Annual Report 2005

INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS

REPORT ON THE ACTIVITIES OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS IN 2005

Photograph on front cover:
An oil spill exercise in the Baltic in 2005

Acknowledgements

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FOREWORD

As Director of the International Oil Pollution Compensation Funds (IOPC Funds), I am pleased to present the Annual Report for the year 2005.

2005 has been a very important year for the IOPC Funds, although fortunately there have been no major oil pollution incidents during the year.

On 3 March 2005, the Supplementary Fund Protocol entered into force and as a result the Supplementary Fund was established, which will provide additional compensation over and above that available under the 1992 Civil Liability and Fund Conventions. This new Fund should ensure that, in those States that ratify the Protocol, sufficient compensation is available for even the most serious of oil spills and also that accepted claims can be paid in full from the outset.

The Supplementary Fund Protocol is currently in force for 11 States and a further four States had ratified the Protocol by the end of 2005, which will bring the total number of Members of the Supplementary Fund to 15 by the end of March 2006.

However, it is anticipated that not all States will need the additional protection afforded by the Supplementary Fund and that many States will continue to be satisfied with that provided by the 1992 Civil Liability and Fund Conventions. During 2005, a further six States ratified the 1992 Fund Convention with the result that the 1992 Fund will have 98 Members by the end of 2006. This continued growth of the membership clearly demonstrates the importance attached to the international compensation regime by States in all parts of the world.

The other significant event during 2005 was the election in October of Mr Willem Oosterveen of the Netherlands as the next Director of the IOPC Funds. Mr Oosterveen will take over the responsibilities of Director on 1 November 2006 and I shall continue to be available until my retirement on 31 December 2006. I am convinced that, with the support of the Secretariat, we will be able to ensure a smooth and efficient transition and that my successor will rise to the challenges that lie ahead.

Måns Jacobsson

It is likely that 2006 will also be a busy year, with the *Erika* and *Prestige* incidents continuing to require a considerable amount of work. Significant effort will also need to be devoted to the winding up of the 1971 Fund and the preparations for the entry into force of the HNS Convention, which will cover damage caused by hazardous and noxious substances.

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

Måns Jacobsson
Director

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PREFACE

The publication of each Annual Report represents the end of another year of activity by the governing bodies of the IOPC Funds and their joint Secretariat. As a delegate, I was of course aware that a lot went on behind the scenes during meetings but it was not until I became Chairman that I realised quite how much! On behalf of the governing bodies, I would therefore like to take this opportunity to express my deep appreciation of the hard-working and dedicated staff of the Secretariat, without whom the IOPC Funds would not be able to function.

The election of the next Director, only the third in the history of the IOPC Funds, was of course a historic moment for the IOPC Funds. The Assembly had to choose between two very competent candidates, Mr José Maura and Mr Willem Oosterveen, both of whom were well known to many. I would like to give my warmest congratulations to Mr Oosterveen, who will take over as Director from November 2006. Mr Oosterveen will of course be a familiar face to regular readers of the Annual Report, having served as Chairman of the 1971 Fund Executive Committee from 1995 to 1998 and of the 1992 Fund Assembly from 1999 to 2004.

I would also like to express my sincere thanks to the current Director, Mr Måns Jacobsson, who has already dedicated more than 20 years to the service of the IOPC Funds. Mr Jacobsson has led the IOPC Funds with considerable wisdom and expertise and I am confident that Mr Oosterveen will prove a worthy successor.

The establishment of the Supplementary Fund in March 2005 represents the culmination of many years of work by the intersessional Working Group entrusted with the task of examining the adequacy of the international compensation regime, so ably chaired by Mr Alfred Popp of Canada. Of course, we all hope that no incidents occur which require the additional compensation available under the Supplementary Fund Protocol.

Jerry Rysanek

It was not possible to reach a consensus between Member States on the need for further revision of this regime. I hope, however, that the considerable work on various aspects of the regime which has been carried out within the Working Group will prove a valuable resource in the future when, as seems inevitable, it becomes necessary to reconsider revision in order to ensure that the regime continues to meet the needs of society.

I would like to end by thanking, on behalf of the governing bodies, all those who have chaired meetings of the IOPC Funds during 2005: Mrs Lolan Margaretha Eriksson (Finland), Captain Raja Malik (Malaysia), Captain Esteban Pacha (Spain), Mr Volker Schöfisch (Germany) and Mr John Wren (United Kingdom).

Jerry Rysanek
Chairman of the 1992 Fund Assembly

PART 1

1 INTRODUCTION

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

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

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

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

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

The 1969 Civil Liability Convention still remains in force in respect of 41 States. Although it was envisaged that States becoming Parties to the 1992 Civil Liability Convention would denounce the 1969 Convention, some States are still Parties to both, resulting in complex treaty relationships.

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

The IOPC Funds provide supplementary compensation to anyone having suffered oil pollution damage in Member States who cannot obtain full compensation for the damage under the applicable Civil Liability Convention. The compensation payable by the 1971 Fund for any one incident is limited to 60 million Special Drawing Rights (SDR) (about £50 million or US$86 million)[1]. The maximum amount of compensation payable by the 1992 Fund for any one incident is 203 million SDR (about £168 million or US$290 million) in respect of incidents occurring on or after 1 November 2003. For incidents which took place before that date, the maximum amount payable is 135 million SDR (about £112 million or US$193 million). For each Fund these amounts include the sum actually paid by the shipowner under the respective Civil Liability Convention.

The Supplementary Fund Protocol, which entered into force on 3 March 2005, made available a total amount of 750 million SDR (£620 million or US$1 070 million) in

[1] *The unit of account in the treaty instruments is the Special Drawing Right (SDR) as defined by the International Monetary Fund. Conversion of currencies in this Report has been made on the basis of the rates at 30 December 2005 (on that day 1 SDR = £1.20474 or US$0.69966), except in respect of claims paid by the Funds where conversion has been made at the rate of exchange on the date of payment.*

compensation for pollution damage in States becoming Members of that Fund, including the amounts payable under the 1992 Conventions.

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

Assembly in session.

2 THE LEGAL FRAMEWORK

Scope of application

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

'Pollution damage' is defined in the 1969 and 1971 Conventions as loss or damage caused by contamination. The definition of 'pollution damage' in the 1992 Conventions and the Supplementary Fund Protocol has the same basic wording as the definition in the original Conventions, but with the addition of a phrase to clarify that compensation for impairment of the environment, other than loss of profit from such impairment, is limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken. 'Pollution damage' includes the costs of reasonable preventive measures, ie measures to prevent or minimise pollution damage.

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

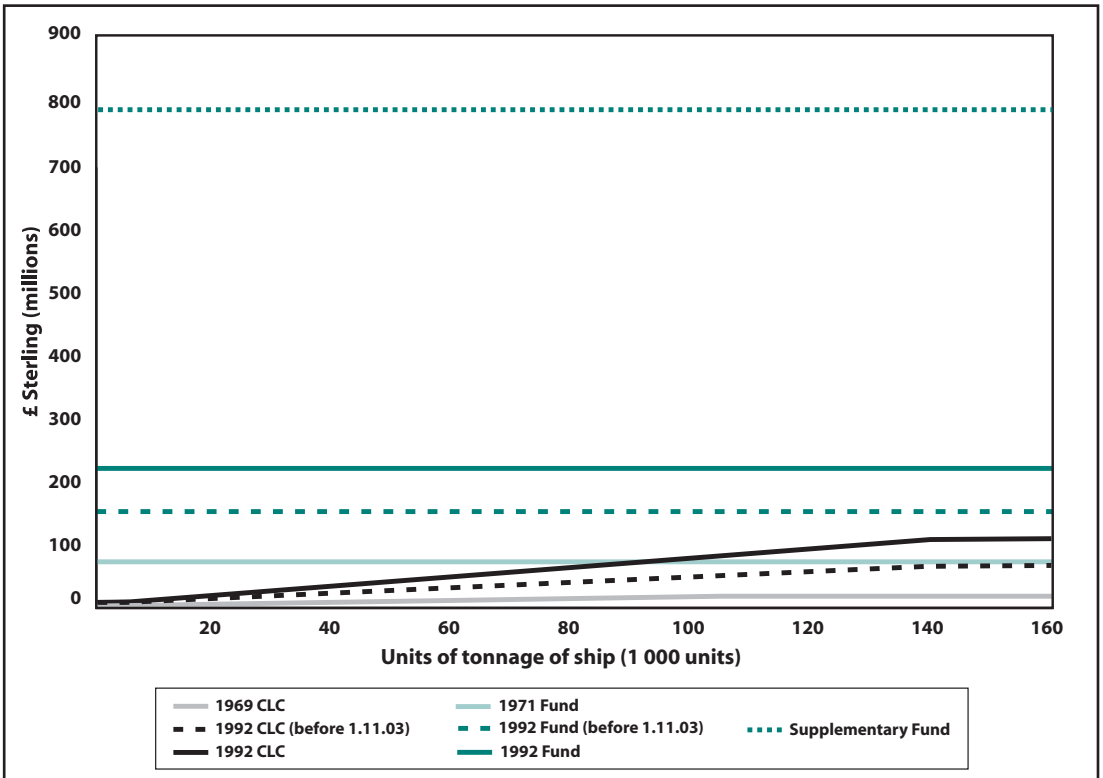
The 1969 and 1971 Conventions apply only to ships that actually carry oil in bulk as cargo, ie generally laden tankers. Spills from tankers during ballast voyages are therefore not covered by these Conventions. The 1992 Conventions and the Supplementary Fund Protocol, however, apply also to spills of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

Shipowner's liability

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

- the damage resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character, or
- the damage was wholly caused by an act or omission done with the intent to cause damage by a third party, or
- the damage was wholly caused by the negligence or other wrongful act of public

Ship's tonnage	Incidents occurring before or on 31 October 2003	Incidents occurring on or after 1 November 2003
Ship not exceeding 5 000 units of gross tonnage	3 000 000 SDR (£2.5 million or US$4.2 million)	4 510 000 SDR (£3.7 million or US$6.4 million)
Ship between 5 000 and 140 000 units of gross tonnage	3 000 000 SDR (£2.5 million or US$4.2 million) plus 420 SDR (£350 or US$600) for each additional unit of tonnage	4 510 000 SDR (£3.7 million or US$6.4 million) plus 631 SDR (£524 or US$902) for each additional unit of tonnage
Ship of 140 000 units of gross tonnage or over	59 700 000 SDR (£50 million or US$85 million)	89 770 000 SDR (£75 million or US$128 million)



Limits laid down in the Conventions

authorities in maintaining lights or other navigational aids.

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

Under the 1969 Civil Liability Convention, the shipowner's liability is limited to 133 Special Drawing Rights (SDR) (£110 or US$190) per ton of the ship's tonnage or 14 million SDR (£12 million or US$20 million), whichever is less.

Under the 1971 Fund Convention the 1971 Fund indemnified, under certain conditions, the shipowner for part of his liability under the 1969 Civil Liability Convention. There are no corresponding provisions in the 1992 Fund Convention.

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

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

Compulsory insurance

The shipowner is obliged to maintain insurance

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

Channelling of liability

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

The IOPC Funds' obligations

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

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

The maximum compensation payable by the 1971 Fund in respect of one incident is 60 million SDR (about £50 million or US$86 million), irrespective of the size of the ship involved. As for the 1992 Fund the maximum amount payable is 203 million SDR (£168 million or US$290 million) for incidents occurring on or after 1 November 2003, irrespective of the size of the ship.

The Supplementary Fund makes additional compensation available so that the total amount payable for any one incident for pollution damage in a State that is a Member of that Fund is 750 million SDR (£620 million or US$1 070 million), including the amount payable under the 1992 Civil Liability and Fund Conventions.

Time bar

Claims for compensation under the Civil Liability and Fund Conventions and the Supplementary Fund Protocol are time-barred (extinguished) unless legal action is brought against the shipowner and his insurer and against the 1971 or 1992 Fund within three years of the date when the damage occurred and in any event within six years of the date of the incident. A claim made against the 1992 Fund is regarded as a claim made against the Supplementary Fund. Rights to compensation against the Supplementary Fund are therefore extinguished only if they are extinguished against the 1992 Fund.

Jurisdiction and enforcement of judgements

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

Structure and financing

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

3 MEMBERSHIP OF THE IOPC FUNDS

3.1 1971 Fund

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

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

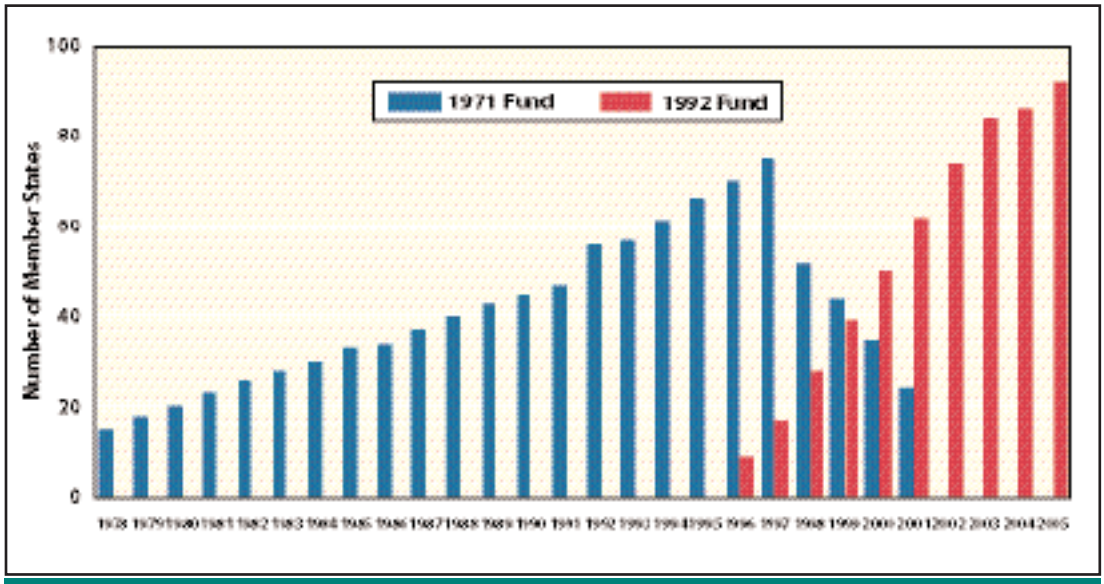
92 STATES FOR WHICH THE 1992 FUND CONVENTION IS IN FORCE (AND THEREFORE MEMBERS OF THE 1992 FUND)

Algeria
Angola
Antigua and Barbuda
Argentina
Australia
Bahamas
Bahrain
Barbados
Belgium
Belize
Brunei Darussalam
Cambodia
Cameroon
Canada
Cape Verde
China (Hong Kong Special Administrative Region)
Colombia
Comoros
Congo
Croatia
Cyprus
Denmark
Djibouti
Dominica
Dominican Republic
Estonia
Fiji
Finland
France
Gabon
Georgia
Germany
Ghana
Greece
Grenada
Guinea
Iceland
India
Ireland
Israel
Italy
Jamaica
Japan
Kenya
Latvia
Liberia
Lithuania
Madagascar
Malaysia
Malta
Marshall Islands
Mauritius
Mexico
Monaco
Morocco
Mozambique
Namibia
Netherlands[2]
New Zealand
Nigeria
Norway
Oman
Panama
Papua New Guinea
Philippines
Poland
Portugal
Qatar
Republic of Korea
Russian Federation
Saint Lucia
Saint Vincent and the Grenadines
Samoa
Seychelles
Sierra Leone
Singapore
Slovenia
South Africa
Spain
Sri Lanka
Sweden
Tonga
Trinidad and Tobago
Tunisia
Turkey
Tuvalu
United Arab Emirates
United Kingdom
United Republic of Tanzania
Uruguay
Vanuatu
Venezuela

6 STATES WHICH HAVE DEPOSITED INSTRUMENTS OF ACCESSION, BUT FOR WHICH THE 1992 FUND CONVENTION DOES NOT ENTER INTO FORCE UNTIL DATE INDICATED

Saint Kitts and Nevis	2 March 2006	Switzerland	10 October 2006
Maldives	20 May 2006	Bulgaria	18 November 2006
Albania	30 June 2006	Luxembourg	21 November 2006

[2] *The Netherlands extended the application of the 1992 Fund Convention to the Netherlands Antilles with effect from 21 December 2005.*



Annual membership of the 1971 and 1992 Funds

still seven States which have not yet done so, namely: Benin, Côte d'Ivoire, Gambia, Guyana, Kuwait, Mauritania and Syrian Arab Republic. It is hoped that these States will ratify the 1992 Fund Convention in the near future.

3.2 1992 Fund

The 1992 Fund Convention entered into force on 30 May 1996 for nine States. By the end of 2005, 92 States had become Members of the 1992 Fund. A further six States acceded to the 1992 Fund Convention during 2005, bringing the number of Member States to 98 by the end of 2006, as set out on page 18.

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

The graph above shows developments as regards the number of Member States of the 1971 and 1992 Funds over the years.

3.3 Supplementary Fund

By the end of 2005,11 States had become Members of the Supplementary Fund. A further four States had acceded to the Protocol and will become Members in early 2006, as set out below.

11 STATES PARTIES TO THE 2003 SUPPLEMENTARY FUND PROTOCOL (AND THEREFORE MEMBERS OF THE SUPPLEMENTARY FUND)

Denmark	Ireland	Portugal
Finland	Japan	Spain
France	Netherlands	Sweden
Germany	Norway	

4 STATES WHICH HAVE DEPOSITED INSTRUMENTS OF ACCESSION, BUT FOR WHICH THE PROTOCOL DOES NOT ENTER INTO FORCE UNTIL DATE INDICATED

Italy	20 January 2006	Lithuania	22 February 2006
Belgium	4 February 2006	Barbados	6 March 2006

4 EXTERNAL RELATIONS

4.1 Promotion of 1992 Fund membership and information on Fund activities

The Secretariat has continued its efforts to increase the number of 1992 Fund Member States. To this end, the Director and other members of the Secretariat visited several non-Member States. They also participated in seminars and conferences in a number of countries and gave lectures on liability and compensation for oil pollution damage and on the operation of the 1992 Fund. Members of the Secretariat also participated in several workshops on the handling of compensation claims. As in previous years, the Director lectured to students at the World Maritime University in Malmö (Sweden), providing the opportunity to disseminate information on the 1992 Fund and the international compensation regime to students who eventually return to their administrations throughout the world. He also lectured to students at the Dalian Maritime University and the Shanghai Maritime University (People's Republic of China). Lectures have also been given at the IMO International Maritime Law Institute in Malta.

In order to establish and maintain personal contacts between the Secretariat and officials within the national administrations dealing with Fund matters, the Director and other members of the Secretariat visited a number of 1992 Fund Member States during 2005 for discussions with government officials on the international compensation regime and the operations of the IOPC Funds.

For the purpose of promoting membership of the 1992 Fund and the Supplementary Fund, the Director and other members of the Secretariat had discussions with government representatives of non-Member States in connection with IMO meetings, in particular during the sessions of the IMO Assembly, Council and Legal Committee.

Former Member States of the 1971 Fund automatically have observer status with the 1992 Fund. In addition, the 1992 Fund Assembly has granted observer status to a number of States that have never been parties to either Fund Convention. At the end of 2005 the non-Member States set out in the table below had observer status with the 1992 Fund (former 1971 Fund Member States are indicated with an asterisk).

4.2 Relations with international organisations and interested bodies

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

The following intergovernmental organisations have been granted observer status with the IOPC Funds:

- United Nations
- International Maritime Organization (IMO)

NON-MEMBER STATES WITH OBSERVER STATUS

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

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

The IOPC Funds have particularly close links with IMO and co-operation agreements have been concluded between the Funds and that organisation. During 2005 the Secretariat represented the IOPC Funds at meetings of the IMO Assembly, Council and Legal Committee and other IMO bodies dealing with issues of interest to the Funds.

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

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

4.3 The IOPC Funds' website

The IOPC Funds have a trilingual website (www.iopcfund.org) containing information on the Organisations and their activities in English, French and Spanish. During 2005, the website was further developed to provide a wider range of information structured in a cohesive manner so as to make the website's navigation more user-friendly.

4.4 The IOPC Funds' publications

During 2005, the 1992 Fund published a new edition of its Claims Manual in English, French and Spanish. The new edition of the Manual, which is a guide to presenting compensation claims, is easier to read than the previous version and gives further assistance to claimants.

A booklet containing the texts of the 1992 Civil Liability Convention, the 1992 Fund Convention and the 2003 Supplementary Fund Protocol was published in English, French and Spanish.

4.5 The IOPC Funds' Document Server

The IOPC Funds have established a Document Server to provide delegates to the Funds' governing bodies and the general public with access to documents for Fund meetings via the IOPC Funds' website. The Document Server contains documents covering all meetings from January 2001 onwards. During 2006 the Document Server will be expanded to include all meeting documents from the setting up of the 1971 Fund in November 1978.

5 THE IOPC FUNDS GOVERNING BODIES

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

The 1971 Fund Administrative Council held sessions in March and October 2005. Both sessions were chaired by Captain Raja Malik (Malaysia). The main decisions taken by the Administrative Council at these sessions regarding incidents involving the 1971 Fund are reflected in Section 13 in the context of particular pollution incidents involving that Fund.

Raja Malik

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

In 2002 the 1992 Fund Assembly recognised that, because of the growth in the number of Member States, and the lack of attendance of many Member States, it might be unable to achieve a quorum at future sessions. The Assembly therefore adopted a similar Resolution establishing an Administrative Council for the 1992 Fund. The quorum requirement for this Administrative Council was set at 25 Member States.

The 1992 Fund Assembly held an extraordinary session in March 2005 and its ordinary autumn session in October 2005. Both sessions were held under the chairmanship of Mr Jerry Rysanek (Canada).

The 1992 Fund Executive Committee held four sessions during 2005. The March and the first October sessions were chaired by Mr Volker Schöfisch (Germany), whereas the June session was chaired by Mrs Lolan Margaretha Eriksson (Finland). The last session, also in October 2005, was chaired by Captain Carlos Ormaechea (Uruguay). The main decisions taken by the 1992 Fund Executive Committee at these sessions are reflected in Section 14 in the context of particular pollution incidents involving that Fund.

The Supplementary Fund has an Assembly composed of all States which are Parties to the Supplementary Fund Protocol. It held its first ordinary session in March 2005 and an extraordinary session in October 2005. Both sessions were chaired by Captain Esteban Pacha (Spain).

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

Decisions relating to all three Organisations

March 2005

At their March 2005 sessions the governing bodies took a number of decisions on issues of common interest linked to the entry into force of the Supplementary Fund Protocol and the establishment of the Supplementary Fund.

- The governing bodies of the three Organisations agreed that the 1992 Fund, the 1971 Fund and the Supplementary Fund should have a joint Secretariat and that the Secretariat of the 1992 Fund should administer, in addition to the 1971 Fund, also the Supplementary Fund. It was also agreed that the Director of the 1992 Fund, Mr Måns Jacobsson (Sweden), who was *ex officio* Director of the 1971 Fund, should be *ex officio* Director of the Supplementary Fund also.
- The governing bodies of the three Funds also considered a number of administrative issues, *inter alia*, the apportionment of the costs of running the joint Secretariat. It was decided that the 1971 Fund and the Supplementary Fund should each pay a management fee to the 1992 Fund as a contribution to these costs.

Volker Schöfisch

Willem Oosterveen was elected the next Director in October 2005

October 2005

- As a result of the expiry of the contract of the current Director of the 1992 Fund, the 1971 Fund and the Supplementary Fund, Mr Måns Jacobsson, on 31 December 2006, the 1992 Fund Assembly elected Mr Willem J G Oosterveen (Netherlands) as the next Director of the three Funds. The current Director of the Funds, Mr Jacobsson, will retain full responsibility for the Organisations up to 31 October 2006. Mr Oosterveen will join the Secretariat on 1 September 2006 and take up office as Director on 1 November 2006. Mr Jacobsson will continue to be available until his retirement on 31 December 2006 after having held the post of Director for 22 years. The 1971 Fund Administrative Council and the Supplementary Fund Assembly noted the decision of the 1992 Fund Assembly to elect Mr Oosterveen as next Director.
- The governing bodies considered that the situation in respect of the non-submission of oil reports by a number of States continued to be a matter of serious concern, since without such reports the Secretariat cannot levy contributions in respect of oil receivers in those States (cf Section 9.1).

Lolan Margaretha Eriksson

- The 1971 Fund, 1992 Fund and the Supplementary Fund have a joint Audit Body, the members of which are elected by the 1992 Fund Assembly. The following persons were elected members of the joint Audit Body for a period of three years: Mr Charles Coppolani (France) (Chairman), Mr Maurice Jaques (Canada), Mr Mendim Me Nko'o (Cameroon), Dr Reinhard Renger (Germany), Mr Wayne Stuart (Australia), Professor Hisashi Tanikawa (Japan) and Mr Nigel Macdonald as the external expert not related to the Organisations.
- The 1971 Fund, the 1992 Fund and the Supplementary Fund have a joint Investment Advisory Body, the members of which are elected by the 1992 Fund Assembly. Mr David Jude, Mr Brian Turner and Mr Simon Whitney-Long were elected members of the joint Investment Advisory Body for a term of three years.

Decisions relating to the 1971 Fund and 1992 Fund

October 2005

- At their October 2005 sessions the 1992 Fund Assembly and the 1971 Fund Administrative Council noted with appreciation the External Auditor's Reports and his Opinions on the Financial Statements of the 1992 Fund and the 1971 Fund and noted that the Auditor had provided an unqualified audit opinion following a rigorous examination of the financial operations and accounts in conformity with international standards on auditing and best practice. The governing bodies of the 1992 Fund and the 1971 Fund approved the accounts for the financial period 1 January - 31 December 2004 (cf Section 8.3), as recommended by the Organisations' joint Audit Body.

Decisions relating to the 1992 Fund only

March 2005

- At its March 2005 session the 1992 Fund Assembly noted that the International Group of P & I Clubs had established the Small Tanker Oil Pollution Indemnification Agreement (STOPIA), whereby shipowners and P & I Clubs had undertaken to increase voluntarily the limit of liability in the case of incidents occurring in Supplementary Fund Member States under the 1992 Civil Liability Convention for ships of 29 548 gross tonnage or less to 20 million SDR (£17 million or US$29 million). The difference between the limit under the 1992 Civil Liability Convention and 20 million SDR would be paid as indemnification by the 1992 Fund. STOPIA had entered into force on 3 March 2005, ie on the date of the entry into force of the Supplementary Fund Protocol.
- The International Union of Marine Insurance (IUMI) was granted observer status.
- The 1992 Fund elected Mr Jerry Rysanek (Canada) as its Chairman.

October 2005

- In April 2000 the 1992 Fund Assembly had established an intersessional Working

Group to assess the adequacy of the international compensation system created by the 1992 Civil Liability Convention and the 1992 Fund Convention. In October 2005 the Assembly considered the report of the Working Group on its March 2005 meeting. Since there was insufficient support for a revision of the Conventions, the Assembly decided that the Working Group should be disbanded and that the revision of the Conventions should be removed from the Assembly's agenda. In respect of the discussion in the Assembly reference is made in Section 7.

- The 1992 Fund Assembly elected the following States as members of the 1992 Fund Executive Committee:

Algeria	Portugal
Cameroon	Republic of Korea
Canada	Russian Federation
China (Hong Kong Special Administrative Region)	Singapore
	Spain
	Turkey
Finland	United Kingdom
France	Uruguay
Italy	

- The 1992 Fund Assembly adopted the budget for 2006 for the administrative expenses for the joint Secretariat totalling £3 601 900.
- The Assembly decided not to levy 2005 contributions to the General Fund.
- The Assembly decided to raise 2005 contributions to the *Erika* and *Prestige* Major Claims Funds of £2 million and £3.5 million respectively, the entire levies to be deferred (cf Section 9.2).
- The Assembly noted the developments in respect of the ratification and implementation of the 1996 International Convention on liability and compensation for damage in connection with the carriage of hazardous and noxious substances by sea (HNS Convention) (cf Section 10).
- The Assembly took note of the results of the Director's enquiries to all Member States as to whether the 1992 Conventions had been fully implemented into their national law. It was noted that at the time of the session only 37 replies had been received to the Director's enquiries. The Assembly instructed the Director to make further efforts to obtain responses to the enquiries from all 1992 Fund Member States which had not already responded.

Decisions relating to the Supplementary Fund only

March 2005 session

- At its March 2005 session the Supplementary Fund Assembly took a number of decisions of an administrative nature relating to the establishment of the Supplementary Fund. These decisions included granting observer status to non-Member States and to intergovernmental and international non-governmental organisations, adoption of Rules of Procedure, adoption of Internal and Financial Regulations and appointment of the External Auditor.
- The Assembly decided that the Supplementary Fund should have a working capital of £1 million, and that contributions should be levied at the same time as contributions are levied for the 1992 Fund.

Esteban Pacha

- It was also decided that in view of the provisions of the Supplementary Fund Protocol and for practical reasons, the Supplementary Fund should not have a Claims Manual.
- The Supplementary Fund Assembly elected Captain Esteban Pacha (Spain) as its Chairman, and Mr Nobuhiro Tsuyuki (Japan) and Mrs Birgit Sølling Olsen (Denmark) as its Vice-Chairpersons.

October 2005 session

- At its October 2005 session the Supplementary Fund Assembly adopted the 2006 budget for the administrative expenses of the Supplementary Fund with a total of £85 000 (including a management fee of £70 000 payable to the 1992 Fund).
- The Supplementary Fund Assembly noted that the 1992 Fund Assembly had decided that the 1992 Fund should not raise any contributions for payment in early 2006. For this reason the Supplementary Fund Assembly considered it preferable to postpone the first levy of contributions to the Supplementary Fund until the autumn of 2006 and requested that the 1992 Fund Assembly authorise the Director to make the necessary funds available to the Supplementary Fund in the form of loans. This request was granted by the 1992 Fund Assembly.
- The Supplementary Fund Assembly further decided that, since there had been no incidents which would or might require the Supplementary Fund to pay compensation, there was no need for contributions to be levied to any Claims Fund (cf Section 9.2).

Decisions relating to the 1971 Fund only

October 2005 session

- In October 2005 the Administrative Council adopted the 2006 budget for the administrative expenses of the 1971 Fund with a total of £535 000 (including a management fee of £275 000 payable to the 1992 Fund and an amount of £250 000 relating to the winding up of the 1971 Fund).
- In October 2005 the 1971 Fund Administrative Council decided there should be no levy of 2005 contributions in respect of the three remaining Major Claims Funds, namely those in respect of the *Vistabella*, *Nissos Amorgos* and *Pontoon 300* incidents (cf Section 9.2).
- In the context of the discussion regarding the winding up of the 1971 Fund, the Administrative Council decided that the former 1971 Fund Member States with outstanding oil reports should be listed on the IOPC Funds' website (cf Section 9.1).
- The Administrative Council elected Mrs Teresa Martins de Oliveira (Portugal) as its Chairperson and Mr John Gillies (Australia) as its Vice-Chairperson from 2006.

6 WINDING UP OF THE 1971 FUND

6.1 Termination of the 1971 Fund Convention

As mentioned in Section 3.1, the 1971 Fund Convention ceased to be in force on 24 May 2002 and does not apply to incidents occurring after that date.

The termination of the 1971 Fund Convention does not result in the immediate liquidation of the 1971 Fund as the Organisation has to meet its obligations in respect of pending incidents. During 2005 significant progress was made towards the winding up of the 1971 Fund in that a number of pending incidents were closed. It is expected that by the end of 2006 compensation claims will be outstanding only in respect of a very small number of incidents. Steps will be taken to ensure that the 1971 Fund is liquidated and wound up in a proper manner as soon as possible.

6.2 Procedure for winding up the 1971 Fund

In October 2005 the Administrative Council considered certain issues which will have to be addressed during the winding-up period, namely the timescale for the settlement of all remaining claims in respect of pending incidents and for the recourse actions taken by the 1971 Fund in respect of certain incidents. The Council considered what action should be taken in respect of the contributors in arrears and the problem caused by a number of States not having fulfilled their treaty obligation under the 1971 Fund Convention to submit reports on contributing oil receipts. These issues will be considered further in 2006.

The Council noted the considerable improvement in the situation as regards contributors in arrears, with the number decreasing from 27 to 15 during the last three years. The Council instructed the Director to continue his efforts to make the contributors who were in arrears pay the amounts due and consider, on a case-by-case basis, whether legal action should be taken against a particular contributor or whether other steps would be more effective.

7 CONSIDERATION OF THE ADEQUACY OF THE INTERNATIONAL COMPENSATION REGIME

7.1 Intersessional Working Group

In April 2000 the 1992 Fund Assembly established an intersessional Working Group to assess the adequacy of the international compensation system created by the 1992 Civil Liability Convention and the 1992 Fund Convention. The Working Group elected Mr Alfred Popp QC (Canada) as its Chairman.

In October 2001 the Assembly gave the Working Group the following revised mandate:

- to continue an exchange of views concerning the need for and the possibilities of further improving the compensation regime established by the 1992 Civil Liability Convention and the 1992 Fund Convention, including issues which had already been identified by the Working Group, but had not yet been resolved;
- to report to the next regular session of the Assembly on the progress of its work and make such recommendations as it might deem appropriate.

7.2 Work carried out by the Working Group in the period 2000-2003

Preparation of Supplementary Fund Protocol

The initial task of the Working Group was the elaboration of a draft Protocol to establish an optional third tier of compensation by means of a Supplementary Fund that would provide compensation over and above the compensation available under the 1992 Fund Convention for pollution damage in States that became Parties to the Protocol. This task was completed by the Working Group in 2002 (see page 29).

Environmental damage

In April/May 2002 the Working Group considered the criteria to be applied with regard to the admissibility of claims for costs of post-spill environmental studies and for costs of measures of reinstatement of the polluted environment. The Working Group prepared a revised text of the relevant section of the Claims Manual. The revised text, which was approved by the Assembly at its October 2002 session, clarifies the criteria to be applied in respect of such claims within the legal framework of the definition of 'pollution damage' in the 1992 Conventions.

Shipowners' liability and related issues

Concerns were expressed that the adoption of the Supplementary Fund Protocol would distort the balance between shipping and cargo interests, since it was the intention that only oil receivers would finance the Supplementary Fund.

The observer delegations representing shipowners and P&I Clubs referred to a proposal made by the shipping industry to increase, on a

Alfred Popp QC

voluntary basis, the limitation amount applicable to small ships to 20 million SDR (£17 million) and maintained that this would preserve this balance, even after the entry into force of the Protocol establishing a Supplementary Fund.

The Working Group decided that, in view of the apparent disagreement between the shipping industry and the oil industry on the extent to which the financial burden of oil spills had been shared in the past and would be shared in the future, the Director should undertake an independent study of the costs of past spills in relation to the past, current and future limitation amounts of the 1992 Conventions. The Working Group considered that it was important that the study reflected the costs of past spills and the apportionment of those costs between the shipping and oil industries on the basis of values in 2003 and likely values in the future, taking into account inflation indices for individual States (see page 30).

Other issues

During the period 2000–2003 the Working Group also considered a number of other issues without coming to any conclusions. As regards these discussions reference is made to the Annual Report 2003, pages 34-36.

7.3 2003 Diplomatic Conference

The draft Protocol prepared by the Working Group was considered by a Diplomatic Conference held under the auspices of IMO in May 2003. After difficult negotiations, the Conference adopted a Protocol creating a Supplementary Fund. This Protocol, which entered into force on 3 March 2005, is on practically all significant points identical to the draft prepared by the Working Group. The Protocol contains the following main elements:

- The Protocol established a new intergovernmental organisation, the International Oil Pollution Compensation Supplementary Fund, 2003.
- Any State which is Party to the 1992 Fund Convention may become Party to the Protocol and thereby become a Member of the Supplementary Fund.
- The Protocol applies to pollution damage in the territory, including the territorial sea, of a State which is a Party to the Protocol and in the exclusive economic zone (EEZ) or equivalent area of such a State.
- The total amount of compensation payable for any one incident is 750 million SDR (US$1 070 million), including the amount payable under the 1992 Civil Liability and Fund Conventions, ie 203 million SDR (US$290 million).
- Annual contributions to the Supplementary Fund are made in respect of each Member State by any person who, in any calendar year, has received total quantities of contributing oil exceeding 150 000 tonnes after sea transport in ports and terminal installations in that State. The contribution system for the Supplementary Fund differs from that of the 1992 Fund in that where the aggregate quantity of contributing oil received in a Member State in a given calendar year is less than 1 million tonnes, that Member State shall assume the obligations that would be incumbent on any person who would be liable to contribute to the Supplementary Fund in respect of oil received in that State in so far as no liable person exists for the aggregate quantity of oil received. That means that the Member State would be liable to pay contributions for a quantity of contributing oil corresponding to the difference between 1 million tonnes and the aggregate quantity of actual contributing oil receipts reported in respect of that State.
- The Supplementary Fund only pays compensation for incidents occurring after the Protocol entered into force for the affected State.
- The Protocol contains provisions for so-called 'capping' of contributions, ie that the aggregate amount of contributions payable in respect of contributing oil received in a particular State during a calendar year should not exceed 20% of

the total amount of contributions levied. The capping provisions apply until the total amount of contributing oil received in the States which are Members of the Supplementary Fund has reached 1 000 million tonnes or for a period of 10 years from the date of the entry into force of the Protocol, whichever is the earlier.

The Protocol will greatly improve the situation for victims in States becoming parties to it. In view of the very high amount available for compensation of pollution damage in these States, it should in practically all cases be possible to pay all established claims in full from the outset.

7.4 Work carried out in 2004

Study of the costs of spills in relation to past, current and future limitation amounts of the 1992 Conventions

As requested, the Director undertook an independent study of the costs of past oil spills in relation to past, current and future limitation amounts of the relevant Conventions (1969 Civil Liability Convention and 1971 Fund Convention and 1992 Civil Liability and Fund Conventions) and the voluntary industry schemes (TOVALOP and CRISTAL[3]). The voluntary schemes, which operated between 1969 and 1997, were broadly similar in scope to the Conventions, applied worldwide and for some years interacted with the international Conventions. The study was presented to the Working Group in May 2004.

The study showed that on the basis of the financial limits of the applicable compensation regime the shipping industry had contributed 45% and oil cargo interests 55% of the total costs of 5 802 incidents that had occurred world-wide (except in the United States of America) in the 25-year period 1978–2002. The study also showed that the sharing of the financial burden varied considerably with different size ranges of ships, with oil cargo interests contributing considerably more to the costs of incidents involving ships up to 20 000 gross tonnes, an equal sharing of the costs between oil cargo interests and the shipping industry in respect of incidents involving ships between 20 000 and 80 000 gross tonnes, and the shipping industry contributing considerably more to the costs of incidents involving ships greater than 80 000 gross tonnes. When the costs of past incidents were inflated to 2002 and predicted 2012 monetary values, the relative contribution of oil cargo interests to the costs of oil spills increased considerably.

General discussion in the Working Group as to whether or not the 1992 Conventions should be revised

When considering the implications of the cost study, the Working Group remained divided on the need for a revision of the 1992 Conventions, although there was overwhelming support for protecting the system and maintaining its fundamental objectives. Some delegations expressed the view that the current weaknesses in the system could be addressed through voluntary industry arrangements. Other delegations, however, were reluctant to accept voluntary arrangements as a permanent solution and noted, further, that there were other issues that could only be resolved through changes to the Conventions.

Other issues

As regards other issues considered by the Working Group during 2004 reference is made to the Annual Report 2004, pages 33-38.

7.5 Consideration of the Working Group's reports by the Assembly in October 2004

The 1992 Fund Assembly considered in October 2004 the Working Group's reports on its February and May 2004 meetings.

In his summing up of the discussion the Chairman of the Assembly noted that the Working Group was divided into two large groups, one of which was against any revision of the 1992 Conventions and the continuation of the Working Group whilst the other considered

[3] *TOVALOP: Tanker Owners Voluntary Agreement concerning Liability for Oil Pollution. CRISTAL: Contract Regarding a Supplement to Tanker Liability of Oil Pollution.*

that there were a number of outstanding issues that needed to be addressed by the Working Group which could result in the revision of the 1992 Conventions. He also noted that some of those delegations that did not support a revision of the Conventions were, nevertheless, flexible on whether or not the Working Group should continue its work provided that a definite time limit for its work was set. He further noted that most delegations that had supported the continuation of the Working Group had recognised that it should not continue indefinitely and that it should be in a position to make a final recommendation to the 1992 Fund Assembly in October 2005.

The Assembly decided that the Working Group should meet in early 2005 and make final recommendations to the October 2005 session of the Assembly on whether or not the Conventions should be revised, and if so, which items required revision.

7.6 Work carried out in 2005

The Working Group met in March 2005.

General considerations on a possible revision of the 1992 Conventions

In order to address the imbalance in the sharing of the financial burden created by the establishment of the Supplementary Fund, funded by oil receivers in States that became parties to the Supplementary Fund Protocol, the International Group of P&I Clubs had created a voluntary, but legally binding arrangement known as the 'Small Tanker Oil Pollution Indemnification Agreement' (STOPIA) whereby shipowners and P&I Clubs undertook to indemnify the 1992 Fund in respect of all claims up to 20 million SDR (£17 million) where the limitation amount under the 1992 Civil Liability Convention was lower, namely for ships of 29 548 tonnage or less, to the effect that the maximum amount payable by the owners of such ships would be 20 million SDR. Although STOPIA would only apply to pollution damage in States that were parties to the Supplementary Fund Protocol, it would operate irrespective of whether or not the Supplementary Fund paid any compensation. Since it would be the 1992 Fund that would be indemnified, all contributors to the 1992 Fund and not only those contributing to the Supplementary Fund would benefit from STOPIA. STOPIA entered into force on 3 March 2005, ie on the date of the entry into force of the Supplementary Fund Protocol.

The International Group of P&I Clubs had also prepared an alternative proposal establishing the 'Tanker Oil Pollution Indemnification Agreement' (TOPIA) whereby the Clubs would indemnify the Supplementary Fund in respect of 50% of the amounts paid in compensation by the Supplementary Fund. The International Group indicated that the acceptance of TOPIA would require the simultaneous withdrawal of STOPIA. The International Group pointed out that neither agreement had been proposed as an interim measure and both were conditional on there being no revision to the existing Conventions.

A number of delegations welcomed the voluntary initiative of the International Group of P&I Clubs to establish STOPIA as an interim measure but stressed the need for a limited revision of the Conventions to address the financial imbalance and to ensure the uniform application of the Conventions. An almost equal number of delegations were opposed to any revision of the Conventions on the grounds that the proposed voluntary arrangements had dealt effectively with the imbalance of the sharing of the financial burden without the delays that would result from revision and implementation.

In his summing up of the discussion the Chairman of the Working Group noted that the Working Group remained evenly divided on the question of whether or not the Conventions should be revised and that the Working Group was therefore not in a position to make a recommendation to the 1992 Fund Assembly on this issue and that it would be for the Assembly to make a decision in the light of the debate.

The Working Group agreed not to make a recommendation to the Assembly as to whether or not the Conventions should be revised, and instead decided to consider which items should be included if a revision of the Conventions were to take place, recognising that this was without prejudice to the position of those delegations which had opposed any revision of the 1992 Conventions.

Items to be included if a revision of the Conventions were to take place

The Working Group recommended to the Assembly that if it were to decide to proceed with a limited revision of the 1992 Conventions, the following issues should be included:

- the tacit amendment procedure for changing the financial limits under the Conventions should be amended;
- the compulsory insurance requirements should be amended to include all ships regardless of the quantity of oil carried on board;
- in order to ensure that States parties to the 1992 Fund Convention complied with their obligations to submit oil reports, the issue of sanctions against non-reporting States should be addressed;
- the problem of achieving a quorum for meetings of the 1992 Fund Assembly, which currently required a majority of Member States to be present, required further consideration;
- the definition of 'ship' should be amended to remove any ambiguity; and
- the uniform application of the Conventions needed further consideration so as to ensure the proper and equitable functioning of the compensation regime.

7.7 Consideration of the Working Group's report by the Assembly in October 2005

Revision of the Conventions

The 1992 Fund Assembly considered in October 2005 the Working Group's report on its March 2005 meeting.

The Assembly also considered a proposal by 11 Member States in favour of revising the Conventions to amend the Working Group's terms of reference and instruct it to:

- develop appropriate treaty text on the six issues recommended by the Working Group for further consideration;
- further discuss the issue of substandard transportation of oil, including a proposal by the International Group of P&I Clubs (see page 33) to establish an informal Working Group to consider making recommendations to the Assembly on what measures in the fields of liability, insurance and administration of the international compensation regime could be taken to address the issue;
- reserve the decision on rebalancing of the financial burden between shipowners and contributors until the Assembly had fully considered the treaty text on the six issues that had had the support of the Working Group.

The Assembly also considered the points made by one delegation that was against revising the 1992 Conventions on the grounds that in order to maintain a global and universally applicable regime, there had to be broad support for a revision and that such support fell well short of being broad. That delegation had therefore proposed that the Assembly should decide against a revision and terminate the activities of the Working Group.

The International Group of P&I Clubs, which had previously offered to establish one of two possible voluntary agreements (STOPIA and TOPIA) to address the imbalance in the sharing of the financial burden between the shipping and oil industries (see paragraph 7.6 above), made a new proposal whereby if the decision to revise the Conventions were to be put on hold, the Clubs would be prepared to extend the contractually binding STOPIA to all States parties to the 1992 Civil Liability Convention and to apply TOPIA to States parties to the Supplementary Fund Protocol.

In his summing up of the discussion, the Chairman of the Assembly stated that it was clear that there was insufficient support for the proposal to amend the terms of reference of the Working Group with a view to revising the Conventions. The 1992 Fund Assembly decided that the Working Group should be disbanded and that the revision of the Conventions should be removed from the Assembly's agenda.

As regards the proposed voluntary agreements, the Director was instructed to collaborate with the oil and shipping industries before the voluntary agreement package was submitted to the Assembly for consideration at its next session in 2006 and provide technical and administrative advice with a view to consolidating the package and ensuring that it was legally enforceable.

Proposal on establishment of Working Group to consider certain issues relating to substandard transportation of oil

The 1992 Fund Assembly considered a proposal by the International Group of P&I Clubs to establish an informal Working Group to address what measures in the fields of liability, insurance and administration of the international compensation regime could be taken to address the substandard transportation of oil.

Although a number of delegations expressed reservations about the proposal on the grounds that the issue of substandard transportation of oil was essentially a technical one, the majority of delegations supported the idea in principle. The Assembly decided that the next step would be for one or more delegations to develop clear and precise terms of reference so that the Assembly could consider these at its next session.

8 ADMINISTRATION OF THE IOPC FUNDS

8.1 Secretariat

The 1971 Fund, 1992 Fund and Supplementary Fund have a joint Secretariat headed by one Director. Throughout 2005 the Secretariat continued to face considerable challenges. The strong commitment of the staff to their work, as well as their knowledge and expertise, are important assets to the IOPC Funds and are crucial to the efficient functioning of the Secretariat.

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

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

8.2 Risk Management

During 2005 the Director continued a review of the IOPC Funds' risk management and the work towards developing a risk register. In close co-operation with the Audit Body, and with the assistance of consultants and the External Auditor, five areas of risk have been identified, namely: reputation risk, claims-handling process, financial risk, human resource management and business continuity. Under these five areas the sub-risks are being mapped and assessed, following which the process and procedures for management of these risks will be documented. The Audit Body and the External Auditor have made valuable contributions to the work in this field. Further work will be carried out during 2006.

8.3 Financial statements for 2004

The financial statements of the 1971 Fund and the 1992 Fund for the period 1 January to 31 December 2004 were approved by the respective governing bodies during their sessions in October 2005.

As in previous years the accounts of the 1971 Fund and the 1992 Fund were audited by the Comptroller and Auditor General of the United Kingdom. The Auditor's reports on the two Organisations are reproduced in full in Annexes III and IX respectively and his opinions on each financial statement are reproduced in Annexes IV and X. Summaries of the information contained in the audited statements for this period are given in Annexes V to VIII for the 1971 Fund and in Annexes XI to XIV for the 1992 Fund.

