeal and the Court of Cassation.

Quantum and merits of claims for compensation

At a hearing in January 2011, the Arbitration Court of the city of Saint Petersburg and Leningrad Region 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, October, November and December 2011, and in February, April and June 2012 at the Arbitration Court of the City of Saint Petersburg and Leningrad Region.

At the February 2012 hearing the Court decided that all claimants had the right to legal interest according to Russian law and ordered the claimants to submit their interest calculations.

[<8>] For details regarding the preliminary conclusions reached by the 1992 Fund's experts, reference is made to the IOPC Funds' Annual Report 2008, pages 119–122.

Shoreline area of the Strait of Kerch, heavily coated with oil following the Volgoneft 139 incident.

Judgement on quantum and merits of the claims

In July 2012 the Court delivered its judgement on quantum, awarding amounts totalling RUB 503.2 million, including legal interest. In addition, the Court awarded some claimants court fees totalling RUB 164 445 to be paid by Ingosstrakh, the shipowner and the 1992 Fund in equal parts.

The table below summarises the amounts awarded by the judgement of the Arbitration Court of the City of Saint Petersburg and Leningrad Region, against the 1992 Fund's assessment of the claims.

The Court decided that the shipowner/Ingosstrakh should pay the awarded amounts up to 3 million SDR and that the 1992 Fund should pay all amounts above 3 million SDR. Since the 1992 CLC limit applicable at the time of the incident was 4.5 million SDR, there remains an 'insurance gap' of some 1.5 million SDR. In the judgement, the Court decided that the shipowner's limit should be 3 million SDR since that was the limit of liability under the 1992 CLC at the time of the incident as published by the Russian Official Gazette.

In August 2012, the 1992 Fund appealed against the judgement on the grounds that:

i. the limit of the shipowner's liability under the 1992 CLC at the time of the incident was 4.51 million SDR (RUB 174.4 million) and therefore the Court's ruling establishing the shipowner's limitation fund at only 3 million SDR (RUB 116.3 million) should be amended; and
ii. the judgement does not explain the assessment of the amounts of compensation adjudicated in favour of the various claimants. Therefore, it remains unclear how the Court calculated the awarded amounts and on what evidence the judgement was reached.

A local authority claiming for the costs incurred in clean up and preventive measures also appealed against the judgement since the amount awarded was lower than the claimed amount. In September 2012 the Court of Appeal confirmed the judgement by the Arbitration Court. The 1992 Fund has appealed the judgement before the Court of Cassation.

	Claimed amount (RUB)	1992 Fund assessment (RUB)	Court judgement (RUB)	
			Principal	Legal interest
Clean up contractor	63 926 933	50 766 549	50 766 549	17 413 621
Regional government	434 687 072	241 045 047	337 866 060	41 350 713
Local government	42 960 768	24 949 162	33 954 965	4 456 180
Port of Kerch (Ukraine)	9 170 697	1 739 454	3 770 772	1 089 164
Charterer	9 499 078	2 312 714	2 312 714	891 050
Tourist operator (private)	8 524 153	8 524 153	8 524 153	
Shipowner	27 706 290	8 755 555		
Federal agency (Rosprirodnadzor)	753 332	688 487	688 487	92 974
Total	**597 228 323 (£11 840 347)**	**338 781 121 (£6 716 503)**	**437 883 700**	**65 293 702**
				503 177 402 (£9.9 million)

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 1992 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 Harbour Masters of Kavkaz and Temryuk and a claimant in the tourism sector.

The Secretariat and the 1992 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

Executive Committee

Since the incident was first reported to the 1992 Fund Executive Committee in March 2008, the question of whether to authorise the Director to make payments of claims for compensation in respect of the *Volgoneft 139* has been considered on numerous occasions. The conclusion at each discussion of the issue has been that a number of issues would have to be resolved before the Committee could authorise the Director to make such payments.

March 2011

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 problem of the 'insurance gap'.

October 2012

At its October 2012 session, the Executive Committee noted that although a number of delegations had suggested that the 1992 Fund should try to pay compensation to the victims of this incident, the majority of delegations considered that the problem of the 'insurance gap' had first to be resolved before the 1992 Fund could start making payments. The Executive Committee instructed the Director to continue discussions with the claimants and the Russian authorities to explore a solution to the problem of the 'insurance gap' and revert to the Executive Committee with a proposal at a future session.

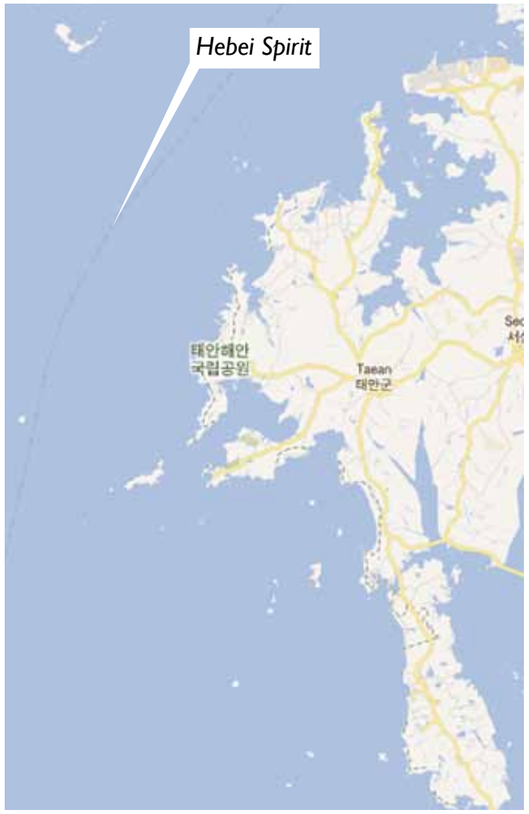
As instructed, the Director will continue monitoring the legal proceedings before the Russian Courts and to pursue the discussions with the claimants and Russian authorities to explore a solution to the problem of the insurance gap. A proposal will be presented to the Executive Committee at a future session.

1992 FUND • Volgoneft 139

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 (£106.3 million)
STOPIA/TOPIA applicable	No
CLC + Fund limit	KRW 321.6 billion (£183 million)
Compensation paid	KRW 167.2 billion (£95.2 million)

Conversion into Pounds sterling has been made on the basis of the exchange rate as at 31 October 2012.



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.

1992 FUND • Hebei Spirit

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 was 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 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.

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 ❯

Volunteers conducting beach clean-up operations in difficult conditions near Taean, Republic of Korea.

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 of 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, March, June and October 2009 and 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. It was decided that 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 of the Executive Committee.

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, April 2012 and October 2012 the 1992 Fund Executive Committee decided to maintain the level of payments at 35% and to review the level of payments 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 October 2012, the Korean Government had made payments totalling KRW 37 550 million in respect of 695 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 32 992 million in respect of 662 of these claims.

Under the Special Law the Korean Government has 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 2012, the Korean Government had granted 21 295 loans totalling KRW 50 685 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 444 800 million. 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. In accordance with 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.

Second Cooperation Agreement

The Skuld Club also entered into discussions with the Korean Government in order to resolve its concern that Korean courts dealing with the limitation proceedings might not fully take into account payments made by the Skuld Club and that the Club would therefore run the risk of paying compensation in excess of the limitation amount.

In July 2008, a Second Cooperation Agreement was concluded between the shipowner, Skuld Club and the Korean Government (Ministry of Land, Transport and Maritime Affairs, 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 f ull, 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 in court should the Limitation Court order a deposit of the limitation fund.

Claims for compensation

As of October 2012, 128 400 individual claims totalling KRW 2 611 billion, had been registered. Some 128 311 claims had been assessed at a total of KRW 179.9 billion, out of which 83 946 claims had been rejected. The Skuld Club had made payments totalling KRW 167.2 billion in respect of 37 108 claims, and the remaining claims were being assessed or additional information was being requested from the claimants.

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 2012, 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, 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.

As of 27 August 2012, 127 483 claims totalling KRW 4 023 billion had been submitted in the Limitation Court, representing an increase of nine claims and KRW 64 billion since April 2012. On 27 August 2012 the Limitation Court held a hearing. At the hearing, the Court listed the claims which had been submitted. As a matter of Korean Law and practice, no further claims would be registered nor would changes to the amount claimed be accepted. The Court is expected to issue its decision regarding the distribution of the *Hebei Spirit* limitation fund in December 2012. The Fund's lawyers are following the proceedings.

Limitation proceedings by the bareboat charterer of the Marine Spread

In December 2008, the bareboat charterer of the Marine Spread (the crane-barge, the two tugs and the anchor-boat), 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 2012, the appeal was still pending.

Civil Proceedings

Claim 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.

In January 2012, the Court of Appeal issued a judgement to the effect that, whilst the assessment made by the Club and the 1992 Fund was considered reasonable, the amount recognised by the Court was KRW 318 450 947. The amount assessed by the Club and the 1992 Fund totalled KRW 304 177 512, which was paid to the plaintiff in September 2011. The Court ordered the Korean Government to pay the clean-up company the difference plus interest, equivalent to KRW 24 429 768. Both parties appealed to the Supreme Court. As of October 2012, the case was pending at the Supreme Court.

Claim 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 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.

In November 2011, the Court dismissed the company's lawsuit against the 1992 Fund. The Court ruled that the claim against the 1992 Fund was groundless since:

a. unless and until the total amount of oil pollution claims was confirmed, the claim against the 1992 Fund could not be specified and the 1992 Fund's liability could therefore not be determined; and
b. in any event, the company's reasonable costs were KRW 233 158 549 and this amount had already been paid by the Club.

The clean-up company appealed against the judgement to the Court of Appeal. Further hearings took place in October 2012, at which further information was requested. The next hearing of the Court was scheduled for 20 November 2012.

Claim 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* had been finalised.

Claim 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.

Claim 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 had been finalised.

Recourse action by the 1992 Fund against Samsung C&T Corporation (Samsung C&T) and SHI

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

The Director visiting Mo-Hang port in February 2012, as part of the Fund's ongoing post-incident visits to the Republic of Korea.

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 was 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 would 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.

In December 2011 the Supreme Court dismissed the 1992 Fund's application for retrial on the grounds of *forum non-conveniens*.

In December 2011 the owner and the insurer of the *Hebei Spirit* concluded a settlement agreement under which Samsung C&T and SHI would pay the amount of US$10 million to the shipowner and its insurer.

As the 1992 Fund had concluded an agreement with the owner and the insurer of the *Hebei Spirit* under which the 1992 Fund and the ship's interests would share the legal costs of the recourse actions and the proceeds of any recovery under a court judgement or settlement on a 50/50 basis, the 1992 Fund has recovered US$5 million from the Skuld Club in accordance with this agreement. In accordance with the agreement, the 1992 Fund will reimburse the Skuld Club and the China P&I Club for each share of the legal costs incurred in bringing the recourse action.

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 million)
STOPIA/TOPIA applicable	No
CLC + Fund limit	203 million SDR (£194 million)
Compensation paid	AR$4.4 million (£573 000.) and US$115 949 (£72 000) (paid by the West of England Club)
Legal Proceedings	Twenty-two actions, representing 83 claimants, remain pending against the owner of the *Presidente Illia* (the possible source of the spill) and the West of England Club in the Federal Court of Comodoro Rivadavia (Civil Section). These actions also include the 1992 Fund either as a defendant or as an interested third party. The 1992 Fund brought an action against the owner of the *San Julian*, another possible source of the spill, and against his insurer.
Specific Issues	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.

Conversion into Pounds sterling has been made on the basis of the exchange rate as at 31 October 2012.

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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 km2 and estimated to contain about 50-200 tonnes of crude oil. Later the same day, a significant quantity of oil impacted the shoreline in Caleta Córdova. A total of 5.7 kilometres of coast was reported to have been affected.

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 m3 of oily water and 900 m3 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 was also used for recreational purposes and claims for losses in the tourism sector were expected.

Applicability of the Conventions

At the time of the incident Argentina was a Party to the 1992 Civil Liability Convention (1992 CLC) and 1992 Fund Convention.

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

The limit of liability of the owner of the *Presidente Illia* under the 1992 CLC is estimated to be 24 million SDR (£23.8 million). It is however unlikely that the total amount of the damage will exceed the shipowner's limit of liability, in which case the 1992 Fund would not be called upon to pay compensation.

The shipowner and his insurer maintain that the *Presidente Illia* did not cause the spill that impacted the coast. However, following discussions between the 1992 Fund and the West of England Club, it was agreed that the shipowner and his insurer would pay claims for compensation assessed and approved in accordance with the principles laid down in the 1992 Civil Liability and Fund Conventions. It was agreed that if it is finally established that the oil which impacted the coast did not come from the *Presidente Illia* but from another source, the shipowner and the West of England Club would attempt to recover the amounts of compensation paid from the party responsible for the oil spill. It was also agreed that if it is proved that the oil spill must have come from a tanker other than the *Presidente Illia* but it remains unknown which one, a so-called 'mystery spill', the shipowner and the West of England Club would recover the amounts of compensation paid from the 1992 Fund.

Claims situation

As of October 2012, 331[9] claims for compensation for a total of AR$53.3 million and US$391 294 had been submitted. Two hundred and twenty claims have been assessed at a total of AR$5.2 million and US$121 799. Payments totalling AR$4.4 million and US$115 949 have been made by the West of England Club. Among the 220 assessed claims, 43 have been rejected. The remaining claims are the subject of court proceedings or are time-barred. The table below summarises the claims situation by claim category.

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.

Claim Category	Claims			Assessed			Paid by Club		
	No.	Amount (AR$)	Amount (US$)	No.	Amount (AR$)	Amount (US$)	No.	Amount (AR$)	Amount (US$)
Tourism	11	1 644 366	0.00	4	1 246.50	0.00	2	12 000	0.00
Clean up and preventive measures	10	2 642 061	132 467	9	1 203 878	121 799	4	665 988	115 949
Fisheries	310	48 969 282	258 827	207	3 996 237	0.00	75	3 725 290	0.00
Totals:	**331**	**53 255 710**	**391 294**	**220**	**5 201 362**	**121 799**	**81**	**4 403 278**	**115 949**

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

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 (Criminal Section). 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 (Criminal Section) rendered a preliminary decision where five persons including the master, officers and crew were charged with a water pollution offence under Argentine Environment Law, whilst the shipowner's representative (Superintendente) was charged under Argentine criminal law with having hidden information and evidence.

