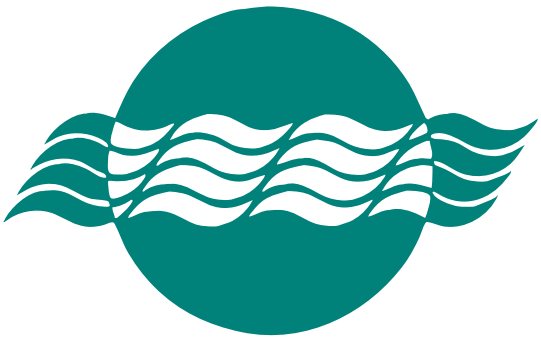
Annual Report 2007

INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS

REPORT ON THE ACTIVITIES OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS IN 2007



Photograph on front cover:
Hebei Spirit: Military personnel collecting oil on the beach in So Won Myeon, Republic of Korea

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 2007.

Two major new incidents occurred during 2007 which are likely to result in considerable work for the Organisations. Both the *Volgoneft 139* and the *Hebei Spirit* incidents happened during winter storms, spilling thousands of tonnes of oil and causing extensive pollution of shorelines. Claimants in these incidents should benefit considerably from the Funds' new state-of-the-art web-based claims management system, which is designed to expedite the claims handling process by allowing our staff to work seamlessly with staff in local claims offices and with international experts, wherever they are based.

During 2007, the number of States which have ratified the 1992 Fund Convention passed the milestone of 100 and I look forward to welcoming the Cook Islands as the 100th Member State of the Fund when the Convention enters into force for that State in March 2008. The international compensation regime is therefore still continuing to grow and develop, which can also be seen in the successful implementation of the STOPIA/TOPIA agreements and the progress of the Working Group on non-technical measures to promote quality transportation of oil by sea.

Over the years, the Secretariat has devoted considerable effort to promoting the implementation of the HNS Convention, including holding workshops and developing software to assist with the reporting of contributing cargo, however progress towards ratification of the Convention has been slow. I therefore hope that the HNS Focus Group established by the 1992 Fund Assembly to resolve the major issues that have prevented States from ratifying the Convention will be successful in its work during 2008 and that we can look forward to the HNS Convention entering into force in the near future.

At the end of my first full year as Director of the Funds, I now know exactly what my predecessor meant when he described the job as "sometimes difficult, demanding but rewarding, and never dull". I would like to take this opportunity to thank all my staff for their hard work and support during the year – their dedication and expertise are essential for the proper functioning of the Organisations.

Willem Oosterveen

I would also like to thank the governments of Canada and Monaco for their generosity in offering to host meetings of the governing bodies whilst the IMO headquarters is being refurbished. Running meetings abroad is definitely a challenge for a small Secretariat but it has also proved worthwhile, certainly for the Secretariat and I hope also for the governments involved.

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

Willem Oosterveen
Director

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PREFACE

During 2007, my government had the very great pleasure of welcoming the IOPC Funds to Canada, when the June 2007 meetings of the governing bodies were held in Montreal. This was the first time in the history of the IOPC Funds that the governing bodies had met outside London. The March 2008 meetings will also be held outside the United Kingdom, due to the generosity of the government of Monaco. Whilst the meetings will subsequently return to the newly refurbished London headquarters of the International Maritime Organization (IMO), I hope that will not be the last time that meetings are held abroad, since it provides a useful opportunity for local staff and industry representatives to attend who might otherwise not be able to, thus increasing the visibility and awareness of the IOPC Funds in Member States.

At its October 2007 meeting, the 1992 Fund Assembly took the important decision to establish a Focus Group with the aim of developing a draft Protocol to the HNS Convention. It is hoped that the Protocol will resolve the three issues which have prevented States from ratifying the Convention, ie the concept of "receiver", contributions to the LNG account and non-submission of reports on contributing cargo. I sincerely hope that the Protocol will enter into force rapidly so that, when a major incident involving hazardous and noxious substances occurs, its victims will benefit from the existence of an international compensation regime, in the same way as victims of oil spills from tankers.

Any international regime must continue to develop if it is to continue to be effective. It is pleasing to note that States continue to join both the 1992 Fund and the Supplementary Fund, demonstrating that they believe that the system is a valuable one, and that as a result the 1992 Fund will soon have more than 100 Member States. It is equally pleasing to see that the STOPIA 2006 agreement, which was designed to share the costs of incidents involving small tankers more equitably between the shipping and cargo interests, is working so well in practice. Valuable work has also been done during 2007 by a Working Group established to promote quality shipping for carriage of oil by sea.

Jerry Rysanek

The importance of the international regime has been reinforced during 2007 with the occurrence of two major incidents: the *Volgoneft 139*, which affected the Russian Federation and the Ukraine, and the *Hebei Spirit*, which caused extensive pollution in the Republic of Korea. As always, it is important that the system is able to provide prompt and effective compensation in order to minimise the impact on the victims of these oil spills.

I would like to end by thanking, on behalf of the governing bodies, all those who have chaired meetings of the IOPC Funds during 2007: Mr John Gillies (Australia), Rear-Admiral Giancarlo Olimbo (Italy), Mrs Teresa Martins de Oliveira (Portugal) and Mrs Birgit Sølling Olsen (Denmark). I would also like to congratulate the IOPC Funds' new Director, Mr Willem Oosterveen, on completing his first full year in office.

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

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

The IOPC Funds provide 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 £47.5 million or US$93.5 million)[1]. The maximum amount of compensation payable by the 1992 Fund for any one incident is 203 million SDR (about £161 million or US$316 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 £107 million or US$210 million). For each Fund these amounts include the sum actually paid by the shipowner under the respective Civil Liability Convention.

The Supplementary Fund Protocol made available a total amount of 750 million SDR (£594 million or US$1 168 million) in compensation for pollution damage in States

[1] *The unit of account in the treaty instruments is the Special Drawing Right (SDR) as defined by the International Monetary Fund. Conversion of currencies in this Report has been made on the basis of the rates at 31 December 2007 (on that day 1 SDR = £0.7916 or US$1.5576), except in respect of claims paid by the Funds where conversion has been made at the rate of exchange when the currency was purchased.*

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

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

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

Assembly in session in Montreal, Canada in June 2007

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.

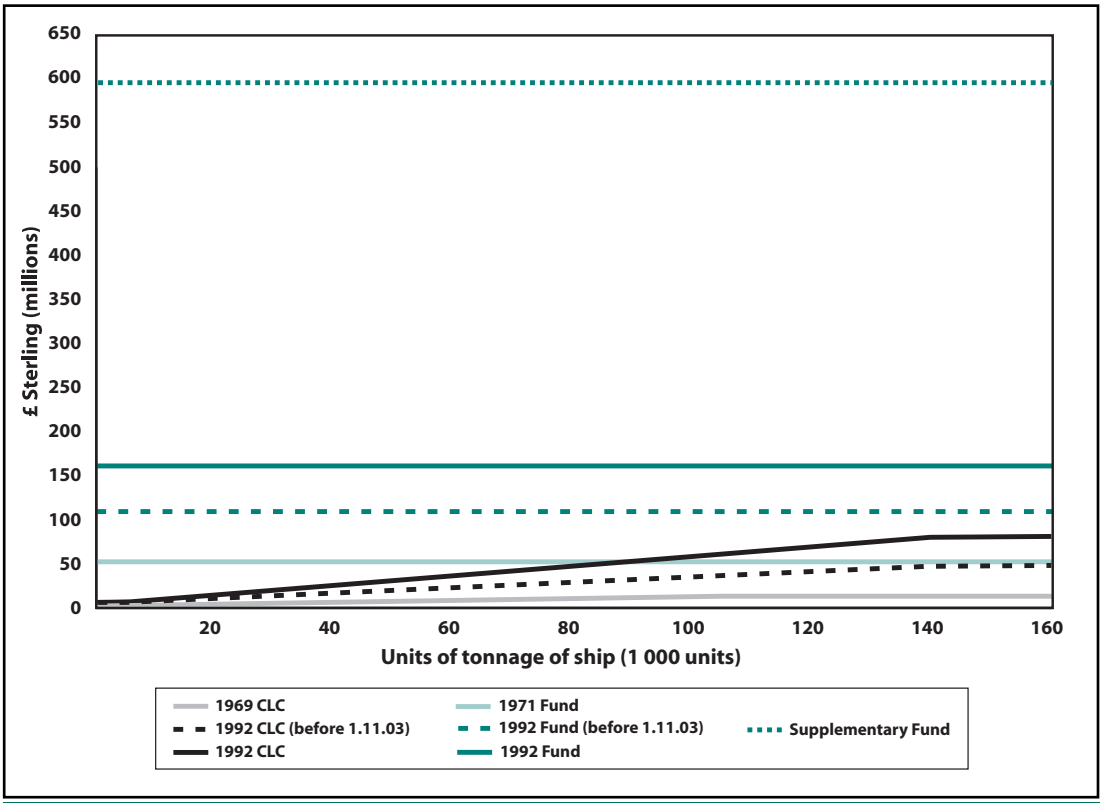
The 1969 and 1971 Conventions apply only to ships that actually carry oil in bulk as cargo, ie generally laden tankers. Spills from tankers during ballast voyages are therefore not covered by these Conventions. The 1992 Conventions and the Supplementary Fund Protocol do apply to spills of bunker oil 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

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 (£2.4 million or US$4.7 million)	4 510 000 SDR (£3.6 million or US$7 million)
Ship between 5 000 and 140 000 units of gross tonnage	3 000 000 SDR (£2.4 million or US$4.7 million) plus 420 SDR (£332 or US$654) for each additional unit of tonnage	4 510 000 SDR (£3.6 million or US$7 million) plus 631 SDR (£499 or US$983) for each additional unit of tonnage
Ship of 140 000 units of gross tonnage or over	59 700 000 SDR (£47 million or US$93 million)	89 770 000 SDR (£71 million or US$140 million)



Limits laid down in the Conventions

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

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

Under the 1969 Civil Liability Convention, the shipowner's liability is limited to 133 Special Drawing Rights (SDR) (£105 or US$207) per ton of the ship's tonnage or 14 million SDR (£11 million or US$22 million), whichever is the less.

Under the 1971 Fund Convention the 1971 Fund indemnified the shipowner, under certain conditions, 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 Civil Liability Convention are set out in the table above.

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 cannot obtain full compensation from the shipowner or his insurer under the applicable Civil Liability Convention in the following cases:

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

The maximum compensation payable by the 1971 Fund in respect of one incident is 60 million SDR (about £47.5 million or US$93.5 million), irrespective of the size of the ship involved. As for the 1992 Fund the maximum amount payable is 203 million SDR (about £161 million or US$316 million) for incidents occurring on or after 1 November 2003, irrespective of the size of the ship. For incidents occurring before that date the maximum amount payable is 135 million SDR (about £107 million or US$210 million). These maximum amounts include the sums actually paid by the shipowner under the applicable Civil Liability Convention.

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 (£594 million or US$1 168 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 from the Supplementary Fund are therefore extinguished only if they are extinguished as regards the 1992 Fund.

Jurisdiction and enforcement of judgements

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

Structure and financing

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

3 MEMBERSHIP OF THE IOPC FUNDS

3.1 1971 Fund

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

Of the 23 States which were Members of the 1971 Fund on 24 May 2002, 16 have acceded to the 1992 Fund Convention. However, seven States have not yet done so, namely Benin, Côte d'Ivoire, Gambia, Guyana, Kuwait, Mauritania and Syrian Arab Republic. Indonesia, which had earlier denounced the 1971 Fund Convention, has also not become a Member of the 1992 Fund. It is hoped that these States will ratify the 1992 Fund Convention in the near future.