There are separate income and expenditure accounts for the General Fund and for each Major Claims Fund. Separate Major Claims Funds are established for incidents for which the total amounts payable exceed 1 million Special Drawing Rights (SDR) (£830 000) for the 1971 Fund or 4 million SDR (£3.3 million) for the 1992 Fund; conversion from SDR to Pounds Sterling is made at the rate applicable at the date of the incident in question.

The administrative expenses for the joint Secretariat totalled £2 624 613 in 2004, compared to a budgetary appropriation of £3 292 250.

1971 Fund

No annual contributions were due in respect of the General Fund during 2004 as it is no longer possible to levy contributions to the General Fund.

Claims and claims-related expenditure for 2004 amounted to £6 million. The majority of this expenditure related to two cases, namely the *Nissos Amorgos* and *Yuil N°1* incidents.

Following reimbursements to contributors, five Major Claims Funds were closed in 2004.

The balance sheet of the 1971 Fund as at 31 December 2004 is reproduced in Annex VII. The balances of the various Major Claims Funds are also given. The contingent liabilities were estimated at over £85 million in respect of claims arising from nine incidents.

1992 Fund

Contributions of £7 million in respect of the General Fund and £75 million for the *Prestige* Major Claims Fund were due during 2004. A reimbursement of £37.7 million was made to contributors to the *Nakhodka* Major Claims Fund.

Claims and claims-related expenditure during 2004 was £14.5 million. The payments related mainly to the *Erika*, *Prestige* and *Kyung Won* incidents.

The balance sheet of the 1992 Fund as at 31 December 2004 is reproduced in Annex XIII. The balances of the various Major Claims Funds are also given. The contingent liabilities were estimated at £135 million in respect of claims and claims-related expenditure arising from eight incidents.

8.4 Financial statements for 2005

The financial statements of the 1971 Fund and 1992 Fund for the period 1 January to 31 December 2005 and for the Supplementary Fund for the period 3 March 2005 to 31 December 2005 will be submitted to the External Auditor in the spring of 2006 and will be presented to the respective governing bodies for approval at their sessions in October 2006. These accounts will be reproduced in the IOPC Funds' 2006 Annual Report.

The following preliminary information is given on the financial operations during 2005. The figures, which have been rounded, have not yet been audited by the External Auditor. Further details are given in Annexes XV and XVI respectively.

The administrative expenses for operating the joint Secretariat in 2005 total some £2.7 million, compared to a budget appropriation of £3 372 600.

1971 Fund

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

Reimbursements were made to contributors to four Major Claims Funds.

The total claims expenditure incurred by the 1971 Fund during 2005 was approximately £157 000, out of which some £50 000 related to the *Nissos Amorgos* incident.

1992 Fund

Contributions of £5.4 million to the General Fund and £33 million to the *Prestige* Major Claims Fund were due.

Reimbursements were made to contributors to one Major Claims Fund, as detailed in the table on page 41.

The 1992 Fund's claims payments during 2005 totalled some £17 million, out of which some £13.4 million related to the *Erika* incident and some £3 million to the *Prestige* incident.

8.5 Investment of funds

Investment policy

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

Investments

Investments were made by the 1971 and 1992 Funds during 2005 with a number of banks and one building society. As at 30 December 2005 the portfolios of investments totalled some £11 million for the 1971 Fund and £143 million for the 1992 Fund. Interest due in 2005 on the investments amounted to £600 000 for the 1971 Fund and £6 million for the 1992 Fund. No investments were made in respect of the Supplementary Fund.

Investment Advisory Body

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

During 2005 the Investment Advisory Body monitored the relevant procedures for investment and cash management controls. It also monitored the credit ratings of financial institutions and reviewed on a continuing basis the list of such institutions which meet the Funds' investment criteria. In addition, the Body also regularly reviewed the Funds' investment and foreign exchange requirements and the quotations for investments in order to ensure that reasonable investment returns were achieved without compromising the Funds' assets. The Investment Advisory Body reports annually to the governing bodies.

8.6 Audit Body

The 1992 Fund, the 1971 Fund and the Supplementary Fund have a joint Audit Body, the members of which are elected by the 1992 Fund Assembly. The Audit Body has the following mandate:

(a) to review the effectiveness of the Organisations regarding key issues of financial reporting, internal controls, operational procedures and risk management;

(b) to promote the understanding and effectiveness of the audit function within the Organisations, and provide a forum to discuss internal control issues, operational procedures and matters raised by the external audit;

(c) to discuss with the External Auditor the nature and scope of each forthcoming audit;

(d) to review the Organisations' financial statements and reports;

(e) to consider all relevant reports by the External Auditor, including reports on the Organisations' financial statements; and

(f) to make appropriate recommendations to the governing bodies.

During 2005 the Audit Body met with representatives of the External Auditor and received a detailed report of the work carried out by the auditor and the auditor's findings, all of which were considered satisfactory. The Audit Body was satisfied that the extent of the audit examination was appropriate. A meeting with the Investment Advisory Body was also held. The Audit Body recommended that the governing bodies should approve the accounts of the 1971 and 1992 Funds for the financial year 2004.

In 2005 the Audit Body conducted a review of the claims settlement procedures in order to enable the Body to form a view about the efficiency of those procedures. The report on the review was presented to the governing bodies in October 2005. The report dealt with, *inter alia*, the time taken to handle claims, the costs of claims, interim payments and the management of claims handling. The review did not identify

any serious past weaknesses or failures by the Secretariat. The Director was instructed to draw up an action plan to be put in place in the light of the Audit Body's recommendations.

The Audit Body also addressed the issue of risk management, advised the Funds on adopting a balanced policy towards managing risk and noted with satisfaction that progress had been made by the Secretariat in the definition of risks and the putting into place of procedures to meet them. The Audit Body noted that a considerable amount of work had been carried out on financial risks and that a timetable had been set for addressing other risk areas, with a view to completing the work on risk management prior to the new Director taking up his responsibilities in November 2006.

9 CONTRIBUTIONS

9.1 The contribution system

Basis for levy of contributions

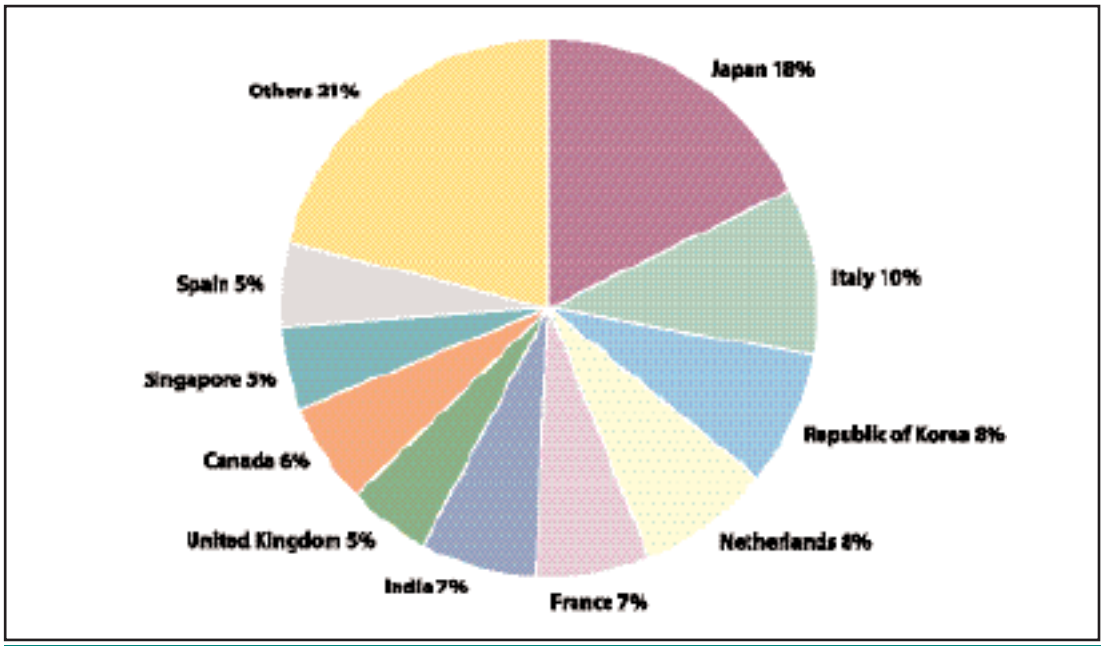
The IOPC Funds are financed by contributions paid by any person who has received in the relevant calendar year in excess of 150 000 tonnes of crude oil or heavy fuel oil (contributing oil) in ports or terminal installations in a State which is a Member of the relevant Fund, after carriage by sea. The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

However, as regards the Supplementary Fund for the purpose of contributions at least 1 million tonnes of contributing oil will be deemed to have been received each calendar year in each Member State of that Fund. As for the capping of contributions in respect of the Supplementary Fund, reference is made to Section 7.3 above.

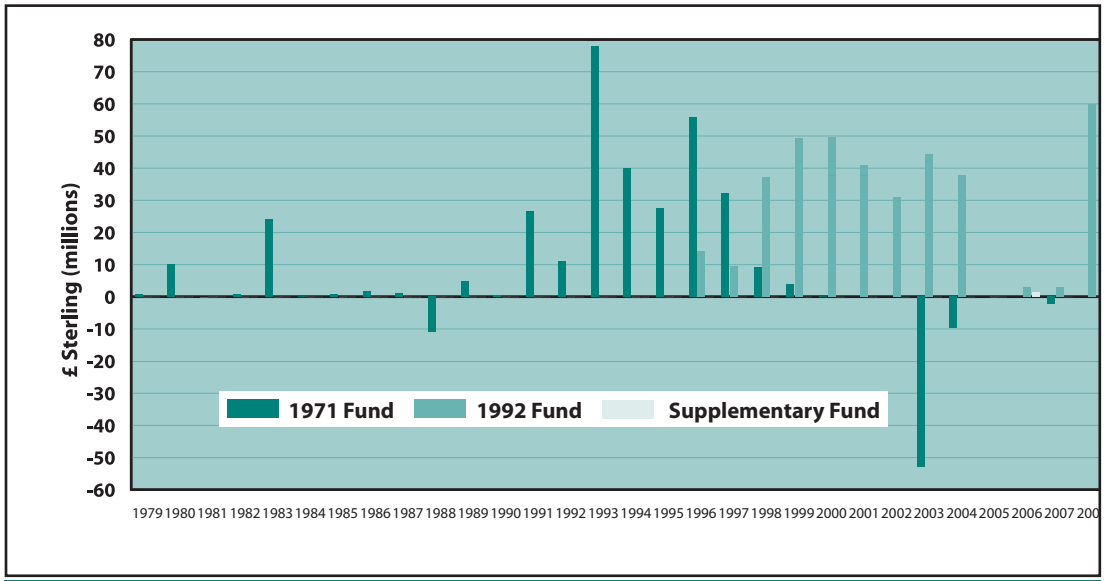
Non-submission of oil reports

The non-submission of oil reports by a number of States was again considered at the October 2005 sessions of the governing bodies of the three Funds. At that time 22 Member States of the 1992 Fund and 11 former Member States of the 1971 Fund had not submitted their reports on contributing oil in 2004 and/or previous years. For seven of the former 1971 Fund Member States reports were outstanding for between four and 16 years. Four of these States are also Members of the 1992 Fund. There were no outstanding oil reports as regards the Supplementary Fund.

The governing bodies noted that the failure of a number of Member States to submit oil reports had been a very serious issue for a number of years and that, whilst the situation might be slightly better than in previous years, it was still very unsatisfactory. The governing bodies expressed their very serious concern as regards the number of Member States which had not fulfilled their obligation to submit oil reports, since the submission of these reports was crucial to the functioning of the IOPC Funds.



1992 Fund: General Fund contributions 2004



1971 Fund and 1992 Fund: annual contributions over the years

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

The 1971 Fund Administrative Council decided that the former 1971 Fund Member States with outstanding oil reports should be listed on the IOPC Funds' website.

In view of the fact that the non-submission of reports on contributing oil receipts (oil reports) has been a recurring problem for both the 1971 Fund and the 1992 Fund, it was decided when the Supplementary Fund Protocol was drafted to insert provisions in the Protocol under which compensation would be denied temporarily or permanently in respect of pollution damage in States that failed to fulfil their obligation to submit oil reports. This issue was considered at the Supplementary Fund Assembly's March 2005 session. It was decided that it would be for the Supplementary Fund Assembly to determine whether compensation should be denied. Certain procedural provisions on this issue were inserted in the Internal Regulations of that Fund.

Levy of contributions

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

Deferred invoicing

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

9.2 Contribution levies/ reimbursements

1971 Fund

2004 contributions

In October 2004 the 1971 Fund Administrative Council decided not to levy contributions to any Major Claims Fund. It is no longer possible to levy contributions to the 1971 Fund's General Fund.

The Administrative Council decided to reimburse to the contributors on 1 March 2005 the surpluses totalling £9.65 million on four Major Claims Funds. It was also decided that reimbursements to contributors in those States which have any oil reports outstanding should be deferred until all such reports have been submitted.

2005 contributions
In October 2005, the 1971 Fund Administrative Council decided that there should be no levy of 2005 contributions in respect of the three remaining Major Claims Funds, ie the *Vistabella*, *Nissos Amorgos* and *Pontoon 300*.

1992 Fund

2004 contributions
The 1992 Fund Assembly decided to levy contributions of £5.4 million to the General Fund and £33 million to the *Prestige* Major Claims Fund, the entire levies payable by 1 March 2005. It was decided that a further reimbursement should be made to contributors to the *Nakhodka* Major Claims Fund of £600 000.

The 2004 contributions to the 1992 Fund General Fund were levied on the basis of the quantities of contributing oil received in 2003 in 1992 Fund Member States. The shares of the 2004 contributions to that Fund in respect of Member States are illustrated by the chart on page 38.

2005 contributions
The 1992 Fund Assembly decided that there should be no levy of 2005 contributions to the General Fund. The Assembly also decided to raise 2005 contributions to the *Erika* and *Prestige* Major Claims Funds of £2 million and £3.5 million respectively, but that the entire levies should be deferred. The Director was authorised to decide whether to invoice all or part of the deferred levies for payment during the second half of 2006, if and to the extent required.

Supplementary Fund

2005 contributions
The 1992 Fund Assembly had agreed to continue to provide the Supplementary Fund with loans, repayable with interest, to cover its administrative costs. The Supplementary Fund Assembly therefore decided in October 2005 to postpone the first levy of contributions to the General Fund until the autumn of 2006. The Supplementary Fund Assembly also decided that, since there had been no incidents which would or might require that Fund to pay compensation, there was no need for contributions to be levied to any Claims Fund.

9.3 Contributions over the years

Details of the 1971 and 1992 Funds' 2004 and 2005 contributions are set out in the table opposite.

The payments made by the 1971 and 1992 Funds in respect of claims for compensation for oil pollution damage vary considerably from year to year. As a result, the level of contributions to the Funds has fluctuated from one year to another, as illustrated in the graph on page 39.

The total amount levied over the years is £386 million for the 1971 Fund and £356 million for the 1992 Fund. Reimbursements totalling £117 million and £42 million have been made to contributors to the 1971 Fund and 1992 Fund respectively. With regard to contributions levied by the 1971 Fund over the years, £368 768 was outstanding as at 31 December 2005. As for contributions levied by the 1992 Fund since its establishment in 1996, £745 250 was outstanding as at 31 December 2005. The arrears thus represent 0.14% and 0.24% respectively of the net amounts levied.

So far no contributions have been levied to the Supplementary Fund.

1971 AND 1992 FUNDS' 2004 AND 2005 ANNUAL CONTRIBUTIONS

Organisation	Annual contribution year	Decision of governing body		General Fund/Major Claims Fund	Total amount due/to be reimbursed £	Oil year	Levy/credit per tonne £
1971 FUND	2004	October 2004	Reimburse-ments	*Aegean Sea* Spain	-800 000	1991	-0.0008305
			Due 1 March 2005	*Keumdong N° 5* Republic of Korea	-8 100 000	1992	-0.0075540
				Sea Empress United Kingdom	-350 000	1995	-0.0002965
				Nakhodka Japan	-400 000	1996	-0.0003275
	2005	October 2005	No levy		-		
1992 FUND	2004	October 2004	Levy/ reimburse-ments	General Fund	5 400 000	2003	0.0039297
				Prestige Spain	33 000 000	2001	0.0243113
			Due 1 March 2005	*Nakhodka* Japan	-600 000	1996	-0.0009048
	2005	October 2005	No levy	General Fund	-		
			Deferred levy	*Erika* France	2 000 000	1998	0.0017919
			Due second half of 2006	*Prestige* Spain	3 500 000	2001	0.0025770

10 PREPARATIONS FOR THE ENTRY INTO FORCE OF THE HNS CONVENTION

In 1996 a Diplomatic Conference adopted the International Convention on liability and compensation for damage in connection with the carriage of hazardous and noxious substances by sea (HNS Convention). The Conference invited the Assembly of the 1992 Fund to assign to the Director of the 1992 Fund, in addition to his functions under the 1992 Fund Convention, the administrative tasks necessary for setting up the International Hazardous and Noxious Substances Fund (HNS Fund) in accordance with the HNS Convention. In 1996 the 1992 Fund Assembly instructed the Director to carry out the tasks requested by the HNS Conference on the basis that all expenses incurred would be repaid by the HNS Fund.

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

By 31 December 2005 eight States (Angola, Cyprus, Morocco, the Russian Federation, Saint Kitts and Nevis, Samoa, Slovenia and Tonga) had acceded to the HNS Convention. As only two of those States have ships with a total of at least 2 million units of gross tonnage, the conditions for the entry into force of the HNS Convention are far from being fulfilled.

The IOPC Funds' Secretariat has established a website dedicated to the implementation of the HNS Convention (www.hnsconvention.org).

The Secretariat has also completed the development of a system to monitor contributing cargo under the HNS Convention, which includes a database of all substances qualifying as hazardous or noxious substances (HNS). The final system was circulated in August 2005 in the form of a CD-ROM containing software for installation on a user's personal computer. The Secretariat has developed a dedicated website for the system (www.hnscccc.org).

In October 2005, the 1992 Fund Assembly's attention was drawn to the fact that revised regulations to prevent marine pollution by ships carrying oil or chemicals had been adopted by IMO's Marine Environment Protection Committee (MEPC) in October 2004. These revised regulations, which include Annexes I and II of the International Convention for the Prevention of Pollution from Ships, 1973, as amended by the Protocol of 1978 relating thereto (MARPOL 73/78) and the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk, 1983 (IBC Code), are expected to enter into force on 1 January 2007 under the 'tacit acceptance' procedure, whereby the amendments will enter into force on that date unless at least one third of the States Parties or States Parties having ships totalling at least 50% of the gross tonnage of the world's merchant fleet have objected to the amendments by 1 July 2006.

The definition of HNS in Article 1.5 of the HNS Convention is largely based on lists of individual substances which are identified in a number of IMO Conventions and Codes designed to ensure maritime safety and prevention of pollution. In particular, parts (a)(i) to (a)(iii) of the definition of HNS in Article 1.5 are based on Annexes I and II of MARPOL 73/78 and the IBC Code, respectively. If, as expected, the revised Annex II enters into force on 1 January 2007, the reference in Article 1.5(a)(ii) of the HNS Convention to 'noxious liquid substances carried in bulk referred to in appendix II of Annex II to MARPOL 73/78, as amended,...' would be meaningless from that date, as would the

reference to '...those substances and mixtures provisionally categorised as falling in pollution category A, B, C or D in accordance with regulation 3(4) of Annex II'.

The 1992 Fund Assembly therefore noted that it was essential that the issue relating to the definition of HNS under Article 1.5(a)(ii) be resolved as quickly as possible, since those substances that qualified as HNS under this part of the definition were likely to form a significant part of contributing cargo. The Assembly instructed the Director to discuss this issue with the Secretary-General of IMO with the aim of finding a practical solution to the issue and also of attempting to avoid similar issues arising in the future.

The IOPC Funds' Secretariat organised a Workshop in London on 28 and 29 June 2005 to facilitate States' preparations for ratification of the HNS Convention. The Secretariat has produced a revised version of the 'Guide to the Implementation of the HNS Convention', which had been developed to form the basis of the Workshop. The Guide, together with the PowerPoint presentations given at the Workshop, are available on the abovementioned website dedicated to the implementation of the HNS Convention.

A further Workshop on the HNS Convention will be held in the spring of 2006, focusing on more practical aspects of the implementation of the HNS Convention.

The Maritime and Port Authority of Singapore conducting a major HNS spill exercise involving a release of benzene from a chemical tanker.

11 SETTLEMENT OF CLAIMS

11.1 General

The governing bodies of the IOPC Funds have given general authority to the Director to settle claims and pay compensation if it is unlikely that the total payments by the respective Fund with regard to the incident in question will exceed 2.5 million SDR (£2 million). For incidents leading to larger claims, the Director needs in principle approval of the settlement by the governing body of the Fund in question (ie the Administrative Council of the 1971 Fund, the Executive Committee of the 1992 Fund or the Assembly of the Supplementary Fund). However, the governing bodies normally give the Director very extensive authority to settle claims by authorising him to make binding settlement of all claims arising from a particular incident, except where a specific claim gives rise to a question of principle which has not previously been decided by the governing bodies. The Director is permitted, in certain circumstances and within certain limits, to make provisional payment of compensation before a claim is settled, if this is necessary to mitigate undue financial hardship to victims of pollution incidents. These procedures are designed to expedite the payment of compensation.

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

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

11.2 Admissibility of claims for compensation

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

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

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

The Assemblies of the three Funds have expressed the opinion that a uniform interpretation of the definition of 'pollution

damage' is essential for the functioning of the compensation regime established by the Conventions. The IOPC Funds' position in this regard applies not only to questions of principle relating to the admissibility of claims but also to the assessment of the actual loss or damage where the claims do not give rise to any question of principle.

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

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

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

A revised version of the 1992 Fund's Claims Manual adopted by the 1992 Fund Assembly was published in English, French and Spanish in April 2005. The revised Manual largely follows in substance the previous version and does not amend the 1992 Fund's policy as regards the handling or admissibility of claims. The main difference between the old version and the revised text is that each of the main categories of claims covered by the Conventions (ie cost of clean-up and preventive measures, property damage, economic loss in the fisheries, mariculture and fish processing sectors, economic loss in the tourism sector and environmental damage and post-spill studies) has its own section in the Manual. This has made it possible to provide specific examples to explain the admissibility criteria in the context of different types of claims and to list the different types of supporting documents appropriate for different categories of claims.

The Supplementary Fund will not normally become directly involved in the claims handling process. The 1992 Fund's Manual includes a statement that the criteria under which claims qualify for compensation from the Supplementary Fund are identical to those of the 1992 Fund. In the light of the provisions of the Supplementary Fund Protocol, and for practical reasons, the Supplementary Fund Assembly decided in March 2005 that the Supplementary Fund did not need its own Claims Manual.

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

11.3 Incidents involving the 1971 Fund

1971 Fund claims settlements 1978-2005

Since its establishment in October 1978, the 1971 Fund has, up to 31 December 2005, been involved in the settlement of claims arising out of 100 incidents. The total compensation paid by the 1971 Fund amounts to £329 million (US$631 million).

Annex XX to this Report contains a summary of all incidents for which the 1971 Fund has paid compensation or indemnification, or where it is possible that such payments may be made by the Fund. It also includes some incidents in which

Ship	Place of incident	Year	1971 Fund payments
Antonio Gramsci	Sweden	1979	£9.2 million
Tanio	France	1980	£18.7 million
Ondina	Federal Republic of Germany	1982	£3.0 million
Thuntank 5	Sweden	1986	£2.4 million
Rio Orinoco	Canada	1990	£6.2 million
Haven	Italy	1991	£30.3 million
Aegean Sea	Spain	1992	£34.1 million
Braer	United Kingdom	1993	£45.7 million
Taiko Maru	Japan	1993	£7.2 million
Keumdong N°5	Republic of Korea	1993	£11.0 million
Toyotaka Maru	Japan	1994	£5.1 million
Sea Prince	Republic of Korea	1995	£21.1 million
Yuil N°1	Republic of Korea	1995	£15.9 million
Senyo Maru	Japan	1995	£2.3 million
Sea Empress	United Kingdom	1996	£31.2 million
Nakhodka[4]	Japan	1997	£49.6 million
Nissos Amorgos[5]	Venezuela	1997	£11.0 million
Osung N°3	Republic of Korea/Japan	1997	£8.2 million

the 1971 Fund was involved but ultimately was not called upon to make any payments.

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

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

Incidents with outstanding claims against the 1971 Fund

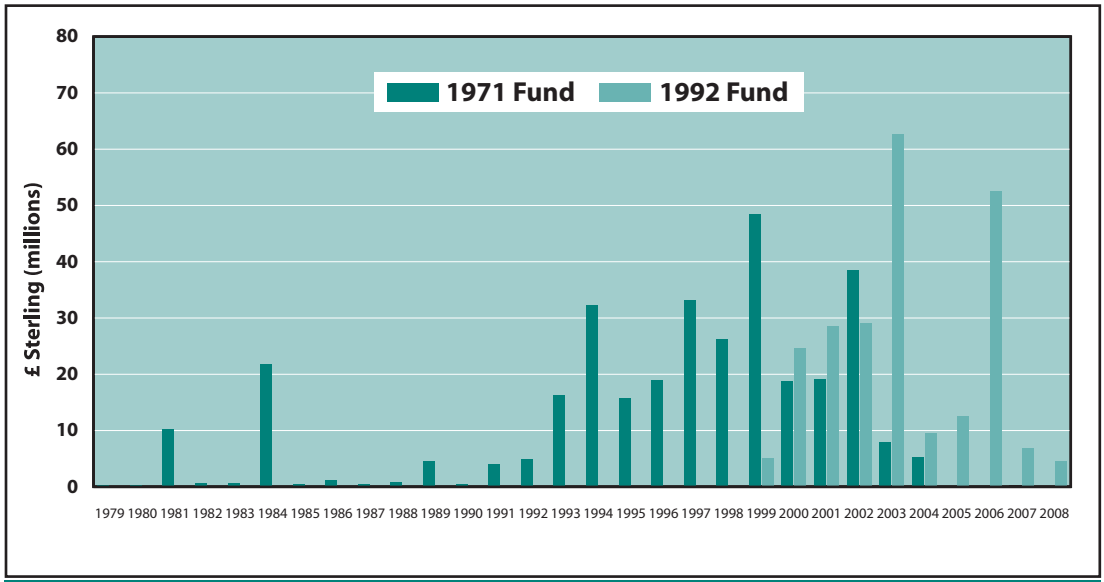
As at 31 December 2005 there were outstanding third party claims in respect of five incidents involving the 1971 Fund which had occurred before 24 May 2002, the date when the 1971 Fund Convention ceased to be in force. The situation in respect of the two major incidents is summarised below.

In respect of the *Nissos Amorgos* incident (Venezuela, 1997), claims have so far been agreed for a total of US$24.4 million. Claims for significant amounts have been lodged in the Venezuelan courts.

As regards the *Pontoon 300* incident (United Arab Emirates, 1998), claims totalling £32.4 million, including a claim for £31.3 million in respect of environmental damage, are the subject of legal proceedings. The 1971 Fund has made payments of £817 000 corresponding to 75% of the agreed amounts of the claims which have been settled.

[4] *The 1992 Fund has paid a further £61.1 million in compensation in respect of the* Nakhodka *incident.*

[5] *Some third party claims are pending.*



1971 Fund and 1992 Fund: payment of claims

11.4 Incidents involving the 1992 Fund

1992 Fund claims settlements 1996–2005

Since its creation in May 1996 there have been 29 incidents that have involved the 1992 Fund, or may involve it in the future. The total compensation paid by the 1992 Fund amounts to £172 million (US$295 million).

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

Ship	Place of incident	Year	1992 Fund payments
Nakhodka[6]	Japan	1997	£61.1 million
Erika	France	1999	£67.9 million
Prestige	Spain	2002	£40.7 million

Incidents in previous years with outstanding claims against the 1992 Fund

As at 31 December 2005 there were six incidents which occurred before 2005 and which have given or may give rise to claims against the 1992 Fund. The most important of these are the *Erika* (France, 1999) and *Prestige* (Spain, 2002) incidents, both of which resulted in claims for compensation greatly exceeding the maximum amount available under the 1992 Conventions.

The French Government and the French oil company TotalFinaElf SA have undertaken to pursue claims for compensation in respect of the *Erika* incident only if and to the extent that all other claims have been paid in full. Compensation payments totalling £76.7 million have been made in respect of 5 574 claims arising from this incident.

The *Prestige* incident has given rise to claims for compensation for very high amounts in Spain. Claims for substantial amounts have been submitted in France. The Portuguese authorities have also submitted claims. Compensation totalling £40 million has been paid to the Spanish Government. A further £745 000 has been paid to private claimants in Spain and France.

Incidents in 2005 involving the 1992 Fund

During 2005 the 1992 Fund became involved in a new incident in the Republic of Korea that may give rise to claims against the 1992 Fund. Although serious for those affected by the spill, the incident did not cause large-scale pollution damage.

[6] *As mentioned above, the 1971 Fund has paid a further £49.6 million in compensation in respect of the* Nakhodka *incident.*

PART 2

12 INCIDENTS DEALT WITH BY THE 1971 AND 1992 FUNDS DURING 2005

This part of the Report provides information on incidents in which the IOPC Funds have been involved in 2005. The Report sets out the developments in the various cases during 2005 and the position taken by the governing bodies in respect of claims. The Report is not intended to reflect in full the discussions of the governing bodies. These discussions are reflected in the Records of Decisions of the meetings of these bodies, which are available on the IOPC Funds' website (www.iopcfund.org).

The Supplementary Fund has not been involved in any incident during 2005.

Claim amounts have been rounded in this Report. The conversion of foreign currencies into Pounds Sterling is as at 30 December 2005, except in the case of claims paid by the 1971 Fund or the 1992 Fund where conversions have been made at the rate of exchange on the date when the currency was purchased.

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

Baltic States participated in a major oil spill exercise in Swedish waters under the auspices of the Helsinki Commission.

13 1971 FUND INCIDENTS

13.1 VISTABELLA

(Caribbean, 7 March 1991)

The incident

While being towed, the sea-going barge *Vistabella* (1 090 GRT), registered in Trinidad and Tobago, sank to a depth of over 600 metres, 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.

The *Vistabella* was not insured by any P&I Club but was covered by third party liability insurance with a Trinidad insurance company. The insurer argued that the insurance did not cover this incident. The limitation amount applicable to the ship was estimated at FFr2 354 000 or €359 000 (£247 000). No limitation fund was established. The shipowner and his insurer did not respond to invitations to co-operate in the claim settlement procedure.

Claims for compensation

The 1971 Fund paid compensation amounting to FFr8.2 million or €1.3 million (£890 000) to the French Government in respect of clean-up operations. Compensation was paid to private claimants in St Barthélemy and the British Virgin Islands and to the authorities of the British Virgin Islands for a total of some £14 250.

Legal proceedings

The French Government brought legal action against the owner of the *Vistabella* and his insurer in the Court of first instance in Basse-Terre (Guadeloupe), claiming compensation for clean-up operations carried out by the French Navy. The 1971 Fund intervened in the proceedings and acquired by subrogation the French Government's claim. The French Government withdrew from the proceedings.

In a judgement rendered in 1996 the Court of first instance accepted that, on the basis of subrogation, the 1971 Fund had a right of action against the shipowner and a right of direct action against his insurer and awarded the Fund the right to recover the total amount which it had paid for damage caused in the French territories. The insurer appealed against the judgement.

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

In a judgement rendered in March 2000 the Court of first instance ordered the insurer to pay to the 1971 Fund FFr8.2 million or €1.3 million (£890 000) 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.

The Fund is taking steps to enforce the judgement.

13.2 AEGEAN SEA

(Spain, 3 December 1992)

The incident

During heavy weather, the Greek OBO *Aegean Sea* (56 801 GRT) ran aground while approaching La Coruña harbour in north-west Spain. The ship, which was carrying approximately 80 000 tonnes of crude oil, broke in two and burnt fiercely for about 24 hours. The forward section sank some 50 metres from the coast. The stern section remained largely intact. The oil remaining in the aft section was removed by salvors working from the shore. The quantity of oil spilled was not known, but most of the cargo was either consumed by the fire on board the vessel or dispersed in the sea. Several stretches of coastline east and north-east of La Coruña were contaminated, as well as the sheltered Ria de

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

Claims for compensation

Claims totalling Pts 48 187 million (£199 million) were submitted before the criminal and civil courts. A large number of claims were settled out-of-court but many claimants pursued their claims in court.

Criminal proceedings

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

In a judgement rendered in April 1996 the Criminal Court held that the master and the pilot were both liable for criminal negligence. They were each sentenced to pay a fine of Pts 300 000 (£1 250). The master, the pilot and the Spanish State appealed against the judgement, but the Court of Appeal upheld the judgement in June 1997.

Global settlement

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

On 4 October 2002 the Spanish State Council (Consejo de Estado) approved the proposed settlement agreement. On 17 October 2002 the Spanish Parliament adopted a Royal Decree ('Decreto-Ley') authorising the Minister of Finance to sign on behalf of the Spanish Government an agreement between Spain, the shipowner, the UK Club and the 1971 Fund. The Decree also authorised the Spanish Government to make out-of-court settlements with claimants in exchange for the withdrawal of their court actions. By 30 October 2002 the Spanish Government had reached agreements with claimants representing over 90% of the principal of the loss or damage claimed. The conditions laid down in the 1971 Fund's offer were therefore fulfilled.

On 30 October 2002 an agreement was concluded between the Spanish State, the 1971 Fund, the shipowner and the UK Club whereby the total amount due from the owner of the *Aegean Sea*, the UK Club and the 1971 Fund to the victims as a result of the distribution of liabilities determined by the Court of Appeal in La Coruña amounted to Pts 9 000 million (£37 million). As a consequence of the distribution of liabilities determined by the Court of Appeal in La Coruña, the Spanish State undertook to compensate all the victims who might obtain a final judgement by a Spanish court in their favour which condemned the shipowner, the UK Club or the 1971 Fund to pay compensation as a result of the incident.

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

Recent developments

Six claimants did not reach agreement with the Spanish Government on the amount of their losses and pursued their claims in the Court of first instance in La Coruña against the Spanish State, the master, the UK Club, the shipowner and the 1971 Fund for a total amount of €3 646 000 (£2.5 million). The 1971 Fund submitted pleadings to the Court to the effect that the 1971 Fund was not liable to compensate these claimants since the Spanish Government had, in the above-mentioned agreement with the 1971 Fund,

undertaken to compensate all the victims of the incident with outstanding claims and that this undertaking had been approved by a Royal Decree.

In December 2005, the Court rendered judgements in respect of three of the claims. In the judgements the Court rejected the argument of the 1971 Fund on the grounds that the Royal Decree did not exonerate the 1971 Fund from responsibility vis-à-vis the victims since it related to a contract between the 1971 Fund and the Spanish State. The Court also held that the Spanish State had not been authorised by the victims to reach agreement on their claims with third parties. The Court held that the Government and the Fund had joint liability to the claimants but awarded amounts considerably lower than those claimed.

All parties have appealed against the judgements.

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

13.3 BRAER

(United Kingdom, 5 January 1993)

The incident

The Liberian tanker *Braer* (44 989 GRT) grounded south of the Shetland Islands (United Kingdom). The ship eventually broke up, and both the cargo and bunkers spilled into the sea. Due to the prevailing heavy weather, most of the spilt oil dispersed naturally, and the impact on the shoreline was limited. Oil spray blown ashore by strong winds affected farmland and houses close to the coast. The United Kingdom Government imposed a fishing exclusion zone covering an area along the west coast of Shetland which was affected by the oil, prohibiting the capture, harvest and sale of all fish and shellfish species from within the zone.

Claims for compensation

All claims but one have been settled and the total compensation paid amounted to some £51.9 million, of which the 1971 Fund paid £45.7 million and the shipowner's insurer, Assuranceföreningen Skuld (Skuld Club), £6.2 million.

The only remaining claim, by Shetland Sea Farms Ltd, a Shetland-based company, related to a contract to purchase smolt from a company on the mainland. The Executive Committee decided that in the assessment of the claim account should be taken of any benefits derived by other companies in the same group. Attempts to settle the claim out of court failed.

Legal action by Shetland Sea Farms Ltd

The company took legal action against the shipowner, the Skuld Club and the 1971 Fund. The question arose as to whether certain of the documents relied upon by the claimant were genuine.

The Court of first instance rendered its decision in July 2001. Having heard the evidence the Court concluded that responsible officers of the claimant had knowingly presented copies of fake letters in support of Shetland Sea Farms' claim for compensation. The Court held that these documents had been put forward with the intent to deceive the Claims Office established by the 1971 Fund and the Skuld Club into believing that the Shetland Sea Farms' alleged contractual commitments were based on correspondence setting out the terms of the contracts. The Court also held that they did so as part of a scheme to further a substantial claim for compensation.

The Court then addressed the issue of whether as a result of this finding the claim should be refused without any further procedure. The Court acknowledged that it had an inherent power to dismiss the claim where a party was guilty of an abuse of process but stated that that was a drastic power. The Court resolved, however, that as Shetland Sea Farms no longer was going to base its claim on the false letters, the company should be given the opportunity to present a revised case that should not depend on the false letters and that not allowing the claim to proceed in its revised version would be an excessive punishment.

The Court decided that the case should proceed to a hearing restricted to the question of whether Shetland Sea Farms could prove that a contract existed before the *Braer* incident occurred for the supply of smolt to Shetland Sea Farms without reference to false letters and invoices. Hearings were held in April and September 2002 and the Court rendered its decision in May 2003. The Court did not accept Shetland Sea Farms' evidence that there was a contract for the supply of smolt for which the company was legally obliged to pay independent of the false letters. The Court considered that the evidence disclosed that the management of the company had been involved in a fraudulent scheme and reported the matter to the Chief Prosecutor in Scotland to consider whether criminal proceedings should be brought against three of Shetland Sea Farms' witnesses. The Court allowed the case to proceed, however, restricting it to a claim for loss of profit by Shetland Sea Farms to the extent that the company could establish the probable number of smolt that would have been introduced to Shetland but for the *Braer* incident.

The shipowner, the Skuld Club and the 1971 Fund appealed against that part of the Court's decision on the grounds that the loss of profit claim was based on the numbers and the cost of smolt as set out in the claim which was based on the alleged contracts which had been shown to be false.

In January 2005, the Appellate Court issued a judgement confirming the decision of the Court of first instance and held that although Shetland Sea Farms could not rely on the existence of the alleged contract, the company could proceed with the claim on the basis that it would have acquired, reared and sold smolt from which it would have earned a profit. The claimant has not as yet quantified the claim in accordance with the criteria laid down by the Court. It is unlikely that a hearing will take place before the summer of 2006.

The Skuld Club has undertaken to pay any amount awarded by a final court decision.

13.4 ILIAD

(Greece, 9 October 1993)

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 300 tonnes of Syrian light crude oil. The Greek national contingency plan was activated and the spill was cleaned up relatively rapidly.

In March 1994 the shipowner's liability insurer established a limitation fund amounting to Drs 1 497 million or €4.4 million (£3 million) with the competent court by the deposit of a bank guarantee.

The Court decided that claims should be lodged by 20 January 1995. By that date, 527 claims had been presented in the limitation proceedings, totalling Drs 3 071 million or €9 million (£6.2 million) plus Drs 378 million or €1.1 million (£760 000) for compensation of 'moral damage'.

In March 1994, the Court appointed a liquidator to examine the claims in the limitation proceedings. Due to the inordinate delay by the liquidator in submitting his report to the Court, the claimants submitted an official complaint against the liquidator for neglect of duty. Following an informal meeting in November 2005 before the judge in charge of the proceedings, the liquidator was given a deadline of 16 January 2006 to submit his report to the Court.

The shipowner and his insurer took legal action against the 1971 Fund in order to prevent their rights to reimbursement from the Fund for any compensation payments in excess of the shipowner's limitation amount and to indemnification under Article 5.1 of the 1971 Fund Convention from becoming time-barred. The owner of a fish farm, whose claim is for Drs 1 044 million or €3 million (£2.1 million), also interrupted the time-bar period by taking legal action against the 1971 Fund. All other claims have become time-barred vis à-vis the 1971 Fund.

13.5 YEO MYUNG

(Republic of Korea, 3 August 1995)

The Korean tanker *Yeo Myung* (138 GRT) collided with a tug towing a sand barge near Geoje island (Republic of Korea), resulting in a spill of about 40 tonnes of heavy fuel oil.

Claims relating to clean-up costs and losses in the fishery and tourism sectors were settled for a total of Won 1 553 million (£890 000).

The only outstanding claim, which was for Won 335 million (£193 000), became time-barred since the claimant failed to take legal action against the 1971 Fund within six years of the date of the incident.

Prior to the limitation proceedings being terminated, the 1971 Fund and the shipowner's insurer resolved all outstanding issues in respect of compensation paid by the insurer in excess of the limitation amount applicable to the *Yeo Myung*, indemnification and the apportionment of joint costs. However, in October 2005, when the Court in charge of the limitation proceedings distributed the limitation fund deposited by the shipowner/insurer in March 1996, the 1971 Fund was awarded Won 20.3 million (£11 600), which represented approximately 95% of the limitation fund. As a consequence of the Court's decision the shipowner/insurer paid the limitation amount twice. The 1971 Fund therefore reimbursed the shipowner/insurer the amount it had received from the Court less the indemnification amount already paid by the Fund to the insurer in accordance with Article 5.1 of the 1971 Fund Convention.

13.6 KRITI SEA

(Greece, 9 August 1996)

The Greek tanker *Kriti Sea* (62 678 GRT) spilled 20 - 50 tonnes of Arabian light crude while discharging at an oil terminal in the port of Agioi Theodori (Greece) some 40 kilometres west of Piraeus, Greece. Rocky shores and stretches of beach were oiled, seven fish farms were affected and the hulls of pleasure craft and fishing vessels in the area sustained oiling.

In December 1996 the shipowner established a limitation fund amounting to Drs 2 241 million or €6.6 million (£4.5 million) by means of a bank guarantee.

Most claims have been settled, but some are the subject of legal proceedings in the Greek Supreme Court. The aggregate amount of the settled claims and the amount claimed in the Supreme Court is below the level at which the 1971 Fund would be called upon to make any payments in respect of compensation or indemnification. However, as the Fund is a defendant in the proceedings in the Supreme Court, the Fund's lawyers attended the hearings at the Supreme Court in November 2005. It is expected that the Supreme Court will render its judgement early in 2006.

13.7 NISSOS AMORGOS

(Venezuela, 28 February 1997)

The incident

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

The incident gave 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. A number of claims have been settled out of court and the corresponding legal actions have been withdrawn.

Criminal proceedings

Criminal proceedings were brought against the master. In his pleadings to the Criminal Court

the master maintained that the damage was substantially caused by negligence imputable to the Republic of Venezuela.

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

In September 2000 the Criminal Court of Appeal decided not to consider the appeal and to order the Court of Cabimas to send the file to the Supreme Court due to the fact that the Supreme Court was considering a request for 'avocamiento'[7]. The Court of Appeal's decision appeared to imply that the judgement of the Criminal Court of Cabimas was null and void.

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

In a judgement rendered in February 2005, the Criminal Court of Appeal held that it had been proved that the master had incurred criminal liability due to negligence causing pollution damage to the environment. The Court decided, however, that in accordance with Venezuelan procedural law, since more than four and a half years from the date of the criminal act had passed, 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 declared time-barred in the judgement.

Claims for compensation in court

Claims by the Republic of Venezuela

The Republic of Venezuela presented a claim for environmental damage for US$60.3 million (£35 million) against the master, the shipowner and his insurer, Assuranceföreningen Gard (Gard Club), in the Criminal Court in Cabimas. The 1971 Fund was notified of the criminal action and submitted pleadings in the proceedings.

The Republic of Venezuela also presented a claim for environmental damage for US$60.3 million (£35 million) against the master, the shipowner and Gard Club before the Civil Court in Caracas. The Fund was not notified of the civil action.

At its July 2003 session the 1971 Fund Administrative Council reiterated the 1971 Fund's position that the components of the claims by the Republic of Venezuela did not relate to pollution damage falling within the scope of the 1969 Civil Liability Convention and the 1971 Fund Convention and that these claims should therefore be treated as not admissible. At the same session the Administrative Council noted that the two claims presented by the Republic of Venezuela were duplications, since they were based on the same university report and related to the same items of damage. It was also noted that the Procuraduria General de la Republica (Attorney General) had accepted this duplication in a note submitted to the 1971 Fund's lawyers in August 2001.

Article 6.1 of the 1971 Fund Convention provides as follows:

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

The legal actions by the Republic of Venezuela in the Civil and Criminal Courts were not brought against the 1971 Fund. The Fund was therefore not a defendant in the actions, and although the Fund intervened in the proceedings brought before the Criminal Court in Cabimas, the actions could not have resulted in a judgement against the Fund. As set out above, Article 6.1 of the 1971 Fund Convention requires that in order

[7] *Under Venezuelan law, in exceptional circumstances, the Supreme Court may assume jurisdiction, 'avocamiento', and decide on the merits of the 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.*

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. Since the Republic of Venezuela had not taken legal action against the 1971 Fund within the six-year period, which had expired in February 2003, at its October 2005 session the Administrative Council endorsed the Director's view that the Republic's claims were time-barred vis-à-vis the 1971 Fund.

Claims by fish processors

Three fish processors presented claims totalling US$30 million (£17 million) in the Supreme Court against the 1971 Fund and the Instituto Nacional de Canalizaciones (INC). The Supreme Court would in this case act as court of first and last instance. The claims have not been substantiated by supporting documentation and are therefore considered inadmissible by the 1971 Fund.

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 Fund also argued that not only had the claimants failed to demonstrate the extent of their loss, but the evidence they had submitted indicated that the cause of any loss was not related to the pollution. There have been no developments in respect of these claims.

In a judgement rendered in July 2005, the Supreme Court decided to accept the withdrawal of the claims by a group of 11 fish and shellfish processors and the fishermen's union FETRAPESCA following the settlement reached by the six shrimp processors and two thousand fishermen with the 1971 Fund in December 2000. In its judgement, the Supreme Court also rejected the request for 'avocamiento'.

Settled claims

The table at the foot of the page shows claims that have been settled out of court.

Immediately after the incident, the *Nissos Amorgos* was detained pursuant to an order rendered by the Criminal Court in Cabimas. The shipowner provided a guarantee to the Cabimas Court for Bs3 473 million (£780 000), being the limitation amount applicable to the *Nissos Amorgos* under the 1969 Civil Liability Convention. The Cabimas Court ordered the release of the ship in June 1997.

The Court also decided that the maximum amount payable under the 1969 Civil Liability Convention and the 1971 Fund Convention, namely 60 million SDR, corresponded to Bs39 738 million or US$83 221 800 (£48 million).

Level of payments

In view of the uncertainty as to the total amount of the claims arising from this incident, the Executive Committee and later the Administrative Council decided to limit

Claimant	Category	Settlement amount Bs	Settlement amount US$
Petroleos de Venezuela S.A. (PDVSA)	Clean up		8 364 223
ICLAM[8]	Preventive measures	61 075 468	
Shrimp fishermen and processors	Loss of income		16 033 389
Other claims[9]	Property damage and loss of income	289 000 000	
Total		**Bs350 075 468 (£78 800)**	**US$24 397 612 (£14.2 million)**

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

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

payments to 25% of the loss or damage actually suffered by each claimant. In July 2003 the Administrative Council decided to increase the 1971 Fund's level of payments from 40% to 65%, since the claims by the Republic of Venezuela were duplicated.

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

The Council instructed the Director to seek the necessary assurance from the Republic of Venezuela as to whether its understanding of the meaning of the term 'standing last in the queue' coincided with his (namely that the Government undertook not to pursue or seek payment for its claims for compensation under the Conventions, or under its national legislation implementing the Conventions, until all other admissible claims had been paid in full, either for the amount agreed in out-of-court settlement or decided by a competent court in a final judgement). The Council authorised the Director to increase the level of payments to 100% of the established claims, when he had received the necessary assurance.