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 indicated 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, having pleaded not guilty, thus leading to the opening of the trial phase. The accused parties have applied to be put on probation<10>. The request has been denied but the accused parties have appealed against this decision.

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 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.

Taking into consideration that criminal court decisions are not binding on civil judges, the owner of the *Presidente Illia* will be entitled to try and prove, in any of the civil court proceedings, that the spill did not come from the *Presidente Illia*. However, the findings in the criminal proceedings will have a weight when the civil judge delivers a decision.

Civil proceedings

Twenty-two actions, representing 83 claimants, remain pending against the owner of the *Presidente Illia* and the West of England Club in the Federal Court of Comodoro Rivadavia (Civil Section). These actions include the 1992 Fund either as a defendant or as an interested third party.

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 considered 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.

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 the resolution of the criminal proceedings.

An action has 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*. These proceedings have been stayed pending the resolution of the criminal proceedings.

<10> The effect of being placed on probation can be to temporarily suspend the execution of a sentence for the period of probation. The Court may impose conditions on the offender which, if complied with, may result in the revocation of the original sentence.

Oiled birds near Caleta Córdova, Southern Argentina

1992 FUND • Incident in Argentina

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 (£26.6 million)
STOPIA/TOPIA applicable	No
CLC + Fund limit	203 million SDR (£194 million)
Compensation paid	Two claims have been settled at the claimed amount for a total of US$1 332 488 (£827 000) (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 2012.

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

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.

As of October 2012 the Federal Court in Halifax had 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.

As of October 2012 there had been no developments in the proceedings since the October 2011 session of the 1992 Fund Executive Committee.

Redfferm

Date of incident	March 2009
Place of incident	Tin Can Island, Lagos, Nigeria
Cause of incident	Barge sinking/spill during trans-shipment operation
Quantity of oil spilled (approximate)	Unknown
Area affected	Tin Can Island, Lagos, Nigeria
Flag State of ship	Unknown
Gross tonnage	Unknown but estimated to be less than 5 000
P&I insurer	Unknown
CLC limit	Estimated to be 4 510 000 SDR (£4.3 million)
STOPIA/TOPIA applicable	No
CLC + Fund limit	203 million SDR (£194 million)
Compensation paid	None

Conversion into Pounds sterling has been made on the basis of the exchange rate as at 31 October 2012.

Map data ©2013 Google

Incident

On 30 March 2009, the tanker *MT Concep* was involved in a trans-shipment operation with the barge *Redfferm* at Tin Can Island, Lagos, Nigeria which resulted in the sinking of the barge. The circumstances surrounding the incident are not clear and it is not known what caused the *Redfferm* to sink. However, it is believed that on 30 March 2009[<11>], following a trans-shipment operation from the tanker *MT Concep*, the barge *Redfferm* sank in the turning circle basin off the finger jetty of Tin Can Island port spilling its cargo of Low Pour Fuel Oil (LPFO), causing contamination to the surrounding shoreline. The barge *Redfferm* was said to be laden with between 500 and 650 tonnes of LPFO at the time of the incident, however it has not been possible to verify the quantity of oil on board or the quantity actually spilled. The Secretariat was not informed of the incident until late January 2012.

Impact of the spill

Nine months after the spill from the *Redfferm*, The Nigerian Oil Spill Detection and Response Agency (NOSDRA) commissioned a firm of estate valuers and surveyors to provide an estimation of the loss of income suffered by five communities with fish ponds, allegedly affected by the *Redfferm* spill, on Snake Island. The valuation concluded that over a five month period, the aggregate compensatory value of the properties, interests and rights of 316 individual fishermen in the five communities amounted to NGN 18.96 million (approximately £76 000).

However, a valuation obtained by the same five communities but listing 847 claimants, each with several fish nets, and also including claims for damaged boat engines, respraying boats, damage to economic crops and 'injurious affection' amounted to NGN 150.9 million.

The Secretariat is liaising with the plaintiffs' lawyer to ascertain the precise locations of the communities and the numbers of individuals within those communities allegedly affected.

Response operations

The Nigerian Maritime Administration and Safety Agency (NIMASA) and NOSDRA were notified a few hours after the spill but due to a lack of resources and the impending nightfall, no action was taken to contain the spill until the following day, 31 March 2009.

A Nigerian Ports Authority (NPA) report indicates that at approximately 07:50 hours on 31 March 2009 (the day after the *Redfferm* sank) it was observed that the tanker *MT Concep* was moored midstream and discharging LPFO into a second barge, around which oil could be seen. On 31 March 2009, the authorities commenced clean-up operations with the use of skimmers for recovery of stranded oil at the finger jetty.

Further surveys the next day indicated stranded oil to the north and on the southern shore of Tin Can Island. It also appears that oil stranded on the northern shores of Snake Island and Sagbokeji Island where many communities are located, but due to a lack of resources and concerns for the safety of the clean-up crews, little or no clean-up operations were conducted at these locations.

Clean-up operations continued over the following days with the assistance of local young people collecting oil into canoes and by the professional services of African Circle to assist with the clean-up operations. The clean-up operations concentrated on the areas of the Apapa Boat Yard, Folawiyo, Nedo Gas dock, Lister Jetty, Liverpool Bridge and the Federal Palace Hotel.

The operation to salvage the *Redfferm* using a crane barge began on 6 April 2009. The *Redfferm* was finally refloated on 9 April 2009[<12>]. Shoreline clean-up operations were completed by 22 April 2009.

Following the conclusion of the clean-up operations NPA fined Concel Engineering Ltd, the owners of the tanker *MT Concep*, the sum of US$52 000. Concel Engineering Ltd denied responsibility for the pollution incident, claiming that it was the owners of the barge *Redfferm* who should pay.

Applicability of the Conventions

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

The tanker *MT Concep* was owned by Concel Engineering Nigeria Ltd, which had also chartered the barge *Redfferm*. A company, Thame Shipping Agency Ltd, acted as agents for the owners of both the *MT Concep* and the *Redfferm*.

Article VII.1 of the 1992 CLC states:

> *'The owner of a ship registered in a Contracting State and carrying more than 2 000 tons of oil in bulk as cargo shall be required to maintain insurance or other financial security, such as the guarantee of a bank or a certificate delivered by an international compensation fund, in the sums fixed by applying the limits of liability prescribed in Article V, paragraph 1 to cover his liability for pollution damage under this Convention.'*

The *Redfferm* was reported as carrying between 500 and 650 tonnes of oil at the time of the incident and there was therefore no requirement for the shipowner to have insurance for his liability for pollution damage, as required for vessels carrying over 2 000 tonnes. It appears unlikely that the shipowner will have sufficient assets to pay any claims for compensation. It is therefore possible that the 1992 Fund will have to pay the claims for compensation from the outset, and then decide whether to attempt to recover the sums from the shipowner by way of a recourse action in the future.

Claims for compensation

Following the incident, in 2009 and 2010, the NPA, NOSDRA and NIMASA were involved in a series of meetings with representatives of five communities allegedly affected by the spill. No compensation was paid to the five communities.

In March 2012 a claim for US$26.25 million was filed by a lawyer representing 102 communities allegedly affected by the spill against the owners of *MT Concep*, the owners of *Redfferm*, Thame Shipping Agency Ltd (agent of both the *MT Concep* and the *Redfferm*) and the 1992 Fund.

The claim totalling US$26.25 million comprises claims for clean-up and pollution prevention measures (US$1.5 million); claims for property damage (US$2.5 million); claims for economic loss in the fisheries, mariculture and fish processing sectors (US$10 million); ›

[<11>] The claimants report that the spill occurred on 24 March 2009, and that the authorities did not respond until 30 March 2009.

[<12>] Concel Engineering Ltd (the owners of the *MT Concep*/charterers of the *Redfferm*) paid NGN 5 750 000 (£23 000) to lift the barge.

claims for economic loss in the tourism sector (US$1.5 million); claims for environmental damages and economic losses (US$750 000); and general damages (US$10 million).

The Secretariat is working with the Government of Nigeria to ascertain the facts of the case and, if applicable, to determine the compensation due to the victims under the Conventions.

Legal issues

Investigation into the cause of the incident

After being informed in early 2012 of the spill, the Secretariat conducted initial investigations, including requesting the International Group of P&I Associations and the International Tanker Owners Pollution Federation (ITOPF) for details of any information they held regarding the incident, the vessels concerned and the barge owner's identity. The Secretariat found no records of any International Group P&I Club cover for either vessel and the vessels owners were not ITOPF members.

In June 2012, the Director and members of the Secretariat visited Nigeria to meet with the plaintiffs' lawyer and representatives from NIMASA, NOSDRA and the NPA, in order to investigate the circumstances of the incident, gather facts and to visit the spill location.

The Secretariat instructed Nigerian lawyers to conduct a preliminary fact-finding investigation. The Secretariat also made contact with NIMASA and requested their assistance in providing further details of the incident.

The shipowner and the insurance

There appears to be no information available on the Nigerian Ship Registry regarding the ownership of the barge, with whom primary liability for the spill rests. However, the Secretariat has been informed verbally, that at the time of the incident, the barge was owned by Captain Orizu. The Secretariat has also been informed that following the refloating of the *Redfferm*, the barge was adapted into a floating dock. However, the current location of the barge and its owner are not known.

NIMASA has no records or details of the registration or any information relating to *Redfferm*. Additionally, NPA has no written records regarding the movements of the barge prior to the spill or of its conversion into a floating dock.

Redfferm as a sea-going ship (Article I.1 of the 1992 CLC)

Article I.1 of the 1992 Civil Liability Convention states:

> *" 'Ship' means any sea-going vessel and seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo, provided that a ship capable of carrying oil and other cargoes shall be regarded as a ship only when it is actually carrying oil in bulk as cargo and during any voyage following such carriage unless it is proved that it has no residues of such carriage of oil in bulk aboard."*

The Secretariat is investigating if the *Redfferm* is a sea-going vessel within the meaning of Article I.1 of the 1992 CLC. As of October 2012, it appears that there is no documentary evidence showing earlier trans-shipments involving the barge *Redfferm* at sea. NPA has however stated that the size of the barge did not prevent it from being an ocean-going barge and that what mattered was whether it could be used for ocean-going transportation. However, there is presently no evidence that previous trans-shipment operations involving the *Redfferm* took place at sea.

At the October 2012 session of the 1992 Fund Executive Committee it was agreed that the Director should first establish whether the barge *Redfferm* constituted a 'sea-going vessel or seaborne craft', as described in Article I.1 of the 1992 CLC, before any decision regarding payment of compensation could be taken.

Legal proceedings

In March 2012 a claim for US$26.25 million was filed by a lawyer representing 102 communities allegedly affected by the spill against the owners of *MT Concep*, the owners of *Redfferm*, Thame Shipping Agency Ltd (agent of both the *MT Concep* and the *Redfferm*) and the 1992 Fund.

Although some information has been provided, the 1992 Fund cannot clearly determine the precise locations of the 102 communities or the numbers of individuals within the communities allegedly affected by the spill. Only when this information is provided to the Secretariat would the Fund's experts be in a position to attempt to analyse the data provided with a view to assessing the likely losses caused by the incident, although this task will be hampered by the late notification of the incident to the 1992 Fund.

The 1992 Fund applied to be removed from the proceedings as a defendant and replaced as an intervenor on the basis that primary liability for the spill rests with the owner of the *Redfferm*. The claimants' lawyer also agreed to stay the proceedings against the 1992 Fund, in order that the claims assessment process could commence without the need for the 1992 Fund to simultaneously defend a legal action.

JS Amazing

Date of incident	6 June 2009
Place of incident	Ijala, Warri River, Delta State, Nigeria
Cause of incident	Tanker's hull pierced by two iron pipes from the remains of a mooring dolphin as tanker was being loaded
Quantity of oil spilled	Estimated to be approximately 1 000 tonnes
Area affected	Warri River, Delta State, Nigeria
Flag State of ship	Nigeria
Gross tonnage	3 384 GT
P&I insurer	Ship appears not to be insured
CLC limit	4.51 million SDR (£4.3 million)
STOPIA/TOPIA applicable	No
CLC + Fund limit	203 million SDR (£194 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 2012.

Map data ©2011 Europa Technologies, Google

Incident

On 6 June 2009, the Nigerian-registered tanker *JS Amazing* spilled approximately 1 000 tonnes of low pour fuel oil (LPFO) into the Warri River, Delta State, Nigeria.

On 5 June 2009, the *JS Amazing* had received orders to proceed to the refinery loading berth II, owned by the Nigerian National Petroleum Corporation (NNPC), to load 5 000 tonnes of LPFO. Loading of the cargo commenced on 5 June 2009, but shortly after midnight an oil leak was noted from the vessel's hull. In the early hours of 6 June, shortly after loading was suspended, the vessel listed approximately 45° to port. Oil continued to spill from the casualty.

The next day, a diver's inspection revealed that the port side of the vessel's hull had been punctured by two iron pipes from the wreck of a submerged mooring dolphin under the hull of the vessel.

It is understood that the tanker stopped leaking oil on 11 June 2009 when the two iron pipes were cut from the mooring dolphin wreck and the casualty was stabilised.

The 1992 Fund was not informed of the incident until May 2011. The 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 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.

Impact

According to a Pipeline Products Marketing Corporation (PPMC) internal memorandum, the quantity of oil on board the *JS Amazing* before the incident totalled 3 338.6 tonnes. After the incident 2 303.8 tonnes were pumped from the vessel. Accordingly, it is believed that some 1 000 tonnes of oil leaked into the Warri River on the days following the incident.

Joint visit by NOSDRA and PPMC to the affected area

Within days of the spill, the Nigerian Oil Spill Detection and Response Agency (NOSDRA) was notified that some 12 communities had been impacted by the spill. Shortly thereafter, NOSDRA conducted a joint visit with PPMC to assess the impact of the spill upon the environment and upon the communities affected. NOSDRA and PPMC visited 232 communities between July and September 2009 and listed the inventory of each community.