3.2 1992 Fund

The 1992 Fund Convention entered into force on 30 May 1996 for nine States. By the end of

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

Albania
Algeria
Angola
Antigua and Barbuda
Argentina
Australia
Bahamas
Bahrain
Barbados
Belgium
Belize
Brunei Darussalam
Bulgaria
Cambodia
Cameroon
Canada
Cape Verde
China (Hong Kong Special Administrative Region)
Colombia
Comoros
Congo
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
Luxembourg
Madagascar
Malaysia
Maldives
Malta
Marshall Islands
Mauritius
Mexico
Monaco
Morocco
Mozambique
Namibia
Netherlands
New Zealand
Nigeria
Norway
Oman
Panama
Papua New Guinea
Philippines
Poland
Portugal
Qatar
Republic of Korea
Russian Federation
Saint Kitts and Nevis
Saint Lucia
Saint Vincent and the Grenadines
Samoa
Seychelles
Sierra Leone
Singapore
Slovenia
South Africa
Spain
Sri Lanka
Sweden
Switzerland
Tonga
Trinidad and Tobago
Tunisia
Turkey
Tuvalu
United Arab Emirates
United Kingdom
United Republic of Tanzania
Uruguay
Vanuatu
Venezuela

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

Kiribati	5 February 2008	Hungary	30 March 2008
Cook Islands	12 March 2008	Ecuador	11 December 2008

2007, 98 States were Members of the 1992 Fund and four additional States had acceded to the 1992 Fund Convention and will become Members of the 1992 Fund in the course of 2008. The list of States which have acceded to the 1992 Fund Convention is set out on page 19 and above.

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

3.3 Supplementary Fund

By the end of 2006, 20 States had become Members of the Supplementary Fund. One further State had acceded to the Supplementary Fund Protocol and will become a Member in March 2008, as set out below.

3.4 Developments over the years

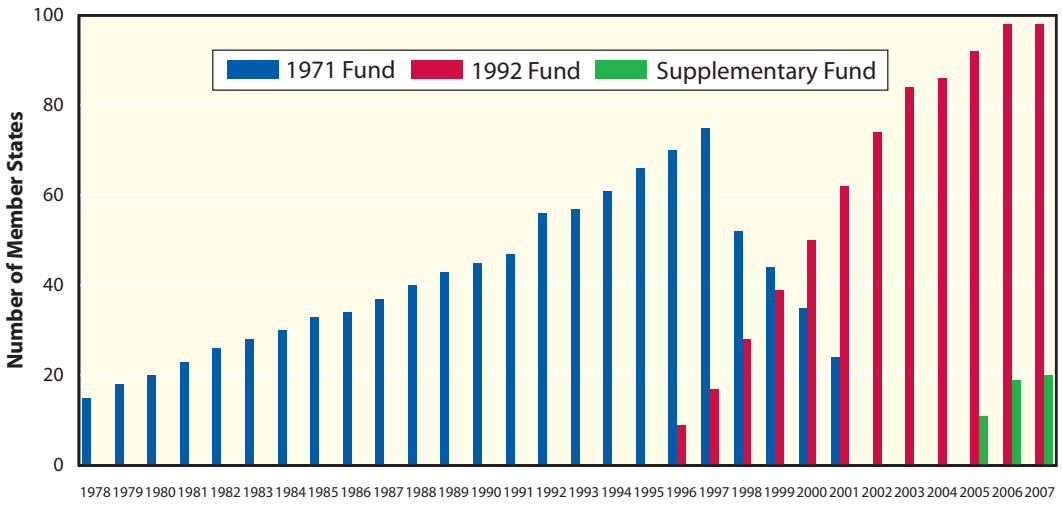
The graph below shows developments as regards the number of Member States of the 1971 Fund, 1992 Fund and Supplementary Fund over the years.

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

Barbados	Greece	Netherlands
Belgium	Ireland	Norway
Croatia	Italy	Portugal
Denmark	Japan	Slovenia
Finland	Latvia	Spain
France	Lithuania	Sweden
Germany	Japan	United Kingdom

1 STATE WHICH HAS DEPOSITED AN INSTRUMENT OF ACCESSION, BUT FOR WHICH THE PROTOCOL DOES NOT ENTER INTO FORCE UNTIL DATE INDICATED

Hungary	30 March 2008



Annual membership of the 1971, 1992 and Supplementary Funds

4 EXTERNAL RELATIONS

4.1 Promotion of 1992 Fund membership and information on Fund activities

The Secretariat has continued its efforts to increase the number of 1992 Fund Member States and to provide information on Fund activities. To this end, the Director and other members of the Secretariat visited some Member States and several non-Member States in 2007, participating in seminars and conferences and giving lectures on liability and compensation for oil pollution damage and on the operation of the 1992 Fund. They also had discussions for this purpose with government representatives of non-Member States in connection with IMO meetings, in particular during sessions of the IMO Council and Legal Committee.

Whenever possible, the Director and other members of the Secretariat took advantage of their participation in seminars and conferences or incident-related travel to meet with government officials and other interested parties in the countries involved or in the respective region, in order to establish and maintain personal contacts between the Secretariat and officials within national administrations dealing with Fund matters.

Members of the Secretariat also participated in workshops on the handling of compensation claims in both Member States and non-Member States (Bulgaria, Egypt, Equatorial Guinea, Ghana, Turkey and Congo) and gave presentations at meetings of inter-governmental and international non-governmental organisations which have observer status with the IOPC Funds.

Lectures were also given by members of the Secretariat at the Institute of Maritime Law at the University of Southampton (United Kingdom). Students from universities in Antwerp and Ghent (Belgium) and Bilbao and Valencia (Spain) and from the International Tribunal on the Law of the Sea in Hamburg (Germany) have visited the Secretariat as have other bodies interested in the activities of the IOPC Funds. On such occasions the Director and other members of the Secretariat have given in-house lectures on the operation of the Fund.

As requested by the 1992 Fund Assembly, the IOPC Funds have continued to give high priority to the preparations for the entry into force of the International Convention on liability and compensation for damage in connection with the carriage of hazardous and noxious substances by sea, 1996 (HNS Convention). In this connection, a series of presentations on different aspects of the HNS Convention was made by the IOPC Fund Secretariat at three seminars organised by the European Maritime Safety Agency (EMSA) in Malta, Poland and Portugal, as well as at a seminar in Denmark organised by the Danish Maritime Authority. The Secretariat also participated in intersessional meetings of Member States in connection with the work towards ratification of the HNS Convention.

Former Member States of the 1971 Fund automatically have observer status with the 1992 Fund. In addition, the 1992 Fund Assembly has granted observer status to a number of States that have never been parties to either Fund Convention. At the end of 2007 the

NON-MEMBER STATES WITH OBSERVER STATUS

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

non-Member States set out in the table on page 21 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)
- 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 2007 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, as well as at the International Diplomatic Conference on Removal of Wrecks.

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

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

4.3 Website

The IOPC Funds have a trilingual website (www.iopcfund.org) containing information in English, French and Spanish on the Organisations and their activities. During 2007 information on conferences, seminars and workshops in which members of the IOPC Funds Secretariat participated continued to be added to the website, reflecting the increasing outreach activities of the Organisations.

The IOPC Funds also have a dedicated website for the HNS Convention (http://www.hnsconvention.org).

4.4 Document Server

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

meeting documents from the setting up of the 1971 Fund in November 1978 onwards was completed in 2007.

4.5 Records of Decisions database

The IOPC Funds are in the process of establishing a database of all the decisions taken by the governing bodies of the IOPC Funds since their inception in 1978. A key feature of the database, which will be web-based and set up at least initially in English only, is that each decision will be accompanied by an abstract of that decision which will be linked directly to the relevant paragraphs in the source documents relating to the decision. The categorisation of all the decisions and other relevant information, such as court judgements, was completed at the end of 2007. Once it has been proofread, a database interface will be developed to enable the database to be accessible online. The database will then be kept up to date after each session of the governing bodies.

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

The 1971 Fund Administrative Council held sessions in March and October 2007. The March 2007 session was chaired by Mrs Teresa Martins de Oliveira (Portugal) and the October 2007 session by Mrs Martins de Oliveira and by Mr David Bruce (Marshall Islands), Vice-Chairman of the 1971 Administrative Council. The main decisions taken by the Council at these sessions in respect of incidents involving the 1971 Fund are reflected in Section 14 in the context of particular pollution incidents involving that Fund.

Teresa Martins de Oliveira

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

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

The 1992 Fund Assembly held an extraordinary session in March 2007 and its ordinary autumn session in October 2007. A session of the Administrative Council acting on behalf of the Assembly since the Assembly was unable to achieve a quorum was held in June 2007. At the invitation of the Government of Canada, this session was held in Montreal. This was the first time in the history of the IOPC Funds that a meeting of one of the IOPC Funds' governing bodies had been held outside the United Kingdom. All three sessions were held under the chairmanship of Mr Jerry Rysanek (Canada).

The 1992 Fund Executive Committee held four sessions during 2007, in March, June and October, all of which were chaired by Mr John Gillies (Australia). The main decisions taken by the 1992 Fund Executive Committee at these sessions are reflected in Section 15 in the context of particular pollution incidents involving that Fund.

The Supplementary Fund has an Assembly composed of all States which are Parties to the Supplementary Fund Protocol. It held an ordinary session in October 2007 which was chaired by Rear-Admiral Giancarlo Olimbo (Italy).

Decisions relating to all three Organisations

June 2007

- The governing bodies decided to accept the kind invitation of the Government of Monaco and hold the March 2008 sessions of the IOPC Funds' governing bodies in Monaco.

October 2007

- The 1971 Fund Administrative Council and the 1992 Fund Assembly noted with appreciation the External Auditor's Reports and his Opinions on the Financial Statements of the 1971 Fund and the 1992 Fund for 2006, and noted that the Auditor had provided an unqualified audit opinion on the Financial Statements following a rigorous examination of the financial operations and accounts in conformity with international standards on auditing and best practice. The Supplementary Fund Assembly noted the unqualified audit opinion on that Fund's 2006 Financial Statements, also following a similar rigorous examination. The governing bodies of the three Funds approved the accounts for the financial year ending 31 December 2006 (see Section 8.4), as recommended by the Organisations' joint Audit Body.
- The governing bodies endorsed the proposal put forward by the joint Audit Body for a procedure to be used for the selection and appointment of the IOPC Funds' External Auditor in future years.
- 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 could not levy contributions in respect of oil receivers in those States (see Section 9.1).
- It was agreed that the Secretariat should complete and proofread the Record of Decisions database. A database interface to render the database accessible online would then be developed. The database would be updated after each session of the governing bodies.
- The governing bodies agreed to changes proposed by the Secretariat in the drafting of documents and Records of Decisions. These changes would be reviewed by the governing bodies after an appropriate period of time.

John Gillies

Decisions relating to the 1992 Fund and the Supplementary Fund only

- With respect to the non-submission of oil reports mentioned above, the IOPC Funds joint Audit Body was requested to refine its proposal suggesting that a policy decision be taken by the governing bodies to the effect that admissible claims submitted by a public authority or agent of the administration of a Member State that was in arrears with the submission of its oil reports could be assessed as normal, but that payment of such claims would be deferred until the reporting deficiency was fully rectified.
- The Assembly decided that, although it was desirable that as many ships as possible were covered by international agreements aimed at ensuring an equitable sharing of the burden of the international compensation regime between the shipping industry and the oil receiving

Rear-Admiral Giancarlo Olimbo

industry, it was neither necessary nor desirable at this point in time to amend STOPIA 2006 and/or TOPIA 2006 to compel all tanker owners entered with the P&I Clubs which belonged to the International Group of P&I Clubs to be a party to these agreements. However, the Director indicated his intention to monitor the situation regularly and to report to the governing bodies at future sessions.