A letter from the Minister of Foreign Affairs of Venezuela received in August 2004 gave, in the Director's opinion, the necessary assurance that the Republic agreed with his interpretation of that notion. The Director therefore decided to increase the level of payments to 100%, as a result of which all settled claims have been paid in full.

Possible recourse action against the Instituto Nacional de Canalizaciones

In May 2004 the Administrative Council considered the issue of whether the 1971 Fund should take recourse action against the Instituto Nacional de Canalizaciones (INC), the agency responsible for the maintenance of the Lake Maracaibo navigation channel. The Council decided that the 1971 Fund should postpone taking a position as to whether or not the Fund should take recourse action against INC.

A time bar period of 10 years applies to a recourse action by the 1971 Fund against INC. Such an action would therefore become time-barred on 28 February 2007.

At the October 2005 session of the 1971 Fund Administrative Council the Venezuelan delegation acknowledged that most outstanding claims resulting from the *Nissos Amorgos* incident were time-barred and requested the Administrative Council to authorise the Director to approach the Gard Club and the Attorney General and the Public Prosecutor of the Republic of Venezuela to facilitate the resolution of the outstanding issues arising from this incident. That delegation pointed out that a resolution of the rest of the outstanding issues would contribute to the winding up of the 1971 Fund.

The Administrative Council invited the Director to approach the Gard Club and the Attorney General and the Public Prosecutor of the Republic of Venezuela for the purpose of assisting them in resolving the outstanding issues.

13.8 PLATE PRINCESS

(Venezuela, 27 May 1997)

The incident

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

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

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

The limitation amount applicable to the *Plate Princess* under the 1969 Civil Liability Convention is estimated at 3.6 million SDR (£3 million).

In June 1997 the Executive Committee considered that, if it were confirmed that the spilt oil was the same Lagotreco crude as was being loaded on to the *Plate Princess*, then it would appear that the oil which escaped via a defective coupling in the ballast line had first been loaded into the cargo tanks. The Committee took the view that the incident would therefore fall within the scope of the Conventions, as the oil was carried on board as cargo.

Court proceedings

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

A fishermen's trade union (FETRAPESCA) presented a petition against the master of the *Plate Princess* in the Criminal Court on behalf of 1 692 fishing boat owners, claiming an estimated US$10 060 per boat (£5 900), ie a total of US$17 million (£10 million). The claim was for alleged damage to fishing boats and nets and for loss of earnings. FETRAPESCA also brought a claim for fishermen's loss of income against the shipowner and the master of the *Plate Princess* before the Civil Court of Caracas for an estimated amount of US$10 million (£6 million).

A local fishermen's union also presented a claim in the Civil Court in Caracas against the shipowner and the master of the *Plate Princess* for an estimated amount of US$20 million (£12 million).

As for the provisions in the 1971 Fund Convention relating to time bar reference is made to page 57 regarding the *Nissos Amorgos* incident.

The 1971 Fund was not notified of any of the legal actions. As a consequence, claims against the 1971 Fund became time-barred on or shortly after 27 May 2000.

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

respect of this incident and stated that it wished to include the *Plate Princess* incident on the agenda of the next session of the 1971 Fund Administrative Council.

The Director stated that, although he had not seen the decision by the Supreme Court, the 1971 Fund had not been notified in accordance with Article 7.6 of an action against the shipowner and/or the insurer within three years of the date of the damage, nor had a legal action been brought against the 1971 Fund within six years from the date of the incident. In his view, claims arising from this incident were therefore time-barred pursuant to Article 6 of the 1971 Fund Convention.

The 1971 Fund is examining the situation in respect of the incident.

13.9 KATJA

(France, 7 August 1997)

The incident

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

The limitation amount applicable to the *Katja* in accordance with the 1969 Civil Liability Convention is estimated at €7.3 million (£5 million).

Claims for compensation

A claim presented by the French Government for clean-up costs was settled in July 2000 at €207 000 (£140 000). Other claims relating to clean-up, property damage and loss of income in the fisheries sector were settled at a total of €2.3 million (£1.6 million).

Legal actions were taken against the shipowner, his liability insurer and the 1971 Fund relating to claims for the cost of clean-up operations incurred by the regional and local authorities, property damage and loss of income in the fisheries sector totalling €1.4 million (£960 000).

Only three claims totalling €976 000 (£670 000) remain pending in court, the largest of which is a claim by the Port Autonome du Havre (PAH) in respect of clean-up costs for €915 000 (£630 000).

It is virtually certain that all claims will be settled for an amount lower than the limitation amount applicable to the *Katja* under the 1969 Civil Liability Convention and that the 1971 Fund will not be called upon to make any payments in respect of this incident.

The shipowner and his insurer brought proceedings against the PAH. The grounds for the action were that (a) the port had sent the *Katja* to an unsuitable berth and had thereby been wholly or partially responsible for the incident and (b) the port's inadequate counter-pollution response to the incident had increased the extent of the pollution damage caused. As the 1971 Fund is unlikely to be called upon to make payments in respect of this incident, the 1971 Fund has not intervened in these proceedings.

The legal action relating to the claim by PAH and the action against PAH will be heard in early 2006.

13.10 EVOIKOS

(Singapore, 15 October 1997)

The incident

The Cypriot tanker *Evoikos* (80 823 GRT) collided with the Thai tanker *Orapin Global* (138 037 GRT) whilst passing through the Strait of Singapore. The *Evoikos*, which was carrying approximately 130 000 tonnes of heavy fuel oil, suffered damage to three cargo tanks, and an

estimated 29 000 tonnes of its cargo were subsequently spilled. The *Orapin Global*, which was in ballast, did not spill any oil. The spilt oil initially affected the waters and some southern islands of Singapore, but later oil slicks drifted into the Malaysian and Indonesian waters of the Strait of Malacca. In December 1997 oil came ashore in places along a 40 kilometre length of the Malaysian coast in the Province of Selangor.

At the time of the incident, Singapore was Party to the 1969 Civil Liability Convention but not to the 1971 Fund Convention or the 1992 Conventions, whereas Malaysia and Indonesia were Parties to the 1969 Civil Liability Convention and the 1971 Fund Convention.

Claims for compensation

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

In the limitation proceedings commenced by the shipowner in Singapore, the Court determined the limitation amount applicable to the *Evoikos* under the 1969 Civil Liability Convention at 8 846 942 SDR (£7.4 million).

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

However, the shipowner's insurer commenced legal actions against the 1971 Fund in London, Indonesia and Malaysia to protect its rights against the Fund. The Indonesian Court, at the request of the insurer and the Fund, discontinued the action in Indonesia. The actions in London and in Malaysia were stayed by mutual consent. Although any further claims are time-barred under the Conventions, the insurer has informed the Fund that it is not prepared to withdraw its actions against the Fund in Malaysia and London until it has had the opportunity to establish that there are no outstanding claims against the shipowner which might result in the Fund being liable to pay compensation or indemnification. The Director has held discussions with the shipowner's insurer with a view to resolving outstanding issues.

13.11 PONTOON 300

(United Arab Emirates, 7 January 1998)

The incident

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

The *Pontoon 300*, which was owned by a Liberian company, was not covered by any insurance for oil pollution liability. The tug *Falcon 1* was registered in Abu Dhabi and owned by a citizen of that Emirate.

Claims for compensation

Settled claims

Claims totalling Dhs 7.4 million (£1.1 million) in respect of clean-up operations and preventive measures have been settled for a total of Dhs 6.3 million (£958 000). The 1971 Fund has paid a total of Dhs 4.8 million (£817 000), corresponding to 75% of the settlement amounts.

Pending claims

The Municipality of Umm Al Quwain presented claims against the 1971 Fund totalling Dhs 199 million (£32 million) on behalf of fishermen, tourist hotel owners, private property owners, a Marine Resource Research Centre (MRRC) and the Municipality itself (see table on page 63). Little or no documentation was provided in support of the claims, and the amounts involved appeared to be based upon estimates. The main claim by the Municipality was for environmental damage related to alleged losses of fish stocks and other marine resources, including mangroves. The estimation of the damage appeared to be based upon theoretical models.

The 1971 Fund informed the Umm Al Quwain Municipality that claims in respect of property damage and economic losses actually sustained

were admissible in principle but that considerable supporting documentation was required before the Fund could assess the claims. The 1971 Fund also pointed out that claims for environmental damage based upon theoretical models were not admissible.

Legal actions

In September 2000 the Umm Al Quwain Municipality brought legal action in the Umm Al Quwain Court against the tug owner and the owner of the cargo on board the *Pontoon 300* in respect of its claims. The 1971 Fund was not joined as a defendant in the proceedings, nor was it formally notified of the proceedings. However, the plaintiffs requested the Court to notify the 1971 Fund of the action through diplomatic channels in accordance with Article 7.6 of the 1971 Fund Convention and through the Ministry of Justice in accordance with United Arab Emirates law of Civil Procedure.

Claims against the 1971 Fund became time-barred on or around 8 January 2001 at which point the Umm Al Quwain Municipality had not taken the measures laid down in the 1971 Fund Convention to prevent the claims becoming time-barred. In the proceedings, the 1971 Fund therefore maintained that the claims submitted by the Municipality were time-barred.

In December 2000 the Ministry of Agriculture and Fisheries in Umm Al Quwain joined the Umm Al Quwain Municipality's action as a co-plaintiff, claiming Dhs 6.4 million (£1 million), which corresponded to the claim by the MRRC included in the Municipality's claim. However, the Ministry also joined the 1971 Fund as a co-defendant in its action. Although the action had not been served on the 1971 Fund, the Administrative Council decided that this claim was not time-barred, since the Fund had been brought in as a defendant in the action before the expiry of the three-year time bar period.

In December 2001 the Umm Al Quwain Court issued a preliminary judgement in which it decided to refer the matter to a panel of experts experienced in oil pollution and the environment, to be appointed by the UAE Ministry of Justice. The Court further decided to combine all the pleadings relating to issues of jurisdiction and time bar and to review these after the experts had submitted their report.

The experts submitted their report to the Umm Al Quwain Court of First Instance in February 2003. The pending claims and the court experts' assessment of the claims are summarised in the table below.

Claim	Claimed amount (Dhs)	Assessed amount (Dhs)
Fishing		
- Loss of income	10 008 840	1 137 048
- Property damage	306 593	123 429
Tourism	765 389	122 570
Property damage	7 000 000	0
Marine Resource Research Centre	6 352 660	335 000
Environmental damage		
- Marine organisms	130 294 415	0
- Mangroves	24 280 000	1 500 000
Clean-up	19 744 600	0
Total	**Dhs 198 752 497 (£32 million)**	**Dhs 3 218 047 (£510 000)**

The 1971 Fund submitted to the Court its comments on the experts' report stating that, notwithstanding the Fund's position that the claims were time-barred, the assessments of the claims by the panel of experts was generally in line with the 1971 Fund's policy as regards the admissibility of claims for compensation.

The Umm Al Quwain Municipality and the Ministry of Agriculture and Fisheries objected to the experts' assessments of their losses and requested that the Court should refer the matter back to the experts with the instruction to reassess the claims in the light of their comments.

The owner of the tug *Falcon 1* submitted pleadings maintaining that the experts had failed to assess the claims in an objective manner. He stated that the report had been issued contrary to local law and jurisprudence and contained contradictions as regards facts and conclusions. He also stated that the report was faulty and incomplete and requested the Court to set aside the entire report. In October 2003 the Court decided to refer the case back to the experts for them to respond to the objections raised by the various parties.

The Fund has held a number of meetings with the experts and the other parties with the aim of reaching agreement on the quantum of the losses, without prejudice to the issue of time bar in respect of the claims by Umm Al Quwain Municipality. As a result of these meetings an agreement in principle was reached on the claim by the Ministry of Agriculture and Fisheries in respect of the MRRC at Dhs 1.6 million (£250 000) which is not time-barred. However, this claim has not been paid pending clarification as to the recipient of the agreed amount. As regards the claims by the Municipality, no agreement has been reached on the quantum.

At a hearing in December 2004 the owner of the tug *Falcon 1* filed a memorandum seeking an amendment to the court experts' brief. At a subsequent hearing the owner of the tug *Falcon 1* applied to the Court to join additional defendants to the proceedings. The Municipality and the Fund requested the Court to reject these applications stating that they were groundless and were being made to extend the proceedings unnecessarily. The proceedings were adjourned pending receipt of the experts' response to the objections raised by the various parties.

Level of the 1971 Fund's payments

The maximum amount of compensation available under the 1969 Civil Liability Convention and the 1971 Fund Convention is 60 million SDR (£50 million).

In April 1998 the Executive Committee decided that, in view of the uncertainty regarding the total amount of claims for compensation, the 1971 Fund's payments should be limited to 75% of the loss or damage actually suffered by each claimant. Due to the uncertainty of the total amounts that would be awarded by the courts in relation to the legal actions in the UAE, the Administrative Council decided at several sessions, most recently in October 2004, to maintain the Fund's level of payments at 75% of the total loss or damage suffered by each claimant.

Criminal action

In November 1999 a Criminal Court of first instance found the master of the tug *Falcon 1*, the alleged cargo owner, the general manager of the tug owner and the general manager of the alleged cargo owner guilty of misuse of the barge *Pontoon 300*, which had not been in a seaworthy condition and thus in violation of United Arab Emirates law, and of causing harm to the people and the environment by use of the unseaworthy barge. The master of the tug *Falcon 1*, the tug owner and his general manager appealed against the judgement, but the alleged cargo owner and his general manager did not.

In February 2000 the Criminal Court of Appeal found the tug owner and his general manager not guilty. The Court of Appeal confirmed the guilty verdict against the master of the *Falcon 1*, the alleged cargo owner and his general manager. The master of the tug *Falcon 1* lodged an appeal in the Federal Court of Cassation, which sent the

case back to the Court of Appeal to consider the issues of the seaworthiness of the *Pontoon 300* and the master's defence of 'force majeure'.

In May 2004 the Criminal Court of Appeal re-opened the proceedings at the request of the master of the tug *Falcon 1*. In March 2005, the Court rejected the appeal filed by the master and sentenced the master to one year's imprisonment.

Action by the 1971 Fund against the owner of the tug *Falcon 1*

In January 2000 the 1971 Fund took legal action against the owner of the tug *Falcon 1* maintaining that, since the sinking of the *Pontoon 300* had occurred due to its unseaworthiness and the negligence of the master and the owner of the *Falcon 1* during the towage, the tug owner was liable for the ensuing damage. The Fund claimed Dhs 4.5 million (£710 000), corresponding to the major part of the compensation it had paid for clean-up operations and preventive measures.

In December 2000 the Dubai Court rendered a judgement in which it rejected the 1971 Fund's claim against the owner of the tug *Falcon 1* but ordered the owner of the cargo on board the *Pontoon 300* to pay the Fund Dhs 4.5 million (£710 000). The basis of the rejection of the claim against the owner of the *Falcon 1* was that under the terms of the charter party the master of the tug was under the control of the charterer.

The 1971 Fund appealed against the judgement. In the appeal proceedings the Fund amended the claimed amount to Dhs 4.7 million (£740 000) to reflect the amounts actually paid by the Fund.

In February 2002 the Dubai Court of Appeal upheld the judgement of the Court of first instance against the same parties, but amended the judgement to the effect that the amount payable by the owner of the cargo on board the *Pontoon 300* was increased to Dhs 4.7 million (£740 000) on the basis of the Fund's revised claim.

The 1971 Fund appealed to the Dubai Court of Cassation against the Court of Appeal's judgement on the ground that under UAE maritime law, even if the cargo owner had chartered the tug, the management of the tug would remain under the control of the tug owner unless the charter party specified otherwise. The Fund also argued that a photocopy of the charter party submitted by the tug owner was not sufficient evidence to support an alleged charter arrangement between the owner of the tug and the cargo owner.

In his pleadings to the Court of Cassation, the tug owner maintained that the original charter party had been submitted in the criminal proceedings and that he could therefore only submit a photocopy thereof in connection with the recourse action. The tug owner further maintained that since the Criminal Court had accepted the validity of the original charter party, it should be deemed valid for the purpose of the recourse action.

In October 2002 the Court of Cassation allowed the Fund's appeal and referred the matter back to the Dubai Court of Appeal for it to reconsider the matter. Both parties submitted further pleadings in December 2002.

In April 2004, the Court of Appeal issued a judgement in favour of the 1971 Fund. The Court held that the charterer and the owner of the *Falcon 1* were jointly and severally liable to pay the Fund an amount of Dhs 3.5 million (£550 000).

The 1971 Fund appealed against this judgement to the Court of Cassation on the question of the quantum. The owner of the *Falcon 1* appealed against the judgement on procedural grounds, including, *inter alia*, that the civil case should have been suspended pending the final judgement in the criminal proceedings relating to the incident.

The Dubai Court of Cassation has not fixed a date to hear the appeals.

13.12 AL JAZIAH 1

(United Arab Emirates, 24 January 2000)

The incident

The tanker *Al Jaziah 1* (reportedly of 681 GRT) laden with fuel oil sank in about 10 metres of water five miles north-east of the port of Mina Zayed, Abu Dhabi (United Arab Emirates, UAE). It was estimated that approximately 100 - 200 tonnes of cargo escaped from the wreck. The oil drifted under the influence of strong winds towards the nearby shorelines polluting a number of small islands and sand banks. Some mangroves were also oiled. The sunken vessel was refloated by the salvors and taken into the Abu Dhabi Freeport.

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

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

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

Claims for compensation

Claims in various currencies totalling £1.4 million were submitted in respect of the costs of clean-up operations and preventive measures. These claims were settled and paid by the Funds at £1 million.

Criminal proceedings

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

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

The master was fined Dhs 5 000 (£800) for causing damage to the environment.

Recourse action

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

In January 2003 the Funds commenced legal action in the Abu Dhabi Court of first instance against the shipowning company and its sole proprietor, requesting that the defendants should pay Dhs 6.4 million (£1 million) to the Funds, the amount to be distributed equally between the 1971 Fund and the 1992 Fund.

In May 2003 the defendants filed pleadings in which they argued that the Funds had not submitted admissible evidence in respect of the incident or details of the alleged losses suffered by the parties, and that the subrogation of the claimants' rights had not been done correctly under UAE law. They further maintained that the persons who were alleged to have suffered losses had not exercised their right to claim against the shipowner under the Civil Liability Conventions. It was argued that under Articles 2, 4.1 and 5 of the Fund Conventions, the Funds should only pay compensation if the persons suffering pollution damage had been unable to obtain recovery from the shipowner under the Civil Liability Conventions.

The Funds submitted further pleadings arguing that the shipowner had failed to set up a limitation fund in accordance with the 1969 and

1992 Civil Liability Conventions, and that since there was no indication that the shipowner had any intention of paying compensation, the Funds had decided to pay compensation to those who had suffered pollution damage. The Funds further argued that the subrogation of the claimants' rights was based on Article 9 of the Fund Conventions and not on UAE law, which required a court judgement for a party to acquire subrogated rights in order to be able to commence proceedings against a third party. The Funds also presented the Court with further evidence in relation to the incident and the losses caused, including documents issued by various government authorities.

In November 2003 the Abu Dhabi Court of first instance appointed an expert to investigate the nature of the incident and the payments made by the 1971 and 1992 Funds. The Funds met with the expert on two occasions and provided supplementary information as requested by the expert.

In August 2005 the expert informed the Court that he could not complete his report due to other commitments and the Court appointed a new expert with the same mandate. The Funds met with the new expert in October 2005 and provided supplementary information. This expert is expected to submit his report to the Court in early 2006.

13.13 ALAMBRA

(Estonia, 17 September 2000)

The incident

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

Limitation of liability

The limitation amount applicable to the *Alambra* under the 1969 Civil Liability Convention is estimated at 7.6 million SDR (£6.3 million).

Claims for compensation

The shipowner and his insurer, the London Steam-Ship Owners Mutual Insurance Association Ltd (London Club), have settled claims for clean-up costs for a total of US$620 000 (£360 000). The Estonian Court of first instance approved this settlement in March 2004, and all court actions against the shipowner and the Club in relation to claims in respect of clean-up were terminated.

A claim by the Estonian State for EEK 45.1 million (£2 million), which had the character of a fine or charge, was settled by the shipowner and the London Club at US$655 000 (£380 000). The Court approved this settlement in March 2004, and the proceedings against the shipowner and the Club in relation to this claim were terminated.

A claim for US$100 000 (£58 000) has been presented to the shipowner and the London Club by a charterer of a vessel said to have been delayed whilst clean-up operations were being undertaken.

The owner of the berth in the Port of Muuga from which the *Alambra* was loading cargo at the time of the incident, and a company contracted by the owner of the berth to carry out oil-loading activities on its behalf, have submitted claims to the shipowner and the London Club for EEK 29.1 million (£1.3 million) and EEK 9.7 million (£425 000) respectively for loss of income due to the unavailability of the berth whilst clean-up operations were being undertaken. These claims are pending in the Court of first instance.

Legal actions

In November 2000 the owner of the berth in the Port of Muuga and the company it had contracted to carry out oil-loading operations took legal action in the Court of first instance in

Tallinn against the shipowner and the London Club and requested the Court to notify the 1971 Fund of the proceedings in accordance with Article 7.6 of the 1971 Fund Convention. Having been notified of the actions, the 1971 Fund intervened in the proceedings.

In the context of these legal actions, the question has arisen as to whether the 1969 Civil Liability Convention and the 1971 Fund Convention have been correctly implemented into Estonian national law.

The constitutional issue

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

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

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

Constitutional review

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

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

Court held that it could not assess which legal norm was relevant in solving the case and whether that norm was in accordance with the Constitution.

Other issues raised in the legal proceedings

In September 2002 the London Club filed pleadings in court in respect of the claims presented by the Port of Muuga and the contractor for the loading operations, maintaining that the shipowner had deliberately failed to make the necessary repairs to the *Alambra* resulting in the ship becoming unseaworthy, and that therefore under the insurance contract as well as under the Merchant Shipping Act, the Club was not liable to pay compensation for the damage resulting from the incident.

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

The proceedings are ongoing in the Court of first instance. No date has been fixed for the next hearing.

14 1992 FUND INCIDENTS

14.1 INCIDENT IN GERMANY

(Germany, June 1996)

The incident

From 20 June to 10 July 1996 crude oil polluted the German coastline and a number of German islands close to the border with Denmark in the North Sea. The German authorities undertook clean-up operations at sea and on shore and some 1 574 tonnes of oil and sand mixture were removed from the beaches.

Investigations by the German authorities revealed that the Russian tanker *Kuzbass* (88 692 GT) had discharged Libyan crude in the port of Wilhelmshaven on 11 June 1996. According to the German authorities there remained on board some 46 m^3 of oil which could not be discharged by the ship's pumps.

The German authorities approached the owner of the *Kuzbass* and requested that he should accept responsibility for the oil pollution. They stated that, failing this, the authorities would take legal action against him. The shipowner and his liability insurer, the West of England Ship Owners' Mutual Insurance Association (Luxembourg) (West of England Club), informed the authorities that they denied any responsibility for the spill.

1992 Fund's involvement

The German authorities informed the 1992 Fund that, if their attempts to recover the cost of the clean-up operations from the owner of the *Kuzbass* and his insurer were to be unsuccessful, they would claim against the 1992 Fund.

The limitation amount applicable to the *Kuzbass* under the 1992 Civil Liability Convention is estimated at approximately 38 million SDR (£32 million).

Legal actions

In July 1998 the Federal Republic of Germany brought legal actions in the Court of first instance in Flensburg against the owner of the *Kuzbass* and the West of England Club, claiming compensation for the cost of the clean-up operations for an amount of DM2.6 million or €1.3 million (£890 000). The claim was subsequently increased to €1.4 million (£960 000) plus interest.

The 1992 Fund was notified in November 1998 of the legal actions. The 1992 Fund intervened in the proceedings in order to protect its interests.

For summaries of the pleadings by the parties reference is made to the Annual Report 2001, pages 102 and 103.

In order to prevent their claims against the Fund becoming time-barred at the expiry of the six-year period from the date of the incident, the German Government took legal action against the 1992 Fund in June 2002. The 1992 Fund applied to the Court to stay the proceedings in respect of this action, pending the outcome of the action by the German Government against the shipowner and the West of England Club. The stay was granted by the Court.

In December 2002 the Court of first instance rendered a part-judgement in which it held that the owner of the *Kuzbass* and the West of England Club were jointly and severally liable for the pollution damage. The Court acknowledged that the German Government had failed to provide conclusive evidence that the *Kuzbass* was the vessel responsible, but considered that the circumstantial evidence pointed overwhelmingly to that conclusion. The Court did not deal with the quantum of the losses suffered by the German authorities and stated that this issue would be considered at the request of one of the parties, but not until the judgement on the liability issue had become final.

The shipowner and the West of England Club appealed against the judgement. In the appeal they argued that the Court of first instance had followed incorrect and irregular procedures in that essential parts of the records of the hearing in December 2002 did not properly reflect the statements made at the hearing. The appellants further maintained that the Court had taken evidence from the public prosecutor's office in relation to the criminal investigation without a

court order and without giving them the opportunity to comment on the evidence.

The main grounds for the appeal as regards the substantive issues were that the *Kuzbass* could not have reached the alleged dumping area in the time available, that the chemical analyses of the pollution samples did not provide conclusive proof that the oil had originated from the *Kuzbass* and that there were three other vessels in the southern North Sea at the relevant time that had previously carried cargoes of Libyan crude oil and which could therefore have caused the pollution.

In its response the German Government reiterated the circumstantial evidence that had led the Court of first instance to conclude that the *Kuzbass* was the source of the pollution and also addressed the points raised by the appellants in their appeal. The Fund also submitted a response, which was largely along the same lines as that of the German Government.

At a hearing in December 2004, the Schleswig-Holstein Appeal Court indicated that on the basis of the evidence submitted to date, it was far from convinced that the *Kuzbass* was the source of the pollution, and in particular drew attention to other potential ship sources that the German authorities had failed to investigate. The Court also raised doubts regarding the correctness of the circumstantial evidence and the Court of first instance's interpretation of that evidence. The Appeal Court stated that on the basis of the documentation submitted, the prospects of the shipowner/West of England Club succeeding in the appeal were significantly better than those of the German Government. The Court strongly recommended that the parties reach an out-of-court settlement to the effect that the shipowner and the West of England Club would pay the German Government €120 000 (£82 000) and that the recoverable costs would be shared between the German Government and the shipowner/West of England Club on a 92%-8% basis. This recommendation would imply that the 1992 Fund should pay the balance of the admissible amount of the German Government's claim. However, the Court also granted the parties the possibility of submitting further briefs and presenting witnesses.

The Director, in consultation with the German Government, held without prejudice discussions with the West of England Club with a view to reaching an out-of-court settlement. The shipowner and the West of England Club made a proposal for an out-of-court settlement involving all parties whereby the shipowner and the West of England Club would pay 18% and the 1992 Fund 82% of any proven losses suffered by the Federal Republic of Germany as a result of the incident.

At its March 2005 session the Executive Committee considered whether the 1992 Fund should reach an out-of-court settlement of the case. The Committee noted that whilst there had been good grounds for suspecting that the *Kuzbass* was the source of the pollution, the evidence was largely circumstantial, and that in presenting their case the German authorities had sought to convince the Court of first instance that this evidence was sufficient to switch the burden on to the shipowner to prove that the *Kuzbass* was not the source of the pollution. A number of delegations expressed their disappointment in respect of recent developments in the legal proceedings, but acknowledged that evidence against the shipowner and the West of England was lacking in a number of key areas. Those delegations supported the Director's recommendation that the 1992 Fund should seek an out-of-court settlement with the other parties.

The Committee decided to authorise the Director to conclude an out-of-court settlement with all other parties involved (ie the Federal Republic of Germany, the shipowner and the West of England Club) provided that the amount to be paid by the shipowner and the Club was increased above the 18% on offer.

Following the March 2005 session the West of England Club and the shipowner increased their offer from 18% to 20%. The Director considered that under the circumstances there was no possibility to persuade them to increase

the offer beyond 20%, and in the light of the decision by the Executive Committee, therefore decided to accept the proposed settlement offer.

In July 2005 the 1992 Fund and the West of England Club, with the assistance of its experts, completed a preliminary assessment of the claim submitted by the German authorities. The claim was provisionally assessed at €932 000 (£640 000) pending receipt of further information in respect of some claim items. It is anticipated that once the German authorities provide further details of the claims the assessed amount will increase considerably. It is expected that the claim will be settled early in 2006.

14.2 DOLLY

(Caribbean, 5 November 1999)

The incident

The *Dolly* (289 GT), registered in Dominica, was carrying some 200 tonnes of bitumen when it sank at 20 metres depth in Robert Bay, Martinique.

There is a national park, a coral reef and mariculture near the grounding site, and artisanal fishing is carried out in the area. There were fears that fishing and mariculture would be affected if bitumen or oil were to escape.

The *Dolly* was originally a general cargo vessel, but special tanks for carrying bitumen had been fitted, together with a cargo heating system. The ship did not have any liability insurance. The owner is a company in St Lucia.

The shipowner was ordered by the authorities to remove the wreck but did not comply with the order, probably due to lack of financial resources.

Definition of 'ship'

In January 2001 the Executive Committee considered the question of whether the *Dolly* fell within the definition of 'ship' in the light of information which the French authorities had provided to the 1992 Fund, including the original drawings and a sketch showing modifications that were subsequently made to the vessel. The 1992 Fund's experts expressed the opinion that although the *Dolly* had been originally designed as a general cargo vessel, it had subsequently been adapted for the carriage of oil in bulk as cargo, and that it therefore fell within the definition of 'ship' laid down in the 1992 Civil Liability Convention. The Committee decided that the *Dolly* fell within that definition.

Measures to prevent pollution

Since the shipowner did not take any measures to prevent pollution, the French authorities arranged for the removal of 3.5 tonnes of bunker oil and requested three salvage companies to submit proposals on how to eliminate the threat of pollution by bitumen. These companies submitted proposals on the basis of diving inspections of the wreck. The French authorities provided the 1992 Fund with copies of these proposals.

In July 2001 the Executive Committee concurred with the Director's opinion that, in view of the location of the wreck in an environmentally sensitive area, an operation to remove the threat of pollution by the bitumen would in principle constitute 'preventive measures' as defined in the 1992 Conventions. The Committee instructed the Director to examine with the 1992 Fund's experts and the French authorities the proposed measures to remove the bitumen.

In July 2001 the Director informed the French Government of the Fund's experts' opinion on the various proposals. The Director stressed that any claims presented by the French authorities in respect of operations on the wreck of the *Dolly* would be examined against the Fund's admissibility criteria and that the Fund would not approve the costs of the operation in advance of the work being carried out.

In August 2004 the French authorities informed the Fund that a contract had been awarded to a consortium comprising a French diving

company and the managers of a yacht marina in Martinique. The original intention had been to right the vessel on the seabed before removing the three cargo tanks containing the bitumen from the ship's hold, following which the tanks would be towed to a dry dock in Fort de France for the bitumen to be removed. The total cost of the operation was estimated at around €1.1 million (£755 000).

Operations commenced in October 2004. Attempts to right the vessel on the seabed were unsuccessful, and the contractors therefore decided to cut through the side and deck plating of the wreck in order to gain access to the three tanks containing the bitumen. As a result of heavy sea conditions and a number of unforeseen practical problems, removal of the tanks took longer than planned and proved more difficult than anticipated. By mid-December 2004, the contractors had removed the tanks from the hold with the aid of floatation bags and laid them on the seabed near to the wreck where they were left until March 2005 when the weather was more conducive to towing the tanks to the dry dock. Operations were resumed in March 2005 as planned. However, as a result of further technical problems the towing of the tanks to shore and the removal of the bitumen were not completed until July 2005.

It is expected that the French Government will present its claim for the costs of the operations to remove the bunker fuel and bitumen cargo to the 1992 Fund in the near future.

Legal action

In October 2002 the French Government took legal action against the shipowner and the 1992 Fund claiming provisionally €232 000 (£160 000) in respect of the costs of removing the bunker oil from the *Dolly*. It was stated in the writ of summons that further costs in excess of €2.2 million (£1.5 million) would be claimed in respect of the removal of the wreck and cargo.

The limitation amount applicable to the *Dolly* under the 1992 Civil Liability Convention is 3 million SDR (£2.5 million).

14.3 ERIKA

(France, 12 December 1999)

The incident

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

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

Clean-up operations

Some 400 kilometres of shoreline were affected by oil. Although the removal of the bulk of the oil from shorelines was completed quite rapidly, considerable secondary cleaning was still required in many areas in 2000. Operations to remove residual contamination began in spring 2001. By the summer tourist season of 2001, almost all of the secondary cleaning had been completed, apart from at 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 was collected from shorelines and temporarily stockpiled. Total SA, the French oil company, engaged a contractor to deal with the disposal of the recovered waste and the operation was completed in December 2003. The cost of the waste disposal was estimated at some €46 million (£32 million).

Removal of the oil remaining in the wreck

The French Government decided that the oil should be removed from the two sections of the wreck. The oil removal operations, which were

funded by Total SA, were carried out by an international consortium during the period 6 June - 15 September 2000. No significant quantities of oil escaped during the operations.

Shipowner's limitation fund

At the request of the shipowner, the Commercial Court in Nantes issued an order on 14 March 2000 opening limitation proceedings. The Court determined the limitation amount applicable to the *Erika* at FFr84 247 733 corresponding to €12 843 484 (£8.8 million) and declared that the shipowner had constituted the limitation fund by means of a letter of guarantee issued by the shipowner's liability insurer, the Steamship Mutual Underwriting Association (Bermuda) Ltd (Steamship Mutual).

In 2002 the limitation fund was transferred from the Commercial Court in Nantes to the Commercial Court in Rennes.

Maximum amount available for compensation

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

Applying the principles laid down by the Assembly in the *Nakhodka* case, the Executive Committee decided in February 2000 that the conversion should be made using the rate of the SDR as at 15 February 2000 and instructed the Director to make the necessary calculations. The Director's calculations gave 135 million SDR = FFr1 211 966 811 which corresponded to €184 763 149 (£127 million).

Undertakings by Total SA and the French Government

Total SA undertook not to pursue against the 1992 Fund or against the limitation fund constituted by the shipowner or his insurer claims relating to its costs arising from operations in respect of the wreck, the clean-up of shorelines and 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 under the 1992 Conventions, ie 135 million SDR.

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

Other sources of funds

The French Government introduced a scheme to provide emergency payments in the fishery sector, administered by OFIMER (Office national interprofessionnel des produits de la mer et de l'aquaculture), a government agency attached to the French Ministry of Agriculture and Fisheries. OFIMER stated that it based its payments on assessments made by Steamship Mutual and the 1992 Fund. OFIMER paid €4.2 million (£2.9 million) to claimants in the fishery sector and €2.1 million (£1.4 million) to salt producers.

The French Government also introduced a scheme to provide supplementary payments in the tourism sector. Payments totalling €10.1 million (£6.9 million) were made under that scheme.

Level of the 1992 Fund's payments

The Executive Committee has at several sessions considered the level of the 1992 Fund's payments in respect of the *Erika* incident.

In view of the uncertainty as to the total amount of claims arising from the *Erika* incident, the

Executive Committee decided in July 2000 that the payments by the 1992 Fund should be limited to 50% of the amount of the loss or damage actually suffered by the respective claimants, as assessed by the 1992 Fund's experts. The Committee decided in January 2001 to increase the level of the 1992 Fund's payments from 50% to 60% and in June 2001 to 80%.

In February 2003 the Executive Committee authorised the Director to increase the level of payments to 100% when he considered it safe to do so. After a careful assessment, the Director considered in April 2003 that there was a sufficient safety margin, in spite of the remaining uncertainties as to the total level of admissible claims, and decided to increase the level of payments to 100%.

At the Executive Committee's October 2003 session the Director stated that although there remained considerable uncertainties as to the total amount of the established claims, this uncertainty had been reduced since April 2003 and that it might therefore be possible in the near future to make payments in respect of the French Government's claim. The Committee authorised the Director to make such payments to the extent that he considered there was a sufficient margin between the total amount of compensation available and the Fund's exposure in respect of other claims.

After having reviewed his earlier assessment of the total level of admissible claims, the Director decided in December 2003 that there was a sufficient margin to enable the 1992 Fund to commence payments to the French State. The 1992 Fund initially paid €10.1 million (£7 million) to the French State, corresponding to the French Government's subrogated claim in respect of the supplementary payments to claimants in the tourism sector. In October 2004 the 1992 Fund paid a further €6 million (£4.2 million) to the French State relating to the French Government's supplementary payments made under the scheme to provide emergency payments to claimants in the fishery, mariculture and salt producing sectors administered by OFIMER. In December 2005 the 1992 Fund paid the French State €15 million (£10 273 870.87) towards the costs incurred by the French authorities in the clean-up response. It is expected that further payments in respect of clean-up costs will be made in 2006 as the Fund's exposure to other claims decreases.

Claims Handling Office

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

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

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

Claims handling

As at 31 December 2005, 6 984 claims for compensation had been submitted for a total of €208 million (£143 million). By that date 95% of the claims had been assessed. Some 800 claims, totalling €24.8 million (£17 million), had been rejected.

Payments of compensation had been made in respect of 5 631 claims for a total of €116.3 million (£76.7 million), out of which Steamship Mutual had paid €12.8 million (£8.8 million) and the 1992 Fund €103.5 million (£67.9 million).

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

Cause of the incident

Since the *Erika* was registered in Malta, the Malta Maritime Authority conducted a Flag State investigation into this incident. The Authority issued its report in September 2000. An investigation was also carried out by the French Permanent Commission of Enquiry into

CLAIMS SITUATION AS AT 31 DECEMBER 2005					
Category	Claims submitted	Claims assessed	Claims rejected	Payments made	
				Number of claims	Amounts €
Mariculture and oyster farming	1 006	1 001	89	844	7 758 232
Shellfish gathering	530	527	109	370	889 189
Fishing boats	319	318	29	282	1 099 551
Fish and shellfish processors	51	50	6	43	976 832
Tourism	3 691	3 669	441	3 195	75 291 978
Property damage	711	440	98	330	2 059 060
Clean-up operations	149	140	13	122	21 605 370
Miscellaneous	527	480	29	446	6 659 618
Total	**6 984**	**6 625**	**814**	**5 631**	**116 339 830**

Accidents at Sea (La Commission permanente d'enquête sur les événements de mer, CPEM). The report of this investigation was published in December 2000. The conclusions of these investigations are summarised in the Annual Report 2001, pages 118 and 119.

A criminal investigation into the cause of the incident is being carried out by an examining magistrate in Paris. During 2000 charges were brought against the master of the Erika, the representative of the registered owner (Tevere Shipping), the president of the management company (Panship Management and Services Srl), the management company itself, the deputy manager of Centre Régional Opérationnel de Surveillance et de Sauvetage (CROSS), three officers of the French Navy who were responsible for controlling the traffic off the coast of Brittany, the classification society (RINA) and one of RINA's managers. In December 2001 charges were brought against Total SA and some of its senior staff on the basis of a report by an expert appointed by the magistrate. In June 2003 charges were brought against the Malta Maritime Authority and against its Director. The trial is expected to take place in the course of 2006.

At the request of a number of parties, the Commercial Court (Tribunal de Commerce) in Dunkirk appointed experts to investigate the cause of the incident ('expertise judiciaire'). The experts submitted their report in late November 2005. The experts concluded that the fate of the *Erika* was the inevitable consequence of the serious corrosion of the internal structures of the vessel's No.2 ballast tanks, which resulted in their collapse as soon as the vessel encountered sustained heavy seas. The experts stated that the level of corrosion was well beyond acceptable standards for a classification society and contradicted the thickness measurements made of tank internals in 1997 and in particular in 1998, which were carried out by the classification society RINA. The experts stated that once the longitudinal deck stiffeners and the upper parts of the transverse bulkheads in the No.2 had failed in the prevailing sea conditions, there was nothing anyone could have done to influence the fate of the vessel.

The experts expressed the view that it would not have been possible to detect the level of corrosion when the ship was vetted by Total SA, nor at the time of loading the vessel in Dunkirk prior to the final voyage and that the vetting procedures of other major oil companies or a survey by a port state would also have not revealed the problem. In contrast, the experts stated that this was not the case with Tevere Shipping (the registered owner), Panship (the management company), which monitored the vessel's fifth special survey in Bijela (Croatia) in 1998, and RINA, which

undertook the surveys in Bijela and in Augusta in 1999.

The Director intends to study the report by the court experts with the assistance of the 1992 Fund's own experts and report to the Executive Committee in 2006.

Recourse actions by the 1992 Fund

Although it is not possible for the 1992 Fund to take a final position as to whether the Fund should take recourse actions to recover the amounts paid by it in compensation and, if so, against which parties, until the investigations into the cause of the incident have been completed, the Executive Committee considered in October 2000 whether the Fund should take such actions as were necessary to prevent its rights becoming time-barred. The Committee decided to authorise the Director to challenge the shipowner's right to limit his liability under the 1992 Civil Liability Convention and to take recourse actions, as a protective measure before the expiry of the three-year time-bar period, against the following parties:

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

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

After the Committee's October 2002 session the Director was made aware of the fact that the classification society Bureau Veritas had inspected the *Erika* prior to the transfer of class to RINA. He decided that the 1992 Fund should take recourse action, as a protective measure, against Bureau Veritas, and this action was also brought in the Civil Court in Lorient on 11 December 2002.

There have been no developments in respect of these actions during 2005.

As mentioned above, criminal charges were brought against *inter alia* the deputy manager of CROSS and three officers of the French Navy. If they were to be found guilty there might be grounds for the 1992 Fund to take recourse action against the French State, but it is not possible for the 1992 Fund to decide whether there are grounds for such an action until the trial in the criminal proceedings has taken place.

Under French law the general time-bar period in commercial matters is – subject to many exceptions – 10 years. In matters involving the liability of public bodies, in order to prevent a claim for compensation becoming time-barred, the French Administration should be notified of such a claim by 31 December of the fourth year after the event that gave rise to a claim, ie in the case of the *Erika* incident by 31 December 2003. The 1992 Fund made such a notification in December 2003 and the French State accepted that this notification had the effect of interrupting the time bar.

Claims by salt producers

Efforts were made to minimise the impact of the spill on coastal salt production in marshes in Loire Atlantique and Vendée, and a number of monitoring and analytical programmes were implemented. Salt production resumed in Noirmoutier (Vendée) in mid-May 2000 as a result of an improvement in sea water quality, and bans which had been imposed to prevent the intake of sea water in Guérande (Loire Atlantique) were lifted on 23 May 2000. A group of independent producers in Guérande tried to resume salt production but were unable to take in sufficient seawater to produce salt. Members of a co-operative who account for some 70% of the salt production in Guérande

decided not to produce salt in 2000 on the grounds of protecting market confidence in the product.

Claims for lost salt production due to delays to the start of the 2000 season caused by the imposed ban on water intake were received from producers (both independent and members of the co-operative) in Guérande and Noirmoutier as well as for losses caused by the late start of the 2001 season. Claims were also presented for costs of restoration of salt ponds in Guérande in 2001.

The experts engaged by the 1992 Fund and Steamship Mutual had considered that salt production had been possible in Guérande in 2000, but that as a result of the interruption caused by the ban on water intake, the maximum yield would have been 20% of that expected for the year. Interim compensation payments were therefore made to the claimants for the outstanding 80%.

As regards the salt producers in Noirmoutier, the 1992 Fund and Steamship Mutual had also considered that salt production had been possible in 2000, but that the maximum yield would have been 30% of that expected for the year. Compensation payments were made to the salt producers for the outstanding 70%. Eighty producers accepted the Fund's assessment whereas five submitted claims in court.

At the request of the 1992 Fund and Steamship Mutual, a court expert was appointed to examine whether it was feasible to produce salt in 2000 in Guérande that would meet the criteria relating to quality and the protection of human health. The court expert presented his report in late December 2004. The court expert concluded that salt production would have been feasible in 2000, but that as a result of the bans that were imposed, the maximum yield would have been between 4% and 11% of normal production.

In the light of the court expert's findings the 1992 Fund approached claimants with the objective of exploring the possibility of reaching out-of-court settlements. Such settlements have been reached with 22 of the salt producers in Guérande on the basis of a loss of production of 95%. Claims are being pursued in court by 140 salt producers from this area.

Time bar

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

During September 2002 the 1992 Fund wrote individually to all those who had submitted claims to the Claims Handling Office and with whom settlements had not been reached by that time informing them about the time bar issue. In addition, the 1992 Fund organised a series of presentations to the Chambers of Commerce and Industry in Quimper, St Nazaire and La Roche sur Yon to bring the time bar issue to the attention of a wider audience. Advertisements were also placed in the local press.

Since it may be uncertain from which date the three-year time-bar period started to run for an individual claimant (ie the date when the respective claimant's damage or loss occurred), the Director suggested that claimants should assume that the time-bar period commenced on the date of the incident (ie 12 December 1999), in order to avoid any risk of the claims becoming time-barred. He also made it clear that even if a claimant took legal action, this would not prevent further discussions concerning his claim for the purpose of reaching an out-of-court settlement.

Despite these warnings a number of claimants who had presented claims to the Claims

Handling Office and whose claims had not been settled had not taken legal action against the shipowner, Steamship Mutual and the 1992 Fund by 12 December 2002. A number of claimants commenced legal actions late in December 2002 or in the first half of 2003. The question arose whether these claims or some of them were time-barred.

In February 2003 the Executive Committee decided that the three-year time-bar period should be considered to start to run at the earliest from the beginning of the period of the loss suffered by the individual claimant. The Committee recognised that there could be claims in respect of which the starting point for the time-bar period might be some time after the beginning of the period of the loss and that such claims would have to be considered in the light of the particular circumstances in each case.

As a result of this decision, some 160 claims which had not been the subject of legal actions, and for which the time-bar period ended after the Committee's February 2003 session, were subsequently settled out-of-court.

A number of claimants did not take legal action against the 1992 Fund before the expiry of the three-year time-bar period but only submitted claims against the shipowner and Steamship Mutual in the limitation proceedings. The Fund was formally notified by the liquidator of the limitation fund of theses actions. However, as stated above, in order to prevent such a claim from becoming time barred against the Fund, the claimant must take legal action against the Fund within six years of the date of the incident, ie by 12 December 2005. In early December 2005 the Fund wrote to all these claimants drawing their attention to the six-year time-bar period. As a result, action was filed by a fisherman for a claim of some €50 000 (£33 000) for loss of earnings in 2000.

Legal proceedings

The Conseil Général of Vendée and a number of other public and private bodies brought actions in various courts against the shipowner, Steamship Mutual, companies in the Group Total SA and others requesting that the defendants should be held jointly and severally liable for any claims not covered by the 1992 Civil Liability Convention. The 1992 Fund requested to be allowed to intervene in the proceedings. So far only procedural hearings have been held.

The French State brought actions in the Civil Court in Lorient against Tevere Shipping Co Ltd, Panship Management and Services Srl, Steamship Mutual, Total Transport Corporation, Selmont International Inc, the limitation fund referred to above and the 1992 Fund, claiming €190.5 million (£131 million).

Four companies in the Group Total SA took legal actions in the Commercial Court in Rennes against the shipowner, Steamship Mutual, the 1992 Fund and others claiming €143 million (£98 million).

Steamship Mutual brought action in the Commercial Court in Rennes against the 1992 Fund, requesting the Court *inter alia* to note that, in the fulfilment of its obligations under the 1992 Civil Liability Convention, Steamship Mutual had paid €12 843 484 (£8.8 million) corresponding to the limitation amount applicable to the shipowner, in agreement with the 1992 Fund and its Executive Committee. Steamship Mutual further requested the Court to declare that it had fulfilled all its obligations under the 1992 Civil Liability Convention, that the limitation amount had been paid and that the shipowner was exonerated from his liability under the Convention. Steamship Mutual also requested the Court to order the 1992 Fund to reimburse it any amount the shipowner's insurer will have paid in excess of the limitation amount.

Claims totalling €497 million (£341 million) were lodged against the shipowner's limitation fund constituted by Steamship Mutual. This amount includes the claims by the French Government and Total SA. However, most of these claims, other than those of the French Government and Total SA, have been settled and it appears therefore that these claims should be

withdrawn against the limitation fund to the extent that they relate to the same loss or damage. The 1992 Fund received from the liquidator of the limitation fund formal notifications of the claims lodged against that fund.