As a result of the visit, NOSDRA requested PPMC to take immediate steps to clean up and remediate the impacted areas. By December 2009, PPMC had not complied with NOSDRA's request to clean up the impacted areas, as a result of which NOSDRA fined PPMC the sum of NGN 1 million (US$6 420).

In September 2010, NOSDRA commenced legal proceedings against PPMC for failing to clean up and remediate the impacted areas and failing to pay the fine. The proceedings concluded in May 2012 when the judge decided that:

- PPMC was in breach of legislation when it failed to clean up the area impacted by the *JS Amazing* spill;
- PPMC should pay the fine of NGN 1 million to NOSDRA; and
- PPMC should immediately clean up and remediate the impacted sites as directed.

It is not known whether PPMC carried out any clean-up and remediation work or whether it has paid the fine.

Damage assessment and valuations

In July 2009 NOSDRA commissioned a firm of estate surveyors and valuers to conduct a damage assessment report on behalf of 245 communities allegedly affected by the incident. The damage assessment report concluded that the losses and injuries suffered and the damage to the property, interests and rights of the communities, as a result of the spill from the *JS Amazing*, amounted to NGN 2 241 million (£8 964 000).

In 2010, as a result of pressure from a number of committee groups established following the incident, PPMC paid to a number of communities the total sum of NGN 30 million (£120 000).

In July 2011 PPMC appointed a valuer to conduct an assessment of damages in conjunction with an NNPC committee established to handle the assessment and payment of compensation. The results of the assessment and details of any additional compensation paid by PPMC are not known.

Post spill socio-economic impact assessment study

In accordance with Nigerian legislation, NOSDRA commissioned a post-spill socio-economic impact assessment study of the incident. The study was conducted by a firm of environmental consultants. The fieldwork was carried out between 15 July and 15 August 2009 (approximately 6-10 weeks after the incident) and consisted of samples taken from soil, surface water and sediment. In addition, top and bottom soil samples, surface water and sediments were taken from fishponds at various locations.

The study lists 100 communities affected by the LPFO spill from the *JS Amazing*. The study states that all water samples contained heavy metals in traces, but that these were far below the Department of Petroleum Resources (DPR) intervention levels and notes that many of the heavily impacted sites were within 7.5 km of the site of the spill.

The study concludes that the soil samples collected showed no significant increase of heavy metal concentrations, as they were all below established DPR intervention levels, but that there were 'heavily impacted' bottom sediments found around the PPMC loading jetty where the spill took place and at three other areas/ fishponds where the petroleum hydrocarbon concentrations exceeded the DPR intervention levels. The study also lists two other categories, namely 'moderately impacted' and 'low impacted' areas, which appear to have been categorised on the basis of the sedimentation readings obtained by the field study.

The report also states that there was a presence of petroleum hydrocarbons at all the sites within the study area. It is submitted that this could indicate a pre-existing level of presence of hydrocarbons, prior to the spill from the *JS Amazing*.

The JS Amazing listing, having punctured its hull.

Response operations

The Warri Port Manager initially notified the Nigerian Ports Authority (NPA) of the incident in the early hours of 6 June 2009. At approximately the same time NOSDRA was notified of the spill by a member of one of the communities affected. Later that morning, several NOSDRA officials, community members and NNPC representatives went to the jetty area.

Response operations commenced on 6 June 2009 with the mobilisation of an oil spill response team and equipment. In addition, Clean Nigeria Associates were retained to assist with the clean-up operation using oil skimmer equipment. The amount of oil recovered in the days following the incident appears to have been minimal. It appears that only on 10 June 2009 were booms placed around the tanker to limit the pollution to the tidal Warri River and that clean-up operations were restricted to the immediate area surrounding the tanker.

The tanker was restored to her initial stability on 11 June 2009. In 2011 the submerged remains of the mooring dolphin were finally removed from the NNPC jetty site.

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.

Claims for compensation

The 1992 Fund has been contacted by two surveyors representing claimants affected by the incident who were seeking compensation for their losses. One claim has been submitted to the 1992 Fund for some NGN 30.5 billion but it contains no calculations or justification for the figures claimed.

In June 2012, the Director and members of the Secretariat visited Nigeria and met with the claimants' representatives, the NPA, the Nigerian Maritime and Safety Agency (NIMASA) and NOSDRA in order to gather further background information.

During the meeting with the claimants, the Director stressed that any compensation available to victims from the IOPC Funds could only be based on real losses. The Secretariat is working with the Government of Nigeria to ascertain the facts of the case and to determine the compensation due to the victims under the Conventions.

As of October 2012, no information has been provided detailing the precise locations of the 248 communities or the numbers of individuals within the communities allegedly affected by the spill. Only when this information is provided to the Secretariat would the Fund's experts be in a position to analyse the data provided with a view to assessing the losses caused by the incident, although this task will be hampered by the late notification of the incident to the 1992 Fund.

The situation regarding the impact of earlier spills on communities which may have been subsequently affected by the *JS Amazing* incident is not yet clear. In addition, the total amount of compensation paid to the communities by PPMC, the valuation of the losses suffered by the affected communities as assessed by PPMC and the extent of remediation works (if any) have not yet been clearly explained.

Legal Issues

Investigation into the cause of the incident

In March 2012, the Nigerian Federal Ministry of Transport established a Marine Board of Inquiry to carry out an investigation into the cause of the spill.

Poor ship handling

The Marine Board of Inquiry noted that the vessel was improperly moored with insufficient mooring lines and that as the tide flowed, the tide pushed the stern of the vessel approximately ten metres away from the jetty. As a consequence, the bow was pushed into the jetty where the vessel struck the underwater wreck of the mooring dolphin. It also appears that as tidal conditions changed, no crew members tended the mooring lines.

No safe minimum manning documentation

The Marine Board of Inquiry report highlighted that the vessel was undermanned because:

i. there was no officer of the watch;
ii. the chief engineer was not certified competent to be the chief engineer; and
iii. there was no second engineer, which was unusual for a vessel of that size. ❯

Unqualified master and crew

The Marine Board of Inquiry report also highlighted that:

i. the master of the *JS Amazing* was not certified to take command of a vessel of such gross tonnage and did not possess an advanced tanker certificate/endorsement which was necessary for a vessel such as the *JS Amazing*;
ii. the master had no knowledge of the certificates the vessel was required to carry, the requirement to comply with the provisions of the International Safety Management (ISM) Code, the relevant nautical publications the vessel was required to carry and the emergency procedures to follow after an incident; and
iii. the master had no knowledge of the provisions of the 1992 CLC or the need to forward the certificate of insurance (blue card) from the insurer to NIMASA for issuance of the CLC certificate.

In addition, the master testified at the Inquiry that he could not locate the majority of the relevant certificates which are required under Nigerian and international law.

Insurance cover of the *JS Amazing*

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. Subsequently, the Secretariat was informed that the *JS Amazing* was insured with the South of England P&I Club.

Amongst the exhibits tendered to the Marine Board of Inquiry were copies of:

a. a Certificate of Entry from the South of England P&I Club for the 2008 policy year; and
b. a Certificate (blue card) furnished as evidence of insurance pursuant to Article VII of the 1969 CLC and Article VII of the 1992 CLC for the period from July 2010 to January 2011, issued by the South of England P&I Club to NIMASA.

Evidence of insurance with the South of England P&I Club has been provided for the 2008 and 2010 policy years, however, no evidence of insurance has been provided for the 2009 policy year when the incident occurred. Under cross-examination at the Marine Board of Inquiry, the representative of the shipowner stated that the shipowners had paid the insurance cover annually to a broker since 2005 and that the vessel was insured at the time of the incident.

Certificate of Entry with the South of England P&I Club (2008 policy year)

Notwithstanding that no policy documents have been provided for the 2009 policy year, the Certificate of Entry for the 2008 policy year states:

> "*This Certificate of Entry is only to provide cover for liability in respect of Cargo on board the Entered Ship in accordance with Rule 29A of the South of England Rules of theAssociation, when such cargo is homogenous liquids in bulk of a non-persistent nature*."

Certificate of Class for Hull and Machinery (2010 policy year)

Amongst the documents tendered to the Marine Board of Inquiry was a Certificate of Class for Hull and Machinery Equipment issued by the International Naval Surveys Bureau in 2010, which stated that the vessel was not classed to carry heavy grade oil.

The liquidation of the South of England P&I Club

In 2011, the Supreme Court of Bermuda handed down a winding up Order in relation to the South of England P&I Club. The Court also ordered that joint provisional liquidators be appointed to oversee the winding up of the Club.

The Secretariat contacted the joint liquidators to alert them as to the existence of the incident and to enquire whether they had documentation which might assist in identifying the insurer at the time of the incident. The joint liquidators stated that they had not been provided with much information regarding the incident but that they had had several conversations with the placing broker who had stated that the vessel was not insured with the South of England P&I Club at the time of the incident.

At present the Secretariat has not seen any documentation that indicates that the vessel was insured for the 2009 policy year. It also appears that she was not classed to carry heavy grade oil in 2008 or 2010.

Legal 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.

In 2010, the shipowner commenced legal proceedings against NNPC for damage to the ship arising from the incident.

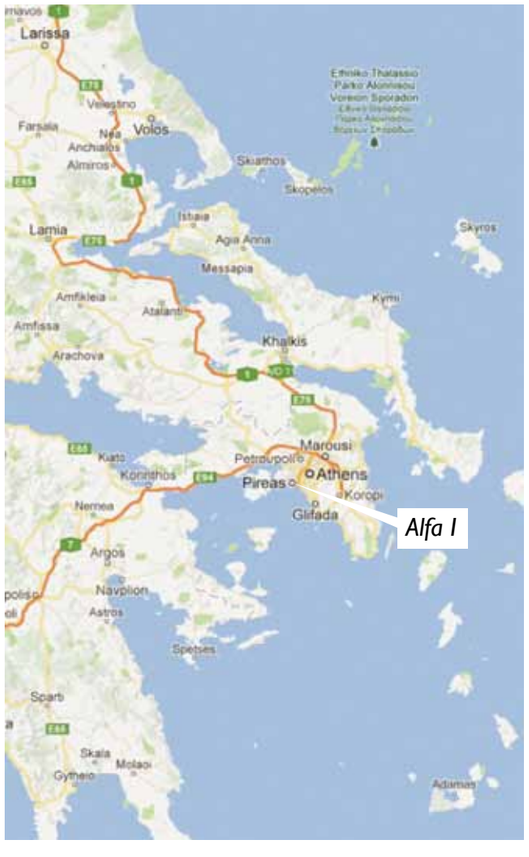
In May 2012 a claim for NGN 30.5 billion was filed against the shipowner, the joint liquidators of the South of England P&I Club and the 1992 Fund by representatives of 248 communities allegedly affected by the spill.

In July 2012 the 1992 Fund applied to strike itself out as a defendant but sought leave to be an intervenor, on the basis that primary liability for the first tier of compensation rests with the shipowner, but recognising that the 1992 Fund might be called upon to pay compensation in excess of the shipowner's limit of liability.

Alfa I

Date of incident	5 March 2012
Place of incident	Elefsis Bay, Piraeus, Greece
Cause of incident	Collision with submerged object
Quantity of oil spilled (approximate)	Unknown
Area affected	Elefsis Bay, Piraeus, Greece
Flag State of ship	Greece
Gross tonnage	1 648
P&I insurer	Aigaion Insurance Company, Greece
CLC limit	4 510 000 SDR (£4.3 million)
STOPIA/TOPIA applicable	No
CLC + Fund limit	203 million SDR (£194 million)
Compensation paid	None

Conversion into Pounds sterling has been made on the basis of the exchange rate as at 31 October 2012.



Map data ©2013 Basarsoft, Google

Incident

On 5 March 2012, the tanker *Alfa I* hit a submerged object, namely the marked wreck of the vessel *City of Myconos*, while crossing Elefsis Bay near Piraeus, Greece. The impact punctured the bottom hull plating of *Alfa I* over a length of some 30 metres. Shortly thereafter, the *Alfa I* listed over onto her starboard side and sank. The *Alfa I* came to rest in 18-20 metres of water with her stern in contact with the seabed but the bow still visible above water. The incident also resulted in the tragic loss of the master's life.

The *Alfa I*, built in 1972, is a single hull tanker with 12 cargo tanks. At the time of the incident, the *Alfa I* was said to be loaded with some 2 070 tonnes of cargo comprising 1 500 tonnes of fuel oil N°2, 300 tonnes of fuel oil N°1 and 270 tonnes of gas oil. The exact amount and specifications of the cargo and bunkers on board at the time of the incident are not known. After sinking, an unknown quantity of oil was released from the tanker through the manholes, vent pipes and sounding pipes on her deck.

Impact

Oil impacted along some 13 kilometres of the shoreline of Elefsis Bay, contaminating a number of local beaches in Loutopyrgos, Neraki and Nea Peramos, and also the Salamina Island (Faneromenis and Batsi). In addition it is reported that some oil impacted less accessible areas of rocky shore and a naval base.

Response operations

At-sea operations

A salvage company was engaged by the shipowner under a salvage contract and divers employed by this company stopped the release of oil into the water by closing and tightening the manholes, vent pipes and sounding pipes. No further loss of oil was reported.

A perimeter consisting of two sets of booms was placed around the wreck of the tanker and anchored at regular intervals to maintain the perimeter in the prevailing weather conditions.

Subsequent salvage activity focussed on the removal of the cargo from *Alfa I* by 'hot tapping' which involved drilling into each cargo tank and pumping out the contents. The salvors recovered some 1 579 m^3 of Heavy Fuel Oil (fuel oil N°2), some 158 m^3 of Marine Grade Oil (fuel oil N°1) and some 94 m^3 of slops from the wreck of the tanker between 13 March and 28 April 2012.

The viscous nature of the cargo and the equipment employed during the oil removal delayed the operations, but reports provided by surveyors appointed by the shipowner's insurers indicate that the oil removal operations from the wreck of the tanker were completed by 25 April 2012 and tank flushing and sealing operations continued until 28 April 2012. Following the oil removal operation, the surveyors appointed by the shipowner's insurers requested that the clean-up contractors provide documentation and an estimate of the costs incurred during the operation, but this was not provided until late August 2012.