Decisions relating to the 1992 Fund only

June 2007

- It was agreed that a new version of the 1992 Fund's Claims Manual would be prepared to include the sub-criteria proposed by the Director for claims of costs of removing the remaining oil from sunken ships.
- It was agreed to publish the experts' version of the Guidelines on methods of assessing losses in the fisheries, mariculture and fish processing sectors as a Fund document.

October 2007

- The Assembly elected the following delegates to hold office until the next regular session of the Assembly:
  Chairman: Mr Jerry Rysanek (Canada)
  First Vice-Chairman: Professor Seiichi Ochiai (Japan)
  Second Vice-Chairman: Mr Edward K Tawiah (Ghana)
- The 1992 Fund Assembly noted that the Director had continued to draw the attention of the States which ratified the 1992 Fund Convention to the importance of the implementation of the 1992 Conventions into national law and to offer assistance in preparing the necessary legislation. In this context, the Assembly instructed the Director to have informal discussions of an exploratory nature with the IMO Secretariat with regard to the latter's voluntary audit scheme, taking into account the complex treaty law issues involved in the implementation of the 1992 Conventions.
- The 1992 Fund Assembly noted that a new claims handling database was in the process of being developed in-house and that it would assist in the handling of incidents where claimants, Governments, experts and other parties make large amounts of data available to the Fund. This data would provide the Director with useful management information.
- The 1992 Fund Assembly elected the following States as members of the 1992 Fund Executive Committee:

Australia	Lithuania
Bahamas	Malaysia
Denmark	Netherlands
Gabon	Qatar
Germany	Republic of Korea
India	United Kingdom
Italy	Venezuela
Japan	

- The Assembly adopted the budget for 2008 for the administrative expenses for the joint Secretariat for a total of £3 646 000.
- The Assembly decided to levy contributions of £3 million to the General

Fund due for payment by 1 March 2008. It also decided that there should be no levy of 2007 contributions to the *Erika* and *Prestige* Major Claims Funds.

- The Assembly took note of the report of the Working Group on non-technical measures to promote quality shipping for carriage of oil by sea, which had held its second and third meetings in March and June 2007, respectively (see Section 7).
- 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). The Assembly expressed its strong support in principle for the HNS Convention, based on a system of shared liability, and indicated its wish that work towards resolving the problems which were presently hampering the entry into force of the Convention should continue. The Assembly decided to establish a Working Group ('the HNS Focus Group'), to be chaired by Mr Alfred Popp (Canada), with the aim of facilitating the rapid entry into force of the HNS Convention (see Section 11).
- The Assembly noted that the Maritime and Port Authority of Singapore (MPA) and the International Tanker Owners Pollution Federation Limited (ITOPF) had signed a Memorandum of Understanding (MOU) on oil spill response resources on 24 September 2007. This MOU, which would be in force for three years and would be reviewed in 2009, established a schedule of rates, endorsed by ITOPF, for oil spill response resources deployed under the direction of the MPA in response to pollution incidents involving vessels entered in the International Group of P&I Clubs. The Assembly decided to endorse this initiative.

Decisions relating to the Supplementary Fund only

October 2007

- The Assembly elected the following delegates to hold office until the next regular session of the Assembly:
  Chairman: Rear-Admiral Giancarlo Olimbo (Italy)
  First Vice-Chairman: Mrs Birgit Sølling Olsen (Denmark)
  Second Vice-Chairman: Mr Yukio Yamashita (Japan)
- The Supplementary Fund Assembly adopted the 2008 budget for the administrative expenses of the Supplementary Fund for a total of £63 500 (including the management fee of £50 000 payable to the 1992 Fund).
- The Assembly decided to maintain the working capital at £1 million fixed in October 2005.
- The Assembly decided not to levy 2007 Contributions to the General Fund.

Decisions relating to the 1971 Fund only

October 2007

- The Administrative Council re-elected Mrs Teresa Martins de Oliveira (Portugal) as its Chairman, and elected Captain David J. F. Bruce (Marshall Islands) as Vice-Chairman.
- The Administrative Council noted that once the final payment had been made in respect of the *Pontoon 300* incident there would be a surplus on the Major Claims Fund of approximately £2.3 million including interest as at 1 March 2008. The Council decided to reimburse this surplus to contributors to this Major Claims Fund on 1 March 2008 and to transfer the remaining balance to the General Fund.
- The Administrative Council noted that it was anticipated that by the end of 2008

there would only be outstanding compensation and/or indemnification claims in respect of the *Nissos Amorgos* incident and, possibly, in respect of the *Iliad* and *Alambra* incidents. It also noted that the 1971 Fund might still be involved in recourse proceedings in respect of the *Vistabella* and *Al Jaziah 1* incident and that issues relating to costs might be outstanding in respect of some other incidents.

- The Administrative Council decided that there should be no levies of 2007 contributions in respect of the *Vistabella* and *Nissos Amorgos* Major Claims Funds (see Section 9.2).
- The Administrative Council adopted the budget for 2008 for the administrative expenses of the 1971 Fund for a total of £475 000 (including the management fee of £210 000 payable to the 1992 Fund).

Kristine Burr, Assistant Deputy Minister (Policy), Transport Canada, speaking at a reception hosted by the Government of Canada during the June 2007 meetings in Montreal, Canada

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.

6.2 Incidents pending

The termination of the 1971 Fund Convention does not result in the immediate liquidation of the 1971 Fund as the Organisation has to meet its obligations in respect of pending incidents. During 2007 further progress was made towards the winding up of the 1971 Fund. It is anticipated that by the end of 2008 there will only be outstanding compensation and/or indemnification claims in respect of a very small number of incidents, and that the 1971 Fund may still be involved in recourse proceedings or outstanding issues relating to costs in respect of some other incidents.

6.3 Distribution of the 1971 Fund's remaining assets

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

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

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

6.4 Contributors in arrears

There has been an improvement in the contribution situation over the last five years. The total amount of the principal in arrears has decreased from £930 000 in October 2002 to £311 004 in December 2007. This represents some 0.081% of the total amount levied by the 1971 Fund during the period 1978-2003 (the year of the last levy). The number of contributors in arrears has decreased from 27 to 11, out of which five are located in the former USSR (but not in the Russian Federation) and three are located in the former Socialist Federal Republic of Yugoslavia.

During 2007 the Director continued his efforts to make contributors in arrears pay the amounts due. Contributors were reminded by telefax or letter of their outstanding contributions and the Director wrote to the contributors with significant arrears, explaining the legal basis for their obligation to pay, and making it clear that the 1971 Fund might take legal action to recover outstanding amounts. In some cases the Fund's lawyers in the States concerned have contacted the contributor in arrears and pressed for payment. The Secretariat has sometimes made direct contact with a person within a defaulting entity to press for payment and in some cases assistance has been given by members of the delegations of the States concerned. The Director will continue his efforts and will consider, on a case-by-case basis, whether legal action should be taken against a particular contributor.

6.5 Non-submission of oil reports

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

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

7.1 Establishment of Working Group

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

- to develop proposals in respect of non-technical measures and guidelines for Contracting States and the industry to promote quality shipping by ensuring that effective checks and procedures are in place to establish that ships insured and certificated are suitable for the carriage of oil by sea covered under the Civil Liability Convention/Fund Convention regime;
- to identify related issues, other than those referred to below, as it may deem helpful to complete its task within the current Conventions and make the appropriate recommendations to the Assembly;
- to make recommendations to the Assembly upon the completion of its work.

The Assembly also decided that the Working Group should focus on the following:

- considering and making proposals on the development of common criteria to be uniformly applied by Contracting States to ensure that fully effective insurance is in place before States issue Certificates under the Civil Liability Convention;
- identifying factors that prevent the sharing of information between marine insurers and seeking to develop a common policy or other measures that would facilitate such sharing of information;
- identifying practical measures to achieve better and more transparent co-ordination between insurers, shipowners and cargo interests that would promote quality shipping;
- considering possible measures for the denial or withdrawal of insurance cover in order to improve the safer transport of oil;
- considering the feasibility and impact of differentiated insurance rates and premiums that would encourage quality shipping;
- examining ways of encouraging and strengthening the participation of classification societies in the promotion of quality shipping.

The Assembly emphasised that the Working Group should not stray into areas within the competence of IMO nor duplicate work which had been undertaken by that Organization. The Assembly stated that the Working Group should bear in mind the work done on quality shipping in other fora, such as the study on insurance carried out within the Organisation for Economic Co-operation and Development (OECD). The Assembly also emphasised that the Working Group should not consider issues that would require any re-opening of the

Birgit Søllen Olsen

discussion regarding a revision of the 1992 Conventions.

7.2 First meeting of the Working Group

The Working Group held its first meeting in May 2006, electing Mrs Birgit Sølling Olsen (Denmark) as its Chairman.

The Working Group focused on current and planned procedures and practices of the marine insurance industry and States to promote quality shipping, and also discussed the sharing of information relating to the quality of shipping and barriers to sharing such information.

The Working Group decided to undertake a study to:

- identify factors that allow/require/ prevent marine insurers and other business endeavours from sharing information on clients, including national legislation and practices;
- identify whether competition law and practices take into consideration the need for taking measures to encourage quality shipping for the transportation of oil.

The Working Group decided to invite the Comité Maritime International (CMI) to undertake the above-mentioned study.

The Working Group also decided to undertake a study to determine the extent to which the main focus of the Working Group's attention should be on ships falling outside the ambit of the classification societies belonging to the International Association of Classification Societies (IACS) and of the P&I insurers belonging to the International Group of P&I Clubs.

7.3 Second meeting of the Working Group

The Working Group's second meeting, held on 15 March 2007, continued to discuss current and planned procedures and practices of the marine insurance industry and States to promote quality shipping. In particular, the Working Group noted a number of recent measures taken by the International Group of P&I Clubs to contribute positively to global efforts to improve ship quality and safety standards. The discussions also covered the sharing of information relating to the quality of shipping and possible barriers to sharing such information.

The Working Group also considered the results of its own study, mentioned above, and concluded that ships falling outside the ambit of classification societies which were members of IACS and outside the ambit of P&I Clubs which were members of the International Group of P&I Clubs were not more likely to be involved in pollution incidents than vessels within the ambit of IACS and of the International Group of P&I Clubs. It was decided that this should therefore not be the main focus of the Working Group's attention.

7.4 Third meeting of the Working Group

The Working Group's third meeting, held on 14 June 2007, focused on two main areas: practices within the marine insurance industry to promote quality shipping for the carriage of oil by sea, including the sharing of information within the industry and possible barriers to sharing such information, and practices by Member States to promote quality shipping for the carriage of oil by sea, and more specifically whether those practices could be improved in any way.

Practices within the marine insurance industry to promote quality shipping

The Working Group noted the results of the discussions held in May between the Secretariat, the International Union of Marine Insurance (IUMI) and the International Group of P&I Clubs regarding which questions should be included in the proposed study by CMI. The Working Group invited CMI to proceed based on further consultation with the Secretariat, IUMI and the International Group of P&I Clubs, and decided that the study should focus on the difficulties faced by property insurers.