Legal actions against the shipowner, Steamship Mutual and the 1992 Fund were taken by 796 claimants. By 31 December 2005 out-of-court settlements had been reached with 426 of these claimants. The courts had rendered judgements in respect of 57 claims. Actions by 313 claimants (including 145 salt producers) were pending. The total amount claimed in the pending actions, excluding the claims by the French State and Total SA, was €63 million (£43 million).

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

Court judgements in respect of claims against the 1992 Fund

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

As mentioned in Section 11.2 the governing bodies of the 1971 and 1992 Funds have adopted criteria for the admissibility of claims. As regards claims for pure economic loss these criteria can be summarised as follows.

> Claims for pure economic loss are admissible only if they are for loss or damage caused by contamination. The starting point is the pollution, not the incident itself.
>
> To qualify for compensation for pure economic loss, there must be a sufficiently close link of causation between the contamination and the loss or damage sustained by the claimant. A claim is not admissible for the sole reason that the loss or damage would not have occurred had the oil spill not happened. When considering whether such a close link exists account is taken of the following factors:
>
> - the geographic proximity between the claimant's business activity and the contaminated area
> - the degree to which a claimant was economically dependent on an affected resource
> - the extent to which a claimant's business had alternative sources of supply or business opportunities
> - the extent to which a claimant's business formed an integral part of the economic activity within the area affected by the spill
>
> The 1992 Fund also takes into account the extent to which a claimant was able to mitigate his loss.
>
> As regards the tourism sector, a distinction is made between a) claimants who sell goods or services directly to tourists and whose businesses are directly affected by a reduction in visitors to the area affected by an oil spill, and b) those who provide goods or services to other businesses in the tourist industry, but not directly to tourists. It is considered that in this second category there is generally not a sufficiently close link of causation between the contamination and the losses allegedly suffered by claimants. Claims of this type will therefore normally not qualify for compensation in principle.
>
> The assessment of a claim for pure economic loss is based on a comparison between the actual financial results of the individual claimant during the claim period and those for previous periods. The assessment is not based on budgeted figures. The particular

circumstances of the claimant are taken into account and any evidence presented is considered. The criterion is whether the claimant's business as a whole has suffered economic loss as a result of the contamination.

Any saved overheads or other normal expenses not incurred as a result of the incident should be deducted from the loss in revenue suffered by the claimant.

The courts have in some cases applied the Fund's admissibility criteria and in other cases they did not apply them, but took them into account. In some cases the courts stated that the Fund's criteria were not binding and that the admissibility should be decided by the application of French law but reached the same results as the Fund on its rejection of the claims by applying the requirement that there must be a link of causation between the event and the damage.

The 1992 Fund has lodged appeals in respect of 11 judgements and five claimants have also lodged appeals. Judgements rendered in 2005 which went against the 1992 Fund, not all of which were appealed by the Fund, and judgements which went against claimants and which were appealed, are summarised below, as well as some other judgements which may be of general interest.[10]

In the 2004 Annual Report it was indicated in respect of a number of judgements that at the time of the editing of that Report no appeals had been lodged by the claimants. Except for the judgements reported below the claimants did not appeal.

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

Commercial Court in Lorient and Court of Appeal in Rennes

In December 2003 the Commercial Court in Lorient rendered judgements in respect of four claims in the tourism and fisheries sectors that had been rejected by the shipowner, Steamship Mutual and the 1992 Fund.

One of these claims, for €10 671 (£7 300), related to loss of income allegedly suffered by the owner of a property in the affected area which was to be let to other businesses (and not directly to tourists) but, according to the claimant, could not be let due to the negative effects of the *Erika* incident. The 1992 Fund had rejected the claim on the ground that it did not fulfil the Fund's admissibility criteria, since it was a 'second degree tourism claim'.

In its judgement the Commercial Court stated that its function was to establish whether there was damage and, if so, to assess it in accordance with the criteria of French law. The Court held that, under French law, a claim for compensation was admissible if there was a sufficient link of causation between the event and the damage, and if it was shown that the damage would not have occurred if the event had not taken place. In the Court's view, the *Erika* incident was the sole cause of the pollution and its economic consequences. The Court stated that it was not bound by the criteria for admissibility laid down by the 1992 Fund. The Court ordered the shipowner, Steamship Mutual and the 1992 Fund to pay compensation to the claimant for loss of rental income at the amount claimed.

The three other judgements related to claims by a person selling and letting machines for the production of ice cream, by a hotel situated in Carnac and by an oyster grower in Morbihan. These claims had been rejected by the 1992 Fund on the grounds that the claimants had not shown that there was a sufficient link of causation between the alleged loss and the contamination caused by the *Erika* oil spill. After having made the same statement in respect of the criteria to be applied and stating that it was not bound by the Fund's criteria, the Commercial Court appointed an expert to investigate whether there was a link of causation between the alleged loss and the oil pollution and, if so, to assess the loss.

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

The 1992 Fund appealed against the four judgements.

As regards the claim by the owner of a property in the area that was let to other businesses, the Court of Appeal rejected the claim in a judgement in May 2004. In its judgement the Court stated that although the 1992 Fund's criteria were not binding on national courts, the claimant had not shown that there was a sufficient link of causation between the event in question and the alleged damage, nor had the claimant proven that any damage existed. The claimant did not appeal against the Court of Appeal's judgement

In a judgement in May 2005 the Court of Appeal rejected the claim by the claimant selling and renting ice cream machines. The Court stated that it was competent to interpret the notion of pollution damage under the 1992 Conventions and to apply it to particular cases. The Court considered that the alleged damage was of an indirect character, and that there was no certainty that the difficulties in renting or selling equipment were directly caused by the contamination but, in view of the particular nature of the product to be sold, could be related to other causes, such as weather, geographic and market situations. The Court of Appeal held that the claimants had not proved a sufficient link of causation between the alleged loss and the *Erika* incident, nor had he proved that a loss had been incurred.

In May 2005 the Court of Appeal also rendered judgements in respect of the claims by the owner of the hotel situated in Carnac and the oyster grower in Morbihan. The Court stated that whilst the 1992 Fund's admissibility criteria were not binding on the national courts, they could nonetheless serve as a reference ('une reference d'ordre indicatif") for the national judge. The Court stated that the dispute in both cases related to the question of whether the losses in 2001 were due to the pollution, which had occurred towards the end of 1999, which were questions of fact necessitating technical investigations on the basis of the evidence provided by the parties. The Court of Appeal confirmed the decisions by the Commercial Court that the claims were admissible in principle and the appointment of experts. The Court of Appeal amended the terms of reference of the experts to the effect that they should establish whether the hotel losses had resulted from a decrease in visitors, in particular businessmen and foreign guests, and whether the oyster grower's losses had resulted from an enduring loss of confidence by consumers in respect of seafood, in particular oysters, due to the contamination caused by the *Erika* incident or to other causes. The Court of Appeal referred the cases back to the Commercial Court in Lorient, which is expected to render its judgements in early 2006.

Commercial Court in Lorient

Supermarkets and a hotel

The owner of a supermarket in Quiberon and the owner of a hotel in Carnac had submitted claims for €50 217 (£35 000) and €108 740 (£75 000) respectively relating to losses allegedly suffered in 2000 and 2001 as a result of the *Erika* incident. The Fund had assessed the claims at €27 088 (£19 000) and €50 414 (£35 000) respectively relating to the losses in 2000 but had rejected the claims for losses in 2001 on the grounds that there had not been a sufficient link of causation between the alleged losses and the oil pollution resulting from the *Erika* incident.

The owner of a supermarket in Belle-Ile had submitted claims for €127 949 (£87 900) and €68 000 (£46 700) respectively for losses allegedly suffered in 2000 and 2001 as a result of the *Erika* incident. The 1992 Fund had assessed the losses in 2000 at €77 159 (£53 000) and the losses for 2001 at €11 840 (£8 100).

In October 2005 the Court rendered judgements in respect of these claims. In its judgements the Court stated that it was not bound by the Fund's criteria for admissibility and that it was for the Court to interpret the concept of 'pollution damage' in the 1992 Conventions and to apply it in each individual case by determining whether there was a sufficient link of causation between the event

Area affected by the Erika incident

and the damage. The Court ordered the shipowner, Steamship Mutual and the Fund to pay the amount of compensation assessed by the Fund to the claimants. Since the facts had not been established, the Court appointed a court expert to establish whether there had been a reduction in turnover in 2000 and 2001 compared with previous years and to determine whether there was a sufficient link of causation between the claimed losses and the *Erika* incident.

In October 2005 the Fund offered to pay the claimants the amounts it had assessed, but they have not responded to the offer.

Commercial Court in Rennes

A fisherman and his association

A fisherman had submitted a claim for €8 027 (£5 500) relating to loss of income due to the *Erika* incident. The claimant had accepted the assessment made by the 1992 Fund, the shipowner and Steamship Mutual for €1 357 (£930). The claimant had received two provisional payments totalling €1 085 (£740) and had signed full and final receipts and releases in respect of that amount, leaving an amount of €272 (£160) outstanding. Before the last compensation payment was made, he brought proceedings against the Fund arguing that the agreement reached with the 1992 Fund was not valid, claiming compensation for losses totalling €6 942 (£4 000).

A claimants' association joined in these legal proceedings supporting this claimant, who was one of its members. The association did not make a specific claim for loss or damage caused by the *Erika* incident, but claimed against the 1992 Fund the symbolic amount of €1 (£0.7) for non-defined damages.

In a judgement rendered in March 2005, the Court rejected the claim by the individual claimant. The Court considered that by signing a full and final receipt and release the claimant had accepted the terms of the proposed agreement and entered into a valid settlement according to French law. The Court stated that receipts and releases were in all aspects valid settlement documents and were considered

under the French Civil Code as contracts by which the parties ended an existing dispute or prevented a dispute to arise. The Court concluded therefore that the settlement between the individual claimant and the Fund was valid and dismissed the action, stating that the claimant was not entitled to further compensation for more than the balance of the settlement amount. It was stated that the claimants' association had not suffered any damage falling within the scope of the 1992 Civil Liability and Fund Conventions and held that its claim was inadmissible. The Court also stated that the actions of the individual claimant and the association were excessive and ordered them to pay a symbolic amount of €1 to each of the shipowner, Steamship Mutual and the Fund.

The individual claimant and the association have appealed against the judgement.

Property letting and a crêperie
A claimant in Finistère had submitted a claim for €77 467 (£52 000) for loss of income of two commercial activities in 2000 and 2001, namely letting furnished property to tourists and running a crêperie. The 1992 Fund had assessed the claim for the year 2000 at €13 819 (£9 000), compared to the claimed amount of €29 367 (£19 893), and had rejected the claim for 2001 on the ground that the *Erika* incident had not had any negative impact on tourism in the area in 2001 and that there was not a link of causation between the loss allegedly suffered in 2001 and the contamination resulting from the *Erika* incident.

In a judgement rendered in June 2005, the Court agreed with the 1992 Fund's assessment of the losses in 2000. The Court considered, however, that although the claimed amount for 2001 appeared exaggerated, it was not unrealistic to believe that the psychological effect of the pollution caused by the *Erika* incident could have influenced the 2001 tourist season. The Court stated, however, that it did not have sufficient information to be able to assess the quantum of the losses for 2001. The Court requested the Fund's experts to assess the claim for that year as regards both commercial activities. The 1992 Fund's experts have assessed the claim as requested by the Court and the Fund will make a settlement proposal to the claimant.

Fishing ports
A Chamber of Commerce had submitted a claim for €16 470 (£11 000) for additional costs incurred as a consequence of the *Erika* incident. Of the amount claimed, €1 703 (£1 151) related to a series of analyses of seawater for oil pollution in ports along the coast of South Finistère, and €13 589 (£9 184) related to the costs of increased consumption of fresh water used to clean up the stalls of a fish auction hall. The claim had been assessed by the 1992 Fund at €7 065 (£4 800), of which €1 093 (£740) was for the seawater analyses and €4 789 (£3 236) for the increased consumption of fresh water. In its assessment the Fund had excluded the cost of the seawater analyses that had been carried out in two ports located outside the area affected by the contamination.

In a judgement rendered in June 2005, the Court agreed with the 1992 Fund's assessment of the part of the claim relating to the increased consumption of fresh water. As regards the seawater analyses the Court noted, however, that the authorities had given instructions that such analyses should be carried out along the entire coast of South Finistère. The Court held that seawater analyses carried out in ports in the area should not be discarded even if the oil did not eventually affect them. The Court considered that the analyses in those ports had been justified and should have been included in the assessment. Therefore, the Court requested the parties to reassess the claim accordingly.

The 1992 Fund's experts have reassessed the claim for seawater analyses taking into account the Court's decision in this regard and a settlement has been reached with the claimant.

Claim by a student who had failed to obtain expected employment
A claim for loss of income for €978 (£670) had been presented by a student who, contrary to what had been the case in 1998 and 1999, had

not been employed in the summer of 2000 at a camping site in Névez, Department of Finistère, as a kitchen assistant. This claim had been rejected by the 1992 Fund on the grounds that there was not a sufficient link of causation between the alleged loss and the oil pollution resulting from the *Erika* incident.

The student pursued his claim in Court maintaining that, had it not been for the *Erika* incident, he would, as in previous years, have been employed at the camping site. He maintained that as he lived in Névez where the camping site was located, it was inconceivable for him to work in any other area, since the costs he would have incurred would have absorbed the major part of his salary. He also made the point that since seasonal workers were engaged many months in advance, it was too late for him to find alternative employment by the time it had been established that the 2000 tourist season would be affected by the oil pollution.

In the proceedings the 1992 Fund argued that the claim did not fulfil the Fund's criteria for admissibility and that, in any event, as a seasonal worker the student should have been able to find work outside the area affected by the oil spill.

The Court noted that the camping site was located in the contaminated area and that its activities had been greatly affected by the oil spill. The Court concluded therefore that the student's activity at the camping site was highly integrated with the economy of the affected area, that as a student he was very dependant on this employment and that he could not have taken other employment as a kitchen assistant, since this would have made it necessary for him to leave the place where his parents lived and that for this reason it would not have been possible for him to find alternative, similar, employment. The Court therefore accepted the claim and ordered the shipowner, Steamship Mutual and the 1992 Fund to pay the claimed amount of €978 (£650) plus legal interest and an amount of €3 000 (£2 000) in costs. The Court also decided that the judgement was immediately enforceable whether or not an appeal was lodged.

The 1992 Fund Executive Committee considered at its October 2005 session whether to appeal against the judgement. The Committee took note of the previous considerations by the 1971 Fund Executive Committee of the issue in the context of the *Aegean Sea* and *Braer* incidents, and the considerations by the 1971 Fund 7th intersessional Working Group and the 1971 Fund Assembly. When in June 1993 the 1971 Fund Executive Committee had considered certain claims arising from the *Aegean Sea* and *Braer* incidents by employees at fish processing plants, mussel plants and shellfish purification plants who had either been placed on part-time working or had been made redundant, it had taken the view that the losses suffered by employees were a more indirect result of contamination than losses suffered by companies or the self-employed, since the losses of employees were the result of their employers being affected by the consequences of a spill and therefore having to reduce their workforce. Reference had been made to the fact that, although the 1971 Fund Executive Committee had at a previous session accepted claims from fish processing plants, the losses suffered by their employees had been considered one step more remote than losses suffered by fish processors. The Committee had concluded that such losses could not be considered as 'damage caused by contamination' and therefore did not fall within the definition of 'pollution damage'.

When this issue had been considered by the 1971 Fund opinions had been split both in the Executive Committee and in the intersessional Working Group. On the one hand it had been argued that the losses suffered by employees being laid off were a more indirect result of the contamination than losses suffered by companies and the self-employed and that such losses could not be considered as damage by contamination. On the other hand it had been suggested that the decisive criteria should be whether the activity in question had been affected by the spill and not the corporate structure. During the discussions in the Working Group some delegations had maintained that an employer's action to lay off staff should be considered as measures taken to minimise his loss and that the loss suffered by the

employees should therefore be considered as 'loss or damage caused by preventive measures', which would qualify for compensation under Article I.6 of the Civil Liability Convention. As set out above, the Executive Committee had however taken the decision that claims by such employees were not admissible, and that this had therefore been the IOPC Funds' policy. The 1992 Fund Assembly had decided in June 1996 that the criteria hitherto laid down by the 1971 Fund Executive Committee should be applied by the 1992 Fund in its consideration of the admissibility of claims.

At the Committee's October 2005 session the Director expressed the view that the decisive issue was whether there was a sufficiently close link of causation between the contamination and the losses suffered by employees who had been laid off or placed on part-time work and therefore had suffered what is known as 'pure economic loss' (ie economic loss suffered by persons whose property had not been contaminated by the oil).

During the Committee's discussion in October 2005 some delegations that had been in favour of admitting claims by employees when they were considered by the 1971 Fund Executive Committee in relation to the previous incidents and further considered by the 7th intersessional Working Group, reaffirmed their view that claims by employees who had been made redundant should be admissible in principle. Those delegations considered, however, that a distinction should be made between workers that had a contract of employment and those that merely had an expectation of employment. The point was made that the student fell into the latter category, that there was an insufficient link of causation between the loss and the pollution and that his claim was therefore inadmissible.

Most delegations considered that despite the fact that the claim was for a small amount in comparison with the likely legal costs involved in an appeal, an important question of principle was involved and for that reason it was necessary to go ahead with the appeal. Those delegations considered that because the claim was merely based on an expectation of employment, the decisive factor was the lack of a link of causation and not a question of whether or not it was a 'second degree tourism claim'.

Although there was insufficient support for revising the Fund's policy at this time as regards the admissibility of claims by employees laid off or made redundant, a number of delegations made the point that the Fund's admissibility criteria were not set in stone and that it would be appropriate to review the criteria from time to time so as to ensure that they remained relevant and up to date.

The Committee decided that the Fund's policy regarding claims for losses suffered by employees laid off temporarily, put on part-time work or made redundant should not be changed and that the Fund should continue to reject such claims. The Director was therefore instructed to appeal against the judgement, and an appeal was lodged in November 2005.

Union of salt producers

A salt producers' union had submitted a subrogated claim for €16 327 (£11 200) relating to advance payments made by the union to 51 members for exceptional expenses for the restoration of salt marshes in 2001 which had become necessary as a result of the *Erika* incident. The union had argued that the commencement of salt production had been delayed for two months compared to normal seasons due to the necessity to restore the salt marshes which as a result of the incident had suffered from the proliferation of harmful animals and plants. A report by a professor at the Laboratory of Marine Biology in Nantes had concluded that this proliferation had not been caused by the *Erika* incident but by the exceptionally heavy rain between the harvesting seasons of 2000 and 2001. The claim had therefore been rejected by the Fund.

In a judgement rendered in October 2005 the Court held that, in the light of the expert's reports, the claimant had not established a sufficient link of causation between the alleged

loss and the oil pollution resulting from the *Erika* incident and rejected the claim.

The claimant has not appealed against the judgement.

Commercial Court in Saint Brieuc

Campsite operator
In September 2004 the Court rendered a judgement in respect of a claim for €33 265 (£24 000) by a person operating a campsite in Côtes d'Armor, which is located in the northern part of Brittany, in respect of losses allegedly suffered in 2001 as a result of the *Erika* incident.

The operator of this campsite had previously submitted a claim in respect of losses suffered during 2000. This earlier claim was settled at €15 883 (£11 000) and that amount was paid by the 1992 Fund to the claimant in December 2002. The Fund had considered that, although this campsite was located in northern Brittany, ie outside the area directly affected by the *Erika* oil spill, the spill had resulted in loss of business for the season of 2000. However, with a few exceptions, there was no remaining contamination on the beaches in Brittany after the end of the season of 2000. For this reason, the 1992 Fund had rejected the claim for losses during the 2001 season on the ground that any loss of business suffered by the operator of this campsite during that period did not result from the contamination of the beaches caused by the *Erika*.

The Court nevertheless held that the claim was admissible, since it considered that the reduction in turnover in 2001 compared to 1999 was caused by the *Erika* incident, and awarded the claimant an amount of €26 719 (£18 000).

The 1992 Fund has appealed against the judgement.

Commercial Court in Vannes

Agency recruiting temporary workers
An agency recruiting temporary workers in the agriculture and oyster growing sectors had submitted a claim for €48 198 (£33 100) relating to loss of income in 2000. The claim had been rejected by the 1992 Fund on the grounds that there was not a sufficient link of causation between the alleged loss and the contamination.

In a judgement rendered in June 2005, the Court stated that, in accordance with the French Constitution, the 1992 Civil Liability and Fund Conventions took precedence over French law. The Court noted that in order to harmonise the principles of compensation, the governing bodies of the Fund had established criteria for the admissibility of claims which were set out in the Claims Manual, in particular, that in order for a claim to be admissible there should be a sufficient link of causation between the pollution and the loss or damage allegedly suffered by the claimant. In the judgement it was stated that the criteria for admissibility of claims established by the Fund made it possible to determine if there was a sufficient link of causation, namely the geographic proximity between the claimant's activity and the contamination, the degree to which the claimant was economically dependant on an affected resource, the extent to which the claimant had alternative sources of supply or business opportunities, and the extent to which the claimant's business formed an integral part of the economic activity within the area affected by the spill.

The Court noted that the claimant's activity concerned in particular the agriculture sector. The Court held that the claimant had not shown that the reduction in turnover was caused by the *Erika* incident. For this reason the Court rejected the claim.

The claimant did not appeal against the judgement.

Crêperie
The owner of a crêperie in Morbihan had submitted a claim for €52 806 (£36 300) relating to loss of income allegedly due to the *Erika* incident. The claim had been rejected by the 1992 Fund on the grounds that having bought the crêperie on 31 May 2000, ie six months after the *Erika* incident took place, the

claimant was fully aware of the consequences the incident could have on his commercial activity.

In its judgement rendered in June 2005, the Court noted the position taken by the governing bodies of the 1992 Fund, ie that in order for a claim to be admissible there should be a sufficient link of causation between the pollution and the loss or damage allegedly suffered by the claimant. The Court referred to the admissibility criteria established by the governing bodies for claims for pure economic loss. The Court noted that the claimant had purchased the business with full knowledge that the incident had taken place and the consequences it could have on his activity. The Court held that the claimant had not proved that the reduction in the turnover was a consequence of the pollution and, for this reason, rejected the claim.

The claimant has appealed against the judgement.

Restaurant/crêperie

The owner of a restaurant/crêperie in Morbihan had submitted claims for loss of income in 2000 and 2001 totalling €53 748 (£36 900). The claims relating to losses in 2000, in the amount of €35 748 (£24 500), covered the entire calendar year. The 1992 Fund had taken the view that the *Erika* incident only affected the tourism industry up to the end of the tourism season at the end of November 2000 and had accepted the claim as admissible in principle for that period but had rejected the part of the claim relating to December 2000. The Fund had assessed the admissible part of the claim at €12 304 (£8 500). The Fund had rejected the part of the claim for losses allegedly suffered in 2001 on the grounds that the incident had not affected the claimant's business during that year.

In its judgement rendered in June 2005, the Court referred to the fact that in order to harmonise the principles of compensation, the governing bodies of the Fund had established criteria for admissibility of claims, contained in the Claims Manual, particularly that there should be a sufficient link of causation between the pollution and the loss or damage allegedly suffered by the claimant.

The Court held that as regards the claim relating to 2000 the claimant was entitled to compensation for losses suffered during the period January–November, which corresponded to the tourism season. The Fund's assessment of the loss was accepted by the Court which considered the assessment well founded.

In respect of the claim for 2001, the Court held that the claimant had not proved that he had suffered any loss during that year and that, on the contrary, the 1992 Fund had provided evidence showing that the decrease in turnover in 2001 and 2002 was due to factors other than the *Erika* incident. For this reason the Court rejected this claim.

The claimant has appealed against the judgement.

Fish merchant

A fish merchant had submitted a claim for €5 182 (£3 600) relating to loss of income in January and February 2000 due to the Erika incident. The Fund had assessed the claim at €5 132 (£3 500), and that amount was paid to the claimant. The claimant submitted an additional claim for €8 062 (£5 500) relating to loss of income for the period from 1 March to 31 October 2000. The Fund had assessed that claim at €476 (£330) on the basis that the Fund had not taken into account the additional labour force recruited by the claimant only in August 2000 for the calculation of the loss of income in 2000. The claimant rejected this offer and subsequently filed a claim in the Commercial Court in Vannes for €9 088 (£6 200) relating to 20% of the settlement amount of his initial claim and loss of income for the period from 1 March – 31 October 2000 due to the *Erika* incident.

In a judgement rendered in December 2005 the Court accepted the claimant's calculation of the loss. The Fund will not appeal against the judgement.

Civil Court in Paris

Oyster grower
An oyster grower in Loire Atlantique had brought action in respect of a claim for a total of €35 000 (£24 000), relating to a reduction in sales during the period October 2000 – April 2001 and the subsequent termination of his oyster growing activity as a result of the *Erika* incident. The 1992 Fund had rejected the claim on the ground that there was no link of causation between the *Erika* incident and the alleged losses, since the claim related to a period during which there were no administrative harvesting bans on mariculture in the area. The claimant had already been compensated by the Fund for a total amount of €46 148 (£31 7000) corresponding to losses incurred during the period January to September 2000.

In a judgment rendered in February 2005, the Court considered that the claimant had already been compensated for the losses originating from harvesting bans on mariculture and from a reduction in the number of visitors to the affected area due to the *Erika* incident resulting in a decrease in sales of the claimant's products. The Court held that the claimant could not prove that the reduction in sales after September 2000 and the subsequent termination of his oyster growing business were due to the *Erika* incident, since the evidence submitted showed that the claimant had decided to change his professional activity when the oyster market had, from October 2000, achieved a level of sales similar to that prior to the incident. For this reason the claim was rejected.

The claimant did not appeal against the judgment.

Organisation for protection of sea birds
An organisation for the protection of birds had submitted a claim for €242 041 (£166 000), relating to the costs of clean-up of birds contaminated by oil on the French Atlantic coast after the *Erika* incident. This claim had been rejected by the 1992 Fund on the grounds that the organisation had already been compensated by the French Government under the French National Contingency Plan (Plan POLMAR), by Total SA and by private donors.

In a judgment rendered in February 2005, the Court noted that the organisation had already received from the French Government, Total SA and private donors a total amount of €1 744 322 (£1.2 million). The Court held that the Fund had the obligation to compensate only for losses which had actually been incurred and concluded that the claimant had not proved any loss which had not been compensated and for this reason rejected the claim.

The claimant has appealed against the judgment.

Postcard seller
A company selling postcards and posters in Brittany had submitted a claim for €23 572 (£16,200), relating to loss of income allegedly suffered as a result of the *Erika* incident. This claim had been rejected by the 1992 Fund on the grounds that the claimant supplied goods and services to other businesses in the tourist sector but not directly to tourists, and that therefore there was not a sufficiently close link of causation between the contamination and the alleged loss.

In a judgment rendered in February 2005, the Court specifically referred to the Fund's criteria for admissibility of claims for pure economic loss. The Court considered in particular that the Fund had defined the admissibility criteria as requiring a reasonable degree of proximity between the contamination and the loss or damage incurred by the claimant and that account should be taken of the geographic proximity between the claimant's activity and the contamination, the degree to which the claimant was economically dependant on an affected resource, the extent to which the claimant had alternative sources of supply or business opportunities, and the extent to which the claimant's business formed an integral part of the economic activity within the area affected by the spill.

The Court noted that the 1992 Fund distinguished between, on the one hand,

claimants who sold goods or services directly to tourists and whose businesses were directly affected by a reduction in visitors to the area affected by an oil spill and, on the other hand, those who provided goods or services to other businesses in the tourist industry, but not directly to tourists. The Court stated that in the latter case, the 1992 Fund had considered that there was generally not a sufficient degree of proximity between the contamination and the losses allegedly suffered by the claimants and that claims of this type would normally not be admissible in principle. The Court noted that the claimant belonged to the latter sector, since it did not sell its goods directly to tourists but only to other businesses in the tourist category. The Court further noted that the claimant did not sell its products only to businesses in Brittany but also to a large extent to businesses in several other parts of France. The Court held that the claimant did not fulfil the conditions determined by the 1992 Fund to be entitled to compensation and therefore rejected the claim.

The claimant did not appeal against the judgement.

Real estate agent

A real estate agent had submitted a claim for €115 036 (£79 000), relating to loss of income as a result of a reduction in annual and seasonal letting activities and for a reduction in property sales in the affected area allegedly due to the *Erika* incident. The 1992 Fund had rejected the claim as regards the reduction in the annual letting activity and the reduction in property sales on the ground that the *Erika* incident did not have a long term impact on the economic activity in the area and that the decision by prospective clients to rent on an annual basis or to purchase property was only postponed as a result of the clean-up operations. The claim for losses incurred in the seasonal letting activity following the incident had been assessed by the 1992 Fund at €9 129 (£6 300), and a payment of that amount had been made to the claimant.

In a judgment rendered in February 2005, the Court rejected the part of the claim relating to loss of income for a reduction in annual letting activities. The Court considered that it had not been established that the annual letting activity, which represented only 8% of the claimant's turnover, depended on the number of tourists visiting the affected area and that, therefore, this item was not admissible for compensation.

The Court also rejected the part of the claim relating to loss of income as a result of a reduction in property sales in the affected area, since the claimant had failed to prove that the *Erika* incident had had an enduring effect on property sales. The Court agreed with the 1992 Fund's view that the purchase of property was a long-term investment that may be affected in the short term by an event such as the *Erika* incident, but that its effect could only be to delay the decision to purchase property until the completion of the clean-up operations. The Court also considered that the decision to purchase property depended directly on other factors such as sale price, level of interest rates and the possibility to obtain loans.

The Court held that the claimant was entitled to compensation for losses resulting from the reduction in the seasonal letting activity for €9 129 (£6 300), but that no decision could be rendered in that regard since the Fund had already paid that amount to the claimant.

The claimant did not appeal against the judgement.

Construction and sales of ultra light aircraft

A claim for €142 185 (£97 700) had been submitted by a company whose main activity was construction and sales of ultra light aircraft and sales of equipment for such aircraft. As a secondary activity, the company undertook aerial towing of advertising banners in Loire-Atlantique. The claim related to loss of income from the latter activity allegedly suffered from 2000 to 2003 as a result of the *Erika* incident. This claim had been rejected by the 1992 Fund on the grounds that the claimant supplied goods and services to other businesses in the tourism sector but not directly to tourists, and that therefore there was not a sufficient link of

causation between the contamination and the alleged loss.

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

The claimant has appealed against the judgement.

Commercial Court in La Roche sur Yon

Water sports equipment retailer

A company selling water sports equipment had submitted a claim for €19 291 (£13 300) for losses suffered in 2000 as a result of the *Erika* incident, in its dual activity of sales of such equipment to individual tourists and to sailing schools in Vendée. The 1992 Fund had assessed the claim for loss of income due to reduced sales to individual tourists at €549 (£370), but had rejected the claim for loss of sales to sailing schools on the ground that such sales related to services provided to other businesses in the tourism industry but not directly to tourists and that, for this reason, there was not a sufficient link of causation between the contamination and the alleged loss.

In a judgement rendered in September 2005 the Court stated that it was not bound by the 1992 Fund's criteria for admissibility. The Court stated that it was for the Court to interpret the concept of 'pollution damage' in the 1992 Conventions and to apply it to the individual claim by determining whether there was a sufficient link of causation between the event that lead to the damage ('le fait générateur') and the losses suffered, and by assessing the extent of the damage suffered by the victims according to the criteria of French law. The Court held that there was no doubt that there was a direct link of causation between the contamination caused by the *Erika* incident and the losses suffered and that the losses suffered could not be doubted. For these reasons the Court accepted the claimed amount in its entirety and ordered the Fund to compensate the claimant accordingly.

The 1992 Fund has appealed against the judgement.

Seasonal letting activities

The Court rendered four judgements relating to claims by estate agencies in Vendée for losses suffered in their activity of seasonal lettings of furnished apartments and villas in the year 2000, allegedly as a consequence of the reduction in the number of tourists in the affected area due to the *Erika* incident. The Fund had as regards three of the claims assessed the losses at amounts lower than those claimed. The fourth claim has been rejected by the 1992 Fund since, in the Fund's opinion, the claimant had not proven any losses.

In the four judgements, the Court made the same statements as in respect of the claims by the water sport equipment retailer concerning the 1992 Fund's criteria for admissibility and the interpretation of the concept of 'pollution damage' in the 1992 Conventions. The Court stated that no doubt had been raised as to the existence of a link of causation between the contamination caused by the *Erika* incident and the losses suffered. The Court considered that the assessment of the loss could not be calculated only on the basis of the number of property owners' requests for lettings received by the agent, but that account should also be taken of the number of weeks that the apartments or houses were let. The Court therefore awarded the full claimed amounts to three of the four claimants and decided that the judgements were immediately enforceable, whether or not appeals were lodged. In the case of the claimant whose claim had been rejected by the 1992 Fund, the Court awarded the claimant an amount of €11 696 (£8 000), compared to the claimed amount of €25 383 (£17 400).

Before deciding whether to appeal against the judgements, which did not relate to the Fund's admissibility criteria but to quantum, the 1992 Fund has requested its experts to examine the judgements. Having examined the judgements, the Fund's experts expressed the view that the amounts awarded by the Court were unreasonable. The Fund therefore appealed against all four judgements.

Commercial Court in Brest

Oyster grower
In February 2005 the Commercial Court in Brest rendered a judgement in respect of a claim for €83 265 (£57 200) from an oyster grower in North Finistère. The claim, relating to alleged loss of income, had been rejected by the 1992 Fund on the grounds that there was not a reasonable degree of proximity between the contamination and the alleged loss and that in any event no loss had been proven.

In its judgement the Court stated that, in accordance with the French Constitution, the 1992 Civil Liability and Fund Conventions took precedence over French laws. The Court also stated that the claimant had deliberately overvalued his loss, that the business activity was located in North Finistère, ie far away from the area affected by the *Erika* oil spill, and that the claimant was not economically dependent on the affected resource. The Court held that the claim did not fulfil any of the criteria for the admissibility of claims for pure economic loss established by the Fund and for this reason rejected the claim

The claimant did not appeal against the judgement.

Civil Court in Sables d'Olonne

Bar
In March 2005 the Court rendered a judgement in respect of a claim for €53 852 (£37 000) from the owner of a bar.

The 1992 Fund had accepted as admissible the part of this claim relating to loss of income and additional financial expenditure and had assessed the losses at €30 292 (£20 800). The Fund had paid this amount to the claimant.

The other part of the claim related to losses allegedly suffered in connection with the claimant selling his business which, according to the claimant, had lost value as a result of the *Erika* incident. This part of the claim had been rejected by the 1992 Fund on the ground that there was not a sufficient link of causation between the reduction in the sale price and the *Erika* incident.

The Court held that the loss of income and additional financial expenditure incurred by the plaintiff had been compensated by the 1992 Fund in full and that therefore the plaintiff had been put in the same economic position as he would have been in if the incident had not occurred. The Court considered that there was no link of causation between the pollution caused by the *Erika* incident and the decision taken by the plaintiff to sell his business. For these reasons the claim was rejected.

The claimant did not appeal against the judgement.

Other judgements

A number of claims were rejected by the courts on the ground that the claimant had not proven any loss, for example judgements by the Commercial Court in Lorient (meat wholesaler, bar, camping site, sculptor) and by the Commercial Court in Paris (oyster grower). Other claims were rejected because the courts held that there was not a sufficient link of causation between the loss and the *Erika* oil spill, for example judgements by the Commercial Court in Rennes (sign post manufacturer, crêperie). In some cases the courts agreed with the Fund's assessments of the losses or assessed the losses at amounts very close to the Fund's assessments, although the Fund's assessments were significantly lower than the amounts claimed. In this regard reference is made to judgements by the Commerical Court in Rennes (oyster grower), Commercial Court in Saint Brieux (camping site), the Civil Court in Saint-Nazaire (shop selling sports equipment, property located on the beach) and the Commercial Court in Vannes (crêperie, hotel/restaurant).

14.4 AL JAZIAH 1

(United Arab Emirates, 24 January 2000)

See pages 66-67.

14.5 SLOPS

(Greece, 15 June 2000)

The incident

The Greek-registered waste oil reception facility *Slops* (10 815 GT) laden with some 5 000 m^3 of oily water, of which 1 000 – 2 000 m^3 was believed to be oil, suffered an explosion and caught fire at an anchorage in the port of Piraeus (Greece). An unknown but substantial quantity of oil was spilled from the *Slops*, some of which burned in the ensuing fire.

The *Slops* had no liability insurance in accordance with Article VII.1 of the 1992 Civil Liability Convention.

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

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

The *Slops*, which was registered with the Piraeus Ships' Registry in 1994, was originally designed and constructed for the carriage of oil in bulk as cargo. In 1995 it underwent a major conversion in the course of which its propeller was removed and its engine was deactivated and officially sealed. It was indicated that the purpose of the sealing of the engine and the removal of the propeller had been to convert the status of the craft from a ship to a floating oily waste receiving and processing facility. Since the conversion the *Slops* appeared to have remained permanently at anchor at its present location and had been used exclusively as a waste oil storage and processing unit. The local Port Authority confirmed that the *Slops* had been permanently at anchor since May 1995 without propulsive equipment. It was understood that the oil residues recovered from the processed *slops* were sold as low-grade fuel oil.

In July 2000 the Executive Committee considered the question of whether the *Slops* fell within the definition of 'ship' under the 1992 Civil Liability Convention and the 1992 Fund Convention. The Committee recalled that the 1992 Fund Assembly had decided that offshore craft, namely floating storage units (FSUs) and floating production, storage and offloading units (FPSOs), should be regarded as ships only when they carried oil as cargo on a voyage to or from a port or terminal outside the oil field in which they normally operated. The Committee noted that this decision had been taken on the basis of the conclusions of an Intersessional Working Group

The Slops was a floating oil reception facility which suffered a fire and explosion in the port of Piraeus, Greece, in 2000.

that had been set up by the Assembly to study this issue. The Committee also noted that although the Working Group had mainly considered the applicability of the 1992 Conventions in respect of craft in the offshore oil industry, there was no significant difference between the storage and processing of crude oil in the offshore industry and the storage and processing of waste oils derived from shipping. It was further noted that the Working Group had taken the view that in order to be regarded as a 'ship' under the 1992 Conventions, an offshore craft should *inter alia* have persistent oil on board as cargo or as bunkers.

A number of delegations expressed the view that since the *Slops* had not been engaged in the carriage of oil in bulk as cargo it could not be regarded as a 'ship' for the purpose of the 1992 Conventions. One delegation pointed out that this was supported by the fact that the Greek authorities had exempted the craft from the need to carry liability insurance in accordance with Article VII.1 of the 1992 Civil Liability Convention.

The Committee decided that, for the reasons set out above, the *Slops* should not be considered as a 'ship' for the purpose of the 1992 Civil Liability Convention and 1992 Fund Convention and that therefore these Conventions did not apply to this incident.

Legal actions

Proceedings before the Court of first instance

In February 2002 two Greek companies took legal actions in the Court of first instance in Piraeus against the registered owner of the *Slops* and the 1992 Fund claiming compensation for costs of clean-up operations and preventive measures for €1.5 million (£1 million) and €787 000 (£540 000) (plus interest), respectively. The companies alleged that they had been instructed by the owner of the *Slops* to carry out clean-up operations and to take preventive measures in response to the oil spill. The companies stated that they had requested the owner of the *Slops* to pay the above-mentioned costs but that he had failed to do so.

In their pleadings the companies stated that the *Slops* had been constructed exclusively to carry oil by sea (ie had been constructed as a tanker), that it had a nationality certificate as a vessel and that it was still registered as a tanker with the Piraeus Ships' Registry. They also maintained that even when the *Slops* operated as an oil separation unit (a slops handling unit), it floated at sea and that its only purpose was to carry oil in its hull. They mentioned that the *Slops* did not have any liability insurance under the 1992 Civil Liability Convention. The companies stated that the registered owner had no assets apart from the *Slops*, which had been destroyed by fire and did not even have scrap value. They argued that they had taken all reasonable measures against the owner of the *Slops*, namely legal action against the owner, investigation into the owner's financial situation, requesting the Court to arrest the assets belonging to the owner and that the owner should be declared bankrupt. They maintained that, since the owner was manifestly incapable of satisfying their claims, they were entitled to compensation for their costs from the 1992 Fund.

The Court rendered its judgements on the actions in December 2002.

As regards the actions against the registered owner of the *Slops*, who did not appear at the court hearing, the Court rendered a default judgement against him for the amounts claimed plus interest.

Concerning the actions against the 1992 Fund, the Court held in its judgement that the *Slops* fell within the definition of 'ship' laid down in the 1992 Civil Liability Convention and the 1992 Fund Convention. In the Court's opinion, any type of floating unit originally constructed as a sea-going vessel for the purpose of carrying oil was and remained a ship, although it might subsequently be converted into another type of floating unit, such as a floating oil waste receiving and processing facility, and notwithstanding that it might be stationary or that the engine might have been temporarily sealed or the propeller removed. The Court ordered the 1992 Fund to pay the companies €1.5 million (£1 million) and €787 000 (£540 000) respectively, ie the amounts claimed, plus legal interest from the date of service of the writ (12 February 2002) to the date of payment, and costs of €93 000 (£65 000).

Proceedings before the Court of Appeal

In February 2003 the 1992 Fund Executive Committee considered the question of whether the Fund should appeal against the judgement. During the discussion a number of delegations pointed out that the decision by the Executive Committee that the *Slops* should not be considered a 'ship' for the purposes of the 1992 Conventions was based on a policy decision by the 1992 Fund Assembly regarding the conditions under which floating storage units should be considered a 'ship' for the purpose of the Conventions, namely only when they were carrying oil in bulk, which implied that they were on a voyage. Those delegations referred to the preamble to the Conventions, which specifically referred to the transportation of oil. The Executive Committee decided that the 1992 Fund should appeal against the judgement.

In its appeal the 1992 Fund argued that the Court of first instance had erroneously considered that the *Slops* had been carrying oil at the time of the incident, regarding the mere existence on board of oil residues as 'carriage', ie transportation. It also argued that although the Court had considered that the 2 000 m^3 of oil on board had been carried in the sense that it had been intended to be transported to the oil refineries, there was no evidence that this would have been the case. The Fund drew attention to a document issued by the Ministry of Merchant Marine proving beyond doubt that the *Slops*, which constituted a floating industrial unit for the processing of oil residues and separating them from water, had operated continuously as such a unit from 2 May 1995 and had been permanently anchored since that date without any propulsion equipment. The Fund maintained that the *Slops* had not been intended to carry oil residues by sea to oil refineries and had never carried out such operations during the time it served as a floating oil residue processing

facility, such carriage having been performed by the use of barges owned by third parties, which had gone alongside the *Slops* to receive the oil residues and transported them to the refineries for further processing. The Fund further argued that the *Slops* had not had the liability insurance required under Article VII.1 of the 1992 Civil Liability Convention and that this requirement had never been imposed by the Greek authorities upon the *Slops*. It was pointed out that the Greek authorities were obliged under Article VII.10 not to permit a vessel flying the Greek flag to carry out commercial activities without such a certificate of insurance. The Fund concluded that in view of these facts, the *Slops* could not be considered to fall within the definition of 'ship' in the 1992 Conventions.

At a hearing in November 2003 the claimants argued that any type of marine craft which by construction was intended to carry oil was considered to be a ship, notwithstanding that it had subsequently undergone conversion, that temporarily its engine had been sealed and its propeller removed. They also argued that the fact that *Slops* was registered at the Piraeus Ships' Registry proved that it was a ship. The claimants maintained that the word 'cargo' was not indicative of the alleged requirement for the ship to be actually carrying oil, as the word was used to distinguish between oil carried as cargo and oil in the ship's tanks. The claimants argued that at the time of the incident the *Slops* actually had had waste residue remaining on board from its last journey as a tanker in 1995. The point was made that the existence of insurance was not a condition for the *Slops* to be considered a ship. It was further stated that the United Nations Law of the Sea Convention, the principal objective of which was the protection of the marine environment, provided a framework for the 1969 Civil Liability Convention calling for an interpretation compatible with this principal objective. It was argued by the claimants that they had become aware of the registered owner's poor financial state after the clean-up work had progressed considerably and that in any case they could have been accused of contributing to the damage to the environment had they not completed the clean-up operations. The claimants also argued that the fact that the 1992 Fund had arranged for two technical experts to travel to Greece and to report on the incident had led them to believe that the 1992 Fund was prepared to grant compensation.

The 1992 Fund drew the Court's attention to Resolution N°8 adopted in May 2003 by the Administrative Council in which the Council expressed the view that the courts of States Parties to the 1992 Conventions should take into account the decisions of the governing bodies of the 1992 Fund and the 1971 Fund relating to the interpretation and application of the Conventions.

The Court of Appeal rendered its judgement in February 2004. The Court held that the *Slops* did not meet the criteria required by the 1992 Civil Liability Convention and the 1992 Fund Convention and rejected the claims. The Court interpreted the word 'ship' as defined in Article I.1 of the 1992 Civil Liability Convention as a seaborne unit which carried oil from place A to place B.

The Court of Appeal took into consideration evidence submitted by the Fund, which clearly showed that, at the time of the incident, the *Slops* had not operated as a seagoing vessel or a floating unit for the purpose of transporting persistent oil in its tanks. The Court accepted the Fund's position that the *Slops*, which had originally been built as a tanker, had performed its last voyage as an oil-carrying vessel in 1994. The Court also noted that the *Slops* had been subsequently sold to Greek interests, who had converted it into a floating waste oil storage and processing unit and to this effect had removed its propeller and sealed its engine and that the Piraeus Central Port Authority had confirmed that the *Slops* had remained permanently at anchor since May 1995 without propulsive equipment. The Court also referred to the fact that the relevant Greek authorities had not required that the *Slops* be insured in accordance with Article VII.1 of the 1992 Civil Liability Convention and that this also indicated that the *Slops* could not be considered as a 'ship' under the 1992 Conventions.

Proceedings before the Supreme Court
The claimants appealed to the Supreme Court.

In the pleadings before the Supreme Court, the claimants argued that the *Slops*, which by its construction had all the characteristics of a vessel carrying oil, had been anchored and used as a floating receiving and separating unit of oil products transferred from other vessels. They also stated that as a result of fire, a large quantity of oil loaded in bulk as cargo in the vessel's cargo tanks had been spilled. The claimants maintained that the Court of Appeal had made an incorrect interpretation of the definition of 'ship' in the 1992 Civil Liability Convention. In the claimant's view, it was clear that the wording of the definition and its purpose was not only to prevent pollution but also to compensate victims of oil pollution and those who contribute to prevention of such pollution.

The claimants further maintained that the definition of 'ship' covered also a craft which by its construction was designed to carry oil and which at the time of the incident did not perform voyages and (for a brief or longer period of time) was stationary, operating as a receiving and separating unit for oil or oily residues and carrying oil in its cargo tanks. This was in the claimant's view particularly so when the craft had oily residues from the carriage on board and constituted a high risk of causing pollution in vital areas such as ports. The claimants also maintained that the Court of Appeal had considered an issue that was not pleaded, holding that it could not support the view that there were oil residues from the *Slops*' last voyage at the time of the incident. They also argued that the definition of 'ship' introduced a rebuttable presumption that there were residues on board, but that the Fund had not rebutted this presumption.

In their pleadings to the Supreme Court, the claimants suggested that the Court of Appeal judgement lacked proper legal foundation and contained insufficient reasoning.

The 1992 Fund submitted pleadings to the Supreme Court in May 2005 maintaining that the Court of Appeal had interpreted the definition of 'ship' correctly and that the appeal should be dismissed. In its pleadings before the Supreme Court the Fund put forward largely the same arguments as in the Court of Appeal. The Fund reiterated the point made to the Court of Appeal that it was not possible that the residues from previous voyages had remained onboard in view of the fact that the *Slops* had been converted to a floating oil recovery facility. The Fund also maintained that in any event the alleged rebuttable presumption would not apply in this case. In addition, the Fund drew the Supreme Court's attention to the above-mentioned Resolution N°8.