Another company was contracted to undertake the response operations at sea using oil recovery vessels, booms and skimmers. An unknown quantity of oil was recovered at sea by vessels normally used for oil and debris removal in the port. The clean-up contractors reported that some 1 200 metres of booms were deployed around the casualty and skimmers were used to collect the oil[13]. In addition, allegedly some 200 to 300 metres of booms were deployed to protect a marina and an oyster farm nearby.

Shoreline clean up

The amount of oil which impacted the shoreline and the quantity of waste material removed during the clean-up operations is not known.

The company contracted to undertake response operations at sea was also contracted to carry out the manual cleaning of the shoreline affected. Some 30 to 50 people were employed to manually remove the oil along with beach sediment (mainly gravel and pebbles) and to put the waste in bags for disposal.

One clean-up team consisting of nine people remained operating at Faneromeni and Salamis on 5 May 2012. According to reports provided by the clean-up contractors, cleaning of the equipment used during the response operations (with the exception of the booms surrounding the sunken tanker) was completed on or around 5 June 2012. It is understood that clean-up operations were completed by 30 June 2012.

Site visit by the 1992 Fund Secretariat

In May 2012, the Head of the Claims Department and the Claims Manager handling the incident visited the location of the sunken tanker and the areas affected by the spill. They also met with Aigaion Insurance Company (the shipowner's insurers) to discuss the details of the insurance arrangements which were in place for the *Alfa I* at the time of the incident. The 1992 Fund instructed experts to visit the site of the incident and Greek lawyers to monitor and investigate the circumstances surrounding the incident.

The Secretariat was informed that only a small area contaminated by the spill remained to be cleaned and that the majority of the clean-up operations had been concluded[14]. It was noted that the site of the sunken tanker was only marked by the presence of floating oil booms with a salvage tug in attendance and that no marker buoys had been placed to warn other shipping of the location of the sunken tanker, or of its proximity to the surface of the sea[15]. No visible oil was seen to be leaking from the wreck.

The Secretariat was informed that the Greek authorities were conducting a formal investigation into the incident, but that this would initially be confidential and would only be made available to the general public when the files were forwarded to the District Attorney of Athens for publication.

Applicability of the Conventions

Greece is a Party to the 1992 Civil Liability and Fund Conventions.

Since the *Alfa I* (1 648 GT) is below 5 000 units of tonnage, the limitation amount applicable under the 1992 CLC is 4.51 million SDR. The total amount available for compensation under the 1992 CLC and 1992 Fund Convention is 203 million SDR.

[13] It is understood that the contractors were instructed to surround the area where the tanker sank with two booms (one within the other).

[14] Shoreline clean-up of contaminated areas of Nea Peramos, Neraki and Loutropirgos (excluding some scattered areas at Eftaixia) were completed by 2 May 2012. Some scattered areas of Skaramanga were reported by the clean-up personnel as contaminated, but this area was part of a military area and access was not easily permitted. Clean-up operations at Salamis Island, including the naval base of Nafstathmos, Batsi, Agios Georgios and Faneromeni were also completed by 6 May 2012 (excluding some small areas at Batsi and Faneromeni consisting of rocky shoreline).

[15] Both the experts retained by the Fund and the Fund's Head of Claims/ Technical Adviser noted that the presence of two booms as a perimeter was unnecessary if just one boom was deployed correctly.

Consequently, if the total amount of damages caused by the spill were to exceed the limitation amount applicable under the 1992 CLC, the 1992 Fund would be liable to pay compensation to the victims of the spill.

Alternatively, the 1992 Fund would be liable to pay compensation if the shipowner was financially incapable of meeting his obligations in full and any insurance provided did not cover or was insufficient to satisfy the claims for compensation, after the claimants had taken all reasonable steps to pursue the legal remedies available to them (Article 4(1)(b) of the 1992 Fund Convention).

Greece is also a Party to the Supplementary Fund Protocol. The *Alfa I* is therefore the first incident taking place in a Member State of the Supplementary Fund. It is however very unlikely that the incident will exceed the limit under the 1992 Fund Convention.

Claims for compensation

As at 7 September 2012, no claims for compensation had been made against the 1992 Fund. However, in June 2012 the Elefsis Harbour Master issued a fine to the shipowners for the amount of €150 000 in respect of the pollution caused by the incident and also issued an order for the reimbursement of the costs and expenses of the Greek State for the clean-up operations amounting to €260 000.

In late August 2012, the clean up contractors submitted a claim for €13.3 million to the shipowner for marine environment protection measures, collection of oil from the surface of the sea, cleaning of polluted shores, pumping of oil and waste products from the wreck and waste transportation/disposal from the anti-pollution operations for the period of 5 March 2012 to 30 June 2012.

Legal issues

The 1992 Fund has engaged experts to monitor the clean-up operations and gather information regarding the incident and the response. The 1992 Fund has also employed a Greek lawyer to advise the Fund on the legal issues arising from the incident.

The shipowner and the insurance policy of the *Alfa I*

The shipowner is Via Mare Shipping Company, Greece, under the management of Blue Iris Shipping. The Greek Register of Shipping lists five vessels under the management of Blue Iris Shipping but each vessel is owned separately.

The *Alfa I* had P&I cover including pollution risks with Aigaion Insurance Company, a fixed premium insurance provider. The policy was subject to English law and practice. The terms of that policy provided for trading in Greek waters only and contained a limit of liability as follows:

> 'Euro 2 000 000 combined single limit each vessel for all claims any one accident or occurrence'

It also included the following express warranty:

> 'Warranted non-persistent cargoes only'

The shipowner's insurer issued certificates of insurance (blue cards) to the Central Port Authority of Piraeus in respect of liability under the Bunkers Convention and liability under the 1992 CLC. The 1992 CLC certificate provided:

> "Certificate furnished as evidence of insurance pursuant to Article VII of the International Convention on Civil Liability for Oil Pollution Damage 1969 and Article VII of the International Convention for Oil Pollution Damage 1992…
>
> *This is to certify that there is in force in respect of the above named ship while it is in the above ownership as [sic] policy of insurance satisfying the requirements of (A) Article VII of the International Convention on Civil Liability for Oil Pollution Damage 1969, and (B) Article VII of the International Convention on Civil Liability for Oil Pollution Damage 1992 where and when applicable."*

On the basis of the blue card, the Greek authorities as the Flag State issued a certificate of insurance in the form of the draft in the Annex to the text of the 1992 CLC specifying, *inter alia*, Aigaion Insurance Company as the insurers.

Article VII, paragraph 1 of the 1992 CLC provides:

> *"The owner of a ship registered in a Contracting State and carrying more than 2 000 tons of oil in bulk as cargo shall be required to maintain insurance or other financial security, such as the guarantee of a bank or a certificate delivered by an international compensation fund, in the sums fixed by applying the limits of liability prescribed in Article V, paragraph 1 to cover his liability for pollution damage under this Convention".*

Prior to the incident, the tanker was understood to have been loaded with 2 070 tonnes of cargo, of which 1 800 tonnes were various persistent mineral oils and 270 tonnes gas oil. The precise amount of the cargo actually on board the tanker at the time of loading and its specification is unknown, as is the quantity of bunkers on board. It is not known therefore, whether more than 2 000 tonnes of persistent oil was on board at the time of the incident.

In the event that the *Alfa I* was not carrying more than 2 000 tonnes of persistent oil at the time of the incident, the primary liability for any pollution damage caused as a result of the incident under the 1992 CLC rests with the shipowner (Article III(1) of the 1992 CLC). The shipowner would normally be entitled to limit its liability to 4.51 million SDR provided the limitation fund is established (Article V(1)(a) of the 1992 CLC).

Considerations

In respect of the *Alfa I* insurance coverage there is a contradiction in the terms of the policy and the certificate (blue card) issued to the Greek State by the shipowner's insurer, Aigaion Insurance Company, because the insurance policy is limited to some €2 million, with an express warranty permitting the carriage of non-persistent mineral oils only. However, the certificate (blue card) provided to the Central Port Authority of Piraeus, states that an insurance policy was in place which complied with Article VII of the 1992 CLC 'where and when applicable'.

The Director is of the view that if the shipowner's insurer were to refuse payment of compensation for pollution damage either on the grounds that the policy of insurance contained a warranty ('Warranted non-persistent cargoes only') or that the policy was limited to €2 million, the 1992 Fund might wish to consider whether to contest the terms of the insurance provided.

Following discussions with the 1992 Fund's Greek and English lawyers, the Director is of the view that Aigaion Insurance Company would be *prima facie* liable to pay compensation for the damages caused by the spill. Aigaion Insurance Company are the insurers identified in the Certificate of Insurance issued by the Greek authorities in the form specified in the Annex to the 1992 CLC. Furthermore, the tanker was allowed to trade in Greek waters on the basis of the representation made on the certificate of insurance (blue card) issued by Aigaion Insurance Company.

At its October 2012 session, the 1992 Fund Executive Committee decided that further investigations into the incident were required before a decision could be taken as to whether to authorise the Director to start making payments in respect of this incident.

IOPC Funds Claims Manager, Mark Homan, and local surveyor on site in Elefsis Bay, Piraeus, Greece.

1992 FUND • Summary of Incidents

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	Cause of incident	Estimated quantity of oil spilled (tonnes)	Compensation paid by the 1992 Fund up to 31.10.12	Year last featured in Annual/Incident Report*
Incident in Germany	20.06.1996	North Sea coast, Germany	Unknown	Unknown	Unknown	Unknown	Unknown	€1 284 905	2007
Nakhodka	02.01.1997	Oki Islands, Japan	Russian Federation	13 159	1 588 000 SDR	Breaking	6 200	¥26 089 893 000	2002
Osung N°3	03.04.1997	Tunggado, Republic of Korea	Republic of Korea	786	104 500 SDR	Grounding	Unknown	Nil	2001
Incident in United Kingdom	28.09.1997	Essex, United Kingdom	Unknown	Unknown	Unknown	Unknown	Unknown	Nil	2002
Santa Anna	01.01.1998	Devon, United Kingdom	Panama	17 134	10 196 280 SDR	Grounding	280	Nil	1999
Milad 1	05.03.1998	Bahrain	Belize	801	Unknown	Damage to hull	Unknown	BD 21 168	1999
Mary Anne	22.07.1999	Philippines	Philippines	465	3 million SDR	Sinking	Unknown	Nil	2002
Dolly	05.11.1999	Martinique	Dominican Republic	289	3 million SDR	Sinking	Unknown	€1 457 753	2007
Erika	12.12.1999	Brittany, France	Malta	19 666	€12 843 484	Breaking	19 800	€129.7 million	2012
Al Jaziah 1	24.01.2000	Abu Dhabi, United Arab Emirates	Honduras	681	3 million SDR	Sinking	100-200	Dhs 6 400 000	2010
Slops	15.06.2000	Piraeus, Greece	Greece	10 815	8.2 million SDR	Fire	1 000-2 500	€4 022 099	2008
Incident in Spain	05.09.2000	Spain	Unknown	Unknown	Unknown	Unknown	Unknown	Nil	2003
Incident in Sweden	23.09.2000	Sweden	Unknown	Unknown	Unknown	Unknown	Unknown	Nil	2006
Natuna Sea	03.10.2000	Indonesia	Panama	51 095	22 400 000 SDR	Grounding	7 000	Nil	2003
Baltic Carrier	29.03.2001	Denmark	Marshall Islands	23 235	DKr 118 million	Collision	2 500	Nil	2003
Zeinab	14.04.2001	United Arab Emirates	Georgia	2 178	3 million SDR	Sinking	400	US$844 000 Dhs 2 480 000	2004
Incident in Guadeloupe	30.06.2002	Guadeloupe	Unknown	Unknown	Unknown	Unknown	Unknown	Nil	2003
Incident in United Kingdom	29.09.2002	United Kingdom	Unknown	Unknown	Unknown	Unknown	Unknown	£5 400	2003
Prestige	13.11.2002	Spain	Bahamas	42 820	€22 777 986	Breaking	63 200	€119.9 million	2012
Spabunker IV	21.01.2003	Spain	Spain	647	3 million SDR	Sinking	Unknown	Nil	2003
Incident in Bahrain	15.03.2003	Bahrain	Unknown	Unknown	Unknown	Unknown	Unknown	US$1 231 000	2006
Buyang	22.04.2003	Geoje, Republic of Korea	Republic of Korea	187	3 million SDR	Grounding	35-40	Nil	2004

*All Annual and Incident Reports dating back to 1978 are available at www.iopcfunds.org/publications

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	Cause of incident	Estimated quantity of oil spilled (tonnes)	Compensation paid by the 1992 Fund up to 31.10.12	Year last featured in Annual/Incident Report*
Hana	13.05.2003	Busan, Republic of Korea	Republic of Korea	196	3 million SDR	Collision	34	Nil	2004
Victoriya	30.08.2003	Syzran, Russian Federation	Russian Federation	2 003	3 million SDR	Fire	Unknown	Nil	2004
Duck Yang	12.09.2003	Busan, Republic of Korea	Republic of Korea	149	3 million SDR	Sinking	300	Nil	2004
Kyung Won	12.09.2003	Namhae, Republic of Korea	Republic of Korea	144	3 million SDR	Stranding	100	KRW 3 328 000 000	2004
Jeong Yang	23.12.2003	Yeosu, Republic of Korea	Republic of Korea	4 061	4 510 000 SDR	Collision	700	Nil	2004
N°11 Hae Woon	22.07.2004	Geoje, Republic of Korea	Republic of Korea	110	4 510 000 SDR	Collision	12	Nil	2004
N°7 Kwang Min	24.11.2005	Busan, Republic of Korea	Republic of Korea	161	4 510 000 SDR	Collision	37	KRW 2 032 100 000	2010
Solar 1	11.08.2006	Guimaras Strait, Philippines	Philippines	998	4 510 000 SDR	Sinking	2 100	PHP 986 646 031	2012
Shosei Maru	28.11.2006	Seto Inland Sea, Japan	Japan	153	4 510 000 SDR	Collision	60	¥899 693 953	2009
Volgoneft 139	11.11.2007	Strait of Kerch, between Russian Federation and Ukraine	Russian Federation	3 463	4 510 000 SDR	Breaking	1 200-2 000	Nil	2012
Hebei Spirit	07.12.2007	Off Taean, Republic of Korea	China	146 848	KRW 186.8 billion	Collision	10 900	Nil	2012
Incident in Argentina *(Presidente Illia)*	26.12.2007	Caleta Córdova, Argentina	Argentina	35 995	24 067 845 SDR	Unknown	50-200	Nil	2012
King Darwin	27.09.2008	Port of Dalhousie, New Brunswick, Canada	Canada	42 010	27 863 310 SDR	Discharge	64	Nil	2012
JS Amazing	06.06.2009	Ijala, Warri River, Delta State, Nigeria	Nigeria	3 384	4 510 000 SDR	Unknown	Unknown	Nil	2012
Redfferm	30.03.2009	Tin Can Island, Lagos, Nigeria	Nigeria	Unknown but estimated to be less than 5 000	4 510 000 SDR (estimated)	Barge sinking	Unknown	Nil	2012
Alfa I	05.03.2012	Elefsis Bay, Piraeus, Greece	Greece	1 648	4 510 000 SDR	Collision with submerged object	Unknown	Nil	2012