The Working Group also concluded that, based on the information received and taking into account the very small number of incidents involved, there was no discernible upward nor downward trend in the frequency of spills involving ships falling outside the ambit of the International Group of P&I Clubs and that in some years there had been one or two spills whilst in others, including recent years, there had been no spills.

Practices by Member States to promote quality shipping

The Working Group noted the CLC certification processes in Germany and Liberia. The Working Group also discussed a proposal submitted by Canada and France that, should the Working Group agree to make a recommendation to the Assembly on the authority of Member States to issue and withdraw CLC certificates based on the quality of the ship, it should consider developing measures that would link the quality of the ship to the issuing and withdrawal of CLC certificates. The Chairperson concluded that, although the Working Group had held a full debate on the subject, there had been no clear majority in favour of the proposals, and it was therefore not yet in a position to make any recommendations to the Assembly. The Chairperson invited States who wished the Working Group to consider the matter further to consult with other States ahead of the Working Group's next meeting, with a view to gaining wider support, and to return to the Working Group's fourth meeting with a revised proposal.

7.5 Next meeting of the Working Group

The Working Group's next meeting will be held in Monaco during the week of 10 March 2008.

8 ADMINISTRATION OF THE IOPC FUNDS

8.1 Secretariat

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

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

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

8.2 Risk Management

During 2007 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. The sub-risks have been mapped and assessed for financial risk, human resource management, claims-handling process and business continuity. The Audit Body and the External Auditor have made valuable contributions to the work in this field. It is expected that the project will be completed during 2008.

8.3 Financial statements for 2006

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

The financial statements of the 1971 Fund, the 1992 Fund and the Supplementary Fund for the period 1 January to 31 December 2006 were approved by the respective governing bodies during their sessions in October 2007.

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

As regards the 1971 Fund and the 1992 Fund separate Major Claims Funds are established for incidents for which the total amounts payable exceed 1 million Special Drawing Rights (SDR) (£791 000) for the 1971 Fund or 4 million SDR (£3.16 million) for the 1992 Fund; conversion from SDR to Pounds Sterling is made at the rate applicable at the date of the incident in question. There are separate income and expenditure accounts for the General Fund and for each Major Claims Fund.

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

The administrative expenses for the joint Secretariat totalled £3 288 865 in 2006, compared to a budgetary appropriation of £3 601 900.

1971 Fund

No annual contributions were due in respect of the General Fund during 2006 as it is no longer possible to levy contributions to the General Fund. No contributions were due during 2006 in respect of any Major Claims Funds.

Total obligations incurred by the 1971 Fund in 2006 amounted to £290 640, mainly in respect of the management fee payable to the 1992 Fund for the administration of the joint Secretariat.

Claims and claims-related expenditure for 2006 amounted to £624 840. The majority of this expenditure related to two cases, namely the *Pontoon 300* and *Iliad* incidents.

The balance sheet of the 1971 Fund as at 31 December 2006 is reproduced in Annex VII. The balances of the various Major Claims Funds are also given. The contingent liabilities were estimated at over £39 million in respect of claims arising from 11 incidents.

1992 Fund

No contributions were due in respect of the General Fund and the Major Claims Fund during 2006.

Claims and claims-related expenditure during 2006 was £56.8 million. The payments related mainly to the *Erika* and *Prestige* incidents.

The balance sheet of the 1992 Fund as at 31 December 2006 is reproduced in Annex XIII. The balances of the various Major Claims Funds are also given. The contingent liabilities were estimated at £67.4 million in respect of claims and claims-related expenditure arising from eight incidents.

Supplementary Fund

The total obligations incurred by the Supplementary Fund in 2006 amounted to £81 996, mainly in respect of the management fee payable to the 1992 Fund for the administration of the joint Secretariat. There were no incidents involving the Supplementary Fund during 2006.

8.4 Financial statements for 2007

The financial statements of the 1971 Fund, 1992 Fund and Supplementary Fund for the period 1 January to 31 December 2007 will be submitted to the External Auditor in the spring of 2008 and will be presented to the respective governing bodies for approval at their sessions in October 2008. These accounts will be reproduced in the IOPC Funds' 2008 Annual Report.

The following preliminary information is given on the financial operations during 2007. The figures, which have been rounded, have not yet been audited by the External Auditor. Further details are given in Annexes XVII, XVIII and XIX, respectively.

The administrative expenses for operating the joint Secretariat in 2007 total some £3 million, compared to a budget appropriation of £3 590 750.

1971 Fund

With respect to the 1971 Fund, no annual contributions were due in 2007 to the three remaining Major Claims Funds.

The total claims expenditure incurred by the 1971 Fund during 2007 was approximately £514 000, out of which some £212 000 related to the *Pontoon 300* incident.

The 1971 Fund paid a management fee of £275 000 to the 1992 Fund towards the administrative costs of the joint Secretariat.

1992 Fund

Contributions of £3 million were due to the General Fund in 2007.

The 1992 Fund's claims payments during 2007 totalled some £10 252 000, out of which some £3 million related to the *Prestige* incident, £2 million to the *Erika* incident and £4 million to the *Solar 1* incident. Payments made to settle claims arising from the *Solar 1* incident have been reimbursed by the shipowner's insurer under the STOPIA 2006 agreement.

Supplementary Fund

Contributions of £1.4 million were due to the General Fund in 2007.

The Supplementary Fund paid a management fee of £70 000 to the 1992 Fund towards the administrative costs of the joint Secretariat. Loans taken by the Supplementary Fund prior to the receipt of contributions and interest on these loans were repaid to the 1992 Fund in 2007.

There were no incidents involving the Supplementary Fund during 2007.

8.5 Investment of funds

Investment policy

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

Investments

Investments were made by the 1971 Fund and the 1992 Fund during 2007 with a number of banks and one building society. As at 31 December 2007 the portfolios of investments held in Sterling and Euros totalled some £9.5 million for the 1971 Fund, £91.5 million for the 1992 Fund and £1.1 million for the Supplementary Fund. Interest received in 2007 on the investments amounted to £0.5 million for the 1971 Fund, £5.3 million for the 1992 Fund and £53 000 for the Supplementary Fund.

Investment Advisory Body

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

During 2007 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 regularly reviewed the Funds' investment and foreign exchange requirements and the quotations for investments in order to ensure that reasonable investment returns were achieved without compromising the Funds' assets.

The Investment Advisory Body reports annually to the governing bodies.

8.6 Audit Body

The 1971 Fund, the 1992 Fund and the Supplementary Fund have a joint Audit Body, the members of which are elected by the 1992 Fund Assembly. 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 2007 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 and recommended that the governing bodies should approve the accounts for the financial year 2006. Liaison with the Investment Advisory Body continued.

In its report to the governing bodies, the Audit Body reiterated its great concern that a number of States did not fulfill their treaty obligations to submit their oil reports, since without these reports the contribution system could not work on an equitable basis (see Section 9.1).

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

In 2007 the Audit Body presented a proposal for a procedure for appointing the External Auditor which was approved by to the governing bodies at their autumn session.

9 CONTRIBUTIONS

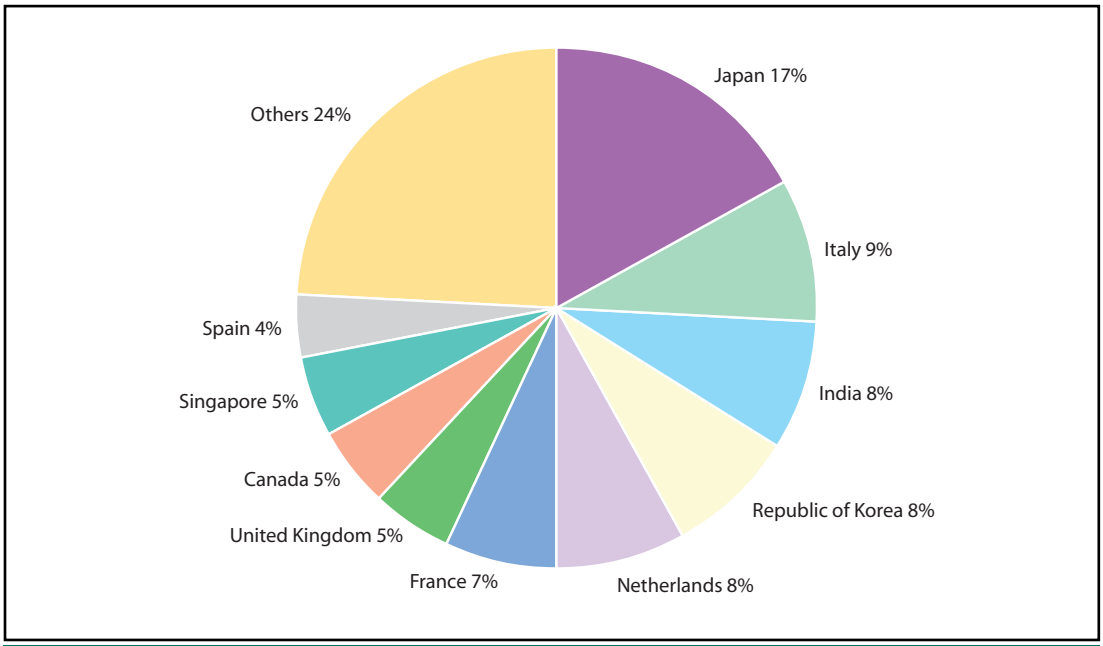
9.1 The contribution system

Basis for levy of contributions

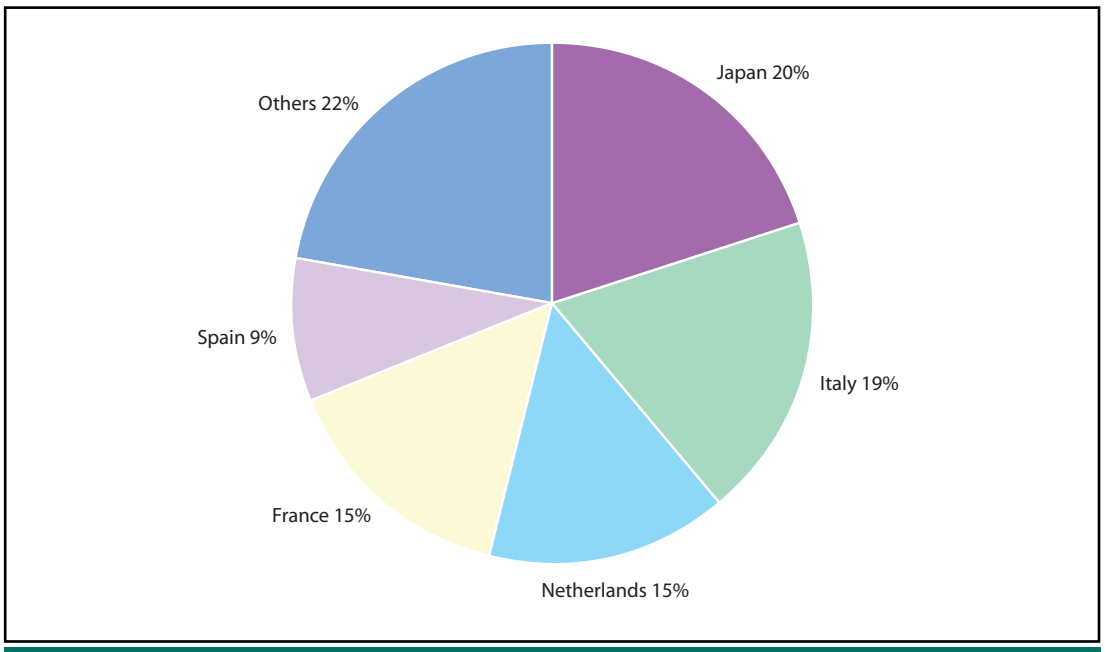
The IOPC Funds are financed by contributions paid by any person who has received in the relevant calendar year in excess of 150 000 tonnes of crude oil or heavy fuel oil (contributing oil) in ports or terminal installations in a State which is a Member of the relevant Fund, after carriage by sea. The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

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

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



1992 Fund: General Fund contributions 2007 (based on 2006 oil reports)



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

Non-submission of oil reports

The non-submission of oil reports by a number of Member States was again considered at the October 2007 sessions of the governing bodies of the three Funds. At that time a total of 37 States had outstanding oil reports for both the 1971 Fund and/or the 1992 Fund. Oil reports were outstanding for between four and ten years in respect of ten States. Ten States had not submitted oil reports since joining the respective Fund. The total number of outstanding reports had increased from 93 in October 2006 to 116 in October 2007, which corresponds to a increase of 25%. There were no outstanding oil reports as regards the Supplementary Fund.