The 1992 Fund submitted to the Supreme Court an expert opinion by Dr Thomas Mensah.[11] In his opinion, Dr Mensah concluded that there was no basis, either in the provisions and terms of the 1992 Civil Liability Convention and the 1992 Fund Convention or in international maritime law or in the rules and principles of international law concerning the interpretation and application of treaties, for suggesting that the *Slops* could be considered as a 'ship' in relation to the incident. He expressed the view that at the time of the incident the *Slops* did not meet any of the requirements for a ship as defined in the 1992 Civil Liability Convention because it was not 'a seagoing vessel and seaborne craft… constructed or adapted for the carriage of oil in bulk as cargo' nor was it a ship that was 'actually carrying oil in bulk as cargo' or on 'any voyage following such carriage'. Consequently, in his view, pollution damage resulting from the incident could not be considered as falling within the scope of application of the 1992 Civil Liability Convention. He stated that it followed, therefore, that there could be no obligation on the part of the 1992 Fund in respect of compensation for such pollution damage.

In September 2005 the five Supreme Court judges who had heard the case concluded that the question as to whether or not the Court of Appeal had correctly interpreted and applied Article I.1 of the 1992 Civil Liability

[11] *Former Assistant Secretary-General of the International Maritime Organization, former President of the International Tribunal for the Law of the Sea in Hamburg (Germany).*

Convention should be referred to the Plenary Session of the Supreme Court. Under the Greek Code of Civil Procedure, in order for a judgement by a Division of the Supreme Court to be conclusive and binding, the judgement must be decided by a majority of more than one vote. It appeared that three judges had been in favour of the claimants and two had been in favour of the 1992 Fund. The Plenary Session will be composed of one half of the judges of the Supreme Court, who will be chosen randomly. The Plenary Session, which will be held in early 2006, will only consider the issue of the interpretation and application of Article I.1, the remaining grounds of the appeal put forward by the claimants having been rejected by the Division of the Supreme Court.

14.6 INCIDENT IN SWEDEN

(Sweden, 23 September 2000)

The incident

Between 23 September and early October 2000 persistent oil landed on the shores of Fårö and Gotska sandön, two islands to the north of Gotland in the Baltic Sea, and thereafter on several islands in the Stockholm archipelago. The Swedish Coastguard, the Swedish Rescue Service Agency and local authorities undertook clean-up operations, which resulted in the collection of some 20 m^3 of oil from the sea and from the shore.

Investigations by the Swedish authorities indicated that the oil could have been discharged within the Swedish Exclusive Economic Zone to the east of Gotland, possibly from the Maltese tanker *Alambra*, which had passed the area at the assumed time of the oil spill on a ballast voyage to Tallinn (Estonia). According to the Coastguard, analyses of oil samples from the polluted islands matched those of samples taken from the *Alambra*.

The *Alambra* was insured by the London Steam-Ship Owners' Mutual Insurance Association Ltd (London Club). The shipowner and the insurer have maintained that the oil did not originate from the *Alambra*.

Limitation of liability

The limitation amount applicable to the *Alambra* under the 1992 Civil Liability Convention is 32 684 760 SDR (£27 million).

Claims for compensation

The Coastguard incurred costs in respect of clean-up operations totalling SEK 1.1 million (£70 000). The Rescue Service Agency, together with local authorities, incurred clean-up costs totalling SEK 4.1 million (£300 000). The aggregate amount of the claims would therefore fall well below the limitation amount applicable to the *Alambra*.

The Swedish authorities informed the 1992 Fund that they intended to submit their claims for compensation to the shipowner. The authorities further indicated that if they were to be unsuccessful in obtaining compensation from the shipowner, they would consider claiming against the Fund. However, in order to be able to obtain compensation from the 1992 Fund, the authorities would have to prove that the damage resulted from an incident involving a ship as defined in the 1992 Civil Liability Convention.

The Swedish authorities made available to the 1992 Fund the results of analyses carried out by the Swedish Forensic Laboratory of samples of oil carried on board the *Alambra* and of samples of oil found on several Swedish islands. The Fund examined the results of the analyses and concurred with the conclusion of the authorities that the pollution samples matched closely those taken from the *Alambra*.

Imposition of fine on the shipowner

The Swedish Coastguard imposed a water pollution fine of SEK 439 000 (£32 000) on the owner of the *Alambra* under the 1980 Act on Measures Against Pollution from Ships.

The shipowner appealed against this decision to the Stockholm District Court. The owner requested that the District Court should annul the Coastguard's decision on the grounds that

the Swedish authorities did not have jurisdiction to impose a water fine in this case, since the alleged discharge was made by a foreign vessel and took place in the Swedish Exclusive Economic Zone (EEZ) and the fine was imposed after the *Alambra* had left that zone. The owner requested subsidiarily that the case should be dismissed since there had been no discharge of oil from the *Alambra*.

In a decision rendered in July 2002 the District Court considered the first ground invoked by the shipowner, namely that the case should be dismissed on the grounds that the Swedish authorities did not have jurisdiction to impose a water fine in respect of the discharge in question. The Court rejected the shipowner's request for dismissal on this ground.

In September 2002 the Stockholm Court of Appeal upheld the District Court's decision. The shipowner lodged an appeal against this decision to the Supreme Court.

The Supreme Court held that the Swedish Coastguard had jurisdiction to impose a water pollution fine on a foreign flag vessel causing pollution in the Swedish EEZ, and that this would be the case even if the vessel in question had not been boarded or detained in the Swedish EEZ or Swedish territorial waters. The Supreme Court further ruled that the exercise of such jurisdiction was not in conflict with Sweden's international obligations.

Legal actions against the shipowner/Club and the Fund

In September 2003 the Swedish Government took legal action in the Stockholm District Court against the shipowner and the London Club maintaining that the oil in question originated from the *Alambra* and claiming compensation of SEK 5 260 364 (£385 000) for clean-up costs. The Government also took legal action against the 1992 Fund as a protective measure to prevent its claim against the Fund becoming time-barred. The Government invoked the liability of the 1992 Fund to compensate the Government if neither the shipowner nor the London Club were to be held liable to pay compensation.

The 1992 Fund submitted its response to the Court in October 2003 requesting that the action against the Fund should be suspended until the final judgement had been rendered in respect of the action against the shipowner and his insurer. The Fund informed the Court that it shared the Swedish Government's view that the *Alambra* was the most likely source of the pollution.

The District Court decided that the action against the Fund should be suspended until the action against the shipowner/London Club had been heard.

As regards the pleadings submitted by the parties reference is made to the 2004 Annual Report, page 92.

In May 2005 the shipowner and the London Club asked the Court for postponement of the proceedings to give the parties time to negotiate an out-of court settlement. The Court granted the request for postponement.

14.7 PRESTIGE

(Spain, 13 November 2002)

The incident

On 13 November 2002 the Bahamas registered tanker *Prestige* (42 820 GT), carrying 76 972 tonnes of heavy fuel oil, began listing and leaking oil while some 30 kilometres off Cabo Finisterre (Galicia, Spain). On 19 November, whilst under tow away from the coast, the vessel broke in two and sank some 260 kilometres west of Vigo (Spain), the bow section to a depth of 3 500 metres and the stern section to a depth of 3 830 metres. The break-up and sinking released an estimated 25 000 tonnes of cargo. Over the following weeks oil continued to leak from the wreck at a declining rate. It was subsequently estimated by the Spanish Government that approximately 13 800 tonnes of cargo remained in the wreck.

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

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

For details of the clean-up operations and the impact of the spill reference is made to the Annual Report 2003, pages 105-109.

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

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

Claims Handling Offices

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

Claims for compensation

Spain

As at 31 December 2005 the Claims Handling Office in La Coruña had received 829 claims totalling €834 million (£573 million). These include a claim for €132 million (£90 million) from a group of 58 associations from Galicia, Asturias and Cantabria representing 13 600 fishermen and shellfish harvesters and seven claims from the Spanish Government totalling €653.5 million (£449 million) submitted during the period October 2003 – April 2005.

The claims by the Spanish Government relate to costs incurred in respect of at sea and onshore clean-up operations, removal of the oil from the wreck, compensation payments to fishermen and shellfish harvesters, tax relief for businesses affected by the spill, administration costs and costs relating to publicity campaigns. The claims originally included items for the cost of clean-up operations in the Atlantic National Park amounting to €11.9 million (£8.2 million) in total. These items have been withdrawn since funding for these operations had been obtained from another source.

The table below provides a breakdown of the different categories of claims received by the Claims Handling Office in La Coruña.

Category of claim (Spain)	No. of claims	Amount claimed €
Property damage	230	2 714 188
Clean-up	17	4 335 197
Mariculture	12	15 435 172
Fishing and shellfish gathering	179	136 290 816
Tourism	14	688 303
Fish processors/vendors	305	19 595 273
Miscellaneous	65	1 463 152
Spanish Government	7	653 499 285
Total	**829**	**834 021 386**

The first claim received from the Spanish Government in October 2003 for €383.7 million (£265 million) was assessed on an interim basis by the Director in December 2003 at €107 million (£74 million). As regards payments to the Spanish Government, see page 106.

Since December 2003, a number of meetings have been held with representatives of the Spanish Government and a considerable amount of further information has been provided in support of its claims. Cooperation with representatives of the Spanish Government is continuing and progress is being made on the assessment of all the claims submitted by the Government.

Of the other claims submitted, 62% have been assessed. Many of the remaining claims lack sufficient supporting documentation and further documentation has been requested from the claimants. Four hundred and thirty-nine of these other claims, totalling €24.6 million (£16.9 million), have been approved for €2.7 million (£1.9 million) and interim payments totalling €90 532 (£62 200) have been made at 15% of the assessed amounts in respect of 90 of the assessed claims; the level of payments is dealt with on page 106 below.[12] The remaining approved claims await a response from the claimants or are being reassessed following claimants' disagreements with the assessed amounts. One hundred and nine claims totalling €10.3 million (£7.1 million) have been rejected, the majority because the claimant has not demonstrated that a loss had been suffered.

At the Executive Committee's May 2004 session the Spanish delegation stated that 67 towns had requested compensation totalling €37.6 million (£25.8 million) and that the four affected autonomous regions had estimated their damage at £150 million (£103 million). As at 31 December 2005, agreements had been reached between the Spanish Government and all the regions and almost all the towns affected by the spill. There are still four towns with which agreements have not been reached.

The Spanish delegation informed the Committee in June 2005 that the Spanish Government would submit claims for the costs incurred by autonomous regions and towns that had been paid by the Government and for the costs incurred in the disposal of the oily residues. That delegation stated that it expected to submit these claims together with the claims assessed by the Consorcio de Compensación de Seguros (Consorcio) (see payments and other financial assistance by the Spanish Authorities below), a state-owned insurance organisation set up to pay claims for damage not normally covered by commercial insurance policies, such as damage due to terrorist activities or natural disasters, by the end of 2005 or early in 2006. No such claims had been submitted by 31 December 2005.

France

By 31 December 2005, 458 claims totalling €107.1 million (£73.6 million) had been received by the Claims Handling Office in Bordeaux. The table on page 102 provides a breakdown of the different types of claims.

Of the 458 claims submitted to the Claims Handling Office, 78% had been assessed by 31 December 2005. Many of the remaining claims lack sufficient supporting documentation and such documentation has been requested from the claimants. Three hundred and seven claims had been approved for €5.9 million (£4.1 million) and interim payments totalling €904 779 (£620 000) had been made at 15% of the assessed amounts in respect of 145 of the approved claims. The remaining approved claims await a response from the claimants or are being reexamined following claimants' disagreement with the assessed amount. Forty claims had been rejected, the majority because the claimants had not demonstrated that a loss had been suffered.

One hundred and eighteen claims had been submitted by oyster farmers totalling €1.2 million (£825 000) for losses allegedly suffered as a result of market resistance due to the pollution. The experts engaged by the London Club and the 1992 Fund had examined these claims and 108 of them, totalling €1 055 704

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

Category of claim (France)	No. of claims	Amount claimed €
Property damage	9	87 772
Clean-up	56	10 572 270
Mariculture	121	1 754 274
Shellfish gathering	3	116 810
Fishing boats	58	1 594 131
Tourism	188	24 326 451
Fish processors/vendors	9	301 446
Miscellaneous	13	899 561
French Government	1	67 499 154
Total	**458**	**107 151 869**

(£725 000), had been assessed at €325 275 (£225 000). Payments totalling €18 779 (£12 900) had been made in respect of 28 of these claims at 15% of the assessed amounts. The experts appointed by the London Club and 1992 Fund are examining the remaining 10 claims.

In September 2005 representatives of the 1992 Fund and the experts appointed by the 1992 Fund met the Association Interprofessionnelle pour le Développement de la Pêche Artisanale (ASSIDEPA), representing the fishery claimants, and the Centre de Gestion et de Comptabilité Agricole (CGCA), representing the oyster farmer claimants. The problems encountered in assessing the outstanding claims were discussed between these representatives and those of the 1992 Fund. A representative of each association was nominated to hold further discussions with the Fund's experts in order to complete the outstanding assessments as soon as possible. A meeting took place in December 2005 between the representative of the CGCA and the Fund's experts where additional information was provided.

The Claims Handling Office had received 188 tourism-related claims totalling €24.4 million (£16.8 million). One hundred and forty-nine of these claims had been assessed at a total of €8 million (£5.5 million). One hundred and twenty-seven claims had been approved for €6.5 million (£4.5 million) and interim payments totalling €710 000 (£490 000) had been made at 15% of the assessed amounts in respect of 73 claims.

In May 2004, the French Government submitted a claim for €67.5 million (£46 million) in relation to the costs incurred for clean-up and preventive measures. The 1992 Fund and the London Club have provisionally assessed the claim at €31.2 million (£21 million). A request for further information was sent to the French Government in August 2005 in order to enable the experts appointed by the 1992 Fund and the London Club to complete the assessment.

A further 55 claims, totalling €10.5 million (£7.2 million), had been submitted by local authorities for costs of clean-up operations. Twenty-two of these claims had been assessed at €3.4 million (£2.3 million). Eighteen claims had been approved for €983 607 (£675 000) and interim payments totalling €120 889 (£83 000) had been made in respect of ten claims at 15% of the assessed amounts.

Portugal

In December 2003 the Portuguese Government submitted a claim for €3.3 million (£2.3 million) in respect of clean up and preventive measures. A meeting was held in

Coastlines of Spain, France and the United Kingdom were affected to varying degrees by the Prestige incident

July 2004 between representatives of the 1992 Fund and representatives of the Government departments involved. In February 2005, the Portuguese Government provided the 1992 Fund with additional documentation in support of its claim. The additional documentation included a supplementary claim for €1 million (£690 000), also in respect of clean-up and preventive measures. The claims have been provisionally assessed at €1.86 million (£1.3 million). Further information has been requested from the Portuguese Government.

Time bar

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

In September 2005 individual letters about the time-bar issue were sent to all those who had submitted claims to the Claims Handling Offices in Spain and France and with whom settlements had not been reached by that time. Advertisements were placed in the national and local press in Spain and France drawing attention to the time-bar issue. In respect of the *Prestige* incident it may be uncertain as to which day the three year time-bar period starts to run for the individual claimant (ie the day when the respective claimant's loss occurred). In view of the uncertainty as to the starting point of the time-bar period, it was suggested in the letters and in the advertisements that the claimants should assume that the time-bar period commenced on the day of the incident (ie 13 November 2002) in order to avoid any risk of the claims becoming time-barred. It was also made clear that even if claimants had taken legal action, this would not prevent further discussions concerning their claims for the purpose of reaching an out-of-court settlement.

At the meeting in September 2005 with the representatives of ASSIDEPA and CGCA referred to above, the 1992 Fund's representative took the opportunity to draw their attention to the impending third anniversary of the incident and to the steps that had to be taken by those claimants whose claims had not been settled by 13 November 2005 to prevent their claims becoming time-barred.

Payments and other financial assistance by the Spanish Authorities

The Spanish Government and regional authorities made payments of €40 (£27) per day to all those directly affected by the fishing bans. These included shellfish harvesters, inshore fishermen and associated onshore workers with a high dependence on the closed fisheries, such as fish vendors, fishing net repairers and employees of fishing co-operatives, fish markets and ice factories. Some of these payments have been included in subrogated claims by the Spanish authorities pursuant to Article 9.3 of the 1992 Fund Convention.

The Spanish Government has also provided aid to other individuals and businesses affected by the oil spill in the form of loans, tax relief and waivers of social security payments.

In June 2003 and July 2004 the Spanish Government adopted legislation in the form of two Royal Decrees (Real Decreto-Ley) making available a total amount of €249.5 million (£171 million) to compensate in full certain categories of claimants who suffered pollution damage. To receive compensation the claimants had to renounce the right to claim compensation in any other way in relation to the *Prestige* incident and had to transfer their rights of compensation to the Spanish Government. The Decrees provided that the assessment of claims would be made following the criteria used to apply the 1992 Civil Liability and Fund Conventions.

At the February 2004 session of the Executive Committee the Spanish delegation mentioned that the Spanish Government had received almost 29 000 claims for compensation from victims of the *Prestige* incident who wished to use the payment mechanism set out in the first Royal Decree. It was also mentioned that of those claims, some 22 800 related to groups of workers in the fisheries sector, which would be assessed by means of a system using either a formula ("estimación objetiva") or a scale. It was stated that some 5 000 claims of other groups would be subject to individual assessments.

In May 2005 the Spanish Government informed the 1992 Fund that agreements had been reached with some 19 500 workers in the fisheries sector and that payments totalling some €88 million (£60 million) had been made to them under the Royal Decrees. It is expected that the claims lodged in the legal proceedings before the Criminal Court in Corcubión (Spain) on behalf of these workers will be withdrawn following their settlement with the Spanish Government under the Royal Decrees (see court actions in Spain below).

The 1992 Fund was informed by the Spanish Government in 2004 that claims which under the Decrees would be subject to individual assessment would be assessed by the Consorcio (see claims for compensation in Spain above). As at 31 December 2005, 971 claims had been received by the Consorcio relating to some 3 700 persons.

Since the Royal Decrees provided that the assessment of claims would be made following the criteria used to apply the 1992 Civil Liability and Fund Conventions, meetings have been held between representatives of the Consorcio and of the 1992 Fund to discuss the criteria. As at 31 December 2005 the Consorcio had provided details of the claims submitted as set out on the table on page 105. The total amount claimed is €229.9 million (£158 million).

The Consorcio has requested the assistance of the experts appointed by the London Club and the 1992 Fund in the assessment of 241 of these claims for a total of €47.8 million (£32.9 million). Many of the claims that have

Category of claim to be assessed by the Consorcio	Number of claims
Mariculture (property damage and loss of income)	103
Fishing (property damage and loss of income)	179
Fish and shellfish vendors (loss of income)	310
Fish and shellfish processors (loss of income)	79
Employees fisheries sector (loss of income)	109
Tourism (loss of income)	86
Land (damage and loss of income during clean-up operations)	72
Property damage	14
Miscellaneous	19
Total	**971**

been referred to these experts are not supported by sufficient evidence to demonstrate the loss claimed. The Consorcio has requested further evidence and information from the claimants. The experts of the Consorcio and the experts appointed by the London Club and the 1992 Fund have made joint assessments of 184 claims. One hundred and sixty-four of these claims, for €11.6 million (£8 million), have been approved by the 1992 Fund and the London Club for €1.94 million (£1.3 million). One hundred and thirty-four claims included in the 241 claims with which the Consorcio has requested assistance have also been submitted directly to the Claims Office. Details of 88 of the joint assessments have been provided, with the approval of the claimants, to the Consorcio. Further assessments are being carried out.

Payments and other financial assistance by the French Authorities

The French Government has introduced a scheme to provide payments in excess of the amounts paid by the 1992 Fund to claimants in the fishery and shellfish harvesting sectors who made a request to that effect by 13 December 2004. Payments were made in January 2005 to 175 claimants for a total amount of €1.15 million (£790 000).

The French Government has informed the Director that these payments were advances on the payments to be made by the 1992 Fund and would be repaid by the claimants and that the Government will not pursue subrogated claims against the 1992 Fund in respect of the payments made.

Shipowner's liability

The limitation amount applicable to the *Prestige* under the 1992 Civil Liability Convention is approximately 18.9 million SDR or €22 777 986 (£15.7 million). On 28 May 2003 the shipowner deposited this amount with the Criminal Court in Corcubión (Spain) for the purpose of constituting the limitation fund required under the 1992 Civil Liability Convention.

Maximum amount available under the 1992 Fund Convention

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

Applying the principles laid down in the *Nakhodka* case, the Executive Committee decided in February 2003 that the conversion in the *Prestige* case should be made on the basis of

Helicopters are sometimes used to move equipment to inaccessible shorelines.

the value of that currency vis-à-vis the SDR on the date of the adoption of the Committee's Record of Decisions of that session, ie 7 February 2003. As a result 135 million SDR corresponds to €171 520 703 (£117.9 million).

Level of payments

Consideration by the Executive Committee in May 2003

Unlike in previous cases, the insurer of the *Prestige* (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 the light of the figures provided by the delegations of the three affected States and an assessment by the Director, which indicated that the total amount of the damage could be as high as €1 000 million (£687 million). The Committee further decided that the 1992 Fund should, in view of the particular circumstances of the *Prestige* case, make payments to claimants, although the London Club would not pay compensation directly to them.

Payments to the Spanish Government as decided by the 1992 Fund Assembly in October 2003

At the Executive Committee's October 2003 session the Spanish delegation proposed that the 1992 Fund should, subject to certain safeguards, make advance payments on account to the Spanish Government and the Governments of other affected States which wished to receive such advance payments. In view of the importance of the issue and the ramifications involved, the Committee referred the matter to the Assembly.

Taking into account the exceptional circumstances of the *Prestige* incident, the Assembly decided as follows:

- Subject to a general assessment by the Director of the total of the admissible damage in Spain arising from the *Prestige* incident, the Director was authorised to make a payment of the balance between 15% of the assessed amount of the claim submitted on 2 October 2003 and 15% of that claim as submitted (15% of €383.7 million = €57 555 000), subject also to the Spanish Government providing a guarantee from a financial institution, not from the Spanish State, which would have the financial standing laid down in the 1992 Fund's Internal Investment Guidelines so as to protect the 1992 Fund against an overpayment situation.
- Such a guarantee should cover the difference between 15% of the assessed amount of the claim submitted on 2 October 2003 and 15% of that claim as submitted (15% of €383.7 million = €57 555 000). The terms and conditions of the guarantee should be to the satisfaction of the Director.
- If the payment amount were to be reduced by the Committee, the difference should be repaid by the Spanish Government.
- Should any other State having suffered losses relating to the *Prestige* incident seek the same solution for payments on the same terms, such a request should be submitted to the Executive Committee.

With the assistance of a number of experts, the Director made an interim assessment of the Spanish Government's claim. On the basis of the documentation provided, he arrived at a preliminary assessment of €107 million (£73.5 million) and on that basis the 1992 Fund made a payment of €16 050 000 (£11.1 million), corresponding to 15% of the interim assessment.

In addition, the Director, with the assistance of a number of experts, also carried out a general assessment of the total of the admissible damage in Spain, and concluded that the admissible damage would be at least €303 million (£208 million).

On that basis, and as authorised by the Assembly, the Director made an additional payment of €41 505 000 (£28.5 million), corresponding to the difference between 15% of €383.7 million or €57 555 000 and 15% of the preliminarily assessed amount of the Government's claim (€16 050 000). That payment was made against the provision by the Spanish Government of a bank guarantee covering the above-mentioned difference (ie €41 505 000) from the Instituto de Credito Oficial, a Spanish bank with high standing in the financial market, and an undertaking by the Spanish Government to repay any amount of the payment decided by the Executive Committee or the Assembly.

The payment to the Spanish State totalling €57 555 000 (£39 914 906) was made on 17 December 2003.

Consideration by the Executive Committee in October 2004

At the October 2004 session of the Executive Committee the delegations of Spain and France reported that they had held consultation meetings on the handling of the *Prestige* case in order to explore the possibilities of improving the settlement of claims. Those delegations expressed the view that the compensation level of 15% had left the victims in an unsatisfactory situation.

The Spanish delegation stated that, as a result of the arrangement put in place to compensate victims, the Spanish administration had been directly affected by the low level of payments since it had incurred very considerable expenditure to combat the effects of the incident and had provided compensation to the victims.

The French delegation stated that in France the announcement of the 15% level, which was the lowest in the history of the 1971 and 1992 Funds, had triggered reactions of incomprehension and hostility towards the international system. In the French delegation's

view, despite the losses observed, the small number of claims submitted could be explained by the fact that, for many businesses, a 15% compensation level did not cover the extra cost of submitting a claim for compensation and the time spent answering subsequent queries from the experts.

It was stated that both Governments considered that increasing the compensation level should be a priority for the 1992 Fund for the coming year, particularly with the approaching three-year time bar on claims. In these Governments' view, in order to enable the victims who had not yet done so to submit a claim in time, it was necessary to send them a clear message so that they could judge, by reference to the financial loss they considered they had suffered and to what might be recovered, whether or not to take legal action before November 2005. Both delegations stated that the claimants should be made aware as soon as possible of the possibility of being compensated, for it would be particularly damaging for the image of the Fund if any significant increases in the level of payments were to be decided after the expiry of the time-bar period, leaving a number of victims without any possibility of taking appropriate action.

The Spanish and the French delegations urged the Fund to take all necessary steps for the expeditious handling of the claims received (which represented a significant proportion of each State's estimated losses) in order to be able to determine realistically the possibility of increasing the level of compensation payments at the next session of the Committee and that to this end, they had renewed their undertaking to provide the Fund's experts with such explanations as they may need.

The Director stated that on the basis of the figures presented by the Governments of the three countries affected by the incident, the potential total claims exposure was some €1 038 million (£713 million) and that it was therefore, in his view, not possible to increase the level of payments beyond 15% at this stage. He pointed out that, in accordance with the position taken by the IOPC Funds' governing bodies, the level of payments would have to be determined in the light of the potential exposure of the 1992 Fund and not on the basis of the Fund's assessment of the claims.

A number of delegations stated that whilst they agreed that the current level of payment of 15%, the lowest in the Funds' history, was most unfortunate for claimants, the 1992 Fund had no option but to maintain it at this level for the time being, but that it should be kept under review at every available opportunity.

In view of the remaining uncertainties as to the level of admissible claims, the Executive Committee decided to maintain the current level of payments at 15% of the loss or damage suffered by the respective claimants.

Consideration in June 2005

In June 2005 the Executive Committee considered an approach put forward by the Director after discussions with the delegations of France, Spain and Portugal, which was based on an increase in the level of payments, an apportionment between the three States of the amount available for compensation and certain undertakings and guarantees to be provided by these States against overpayment.

The Committee instructed the Director to make a detailed proposal on the basis of the proposed approach, after consultations with the three delegations concerned and taking into account the points raised during the discussion, covering the legal and technical aspects, to be considered by the Committee at its October 2005 session.

Detailed proposal by the Director

In October 2005 the Executive Committee considered a proposal by the Director, which addressed the following five issues:

- Estimate of the likely final amount of the admissible claims in respect of the damage in each of the three States concerned.
- A revision of the level of payments on the basis of that estimate.
- A provisional apportionment between the three States of the maximum amount

payable by the 1992 Fund on the basis of the total amount of the admissible claims as established by the assessments carried out to date.
- The provision of undertakings and guarantees by the Governments of France, Portugal and Spain.
- A final apportionment between the three States of the maximum amount payable by the 1992 Fund on the basis of the final settlement of all claims arising from the incident, whether as a result of agreements with the claimants or as a result of final judgements by competent court.

The experts engaged by the 1992 Fund and the London Club had made a provisional assessment of the total amount of the admissible claims in each of the three States concerned as at 1 September 2005 as set out in the table below, recognising that the assessed amounts would increase as the examination of the claims progressed and additional information was provided and analysed.

Based on the total amount of the admissible claims thus assessed, the Director proposed the following provisional apportionment between the three States of the maximum amount payable by the 1992 Fund of approximately €148.7 million (£102 million), (ie 135 million SDR minus the limitation amount of €22.8 million (£15.7 million) applicable to the *Prestige*).

Since the total amount of admissible claims for damage in Spain would be much higher than the amounts of admissible claims for damage in France and Portugal, any change in the total amount of admissible claims in respect of each of the three States as a result of the continued assessment or court decisions would have only a minor effect on the final apportionment between the threes States.

The Director proposed that in order to minimise the risk of the 1992 Fund having to call upon the Portuguese or Spanish Governments to return a part of the payment made on the basis of a provisional apportionment, the 1992 Fund should base the provisional apportionment on 90% of the amount available for compensation from the Fund, ie €133.8 million (£91.9 million). The balance, €14.9 million (£10.2 million), would be distributed between the three States once the final apportionment had been established.

The Director therefore proposed a provisional apportionment be made between the three States as set out on the table on page 110.

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

State	Amounts claimed	Assessed amounts	Provisional apportionment
Spain	€834 000 000	€241 000 000	85.90%
France	€97 000 000	€38 000 000	13.55%
Portugal	€4 300 000	€1 530 000	0.55%
Total	**€935 300 000**	**€280 530 000**	**100.00%**

State	Assessed amounts	Provisional Apportionment (%)	Provisional Apportionment (amounts) (rounded figures)
Spain	€241 000 000	85.90%	€115 000 000
France	€38 000 000	0.55%	€18 100 000
Portugal	€1 530 000	13.55%	€740 000
Total	**€280 530 000**	**100.00%**	**€133 840 000**

indicating that the total amount of the claims could be as high as €1 050 million (£720 million), it was likely that the level of payments would have to be maintained at 15% for several years unless a new approach were taken. The Director therefore proposed that, instead of the usual practice of determining the level of payments on the basis the total amount of claims already presented and possible future claims, it should be determined on an estimate of the final amount of admissible claims against the 1992 Fund, established either as a result of agreements with claimants or by final judgements of a competent court.

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

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

The Director therefore considered that the level of payments could be increased to 30%.[13]

The Director expressed the view, however, that the 1992 Fund should be provided with appropriate undertakings and guarantees from the three States concerned to ensure that the 1992 Fund was protected against an overpayment situation and that the principle of equal treatment of victims was respected. In his view guarantees should be given, not by the State concerned, but by financial institutions having the financial standing laid down in the 1992 Fund's Internal Investment Guidelines. On the basis of discussions with representatives of the three States the proposal envisaged that the Spanish and Portuguese Governments would provide bank guarantees. The French Government would instead undertake to accept a reduction in the compensation to which it would be entitled, up to the amount of its admissible claim, to protect the 1992 Fund against overpayment to claimants having suffered damage in France, if the Executive Committee were to decide to reduce the level of payments.

As regards the final apportionment between the three States of the maximum amount payable by the 1992 Fund, the Director proposed that once all claims arising from the incident had been settled, whether as a result of agreements with the claimants or as a result of final judgements by a competent court, he would inform the Executive Committee of the total amount of admissible claims in respect of the three States concerned. The Committee would then decide, taking into account the distribution of the shipowner's limitation fund deposited with the Criminal Court in Corcubión (Spain) as determined by the courts, on any reapportionment between the three States concerned of the total amount payable by the 1992 Fund. The Committee would then make the necessary adjustments so that the correct proportion of the total amount of compensation available under the 1992 Civil Liability

[13] *€171.5 million / €573 million = 29.9%*

Convention and the 1992 Fund Convention was received in respect of each of the three States, using the retained amount or the balance thereof. The 1992 Fund would have the possibility to request repayments from the Spanish and Portuguese Governments and to invoke the bank guarantees provided by these Governments, if required.

Consideration by the Executive Committee in October 2005 of the Director's proposal

The French, Portuguese and Spanish delegations expressed their appreciation for the efforts made by the Director in searching for an innovative solution that would be acceptable to the three affected States and at the same time be consistent with the Fund's policy. Those delegations pointed out that the proposal would benefit the victims of the pollution, carried no financial risks for the 1992 Fund, but would enhance the Fund's credibility with claimants by showing that it was prepared to demonstrate flexibility and adapt to new circumstances and challenges.

A number of delegations supported the proposal in recognition of the magnitude of the *Prestige* incident and the exceptional circumstances surrounding it and expressed the view that it was in the best interests of the victims and that they were satisfied with the guarantees protecting the 1992 Fund against overpayment. Several delegations stressed that the solution proposed should not be seen as a precedent to be followed in future incidents. Some delegations stated that they would not be able to accept this kind of solution if it was seen by the Executive Committee as a precedent. It was also stressed that it was important that the Director reported regularly to the Executive Committee on the claims handling process to enable it to monitor the final assessments of claims and satisfy itself that the Fund was adhering to its policies and practices. However, some delegations made the point that the Committee's decision would inevitably be a precedent.

Some delegations expressed concerns that not all States would be able to provide the necessary financial guarantees required and that this could result in not all States and victims being treated equally.

The Executive Committee agreed to the Director's proposal as to the increase in the level of payments, the distribution of the amount payable by the 1992 Fund and the provisions of undertakings and guarantees by the Governments of France, Portugal and Spain and decided as follows:

1. The level of the 1992 Fund's payments should be increased from 15% to 30% of the loss or damage actually suffered by the individual claimant as assessed by the experts appointed by the 1992 Fund and the London Club.

2. The amount of €133 840 000, representing the total amount payable by the 1992 Fund, minus a reserve of 10%, should be apportioned between the three States concerned as set out in the table below.

3. The Director was authorised to pay the Spanish Government €57 365 000 (£40 million), subject to the Spanish Government undertaking to compensate all

State	Apportionment %	Apportionment (amounts) (rounded figures)	Bank guarantees[14]
Spain	85.90%	€115 000 000	€78 850 000
France	13.55%	€18 100 000	-
Portugal	0.55%	€740 000	€510 500
Total	**100.00%**	**133 840 000**	**€79 360 500**

[14] *The amounts of the bank guarantees correspond to the differences between the apportioned amounts and 15% of the assessed amounts, ie Spain €115 000 000 - €36 150 000 (€241 million at 15%) = €78 850 000; Portugal €740 000 - €29 500 (€1 530 000 at 15%) = €510 500.*

claimants who had suffered pollution damage in Spain for amounts no less than 30% of the loss or damage, repay to the 1992 Fund any amount due by it to the Fund if the Executive Committee were to decide to reduce the proportion payable by the Fund for damage in Spain and provide the 1992 Fund with a bank guarantee to cover the difference between the amount paid to it by the Fund and 15% of the assessed amount.

4. The Director was authorised to pay the Portuguese Government €740 000 (£508 000), subject to the Portuguese Government undertaking to repay to the 1992 Fund any amount due by it to the Fund if the Executive Committee were to decide to reduce the proportion payable by the Fund for damage in Portugal, to indemnify the Fund for any amounts that it had paid to other claimants for pollution damage in Portugal and to provide the 1992 Fund with a bank guarantee to cover the difference between the amount paid to it by the Fund and 15% of the assessed amount.

5. The Director was authorised to pay each claimant in France, except the French Government, 30% of the loss or damage as assessed by the 1992 Fund or as decided by a final judgement rendered by a competent court, subject to the French Government undertaking to accept a reduction in the compensation to which it would be entitled, up to the amount of its admissible claim, to protect the 1992 Fund against overpayment to claimants having suffered damage in France, if the Executive Committee were to decide to reduce the level of payments.

6. The bank guarantees to be provided by the Portuguese and Spanish Governments should be given by a financial institution which would have the financial standing laid down in the 1992 Fund's Internal Investment Guidelines and fulfil the other criteria and generally be to the satisfaction of the Director.

Developments after the October 2005 session

The Portuguese Government informed the 1992 Fund in December 2005 that it would not provide any bank guarantee and would as a consequence only request payment of 15% of the assessed amount of its claim.

As at 31 December 2005 the Spanish and French Governments were preparing the required documentation. Once received by the 1992 Fund, the Director will implement the Executive Committee's decision.

Claim for the costs of removing the oil from the wreck

In October 2005 the Executive Committee considered the question of whether a claim by the Spanish Government for the costs of the operation to remove oil from the wreck of the *Prestige* was admissible in principle in accordance with the 1992 Fund's criteria.

As mentioned above, the *Prestige* 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. A remotely operated submersible vehicle was used to temporarily seal and plug cracks to minimise the escape of oil, as a result of which the estimated rate of loss was reported to be less than 20 litres per day. On the basis of surveys carried out in 2003 the quantity of oil remaining in the wreck was estimated to be 13 100 tonnes in the bow section and 700 tonnes in the stern section, with an error of less than 10%.

The Spanish Government established a Scientific Commission to study the various possibilities for dealing with the wreck. This Commission concluded that there were two possible solutions, namely the extraction of the oil remaining in the wreck by pumping and the confinement of the wreck in a structure of concrete or steel.

In December 2003, following trials in the Mediterranean and subsequently at the wreck site, the Spanish Government decided that the cargo remaining in the wreck should be removed using aluminium shuttle containers filled by

Fishing vessels proved very effective in the collection of oil at sea following the Prestige incident.

gravity through holes cut in the tanks. A contract to remove the remaining oil from the *Prestige* was signed between the Spanish Government and the Spanish oil company Repsol YPF. The removal of the oil, which commenced in May 2004, was completed in September 2004. Some 13 000 tonnes of oil cargo was removed from the forepart of the wreck which was treated with biological agents aimed at accelerating the degradation of the oil. No attempt was made to remove the 700 tonnes of oil in the aft section which was not treated with biological agents.

The Spanish Government's claim for €109.2 million (£75 million) related to the cost of the operation to remove the oil from the wreck of the *Prestige*, including the costs of preparatory work and the feasibility trials conducted in the Mediterranean and at the wreck site.

The Director had requested the International Tanker Owners Pollution Federation Limited (ITOPF) to provide the 1992 Fund with an opinion on the technical reasonableness of the operation, ie on the basis of the particular circumstances of the incident, the facts available at the time of the decision to undertake the operation and whether the costs incurred and the relationship between those costs and the benefits derived or expected were reasonable. The Spanish Government had requested an opinion from an international team of experts[15] on the ecological and social necessity to deal with the wreck of the *Prestige*.[16]

In his presentation to the Executive Committee the Director recognised that there were probably many factors that had been taken into account by the Spanish authorities in reaching their decision to remove the oil from the wreck of the *Prestige* and that the question of whether or not a claim for the cost of the operation was admissible in accordance with the 1992 Conventions had probably not been a paramount concern at the time the decision was taken. He also acknowledged the enormous technological and innovative achievement of Repsol YPF and its partners in successfully recovering 13 000 tonnes of oil from a depth of more than 3 500 metres.

15 *Dr Michel Girin, Director of the Centre de documentation de recherche et d'expérimentations sur les pollutions accidentelles des eaux (CEDRE), (France), Professor Lucien Laubier, Director of the Institut océanographique de Paris (IOP), (France) and Dr Ezio Amato, Scientific Director at the Istituto Centrale per la Ricerca Scientifica e Tecnologica Applicata al Mare (ICRAM), (Italy).*

16 *The opinions are available at the IOPC Funds' website (document 92FUND/EXC.30/9/2, Annexes I and II).*

However, the Director expressed the view that it was important that the 1992 Fund considered the Spanish Government's claim purely against the criteria of admissibility laid down by the 1992 Fund Assembly. In this regard he referred to the definition of 'preventive measures' in Article I.7 of the 1992 Civil Liability Convention, namely 'any reasonable measures taken by any person after an incident has occurred to prevent or minimize pollution damage' (cf Article 1.2 of the 1992 Fund Convention). He also mentioned that the criteria for the admissibility of claims for the costs of preventive measures had been developed in 1994 by the 7th intersessional Working Group of the 1971 Fund, approved by the 1971 Fund Assembly in 1994 and endorsed by the 1992 Fund Assembly in 1996 (1992 Fund Resolution N°3). As regards preventive measures, these criteria were reflected in the Claims Manual as follows.[17]

> Claims for the costs of measures to prevent or minimise pollution damage are assessed on the basis of objective criteria. The fact that a government or other public body decides to take certain measures does not in itself mean that the measures are reasonable for the purpose of compensation under the Conventions. The technical reasonableness is assessed on the basis of the facts available at the time of the decision to take the measures. However, those in charge of the operations should continually reappraise their decisions in the light of developments and technical advice.

The key question submitted to the Executive Committee was whether the operation to remove the oil from the wreck was reasonable from an objective, technical point of view.

The Director drew attention to the findings of a study of potentially polluting wrecks in the marine environment commissioned by the sponsors of the 2005 International Oil Spill Conference in the United States.[18] It was stated in the report that the decision to salvage oil from a sunken vessel had to be based upon a sound risk assessment and a well-developed cost-benefit analysis because any salvage effort was usually expensive, time-consuming, and risky and that a cost-benefit analysis must assess the potential environmental and biological impacts of any pollution from the wreck as well as the socioeconomic implications of any spill and remediation costs. The report suggested that, based on past experience, two considerations should be at the forefront of any decision to carry out remedial activities, whether they be to off-load or salvage the remaining oil cargo from any sunken vessel or removal of the wreck, namely whether the potential environmental impact and risks posed by the oil contained within the sunken vessel outweighed the cost of the mitigation action and whether the potential combination of environmental impact/risk, economic damage and social unrest that could be caused by repetitive spills of oil contained in the sunken vessel outweighed the cost of the mitigation action.

The criteria set out in the report to the Oil Spill Conference, although much more detailed, are for the most part consistent with the Fund's admissibility criteria relating to preventive measures. However, the Fund's criteria do not include the issue of social unrest caused by repetitive spills, which may have been a consideration by the Spanish Government in deciding to proceed with the oil removal operation.

As regards the *Prestige* case both ITOPF and the team of experts appointed by the Spanish Government had considered that the most likely outcome of leaving the oil in the wreck would have been a slow escape of oil from the wreck over many years resulting in the widespread scattering of tar balls over a vast area of the Atlantic Ocean which, depending on winds and currents, could have impacted coastlines, particularly the Spanish coast of Galicia and Cantabria. Whilst the experts appointed by the Spanish Government had not ruled out the possibility of a major release of oil due to seismic activity, ITOPF had drawn attention to the evidence from wrecks sunk in deep water for

17 *This text is set out in the 2002 edition of the Manual (pages 18-19). The same text appears in the April 2005 edition (page 21), approved by the 1992 Fund Assembly at its 9th session, held in October 2004.*

18 *Potentially Polluting Wrecks in Marine Waters – Proceedings of the International Oil Spill Conference, May 15 –19 2005, Miami, Florida, USA; report prepared by J Michel et al.*

more than 30 years, which indicated that a catastrophic release was unlikely.

Both groups of experts had agreed that it was impossible to quantify the scale of likely pollution damage in monetary terms had the oil not been removed from the wreck, but that the most likely oil release scenario would not have constituted a serious threat to marine resources. However, whereas ITOPF had concluded that tar balls that stranded on the coast would have been cleared by local authorities along with other routine debris, the experts appointed by the Spanish Government had pointed out that the costs would have been considerable, and that as a result of the time bar provisions in the 1992 Conventions, those costs would not be recoverable in the longer term.

The Director expressed the view that, although costs of clean up of pollution occurring after six years from the date of the incident would not be recoverable under the 1992 Conventions, the total costs of such operations would be very small in comparison with the costs of the operation to remove the oil from the wreck.

One of the main differences between the opinions of the two groups of experts was that the experts appointed by the Spanish Government had taken into account the possible social impact of leaving the oil in the wreck, whereas ITOPF had focused solely on the 1992 Fund's admissibility criteria, which did not take social, non-economic effects into account. In its consideration of the admissibility issue the Director had for the same reason also not taken such effects into account.

The Director shared the views of ITOPF and the experts appointed by the Spanish Government that a catastrophic release of the oil was unlikely and that any escape of oil from the wreck would likely have been in the form of a slow leak of small quantities of oil. He also shared their view that although there was a perceptible risk of oil released from the wreck reaching seafood cultivation areas in Galicia and tourist beaches of the Atlantic islands, a substantially greater release of oil would be required to cause significant damage to these resources.

In the light of the considerations set out above, the Director was of the view that the oil remaining in the sunken sections of the *Prestige* did not pose a significant pollution threat and that the costs of the operation to remove the oil were disproportionate to any potential economic and environmental consequences of leaving the oil in the wreck. For this reason, he considered that the Spanish Government's claim did not fulfil the criteria for admissibility laid down by the IOPC Funds' governing bodies, namely that the operation should be reasonable from an objective, technical point of view.

The Spanish delegation stated that the claim for €109 million included potentially admissible items besides the cost of the oil removal operation itself, such as the costs of a scientific advisory committee, monitoring the oil leaking from the wreck and the oil removal feasibility studies and that these claims items could be assessed separately by the Fund's experts. The Spanish delegation made the point that ITOPF had concluded in its report that there was a perceptible risk of oil escaping from the wreck reaching Galicia. The Spanish delegation stated that this could have had a serious effect on fishing resources. The point was also made that the islands off the coast of Spain, which were very sensitive and received a very high degree of environmental protection, could have been affected. The Spanish delegation stated that the decision to remove the oil from the wreck had been taken after the deliberations and advice of a scientific advisory committee composed of more than 40 internationally recognised experts. The Spanish delegation also stated that the costs of the oil removal operation were not, in its view, disproportionate bearing in mind the amount of oil that was removed and in comparison with costs of similar operations that had been accepted by the IOPC Funds in relation to past incidents.

The French delegation stated that it did not agree that the risk posed by the oil remaining in wreck was low and pointed out that if the Spanish Government had not removed the oil there would have been pollution over decades.

The Portuguese delegation considered that the oil removal operation was reasonable and that the claim was admissible.

Several delegations expressed sympathy with the Spanish Government, but stressed nevertheless that the Fund's admissibility criteria in respect of preventive measures had to be fulfilled. Those delegations endorsed the view expressed by the Director that the cost of the oil removal operation was disproportionate to the potential economic and environmental consequences and that the claim did not therefore fulfil the Fund's admissibility criteria. The point was made that it was the right of individual States to decide what preventive measures it should take, but that if the decision was made on the basis of potential social, non-economic effects, these could not be taken into account when assessing the admissibility of claims for the costs of such measures.

Other delegations expressed the view that, since it was not possible to predict with any certainty what the outcome of leaving the oil in the wreck would have been, it would be difficult for any government to resist pressure from the public to ensure that the risk was eliminated. The point was made that the fact that many governments would probably have acted in the same way, suggested that the measures taken were reasonable. The point was also made that three States would have potentially been at risk from further pollution if no action had been taken and that, as a matter of principle, States were obliged to protect the environment in accordance with various United Nations Conventions and that the Fund needed to review its admissibility criteria so as to be in step with such obligations. Those delegations were of the view that the claim was admissible in principle.

Other delegations suggested that whilst the total costs associated with the oil removal operation seemed to be disproportionate to the likely environmental and economic consequences of leaving the oil in the wreck, it could be that some of the costs of the surveys and studies may have been reasonable up to the point when the actual cost of the oil removal operation was known. Those delegations favoured assessments of the different elements of the claim to see if some were admissible.

The Executive Committee decided to defer any decision on the admissibility of the claim, but instructed the Director to collaborate with the Spanish Government to examine all the elements of the claim with a view to identifying possible admissible items and to assess the admissible quantum of those items for consideration by the Committee at a future session.

In November and December 2005 meetings were held between representatives of the Spanish Government and the Fund Secretariat to discuss the various issues involved. The Director is assessing the various elements of the claims in the light of these discussions.

Investigations into the cause of the incident

The Bahamas Maritime Authority

An investigation into the cause of the incident was carried out by the Bahamas Maritime Authority (ie the authority of flag State). The report of the investigation was published in November 2004 and a summary of the findings was presented at the March 2005 session of the Executive Committee.

The Bahamas Maritime Authority concluded, *inter alia*, that it was likely that the initial failure had been in the side structure of 3 starboard wing tank, followed by a failure in 2 starboard aft wing tank, probably in the bulkhead between the two tanks.

According to the report, there was a lack of firm evidence to assist in finally deciding the cause of the initial failure of the hull, but that the probable cause of the initial breach of the hull had been a large wave revealing a weakness in 3 starboard wing tank. It was stated that the weakness was probably one of, or more likely a combination of two or more of the following factors: ship-to-ship transfer damage sustained in St. Petersburg; fatigue; stresses due to large quantities of new metal being attached to old

steelwork, and/or corrosion and that there may possibly have been some damage to one of the cargo tanks adjoining 3 starboard wing tank.