*All Annual and Incident Reports dating back to 1978 are available at www.iopcfunds.org/publications

Vistabella

Date of incident	7 March 1991
Place of incident	Saint Barthélemy, Guadeloupe (France)
Cause of incident	Sinking
Quantity of oil spilled	Unknown
Area affected	Guadeloupe (France) and British Virgin Islands (United Kingdom)
Flag State of ship	Trinidad and Tobago
Gross tonnage	1 090 GRT
P&I insurer	Maritime General Insurance Company Limited
CLC limit	€359 000 (£288 516)
CLC + Fund limit	60 million SDR (£57 million)
Compensation paid	€1.3 million (£1 million) (paid by the 1971 Fund)

Conversion into Pounds sterling has been made on the basis of the exchange rate as at 31 October 2012.

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. Strong winds and currents led the oil to spread and, as a result, a number of locations in the Caribbean were impacted, including Guadeloupe (France) and the British Virgin Islands (United Kingdom).

Applicability of the Conventions

At the time of the incident France and the United Kingdom were Parties to both the 1969 Civil Liability Convention (1969 CLC) and the 1971 Fund Convention and had extended the application to include the affected islands. 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 considered unlikely that the shipowner would be able to meet his obligations under the 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 of the British Virgin Islands and to the UK Government for a total of £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 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 lawyers in Trinidad and Tobago, 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 appealed against this judgement in the Court of Appeal in Trinidad and Tobago, arguing that the enforcement of foreign judgements was contrary to public policy as the applicable French law was repugnant to the law of Trinidad and Tobago on four grounds, namely:

a. it allowed for a direct action against the insurer and deprived the insurer of defences that would ordinarily be open to it under its contract of insurance with its insured;
b. it imposed strict liability on the insurer without the possibility of mounting an effective defence;
c. it overrode the contractual limitation on liability of TT$3 000 000 (€380 000) which was expressed in the contract of insurance with its insured; and
d. the application of French law was in breach of the legislative choice of law and jurisdiction as set out in the Insurance Act of Trinidad and Tobago and so violated the public policy as determined by Parliament.

In a judgement rendered in July 2012, the Court of Appeal dismissed the first three grounds of appeal but found that the fourth ground required further consideration. Noting that the Insurance Act of Trinidad and Tobago stated: 'Every policy issued in Trinidad and Tobago through a person or an office in Trinidad and Tobago shall, notwithstanding any agreement to the contrary, be governed by the laws of Trinidad and Tobago and shall be subject to the jurisdiction of the Courts of Trinidad and Tobago', the Judge held that this was an example of an overriding statute which laid down a mandatory rule as to the applicable law of the policy or contract of insurance and the relevant jurisdiction and this was to be regarded as laying down or crystallising a rule of public policy.

Noting further that insurance companies fulfilled an important role in the national financial and economic systems, the Judge stated that the State had an obvious interest in protecting and regulating those systems and that the Insurance Act of Trinidad and Tobago was designed to serve that interest. The Judge therefore held that it was contrary to public policy to apply to a policy of insurance issued in Trinidad and Tobago or through a person or an office in Trinidad and Tobago, a law other than the law of Trinidad and Tobago.

The 1971 Fund had argued that it was not sufficient to rely on one statutory provision to claim that foreign judgements were contrary to public policy when a direct action by an injured party against an insurer was a recognised concept under Trinidad and Tobago domestic legislation. Additionally, the 1971 Fund had argued that Trinidad and Tobago had acceded to the 1992 Protocols to the 1969 CLC and 1971 Fund Convention which reflected a broad ›

international consensus as to the appropriate manner to respond to the problems of oil spills which, by acceding to the Conventions, Trinidad and Tobago had chosen to support.

Noting that it was true that an example could be found in the Trinidad and Tobago domestic law which provided a direct action against the insurer and which limited the contractual defences it could raise, the Judge however concluded that it would be contrary to the rule of public policy found within the Insurance Act of Trinidad and Tobago to enforce a judgement pursuant to French law in which the French courts had assumed jurisdiction and applied French law.

Furthermore, the Judge noted that the 1992 Protocols to the Conventions had been acceded to several years after the policy of insurance in this incident was issued and the sinking of the *Vistabella* which had given rise to the claim against the insurer. Moreover, the Judge noted that the Conventions had not been enacted into domestic law and the policy as laid down by the Insurance Act of Trinidad and Tobago therefore remained unchanged.

In these circumstances, the Judge therefore refused enforcement of the judgement of the Court of Appeal in Guadeloupe. In its judgement the Court argued that the Insurance Act of Trinidad and Tobago set out a rule of public policy that provided that a contract of insurance issued in that jurisdiction should be governed by the law of Trinidad and Tobago and be subject to the jurisdiction of the Courts of Trinidad and Tobago. The Court therefore concluded that to enforce a judgement under French law in which the French courts had assumed jurisdiction and applied French law would be contrary to public policy.

The 1971 Fund has been granted leave to appeal the judgement to the Privy Council and, in conjunction with its lawyers in Trinidad and Tobago and in the United Kingdom, is examining the merits of such appeal.

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 (£5.4 million)
CLC + Fund limit	€57.2 million (£46 million)
Compensation paid	€38 386 172 corresponding to Pts 6 386 921 613 (£33 180 891) paid to the Spanish Government

Conversion into Pounds sterling has been made on the basis of the exchange rate as at 31 October 2012.

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 Government, 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 agreement, 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. The 1971 Fund, in turn, also undertook to notify the Spanish State of any proceedings to which the Spanish State was not a party and not to accept the claims brought in the proceedings.

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.

Court judgements

In a judgement rendered in 1997 the Criminal Court of Appeal in La Coruña held that the master of the *Aegean Sea* and the pilot were directly liable for the incident and that they were jointly and severally liable, each on a 50% basis, to compensate victims of the incident. It was also held that the UK Club and the 1971 Fund were directly liable for the damage caused by the incident and that this liability was joint and several. In addition, the Courts held that the owner of the *Aegean Sea* and the Spanish State were subsidiarily liable.

One claim by a fish pond owner, totalling €799 921, is still pending in the civil proceedings. The Court of First Instance issued a judgement in December 2005 ordering the Spanish Government and the 1971 Fund to pay €363 746 to the claimant. The Spanish Government and the 1971 Fund appealed against the judgement. The Court of Appeal returned the file to the Court of First Instance ordering that the proceedings be re-started also against the pilot, in order to correct an error committed by the Court of First Instance.

The Court of First Instance gave time to the claimant to pursue its claim against the pilot as decided by the Court of Appeal. However, the claimant decided not to continue the claim against the pilot. A technical defence 'lack of *litis consortium*' ie that since the pilot was not a defendant in the proceedings then the vicarious liability of the State could not come into effect, was raised by the Spanish State. The Court of First Instance then ordered that the proceedings continue only against the 1971 Fund.

In a judgement delivered in July 2012 the Court of First Instance decided to award the claimant the amount awarded in its prior decision in 2005, ie €363 746, but since the claimant had not included the pilot/Spanish Government in the proceedings, the 1971 Fund would only be liable in respect of 50% of the awarded amount, ie €181 873.

In accordance with the agreement with the Spanish Government, the 1971 Fund notified the Spanish Government of the above judgement and will appeal against the judgement. The Director continues to hold discussions with the Spanish Goverment on a possible way forward.

The Spanish State will, under the agreement with the 1971 Fund, pay any amounts awarded by the courts.

Firefighters spray water onto the burning oil slick caused by the Aegean Sea incident to prevent it spreading to dry land.

Iliad

Date of incident	9 October 1993
Place of incident	Pylos, Greece
Cause of incident	Grounding
Quantity of oil spilled (approximate)	287 tonnes of Syrian light crude oil
Area affected	Sfaktiria Island and vicinity
Flag State of ship	Greece
Gross tonnage	33 837 GRT
P&I insurer	Newcastle P&I Club, now merged with the North of England Protection and Indemnity Association Limited
CLC limit	4 323 912 SDR[<16>] or €4 391 880 (£3.5 million)
CLC + Fund limit	60 million SDR (£57 million)
Compensation paid	None

Conversion into Pounds sterling has been made on the basis of the exchange rate as at 31 October 2012.

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 287 tonnes of Syrian light crude oil.

Response operations

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.

The *Iliad* was insured with the Newcastle P&I Club, which is now merged with the North of England P&I Club.

Claims for compensation

Claims for costs incurred in respect of clean up and preventive measures submitted by the Ministry of Merchant Marine, a clean up contractor and the shipowner, were settled and paid by the shipowner's insurer, for a total of €1 105 344.

The majority of the claimants whose claims are still pending did not prove to have suffered pollution damage due to the incident.

The table overleaf summarises the claims situation. ❯

[<16>] The limitation fund amount was calculated based on a vessel tonnage of 35 210 GRT, calculated in accordance with Article V, paragraph 10 the 1969 CLC.

Claims submitted in the Limitation Court	Claimed amount (€)	Amount assessed by the Court appointed liquidator (€)	Paid by shipowner's insurer (€)
Clean-up claims (settled)	1 105 502	1 105 344	1 105 344
Other claims (pending) - objections filed to the liquidator's report by claimants	8 739 527	1 030 541	-
Other claims (pending) - no objections filed to the liquidator's report by claimants	979 162	81 870	-
Total	**€10 824 191**	**€2 217 755**	**€1 105 344**

Legal issues

Limitation Proceedings

In March 1994, the shipowner's liability insurer established a limitation fund amounting to Drs 1 496 533 000 or €4 391 880 with the Court in Nafplion through 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 €10.8 million.

Liquidator's report

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 €2 217 755.34.

A subrogated claim by the shipowner's insurer for €1.1 million in respect of amounts paid by it for clean up related claims (see section on claims for compensation) was accepted in full by the Court's appointed liquidator.

The largest claim is that of a fish farm, totalling €3 million. However, the Court's appointed liquidator assessed the claim at €296 000.

Objections to the liquidator's report

Four hundred and forty six claimants, including the shipowner and his insurer and the owner of the fish farm mentioned above, filed objections to the report and the assessed amounts.

The 1971 Fund also filed pleadings to the Court, referring to 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 *vis-à-vis* the 1971 Fund.

The shipowner and his insurer had taken 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 hearing of these proceedings is scheduled for December 2014.

The owner of the fish farm had initially interrupted the time-bar period by taking legal action against the 1971 Fund. However, this action has now been abandoned and the claimant has decided to continue its action solely against the shipowner and his insurer in the limitation proceedings. As a consequence, it can be considered that this claim is now time barred against the 1971 Fund.

Jurisdictional issues

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.

Recent developments

Despite the Fund's request to the liquidator in July 2010 to expedite the hearing of these proceedings, there have been no developments in this regard. The shipowner and his insurer have filed objections in the limitation proceedings against the claims lodged by the claimants. The objections have been scheduled to be heard before the Court of Nafplion in November 2013. The Club and the shipowner have therefore activated the limitation proceedings and, as a result, will oblige the claimants to enter an appearance or else risk having their claims dismissed by the Court.

Considerations

In the Director's view, all claims filed in the limitation proceedings against the 1971 Fund are time-barred, except for the 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.

Taking into account the total claimed amount approved by the liquidator (€2 217 755.34) 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, 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 objections 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.

Beach clean-up operations following the Iliad incident.

Nissos Amorgos

Date of incident	28.02.1997
Place of incident	Maracaibo, Bolivarian Republic of Venezuela
Cause of incident	Grounding
Quantity of oil spilled	3 600 tonnes of crude oil
Flag State of ship	Greece
Gross tonnage	50 563 GRT
P&I insurer	Assuranceföreningen Gard (Gard Club)
CLC Limit	5 244 492 SDR (Bs3 473 million or BsF 3.5 million)<17><18>
CLC + Fund limit	60 million SDR (Bs39 738 million or US$83 221 800)
Compensation	Claims have been settled for Bs288 476 394 (£42 000) and US$24 397 612 (£15 million). All the settled claims have been paid.
Legal proceedings	Three claims remain in Court as follows: Two claims by the Bolivarian Republic of Venezuela for Bs29 220 619 740 (BsF 29 220 620 or US$60 250 396) each. These claims are duplicated and time-barred. One claim by three fish processors for US$30 000 000.

Conversion into Pounds sterling has been made on the basis of the exchange rate as at 31 October 2012.

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 were 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 the Bolivarian Republic of 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. In 1997 the Court accepted the guarantee as establishing a limitation fund under Article V of the 1969 CLC.