The governing bodies noted that the failure of a number of Member States to submit oil reports had been a very serious issue for a number of years. The governing bodies expressed their very serious concern as regards the number of Member States which had not fulfilled their obligation to submit oil reports, since the submission of these reports was crucial to the functioning of the IOPC Funds. The Audit Body also expressed its great concern in this regard (see Section 8.6). A proposal, recommending a policy decision to withhold claims settlement with public authorities of Member States which have not submitted all their outstanding oil reports until they have actually done so, was put forward by the Audit Body to the governing bodies at the October 2007 sessions. The 1992 Fund Assembly expressed its gratitude to the Audit Body for the proposal and invited it to submit a document to a future session of the Assembly after refining the proposal in the light of the discussions at the October 2007 sessions.

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

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

In view of the fact that the non-submission of oil reports had been a recurring problem for both the 1971 Fund and the 1992 Fund, it was decided when the Supplementary Fund

Protocol was drafted to insert provisions in the Protocol under which compensation would be denied temporarily or permanently in respect of pollution damage in States that failed to fulfil their obligation to submit oil reports. The Supplementary Fund Assembly decided in March 2005 that it would be for it to determine whether compensation should be denied.

Levy of contributions

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

Deferred invoicing

The three Funds operate a deferred invoicing system. Under this system the governing bodies fix 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

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

2006 contributions

In October 2006 the 1971 Fund Administrative Council decided that there should be no levy of 2006 contributions in respect of the three remaining Major Claims Funds, ie the *Vistabella*, *Nissos Amorgos* and *Pontoon 300*.

2007 contributions

The 1971 Fund Administrative Council decided to reimburse on 1 March 2008 £2.2 million to contributors to the *Pontoon 300* Major Claims Fund.

1992 Fund

2006 and 2007 contributions

The 1992 Fund Assembly decided to levy 2006 and 2007 contributions of £3 million each to the General Fund of the 1992 Fund due for payment by 1 March 2007 and 1 March 2008 respectively. It also decided that there should be no levy of 2006 and 2007 contributions to the *Erika* and *Prestige* Major Claims Funds.

Supplementary Fund

2006 contributions

The Supplementary Fund Assembly decided in October 2006 to levy 2006 contributions of £1.4 million to the General Fund, due for payment by 1 March 2007. This amount included a working capital of £1 million and an amount to be repaid to the 1992 Fund for payments made on behalf of the Supplementary Fund. The Assembly also decided that, since there had been no incidents which would or might require that Fund to pay compensation, there was no need for contributions to be levied to any Claims Fund.

The Supplementary Fund Protocol introduced a system for 'capping' contributions for a certain period, as set out in Section 9.1.

The 2006 contributions to the General Fund were capped as regards contributors in Japan.

2007 contributions

In October 2007 the Supplementary Fund Assembly decided that there should be no levy of 2007 contributions to the General Fund.

9.3 Contributions over the years

Details of the IOPC Funds' 2006 and 2007 contributions are set out in the table on page 40.

The payments made by the 1971 and 1992 Funds in respect of claims for compensation for oil pollution damage have varied considerably

IOPC FUNDS' 2006 AND 2007 ANNUAL CONTRIBUTIONS

Organisation	Annual contribution year	Decision of governing body		General Fund/Major Claims Fund	Total amount due £	Oil year	Levy per tonne £
1971 FUND	2006	October 2006	No levy		0		
	2007	October 2007	Reimburse-ment Due 1 March 2008	*Pontoon 300*, UAE	-2 200 000	1997	-0.0017480
1992 FUND	2006	October 2006	Due 1 March 2007	General Fund	3 000 000	2005	0.0020156
	2007	October 2007	Due 1 March 2008	General Fund	3 000 000	2006	0.0019699
SUPPLE-MENTARY FUND	2006	October 2006	Due 1 March 2007	General Fund	1 400 000	2005	0.0010889 (contributors in Japan) 0.0020154 (other contributors)
	2007	October 2007	No levy		0		

from year to year. As a result, the level of contributions to the Funds has fluctuated from one year to another, as illustrated in the graph on page 41.

1971 Fund

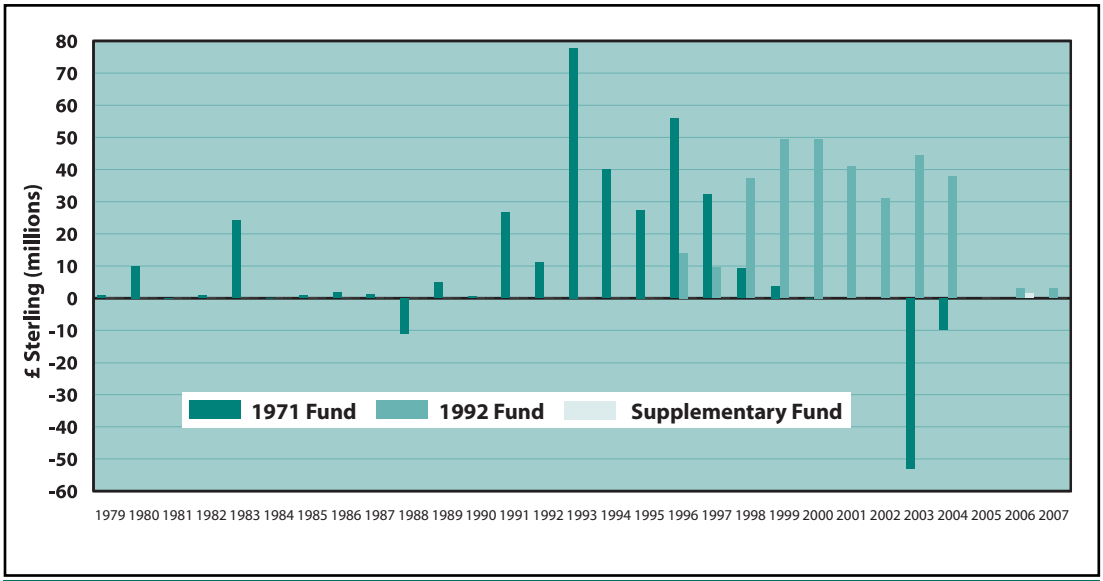
The total amount levied by the 1971 Fund over the years is £386 million. Reimbursements totalling £119 million have been made to contributors. As at 31 December 2007, £311 004 was outstanding, which represents 0.08% of the amount levied.

1992 Fund

The total amount levied by the 1992 Fund over the years is £362 million. Reimbursements totalling £42 million have been made to contributors. As at 31 December 2007, £386 177 was outstanding, which represents 0.11% of the amount levied.

Supplementary Fund

A levy of £1.4 million for the Supplementary Fund was made in 2007. No contributions were outstanding to the Supplementary Fund as at 31 December 2007.



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

10 STOPIA 2006 AND TOPIA 2006

10.1 Consideration of a possible review of the 1992 Conventions

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

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

10.2 Development of voluntary industry agreements

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

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

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

10.3 Overview of the voluntary agreements

STOPIA 2006

STOPIA 2006 applies to pollution damage in States for which the 1992 Fund Convention is in force. It is a contract between owners of small tankers and their respective P&I Club, which increases, on a voluntary basis, the limitation amount applicable to the tanker under the 1992 Civil Liability Convention. The contract applies to all small tankers entered in a P&I Club which is a member of the International Group and reinsured through the pooling arrangements of the International Group. Ships insured by an International Group Club but not covered by the pooling arrangement may agree with the Club concerned to be covered by STOPIA 2006. Certain Japanese coastal tankers have agreed to be bound in this way. The effect of STOPIA 2006 is that the maximum amount of compensation payable by owners of all ships of 29 548 GT or less is 20 million SDR. The 1992

Fund is not a party to the agreement, but the agreement confers legally enforceable rights on the 1992 Fund to indemnification from the shipowner involved.

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

TOPIA 2006

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

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

The review process

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

Entry into force and termination

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

10.4 Number of ships covered by STOPIA 2006 and TOPIA 2006

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

In August 2007 the International Group provided the Fund with the total number of

Year	Number of tankers entered in STOPIA 2006	Number of tankers not entered in STOPIA 2006	Total	% of total entered in STOPIA 2006
2007/8	4 540	361	4 901	92.6

small tankers entered in the International Group of P&I Clubs and reinsured through the Group's pooling arrangements, and therefore automatically entered in STOPIA 2006, and those that are entered in one of the International Group Clubs but not entered in STOPIA 2006 because they are not reinsured through the pooling arrangements, as set out in the table on page 43.

10.5 Operational aspects of STOPIA 2006 and TOPIA 2006

In June 2007 the 1992 Fund Administrative Council, acting on behalf of the Assembly, discussed the operational aspects of STOPIA 2006 and TOPIA 2006 on the basis of a suggestion by one delegation that clarification be sought as to whether a better guarantee of compensation under these agreements could be provided. The Administrative Council instructed the Director to investigate the issue further.

In October 2007 the Director held discussions with the International Group of P&I Clubs and reported to the Assembly the results of his investigations. The Assembly agreed with the Director's analysis that in the present situation, and given the fact that the great majority of tanker tonnage was actually entered in STOPIA 2006 and TOPIA 2006, it would not be advisable at this stage to try to re-open STOPIA 2006 and/or TOPIA 2006 and the MOU. The Director considered that it was very important for the International Group to continue, and indeed strengthen, its efforts to urge all shipowners entered with their member Clubs to become party to the agreements. He intends to regularly monitor, with the International Group, the situation and any progress made, with a view to enhancing the coverage of STOPIA 2006 and TOPIA 2006. The Assembly welcomed the Director's intention to monitor this issue regularly and to report to future sessions of the governing bodies.

11 PREPARATIONS FOR THE ENTRY INTO FORCE OF THE HNS CONVENTION

11.1 The HNS Convention

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

11.2 Status of the Convention

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

By 31 December 2007 ten States (Angola, Cyprus, Lithuania, Morocco, Russian Federation, Saint Kitts and Nevis, Samoa, Sierra Leone, 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 (Cyprus and the Russian Federation) and only two States (Cyprus and Slovenia) have submitted reports on contributing cargo, the conditions for the entry into force of the HNS Convention are far from being fulfilled.