The report stated that videos taken during the towage of the ship showed that waves had continually pounded into the tank for prolonged periods and that roll and pitch motions had caused water to flow rapidly in and out of the tank resulting in unusually high fluctuating pressure loading and that tank structures were not designed to withstand such forces.

The Classification Society rules required that vessels be subjected to an extensive survey every five years (Special Surveys). The report of the Bahamas Maritime Authority stated that the vessel's 5th Special Survey had been carried out in China in 2001, 18 months before the incident, apparently to the highest current industry standards.

According to the report the Annual Survey, carried out in Dubai in 2002, six months before the incident, had been checked by the Bahamas Maritime Authority. The report mentioned that an internal inspection of 2 starboard aft wing tank should have been carried out but that this had not been done. However the report concluded that since the structure of 2 starboard aft wing tank appeared to have survived all of the additional stresses that the incident had imposed upon it except for the bulkhead between the two tanks, it was probable that an inspection in Dubai would not have revealed any significant problems.

Also according to the report, the Port State Control, SIRE (Ship Inspection Report Program) and other inspections carried out before the incident had given no cause for concern about the general condition of the ship and no reason to believe that special internal inspection of any tank was necessary.

As regards actions taken after the damage to the hull had occurred, the Bahamas Maritime Authority had concluded, *inter alia*, that:

- It was certain that the ship could have survived being taken to a place of refuge and that once at such a position, a proper assessment could have been made of the condition of the ship and the best way to ensure that any risk of further pollution was minimised.
- The provision of a place of refuge could well have resulted in a much more favourable outcome and prevented the subsequent large-scale pollution of a long stretch of coastline.
- Looking at the charge of causing pollution, it was difficult to blame the Master for the initial damage to his ship. The Master would have had no way of anticipating or acting to prevent the event. He had acted in a proper seamanlike manner during the severe weather prior to the incident, slowing to an appropriate speed.

The Spanish Ministry of Public Works

The Spanish Ministry of Public Works (Ministerio de Fomento) carried out an investigation into the cause of the incident through the Permanent Commission on the Investigation of Maritime Casualties that has the task of determining the technical causes of maritime accidents. A brief summary of the report's conclusion on the investigation was presented to the Executive Committee at its June 2005 session.

The report stated, *inter alia*, that the Commission had calculated the shear forces and bending moments[19] experienced by the vessel on three occasions, namely: just prior to the damage occurring; after the starboard ballast tanks had flooded; and after the port side ballast tanks had been filled to correct the list brought about by the flooding of the starboard tanks. It was also noted that the report stated, *inter alia,* that:

- The maximum bending moment just prior to the damage occurring was within the calm water maximum allowed by the vessel's classification society, the American Bureau of Shipping (ABS).

[19] *Internal forces that are induced in the structure depending on the way the vessel is loaded.*

A beach-cleaning machine collecting tar balls from a sand beach.

- After the starboard tanks had flooded the maximum bending moment exceeded the calm water maximum by 28.4%.
- Once the port side tanks had been filled the maximum bending moment exceeded the calm water maximum by 70.4%.
- The maximum shear force on all three occasions was within that admissible according to ABS.

The Commission had reached the conclusion that the cause of the casualty was a structural failure in the area of No. 2 starboard aft and No. 3 starboard wing tanks as a result of a local loss of strength due to deformation, detachment or fracture of the longitudinal shipside frames, which had caused a loss of rigidity in the shell plates and their consequent deformation, which could have caused a large breach and even a detachment of those plates. The Commission had based its conclusions on the following factors:

- Video film taken by the submarine Nautile showed that the shell plating of the *Prestige* had become detached on the starboard side at the weld line six metres below the main deck.
- Part of the structure of the affected tanks had been replaced at Guangzhou (China)[20] because the thickness was found to be below the minimum permissible under classification society rules.
- The area affected by the damage, and which had been partially repaired, had over the years been subject to thermal and mechanical fatigue; thermal because fuel oil is a cargo that is transported at high temperatures (up to 90°c) and mechanical because of the age of the ship.
- Replacement of longitudinal frames had been carried out with profiles produced and welded manually since prefabricated frames were not available on the local market. Although it is accepted in the report that this technique is valid, the mechanical characteristics of the sections made this way are said to be of inferior quality.
- The thickness of replacement plates was in some cases less than the originals and,

[20] *The vessel underwent repairs, and Special Survey, at Guangzhou in May 2001.*

although within the reduction permitted by ABS, could provoke an excessive stress concentration in the areas of joint.
- The ship had been modified to allow cargo tanks to be used for clean ballast, including those tanks that were affected by damage. This, added to the fact that the adjacent cargo tanks carried cargo at temperatures up to 90°c, meant that those tanks were subject to a higher degree of corrosion.
- The bad weather prevailing in the area.
- The deficient state of maintenance of the ship.
- The repeated berthing of ships alongside *Prestige* during the four-month stay at St Petersburg,[21] requiring the use of special fenders, could have weakened the area of her side.

The Spanish Ministry of Public Works had provided the 1992 Fund with a copy of the conclusions in an addendum to the report referred to above. In the addendum it had been concluded that:

- The report produced by the Bahamas Maritime Authority in London had been prepared on the basis of reports drawn up by others in order to reach their conclusions, principally those of the ship's classification society, the American Bureau of Shipping (ABS), and that of the auditors of the International Association of Classification Societies (IACS). IACS passed over numerous errors, omissions and negligence easily observable in the reports of the inspections carried out by ABS. As a result, the report prepared by the Authority could not be considered to be independent or impartial.
- According to the Bahamas Maritime Authority's own report, it did not carry out its annual inspection in 2001.
- A new study had been carried out of the sea conditions which the *Prestige* had encountered during its crossing from the North Sea until the MAYDAY. The conditions recorded on 13 November 2002 could not be described as extreme or unusual for the area and that time of the year. There was no evidence of abnormal waves. Approximately 45 000 ships passed annually through the Finisterre Traffic Separation Scheme. None of those that did this on 13 November 2002 had reported extreme conditions.
- The thermographic images taken by one of the rescue helicopters have been studied. The results of the study, the existing photographs and videos as well as other accounts made it impossible to maintain, as Bahamas Maritime Authority had claimed, that the initial spill had occurred exclusively through the Butterworth covers. It was highly probable, as the ship's captain had believed on 13 November 2002, that the dividing bulkhead between 3 centre tank and 3 ballast tank had failed. 2 centre tank and 4 starboard tank were probably seriously damaged. This would explain the enormous amount of fuel that had already spilled into the sea on the morning of 14 November, as the study mentioned in this paragraph had concluded.
- The analysis of the available evidence, including documentation recovered on board, allowed the *Prestige* to have been described as "substandard".

In summary and final conclusion, in the opinion of the Spanish Maritime Administration, it was stated that the chain of errors, omissions and negligence in the inspections of the *Prestige* were factors determining the critical condition in which it had found itself and, consequently, the final outcome. It was stated that deliberately ignoring this circumstance, as the Bahamas Maritime Authority had appeared to do, created the impression that the captain or the salvage team had complete freedom at the time to choose between various options as to the action to be taken while the Spanish coast was seriously threatened and the Spanish authorities were taking measures to protect it without having accurate information available about the ship's real condition.

[21] *The ship acted as a storage ship for 131 days, from 22 June to 30 October 2002, while moored at St Petersburg (Russian Federation) prior to the final voyage. During that time barges delivered oil to the ship and tankers came alongside to load. The ship would have been at risk of contact damage by vessels coming alongside to discharge or load cargo.*

The Criminal Court in Corcubión
The Criminal Court in Corcubión in Spain is carrying out an investigation into the cause of the incident in the context of criminal proceedings. The Court is investigating the role of the master of the *Prestige*, of a civil servant who was involved in the decision not to allow the ship into a port of refuge in Spain and a manager of the ship's management company.

The French Ministry of Transport and the Sea
The French Ministry of Transport and the Sea (Secrétariat D'État aux Transports et à La Mer) carried out a preliminary investigation into the cause of the incident through the General Inspectorate of Maritime Affairs – Bureau of investigations – accidents/sea (BEAmer). A brief summary of the report on the investigation was also presented to the Executive Committee at its June 2005 session.

The report stated that since the investigators had only had access to the documents provided by the classification society and the flag state, they could not base their conclusions on tangible evidence.

The report concluded that, on the basis of the information available, the loss of the *Prestige* appeared to have been due to a series of successive factors, namely:

- Factors linked to conditions of the market for maritime transport of heavy fuels, leading to carriage of a substantial part of such heavily polluting products in old and pre-MARPOL ships.
- Factors concerning the design of these ships at their date of construction and problems with aging resultant on the ships being brought into compliance with the provisions of MARPOL.
- Possible factors causing the initial damage: impact by a floating object (thought unlikely); violent wave impact; failure of the hull or; a combination of these factors.
- Successive repairs, which could indicate structural weakness in the bulkhead between wing tanks 2 and 3 which, in pre-MARPOL vessels, are more susceptible to corrosion, weakening of the internal structure of wing tanks 2 and 3 due to use of the vessel for transhipment operations at St Petersburg and insufficient repairs, notably while at Guangzhou in 2001.
- Enlargement of the initial damage due to: forces on the structure produced by the sea before the damage was reported, additional forces on the damaged structure generated by filling the port ballast tanks, towage and maintenance of the ship in a delicate condition after the initial damage, linked to difficulties in reception (configuration of the coast, limited means of towage).

The report considered that the action of the master in flooding the port side ballast tanks had aggravated the situation[22] and made towage over a long distance perilous but that the master probably had not had available the relevant information for making his decision because the stability calculator had been out of action since the initial sudden list had occurred.[23]

Concerning the actions of the shipowner the report mentioned that liaison with the maritime authorities of the coastal state seemed to have been through a ships' agent designated by the shipowner and who had made contact with the authorities three hours after the alarm had been raised and this information had been given to the shipowner by the master and that the designated person had immediately started to arrange a contract with a salvage company.

The report stated that the actions of the salvor remained to be studied and that the information requested from the salvors had not been supplied to BEAmer.

With regard to the decisions taken by the Spanish authorities to keep the ship from the coast, the report mentioned that the investigators had not received from the Spanish maritime authorities the information necessary to understand completely the decision process. The report pointed out that although the initial pollution was

[22] *The maximum bending moment at time of departure from the loading post was 43% of the maximum permissible in calm water. This increased to 125% after the flooding of the starboard side tanks caused by the damage to the shell plating and then to 163% of the calm water limit when the port side ballast tanks were filled.*

[23] *As a result of the loss of electrical power that occurred when the ship listed to 30°.*

relatively minor and the ship had held together for several days, the information provided by the shipowner and the classification society guaranteeing the strength of the ship did not seem to have been sufficient to satisfy the various coastal authorities, and in the eyes of the maritime authorities of the coastal state, the possible places of refuge in the Galician rías were not suitable to contain an eventual massive pollution.

The report stated that since metallurgical analysis on a minimum of significant samples would not be carried out and made public, it did not seem possible to develop the conclusions further.

Examining magistrate in Brest
An examining magistrate in Brest is carrying out a criminal investigation into the cause of the incident.

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

Court actions

Spain
Some 2 020 claims have been lodged in the legal proceedings before the Criminal Court in Corcubión (Spain). Two hundred and thirteen of these claims involve persons who have submitted claims directly to the London Club and 1992 Fund through the Claims Office in La Coruña. No details of the losses suffered have been provided to the Court. It is expected that claimants who have settled with the Spanish Government under the Royal Decrees will withdraw their claims from the court proceedings.

The Spanish Government has taken legal action in the Criminal Court in Corcubión on its own behalf and on behalf of regional and local authorities as well as on behalf of 976 other claimants. A number of other claimants have also taken legal action in that Court. The Court is examining whether these claimants are entitled to join the proceedings.

France
At the request of a number of communes, the Administrative Court in Bordeaux appointed experts to establish the extent of the pollution at various locations in the affected area.

In July 2003 five oyster farmers commenced summary proceedings against the shipowner, the London Club and the 1992 Fund before the Commercial Court in Marennes d'Oleron requesting provisional payments of amounts totalling approximately €400 000 (£275 000). In July 2004, the Court rendered a summary judgement in which it rejected the request on the grounds that the claimants had not provided sufficient evidence to justify summary proceedings. In its judgement, the Court invited the claimants to submit their claims to the Claims Handling Office in Bordeaux. Three of the oyster farmers have presented their claims to the Office.

The French Government and 216 other claimants have taken legal action against the shipowner, the London Club and the 1992 Fund in 15 courts in France, requesting compensation totalling €110 million (£76 million), including €67.7 million (£46 million) claimed by the Government.

Portugal
The Portuguese Government has taken legal action in the Maritime Court in Lisbon against the shipowner, the London Club and the 1992 Fund claiming compensation for €4.3 million (£3 million).

United States
The Spanish State has taken legal action against the American Bureau of Shipping (ABS), the classification society of the *Prestige*, 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 (£408 million) and estimated later to exceed US$1 000 million (£582 million). The Spanish State has maintained *inter alia* that ABS had been negligent in the inspection of the *Prestige* and had failed to detect corrosion, permanent deformation, defective materials and

fatigue in the vessel and had been negligent in granting classification.

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

As part of the discovery procedure in the New York litigation, ABS requested production by the Spanish State of all documents and material forming part of the file of the Criminal Court in Corcubión investigating the *Prestige* incident, as well as all the documents and material reviewed by the Spanish Permanent Commission for the Investigation of Maritime Accidents. The Spanish State responded, asserting that the requested documents and material were protected from disclosure by privilege under Spanish procedural law. ABS opposed the assertion of privilege. In a decision rendered in August 2005, after having taken into account the various competing interests involved, the judge supervising discovery denied the Spanish State's assertion of privilege and ordered the production of the documents. The judge then denied Spain's motion for reconsideration. The Spanish State may appeal against this decision.

In September 2005, the Spanish State submitted a petition to the Criminal Court in Corcubión maintaining that these documents and material were privileged under Spanish procedural law and could not be provided to ABS and requested the Criminal Court to take a decision on this issue. In a decision rendered in September 2005, the Court decided that these documents and material were privileged to the parties who had joined in the criminal proceedings and should therefore not be made available to ABS. It follows from the decision that ABS could get access to the documents and material by joining the proceedings as an interested party.

In August 2005 ABS submitted a request to the New York Court for a summary judgement dismissing the Spanish State's action. The Court has not yet taken a decision on the request.

Regional authorities of the Basque Region (Spain) took legal action against ABS in the Federal Court of first instance in Houston, Texas, claiming compensation for clean-up costs and payments made to individuals and businesses for US$50 million (£29.1 million). The authorities argued *inter alia* that ABS had been in breach of its duty to inspect the *Prestige* adequately and had classified the vessel as seaworthy when it was not. This legal action was transferred to the New York Court dealing with the claim by the Spanish State referred to above. Since the Basque Region has been compensated by the Spanish Government it is likely that this action will be withdrawn in the near future. However, as of 31 December 2005 the action had not been formally withdrawn.

ABS had previously sought permission from the New York Court to file an indemnity claim against the Spanish State, seeking recovery of any amount for which it may be held liable to the Basque Region. If the Basque Region's action against ABS is withdrawn, the counter claims will also probably be withdrawn.

Recourse action by the 1992 Fund against ABS

In October 2004 the Executive Committee considered whether the 1992 Fund should take recourse action against the American Bureau of Shipping (ABS).

As for the Executive Committee considerations reference is made to the 2004 Annual Report, pages 102-104.

The Executive Committee decided that the 1992 Fund should not take recourse action against ABS in the United States. It further

decided to defer any decision on recourse action against ABS in Spain until further details surrounding the cause of the *Prestige* incident came to light. The Director was instructed to follow the 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 Committee stated that this decision was without prejudice to the Fund's position vis-à-vis legal actions against other parties.

14.8 INCIDENT IN BAHRAIN

(Kingdom of Bahrain, March 2003)

The incident

On 15 March 2003 the Air Wing of the Bahrain Ministry of Interior reported an oil slick 20 miles off the north coast of Bahrain. On 17 March the oil started stranding on shorelines on the north coast of the Kingdom of Bahrain and over a period of three days further oil stranding occurred on the east and west coasts of Muharraq Island. Some oil entered the port of Mina Sulman, and a fishing harbour was impacted causing damage to fishing vessels and gear.

Oil approached the seawater intakes of two power stations/desalination units and a further desalination unit. Some 18 kilometres of shoreline were polluted with an estimated 100 tonnes of oil. Some oil reportedly affected the coastline of the Kingdom of Saudi Arabia in the vicinity of the causeway linking Bahrain with the mainland.

Clean-up operations

The Bahrain Coast Guard assisted the Public Commission for the Protection of Marine Resources, Environment and Wildlife in clean-up operations at sea between 15 and 24 March 2003. On 22 March the Presidency of Meteorology and Environment of Saudi Arabia provided the Bahrain authorities with some 2 000 metres of oil containment boom and a skimming vessel. This equipment was returned to Saudi Arabia on 28 March.

The Ministry of Electricity and Water deployed booms in the vicinity of the intakes of the Sitra and Hidd power/desalination plants and the Addur desalination plant. The Ministry also organised shoreline clean-up operations to prevent the oil contaminating the cooling systems and desalination feedstock of these facilities.

The Ministry of Municipalities and Agriculture and the Bahrain Petroleum Company (BAPCO) undertook extensive shoreline clean-up operations and disposed of the oily waste. These operations were commenced on 19 March and were terminated on 18 April 2003.

Investigations into the source of the pollution

Chemical analyses

The Bahrain authorities collected pollution samples and sent them to laboratories in Bahrain and Saudi Arabia for analysis. The Marine Emergency Aid Centre (MEMAC) in Bahrain also obtained pollution samples and sent them to the 1992 Fund for analysis. The analyses in Bahrain were inconclusive, although it was reported that the sulphur content of the oil closely matched Iraq (Basrah) crude. The laboratory in Saudi Arabia concluded that the oil was Iraq crude.

The samples submitted to the 1992 Fund were sent to a laboratory in Scotland specialising in the analysis and fingerprinting of petroleum oil. That laboratory concluded, in the absence of any reference oils for comparison, based on its experience, that the oil could have originated from Saudi Arabia, Kuwait or southern Iraq.

In February 2004 MEMAC obtained a sample of Iraq (Basrah) crude oil from an export tank of the Al-Baker oil terminal in Iraq and submitted the sample to the 1992 Fund. This sample was subsequently analysed by the laboratory in Scotland, which found that the 'fingerprints' of the pollution samples gave a very good match

with the sample of Iraq (Basrah) crude. The laboratory concluded that the oil residues collected from the north coast of Bahrain were consistent with what would be expected for Basrah crude which had been exposed to natural weathering processes for a period of several days.

Satellite imagery
MEMAC obtained satellite imagery (visible waveband) from the United States National Oceanic and Atmospheric Agency. The imagery for 14 March 2003 showed the oil to the north of Bahrain covering an area of some 50 square miles indicating that the oil had been spilled some days prior to 14 March. The area was covered in cloud between 6 and 13 March 2003 and so no satellite imagery was available for that period. Although 5 March was cloud free, there was no evidence of any oil on the water at that time. MEMAC concluded that the oil must have been released after 5 March and a few days before 14 March 2003.

Slick trajectory hind casting
MEMAC ran its oil slick trajectory model in reverse from the reported position of the oil on 15 March from an overflying aircraft using local wind and current data. This gave a good correlation with the observed position of the oil from the satellite image on 15 March. Further hind casting of the slick trajectory indicated that the oil was most probably spilled on or around 8 March 2003 in the vicinity of the anchorage of the Al Ju'aymah oil terminal off the coast of Saudi Arabia.

Despite intensive enquiries, MEMAC was unable to identify any particular vessel as the source of the oil. The operators of the Al Ju'aymah oil terminal stated that no tanker had visited the terminal with a part load of Iraq oil under the United Nations 'Oil for Food' programme during the relevant period.

MEMAC conducted further trajectory analyses for potential fixed sources of oil to the north of Bahrain to establish whether oil spills emanating from any of these sources could have impacted the coast of Bahrain under the prevailing wind and current conditions. Potential sources were identified as the Al Ju'aymah and Ras Tannurah oil terminals in Saudi Arabia, the Saudi-Bahrain oil pipeline, the Abu Saafah offshore oil field and pipeline, the Zuluf, Houyt and Marjan offshore oil fields and the Al-Baker oil terminal in Iraq. The trajectory analyses indicated that oil spilled from the two oil terminals in Saudi Arabia or the Zuluf, Houyt and Marjan offshore oil fields would have only impacted that country's coastline and that oil from the Saudi-Bahrain pipeline would have only impacted the west coast of Bahrain. The predicted trajectories showed that oil spilled from the Abu Saafah oil field would not have reached Bahrain, although oil released from the pipeline could have impacted its coast. However, the satellite image obtained for 14 March 2003 showed the oil to the north of the pipeline, and since the winds were constantly blowing from the north during the period of concern, MEMAC concluded that the pipeline could not have been the source. Trajectory analyses also indicated that oil released from the Al-Baker terminal would have stranded on the coast of Kuwait.

Applicability of the 1992 Fund Convention

At its October 2002 session the Executive Committee confirmed its interpretation of the 1992 Fund Convention that the Convention applied to spills of persistent oil even if the ship from which the oil came could not be identified, provided that it was shown to the satisfaction of the 1992 Fund, or in the case of dispute, to the satisfaction of a competent court, that the oil originated from a ship as defined in the 1992 Fund Convention.

In May 2004 the Executive Committee considered whether claims for pollution damage arising from the incident in Bahrain were covered by the 1992 Conventions.

On the basis of the chemical analyses undertaken by the laboratory in Scotland of the pollution samples collected from the coast of Bahrain and the reference sample obtained from the export terminal at Al-Baker, Iraq, the Director took the view that it was highly likely that the polluting oil was Iraq (Basrah) crude oil. Furthermore, on the

Removal of oil from shorelines is often hampered by the presence of debris.

basis of the satellite imagery and the trajectory analyses carried out by MEMAC, the Director considered it unlikely that the source of the pollution was an offshore oil field, sub sea pipeline or oil terminal. Although the Al-Baker oil terminal was a potential source of pollution by Iraq (Basrah) crude oil, the trajectory analyses indicated that oil released from the terminal would have impacted the coast of Kuwait. The distance between the Al-Baker terminal and the north coast of Bahrain was some 500 kilometres, and if the prevailing winds had prevented the oil going ashore on the coast of Kuwait, trajectory analyses indicated that the oil would have taken some 13 days to reach the north coast of Bahrain. However, the chemical analyses of the pollution samples indicated that the oil was relatively un-weathered, such that it could not have been exposed to the elements for such a long period of time.

In light of the above evidence the Director was satisfied that the source of the pollution was a ship carrying oil in bulk as cargo engaged either in the transport of Iraq crude oil under the United Nations 'Oil for Food' programme or illegal oil-smuggling operations. The Director therefore considered that claims for pollution damage arising from this incident were covered by the 1992 Conventions, and that in the absence of the identity of a specific vessel as the source, the 1992 Fund was liable to pay compensation.

When the issue was considered by the Executive Committee a large number of delegations expressed the view that the evidence pointed overwhelmingly to the source of the pollution having been a 'ship' as defined in the 1992 Conventions and expressed their appreciation for the systematic way in which the authorities in Bahrain had carried out their investigations.

The Executive Committee decided that the claims arising from the incident were covered by the 1992 Fund Convention and that the claims by the Bahrain authorities were admissible in principle.

Claims for compensation

Claims totalling US$1.1 million (£640 000) were submitted by five government agencies,

A makeshift jetty constructed to allow a vessel access to offload equipment and remove collected oil.

MEMAC and BAPCO for the costs of preventive measures and clean-up operations. These claims were settled for a total of US$689 000 (£383 000).

Claims totalling US$1.6 million (£930 000) were submitted by the Directorate of Marine Resources on behalf of 434 fishermen who had suffered property damage and economic losses. These claims were settled at US$542 000 (£282 000).

All claims arising from this incident were settled within eight months of having been submitted to the 1992 Fund.

14.9 N°7 KWANG MIN

(Republic of Korea, 24 November 2005)

The incident

The Korean tanker *N°7 Kwang Min* (161 GT) collided with the fishing boat *Chil Yang N°1* (139 GT) in port of Busan, Republic of Korea. A total of 64 tonnes of heavy fuel oil escaped into the sea from a damaged cargo tank. The remaining oil onboard the *N°7 Kwang Min* was transferred to a number of other vessels. The *N°7 Kwang Min* was subsequently taken to a shipyard in Busan.

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

Clean-up operations

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

The remaining spilled oil, as well as considerable quantities of oiled debris, stranded on the shorelines to the west and south of the island of Yeongdo. Approximately 5 kilometres of shoreline composed of rocks, boulders and pebbles were polluted to varying degrees. Four private clean-up contractors were appointed by the shipowner to undertake shoreline clean-up operations using predominantly manual methods to remove bulk oil, followed by high pressure water washing to remove oil stains. Some oiled sections of shoreline were fronted by cliffs, which made access difficult both from the land and from the sea. A landing craft was eventually able to land an earth excavator on the island in order to construct a temporary road and causeway to facilitate the removal of collected oil by barge. Shoreline clean-up operations were not expected to have been completed until early 2006.

Impact of the spill

Drifting oil at sea contaminated the hulls of a number of vessels, including those engaged in the clean-up operations.

Some of the affected shorelines support village-fishing grounds. Claims for loss of earnings as result of business interruption can be expected, including losses incurred by some 80 women divers engaged in the gathering of sub-tidal species of plants and animals.

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

Six seafood restaurants reported loss of earnings due to business interruption and alleged mortalities of fish kept in tanks containing seawater fed from offshore subsurface intakes.

Claims for compensation

As at 31 December 2005 only one claim, for Won 4 455 000 (£2 500) for the cost of cleaning and reinstating clean-up equipment, had been received by the 1992 Fund. Further claims for

A diver inspects the seawater intake of a raw seafood restaurant to check for oil contamination.

costs of clean-up operations, property damage, consequential economic loss and pure economic loss are expected.

However, the total cost of the incident is not expected to exceed Won 3 600 million (£2 million).

The limitation amount applicable to the *N°7 Kwang Min* under the 1992 Civil Liability Convention is 4.51 million SDR (£3.8 million).

In December 2005 the Korean Ministry of Maritime Affairs and Fisheries informed the 1992 Fund that the *N°7 Kwang Min* was not insured for pollution liabilities. The Ministry also stated that the shipowner had very few assets and that the value of the *N°7 Kwang Min*, which was built in 1977, was such that the proceeds from its sale would be insufficient to cover the claims for compensation for pollution damage arising form the incident.

In view of the lack of liability insurance in respect of the vessel and the limited assets of the shipowner it is unlikely that he will be financially capable of meeting his obligations under the 1992 Civil Liability Convention to pay compensation in full to persons suffering pollution damage arising out of the incident. Although the total amount of the admissible claims will fall below the limitation amount applicable to the *N°7 Kwang Min* the 1992 Fund will therefore be liable in accordance with Article 4.1 (b) of the 1992 Fund Convention to pay compensation.

ANNEXES

ANNEX I

STRUCTURE OF THE IOPC FUNDS

1992 FUND GOVERNING BODIES

ASSEMBLY

Composed of all Member States

9th extraordinary session

Chairman:	Mr Jerry Rysanek (Canada)
Vice-Chairmen:	Mr José Aguilar Salazar (Mexico)
	Professor Seiichi Ochiai (Japan)

10th ordinary session

Chairman:	Mr Jerry Rysanek (Canada)
Vice-Chairmen:	Professor Seiichi Ochiai (Japan)
	Mr Edward K. Tawiah (Ghana)

EXECUTIVE COMMITTEE

28th - 30th sessions

Chairman:	Mrs Lolan Margaretha Eriksson (Finland)
Vice-Chairman:	Mr Volker Schöfisch (Germany) (Acting Chairman for the 28th and 30th sessions)

Algeria
Australia
China (Hong Kong Special Administrative Region)
Finland
Germany
India
Italy
Japan
Netherlands
Portugal
Republic of Korea
Russian Federation
United Arab Emirates
United Kingdom
Uruguay

31st session

Chairman:	Captain Carlos Ormaechea (Uruguay)
Vice-Chairman:	Rear-Admiral Giancarlo Olimbo (Italy)

Algeria
Cameroon
Canada
China (Hong Kong Special Administrative Region)
Finland
France
Italy
Portugal
Republic of Korea
Russian Federation
Singapore
Spain
Turkey
United Kingdom
Uruguay

1971 FUND ADMINISTRATIVE COUNCIL

Composed of all States having at any time been Members of the 1971 Fund

16th session

Chairman:	Captain Raja Malik (Malaysia)
Vice-Chairman:	Mr John Wren (United Kingdom)

17th session

Chairman:	Captain Raja Malik (Malaysia)

SUPPLEMENTARY FUND ASSEMBLY

1st ordinary session and 1st extraordinary session

Chairman:	Captain Esteban Pacha (Spain)
First Vice-Chairman:	Mr Nobuhiro Tsuyuki (Japan)
Second Vice-Chairman:	Mrs Birgit Sølling Olsen (Denmark)

JOINT SECRETARIAT

Officers

Director:	Mr Måns Jacobsson
Deputy Director/Technical Adviser:	Mr Joe Nichols
Legal Counsel:	Mr Masamichi Hasebe
Personal Assistant to the Director:	Mrs Jill Martinez
Assistant to the Deputy Director/Technical Adviser and to the Legal Counsel:	Ms Astrid Richardson
Head, Claims Department:	Mr José Maura
Claims Manager:	Captain Patrick Joseph
Claims Manager:	Ms Chiara Della Mea
Claims Administrator:	Ms Chrystelle Clément
Claims Administrator:	Ms Ana Cuesta
Claims Assistant:	Ms Kirsty Manahan
Head, Finance and Administration Department:	Mr Ranjit Pillai
IT Manager:	Mr Robert Owen
Finance Manager:	Mrs Latha Srinivasan
Human Resources Manager:	Mrs Rachel Dockerill
Office Manager:	Mr Modesto Zotti
Finance Assistant:	Mrs Elisabeth Galobardes
Finance Assistant:	Mr Joseph Abbey
Office Assistant:	Mr Laurent Tresse
Receptionist/Travel Assistant:	Ms Alexandra Hardman
IT Assistant:	vacant

Head, External Relations & Conference Department:	Ms Catherine Grey
Information Officer:	Ms Stephanie Mulot
Translation Administrator (Spanish):	Mrs Natalia Ormrod
Translation Administrator (French):	Ms Françoise Ploux
Translation Administrator (French):	Ms Aurélie Chollat
Conference Administrator:	Mrs Victoria Turner
Publications Administrator:	Mr Jonathan North

AUDITORS OF THE 1992 FUND, THE 1971 FUND AND THE SUPPLEMENTARY FUND

Sir John Bourn
Comptroller and Auditor General
United Kingdom

JOINT AUDIT BODY

Mr Charles Coppolani (France) (Chairman)
Professor Eugenio Conte (Italy) (until October 2005)
Mr Maurice Jaques (Canada)
Mr Heikki Muttilainen (Finland) (until October 2005)
Mr Mendim Me Nko'o (Cameroon) (from October 2005)
Dr Reinhard Renger (Germany)
Mr Wayne Stuart (Australia) (from October 2005)
Professor Hisashi Tanikawa (Japan)
Mr Nigel Macdonald (Outside expert)

JOINT INVESTMENT ADVISORY BODY

Mr David Jude
Mr Brian Turner
Mr Simon Whitney-Long

ANNEX II

NOTE ON 1971 AND 1992 FUNDS' PUBLISHED FINANCIAL STATEMENTS FOR 2004

The financial statements reproduced in Annexes V to VIII and XI to XIV are an extract of information contained in the audited financial statements of the International Oil Pollution Compensation Funds 1971 and 1992 for the year ended 31 December 2004, approved by the Administrative Council of the 1971 Fund at its 15th session and by the Assembly of the 1992 Fund at its 9th session.

EXTERNAL AUDITOR'S STATEMENT

The extracts of the financial statements set out in Annexes V to VIII and XI to XIV are consistent with the audited financial statements of the International Oil Pollution Compensation Funds 1971 and 1992 for the year ended 31 December 2004.

G Miller
Director
for the Comptroller and Auditor General
National Audit Office, United Kingdom
31 January 2006

ANNEX III

REPORT OF THE EXTERNAL AUDITOR ON THE FINANCIAL STATEMENTS OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1971 FOR THE FINANCIAL PERIOD 1 JANUARY TO 31 DECEMBER 2004

CONTENTS

EXECUTIVE SUMMARY

This section of the report summarises:

- The overall results of the audit – an unqualified audit opinion
- A summary of the key financial matters arising from the audit
- Issues identified from our review of the Fund's key governance arrangements.

Introduction

1 In October 2002, the Administrative Council of the International Oil Pollution Compensation Fund 1971 (1971 Fund) appointed the Comptroller and Auditor General of the United Kingdom as External Auditor for the four years from 2003 to 2006. This External Auditor's report for 2004 provides Member States with an overview of the audit approach and findings; and information to provide assurance on the integrity of the financial statements, internal controls and general financial management of the Fund. The report includes commentary on corporate governance arrangements for the Funds.

Overall results of the Audit

2 We have audited the accounts of the 1971 Fund in accordance with Regulation 13 of the Financial Regulations and in conformity with the International Standards on Auditing (ISAs) as issued by the International Auditing and Assurance Standards Board (IAASB).

3 **Our audit revealed no weaknesses or errors which we considered material to the accuracy, completeness and validity of the financial statements as a whole and the External Auditor has placed an unqualified opinion on the financial statements for the period ended 31 December 2004.**

4 In accordance with the Financial Regulations, this report also includes specific observations and recommendations directed towards cost effective improvements to the Fund's financial management and control.

Main findings and recommendations

Financial matters

5 The detailed findings of this report provide a commentary on the Fund's financial position, together with a number of observations relating to financial matters arising from our audit. For the financial year ended 31 December 2004, the Fund reported an overall deficit of £55,688,678. During the period there was a significant reduction in claims expenditure when compared with 2003, and a reimbursement of £69,575,937 was made to contributors in respect of the *Aegean Sea*, *Sea Empress*, *Nakhodka*, *Sea Prince*, *Yeo Myung* and *Yuil N° 1* incidents.

6 As part of our audit we reviewed the internal controls operated by the Fund Secretariat and found these satisfactory in support of our overall audit findings.

7 We were asked as part of the audit to provide observations to management on revisions to the Financial Regulations. We note in particular the following key amendments to the Regulations, which we regard as providing a benefit to the regulatory framework:

- The removal of single signatory cheque payments – reducing the risk of fraudulent payments;
- Clarification of the basis of accounting (primarily United Nations System Accounting Standards);
- Confirmation of the auditing requirements which relate to the Fund;
- A clear framework for the operation of the joint Secretariat arrangements of the IOPC Funds and the interrelationships between them; and
- Enhancement of the timeliness of the publication of financial statements by bringing from 31 May to 30 April the date by which financial statements are to be submitted for audit each year.

8 In addition to our work in support of the audit opinion, we undertook some specific audit work to review the arrangements for accurate reporting of dual currency investments and for authorisation of staff travel. We are pleased to confirm that, based on our sample testing, the Fund continues to have adequate procedures for reporting investments.

Management issues

9 Notwithstanding the small size of the Secretariat, the IOPC Funds have been exemplary in setting a best practice governance agenda. The Funds have recognised that the existence of a sound corporate governance framework is essential to provide Member States with assurance over the use of resources and compliance with the regulatory frameworks. Our report focuses on the adequacy of key governance arrangements established by the Funds to ensure they continue to provide the best level of assurance. This is of particular importance as the Council will consider the role of the Audit Body in October 2005 and a new Director will take up responsibilities from November 2006.

10 **On internal controls** – we have been encouraged by the development of a document clearly establishing the delegated powers for authorising and committing IOPC Funds, which we encouraged the Secretariat to initiate. We have recommended further improvement to the internal control framework by the Director signing a statement on internal control, which would become part of the financial statements. This would have the benefit of clearly recording the responsibilities of the Director and enhancing his accountability for them. The requirements of the statement would not go beyond those requirements already existing within the current regulatory framework, and would be reviewed for consistency as part of the external audit process.

11 **On ethical conduct** – we reviewed the Fund's existing arrangements to secure transparency in financial management. We have made recommendations for the establishment of registers of interest and for the recording of hospitality and gifts. Furthermore, to reflect best practice we encourage the positive annual declaration by staff of compliance with the requirements of the Financial Regulations and Administrative Instructions. We have also made recommendations for the Fund to consider the way in which arrangements might be further improved by means of a whistleblowing policy. This would ensure that staff had an appropriate mechanism through which they could report misconduct or irregularity. Such an arrangement is of particular importance in the absence of an internal audit function.

12 **On risk management** – The Fund has continued to make progress in identifying its financial and business risks; but we encourage greater impetus to complete the work, ensuring that a full and systematic risk management process can be in place prior to the arrival of the new Director.

13 **On the Audit Body** – We continue to regard the Audit Body as a beneficial and essential part of the IOPC Funds governance framework. It provides detailed scrutiny on key matters which offers valuable additional assurance to the Council Members. Furthermore, its review of the adequacy of the internal control framework and the quality of the audit arrangements is an essential part of the process to ensure the accuracy and usefulness of financial reporting. The existence of the Audit Body is to be reviewed at the October Council and we continue to commend the value this committee provides to the Council and to the management of the Fund.

DETAILED REPORT FINDINGS

This section of the report includes:
- An overall commentary on the financial performance of the Fund.
- Financial management issues arising from our audit work, including comments on internal controls and financial regulations.
- Audit observations on corporate governance.

Financial performance

Summary of financial position

Overall income against expenditure

14 During the financial year 2004, the 1971 Fund reported a General Fund operating surplus of £377,760, compared to a deficit of £995,066 in 2003.

15 When the respective surpluses and deficits on the General Fund and Major Claims Funds (MCFs) are taken into account, the 1971 Fund reported an overall deficit of £55,688,678.

Contributions income

16 Income from contributions of £16,800,826 was received during 2004 as a result of the levies due for the *Nissos Amorgos*, *Osung N°3*, *Vistabella* and *Pontoon 300* incidents. Reimbursements to contributors totalled £69,575,937 in relation to the *Aegean Sea*, *Sea Empress*, *Nakhodka*, *Sea Prince*, *Yeo Myung* and *Yuil N°1* incidents.

Miscellaneous income

17 Miscellaneous income received in 2004 was £3,605,765 (2003 £23,595,788). The fall in income reflects the fact that a global settlement for £20 million was received in 2003. Interest on

investments has fallen from £2,270,198 in 2003 to £1,844,899 in 2004 – this reflects the lower cash totals held by the Fund throughout 2004.

Secretariat expenses

18 Secretariat Expenses were £357,145, which represents a reduction of £175,995 compared to 2003, when in broad terms the 1971 Fund paid for 20 per cent of the Secretariat's running costs. The cost comprises primarily the management fee of £325,000 payable to the 1992 Fund, which is approximately 10 per cent of the joint costs of running the Secretariat - this is in line with the decisions made by the Administrative Council and the Assembly of the 1992 Fund in October 2003. Other costs relate to the External Audit fee (£15,000) and winding up costs (£17,145).

Claims and claims related expenses

19 Compensation and indemnification payments for 2004 totalled £5,511,076, compared with £7,915,847 in 2003. The majority of this expenditure related to the *Nissos Amorgos* incident (£4,716,093), where the level of payments for claims was raised to 100 per cent during 2004; and to the *Yuil N°1* incident (£706,392), where an indemnification payment was made.

20 Claims related expenses, which mainly consist of technical and lawyers fees, were £576,091 (2003 £2,812,041). The decrease in costs reflects a fall in the number of incidents demanding such expenditure - for example, in 2003 the recourse action in respect of the *Sea Empress* incident contributed to £1.24 million of expenses for that particular Major Claims Fund.

Assets and liabilities

21 Cash held by the 1971 Fund was £22,350,629 at the end of the year. The reduction in cash held from 2003 (£75,867,272) reflects the large reimbursement of contributions made in March 2004.

22 The level of outstanding assessed contributions has fallen from £781,543 to £374,738. This is an encouraging trend and the level of contributions outstanding remains very low as a percentage of contributions income. However, we would continue to encourage Contributors to maintain timely payment of assessed contributions, and for the Fund to encourage the repayment of outstanding balances.

23 The balance on the Contributors' account increased from £133,416 in 2003 to £2,253,382 at the close of 2004. This balance relates to amounts held by the Fund as credit balances pending allocation to future levies or requests for repayment.

Contingent liabilities

24 Schedule III to the financial statements reports the contingent liabilities of the Fund, which are defined in the accounting policies as all known or likely claims against the Fund and claims related expenditures estimated for the next financial year. As at 31st December 2004 these liabilities were estimated at £85,290,000, based on information available at 30th April 2005.

25 Such liabilities that may materialise will need to be funded through further levies of contributions to Major Claims Funds. As at 31st December 2004 the *Nissos Amorgos* Major Claims Fund reported a balance of £2,720,316 and the balance of the *Pontoon 300* Fund stood at £2,500,859. Both of these Fund balances were lower than the estimated contingent liabilities relating to these incidents at 31st December 2004.

26 No Major Claims Funds have been established for the *Alambra* or *Iliad* incidents, although both may require additional contributions if all relevant contingent liabilities mature.

Financial management issues

Internal controls

27 As a routine part of our audit we reviewed the Fund's internal controls, which management establish to ensure the regularity of transactions and to provide good stewardship of resources. We found these arrangements to be satisfactory in support of our overall audit opinion.

Winding-up of the 1971 Fund

28 The 1971 Fund Convention ceased to be in force as of 24th May 2002. Although the 1971 Fund will not be called upon to make compensation payments on any new incidents, the final settlement and closure of outstanding incidents may take many years. We believe it is still appropriate for the financial statements of the 1971 Fund to continue to be prepared on a going concern basis, as it will continue its operations for the foreseeable future.

Non-submission of oil reports

29 We noted that several Member States had not submitted the oil reports required for the levy of contributions. We welcome the fact that the position is being reported to the Audit Body and the Administrative Council and the efforts made by the Secretariat to obtain outstanding oil reports. Although non-submission of these oil reports does not impede the running of the 1971 Fund from a financial perspective, we encourage the Fund to continue to follow up on these non-submissions in the interests of fairness to all other contributors who have paid their levies in accordance with the 1971 Fund Convention.

Cases of fraud, Presumptive fraud or money laundering

30 There were no cases of fraud, presumptive fraud or money laundering reported to us by the Secretariat or identified in the items examined as part of our audit.

Corporate governance

31 Corporate governance is the accountability framework under which organisations are directed and controlled. It is the system that establishes who is responsible for setting the organisation's strategic aims; providing the leadership to put them into effect; supervising the management of the organisation; and reporting the progress of the organisation to interested stakeholders, which in the case of the 1971 Fund are primarily the Member States.

32 The principles and philosophy of good governance has been developed and enhanced in the private sector in the wake of high profile corporate failures; and best practice principles have been extended to the public sector. Key elements of good governance are transparency and accountability.

33 We have reviewed the Fund's approach to fundamental requirements and procedures commonly used to secure and promote good governance, and have provided observations and recommendations to management on the areas of transparency, staff conduct, risk management and the work of the Audit Body. In addition to the areas identified in the Executive Summary, further detailed observations can be found in our report to the Assembly of the International Oil Pollution Compensation Fund 1992.

Follow up to prior year audit recommendations

34 There are no matters arising from my 2003 audit that are not covered in this report.

Acknowledgement

35 We are grateful for the assistance and co-operation provided by the Director and the staff of the Secretariat during our audit.

Sir John Bourn
Comptroller and Auditor General, United Kingdom
External Auditor
30 June 2005

ANNEX I: SCOPE AND AUDIT APPROACH

Audit Scope

1 The audit examined the financial statements of the International Oil Pollution Compensation Fund 1971 (the 1971 Fund) for the financial period ended 31 December 2004 in accordance with Financial Regulation 13 of the Financial Regulations.

Audit Objectives

2 The main purpose of the audit was to enable the External Auditor to form an opinion as to whether the financial statements fairly present the Fund's financial position, its surplus, funds and cash flows for the financial period; and whether they had been properly prepared in accordance with the Financial Regulations.

Audit Standards

3 The audit was conducted in accordance with the International Standards on Auditing (ISAs) as issued by the International Auditing and Assurance Standards Board (IAASB). These standards require us to plan and carry out the audit so as to obtain reasonable assurance that the financial statements are free from material misstatement. Management were responsible for preparing these financial statements and the External Auditor is responsible for expressing an opinion on them, based on evidence obtained during the audit.

Audit Approach

4 In accordance with the ISAs, our audit included a general review of the accounting systems and such tests of the accounting records and internal control procedures as we considered necessary in the circumstances. The audit procedures are designed primarily for the purpose of forming an opinion on the Fund's financial statements. Consequently our work did not involve detailed review of all aspects of financial and budgetary systems from a management perspective, and the results should not be regarded as a comprehensive statement of all weaknesses that exist or all improvements that might be made.

5 The audit also included focused work in which all material areas of the financial statements were subject to direct substantive testing. A final examination was carried out to ensure that the financial statements accurately reflected the Fund's accounting records; that the transactions conformed to the financial regulations and directives issued by the Administrative Council; and were fairly presented.

ANNEX IV

FINANCIAL STATEMENTS OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1971 FOR THE YEAR ENDED 31 DECEMBER 2004 OPINION OF THE EXTERNAL AUDITOR

To: the Assembly of the International Oil Pollution Compensation Fund 1971

I have audited the accompanying financial statements, comprising Statements I to VI, Schedules I to III and the supporting Notes of the International Oil Pollution Compensation Fund 1971 for the financial period ended 31 December 2004. These financial statements are the responsibility of the Director. My responsibility is to express an opinion on these financial statements based on my audit.

I conducted my audit in accordance with the International Standards on Auditing (ISAs) as issued by the International Auditing and Assurance Standards Board (IAASB). Those standards require that I plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, and as considered by the auditor to be necessary in the circumstances, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by the Director, as well as evaluating the overall financial statement presentation. I believe that my audit provides a reasonable basis for the audit opinion.

In my opinion, these financial statements present fairly, in all material respects, the financial position as at 31 December 2004 and the results of operations and cash flows for the period then ended in accordance with the 1971 Fund's stated accounting policies set out in Note 1 of the financial statements, which were applied on a basis consistent with that of the preceding financial period.

Further, in my opinion, the transactions of the 1971 Fund, which I have tested as part of my audit have in all significant respects been in accordance with the Financial Regulations and legislative authority.

In accordance with Financial Regulation 13, I have also issued a long-form Report on my audit of the Fund's financial statements.