<17> In January 2008 the Bolivar Fuerte (BsF) replaced the Bolivar (Bs) at the rate of 1 BsF = 1000 Bs. Until December 2011 the Bolivarian Republic of Venezuela used the term Bolivar Fuerte (BsF) to distinguish the new currency from the old currency or Bolivar (Bs). However, since the old currency was taken out of circulation in January 2012, the Venezuelan Central Bank decided that the use of the word 'Fuerte' was no longer necessary. Therefore, the name of the actual Venezuelan currency is now Bolivar (Bs). To avoid any confusion, we will continue to use the term Bolivar Fuerte (BsF) to distinguish the actual Venezuelan currency (from 2008) from the previous currency (pre 2008).

<18> 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	217 800 926	
Total		**Bs288 476 394 (£42 000)**	**US$24 397 612 (£15 million)**

This decision was subsequently rendered null and void by the Maracaibo Criminal Court of First Instance in a judgement of February 2010. That judgement was subsequently upheld by the Maracaibo Criminal Court of Appeal in March 2011.

Claims for compensation

Settled and paid claims

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 Bs288.5 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.

Outstanding claims

Three claims for compensation totalling US$150.5 million, summarised in the table below, are pending before the courts in Venezuela.

Detailed information regarding the three pending claims is given in the Legal issues sections below.

Legal issues

The *Nissos Amorgos* incident gave rise to both criminal and civil proceedings. The criminal proceedings refer not only to criminal liability, but also to civil liability arising from the criminal action. This is summarised in the table overleaf.

Details regarding the criminal and civil proceedings are provided below.

Criminal liability

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 Bolivarian 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.

Claimant	Category of claim	Claimed amount (US$)	Court	Fund's position
Bolivarian Republic of Venezuela	Environmental damage	60 250 396	Supreme Court (Criminal section)	Time-barred and not admissible
Bolivarian Republic of Venezuela	Environmental damage	60 250 396	Supreme Court (Civil section)	Time-barred and not admissible
Three fish processors	Loss of income	30 000 000	Supreme Court (Civil section)	No loss proven
Total		**150 500 792 (£93 million)**		

Liability	Issues/ claimants	Claimed amount (US$)	Defendants	1971 Fund's position	Status of proceedings
Criminal	Criminal liability of the master of the *Nissos Amorgos*	-	Master	-	Criminal Court of Appeal decided the criminal action against the master was time-barred
Civil	Claim by the Republic of Venezuela in criminal proceedings	60 million	Master, shipowner and Gard Club	The 1971 Fund is a notified third party and has intervened in the proceedings	Criminal Court of Appeal's judgement accepted the Claim by the Republic of Venezuela in full. The Fund has appealed to the Supreme Court (Criminal section)
	Claim by the Republic of Venezuela in civil proceedings	60 million	Shipowner, Master and Gard Club.	The 1971 Fund was not notified of this action	No developments for several years. Duplication of the claim above, but not withdrawn
	Three fish processors	30 million	1971 Fund and Instituto Nacional de Canalizaciones (INC)	Defendant	No developments for several years.

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'[19].

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 Bolivarian 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 Bolivarian 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.

The developments concerning the civil action in the criminal proceedings, submitted by the Bolivarian Republic of Venezuela are detailed in the section on civil liability below.

[19] 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.

Civil liability

Claims by the Bolivarian Republic of Venezuela

The Bolivarian 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 Bolivarian 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 Bolivarian 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.

The Bolivarian 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 Bolivarian 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 Bolivarian Republic of Venezuela had decided to withdraw the claim by the Bolivarian 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 his 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. As of October 2012 this claim had not been withdrawn.

Considerations by the Administrative Council on the claims by the Republic of Venezuela

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 Bolivarian 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 noted that the two claims presented by the Bolivarian 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 Bolivarian 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 Bolivarian Republic of Venezuela within the six-year period, which expired in February 2003.

Criminal Court of Appeal's judgement of February 2008

In the February 2008 judgement the Criminal Court of Appeal decided to send the file to a Criminal Court of First Instance, where the claim submitted by the Bolivarian Republic of Venezuela would be decided.

Master's plea of lack of jurisdiction

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 Bolivarian 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 Bolivarian Republic of Venezuela was not admissible under the 1969 Civil Liability Convention and 1971 Fund Convention and the alleged damage was not proved.

Judgement of February 2010 by the Criminal Court of First Instance in Maracaibo

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 and the 1971 Fund appealed against the judgement.

Judgement by the Maracaibo Criminal Court of Appeal in March 2011

In March 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 had requested that the Court recognise 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 his 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 Bolivarian 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 programme 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 ('homologación') 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.

Oil stranded near fishing village, Lake Maracaibo, Republic of Venezuela.

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 Bolivarian 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 Bolivarian 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.

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 2012 there had been no developments in respect of these claims.

The master, shipowner and Gard Club have requested the Supreme Court (Civil Section) to order the transfer of the shipowner's limitation fund, originally constituted in the criminal proceedings, to the Civil Section of the Supreme Court where all the pending civil claims arising from the incident had been consolidated. As of October 2012 the Supreme Court (Civil Section) had not decided on this request.

Document submitted by the International Group of P&I Associations

At the October 2012 session of the 1971 Fund Administrative Council, the International Group of P&I Associations (International Group) submitted document IOPC/OCT12/3/3/1, drawing attention to the possible implications that the judgement by the Maracaibo Criminal Court of Appeal in March 2011 may have for the 1971 Fund.

The International Group stated that, following the establishment of a limitation fund in the Cabimas Criminal Court in accordance with Article VI of the 1969 CLC, the Court had accepted the owner's right to limit and had released the ship from arrest. It was also stated that there had been no allegation that the incident was attributable to actual fault or privity on the part of the owner. It was further stated that fourteen years after the decision of the Cabimas Court that the owner had the right to limit, the Maracaibo Criminal Court of Appeal had overturned the decision, holding that the shipowner did not have the right to limit liability.

The International Group also stated that admissible claims had been paid, firstly the shipowner paying up to the approximate CLC limitation sum, and subsequently payments being made by the 1971 Fund. It was also stated that if the Supreme Tribunal were to uphold the decision of the Maracaibo Criminal Court of Appeal the limitation fund guarantee would be encashed in partial satisfaction of the judgement and the shipowner would have paid twice the limitation fund. It was further stated that, in accordance with the practice adopted between the Club and the Fund, namely that an audit should be made at the end of the case to ensure that the various financial outgoings were correctly distributed between them, the Club would look to the Fund for reimbursement of any sum above the limitation amount.

Considerations

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.

The judgement by the Maritime Court of Appeal also stated that it was for the shipowner and his 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 his insurer would subsequently approach the 1971 Fund to obtain reimbursement.

The Court's decision therefore appears not to be in accordance with the 1969 CLC and 1971 Fund Convention.

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 was given as specified in the first sentence of Article 6.1 of the 1971 Fund Convention, it was 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 Bolivarian 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 Bolivarian Republic of Venezuela were time-barred *vis-à-vis* the 1971 Fund since Article 6.1 of the 1971 Fund Convention required that, in order to prevent a claim from becoming time-barred in respect of the 1971 Fund, a legal action had 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 Bolivarian 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 his 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 his 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. As of October 2012 the Supreme Court (Criminal Section) had not yet delivered its judgement.

Please see overleaf for a timeline of key events following the *Nissos Amorgos* incident ❯

Timeline of key events following the *Nissos Amorgos* incident

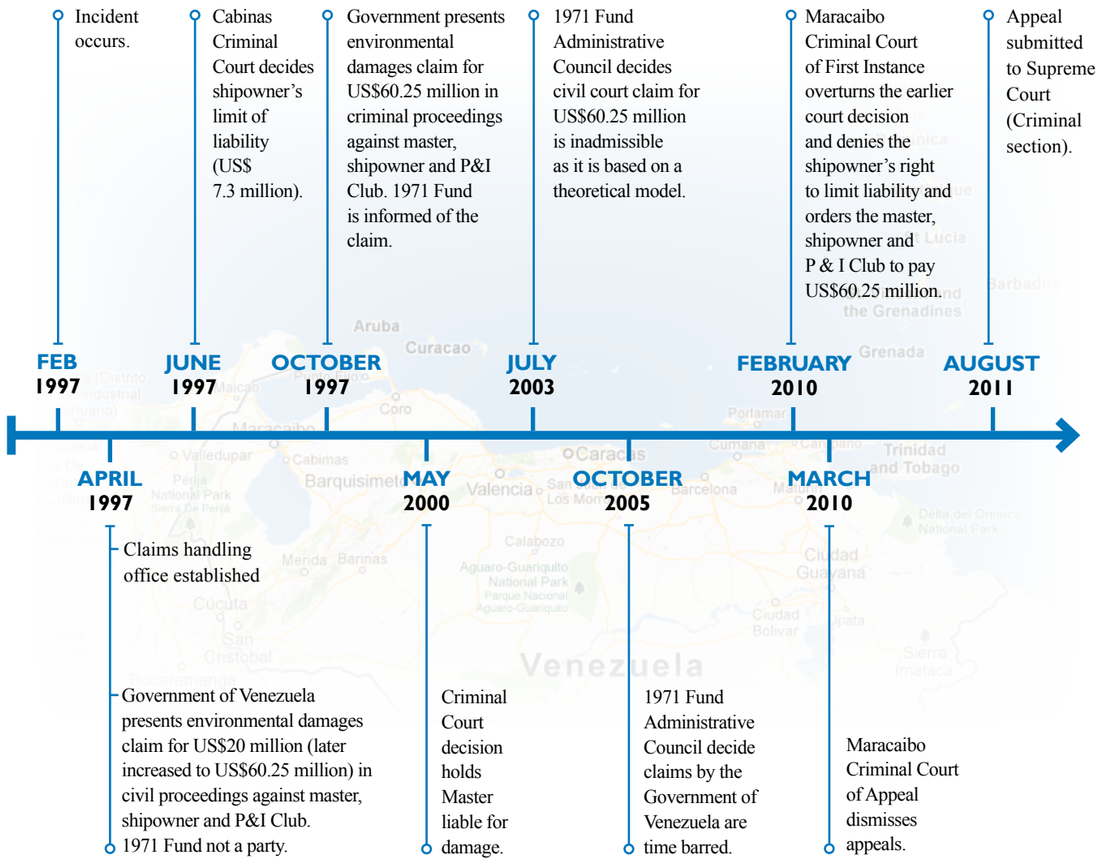


Plate Princess

Date of incident	27.05.1997
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	3.2 tonnes of crude oil contained within 8 000 tonnes of ballast water
Area affected	Unknown
Flag State of ship	Malta
Gross register tonnage	30 423 GRT
P&I insurer	The Standard Steamship Owner's Protection & Indemnity Association (Bermuda) Ltd (the Standard Club)
CLC limit	3.6 million SDR (BsF 2 844 983 or £411 000)
CLC + Fund limit	60 million SDR (BsF 403 473 005 or £58.3 million)
Compensation	No compensation paid
Standing last in the queue	N/A
Legal proceedings	Two claims by two fishermen's trade unions as follows: One claim by the Puerto Miranda Union against the shipowner and master of the *Plate Princess*. Judgement by the Maritime Court of First Instance condemned defendants and the 1971 Fund to pay compensation. Several appeals by the 1971 Fund were rejected. No further forms of appeal are available to the 1971 Fund. One claim by FETRAPESCA against the shipowner and master of the *Plate Princess*. Judgement by the Maritime Court of First Instance condemns the shipowner, master and the 1971 Fund to pay compensation to be quantified by a court expert. The 1971 Fund has appealed to the Maritime Court of Appeal.
Specific issues	The 1971 Fund Administrative Council instructed the Director not to make any payments on the grounds that due process of law had not been followed by the Venezuelan courts, and 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.

Conversion into Pounds sterling has been made on the basis of the exchange rate as at 31 October 2012.

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

Incident

On 27 May 1997, the *Plate Princess* spilled some 3.2 tonnes of crude oil, contained within 8 000 tonnes of ballast water, 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 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 drifting 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 3.6 million SDR or Bs 2 845 million.

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

Claims by FETRAPESCA
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 2012, there had been no developments on this claim.

One of several meetings of the 1971 Fund Administrative Council in London, United Kingdom, which considered the ongoing legal issues relating to the Plate Princess incident.

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.

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. No information was provided with the notification as to the nature or extent of the losses alleged.

In view of the notification 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 text of the Conventions and decided that the claim by FETRAPESCA was time-barred in respect of the 1971 Fund.

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 that the claim by FETRAPESCA had lapsed (*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 had not lapsed. 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 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.

In October 2011 FETRAPESCA requested the withdrawal of its claim from the Maritime Court of First Instance (first request to withdraw the claim). The Court however rejected FETRAPESCA's request.

In September 2012, the 1971 Fund was formally notified for the first time of the judgement. The judgement comprised two documents; the first document contained the decision imposing liability on the shipowner and master and requested the 1971 Fund to be notified of this decision. It also stated that the quantum of compensation would be assessed by court experts to be appointed at a later date. The second document, which also formed part of the judgement, contained a decision which condemned the 1971 Fund to pay compensation to the claimants in excess of the shipowner's liability.

In October 2012, the 1971 Fund filed an appeal against the February 2009 judgement.

Also in October 2012, FETRAPESCA filed an application to withdraw its claim (second request to withdraw the claim). This application again was refused by the Court.

Claim by the Puerto Miranda Union
In June 1997, the Puerto Miranda Union presented a claim in the Civil Court of Caracas against the shipowner and the master of the *Plate Princess* for an estimated amount of US$20 million.

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 by Puerto Miranda Union. No information was provided with the notification as to the nature or extent of the losses alleged.

As with the claim by FETRAPESCA (see above), the 1971 Fund Administrative Council decided in May 2006 that the claim by the Puerto Miranda Union was time barred in respect of the 1971 Fund, according to the 1971 Fund Convention, since FETRAPESCA had not taken legal action against the 1971 Fund nor had it notified the Fund within the time period provided in the Convention of its legal action against the shipowner.

In December 2006, the claim was transferred to the Maritime Court of First Instance, also in Caracas.

Amendment of Puerto Miranda Union claim
In April 2008 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 53.5 million (£37 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-à-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, verbal 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.

Court decisions on liability

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[<20>], 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 [<21>].

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.

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.
>
> 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 ❯

[<20>] The Venezuelan Court, in its interpretation of the Conventions, assumes that the 1971 Fund, having been notified, is obliged automatically to pay compensation.