11.3 Consideration to resolve the key issues of the Convention

In June 2007 the Administrative Council, acting on behalf of the Assembly, discussed the following topics:

- Annual contributions to the LNG Account
- Definition of 'receiver'
- Depositing instruments of ratification without accompanying contributing cargo reports
- A common ratification date for the HNS Convention

In October 2007 the 1992 Assembly continued the discussion regarding the above-mentioned topics. All States which spoke expressed their strong support in principle for the HNS Convention, based on a system of shared liability, and indicated their wish that work towards resolving the problems should continue. Many States expressed their support for the development of a protocol to the Convention which would provide legally binding solutions to the key issues. However, a number of those States expressed their serious concern that it would prove very difficult to restrict such a protocol to the small number of key issues that had been identified and that a wholesale revision of the Convention would be extremely undesirable. Many States agreed that work should continue within the IOPC Funds although a few other States cautioned that the proper place for such work was within IMO's Legal Committee rather than within the IOPC Funds. As regards the proper place for the development of a protocol, reference was made to a number of protocols which had been developed initially within the IOPC Funds before being transferred to IMO's Legal Committee and then to a Diplomatic Conference, ie the 1992 Protocols to the 1969 Civil Liability and 1971 Fund Conventions, and the 2003 Supplementary Fund Protocol.

Alfred Popp QC

The Assembly decided to establish the HNS Focus Group with the aim of facilitating the entry into force of the HNS Convention. Mr Alfred Popp QC (Canada) was appointed the Chairman of the Group. The Secretariat has established practical arrangements enabling participants to correspond within the HNS Focus Group in a transparent manner. All submissions to the HNS Focus Group will be circulated via email and will also be accessible via the following website address: www.hnsconvention.org/en/theconvention.html. The IMO Legal Committee noted the recent developments in respect of the HNS Convention which was submitted to its session in late October 2007 by the IOPC Funds' Secretariat.

11.4 Terms of Reference of the HNS Focus Group

The Terms of Reference of the HNS Focus Group are as follows:

Terms of Reference of the HNS Focus Group

1.1 Recognizing that, over many years, a large number of States have consistently expressed, both in the 1992 Fund and IMO as well as in other international or regional organisations, their determination to establish a robust and effective compensation regime for the maritime carriage of hazardous and noxious substances based on a system of shared liability, the 1992 Fund Assembly has decided to establish a Working Group ("the HNS Focus Group") with the aim of facilitating the rapid entry into force of the HNS Convention.

1.2 The HNS Focus Group shall have the following mandate:

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

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

(c) to identify and develop legally-binding solutions to these issues, taking into account inter alia the impact on developing countries, in the form of a draft protocol to the HNS Convention;

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

1.3 The HNS Focus Group shall not embark on a wholesale revision of the HNS Convention but shall confine its work solely to the issues and solutions set out in paragraph 1.2 (a), (b) and (c).

1.4 The HNS Focus Group shall aim to complete its work according to the following timetable:

(a) interested delegations shall submit concrete policy proposals accompanied by draft treaty text to the Secretariat by 18 January 2008, at the latest;

(b) based on these proposals, the Chairman of the Group, in conjunction with the Secretariat, shall develop a draft text of a protocol to the HNS Convention for circulation to delegations by 15 February 2008;

(c) the Group shall meet in March 2008 and, if required, again in June 2008 in order to:

(i) consider the draft text of the protocol; and

(ii) make recommendations to the Assembly upon the completion of its work, ideally at an extraordinary session of the Assembly to be held in June 2008.

1.5 The Chairman of the HNS Focus Group, in conjunction with the Secretariat, will work closely with the IMO Secretariat in order to ensure that the draft protocol is in compliance with international treaty law, taking due account of the interests of those States that have already ratified the Convention or are at an advanced stage in so doing.

1.6 If approved by the Assembly, the draft protocol will be submitted for consideration by IMO's Legal Committee, ideally at its October 2008 session, with a view to the holding of a Diplomatic Conference as soon as possible.

1.7 The HNS Focus Group shall work intersessionally and shall be open to all governmental and non-governmental delegations that have the right to participate in the 1992 Fund Assembly. IMO, in particular, is strongly encouraged to participate actively in the Group. The Group shall follow the Rules of Procedure of the Assembly so far as they are applicable.

1.8 The 1992 Fund will organise meetings of the HNS Focus Group on the understanding that all expenses incurred will be repaid by the HNS Fund, once it is established, with interest.

11.5 First meeting of the HNS Focus Group

The HNS Focus Group will hold its first meeting in Monaco during the week of 10 March 2008.

12 SETTLEMENT OF CLAIMS

12.1 General

The governing bodies of the IOPC Funds have given general authority to the Director to settle claims and pay compensation if it is unlikely that the total payments by the respective Fund with regard to the incident in question will exceed 2.5 million SDR (£1.9 million). For incidents leading to larger claims, the Director in principle needs approval of the settlement by the governing body of the Fund in question (ie the Administrative Council of the 1971 Fund, the Executive Committee of the 1992 Fund or the Assembly of the Supplementary Fund). However, the governing bodies normally give the Director very extensive authority to settle claims by authorising him to make binding settlement of all claims arising from a particular incident, except where a specific claim gives rise to a question of principle which has not previously been decided by the governing bodies. The Director is permitted, in certain circumstances and within certain limits, to make provisional payment of compensation before a claim is settled, if this is necessary to mitigate undue financial hardship to victims of pollution incidents. These procedures are designed to expedite the payment of compensation.

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

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

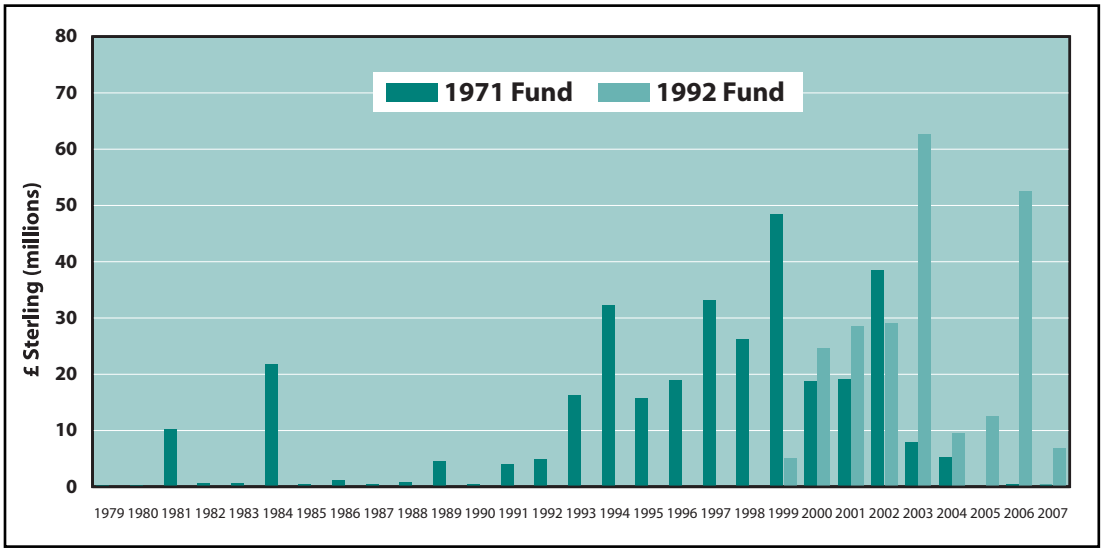
12.2 Admissibility of claims for compensation

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

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

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

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



1971 Fund and 1992 Fund: payment of claims

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 No8). The Resolution drew attention to the importance for the proper and equitable functioning of the regime established by the 1992 Conventions, of these Conventions being implemented and applied uniformly in all States Parties and of claimants for oil pollution damage being given equal treatment as regards compensation in all States Parties. The Resolution also emphasised the importance of national courts in States Parties giving due consideration to the decisions by the governing bodies of the 1971 and 1992 Funds on the interpretation and application of the 1992 Conventions.

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

The 1971 and 1992 Funds have published Claims Manuals containing general information on how claims should be presented and setting 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 Supplementary Fund will not normally become directly involved in the claims-handling process. The 1992 Fund's Claims Manual includes a statement that the criteria under which claims qualify for compensation from the Supplementary Fund are identical to those of the 1992 Fund. In the light of the provisions of the Supplementary Fund Protocol, and for practical reasons, the Supplementary Fund Assembly decided in March 2005 that the Supplementary Fund did not need its own Claims Manual.

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

12.3 Incidents involving the 1971 Fund

Claims settlements 1978–2007

Since its establishment in October 1978, the

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

1971 Fund has, up to 31 December 2007, 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$656 million).

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

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

Ship	Place of incident	Year	Outstanding issue
Vistabella	Caribbean	1991	Recourse action pending
Aegean Sea	Spain	1992	Claims pending
Iliad	Greece	1993	Claims pending
Kriti Sea	Greece	1996	Claims pending
Nissos Amorgos	Venezuela	1997	Claims pending
Plate Princess	Venezuela	1997	Claims pending (time-barred)
Katja	France	1997	Claims pending
Evoikos	Singapore	1997	Claims pending
Pontoon 300	United Arab Emirates	1998	Claims pending
Al Jaziah 1	United Arab Emirates	2000	Recourse action pending
Alambra	Estonia	2000	Claims pending

Ship	Place of incident	Year	1992 Fund payments
Nakhodka	Japan	1997	£61.1 million
Erika	France	1999	£76.9 million
Prestige	Spain	2002	£82.3 million
Solar 1	Philippines	2006	£5.8 million

considered greatly exaggerated. As a result, the 1971 Fund and claimants have become involved in lengthy legal proceedings in respect of some incidents.

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

Outstanding incidents

As at 31 December 2007 there were outstanding claims or recovery actions pending in respect of eleven incidents involving the 1971 Fund. The situation in respect of these incidents is summarised in the table on page 50.

12.4 Incidents involving the 1992 Fund

Claims settlements 1996–2007

Since its creation in May 1996 there have been 33 incidents involving the 1992 Fund. The total compensation paid by the 1992 Fund amounts to £231.5 million (US$461 million).

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

Incidents in 2007

During 2007 the 1992 Fund became involved in a new incident in the Russian Federation (*Volgoneft 139*) and a new incident in the Republic of Korea (*Hebei Spirit*), which are likely to give rise to claims against the 1992 Fund.

The *Volgoneft 139* incident took place in November 2007 in the Russian Federation. It is difficult at this stage to predict how this incident is likely to develop.

The *Hebei Spirit* incident, which took place on 7 December 2007 in the Republic of Korea, has given rise to significant costs for clean-up and preventive measures and has severely affected fisheries and tourism interests in Korea. It is expected that the total amount of damages admissible for compensation arising out of this incident will exceed the limitation amount applicable to the *Hebei Spirit* under the 1992 Civil Liability Convention (89.7 million SDR).

Outstanding incidents

As at 31 December 2007 there were outstanding claims or recovery actions pending in respect of ten incidents involving the 1992 Fund. The situation in respect of these incidents is summarised in the table below.

Ship	Place of incident	Year	Outstanding issue
Incident in Germany	Germany	1996	Claims pending
Erika	France	1999	Claims pending
Al Jaziah 1	United Arab Emirates	2000	Recourse action pending
Slops	Greece	2000	Claims pending
Prestige	Spain	2002	Claims pending
No7 Kwang Min	Republic of Korea	2005	Recourse action pending
Solar 1	Philippines	2006	Claims pending
Shosei Maru	Japan	2006	Claims pending
Volgoneft 139	Russian Federation	2007	Claims pending
Hebei Spirit	Korea	2007	Claims pending

PART 2

13 INCIDENTS DEALT WITH BY THE 1971 AND 1992 FUNDS DURING 2007

This part of the Report provides information on incidents in which the IOPC Funds have been involved in 2007. The Report sets out the developments in the various cases during 2007 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 2007.