Sir John Bourn
Comptroller and Auditor General, United Kingdom
External Auditor
London, 30 June 2005

ANNEX V

GENERAL FUND
1971 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 2004

	2004		2003	
	£	£	£	£
INCOME				
Contributions				
Adjustment to prior years' assessment	758		(5 056)	
Total contributions		**758**		**(5 056)**
Miscellaneous				
Sundry income	39 513		-	
Transfer from *Sea Prince* MCF	126 405		-	
Transfer from *Yeo Myung* MCF	110 723		-	
Transfer from *Yuil N°1* MCF	244 485		-	
Transfer from *Osung N°3* MCF	147 449		-	
Interest on loan to *Vistabella* MCF	2 192		13 170	
Interest on loan to *Pontoon 300* MCF	3 031		16 522	
Interest on loan to *Nissos Amorgos* MCF	2 317		13 303	
Interest on loan to *Braer* MCF	-		4 816	
Interest on loan to *Sea Empress* MCF	-		21 485	
Interest on overdue contributions	50 882		2 090	
Less interest on overdue contributions waived	-		(21)	
Interest on investments	204 305		88 389	
Total miscellaneous		**931 302**		**159 754**
TOTAL INCOME		**932 060**		**154 698**
EXPENDITURE				
Secretariat expenses				
Obligations incurred		**357 145**		**533 140**
Claims				
Compensation	2 482		951 906	
Recovery from insurer	-	**2 482**	(518 528)	**433 378**
Claims-related expenses				
Fees	132 586		190 678	
Travel	1 468		17 323	
Miscellaneous	81		531	
Recovery from insurer	(14 482)		(25 286)	
Total claims-related expenses		**119 653**		**183 246**
Transfer to *Braer* MCF		**75 020**		**-**
TOTAL EXPENDITURE		**554 300**		**1 149 764**
(Shortfall)/excess of income over expenditure		377 760		(995 066)
Balance b/f: 1 January		4 513 875		5 508 941
Balance as at 31 December		**4 891 635**		**4 513 875**

ANNEX VI

MAJOR CLAIMS FUNDS
1971 FUND: INCOME AND EXPENDITURE ACCOUNT
FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 2004

	Aegean Sea		*Braer*	
	2004	**2003**	**2004**	**2003**
	£	**£**	**£**	**£**
INCOME				
Contributions				
Adjustment to prior years' assessment	-	(8 392)	-	(8 232)
Reimbursement to contributors	(17 581 431)	-	-	-
Total contributions	**(17 581 431)**	**(8 392)**	**-**	**(8 232)**
Miscellaneous				
Sundry income	3 175	-	-	-
Interest on overdue contributions	36 741	-	18 216	-
Interest on investments	268 972	669 752	-	-
Interest on Court Deposit	-	-	-	-
Refund of Court Deposit	-	-	-	-
Interest on loans to *Osung N°3* MCF	7 524	44 198	-	-
Interest on loan to *Nissos Amorgos* MCF	-	-	-	-
Miscellaneous income	-	-	-	-
Recovery as a result of global settlement	-	-	-	-
Total miscellaneous	**316 412**	**713 950**	**18 216**	**-**
TOTAL INCOME	**(17 265 019)**	**705 558**	**18 216**	**(8 232)**
EXPENDITURE				
Compensation/Indemnification	-	2 895 274	-	-
Fees	7 128	897 279	21 201	5 484
Interest on loan from General Fund	-	-	-	4 816
Travel	-	-	-	-
Miscellaneous	16	(952)	55	-
TOTAL EXPENDITURE	**7 144**	**3 791 601**	**21 256**	**10 300**
(Shortfall)/excess of income over expenditure	(17 272 163)	(3 086 043)	(3 040)	(18 532)
Exchange adjustment	(39)	4 094	-	-
Balance b/f: 1 January	18 193 357	21 275 306	(71 980)	(53 448)
Transfer from General Fund	-	-	75 020	-
Balance as at 31 December	**921 155**	**18 193 357**	**-**	**(71 980)**

Keumdong N°5		*Sea Empress*		*Nakhodka*	
2004	**2003**	**2004**	**2003**	**2004**	**2003**
£	**£**	**£**	**£**	**£**	**£**
-	(2 299)	-	-	-	-
-	-	(18 327 566)	-	(14 699 973)	-
-	**(2 299)**	**(18 327 566)**	**-**	**(14 699 973)**	**-**
-	-	-	-	-	-
5 737	-	6 850	-	46 293	19 954
373 809	263 177	286 263	450	177 231	508 767
64 283	-	-	-	-	-
795 020	-	-	-	-	-
-	-	-	-	-	-
-	-	-	-	24 958	48 432
-	-	-	-	-	-
-	-	-	20 000 000	-	-
1 238 849	**263 177**	**293 113**	**20 000 450**	**248 482**	**577 153**
1 238 849	**260 878**	**(18 034 453)**	**20 000 450**	**(14 451 491)**	**577 153**
84 778	-	1 331	324 172	-	-
76	2 554	-	1 241 708	-	14 076
-	-	-	21 485	-	-
-	-	-	-	-	-
7	3	-	182	-	12
84 861	**2 557**	**1 331**	**1 587 547**	**-**	**14 088**
1 153 988	258 321	(18 035 784)	18 412 903	(14 451 491)	563 065
(57 701)	-	-	-	-	(365)
7 072 831	6 814 510	18 499 087	86 184	14 976 056	14 413 356
8 169 118	**7 072 831**	**463 303**	**18 499 087**	**524 565**	**14 976 056**

MAJOR CLAIMS FUNDS
1971 FUND: INCOME AND EXPENDITURE ACCOUNT
FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 2004

	Sea Prince		*Yeo Myung*	
	2004	**2003**	**2004**	**2003**
	£	**£**	**£**	**£**
INCOME				
Contributions				
Contributions (second levy)	-	-	-	-
Adjustment to prior years' assessment	-	(3 902)	-	(453)
Reimbursement to contributors	(11 180 528)	-	(3 693 567)	-
Total contributions	**(11 180 528)**	**(3 902)**	**(3 693 567)**	**(453)**
Miscellaneous				
Interest on overdue contributions	7 788	259	1 056	-
Interest on investments	132 913	399 324	44 951	139 987
Interest on Court Deposit	-	24 228	-	-
Refund of Court Deposit	-	1 112 894	-	-
Total miscellaneous	**140 701**	**1 536 705**	**46 007**	**139 987**
TOTAL INCOME	**(11 039 827)**	**1 532 803**	**(3 647 560)**	**139 534**
EXPENDITURE				
Compensation/Indemnification	-	9 324	-	-
Fees	8 022	55 733	-	-
Interest on loan from *Aegean Sea* MCF	-	-	-	-
Interest on loan from General Fund	-	-	-	-
Interest on loan from *Nakhodka* MCF	-	-	-	-
Travel	-	-	-	199
Miscellaneous	3	22	-	-
TOTAL EXPENDITURE	**8 025**	**65 079**	**-**	**199**
(Shortfall)/excess of income over expenditure	(11 047 852)	1 467 724	(3 647 560)	139 335
Exchange adjustment	-	(76 677)	-	-
Balance b/f: 1 January	11 174 257	9 783 210	3 758 283	3 618 948
Transfer to General Fund	(126 405)	-	(110 723)	-
Balance as at 31 December	**-**	**11 174 257**	**-**	**3 758 283**

Yuil N°1		*Nissos Amorgos*		*Osung N°3*	
2004	**2003**	**2004**	**2003**	**2004**	**2003**
£	**£**	**£**	**£**	**£**	**£**
-	-	11 499 980	-	1 700 031	-
-	(2 697)	-	-	-	-
(4 092 872)	-	-	-	-	-
(4 092 872)	**(2 697)**	**11 499 980**	**-**	**1 700 031**	**-**
5 931	297	1 114	745	9 075	3 218
62 378	200 352	205 345	-	-	-
-	-	-	-	-	-
-	-	-	-	-	-
68 309	**200 649**	**206 459**	**745**	**9 075**	**3 218**
(4 024 563)	**197 952**	**11 706 439**	**745**	**1 709 106**	**3 218**
706 392	567 455	4 716 093	3 686 244	-	-
160 207	128 834	104 799	40 336	-	-
-	-	-	-	7 524	44 198
-	-	2 317	13 303	-	-
-	-	24 958	48 432	-	-
-	-	16 511	-	-	-
5	19	287	266	-	-
866 604	**696 308**	**4 864 965**	**3 788 581**	**7 524**	**44 198**
(4 891 167)	(498 356)	6 841 474	(3 787 836)	1 701 582	(40 980)
-	-	-	(23)	-	-
5 135 652	5 634 008	(4 121 158)	(333 299)	1 554 133	(1 513 153)
(244 485)	-	-	-	(147 449)	-
-	**5 135 652**	**2 720 316**	**(4 121 158)**	**-**	**(1 554 133)**

MAJOR CLAIMS FUNDS
1971 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 2004

	Vistabella		*Pontoon 300*	
	2004	**2003**	**2004**	**2003**
	£	**£**	**£**	**£**
INCOME				
Contributions				
Contributions (first levy)	600 033	-	3 000 024	-
Total contributions	**600 033**	**-**	**3 000 024**	**-**
Miscellaneous				
Interest on overdue contributions	-	-	110	-
Less interest on overdue contributions waived	-	-	(2)	-
Interest on investments	2 438	-	86 294	-
Total miscellaneous	**2 438**	**-**	**86 402**	**-**
TOTAL INCOME	**602 471**	**-**	**3 086 426**	**-**
EXPENDITURE				
Compensation/Indemnification	-	-	-	-
Fees	14 372	-	72 012	-
Interest on loan from General Fund	2 192	-	3 031	-
Travel	-	-	11 432	-
Miscellaneous	-	-	283	-
TOTAL EXPENDITURE	**16 564**	**-**	**86 758**	**-**
(Shortfall)/excess of income over expenditure	585 907	-	2 999 668	-
Balance b/f: 1 January	(515 835)	-	(498 809)	-
Balance as at 31 December	**70 072**	**-**	**2 500 859**	**-**

ANNEX VII

BALANCE SHEET OF THE 1971 FUND AS AT 31 DECEMBER 2004

	2004 £	2003 £
ASSETS		
Cash at banks and in hand	22 350 629	75 867 272
Contributions outstanding	374 738	781 543
Interest on overdue contributions	108 583	60 653
Due from *Vistabella* MCF	-	515 835
Due from *Pontoon 300* MCF	-	498 809
Due from *Nissos Amorgos* MCF to General Fund and *Nakhodka* MCF	-	4 121 158
Due from *Braer* MCF	-	71 980
Due from *Osung N°3* MCF to *Aegean Sea* MCF	-	1 554 133
Tax recoverable	2 625	81 887
Miscellaneous receivable	4 136	20 237
TOTAL ASSETS	**22 840 711**	**83 573 507**
LIABILITIES		
Accounts payable	-	168
Contributors' account	2 253 382	133 416
Due to 1992 Fund	326 306	116 525
Due to *Aegean Sea* MCF	921 155	18 193 357
Due to *Keumdong N°5* MCF	8 169 118	7 072 831
Due to *Sea Empress* MCF	463 303	18 499 087
Due to *Nakhodka* MCF	524 565	14 976 056
Due to *Sea Prince* MCF	-	11 174 257
Due to *Yeo Myung* MCF	-	3 758 283
Due to *Yuil N°1* MCF	-	5 135 652
Due to *Nissos Amorgos* MCF	2 720 316	-
Due to *Vistabella* MCF	70 072	-
Due to *Pontoon 300* MCF	2 500 859	-
TOTAL LIABILITIES	**17 949 076**	**79 059 632**
GENERAL FUND BALANCE	**4 891 635**	**4 513 875**
TOTAL LIABILITIES AND GENERAL FUND BALANCE	**22 840 711**	**83 573 507**

ANNEX VIII

CASH FLOW STATEMENT OF THE 1971 FUND FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 2004

	2004		2003	
	£	£	£	£
Cash as at 1 January		75 867 272		63 299 787
OPERATING ACTIVITIES				
Operating Surplus/(Deficit)	(58 145 359)		9 960 560	
(Increase)/Decrease in Debtors	454 238		233 735	
Increase/(Decrease) in Creditors	2 180 516		98 118	
Net cash flow from operating activities		(55 510 605)		10 292 413
RETURNS ON INVESTMENTS				
Interest on investments	1 993 962		2 275 072	
Net cash inflow from returns on investments		1 993 962		2 275 072
Cash as at 31 December		**22 350 629**		**75 867 272**

ANNEX IX

REPORT OF THE EXTERNAL AUDITOR ON THE FINANCIAL STATEMENTS OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1992 FOR THE FINANCIAL PERIOD 1 JANUARY TO 31 DECEMBER 2004

CONTENTS

EXECUTIVE SUMMARY

This section of the report summarises:

- The overall results of the audit – an unqualified audit opinion.
- A summary of the key financial reporting issues and matters arising from the audit.
- Issues identified from our review of the Fund's key governance arrangements.

Introduction

1 In October 2002, the Assembly of the International Oil Pollution Compensation Fund 1992 (1992 Fund) appointed the Comptroller and Auditor General of the United Kingdom as External Auditor for the four years from 2003 to 2006. This External Auditor's report for 2004 provides Member States with an overview of the audit approach and key findings; and information to provide States with assurance on the integrity of the financial statements, internal controls and general financial management of the Fund. The report includes commentary on corporate governance arrangements for the Funds.

Overall results of the Audit

2 We have audited the accounts of the 1992 Fund in accordance with Regulation 13 of the Financial Regulations and in conformity with the International Standards on Auditing (ISAs) as issued by the International Auditing and Assurance Standards Board (IAASB).

3 **Our audit revealed no weaknesses or errors which we considered material to the accuracy, completeness and validity of the financial statements as a whole and the External Auditor has placed an unqualified opinion on the financial statements for the year ended 31 December 2004.**

4 In accordance with the Financial Regulations, this report also includes specific observations and recommendations directed towards cost effective improvements to the Fund's financial management and control.

Main findings and recommendations

Financial matters

5 The detailed findings of this report provide a commentary on the Fund's financial position, together with a number of observations relating to financial matters arising from our audit. For

the financial year ended 31 December 2004, the Fund reported an overall surplus, excluding the Provident Fund, of £32,043,517. During the period there was a significant reduction in claims expenditure when compared with 2003, and a reimbursement of £37,700,028 was made to contributors in respect of the *Nakhodka* incident during the year.

6 As part of our audit we reviewed the internal controls operated by the Fund Secretariat and found these satisfactory in support of our overall audit findings.

7 We were asked as part of the audit to provide observations to management on revisions to the Financial Regulations. We note in particular, the following key amendments to the Regulations, which we regard as providing a benefit to the regulatory framework:

- The removal of single signatory cheque payments – reducing the risk of fraudulent payments;
- Clarification of the basis of accounting (primarily United Nations System Accounting Standards)
- Confirmation of the auditing requirements which relate to the Fund;
- A clear framework for the operation of the joint Secretariat arrangements of the IOPC Funds and the interrelationships between them ; and
- Enhancement of the timeliness of the publication of financial statements by bringing from 31 May to 30 April the date by which financial statements are to be submitted for audit each year.

8 In addition to our work in support of the audit opinion, we undertook some specific audit work to review the arrangements for accurate reporting of dual currency investments and for authorisation of staff travel. We are pleased to confirm that, based on our sample testing, the Fund continues to have adequate procedures for reporting investments.

9 The Secretariat notified us of two instances of potential fraud which had occurred during 2005, relating to attempts to present stolen 1992 Fund cheques for payment. We have investigated these cases and are satisfied that no losses were incurred in either 2004 or 2005 as a result of these attempts, and that the Secretariat has initiated improved arrangements to mitigate against further potential thefts.

Management issues

10 Notwithstanding the small size of the Secretariat, the IOPC Funds have been exemplary in setting a best practice governance agenda. The Fund has recognised that the existence of a sound corporate governance framework is essential to provide Member States with assurance over the use of resources and compliance with the regulatory frameworks. Our report focuses on the adequacy of key governance arrangements established by the Funds to ensure they continue to provide the best level of assurance. This is of particular importance as the Assembly considers the role of the Audit Body in October and in the context of the new Director taking up responsibilities by November 2006.

11 **On internal controls** – we have been encouraged by the development of a document clearly establishing the delegated powers for authorising and committing IOPC Funds, which we encouraged the Secretariat to initiate. We have recommended further improvement to the internal control framework by recommending that the IOPC Funds produce a statement on internal control, which would become part of the financial statements. This would have the benefit of clearly recording the responsibilities of the Director and enhancing his accountability for them. The requirements of the statement would not go beyond those requirements already

existing within the current regulatory framework, and would be reviewed for consistency as part of the external audit process.

12 **On ethical conduct** – we reviewed the Fund's existing arrangements to secure transparency in financial management. We have made recommendations for the establishment of registers of interest and for the recording of hospitality and gifts. Furthermore, to reflect best practice we encourage the positive annual declaration by staff of compliance with the requirements of the Financial Regulations and Administrative Instructions by staff. We have also made recommendations for the Fund to consider the way in which arrangements might be further improved by means of a whistleblowing policy. This would ensure that staff had an appropriate mechanism through which they could report misconduct or irregularity. Such an arrangement is of particular importance in the absence of an internal audit function.

13 **On risk management** – The Fund has continued to make progress in identifying its financial risks, but we encourage greater impetus to complete the process; ensuring that a full and systematic risk management assessment is in place prior to the arrival of the new Director.

14 **On the Audit Body** – We continue to regard the Audit Body as a beneficial and essential part of the IOPC Funds governance framework. It provides detailed scrutiny on key matters which offers valuable additional assurance to the Assembly Members. Furthermore, its review of the adequacy of the internal control framework and the quality of the audit arrangements is an essential part of the process to ensure the accuracy and usefulness of financial reporting. The existence of the Audit Body is to be reviewed at the October Assembly and we continue to commend the value this Committee provides to the Assembly and to the management of the Fund.

DETAILED REPORT FINDINGS

This section of the report includes:
- An overall commentary on the financial performance of the Fund.
- Financial management issues arising from our audit work, including our work on internal controls, financial regulations.

Financial issues

Summary of the financial position

Overall income against expenditure

15 During the financial year 2004, the 1992 Fund reported a General Fund operating surplus of £3,798,597, compared to a deficit of £2,081,271 in 2003. When the respective surpluses and deficits on the General Fund and Major Claims Funds are taken into account (excluding the Provident Fund), the 1992 Fund reported an overall surplus for the year of £32,043,517.

Contributions income

16 The 1992 Fund received income contributions of £81,656,946 during the period, as a result of the levies due for the General Fund and the Prestige Major Claims Fund. A reimbursement to contributors of £37,700,028 was made in relation to the *Nakhodka* incident during 2004.

Miscellaneous income

17 Miscellaneous income, including interest relating to the Provident Fund, was £5,057,268 during

the financial period 2004 (2003 £5,420,449). Interest income from investments accounted for £4,648,160 of the total miscellaneous income. This represents a reduction on the previous year as a result of the timing of investment maturity dates and reduced interest rates. The value of interest income reflects the accounting policy of recording interest income on the basis of cash received, rather than on an accruals basis.

Secretariat expenses

18 The obligations incurred by the 1992 Fund for joint secretariat expenses totalled £2,624,613 for Chapters I-VI, representing an underspend against the approved budgetary appropriations of £667,637. The most significant areas of under expenditure related to personnel costs (£417,371), public information (£93,533), office machines (£44,716) and consultants' fees (£37,545).

19 After the deduction of management and audit fees in respect of the 1971 Fund, total obligations for the 1992 Fund were £2,284,613, representing an increase of £273,958 or 13.6 per cent on the previous year.

Claims and claims related expenses

20 There was a significant reduction in the value of compensation payments during 2004, which totalled £9,555,715, having been £63,553,406 in 2003. This year on year difference arose as a result of the £39,914,906 which was paid to the Spanish Government in relation to the *Prestige* incident during 2003. Claims relating to the new *Kyung Won* incident totalled £1,567,229, while there was a significant reduction from 2003 in the payment of claims relating to the *Erika* incident, where payments totalled £7,502,681.

21 Claims related expenses consisted mainly of technical and legal fees and amounted to £4,990,379 (£6,211,052 in 2003). This reduction reflects the fact that the *Erika* and *Prestige* incidents required less specialist input in 2004 when compared with 2003. Additionally expenses for the *Prestige* incident were split between the General Fund and the Major Claims Fund in 2003.

Staff Provident Fund

22 The balance on the Staff Provident Fund at the year end was £1,955,615. This represents an increase of 9.9 per cent on the closing balance in 2003. The Fund movements were housing loan grants, totalling £205,635 and withdrawals on separation, which totalled £82,444.

23 The Provident Fund earned £110,962 interest during the year, which represents a return on investment of 5.9 per cent on average net assets held throughout the year.

Assets and liabilities

24 Cash held by the 1992 Fund was £121,617,345 at 31 December 2004. The level of outstanding assessed contributions has increased from £71,578 in 2003 to £656,728 at the end of 2004, largely due to contributions relating to the *Prestige* which remain unpaid. Although contributions outstanding remain low in percentage terms, we would continue to encourage Contributors to ensure the timely payment of assessed contributions; and for the Fund to continue to actively seek the payment of outstanding balances.

25 The balance on the Contributors' account increased from £3,388 in 2003 to £1,077,283 at the close of 2004. This balance relates to amounts held by the Fund as credit balances pending allocation to future levies or requests for repayment.

Contingent liabilities

26 Schedule III to the financial statements reports the contingent liabilities of the Fund, which are defined in the accounting policies as all known or likely claims against the Fund and claims related expenditures estimated for the next financial year. As at 31st December 2004 closing liabilities were estimated at £135,480,000, based on the latest available information on 30th April 2005.

27 Such liabilities that may materialise will need to be funded through further levies of contributions to General Fund and Major Claims Funds (MCFs). As at 31st December 2004 the *Erika* MCF had a balance of £60,779,881 and the *Prestige* MCF had a balance of £32,879,058. Both of these fund balances were lower than the estimated contingent liabilities relating to these incidents at 31st December 2004. In October 2004 the Fund decided to make an additional levy to cover payments for the *Prestige* incident in 2005.

Financial management issues

Internal controls

28 As a routine part of our audit we reviewed the Fund's internal controls, which management established to ensure the regularity of transactions and to provide good stewardship of resources. We found these arrangements to be satisfactory for the purpose of supporting our audit opinion.

Review of Internal and Financial Regulations

29 In addition to our financial audit, management asked us to review the Financial and Internal Regulations of the 1992 Fund in the light of our experience and knowledge of other international organisations' regulations.

30 Several changes were made as a result of observations we provided to management, and we believe these changes have improved the financial management and controls in operation. Key changes included the removal of single signatory payments, which reduces the risk of fraudulent and erroneous payments being made; specific references to the use of United Nations System Accounting Standards when preparing the financial statements; and confirmation that the audit is conducted under International Standards on Auditing.

31 Management also clarified the administrative arrangements between the 1992, 1971 and Supplementary Funds, confirming the basis for the administration of Funds by a joint Secretariat under the direction of a single Director. A resolution was adopted by the governing bodies of the three Funds in March 2005, and we believe this has clarified the management arrangements concerning the IOPC Funds as a whole. We further commend the Secretariat for bringing forward the date for the formal submission of the financial statements by one month from 31 May to the 30 April. This provides a framework to ensure timely financial reporting.

Dual currency deposits

32 Dual currency deposits were used by the 1992 Fund for the first time in 2002, in order to increase investment yields by utilising options for repayment of investments in either Euro or Sterling.

33 Financial Regulation 10.1 states that the Director may invest any funds not required in the short term so long as all necessary steps are taken to avoid undue currency risks. As part of our financial audit, we reviewed information held on dual currency deposits to ensure that management had necessary information to enable it to manage any potential risks.

34 In the light of comments made by the Audit Body regarding the need for confirmation of the accuracy of the financial data contained within these schedules we undertook to confirm this information to primary records. We found that the information contained within these schedules accurately reflected the underlying financial information. Together with the Investment Advisory Body these mechanisms provide the Secretariat with the facility to effectively monitor the performance of dual currency deposits.

35 United Nations System Accounting Standards do not require any detailed disclosure of currency investments. However, International Financial Reporting Standards would require disclosure of these currency transactions in the event that there was a significant exposure to currency risk. At present, we do not believe that the amounts held in dual currency deposits give rise to a potentially significant exposure to currency risk. However, if the Fund increased its holding significantly we would recommend greater disclosure in line with best accounting practice.

Non-submission of oil reports

36 Oil reports form the basis of the Fund's system for levying contributions from Contributors in Member States. We noted that several Member States had not submitted oil reports for a number of years, thus preventing the Secretariat from raising the appropriate levies. We have noted the effort that the Secretariat has made to obtain these outstanding oil reports, and welcome the fact that they are reporting on their efforts to the Audit Body and the Assembly. Although the loss of income from the non-submission of these oil reports does not impede the running of the 1992 Fund, we encourage the Fund to continue to follow up these non-submissions to ensure that the costs of the Fund are borne on an equitable basis by all Contributors in accordance with the 1992 Fund Convention.

Cases of fraud, presumptive fraud or money laundering

37 The Secretariat informed us that there were two cases of attempted fraud against the 1992 Fund, both of which occurred in 2005. The cases related to attempts to obtain funds by means of presenting stolen 1992 Fund cheques. In both cases the attempts were prevented by the Fund's bankers and no losses were incurred.

38 We reviewed management's arrangements for the physical security of cheques, which was improved following these attempts. We are satisfied that the new physical security measures will minimise the risk of theft. Furthermore, we can confirm that in both cases no monetary losses were incurred by the Fund. This attempted fraud had no impact on the 2004 financial statements of the 1992 Fund.

39 There were no other cases of fraud, presumptive fraud or money laundering reported to us by the Secretariat or identified in the items examined as part of our audit.

Management issues

This section of the report includes:

- The principles and importance of good governance; and
- An assessment of the Fund's key governance mechanisms, namely the:
  - accountability for the maintenance, scrutiny and disclosure of compliance with internal controls;
  - ethical framework and mechanisms for monitoring the proper conduct of staff;
  - progress on the systematic identification and reporting of operational risks; and
  - consideration of the work of the Audit Body.

Corporate governance

Principles of good governance

40 Sound corporate governance and the systems of internal control that are integral to it are essential to effective financial management, accountability and transparency. Good corporate governance is necessary to support the achievement of any organisation's objectives and in the creation and maintenance of stakeholder confidence. There has been a considerable evolution in corporate governance in recent years in both the private and public sectors. High standards and good practice in corporate governance are relevant to all organisations.

41 The Fund, despite the small size of the Secretariat, has made exemplary progress in adopting the best practices in corporate governance, recognising that it creates a framework of assurance for Member States and other stakeholders; providing a greater degree of confidence in the way in which financial resources are utilised and reported. In our reporting this year we have reviewed these arrangements and suggested a number of enhancements to ensure that the Fund continues to set an example for other international organisations.

Internal control systems

42 A framework of internal control is required to ensure the proper stewardship of funds. Internal controls help to create a basis for the operation of financial systems and to control the regularity of transactions; this provides management with greater assurance that the Fund's resources are being applied for the purposes intended by Member States.

43 The Director is responsible for the proper operation of internal controls within the Fund. This responsibility is primarily discharged through the creation and operation of the Fund's Internal and Financial Regulations. In order to assist the Director in the maintenance of adequate internal controls, staff are charged with the responsibility to comply with and to follow these rules.

44 Following observations made during the course of our audit regarding best practice, and to facilitate a clearer understanding of delegated responsibilities, the Director collated the various delegations of authority from Regulations and Administrative Instructions into a single document, The Delegation of Authority. Such a concise list of approved delegations provides additional clarity regarding the internal control framework, thus enhancing its operation and its transparency.

45 We encourage the Fund to regularly review the adequacy of its internal control framework, since this active consideration helps management to secure the maintenance and scrutiny of its control environment. This can be achieved through the active consideration of the Audit Body, following its reviews and observations on financial reports and the adequacy of management's responses to audit recommendation. The Audit Body is well placed to form a view on the operation of controls. Through this process the Audit Body provides assurance to both management and the Member States.

46 We encourage the Fund to continue to adopt aspects of best practice from the public and private sectors and consider the usefulness of a specific statement of internal control, which would form part of the financial statements. We will work with the Secretariat to consider options which are practical and add value to the assurance process for Member States.

47 An Internal Control Statement provides positive confirmation by the Director that key controls, procedures and processes have been followed during the period to provide a suitable internal

control framework. This process provides additional assurance to Member States about the operation of internal controls and the Director's accountability for them, and is reviewed by the External Auditor to ensure consistency with the work performed to support the overall audit opinion. The statement also provides a specific reference point for the Audit Body's deliberations on the framework of internal control and importantly with the Fund's risk management process. Key aspects in the statement could include:

- procedures for identifying the body's objectives and key risks;
- the development of the control strategy and risk management policy;
- the role of the audit and investment advisory committees;
- procedures for ensuring that aspects of risk management and internal control are regularly reviewed and reported on;
- systems used to ensure compliance with specific regulations or procedures established by Member States; and
- a specific assertion that the control environment has been maintained.

Recommendation 1: We recommend that the Director consider the merits of including a statement of internal financial control to enhance the assurance and accountability framework of the Fund.

Ethical conduct

48 The operation of effective internal controls is dependent upon the ethical conduct of the staff that operate and maintain these controls. A sound ethical framework establishes a culture in which professional conduct is encouraged to promote probity, integrity, and transparency within the organisation and its staff. Such a framework can be built around the establishment of a clear code of conduct for staff, to set out obligations and expectations.

49 The obligations of staff are set out in various regulations, contracts and in the oath of office, but there is currently no document which provides a set of key principles of good conduct. Significantly, there are no effective mechanisms which management can deploy to monitor compliance with these various requirements. It is important for the Funds to demonstrate a clear ethical framework to encourage a strong anti-fraud culture and to create an environment where probity and good stewardship of funds are clearly promoted. This can be achieved by establishing a framework to enable ethical standards to be encouraged, monitored and enforced.

50 Section 1 of the Staff Regulations and Staff Rules provides a framework that records the duties and obligations of Secretariat staff. Best practice suggests that a formal Code of Conduct should be adopted, which specifies the Fund's expectations of staff conduct and behaviour in order to ensure that the duties and obligations are properly understood as set out in Regulations and to report any suspicions of irregular conduct. Confirmation of compliance could be sought from staff on an annual basis to provide a strong and effective process of confirming the responsibilities of staff.

51 We regard the creation and maintenance of registers of interest and for the receipt of hospitality and gifts to be of particular importance to the Fund. Transparency in these areas sets an example of proper professional standards and will help to prevent and detect instances where conflicts of interest could give rise to inappropriate behaviour. We encourage the Fund to require staff to register any interests in Fund suppliers or contributors and to ensure that any gifts or hospitality are properly disclosed.

52 A register helps to provide transparency, and is especially important in the context of the Fund's contacts with industry and private organisations where hospitality may be more readily offered to staff. Examples of the types of hospitality and gifts which might be recorded in such a register would include payments towards the Fund's travel and accommodation costs. The Fund may wish to establish a de-minimus limit for this in order to ensure that maintenance of the record is not burdensome.

53 The Fund does not currently have any established mechanism to allow staff to raise concerns about suspected fraud or misconduct. International organisations are increasingly establishing mechanisms to ensure staff have clear contacts to which such allegations might be reported and it is particularly relevant to the Fund given the absence of an internal audit function. Ultimately such a policy may provide the facility for allegations to be made direct to the External Auditor in the event that the internal process cannot be used. We would encourage the Fund to establish such 'whistleblowing' arrangements to protect staff.

Recommendation 2: We recommend that the Secretariat establish clear procedures for the maintenance of registers of interest and for the receipt of hospitality and gifts. Compliance with these arrangements and with the Funds other conduct requirements could be acknowledged on an annual basis by annual confirmation by staff.

Recommendation 3: We recommend that the Secretariat establish a procedure to provide a clear reporting line for staff to make disclosures of suspect misconduct of staff, and to ensure that it provides protection for staff that make genuine disclosures.

Risk management

54 A key objective of any organisation is to retain the confidence of its key stakeholders and to ensure the maintenance of its reputation and credibility. Potential risks, such as the misuse of funds, inadequate resourcing, failure of IT and business systems, staff succession planning and other physical and operational risks which, if left unmanaged, could damage the operational effectiveness of the Fund. The assessment of risk is critical in providing a focus for management to establish controls and procedures in priority areas, and there is a trend in both public and private organisations to use such arrangements to identify and prioritise risk and communicate the ways in which these are being controlled.

55 The Secretariat is currently developing a risk register, facilitated by an external consultant. The process is being conducted in close co-operation with the Audit Body which is playing an active role in reviewing management's progress. We are encouraged by the actions the Fund is taking to establish risk management, and encourage the conclusion of this process, across the major activities of the Fund. In the climate of change arising from the appointment of a new Director next year and the creation of a new Supplementary Fund, the need to establish a systematic process for assessing and maintaining risk registers across all Fund activities is becoming increasingly important.

56 Robust risk management procedures, informed and overseen by an audit committee, can develop this process further by providing additional scrutiny and objective comment. The Audit Body has already begun to actively consider the Fund's approach to risk management. By doing so it plays a vital role in raising awareness and emphasises the importance of systematic risk management. The Audit Body can add further value to this process through its review of identified risks and their mitigating controls.

Recommendation 4: We encourage the Secretariat to continue to develop and conclude its risk identification process to ensure that a comprehensive and systematic risk assessment framework is established to provide assurance to Member States.

The Audit Body

57 The operation of an effective, expert oversight body is a key aspect of corporate governance. In October 2002, the Assembly of the 1992 Fund and the Administrative Council of the 1971 Fund, established a joint Audit Body, with a mandate approved by the Assembly similar to those of Audit Committees in other entities. In March 2005 it was decided by the respective governing bodies that the joint Audit Body was to carry out its functions on behalf of the 1992 Fund, the 1971 Fund and the Supplementary Fund.

58 A representative of the External Auditor has been present at each of the Audit Body meetings to date. During 2004 we provided observations to the Audit Body and participated in discussions on a number of key issues. Additionally we presented a number of reports; a Management Letter – identifying operational matters arsing from our audit of the financial statements for 2003; an Audit Strategy – recording the basis of audit work, our identified risks and how the audit will address these risks; and an Interim Report – summarising items arising from our planning and interim visits on the audit of 2004.

59 Since its inception, we are pleased to note that the presence and mandate of the Audit Body have been included in the Financial Regulations of the respective IOPC Funds. The mandate and the functioning of the Audit Body is reviewed by the governing bodies every three years, and a review is due in October 2005. We encourage the Assembly to support the work of the Audit Body, since it provides a valuable and effective oversight function on behalf of Member States and is a key component in the overall framework of governance. The key benefits which we believe the Body provides to the Assembly are:

- Reviewing the internal controls of the IOPC Funds and the adequacy of its financial reporting;
- Evaluating the financial results of the IOPC Funds and seeking explanations for variances;
- Continuing open and unambiguous communication with the External Auditor and confirming the quality of the assurance process to the Assembly;
- Monitoring the Secretariat's compliance and implementation of external audit recommendations; and
- Providing commentary on the adequacy of the Fund's risk management arrangements.

Progress on prior year recommendations

60 There are no matters arising from my 2003 audit that are not covered in this report.

Acknowledgement

61 We are grateful for the assistance and co-operation provided by the Director and the staff of the 1992 Fund during our audit.

Sir John Bourn
Comptroller and Auditor General, United Kingdom
External Auditor
30 June 2005

ANNEX I: SCOPE AND AUDIT APPROACH

Audit scope

1 Our audit examined the financial statements of the International Oil Pollution Compensation Fund 1992 (the 1992 Fund) for the financial period ended 31 December 2004 in accordance with Financial Regulation 13 of the Financial Regulations.

Audit objectives

2 The main purpose of the audit was to enable us to form an opinion as to whether the financial statements fairly presented the Fund's financial position, its surplus, funds and cash flows for the year ended 31 December 2004; and whether they had been properly prepared in accordance with the Financial Regulations.

Audit standards

3 Our audit was conducted in accordance with the International Standards on Auditing (ISAs) as issued by the International Auditing and Assurance Standards Board (IAASB). These standards required us to plan and carry out the audit so as to obtain reasonable assurance that the financial statements are free from material misstatement. Management were responsible for preparing these financial statements and the External Auditor is responsible for expressing an opinion on them, based on evidence obtained during the audit.

Audit approach

4 In accordance with the ISAs, our audit included a general review of the accounting systems and such tests of the accounting records and internal control procedures as we considered necessary in the circumstances. The audit procedures are designed primarily for the purpose of forming an opinion on the Fund's financial statements. Consequently our work did not involve detailed review of all aspects of financial and budgetary systems from a management perspective, and the results should not be regarded as a comprehensive statement of all weaknesses that exist or all improvements that might be made.

5 Our audit also included focused work in which all material areas of the financial statements were subject to direct substantive testing. A final examination was carried out to ensure that the financial statements accurately reflected the Fund's accounting records; that the transactions conformed to the financial regulations and directives issued by the Assembly; and were fairly presented.

ANNEX X

FINANCIAL STATEMENTS OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1992 FOR THE YEAR ENDED 31 DECEMBER 2004 OPINION OF THE EXTERNAL AUDITOR

To: the Assembly of the International Oil Pollution Compensation Fund 1992

I have audited the accompanying financial statements, comprising Statements I to VII, Schedules I to III and the supporting Notes of the International Oil Pollution Compensation Fund 1992 for the financial period ended 31 December 2004. These financial statements are the responsibility of the Director. My responsibility is to express an opinion on these financial statements based on my audit.

I conducted my audit in accordance with the International Standards on Auditing (ISAs) as issued by the International Auditing and Assurance Standards Board (IAASB). Those standards require that I plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, and as considered by the auditor to be necessary in the circumstances, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by the Director, as well as evaluating the overall financial statement presentation. I believe that my audit provides a reasonable basis for the audit opinion.

In my opinion, these financial statements present fairly, in all material respects, the financial position as at 31 December 2004 and the results of operations and cash flows for the period then ended in accordance with the 1992 Fund's stated accounting policies set out in Note 1 of the financial statements, which were applied on a basis consistent with that of the preceding financial period.

Further, in my opinion, the transactions of the 1992 Fund, which I have tested as part of my audit have in all significant respects been in accordance with the Financial Regulations and legislative authority.

In accordance with Financial Regulation 13, I have also issued a long-form Report on my audit of the Fund's financial statements.

Sir John Bourn
Comptroller and Auditor General, United Kingdom
External Auditor
London, 30 June 2005

ANNEX XI

GENERAL FUND
1992 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 2004

	2004		2003	
	£	£	£	£
INCOME				
Contributions				
Contributions	6 906 194		2 828 982	
Adjustment to prior years' assessment	394 159		11 148	
Total contributions		**7 300 353**		**2 840 130**
Miscellaneous				
Sundry income	22 480		680	
Interest on loan to HNS Fund	1 754		1 230	
Interest on loan to Supplementary Fund	1 869		723	
Interest on loan to *Prestige* MCF	21 705		4 932	
Interest on overdue contributions	11 245		10 136	
Interest on investments	1 021 033		925 862	
Total miscellaneous		**1 080 086**		**943 563**
TOTAL INCOME		**8 380 439**		**3 783 693**
EXPENDITURE				
Secretariat expenses				
Obligations incurred		2 284 613		2 010 655
Claims				
Compensation		1 930 001		419 882
Claims-related expenses				
Fees	353 070		3 381 479	
Travel	13 858		41 915	
Miscellaneous	300		11 033	
Total claims-related expenses		**367 228**		**3 434 427**
TOTAL EXPENDITURE		**4 581 842**		**5 864 964**
(Shortfall)/excess of income over expenditure		3 798 597		(2 081 271)
Exchange adjustment		14		6 802
Balance b/f: 1 January		21 565 602		23 640 071
Balance as at 31 December		**25 364 213**		**21 565 602**

ANNEX XII

MAJOR CLAIMS FUNDS
1992 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 2004

	Nakhodka		*Erika*		*Prestige*	
	2004	**2003**	**2004**	**2003**	**2004**	**2003**
	£	**£**	**£**	**£**	**£**	**£**
INCOME						
Contributions						
Contributions (first levy)	-	-	-	-	74 356 593	-
Contribution (fourth levy)	-	-	-	27 999 938	-	-
Reimbursement to contributors	(37 700 028)	-	-	-	-	-
Total contributions	**(37 700 028)**	**-**	**-**	**27 999 938**	**74 356 593**	**-**
Miscellaneous						
Sundry income	-	-	51	-	-	-
Interest on loan to *Prestige* MCF	231 744	60 631	-	-	-	-
Interest on overdue contributions	7 351	134	1 274	22 077	80 635	-
Interest on investments	54 614	1 278 706	2 529 820	3 010 374	931 731	-
Total miscellaneous	**293 709**	**1 339 471**	**2 531 145**	**3 032 451**	**1 012 366**	**-**
TOTAL INCOME	**(37 406 319)**	**1 339 471**	**2 531 145**	**31 032 389**	**75 368 959**	**-**
EXPENDITURE						
Compensation	-	-	7 502 681	23 218 618	123 033	39 914 906
Fees	-	18 456	2 004 166	2 659 213	2 325 594	19 385
Interest on loan for General Fund	-	-	-	-	21 705	4 932
Interest on loan for *Nakhodka* MCF	-	-	-	-	231 744	60 631
Travel	-	-	3 303	5 787	28 908	4 309
Miscellaneous	-	19	1 278	1 395	6 453	2 498
TOTAL EXPENDITURE	**-**	**18 475**	**9 511 428**	**25 885 013**	**2 737 437**	**40 006 661**
(Shortfall)/Excess of income over expenditure	(37 406 319)	1 320 996	(6 980 283)	5 147 376	72 631 522	(40 006 661)
Exchange adjustment	-	-	260 148	(11 120)	254 580	(383)
Balance b/f: 1 January	38 120 339	36 799 343	67 500 016	62 363 760	(40 007 044)	-
Balance as at 31 December	**714 020**	**38 120 339**	**60 779 881**	**67 500 016**	**32 879 058**	**40 007 044**

ANNEX XIII

BALANCE SHEET OF THE 1992 FUND AS AT 31 DECEMBER 2004

	2004 £	2003 £
ASSETS		
Cash at banks and in hand	121 617 345	88 672 665
Contributions outstanding	656 728	71 578
Interest on overdue contributions outstanding	63 775	11 250
Due from *Prestige* MCF to General Fund and *Nakhodka* MCF	-	40 007 044
Due from HNS Fund	54 185	37 511
Due from Supplementary Fund	45 539	38 506
Due from 1971 Fund	326 306	116 525
Tax recoverable	496 516	181 313
Miscellaneous receivable	24 373	170 086
TOTAL ASSETS	**123 284 767**	**129 306 478**
LIABILITIES		
Staff Provident Fund	1 955 615	1 779 825
Accounts payable	20 882	18 109
Unliquidated obligations	91 394	98 261
Prepaid contributions	402 421	220 938
Contributors' account	1 077 283	3 388
Due to *Nakhodka* MCF	714 020	38 120 339
Due to *Erika* MCF	60 779 881	67 500 016
Due to *Prestige* MCF	32 879 058	-
TOTAL LIABILITIES	**97 920 554**	**107 740 876**
GENERAL FUND BALANCE	**25 364 213**	**21 565 602**
TOTAL LIABILITIES AND GENERAL FUND BALANCE	**123 284 767**	**129 306 478**

ANNEX XIV

CASH FLOW STATEMENT OF THE 1992 FUND FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 2004

	2004		2003	
	£	£	£	£
Cash as at 1 January		88 672 665		124 145 243
OPERATING ACTIVITIES				
Operating Surplus/(Deficit)	28 021 061		(40 839 203)	
(Increase)/Decrease in Debtors	(1 040 653)		21 093	
Increase/(Decrease) in Creditors	1 271 166		36 693	
Net cash flow from operating activities		28 251 574		(40 781 417)
RETURNS ON INVESTMENTS				
Interest on investments	4 693 106		5 308 839	
Net cash inflow from returns on investments		4 693 106		5 308 839
Cash as at 31 December		**121 617 345**		**88 672 665**

ANNEX XV

1971 FUND: KEY FINANCIAL FIGURES FOR 2005
(2005 INCOME/EXPENDITURE FIGURES ROUNDED AND SUBJECT TO AUDIT BY THE EXTERNAL AUDITOR)

INCOME

	2005 £
2004 Annual Contributions received in 2005	-
Other income:	
Interest on investments	670 000
TOTAL INCOME	**670 000**
Reimbursement to contributors of surpluses on Major Claims Funds	**(9 650 000)**

ADMINISTRATIVE COSTS

	2005 £	2004 £
Only 1971 Fund		
Management fee payable to the 1992 Fund	325 000	325 000
External Audit	12 500	15 000
Winding up		
Budget	250 000	250 000
Expenditure	-	17 145

CLAIMS EXPENDITURE

Incident	2005 £ Compensation	2005 £ Claims related expenditure	2005 £ Total
Nissos Amorgos	16 000	35 000	51 000
Pontoon 300	-	41 000	41 000
Kriti Sea	-	37 000	37 000
Other incidents	-	28 000	28 000
TOTAL CLAIMS EXPENDITURE	**16 000**	**141 000**	**157 000**

ANNEX XVI

1992 FUND: KEY FINANCIAL FIGURES FOR 2005

(2005 INCOME/EXPENDITURE FIGURES ROUNDED AND SUBJECT TO AUDIT BY THE EXTERNAL AUDITOR)

INCOME

	2005 £
2004 Annual Contributions received in 2005:	
General Fund	5 364 000
Prestige Major Claims Fund	32 895 000
Other income:	
Interest on investments	6 269 000
Management fee payable by 1971 Fund	325 000
Management fee payable by Supplementary Fund	125 000
TOTAL INCOME	**44 978 000**
Reimbursement to contributors of surpluses on Major Claims Funds	**(600 000)**

ADMINISTRATIVE COSTS

	2005 £	2004 £
Joint Secretariat		
Budget (including External Auditor's fees)	3 372 600	3 292 250
Expenditure (excluding External Auditor's fees for 1971 and 1992 Funds)	2 745 000	2 571 750
External Auditor's fees in respect of 1992 Fund	42 500	38 250

CLAIMS EXPENDITURE

Incident	2005 £ Compensation	2005 £ Claims related expenditure	2005 £ Total
Erika	11 718 000	1 788 000	13 506 000
Prestige	621 000	2 645 000	3 266 000
Incident in Bahrain	305 000	17 000	322 000
Other incidents	-	252 000	252 000
TOTAL CLAIMS EXPENDITURE	**12 644 000**	**4 702 000**	**17 346 000**

ANNEX XVII

SUPPLEMENTARY FUND (ESTABLISHED 3 MARCH 2005): KEY FINANCIAL FIGURES FOR 2005

(2005 INCOME/EXPENDITURE FIGURES ROUNDED AND SUBJECT TO AUDIT BY THE EXTERNAL AUDITOR)

INCOME

	2005 £
No income	-

ADMINISTRATIVE COSTS

	2005 £	Budget £
Expenditure prior to establishment of Supplementary Fund	65 000	-
Since establishment (3 March 2005)		
Miscellaneous costs	5 000	50 000
Management fee payable to 1992 Fund	125 000	125 000
Loan from 1992 Fund (accruing interest)	**195 000**	

ANNEX XVIII

1992 FUND: CONTRIBUTING OIL RECEIVED IN THE CALENDAR YEAR 2004 IN THE TERRITORIES OF STATES WHICH WERE MEMBERS OF THE 1992 FUND ON 31 DECEMBER 2005

As reported by 31 December 2005

Member State	Contributing Oil (Tonnes)	% of Total
Japan	243 816 066	17.79%
Italy	137 434 896	10.03%
Republic of Korea	118 353 106	8.63%
Netherlands	108 995 298	7.95%
India	104 977 049	7.66%
France	101 787 687	7.43%
Canada	78 504 842	5.73%
Singapore	74 440 246	5.43%
Spain	62 150 672	4.53%
United Kingdom	50 174 810	3.66%
Germany	40 657 548	2.97%
Australia	29 537 858	2.16%
Turkey	25 158 026	1.84%
Greece	21 931 228	1.60%
Sweden	21 464 528	1.57%
Norway	18 987 472	1.39%
Portugal	14 281 681	1.04%
Finland	12 306 081	0.90%
Bahamas	11 466 207	0.84%
Philippines	11 297 516	0.82%
Argentina	10 840 726	0.79%
Mexico	10 680 510	0.78%
Belgium	6 560 086	0.48%
Morocco	6 129 747	0.45%
Denmark	5 717 823	0.42%
China (Hong Kong Special Administrative Region)	5 481 697	0.40%
New Zealand	5 251 264	0.38%
Ireland	4 080 657	0.30%
Tunisia	3 380 414	0.25%
Trinidad and Tobago	3 248 335	0.24%
Croatia	3 214 394	0.23%
Jamaica	2 640 702	0.19%
Sri Lanka	2 200 592	0.16%
Uruguay	2 199 313	0.16%
Malta	2 058 678	0.15%
Cameroon	1 951 241	0.14%
Angola	1 884 068	0.14%
Ghana	1 813 464	0.13%
Cyprus	1 238 778	0.09%
Algeria	677 084	0.05%
Mauritius	514 503	0.04%
Colombia	339 982	0.02%
Kenya	243 274	0.02%
Madagascar	237 657	0.02%
Qatar	178 066	0.01%
Barbados	175 552	0.01%
	1 370 661 424	**100.00%**

Notes

Nil return from Antigua and Barbuda, Belize, Brunei Darussalam, Congo, Georgia, Iceland, Latvia, Liberia, Lithuania, Marshall Islands, Monaco, Mozambique, Namibia, Nigeria, Poland, Samoa, Seychelles, Slovenia, Tonga, United Arab Emirates and Vanuatu.