[<21>] 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.

1971 FUND • Plate Princess

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 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 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 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.

Court decisions on quantum

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 below.

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 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.

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 against this judgement to the Maritime Court of Appeal.

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 had 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 [22], plus costs.

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

Judgement of the Supreme Court on quantum

In November 2011 the Supreme Court rejected the 1971 Fund's request for leave to appeal the July 2011 judgement of the Maritime Court of Appeal in connection with the quantum of the loss.

In March 2012 the 1971 Fund appealed to the Constitutional Section of the Supreme Court against the judgement of the Supreme Court regarding the quantum of the loss.

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)**

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

Judgement of Constitutional Section of the Supreme Court on quantum

In August 2012 the Constitutional Section of the Supreme Court rejected the 1971 Fund's appeal against the judgement of the Supreme Court regarding the quantum of the loss. In its judgement, the Court decided that the awarded amount should be paid to each fisherman individually, according to the Court experts' assessment.

Enforcement of the Court of Appeal's judgement

In March 2012 the Puerto Miranda Union submitted requests to the Maritime Court of First Instance to order the shipowner and the 1971 Fund to pay in accordance with the judgement of the Court of Appeal, and to order the Banco Venezolano de Credito to transfer to the Court the amount of the bank guarantee establishing the shipowner's limitation fund. The Maritime Court of First Instance accepted the request of Puerto Miranda Union concerning the enforcement of the judgement and fixed a date for the shipowner and 1971 Fund to pay the amounts awarded by the Court of Appeal.

In April 2012 the 1971 Fund submitted pleadings to the Maritime Court of First Instance requesting the Court to stay the enforcement of the judgement. In the pleadings the Fund argued that, according to Article 4.5 of the 1971 Fund Convention, the amount of compensation corresponding to the 1971 Fund should be distributed to all recognised victims of the incident in accordance with the accepted amounts of the damage. Therefore, on the basis of the principle of equal distribution of the shipowner's limitation fund between all claimants contained in the 1969 CLC, no payments can be made until the claim by FETRAPESCA has reached a final stage in the proceedings.

In August 2012 the master submitted pleadings also requesting the Court to stay the enforcement of the judgement on the basis of the distribution of the shipowner's limitation fund between all claimants under the 1969 CLC.

In September 2012 the Maritime Court of First Instance rejected the request by the master and the 1971 Fund to stay the enforcement of the judgement.

Also in September 2012, Puerto Miranda Union requested the Constitutional Section of the Supreme Court to amend its judgement rendered in August 2012 and to issue a new decision ordering the defendants to make payment not to the fishermen themselves, but to the Puerto Miranda Union. The 1971 Fund opposed this request.

Considerations

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 (£111.6 million). Of this amount, BsF 726.3 million (£105.3 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 (£243 000) 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 (£11 000). 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 is of the view that the 1971 Fund had not been given reasonable notice and a fair opportunity to present its case, as required under Article X of the 1969 CLC. He considered that this is 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.

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 requesting 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.

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.

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 its October 2011 session 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.

April 2012

At its April 2012 session the 1971 Fund Administrative Council instructed the Director to conduct a further analysis on the legal basis for the 1971 Fund to refuse payment under Article X of the 1969 CLC and to examine the points raised by the Bolivarian Republic of Venezuela in their third intervention at that meeting (see document IOPC/APR12/12/1, paragraph 3.2.55*) with the Legal Affairs and External Relations Division of the International Maritime Organization (IMO).

October 2012

The Director engaged Dr Thomas A Mensah, who is an expert on matters relating to the Law of the Sea, Maritime Law, International Environmental Law and Public International Law, to conduct the legal analysis on Article X of the 1969 CLC and also to examine the points raised by the Bolivarian Republic of Venezuela, in consultation with IMO. Dr Mensah's legal opinion was attached at Annex II to document IOPC/OCT12/3/4/1*, which was presented to the 1971 Fund Administrative Council at its October 2012 session.

Dr Mensah had concluded that, in his view, the decision of the courts in Venezuela on the issue of time bar was patently incorrect as the rights of the claimants to compensation under Article 4 had been extinguished because no action had been bought under Article 4 within three years from the date when the damage occurred, and no notification of action against the owner or his guarantor for compensation under the 1969 CLC had been given to the 1971 Fund within that period, as required under Article 7, paragraph 6 of the 1971 Fund Convention.

Dr Mensah had also concluded that there was strong support for the contention that the judgement of the Venezuelan Court relating to the quantum of damages was based on evidence that was not genuine and which had been falsified for the purpose of obtaining compensation, and that accordingly the 1971 Fund had a very strong case for challenging the enforcement of the judgement in the courts of other contracting states based on the grounds that the judgement had been obtained by fraud. Dr Mensah concluded that before an English court, it would be open to the 1971 Fund to challenge the enforcement of the judgement both under the 1971 Fund Convention and also under English common law.

In respect of the issue of the due process of law, Dr Mensah concluded that the 1971 Fund was fully entitled to challenge the enforcement of the judgement of the Venezuelan Court by asserting that it had not been afforded a fair opportunity to present its case before the Venezuelan Court, both under Article 8 of the 1971 Fund Convention coupled with Article X of the 1969 CLC, and by reference to the English common law which also recognised the right of a party to contest the enforcement of the judgement of a foreign court on the grounds that it had not been given a reasonable opportunity to present its case.

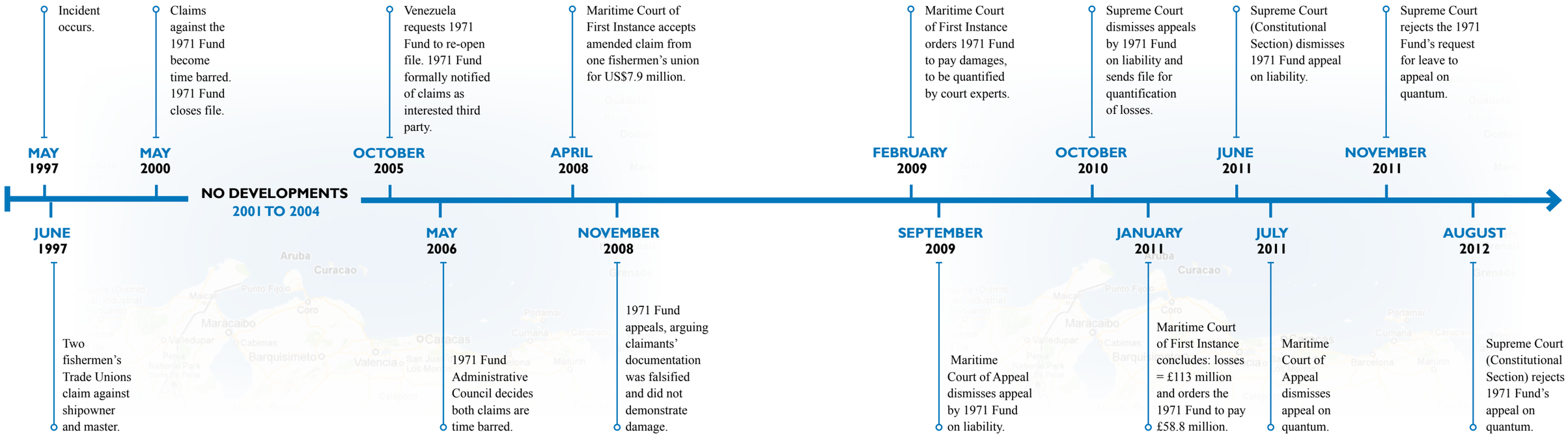
In response to the third intervention of the delegation of Venezuela at the April 2012 session of the 1971 Fund Administrative Council, Dr Mensah had concluded that the intervention was not supported in fact or in law and that the claim that Venezuela 'automatically became a party to the 1992 Protocol' when the 1971 Fund Convention entered into force for Venezuela was factually incorrect. Venezuela did not become a Party to the 1992 Fund Convention until July 1999, and the claim of Venezuela that 1992 Fund Member States were under any liability in respect of incidents that occurred when the 1971 Fund Convention was in force, even when they were not members of the 1971 Fund, had no basis in law, and was in fact in direct conflict with the express provisions of the 1971 Fund Convention and the principles of the general international law of treaties.

Decision by the 1971 Fund Administrative Council in October 2012

The 1971 Fund Administrative Council decided to maintain its previous decisions not to make any payment in respect of this incident and to oppose the enforcement of the judgement. The 1971 Fund Administrative Council also instructed the Director to continue to defend the interests of the 1971 Fund in any court actions in Venezuela.

*All meeting documents are available at www.iopcfunds.org/documentservices

Timeline of key events following the *Plate Princess* incident



1971 FUND • Summary of Incidents

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	Estimated quantity of oil spilled (tonnes)	Compensation paid by the 1971 Fund up to 31.10.12	Indemnification paid by the 1971 Fund	Year last featured in Annual/Incident Report*
Irving Whale	07.09.1970	Gulf of St. Lawrence, Canada	Canada	2 261	Unknown	Sinking	Unknown	Nil		1998
Antonio Gramsci	27.02.1979	Ventspils, USSR	USSR	27 694	RUB 2 431 584	Grounding	5 500	SKr 95 707 157		1980
Miya Maru N°8	22.03.1979	Bisan Seto, Japan	Japan	997	¥37 710 340	Collision	540	¥140 110 582	¥9 427 585	1980
Tarpenbek	21.06.1979	Selsey Bill, United Kingdom	Germany	999	£63 356	Collision	Unknown	£363,550		1986
Mebaruzaki Maru N°5	08.12.1979	Mebaru, Japan	Japan	19	¥845 480	Sinking	10	¥10 188 335	¥211 370	1981
Showa Maru	09.01.1980	Naruto Strait, Japan	Japan	199	¥8 123 140	Collision	100	¥103 104 874	¥2 030 785	1981
Unsei Maru	09.01.1980	Akune, Japan	Japan	99	¥3 143 180	Collision	<140	Nil		1982
Tanio	07.03.1980	Brittany, France	Madagascar	18 048	FFr 11 833 718	Breaking	13 500	FFr 222 140 643		1988
Furenäs	03.06.1980	Oresund, Sweden	Sweden	999	SKr 612 443	Collision	200	SKr 3 187 687 DKr 418 589	SKr 153 111	1982
Hosei Maru	21.08.1980	Miyagi, Japan	Japan	983	¥35 765 920	Collision	270	¥213 322 865	¥8 941 480	1982
Jose Marti	07.01.1981	Dalarö, Sweden	USSR	27 706	SKr 23 844 593	Grounding	1 000	Nil		1987
Suma Maru N°11	21.11.1981	Karatsu, Japan	Japan	199	¥7 396 340	Grounding	10	¥6 426 857	¥1 849 085	1984
Globe Asimi	22.11.1981	Klaipeda, USSR	Gibraltar	12 404	RUB 1 350 324	Grounding	>16 000		US$467 953	1982
Ondina	03.03.1982	Hamburg, Germany	Netherlands	31 030	DM10 080 383	Discharge	200-300	DM11 345 174		1984
Shiota Maru N°2	31.03.1982	Takashima Island, Japan	Japan	161	¥6 304 300	Grounding	20	¥72 671 789		1982
Fukutoko Maru N°8	03.04.1982	Tachibana Bay, Japan	Japan	499	¥20 844 440	Collision	85	¥363 731 755	¥5 211 110	1984
Kifuku Maru N°35	01.12.1982	Ishinomaki, Japan	Japan	107	¥4 271 560	Sinking	33	¥598 181		1983
Shinkai Maru N°3	21.06.1983	Ichikawa, Japan	Japan	48	¥1 880 940	Discharge	3.5	¥1 005 160	¥470 235	1984
Eiko Maru N°1	13.08.1983	Karakuwazaki, Japan	Japan	999	¥39 445 920	Collision	357	¥24 735 109	¥9 861 480	1988
Koei Maru N°3	22.12.1983	Nagoya, Japan	Japan	82	¥3 091 660	Collision	49	¥26 982 248	¥772 915	1986
Tsunehisa Maru N°8	26.08.1984	Osaka, Japan	Japan	38	¥964 800	Sinking	30	¥16 610 200	¥241 200	1985
Koho Maru N°3	05.11.1984	Hiroshima, Japan	Japan	199	¥5 385 920	Grounding	20	¥94 111 818	¥1 346 480	1986

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Koshun Maru N°1	05.03.1985	Tokyo Bay, Japan	Japan	68	¥1 896 320	Collision	80	¥26 124 589	¥474 080	1990
Patmos	21.03.1985	Strait of Messina, Italy	Greece	51 627	Lit 13 263 703 650	Collision	700	Nil		1994
Jan	02.08.1985	Aalborg, Denmark	Germany	1 400	DKr 1 576 170	Grounding	300	DKr 9 455 661	DKr 394 043	1988
Rose Garden Maru	26.12.1985	Umm al Qaiwain, United Arab Emirates	Panama	2 621	US$364 182	Mishandling of oil discharge	Unknown	Nil		1987
Brady Maria	03.01.1986	Elbe Estuary, Germany	Panama	996	DM324 629	Collision	200	DM3 220 511		1988
Take Maru N°6	09.01.1986	Sakai-Senboku, Japan	Japan	83	¥3 876 800	Discharge	0.1		¥104 987	1987
Oued Gueterini	18.12.1986	Algiers, Algeria	Algeria	1 576	Din1 175 064	Discharge	15	US$1 133 FFr 708 824 Din 5 650 £126 120	Din 293 766	1990
Thuntank 5	21.12.1986	Gävle, Sweden	Sweden	2 866	SKr 2 741 746	Grounding	150-200	SKr 23 217 632	SKr 685 437	1992
Antonio Gramsci	06.02.1987	Borgå, Finland	USSR	27 706	RUB 2 431 854	Grounding	600-700	FM1 849 924		1990
Southern Eagle	15.06.1987	Sada Misaki, Japan	Panama	4 461	¥93 874 528	Collision	15	Nil		1989
El Hani	22.07.1987	Indonesia	Libya	81 412	£7 900 000	Grounding	3 000	Nil		1988
Akari	25.08.1987	Dubai, United Arab Emirates	Panama	1 345	£92 800	Fire	1 000	Dhs 864 292 US$187 165		1992
Tolmiros	11.09.1987	West coast, Sweden	Greece	48 914	SKr 50 million	Unknown	200	Nil		1992
Hinode Maru N°1	18.12.1987	Yawatahama, Japan	Japan	19	¥608 000	Mishandling of cargo	25	¥1 847 225	¥152 000	1989
Amazzone	31.01.1988	Brittany, France	Italy	18 325	FFr 13 860 369	Storm damage to tanks	2 000	FFr 1 286 977		1992
Taiyo Maru N°13	12.03.1988	Yokohama, Japan	Japan	86	¥2 476 800	Discharge	6	¥6 134 885	¥619 200	1989
Czantoria	08.05.1988	St. Romuald, Canada	Canada	81 197	Unknown	Collision with berth	Unknown	Nil		1991
Kasuga Maru N°1	10.12.1988	Kyoga Misaki, Japan	Japan	480	¥17 015 040	Sinking	1 100	¥425 365 167	¥4 253 760	1992
Nestucca	23.12.1988	Vancouver Island, Canada	United States of America	1 612	Unknown	Collision	Unknown	Nil		1991
Fukkol Maru N°12	15.05.1989	Shiogama, Japan	Japan	94	¥2 198 400	Overflow from supply pipe	0.5	¥492 635	¥549 600	1990
Tsubame Maru N°58	18.05.1989	Shiogama, Japan	Japan	74	¥2 971 520	Mishandling of oil transfer	7	¥19 159 905	¥742 880	1991