Claim amounts have been rounded in this Report. The conversion of foreign currencies into Pounds Sterling is as at 31 December 2007, 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.

Solar 1: Booms were deployed to protect mariculture facilities

14 1971 FUND INCIDENTS

14.1 VISTABELLA

(Caribbean, 7 March 1991)

The incident

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

The *Vistabella* was not insured by any P&I Club but was covered by third party liability insurance with a Trinidad insurance company. The insurer argued that the insurance did not cover this incident. The limitation amount applicable to the ship was estimated at FFr2 354 000 or €359 000 (£263 000). No limitation fund was established. The shipowner and his insurer did not respond to invitations to co operate in the claims-settlement procedure.

Claims for compensation

The 1971 Fund paid compensation amounting to FFr8.2 million or €1.3 million (£955 000) to the French Government in respect of clean-up operations. Compensation was paid to private claimants in St Barthélemy and the British Virgin Islands and to the authorities of the British Virgin Islands for a total of some £14 250.

Legal proceedings

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

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

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

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

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

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

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

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

The Court has not delivered a decision to this date.

14.2 AEGEAN SEA

(Spain, 3 December 1992)

The incident

During heavy weather, the *Aegean Sea* (57 801 GRT) ran aground while approaching La Coruña harbour in the north-west of Spain. The ship, which was carrying approximately 80 000 tonnes of crude oil, broke in two and burnt fiercely for about 24 hours. The forward section sank some 50 metres from the coast. The stern section remained largely intact. The oil remaining in the aft section was removed by salvors working from the shore. The quantity of oil spilled was not known, 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 or €289.6 million (£212.7 million) were submitted before the criminal and civil courts. A large number of claims were settled out of court but many claimants pursued their claims in court.

Criminal proceedings

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

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

Global settlement

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

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

On 30 October 2002 an agreement was concluded between the Spanish State, the 1971 Fund, the shipowner and the UK Club whereby the total amount due from the owner of the *Aegean Sea*, the UK Club and the 1971 Fund to the victims as a result of the distribution of liabilities determined by the Court of Appeal in La Coruña amounted to Pts 9 000 million or €54 million (£39.7 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 €8 386 172 corresponding to Pts 6 386 921 613 (£24 411 208) to the Spanish Government.

Developments in civil proceedings

Six claimants from the fisheries and mariculture sectors did not reach agreement with the Spanish Government on the amount of their losses and pursued their claims in the Court of first instance in La Coruña against the Spanish State and the 1971 Fund for a total amount of €3.7 million (£2.5 million). The Spanish State submitted pleadings contesting the claims both on procedural grounds and on the merits of the claims. The 1971 Fund submitted pleadings to the Court to the effect that the 1971 Fund was not liable to compensate these claimants since the Spanish Government had, in the above-mentioned agreement with the 1971 Fund, undertaken to compensate all the victims of the incident with outstanding claims and that this undertaking had been approved by a Royal Decree.

Judgements by the Court of first instance of La Coruña

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

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

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

Judgements by the Court of Appeal

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

In January 2007 the Court of Appeal issued a judgement in respect of the claim by the fish pond owner. In its judgement, the Court accepted a procedural argument raised by the Spanish Government and referred the case back to the Court of first instance for a decision.

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

In September 2007 the Court of Appeal issued a judgement in respect of the claim by the fishing boat owner. The Court rejected the claim on the grounds that the losses suffered by the claimant had already been compensated by the Spanish

Claimant	Amount claimed	Amount awarded (Court of Appeal)
Fishing boat owner	€122 334	Rejected
Association of mussel farmers	€635 036	€135 000
Fish pond owner	€799 921	File sent back to Court of First Instance
Fish processor (sea urchin)	€1 182 394	€43,453
Mussel depuration plant	€397 570	€5,640
Boat fisherman (sea urchin and octopus)	€503 538	€16 128
Total	**€3 640 793 (£2.7 million)**	**€250 221 (£184 000)**

Government. The claimant has requested leave to appeal to the Supreme Court.

The Court of Appeal has ordered the provisional execution of four of the judgements. The Spanish Government will, under the agreement with the 1971 Fund, pay any amounts awarded by these judgements.

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

Supreme Court
The boat fisherman, the fish processor and the fishing boat owner have requested leave to appeal to the Supreme Court. No decision has been made on these three requests.

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

In November 2007 the Criminal Court in La Coruña decided on the execution of the judgement in respect of two of the claimants that had continued their compensation claims in the Criminal Court, for a total of €3 709 (£2 700) plus interest. As is the case with the civil proceedings, the Spanish Government will, under the agreement with the 1971 Fund, pay any amounts awarded by the Criminal Court.

14.3 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 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.

Shetland Sea Farms Ltd, a Shetland-based company, submitted a claim relating to a contract to purchase smolt from a company on the mainland. Attempts to settle the claim out of court failed and the company took legal action against the shipowner, the Skuld Club and the

1971 Fund. The question arose as to whether certain 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 resolved, however, that as Shetland Sea Farms was no longer going to base its claim on the false letters, the company should be given the opportunity to present a revised case that did 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 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. 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 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 original claim 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. Accordingly, 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, even if there was no pre-existing contract, it would have acquired, reared and sold smolt from which it would have earned a profit.

In view of the conduct of Shetland Sea Farms, the Appellate Court issued an interim order in July 2006 against Shetland Sea Farms requiring the company to pay the majority of the costs incurred by the shipowner, the Skuld Club and the 1971 Fund in relation to the Court proceedings. The Court made it a condition that the company paid these costs before it would be allowed to continue with the proceedings.

In January 2007 a settlement was reached between Shetland Sea Farms, the Skuld Club and the 1971 Fund whereby the claimant has withdrawn its claim and has paid the sums of £75 000 to the Skuld Club and £20 000 to the 1971 Fund as a contribution for the costs incurred in respect of the court action.

Since the last outstanding claim has been resolved, the case is now concluded.

14.4 ILIAD

(Greece, 9 October 1993)

The incident

The Greek tanker *Iliad* (33 837 GRT) grounded on rocks close to Sfaktiria island after leaving the port of Pylos (Greece), resulting in a spill of some 300 tonnes of Syrian light crude oil. The

Greek national contingency plan was activated and the spill was cleaned up relatively rapidly.

Legal proceedings

The shipowner and his insurer took legal action against the 1971 Fund in order to prevent their rights to reimbursement from the Fund for any compensation payments in excess of the shipowner's limitation amount and to indemnification under Article 5.1 of the 1971 Fund Convention from becoming time-barred. The owner of a fish farm, whose claim is for Drs 1 044 million or €3 million (£2.2 million), also interrupted the time-bar period by taking legal action against the 1971 Fund. All other claims have become time-barred *vis à-vis* the Fund.

Limitation proceedings

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

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

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

In October 2007 the Court in Nafplion decided that it did not have jurisdiction in respect of the proceedings and referred the case to the Court of Kalamata as the court closest to the area where the incident took place. A number of claimants have appealed against the decision. The 1971 Fund, following advice received from its Greek lawyer, has joined in the appeal. It expected that the Court of Appeal will render its decision in early 2008.

14.5 KRITI SEA

(Greece, 9 August 1996)

The Greek tanker *Kriti Sea* (62 678 GRT) spilled 20 to 50 tonnes of Arabian light crude oil while discharging at a terminal in the port of Agioi Theodori (Greece) some 22 nautical miles west of Piraeus, Greece. Rocky shores and stretches of beach were oiled, seven fish farms were affected and the hulls of pleasure craft and fishing vessels in the area sustained oiling.

In December 1996 the shipowner established a limitation fund amounting to Drs 2 241 million or €6.6 million (£4.8 million) by means of a bank guarantee.

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

The Court of Appeal is expected to hear the case in March 2008.

Taking into account the interest which continues to accrue in relation to the pending cases, and costs which may be awarded by the Court, it is

not certain whether the aggregate amount of the settled claims and the final adjudicated sums in respect of the pending cases will remain below the limitation threshold.

14.6 NISSOS AMORGOS

(Venezuela, 28 February 1997)

The incident

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

The incident has given rise to legal proceedings in a Criminal Court in Cabimas, Civil Courts in Caracas and Maracaibo, the Criminal Court of Appeal in Maracaibo and the Supreme Court. 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 in Cabimas the master maintained that the damage was substantially caused by deficiencies in Lake Maracaibo's navigation channel, amounting to negligence imputable to the Republic of Venezuela.

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

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

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

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

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

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

The criminal file has been returned to the Court of Appeal and a hearing is expected to take place in early 2008.

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

Claimant	Category	Claimed amount US$	Court	Fund's Position
Republic of Venezuela	Environmental damage	60 250 396	Criminal Court	Time-barred
Republic of Venezuela	Environmental damage	60 250 396	Civil Court	Time-barred
Three fish processors	Loss of income	30 000 000	Supreme Court	No loss proven
Total		**150 500 792 (£77 million)**		

The Director has met with representatives of the shipowner and his insurer, the Assuranceföreningen Gard (Gard Club) to examine the consequences of the judgement by the Supreme Court. The Gard Club informed the Director that it had decided to let a recourse action against INC (Instituto Nacional de Canalizaciones) become time-barred. At the meeting surprise was expressed that the public prosecutor had waited two years, and until the 1971 Fund and the Gard Club had decided not to bring recourse actions against INC, to request a revision of the Court of Appeal judgement. In the Director's view, the Supreme Court (Constitutional Section) judgement is likely to delay even more the resolution of this incident.

Claims for compensation in court

The situation in respect of the significant claims for compensation pending before the Courts in Venezuela is set out in the table above:

Claims by the Republic of Venezuela

The Republic of Venezuela presented a claim for environmental damage for US$60 250 396 (£30.3 million) against the master, the shipowner and the Gard Club in the Criminal Court in Cabimas. The 1971 Fund was notified of the criminal action and submitted pleadings in the proceedings.

The Republic of Venezuela also presented a claim for environmental damage against the shipowner, the master of the *Nissos Amorgos* and the Gard Club before the Civil Court of Caracas for US$60 250 396 (£30.3 million). The 1971 Fund was not notified of this civil action.

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

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

Article 6.1 of the 1971 Fund Convention provides as follows:

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

The legal actions by the Republic of Venezuela in the Civil and Criminal Courts were brought

against the shipowner and the Gard Club, not against the 1971 Fund. The Fund was therefore not a defendant in these actions, and although the Fund intervened in the proceedings brought before the Criminal Court in Cabimas, the actions could not have resulted in a judgement against the Fund. As set out above, Article 6.1 of the 1971 Fund Convention requires that in order to prevent a claim from becoming time-barred in respect of the 1971 Fund a legal action has to be brought against the Fund within six years of the date of the incident. No legal action had been brought against the 1971 Fund by the Republic of Venezuela within the six-year period, which expired in February 2003. At its October 2005 session the Administrative Council endorsed the Director's view that the claims by the Republic of Venezuela were time-barred *vis-à-vis* the 1971 Fund.

Claims by fish processors

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

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

'Avocamiento'

In a judgement rendered in July 2005, the Supreme Court decided to accept the withdrawal of claims by a group of 11 fish and shellfish processors and the fishermen's union FETRAPESCA following the settlement reached by six shrimp processors and 2 000 fishermen with the 1971 Fund in December 2000. In its judgement, the Supreme Court also rejected the request for 'avocamiento'.