No report from Bahrain, Cambodia, Cape Verde, Comoros, Djibouti, Dominica, Dominican Republic, Estonia, Fiji, Gabon, Grenada, Guinea, Israel, Malaysia, Oman, Panama, Papua New Guinea, Russian Federation, Saint Lucia, Saint Vincent and the Grenadines, Sierra Leone, South Africa, Tuvalu, United Republic of Tanzania and Venezuela.

ANNEX XIX

SUPPLEMENTARY FUND: CONTRIBUTING OIL RECEIVED IN THE CALENDAR YEAR 2004 IN THE TERRITORIES OF STATES WHICH WERE MEMBERS OF THE SUPPLEMENTARY FUND ON 31 DECEMBER 2005

As reported by 31 December 2005

Member State	Contributing Oil (Tonnes)	% of Total
Japan	243 816 066	36.22%
Netherlands	108 995 298	16.19%
France	101 787 687	15.12%
Germany	79 598 054	11.82%
Spain	62 150 672	9.23%
Sweden	21 464 528	3.19%
Norway	18 987 472	2.82%
Portugal	14 281 681	2.12%
Finland	12 306 081	1.83%
Denmark	5 717 823	0.85%
Ireland	4 080 657	0.61%
	673 186 019	**100.00%**

ANNEX XX

1971 FUND: SUMMARY OF INCIDENTS (31 DECEMBER 2005)

For this table, damage has been grouped into the following categories:

- Clean-up
- Preventive measures
- Fishery-related
- Tourism-related
- Farming-related
- Other loss of income
- Other damage to property
- Environmental damage/studies

Where claims are shown in the table as settled this means that the amounts have been agreed with the claimants, but not necessarily that the claims have been paid or paid in full.

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
1	*Irving Whale*	7.9.70	Gulf of St Lawrence, Canada	Canada	2 261	Unknown
2	*Antonio Gramsci*	27.2.79	Ventspils, USSR	USSR	27 694	Rbls 2 431 584
3	*Miya Maru N°8*	22.3.79	Bisan Seto, Japan	Japan	997	¥37 710 340
4	*Tarpenbek*	21.6.79	Selsey Bill, United Kingdom	Federal Republic of Germany	999	£64 356
5	*Mebaruzaki Maru N°5*	8.12.79	Mebaru, Japan	Japan	19	¥845 480
6	*Showa Maru*	9.1.80	Naruto Strait, Japan	Japan	199	¥8 123 140
7	*Unsei Maru*	9.1.80	Akune, Japan	Japan	99	¥3 143 180
8	*Tanio*	7.3.80	Brittany, France	Madagascar	18 048	FFr11 833 718

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1971 Fund, unless indicated to the contrary)		Notes
Sinking	Unknown			*Irving Whale* refloated in 1996. Canadian Court dismissed action against 1971 Fund as Fund could not be held liable for events which occurred prior to entry into force of 1971 Fund Convention for Canada.
Grounding	5 500	Clean-up	SKr95 707 157	
Collision	540	Clean-up Fishery-related Indemnification	¥108 589 104 ¥31 521 478 ¥9 427 585 **¥149 538 167**	¥5 438 909 recovered by way of recourse.
Collision	Unknown	Clean-up	£363 550	
Sinking	10	Clean-up Fishery-related Indemnification	¥7 477 481 ¥2 710 854 ¥211 370 **¥10 399 705**	
Collision	100	Clean-up Fishery-related Indemnification	¥10 408 369 ¥92 696 505 ¥2 030 785 **¥105 135 659**	¥9 893 496 recovered by way of recourse.
Collision	<140			Because of the distribution of liability between the two colliding ships, 1971 Fund not called upon to pay any compensation.
Breaking	13 500	Clean-up Tourism-related Fishery-related Other loss of income	FFr219 164 465 FFr2 429 338 FFr52 024 FFr494 816 **FFr222 140 643**	Total payment equalled limit of compensation available under 1971 Fund Convention; payments by 1971 Fund represented 63.85% of accepted amounts. US$17 480 028 recovered by way of recourse.

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
9	*Furenas*	3.6.80	Oresund, Sweden	Sweden	999	SKr612 443
10	*Hosei Maru*	21.8.80	Miyagi, Japan	Japan	983	¥35 765 920
11	*Jose Marti*	7.1.81	Dalarö, Sweden	USSR	27 706	SKr23 844 593
12	*Suma Maru N°11*	21.11.81	Karatsu, Japan	Japan	199	¥7 396 340
13	*Globe Asimi*	22.11.81	Klaipeda, USSR	Gibraltar	12 404	Rbls 1 350 324
14	*Ondina*	3.3.82	Hamburg, Federal Republic of Germany	Netherlands	31 030	DM10 080 383
15	*Shiota Maru N°2*	31.3.82	Takashima island, Japan	Japan	161	¥6 304 300
16	*Fukutoko Maru N°8*	3.4.82	Tachibana Bay, Japan	Japan	499	¥20 844 440
17	*Kifuku Maru N°35*	1.12.82	Ishinomaki, Japan	Japan	107	¥4 271 560
18	*Shinkai Maru N°3*	21.6.83	Ichikawa, Japan	Japan	48	¥1 880 940
19	*Eiko Maru N°1*	13.8.83	Karakuwazaki, Japan	Japan	999	¥39 445 920
20	*Koei Maru N°3*	22.12.83	Nagoya, Japan	Japan	82	¥3 091 660
21	*Tsunehisa Maru N°8*	26.8.84	Osaka, Japan	Japan	38	¥964 800

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1971 Fund, unless indicated to the contrary)		Notes
Collision	200	Clean-up Clean-up Indemnification	SKr3 187 687 DKr418 589 SKr153 111	SKr449 961 recovered by way of recourse.
Collision	270	Clean-up Fishery-related Indemnification	¥163 051 598 ¥50 271 267 ¥8 941 480 **¥222 264 345**	¥18 221 905 recovered by way of recourse.
Grounding	1 000			Total damage less than shipowner's liability (clean-up SKr20 361 000 claimed). Shipowner's defence that he should be exonerated from liability rejected in final court judgement.
Grounding	10	Clean-up Indemnification	¥6 426 857 ¥1 849 085 **¥8 275 942**	
Grounding	>16 000	Indemnification	US$467 953	No damage in 1971 Fund Member State.
Discharge	200-300	Clean-up	DM11 345 174	
Grounding	20	Clean-up Fishery-related Indemnification	¥46 524 524 ¥24 571 190 ¥1 576 075 **¥72 671 789**	
Collision	85	Clean-up Fishery-related Indemnification	¥200 476 274 ¥163 255 481 ¥5 211 110 **¥368 942 865**	
Sinking	33	Indemnification	¥598 181	Total damage less than shipowner's liability.
Discharge	3.5	Clean-up Indemnification	¥1 005 160 ¥470 235 **¥1 475 395**	
Collision	357	Clean-up Fishery-related Indemnification	¥23 193 525 ¥1 541 584 ¥9 861 480 **¥34 596 589**	¥14 843 746 recovered by way of recourse.
Collision	49	Clean-up Fishery-related Indemnification	¥18 010 269 ¥8 971 979 ¥772 915 **¥27 755 163**	¥8 994 083 recovered by way of recourse.
Sinking	30	Clean-up Indemnification	¥16 610 200 ¥241 200 **¥16 851 400**	

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
22	*Koho Maru N°3*	5.11.84	Hiroshima, Japan	Japan	199	¥5 385 920
23	*Koshun Maru N°1*	5.3.85	Tokyo Bay, Japan	Japan	68	¥1 896 320
24	*Patmos*	21.3.85	Straits of Messina, Italy	Greece	51 627	LIt 13 263 703 650
25	*Jan*	2.8.85	Aalborg, Denmark	Federal Republic of Germany	1 400	DKr1 576 170
26	*Rose Garden Maru*	26.12.85	Umm Al Qaiwain, United Arab Emirates	Panama	2 621	US$364 182 (estimate)
27	*Brady Maria*	3.1.86	Elbe Estuary, Federal Republic of Germany	Panama	996	DM324 629
28	*Take Maru N°6*	9.1.86	Sakai-Senboku, Japan	Japan	83	¥3 876 800
29	*Oued Gueterini*	18.12.86	Algiers, Algeria	Algeria	1 576	Din1 175 064
30	*Thuntank 5*	21.12.86	Gävle, Sweden	Sweden	2 866	SKr2 741 746
31	*Antonio Gramsci*	6.2.87	Borgå, Finland	USSR	27 706	Rbls 2 431 854
32	*Southern Eagle*	15.6.87	Sada Misaki, Japan	Panama	4 461	¥93 874 528
33	*El Hani*	22.7.87	Indonesia	Libya	81 412	£7 900 000 (estimate)
34	*Akari*	25.8.87	Dubai, United Arab Emirates	Panama	1 345	£92 800 (estimate)

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1971 Fund, unless indicated to the contrary)		Notes
Grounding	20	Clean-up Fishery-related Indemnification	¥68 609 674 ¥25 502 144 ¥1 346 480 **¥95 458 298**	
Collision	80	Clean-up Indemnification	¥26 124 589 ¥474 080 **¥26 598 669**	¥8 866 222 recovered by way of recourse.
Collision	700			Total damage agreed out of court or decided by court (LIt11 583 298 650) less than shipowner's liability.
Grounding	300	Clean-up Indemnification	DKr9 455 661 DKr394 043 **DKr9 849 704**	
Discharge of oil	Unknown			Claim against 1971 Fund (US$44 204) withdrawn.
Collision	200	Clean-up	DM3 220 511	DM333 027 recovered by way of recourse.
Discharge of oil	0.1	Indemnification	¥104 987	Total damage less than shipowner's liability.
Discharge	15	Clean-up Clean-up Clean-up Other loss of income Indemnification	US$1 133 FFr708 824 Din5 650 £126 120 Din293 766	
Grounding	150-200	Clean-up Fishery-related Indemnification	SKr23 168 271 SKr49 361 SKr685 437 **SKr23 903 069**	
Grounding	600-700	Clean-up	FM1 849 924	USSR clean-up claims (Rbls 1 417 448) not paid by 1971 Fund since USSR not Member of 1971 Fund at time of incident.
Collision	15			Total damage less than shipowner's liability (¥35 346 679 clean-up and ¥51 521 183 fishery-related agreed).
Grounding	3 000			Clean-up claim (US$242 800) not pursued.
Fire	1 000	Clean-up Clean-up	Dhs 864 293 US$187 165	US$160 000 refunded by shipowner's insurer.

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
35	*Tolmiros*	11.9.87	West coast, Sweden	Greece	48 914	SKr50 000 000 (estimate)
36	*Hinode Maru Nº1*	18.12.87	Yawatahama, Japan	Japan	19	¥608 000
37	*Amazzone*	31.1.88	Brittany, France	Italy	18 325	FFr13 860 369
38	*Taiyo Maru Nº13*	12.3.88	Yokohama, Japan	Japan	86	¥2 476 800
39	*Czantoria*	8.5.88	St Romuald, Canada	Canada	81 197	Unknown
40	*Kasuga Maru Nº1*	10.12.88	Kyoga Misaki, Japan	Japan	480	¥17 015 040
41	*Nestucca*	23.12.88	Vancouver island, Canada	United States of America	1 612	Unknown
42	*Fukkol Maru Nº12*	15.5.89	Shiogama, Japan	Japan	94	¥2 198 400
43	*Tsubame Maru Nº58*	18.5.89	Shiogama, Japan	Japan	74	¥2 971 520
44	*Tsubame Maru Nº16*	15.6.89	Kushiro, Japan	Japan	56	¥1 613 120
45	*Kifuku Maru Nº103*	28.6.89	Otsuji, Japan	Japan	59	¥1 727 040
46	*Nancy Orr Gaucher*	25.7.89	Hamilton, Canada	Liberia	2 829	Can$473 766

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1971 Fund, unless indicated to the contrary)		Notes
Unknown	200			Clean-up claim (SKr100 639 999) not pursued, since legal action by Swedish Government against shipowner and 1971 Fund withdrawn.
Mishandling of cargo	25	Clean-up Indemnification	¥1 847 225 ¥152 000 **¥1 999 225**	
Storm damage to tanks	2 000	Clean-up Fishery-related	FFr1 141 185 FFr145 792 **FFr1 286 977**	FFr1 000 000 recovered from shipowner's insurer.
Discharge	6	Clean-up Indemnification	¥6 134 885 ¥619 200 **¥6 754 085**	
Collision with berth	Unknown			1971 Fund Convention not applicable, as incident occurred before entry into force of Convention for Canada. Clean-up claims (Can$1 787 771) not pursued.
Sinking	1 100	Clean-up Fishery-related Indemnification	¥371 865 167 ¥53 500 000 ¥4 253 760 **¥429 618 927**	
Collision	Unknown			1971 Fund Convention not applicable, as incident occurred before entry into force of Convention for Canada. Clean-up claims (Can$10 475) not pursued.
Overflow from supply pipe	0.5	Clean-up Indemnification	¥492 635 ¥549 600 **¥1 042 235**	
Mishandling of oil transfer	7	Other damage to property Indemnification	¥19 159 905 ¥742 880 **¥19 902 785**	
Discharge	Unknown	Other damage to property Indemnification	¥273 580 ¥403 280 **¥676 860**	
Mishandling of cargo	Unknown	Clean-up Indemnification	¥8 285 960 ¥431 761 **¥8 717 721**	
Overflow during discharge	250			Total damage less than shipowner's liability (clean-up Can$292 110 agreed).

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
47	*Dainichi Maru N°5*	28.10.89	Yaizu, Japan	Japan	174	¥4 199 680
48	*Daito Maru N°3*	5.4.90	Yokohama, Japan	Japan	93	¥2 495 360
49	*Kazuei Maru N°10*	11.4.90	Osaka, Japan	Japan	121	¥3 476 160
50	*Fuji Maru N°3*	12.4.90	Yokohama, Japan	Japan	199	¥5 352 000
51	*Volgoneft 263*	14.5.90	Karlskrona, Sweden	USSR	3 566	SKr3 205 204
52	*Hato Maru N°2*	27.7.90	Kobe, Japan	Japan	31	¥803 200
53	*Bonito*	12.10.90	River Thames, United Kingdom	Sweden	2 866	£241 000 (estimate)
54	*Rio Orinoco*	16.10.90	Anticosti island, Canada	Cayman Islands	5 999	Can$1 182 617
55	*Portfield*	5.11.90	Pembroke, Wales, United Kingdom	United Kingdom	481	£69 141
56	*Vistabella*	7.3.91	Caribbean	Trinidad and Tobago	1 090	FFr2 354 000 (estimate)
57	*Hokunan Maru N°12*	5.4.91	Okushiri island, Japan	Japan	209	¥3 523 520
58	*Agip Abruzzo*	10.4.91	Livorno, Italy	Italy	98 544	LIt 21 800 000 000 (estimate)

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1971 Fund, unless indicated to the contrary)		Notes
Mishandling of cargo	0.2	Fishery-related Clean-up Indemnification	¥1 792 100 ¥368 510 ¥1 049 920 **¥3 210 530**	
Mishandling of cargo	3	Clean-up Indemnification	¥5 490 570 ¥623 840 **¥6 114 410**	
Collision	30	Clean-up Fishery-related Indemnification	¥48 883 038 ¥560 588 ¥869 040 **¥50 312 666**	¥45 038 833 recovered by way of recourse.
Overflow during supply operation	Unknown	Clean-up Indemnification	¥96 431 ¥1 338 000 **¥1 434 431**	¥430 329 recovered by way of recourse.
Collision	800	Clean-up Fishery-related Indemnification	SKr15 523 813 SKr530 239 SKr795 276 **SKr16 849 328**	
Mishandling of cargo	Unknown	Other damage to property Indemnification	¥1 087 700 ¥200 800 **¥1 288 500**	
Mishandling of cargo	20			Total damage less than shipowner's liability (clean-up £130 000 agreed).
Grounding	185	Clean-up	Can$12 831 892	
Sinking	110	Clean-up Fishery-related Indemnification	£249 630 £9 879 £17 155 **£276 663**	
Sinking	Unknown	Clean-up Clean-up	FFr8 237 529 £14 250	
Grounding	Unknown	Clean-up Fishery-related Indemnification	¥2 119 966 ¥4 024 863 ¥880 880 **¥7 025 709**	
Collision	2 000	Indemnification	LIt 1 666 031 931	Total damage less than shipowner's liability.

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
59	*Haven*	11.4.91	Genoa, Italy	Cyprus	109 977	LIt 23 950 220 000
60	*Kaiko Maru N°86*	12.4.91	Nomazaki, Japan	Japan	499	¥14 660 480
61	*Kumi Maru N°12*	27.12.91	Tokyo Bay, Japan	Japan	113	¥3 058 560
62	*Fukkol Maru N°12*	9.6.92	Ishinomaki, Japan	Japan	94	¥2 198 400
63	*Aegean Sea*	3.12.92	La Coruña, Spain	Greece	57 801	Pts 1 121 219 450
64	*Braer*	5.1.93	Shetland, United Kingdom	Liberia	44 989	£4 883 840
65	*Kihnu*	16.1.93	Tallinn, Estonia	Estonia	949	113 000 SDR (estimate)
66	*Sambo N°11*	12.4.93	Seoul, Republic of Korea	Republic of Korea	520	Won 77 786 224 (estimate)
67	*Taiko Maru*	31.5.93	Shioyazaki, Japan	Japan	699	¥29 205 120

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1971 Fund, unless indicated to the contrary)		Notes
Fire and explosion	Unknown	Italian State Two Italian contractors	LIt 70 002 629 093 LIt 1 582 341 690 **LIt 71 584 970 783**	Agreement on a global settlement of all outstanding claims between the Italian State, the shipowner/ Club and the 1971 Fund was signed in Rome on 4 March 1999. The 1971 Fund's payments are set out in the previous column. The shipowner's insurer paid LIt47 597 370 907 to the Italian State. The shipowner and his insurer paid all accepted claims by other Italian public bodies and private claimants.
		French State Other French public bodies Principality of Monaco	FFr12 580 724 FFr10 659 469 FFr270 035 **FFr23 510 228**	
		Indemnification	£2 500 000	
Collision	25	Clean-up Fishery-related Indemnification	¥53 513 992 ¥39 553 821 ¥3 665 120 **¥96 732 933**	
Collision	5	Clean-up Indemnification	¥1 056 519 ¥764 640 **¥1 821 159**	¥650 522 recovered by way of recourse.
Mishandling of oil supply	Unknown	Other damage to property Indemnification	¥4 243 997 ¥549 600 **¥4 793 597**	
Grounding	73 500	Fishing related Clean-up Preventive measures Tourism Financial costs Amounts awarded by criminal court Previously settled claims Miscellaneous	Pts 8 696 000 000 Pts 1 729 240 000 Pts 708 033 000 Pts 13 810 000 Pts 371 680 000 Pts 893 880 000 Pts 1 263 150 000 Pts 252 990 000 **Pts 13 928 783 000**	Shipowner/insurer paid Pts 840 000 000. Pursuant to agreement between the Spanish State, the shipowner/insurer and the 1971 Fund, the Fund paid the Spanish State Pts 6 386 921 613. The Fund also paid Pts 1 263 150 000 to claimants that had settled their claims at an early stage and were not included in the above agreement.
		Indemnification	Pts 278 197 307	
Grounding	84 000	Clean-up Fishery-related Tourism-related Farming-related Other damage to property Other loss of income	£593 883 £38 538 451 £77 375 £3 572 392 £8 904 047 £252 790 **£51 938 938**	£6 213 497 paid by shipowner's insurer. The 1971 Fund paid £45 725 441 in compensation. One claim for £1.4 million subject to court proceedings. The shipowner's insurer will pay any amount awarded.
Grounding	140	Clean-up	FM543 618	
Grounding	4	Clean-up Fishery-related	Won 176 866 632 Won 42 848 123 **Won 219 714 755**	US$22 504 recovered from shipowner's insurer.
Collision	520	Clean-up Fishery-related Indemnification	¥756 780 796 ¥336 404 259 ¥7 301 280 **¥1 100 486 335**	¥49 104 248 recovered by way of recourse.

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
68	*Ryoyo Maru*	23.7.93	Izu peninsula, Japan	Japan	699	¥28 105 920
69	*Keumdong N°5*	27.9.93	Yeosu, Republic of Korea	Republic of Korea	481	Won 77 417 210
70	*Iliad*	9.10.93	Pylos, Greece	Greece	33 837	Drs 1 496 533 000
71	*Seki*	30.3.94	Fujairah, United Arab Emirates, and Oman	Panama	153 506	14 million SDR
72	*Daito Maru N°5*	11.6.94	Yokohama, Japan	Japan	116	¥3 386 560
73	*Toyotaka Maru*	17.10.94	Kainan, Japan	Japan	2 960	¥81 823 680
74	*Hoyu Maru N°53*	31.10.94	Monbetsu, Japan	Japan	43	¥1 089 280
75	*Sung Il N°1*	8.11.94	Onsan, Republic of Korea	Republic of Korea	150	Won 23 000 000 (estimate)
76	Spill from unknown source	30.11.94	Mohammédia, Morocco	-	-	-
77	*Boyang N°51*	25.5.95	Sandbaeg Do, Republic of Korea	Republic of Korea	149	19 817 SDR

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1971 Fund, unless indicated to the contrary)		Notes
Collision	500	Clean-up Indemnification	¥8 433 001 ¥7 026 480 **¥15 459 481**	¥10 455 440 recovered by way of recourse.
Collision	1 280	Clean-up (paid) Fishery-related (paid)	Won 5 602 021 858 Won 10 530 130 111 **Won 16 146 358 015**	Won 64 560 080 paid by shipowner's insurer.
		Indemnification Fishery-related (claimed)	Won 12 857 130 Won 2 756 471 759	Fishing claims subject of appeal by claimants to the Supreme Court.
Grounding	200	Clean-up (paid) Fishery-related (claimed) Other loss of income (claimed) Moral damages (claimed)	Drs 356 204 011 Drs 1 044 000 000 Drs 1 671 000 000 Drs 378 000 000 **Drs 3 449 204 011**	Drs 356 204 011 paid by shipowner's insurer.
Collision	16 000			Settlement outside the Conventions concluded between the Government of Fujairah and the shipowner. Terms of settlement not known to 1971 Fund. The 1971 Fund will not be called upon to pay any compensation.
Overflow during loading operation	0.5	Clean-up Indemnification	¥1 187 304 ¥846 640 **¥2 033 944**	
Collision	560	Clean-up Fishery-related Other loss of income Indemnification	¥629 516 429 ¥50 730 359 ¥15 490 030 ¥20 455 920 **¥716 192 738**	¥31 021 717 recovered by way of recourse.
Mishandling of oil supply	Unknown	Other damage to property Clean-up Indemnification	¥3 954 861 ¥202 854 ¥272 320 **¥4 430 035**	
Grounding	18	Clean-up Fishery-related	Won 9 401 293 Won 28 378 819 **Won 37 780 112**	Shipowner lost right to limit his liability because proceedings not commenced within period specified under Korean law.
Unknown	Unknown	Clean-up (claimed)	Mor Dhr 2 600 000	Not established that oil originated from a ship as defined in 1971 Fund Convention.
Collision	160			Clean-up claim (Won 142 million) time-barred as necessary legal action not taken.

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
78	*Dae Woong*	27.6.95	Kojung, Republic of Korea	Republic of Korea	642	Won 95 000 000 (estimate)
79	*Sea Prince*	23.7.95	Yeosu, Republic of Korea	Cyprus	144 567	Won 18 308 275 906
80	*Yeo Myung*	3.8.95	Yeosu, Republic of Korea	Republic of Korea	138	Won 21 465 434
81	*Shinryu Maru N°8*	4.8.95	Chita, Japan	Japan	198	¥3 967 138
82	*Senyo Maru*	3.9.95	Ube, Japan	Japan	895	¥20 203 325
83	*Yuil N°1*	21.9.95	Busan, Republic of Korea	Republic of Korea	1 591	Won 351 924 060
84	*Honam Sapphire*	17.11.95	Yeosu, Republic of Korea	Panama	142 488	14 000 000 SDR
85	*Toko Maru*	23.1.96	Anegasaki, Japan	Japan	699	¥18 769 567 (estimate)

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1971 Fund, unless indicated to the contrary)		Notes
Grounding	1	Clean-up	Won 43 517 127	
Grounding	5 035	Clean-up (paid) Fishery-related (paid) Tourism-related (paid) Oil removal (paid) Environmental studies (paid) **Won 50 227 315 596** Clean-up (paid) Indemnification (paid)	Won 20 709 245 359 Won 19 836 456 445 Won 538 000 000 Won 8 420 123 382 Won 723 490 410 ¥357 214 Won 7 410 928 540	Won 18 308 275 906 paid by shipowner's insurer.
Collision	40	Clean-up (paid) Fishery-related (paid) Tourism-related (paid) **Won 1 553 029 739** *Claims pending in court:* Fishery-related	Won 684 000 000 Won 600 000 000 Won 269 029 739 Won 335 000 000	Won 560 945 437 paid by shipowner's insurer.
Mishandling of oil supply	0.5	Clean-up (paid) Indemnification (paid) **¥9 634 576** Other damage to property (agreed) Other loss of income (agreed) **US$5 663**	¥8 650 249 ¥984 327 US$3 103 US$2 560	¥3 718 455 paid by shipowner's insurer.
Collision	94	Clean-up Fishery-related Indemnification **¥366 578 453**	¥314 838 937 ¥46 726 661 ¥5 012 855	¥279 973 101 recovered by way of recourse action.
Sinking	Unknown	Clean-up (paid) Fishery-related (paid) Oil removal operation (paid) **Won 27 177 996 729**	Won 12 393 138 987 Won 7 960 494 932 Won 6 824 362 810	
Contact with fender	1 800	Clean-up (paid) Fishery-related (paid) Environmental studies (claimed) **Won 10 259 000 000**	Won 9 033 000 000 Won 1 112 000 000 Won 114 000 000	US$13.5 million paid by shipowner's insurer.
Collision	4			Total damage less than owner's liability. Indemnification not requested.

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
86	*Sea Empress*	15.2.96	Milford Haven, Wales, United Kingdom	Liberia	77 356	£7 395 748
87	*Kugenuma Maru*	6.3.96	Kawasaki, Japan	Japan	57	¥1 175 055 (estimate)
88	*Kriti Sea*	9.8.96	Agioi Theodoroi, Greece	Greece	62 678	€6 576 109 million (estimate)
89	*N° 1 Yung Jung*	15.8.96	Busan, Republic of Korea	Republic of Korea	560	Won 122 million
90	*Nakhodka*	2.1.97	Oki island, Japan	Russian Federation	13 159	1 588 000 SDR
91	*Tsubame Maru N° 31*	25.1.97	Otaru, Japan	Japan	89	¥1 843 849
92	*Nissos Amorgos*	28.2.97	Maracaibo, Venezuela	Greece	50 563	Bs3 473 million (estimate)
93	*Daiwa Maru N° 18*	27.3.97	Kawasaki, Japan	Japan	186	¥3 372 368 (estimate)
94	*Jeong Jin N° 101*	1.4.97	Busan, Republic of Korea	Republic of Korea	896	Won 246 million

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1971 Fund, unless indicated to the contrary)		Notes
Grounding	72 360	Clean-up (paid) Other damage to property (paid) Fishery-related (paid) Tourism-related (paid) Other loss of income (paid) **£36 806 484** Indemnification (paid)	£22 773 470 £443 972 £10 154 314 £ 2 389 943 £1 044 785 £1 835 035	£7 395 748 paid by shipowner's insurer.
Mishandling of oil supply	0.3	Clean-up Indemnification **¥2 278 469**	¥1 981 403 ¥297 066	¥1 197 267 recovered by way of recourse action.
Mishandling of oil supply	30	Clean-up and property damage (paid) Fishery-related (paid) Tourism (paid) Miscellaneous (paid) **€3 774 000**	€2 500 000 €1 100 000 €150 000 €24 000	All claims paid by the shipowner's insurer.
Grounding	28	Clean-up (paid) Salvage (paid) Fishery-related (paid) Loss of income (paid) Cargo transhipment (paid) Indemnification (paid) **Won 771 208 588**	Won 689 829 037 Won 20 376 927 Won 16 769 424 Won 6 161 710 Won 10 000 000 Won 28 071 490	Won 690 million paid by shipowner's insurer.
Breaking	6 200	Clean-up (paid) Fishery-related (paid) Tourism-related (paid) Causeway (paid) **¥26 089 893 000**	¥20 928 412 000 ¥1 769 172 000 ¥1 344 157 000 ¥2 048 152 000	All claims have been settled and paid. A global settlement agreement was reached between the shipowner/insurer and the IOPC Funds whereby the insurer paid ¥10 956 930 000 and the Funds paid ¥15 130 970 000, of which the 1992 Fund paid ¥7 422 192 000 and the 1971 Fund paid ¥7 708 778 000.
Overflow during loading operation	0.6	Clean-up Indemnification **¥8 131 327**	¥7 673 830 ¥457 497	¥1 710 173 paid by shipowner's insurer.
Grounding	3 600	Clean-up (settled) Clean-up (settled) Clean-up (claimed) Fishery-related (settled) Fishery-related (settled) Fishery-related (claimed) Tourism-related (settled) Environmental damage (claimed) Miscellaneous (claimed)	Bs3 523 252 942 US$35 850 Bs78 906 071 Bs133 011 848 US$16 033 390 US$30 000 000 Bs8 188 078 US$60 250 396 Bs540 000 000	Bs1 254 619 385 and US$4 008 347 paid by shipowner's insurer. Bs17 501 083 and US$9 745 882 paid by 1971 Fund. Clean-up (claimed) settled for Bs70 675 468, but claim not withdrawn from Court.
Mishandling of oil supply	1	Clean-up Indemnification **¥416 465 406**	¥415 600 000 ¥865 406	
Overflow during loading operation	124	Clean-up Indemnification **Won 476 000 000**	Won 418 000 000 Won 58 000 000	

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
95	*Osung N°3*	3.4.97	Tunggado, Republic of Korea	Republic of Korea	786	104 500 SDR (estimate)
96	*Plate Princess*	27.5.97	Puerto Miranda, Venezuela	Malta	30 423	3.6 million SDR (estimate)
97	*Diamond Grace*	2.7.97	Tokyo Bay, Japan	Panama	147 012	14 million SDR
98	*Katja*	7.8.97	Le Havre, France	Bahamas	52 079	FFr48 million (estimate)
99	*Evoikos*	15.10.97	Strait of Singapore	Cyprus	80 823	8 846 942 SDR
100	*Kyungnam N°1*	7.11.97	Ulsan, Republic of Korea	Republic of Korea	168	Won 43 543 015
101	*Pontoon 300*	7.1.98	Hamriyah, Sharjah, United Arab Emirates	Saint Vincent and the Grenadines	4 233	Not available

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1971 Fund, unless indicated to the contrary)		Notes
Grounding	Unknown	Clean-up (paid) Fishery-related (paid) Oil removal operation (paid) **Won 7 674 268 001**	Won 866 906 355 Won 68 795 729 Won 6 738 565 917	The 1992 Fund paid ¥340 million to claimants. This amount was later reimbursed by the 1971 Fund.
		Clean-up (paid) Fishery-related (paid) **¥851 039 365**	¥669 252 879 ¥181 786 486	
		Indemnification	Won 37 963 635	
Overflow during loading operation	3.2	Fishery-related (claimed)	US$47 000 000	Claims against the 1971 Fund time-barred.
Grounding	1 500	Clean-up (paid) Fishery-related (paid) Tourism-related (paid) Other loss of income (paid) Miscellaneous (settled) **¥1 416 000 000**	¥1 100 000 000 ¥263 000 000 ¥23 000 000 ¥8 000 000 ¥22 000 000	Total amount of established claims did not exceed shipowner's liability.
Striking a quay	190	Clean-up (paid) Clean-up (claimed)	€2 468 593 €975 684	€2 558 424 paid by shipowner's insurer. Practically certain that total of the established claims will be less than shipowner's liability.
		Fishery-related (paid) Other damage to property (paid) **€3 534 090**	€50 000 €39 813	Claims pending in court.
Collision	29 000	*Singapore* Clean-up (paid) Other damage to property (paid) Other damage to property (claimed) **S$11 567 000**	 S$10 000 000 S$1 500 000 S$67 000	All settled claims in Singapore and Malaysia paid by shipowner.
		Malaysia Clean-up (paid) Fishery-related (paid) **RM2 624 000**	 RM1 424 000 RM1 200 000	
		Indonesia Clean-up (claimed) Environmental damage (claimed) Fishery-related (claimed) **US$3 363 000**	 US$152 000 US$3 200 000 US$11 000	All claims in Indonesia dismissed by limitation court in Singapore.
Grounding	15-20	Clean-up (paid) Fishery-related (paid) **Won 265 023 170**	Won 189 214 535 Won 82 818 635	The shipowner has paid Won 26 622 030.
Sinking	4 000	Clean-up (settled) Other damage (claimed) **Dhs 205 133 019**	Dhs 6 380 522 Dhs 198 752 497	Payments limited to 75% (Dhs 4 785 392).

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
102	*Maritza Sayalero*	8.6.98	Carenero Bay, Venezuela	Panama	28 338	3 000 000 SDR (estimate)
103	*Al Jaziah 1*	24.1.00	Abu Dhabi, United Arab Emirates	Honduras	681	3 000 000 SDR
104	*Alambra*	17.9.00	Estonia	Malta	75 366	7 600 000 SDR (estimate)
105	*Natuna Sea*	3.10.00	Indonesia	Panama	51 095	6 100 000 SDR (estimate)
106	*Zeinab*	14.4.01	United Arab Emirates	Georgia	2 178	3 000 000 SDR
107	*Singapura Timur*	28.5.01	Malaysia	Panama	1 369	102 000 SDR (estimate)

Notes

See page 198.

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1971 Fund, unless indicated to the contrary)		Notes
Ruptured discharge pipe	262	*Claims against shipowner pending in court:* Clean-up and environmental damage (claimed)	Bs10 000 000	The 1971 Fund considers that the Conventions do not apply to this incident. Claims against Fund time-barred.
Sinking	100-200	Clean-up/preventive measures (paid)	£1 112 000	The 1971 and 1992 Funds have each contributed 50% of the amounts paid.
Corrosion	300 (estimate)	Clean-up (settled) Economic loss (claimed) Economic loss (claimed)	US$620 000 US$100 000 **US$720 000** EEK38 800 000 **EEK38 800 000**	All settled claims have been paid by the shipowner's insurer.
Grounding	7 000 (estimate)	*Singapore* Clean-up and fisheries (paid) *Malaysia* Clean-up (paid) Fishery-related (paid) *Indonesia* Clean-up and fisheries (paid)	 US$8 400 000 **US$8 400 000** RM1 300 000 RM905 000 **RM2 205 000** US$2 800 000 **US$2 800 000**	All settled claims have been paid by the shipowner's insurer.
Sinking	400	Clean-up (paid) Clean-up (paid)	US$844 000 Dhs2 480 000	The 1971 and 1992 Funds have each contributed 50% of the amounts paid.
Collision	Unknown	Clean-up (paid) Preventive measures (paid) Preventive measures/environmental risk assessment (paid) Indemnification (paid)	US$62 896 ¥11 436 000 US$783 500 US$25 000	US$103 378 paid by the shipowner's insurer. The 1971 Fund has recovered £317 317 from its insurer in respect of compensation and indemnification. The insurer has recovered £185 000 from the colliding vessel interests.

ANNEX XXI

1992 FUND: SUMMARY OF INCIDENTS (31 DECEMBER 2005)

For this table, damage has been grouped into the following categories:

- Clean-up
- Preventive measures
- Fishery-related
- Tourism-related
- Farming-related
- Other loss of income
- Other damage to property
- Environmental damage/studies

Where claims are shown in the table as settled this means that the amounts have been agreed with the claimants, but not necessarily that the claims have been paid or paid in full.

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GT)	Limit of shipowner's liability under applicable CLC
1	Incident in Germany	20.6.96	North Sea coast, Germany	Unknown	Unknown	Unknown
2	*Nakhodka*	2.1.97	Oki island, Japan	Russian Federation	13 159	1 588 000 SDR
3	*Osung N°3*	3.4.97	Tunggado, Republic of Korea	Republic of Korea	786	104 500 SDR (estimate)
4	Incident in United Kingdom	28.9.97	Essex, United Kingdom	Unknown	Unknown	Unknown
5	*Santa Anna*	1.1.98	Devon, United Kingdom	Panama	17 134	10 196 280 SDR
6	*Milad 1*	5.3.98	Bahrain	Belize	801	Not available
7	*Mary Anne*	22.7.99	Philippines	Philippines	465	3 000 000 SDR

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1992 Fund, unless indicated to the contrary)		Notes
Unknown	Unknown	Clean-up (claimed)	€1 390 000	Legal proceedings were taken against the owner and insurer of the *Kuzbass* by the German authorities. In an out-of-court settlement the shipowner/insurer and the 1992 Fund have agreed to pay 18% and 82% respectively of the final assessed amount.
Breaking	6 200	Clean-up (paid) Fishery-related (paid) Tourism-related (paid) Causeway (paid)	¥20 928 412 000 ¥1 769 172 000 ¥1 344 157 000 ¥2 048 152 000 **¥26 089 893 000**	All claims have been settled and paid. A global settlement agreement was reached between the shipowner/insurer and the IOPC Funds whereby the insurer paid ¥10 956 930 000 and the Funds paid ¥15 130 970 000, of which the 1992 Fund paid ¥7 422 192 000 and the 1971 Fund paid ¥7 708 778 000.
Grounding	Unknown	Clean-up (paid) Fishery-related (paid) Oil removal operation (paid) Clean-up (paid) Fishery-related (paid)	Won 866 906 355 Won 68 795 729 Won 6 738 565 917 **Won 7 674 268 001** ¥669 252 879 ¥181 786 486 **¥851 039 365**	All claims have been settled and paid. The 1992 Fund paid ¥340 million to claimants. This amount was later reimbursed by the 1971 Fund.
Unknown	Unknown	Clean-up (claimed)	£10 000	Claim not pursued.
Grounding	280	Clean-up (settled)	£30 000	Claim paid by the shipowner's insurer.
Damage to hull	0	Pre-spill preventive measures (paid)	BD 21 168	The 1992 Fund did not pursue recourse action against the shipowner.
Sinking	Unknown	Clean-up (paid) Clean-up (paid)	US$2 500 000 PPs1 800 000	Claims settled by the shipowner's insurer without the 1992 Fund's involvement.

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GT)	Limit of shipowner's liability under applicable CLC
8	*Dolly*	5.11.99	Martinique	Dominican Republic	289	3 000 000 SDR
9	*Erika*	12.12.99	Brittany, France	Malta	19 666	FFr84 247 733
10	*Al Jaziah 1*	24.1.00	Abu Dhabi, United Arab Emirates	Honduras	681	3 000 000 SDR
11	*Slops*	15.6.00	Piraeus, Greece	Greece	10 815	None
12	Incident in Spain	5.9.00	Spain	Unknown	Unknown	Unknown
13	Incident in Sweden	23.9.00	Sweden	Unknown	Unknown	Unknown
14	*Natuna Sea*	3.10.00	Indonesia	Panama	51 095	22 400 000 SDR (estimate)
15	*Baltic Carrier*	29.3.01	Denmark	Marshall Islands	23 235	DKr118 million

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1992 Fund, unless indicated to the contrary)		Notes
Sinking	Unknown			No claims submitted so far.
Breaking	14 000 (estimate)	Clean-up (settled) Fishery-related (settled) Property damage (settled) Tourism (settled) Other loss of income (settled) Claims in court	€21 605 000 €10 724 000 €2 059 000 €75 292 000 €6 660 000 €63 000 000 **€179 340 000**	Payments made by the shipowner's insurer for €12 800 000 and by the 1992 Fund for €103 540 000. Further claims totalling €334 000 000 have been filed in court by the French State and Total SA, but these will only be pursued to the extent that all other claims are paid in full.
Sinking	100-200	Clean-up/preventive measures (paid)	Dhs6 400 000	The 1971 and 1992 Funds have each contributed 50% of the amounts paid. The Funds have taken recourse action against the shipowner.
Fire	Unknown	Clean-up (claimed)	€2 323 000	The 1992 Fund considers that the *Slops* does not fall within the definition of 'ship'. Two contractors took legal action against the 1992 Fund, which is now before the Supreme Court.
Unknown	Unknown	Clean-up (claimed)	€6 000	The Spanish authorities have recovered their costs from the alleged source of the pollution.
Unknown	Unknown	Clean-up (claimed)	SEK5 260 000	The Swedish State has brought legal action against the owner of the *Alambra* and his insurer. If the action were to be unsuccessful, the State would claim against the 1992 Fund.
Grounding	7 000 (estimate)	*Singapore* Clean-up and fisheries (paid) *Malaysia* Clean-up (paid) Fishery-related (paid) *Indonesia* Clean-up and fisheries (paid)	 US$8 400 000 RM1 300 000 RM905 000 **RM2 205 000** US$2 800 000	All claims have been paid by the shipowner's insurer.
Collision	2 500	Clean-up (paid) Oil disposal (paid) Property damage/economic loss (paid) Fishery-related (paid) Environmental monitoring (paid) Clean-up (claimed)	DKr15 900 000 DKr17 400 000 DKr1 600 000 DKr19 700 000 DKr258 000 **DKr54 858 000** DKr50 000 000	All claims paid by the shipowner's insurer. The 1992 Fund is unlikely to be called upon to make any compensation payments.

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GT)	Limit of shipowner's liability under applicable CLC
16	*Zeinab*	14.4.01	United Arab Emirates	Georgia	2 178	3 000 000 SDR
17	Incident in Guadeloupe	30.6.02	Guadeloupe	Unknown	Unknown	Unknown
18	Incident in United Kingdom	29.9.02	United Kingdom	Unknown	Unknown	Unknown
19	*Prestige*	13.11.02	Spain	Bahamas	42 820	€22 777 986
20	*Spabunker IV*	21.1.03	Spain	Spain	647	3 000 000 SDR
21	Incident in Bahrain	15.3.03	Bahrain	Unknown	Unknown	Unknown
22	*Buyang*	22.4.03	Geoje, Republic of Korea	Republic of Korea	187	3 000 000 SDR
23	*Hana*	13.5.03	Busan, Republic of Korea	Republic of Korea	196	3 000 000 SDR
24	*Victoriya*	30.8.03	Syzran, Russian Federation	Russian Federation	2 003	3 000 000 SDR

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1992 Fund, unless indicated to the contrary)		Notes
Sinking	400	Clean-up (paid) Clean-up (paid)	US$844 000 Dhs2 480 000	The 1971 and 1992 Funds have each contributed 50% of the amounts paid.
Unknown	Unknown	Clean-up (claimed)	€340 000	The source of the spill appears to have been a general cargo vessel. It is unlikely therefore that the 1992 Fund will be called upon to make any compensation payments.
Unknown	Unknown	Clean-up (paid)	£5 400	
Breaking	Unknown	*Spain* Clean-up/preventive measures (claimed) Property damage (claimed) Fisheries and mariculture (claimed) Tourism (claimed) Miscellaneous (claimed) **€834 021 000** *France* Clean-up (claimed) Property damage (claimed) Fisheries and mariculture (claimed) Tourism (claimed) Miscellaneous (claimed) **€107 152 000** *Portugal* Clean-up (claimed) **€4 292 000**	 €484 921 000 €2 714 000 €338 804 000 €6 119 000 €1 463 000 €78 071 000 €88 000 €3 767 000 €24 326 000 €900 000 €4 292 000	The shipowner has deposited the limitation amount (€22 777 986) with the Spanish Court. The 1992 Fund has paid €57 555 000 to the Spanish Government.
Sinking	Unknown	*Spain* Preventive measures and wreck removal Clean-up **€6 028 000** *Gibraltar* Clean-up	 €5 400 000 €628 000 £18 350	
Unknown	Unknown	Clean-up/preventive measures (settled) Fisheries (settled) **US$1 231 000**	US$689 000 US$542 000	All claims have been paid by the 1992 Fund.
Grounding	35-40	Clean-up/preventive measures (settled) Fisheries (settled) **Won 1 335 000 000**	Won 1 007 000 000 Won 328 000 000	All claims have been paid by the shipowner's insurer.
Collision	34	Clean-up/preventive measures (settled) Fisheries (settled) Property damage (settled) **Won 1 283 650 000**	Won 1 242 000 000 Won 22 500 000 Won 19 150 000	All claims have been paid by the shipowner's insurer.
Fire	Unknown	Clean-up/preventive measures (claimed) Fisheries (not yet claimed)	US$500 000	

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GT)	Limit of shipowner's liability under applicable CLC
25	*Duck Yang*	12.9.03	Busan, Republic of Korea	Republic of Korea	149	3 000 000 SDR
26	*Kyung Won*	12.9.03	Namhae, Republic of Korea	Republic of Korea	144	3 000 000 SDR
27	*Jeong Yang*	23.12.03	Yeosu, Republic of Korea	Republic of Korea	4 061	4 510 000 SDR
28	*№11 Hae Woon*	22.7.04	Geoje, Republic of Korea	Republic of Korea	110	4 510 000 SDR
29	*№7 Kwang Min*	24.11.05	Busan, Republic of Korea	Republic of Korea	139	4 510 000 SDR

Notes to Annexes XX and XXI

1 Amounts are given in national currencies. The relevant conversion rates as at 30 December 2005 are as follows:

£1 =

Algerian Dinar	Din	125.34	Moroccan Dirham	Mor Dhr	15.9141
Bahrain Dinar	BD	0.6471	Philippines Peso	PPs	91.0478
Cameroon	CFA Fr	954.7	Republic of Korea Won	Won	1735.38
Canadian Dollar	Can$	2.0054	Russian Rouble	Rbls	49.3418
Danish Krone	DKr	10.8558	Singapore Dollar	S$	2.8546
Estonian Kroon	EEK	22.7723	Swedish Krona	SEK	13.6629
Euro	€	1.4554	UAE Dirham	UAE Dhs	6.3056
Indonesian Rupiah	Rp	16892.8	United States Dollar	US$	1.7168
Japanese Yen	¥	202.628	Venezuelan Bolivar	Bs	4439.66
Malaysian Ringgit	RM	6.4885			

£1 = 1.20360 SDR or 1 SDR = £0.83084

2 The following currencies were replaced by the Euro on 1 January 2002 at the following conversion rates. The equivalent values relative to the Pound Sterling, as at 30 December 2005, are also given.

		€1=	£1=
Finnish Markka	FM	5.9457	8.6534
French Franc	FFr	6.5595	9.5467
German Mark	DM	1.9558	2.8465
Greek Drachma	Drs	340.75	495.9276
Italian Lira	LIt	1936.27	2818.0474
Spanish Peseta	Pts	166.386	242.1582

3 The inclusion of claimed amounts is not to be understood as indicating that either the claim or the amount is accepted by the 1971 or 1992 Funds.

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1992 Fund, unless indicated to the contrary)		Notes
Sinking	300	Clean-up/preventive measures (settled) Property damage/economic losses (settled)	Won 2 883 000 000 Won 43 000 000 **Won 2 926 000 000**	All claims have been paid by the shipowner's insurer.
Stranding	100	Clean-up/preventive measures (settled) Fisheries (settled)	Won 2 921 000 000 Won 407 000 000 **Won 3 328 000 000**	
Collision	700	Clean-up/preventive measures (settled) Fisheries (settled) Post-spill studies (settled) Economic costs (claimed)	Won 3 992 000 000 Won 78 400 000 Won 140 000 000 Won 115 000 000 **Won 4 325 400 000**	All claims have been paid by the shipowner's insurer.
Collision	12	Clean-up/preventive measures (settled)	Won 354 000 000 **Won 354 000 000**	All claims have been paid by the shipowner's insurer.
Collision	64	Clean-up/preventive measures (claimed)	Won 4 455 000 **Won 4 455 000**	Further claims for costs of clean-up/ preventive measures, property damage and economic loss are expected.

INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS

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