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Tsubame Maru N°16	15.06.1989	Kushiro, Japan	Japan	56	¥1 613 120	Discharge	Unknown	¥273 580	¥403 880	1990
Kifuku Maru N°103	28.06.1989	Otsuji, Japan	Japan	59	¥1 727 040	Mishandling of cargo	Unknown	¥8 285 960	¥431 761	1990
Nancy Orr Gaucher	25.07.1989	Hamilton, Canada	Liberia	2 829	Can$473 766	Overflow during discharge	250	Nil		1990
Dainichi Maru N°5	28.10.1989	Yaizu, Japan	Japan	174	¥4 199 680	Mishandling of cargo	0.2	¥2 160 610	¥1 049 920	1991
Daito Maru N°3	05.04.1990	Yokohama, Japan	Japan	93	¥2 495 360	Mishandling of cargo	3	¥5 490 570	¥623 840	1992
Kazuei Maru N°10	11.04.1990	Osaka, Japan	Japan	121	¥3 476 160	Collision	30	¥49 443 626	¥869 040	1991
Fuji Maru N°3	12.04.1990	Yokohama, Japan	Japan	199	¥5 352 000	Overflow during supply operation	Unknown	¥96 431	¥1 338 000	1991
Volgoneft 263	14.05.1990	Karlskrona, Sweden	USSR	3 566	SKr 3 205 204	Collision	800	SKr 16 849 328		1992
Hato Maru N°2	27.07.1990	Kobe, Japan	Japan	31	¥803 200	Mishandling of cargo	Unknown	¥1 087 700	¥200 800	1991
Bonito	12.10.1990	River Thames, United Kingdom	Sweden	2 866	£241 000	Mishandling of cargo	20	Nil		1993
Rio Orinoco	16.10.1990	Anticosti Island, Canada	Cayman Islands	5 999	Can$1 182 617	Grounding	185	Can$12 831 891		1995
Portfield	05.11.1990	Pembroke, Wales, United Kingdom	United Kingdom	481	£39 970	Sinking	110	£259 509	£17 155	1995
Vistabella	07.03.1991	Caribbean	Trinidad and Tobago	1 090	144 970 SDR	Sinking	Unknown	€1 255 803 £14 250		2012
Hokunan Maru N°12	05.04.1991	Okushiri Island, Japan	Japan	209	¥3 523 520	Grounding	Unknown	¥ 6 144 829	¥880 880	1993
Agip Abruzzo	10.04.1991	Livorno, Italy	Italy	98 544	Lit 22 525 million	Collision	2 000	Nil	Lit 1 666 031 931	1995
Haven	11.04.1991	Genoa, Italy	Cyprus	109 977	Lit 23 950 220 000	Fire and explosion	Unknown	Lit 71 584 970 783 FFr 23 510 228	£2 500 000	1999
Kaiko Maru N°86	12.04.1991	Nomazaki, Japan	Japan	499	¥14 660 480	Collision	25	¥93 067 813	¥3 665 120	1993
Kumi Maru N°12	27.12.1991	Tokyo Bay, Japan	Japan	113	¥3 058 560	Collision	5	¥1 056 518	¥764 640	1995
Fukkol Maru N°12	09.06.1992	Ishinomaki, Japan	Japan	94	¥2 198 400	Mishandling of oil supply	Unknown	¥4 243 997	¥549 600	1993
Aegean Sea	03.12.1992	La Coruña, Spain	Greece	57 801	Pts 1 121 219 450	Grounding	73 500	Pts 6 386 921 613	Pts 278 197 307	2012
Braer	05.01.1993	Shetland, United Kingdom	Liberia	44 989	£4 883 840	Grounding	84 000	£51 938 938		2007

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Kihnu	16.01.1993	Tallinn, Estonia	Estonia	949	113 000 SDR	Grounding	140	FM543 618		1997
Sambo N°11	12.04.1993	Seoul, Republic of Korea	Republic of Korea	520	KRW 77 786 224	Grounding	4	KRW 219 714 755		1994
Taiko Maru	31.05.1993	Shioyazaki, Japan	Japan	699	¥29 205 120	Collision	520	¥1 093185 055	¥7 301 280	1995
Ryoyo Maru	23.07.1993	Izu Peninsula, Japan	Japan	699	¥28 105 920	Collision	500	¥8 433 001	¥7 026 480	1996
Keumdong N°5	27.09.1993	Yeosu, Republic of Korea	Republic of Korea	481	KRW 77 417 210	Collision	1 280	KRW 16 275 151 969	KRW 12 857 130	2004
Iliad	09.10.1993	Pylos, Greece	Greece	33 837	Drs 1 496 533 000	Grounding	200	Nil		2012
Seki	30.03.1994	Fujairah, United Arab Emirates and Oman	Panama	153 506	14 million SDR	Collision	16 000	Nil		1996
Daito Maru N°5	11.06.1994	Yokohama, Japan	Japan	116	¥3 386 560	Overflow during loading operation	0.5	¥1 187 304	¥846 640	1995
Toyotaka Maru	17.10.1994	Kainan, Japan	Japan	2,960	¥81 823 680	Collision	560	¥695 736 817	¥20 455 920	1996
Hoyu Maru N°53	31.10.1994	Monbetsu, Japan	Japan	43	¥1 089 280	Mishandling of oil supply	Unknown	¥4 157 715	¥272 320	1995
Sung Il N°1	08.11.1994	Onsan, Republic of Korea	Republic of Korea	150	KRW 23 million	Grounding	18	KRW 37 780 112		1996
Spill from unknown source	30.11.1994	Mohammédia, Morocco	-	-	-	Unknown	Unknown	Mor Dhr 2 600 000		1997
Boyang N°51	25.05.1995	Sandbaeg Do, Republic of Korea	Republic of Korea	149	19 817 SDR	Collision	160	Nil		1998
Dae Woong	27.06.1995	Kojung, Republic of Korea	Republic of Korea	642	KRW 95 million	Grounding	1	KRW 43 517 127		1998
Sea Prince	23.07.1995	Yosu, Republic of Korea	Cyprus	144 567	KRW 18 308 275 906	Grounding	5 035	KRW 50 227 315 595	KRW 7 410 928 540	2003
Yeo Myung	03.08.1995	Yosu, Republic of Korea	Republic of Korea	138	KRW 21 465 434	Collision	40	KRW 1 553 029 739		2005
Shinryu Maru N°8	04.08.1995	Chita, Japan	Japan	198	¥3 967 138	Mishandling of oil supply	0.5	¥9 634 576 US$5 663		1996
Senyo Maru	03.09.1995	Ube, Japan	Japan	895	¥20 203 325	Collision	94	¥366 578 453		1997
Yuil N°1	21.09.1995	Busan, Republic of Korea	Republic of Korea	1 591	KRW 351 924 060	Sinking	Unknown	KRW 27 177 996 728		2004
Honam Sapphire	17.11.1995	Yosu, Republic of Korea	Panama	142 488	14 million SDR	Contact with fender	1 800	KRW 10 259 000 000		1999
Toko Maru	23.01.1996	Anegasaki, Japan	Japan	699	¥18 769 567	Collision	4	Nil		1996
Sea Empress	15.02.1996	Milford Haven, Wales, United Kingdom	Liberia	77 356	£7 395 748	Grounding	72 360	£36 806 484	£1 835 035	2003

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Kugenuma Maru	06.03.1996	Kawasaki, Japan	Japan	57	¥1 175 055	Mishandling of oil supply	0.3	¥2 278 468		1997
Kriti Sea	09.08.1996	Agioi Theodoroi, Greece	Greece	62 678	€6 576 100	Mishandling of oil supply	30	€3 774 000		2009
N°1 Yung Jung	15.08.1996	Busan, Republic of Korea	Republic of Korea	560	KRW 122 million	Grounding	28	KRW 771 208 587		2000
Nakhodka	02.01.1997	Oki Islands, Japan	Russian Federation	13 159	1 588 000 SDR	Breaking	6 200	¥26 089 893 000		2002
Tsubame Maru N°31	25.01.1997	Otaru, Japan	Japan	89	¥1 843 849	Overflow during loading operation	0.6	¥8 131 327		1998
Nissos Amorgos	28.02.1997	Maracaibo, Venezuela	Greece	50 563	BsF 3.5 million	Grounding	3 600	US$24 397 612 Bs 359 675 468	US$1 804 893	2012
Daiwa Maru N°18	27.03.1997	Kawasaki, Japan	Japan	186	¥3 372 368	Mishandling of oil supply	1	¥415 600 000	¥865 406	1998
Jeong Jin N°101	01.04.1997	Busan, Republic of Korea	Republic of Korea	896	KRW 246 million	Overflow during loading operation	124	KRW 418 000 000	KRW 58 000 000	1998
Osung N°3	03.04.1997	Tunggado, Republic of Korea	Republic of Korea	786	104 500 SDR	Grounding	Unknown	KRW 7 674 268 000 ¥851 039 365	KRW 37 963 635	2001
Plate Princess	27.05.1997	Puerto Miranda, Venezuela	Malta	30 423	3.6 million SDR	Overflow during loading operation	3.2	Nil		2012
Diamond Grace	02.07.1997	Tokyo Bay, Japan	Panama	147 012	14 million SDR	Grounding	1 500	Nil		1999
Katja	07.08.1997	Le Havre, France	Bahamas	52 079	€7.3 million	Striking a quay	190	Nil		2008
Evoikos	15.10.1997	Strait of Singapore	Cyprus	80 823	8 846 942 SDR	Collision	29 000	Nil		2010
Kyungnam N°1	07.11.1997	Ulsan, Republic of Korea	Republic of Korea	168	KRW 43 543 015	Grounding	15-20	KRW 272 033 170		2000
Pontoon 300	07.01.1998	Hamriyah, Sharjah, United Arab Emirates	Saint Vincent and the Grenadines	4 233	Not available	Sinking	8 000	Dhs 7 900 000		2008
Maritza Sayalero	08.06.1998	Carenero Bay, Venezuela	Panama	28 338	3 million SDR	Ruptured discharge pipe	262	Nil		2001
Al Jaziah 1	24.01.2000	Abu Dhabi, United Arab Emirates	Honduras	681	3 million SDR	Sinking	100-200	Dhs 6 400 000		2010
Alambra	17.09.2000	Estonia	Malta	75 366	7 600 000 SDR	Corrosion	300	Nil		2009
Natuna Sea	03.10.2000	Indonesia	Panama	51 095	6 100 000 SDR	Grounding	7,000	Nil		
Zeinab	14.04.2001	United Arab Emirates	Georgia	2 178	3 million SDR	Sinking	400	US$884 000 Dhs 2 480 000		2004
Singapura Timur	28.05.2001	Malaysia	Panama	1 369	102 000 SDR	Collision	Unknown	US$846 396 ¥11 436 000	US$25 000	2004

*All Annual and Incident Reports dating back to 1978 are available at www.iopcfunds.org/publications.

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List of Currencies

Currency	Symbol	Unit of currency per £ as at 31 October 2012, where applicable
Algerian Dinar	Din	
Argentine Peso	AR$	7.6767
Canadian Dollar	Can$	1.6103
Danish Krone	DKr	
Euro	€	1.2433
French Franc*	FFr	
German Mark*	DM	
Greek Drachma*	Drs	
Italian Lira*	Lit	
Japanese Yen	¥	
Malaysian Ringgit	RM	
Moroccan Dirham	Mor Dhr	
Nigerian Naira	NGN	
Philippines Peso	PHP	66.3672
Republic of Korea Won	KRW	1757.01
Russian Rouble	RUB	50.5169
Spanish Peseta*	Pts	
Special Drawing Rights	SDR	1.0473
Swedish Krona	SKr	
UAE Dirham	Dhs	
UK Pound Sterling	£	
US Dollar	US$	1.6111
Venezuelan Bolivar Fuerte**	BsF	6.9189

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

** In January 2008 the Bolivar Fuerte (BsF) replaced the Bolivar (Bs) at the rate of 1 BsF = 1000 Bs. Until December 2011 the Bolivarian Republic of Venezuela used the term Bolivar Fuerte (BsF) to distinguish the new currency from the old currency or Bolivar (Bs). However, since the old currency was taken out of circulation in January 2012, the Venezuelan Central Bank decided that the use of the word 'Fuerte' was no longer necessary. Therefore, the name of the actual Venezuelan currency is now Bolivar (Bs). To avoid any confusion, the term Bolivar Fuerte (BsF) has been used throughout this publication to distinguish the actual Venezuelan currency (from 2008) from the previous currency (pre 2008).

Acknowledgements

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