Maximum amount available for compensation

Immediately after the incident the *Nissos Amorgos* was detained pursuant to an order rendered by the Criminal Court of first instance in Cabimas. The shipowner provided a guarantee to the Cabimas Court for Bs3 473 million (£812 500), being the limitation amount applicable to the *Nissos Amorgos* under the 1969 Civil Liability Convention. The Cabimas Court ordered the release of the ship on 27 June 1997.

On 27 June 1997 the Cabimas Court issued an order which provided that the maximum amount payable under the 1969 Civil Liability Convention and the 1971 Fund Convention, namely 60 million SDR, corresponded to Bs39 738 million or US$83 221 800 (£41.8 million).

Level of payments

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

At the Administrative Council's session held in May 2004, the Venezuelan delegation stated that the Republic of Venezuela had proposed that any claim by the Republic be dealt with after the victims had been fully indemnified so that the pending and settled claims against the Fund were compensated to the benefit of the victims, and that the Republic would stand 'last in the queue' and subject to the amount available for compensation from the Fund. The Council noted that the Vice-Minister of Foreign Affairs,

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

in a letter to the Director, had stated that the Republic of Venezuela accepted that the claims by the Republic of Venezuela would be dealt with after the Fund had paid full compensation to claimants already recognised by it and those who would be recognised legally by a final court judgement, within the maximum amount available established by the Conventions.

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

A letter from the Minister of Foreign Affairs of Venezuela received on 13 August 2004 gave, in the Director's opinion, the necessary assurance that the Republic of Venezuela agreed with his interpretation of that notion. As a result, the Director decided to increase the level of payments to 100%.

Settled claims

The table above summarises the settled claims.

All settled claims have been paid in full.

Possible recourse action against Instituto Nacional de Canalizaciones (INC)

At its May 2004 session, the Administrative Council considered the issue of whether the 1971 Fund should take recourse action against INC, the agency responsible for the maintenance of the Lake Maracaibo navigation channel. The discussion was based on a document submitted by the Director. In conclusion the Director considered the following main factors:

(a) there were facts that spoke in favour of the incident being caused by deficiencies of the channel and other facts supporting the view that the grounding had been caused by negligence on the part of the vessel;

(b) the 1971 Fund would have the burden of proof that the incident had been caused by or contributed to by deficiencies in the channel;

(c) there was a risk element in any litigation and in this case the conflicting evidence mentioned above increases the difficulty in predicting the outcome;

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

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

(d) a very similar case had been dealt with in arbitration in New York and the arbitrators had concluded that the grounding was solely caused by error in navigation; and

(e) a Venezuelan criminal court had held the master of the *Nissos Amorgos* liable for the incident, although this judgement was the subject of appeal[5].

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

In summing up the discussion that took place at the Council's May 2004 session, the Chairman stated that it was important that there should be a wide consensus for a decision not to take recourse action against INC and that, since a slight majority of those delegations that had expressed a view had been in favour of postponing a decision and that even some of those delegations supporting the Director's proposal had been very hesitant, such consensus did not exist. 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.

The question was considered again by the Administrative Council at its October 2006 session. The Council noted that the factors mentioned under points (a) to (d) above had not changed since May 2004, that the Director therefore still considered it unlikely that a recourse action by the 1971 Fund against INC would succeed, and that for this reason he maintained his recommendation that the Fund should not pursue such an action. The Council decided that the 1971 Fund should not take recourse action against INC.

Attempts to resolve the outstanding issues

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

Since October 2005 there have been several meetings and discussions between the Venezuelan delegation and the 1971 Fund. During this period the 1971 Fund has also held meetings and discussions with the Gard Club. In February 2006 the 1971 Fund wrote to the Venezuelan delegation setting out possible solutions to the outstanding issues. In May 2006 a meeting took place in Caracas between the various interested parties including representatives of the Venezuelan Government. The 1971 Fund was represented at the meeting by its Venezuelan lawyers. The purpose of the meeting was to brief the various parties as regards the current situation concerning the outstanding claims.

In June 2006 a meeting was held in London between the Venezuelan delegation and the 1971 Fund at which time the Fund was informed that the Venezuelan authorities were well advanced in their internal discussions and that meetings would take place in Venezuela in the near future between the five government departments concerned and with representatives of the private claimants. The

[5] *As mentioned above the criminal proceedings have been terminated on the grounds that the action against the master was time-barred.*

Venezuelan delegation stated that it would inform the 1971 Fund of the outcome. In discussions with the Venezuelan delegation in September 2006, the 1971 Fund was informed that a meeting had taken place in Caracas in August 2006 and that it would be helpful if representatives of the Gard Club and the 1971 Fund could visit Venezuela in the near future. The 1971 Fund visited Venezuela in October 2006 where a meeting was held at the Ministry of External Affairs attended by representatives of the Ministry of External Affairs, Ministry of the Environment, Public Prosecutor, Attorney General and the Instituto Nacional de los Espacios Acuaticos (National Institute of Aquatic Spaces). At the meeting the participants expressed a desire to resolve the outstanding issues without pursuing the claims in court. There has been no progress on such a resolution since then.

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

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

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

No further developments have taken place in respect of this case.

14.7 PLATE PRINCESS

(Venezuela, 27 May 1997)

The incident

On 27 May 1997 the Maltese tanker *Plate Princess* (30 423 GRT) was loading a cargo of 44 250 tonnes of Lagotreco crude oil at an oil terminal at Puerto Miranda on Lake Maracaibo (Venezuela) when 3.2 tonnes of oil were reportedly spilled into Lake Maracaibo together with ballast water.

Court proceedings

The limitation amount applicable to the *Plate Princess* under the 1969 Civil Liability Convention is estimated at 3.6 million SDR (£2.9 million). The shipowner provided a bank guarantee from Banco Venezolano de Credito (BVC) in the amount of Bs2 844 million (£665 000).

In June 1997 a fishermen's trade union (FETRAPESCA) brought an action against the master and the owner of the *Plate Princess* in the Criminal Court on behalf of 1 692 fishing boat owners, claiming a total of US$17 million (£8.5 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 earnings against the shipowner and the master of the *Plate Princess* before the Civil Court in Caracas for an estimated amount of US$10 million (£5 million).

In June 1997 another local fishermen's union, the Sindicato Único de Pescadores de Puerto Miranda, 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 (£10 million).

At its May 2006 session the Administrative Council decided that the claims referred to above were time-barred in respect of the 1971 Fund (cf Annual Report 2006, pages 67 to 69).

At the Administrative Council's October 2006 session, the Venezuelan delegation stated that it intended to submit a document on the *Plate Princess* at a future session of the Administrative Council and asked that the

incident should therefore remain on the Council's agenda.

There have been no developments since October 2006.

14.8 KATJA

(France, 7 August 1997)

The incident

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

The limitation amount applicable to the *Katja* in accordance with the 1969 Civil Liability Convention is estimated at €7.3 million (£5.4 million).

Claims for compensation

A claim presented by the French Government for clean-up costs was settled in July 2000 at €207 000 (£150 000). 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 (£1.7 million).

Legal actions were taken against the shipowner, his liability insurer and the 1971 Fund relating to claims for the cost of clean-up operations incurred by the regional and local authorities, property damage and loss of income in the fisheries sector totalling €1.4 million (£1 million).

Only three claims totalling €976 000 (£717 000) 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 (£670 000).

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.

At a hearing in May 2006, the PAH submitted pleadings rejecting the arguments submitted by the shipowner and claiming that the berth used by the *Katja* was not dangerous and that the response to the incident was appropriate. The next court hearing is expected to take place in 2008.

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.

14.9 EVOIKOS

(Singapore, 15 October 1997)

The incident

The Cypriot tanker *Evoikos* (80 823 GRT) collided with the Thai tanker *Orapin Global* (138 037 GRT) whilst passing through the Strait of Singapore. The *Evoikos*, which was carrying approximately 130 000 tonnes of heavy fuel oil, suffered damage to three cargo tanks, and an estimated 29 000 tonnes of its cargo were subsequently spilled. The *Orapin Global*, which was in ballast, did not spill any oil. The spilt oil initially affected the waters and some southern islands of Singapore, but later oil slicks drifted into the Malaysian and Indonesian waters of the Strait of Malacca. In December 1997 oil came ashore in places along a 40 kilometre length of the Malaysian coast in the Province of Selangor.

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

Claims for compensation

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

In the limitation proceedings commenced by the shipowner in Singapore, the Court determined the limitation amount applicable to the *Evoikos* under the 1969 Civil Liability Convention at 8 846 942 SDR (£7 million).

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

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

There have been no developments in this case since 2003.

14.10 PONTOON 300

(United Arab Emirates, 7 January 1998)

The incident

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

Claims for compensation

All claims in respect of this incident have been settled for a total of Dhs 7.9 million (£1 million). This includes claims for the cost of clean-up and preventive measures that were settled for Dhs 6.3 million (£862 000), and a claim by a Marine Resource Research Centre (MRRC) that was settled for Dhs 1.6 million (£219 000). The 1971 Fund has paid a total of Dhs 7.8 million (£1.25 million).

Legal actions

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

Level of the 1971 Fund's payments

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

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

The 1971 Fund paid the remaining 25% of agreed claims in 2007, with the exception of one

claimant who has not yet replied to the offer to pay his outstanding 25%. It is expected that this payment will be made in early 2008. Once this payment is made the case will be concluded.

14.11 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 nautical miles north-east of the port of Mina Zayed, Abu Dhabi (United Arab Emirates, UAE). It was estimated that approximately 100 to 200 tonnes of cargo escaped from the wreck. The oil drifted under the influence of strong winds towards the nearby shorelines, thereby polluting a number of small islands and sand banks. Some mangroves were also oiled. The sunken vessel was refloated by salvors and taken into the Abu Dhabi Freeport.

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

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

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

Claims for compensation

Claims in various currencies totalling £1.1 million were submitted in respect of the costs of clean-up operations and preventive measures. These claims were settled and paid at Dhs 6.4 million (£875 400).

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 (£684) 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 (£875 400) to the Funds, the amount to be distributed equally between the 1971 Fund and the 1992 Fund.

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

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

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

- The incident had caused pollution damage to various parties within the Emirate of Abu Dhabi.

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

The expert appeared to suggest that the Funds had paid claims without scrutinizing them. He also made the point that there was gross negligence on the part of the authorities in permitting the ship, which was not a tanker, to load a cargo of oil and allowing it to depart in inclement weather. The expert suggested that the lack of appropriate legislation in the UAE dealing with the licensing authority and loading facilities had contributed directly to the incident. The expert concluded that considering the lack of such legislation, the UAE authorities should be partly liable for paying compensation for the damage arising from this incident.

In September 2006 the Funds submitted a memorandum to the Court which set out their comments on the expert's report. The Funds agreed with the main conclusions reached by the expert.

In the memorandum, the Funds commented on the expert's view on the payments made to claimants. The Funds explained that all claims had been assessed on the basis of the admissibility criteria established by the Funds' Member States. The Funds also dealt with the issue of the strict liability of the shipowner under the Civil Liability Conventions. The Funds stated that the expert's opinion that the UAE authorities should be partly liable for this incident was incorrect, since under the Conventions the shipowner had strict liability. The Funds requested the Court to hold the shipowner solely liable for the damage arising from this incident and to order the sole proprietor of the shipowning entity to pay the Funds Dhs 6.4 million (£875 400).

In October 2006 the shipowner submitted a memorandum to the Court setting out his objections to the expert's findings. The shipowner stated that the Abu Dhabi authorities should be responsible for at least 90% of the damages arising from the incident as they had allowed an unauthorised ship to load an oil cargo and subsequently allowed the ship to depart in bad weather. The shipowner also stated that the expert's findings as regards the payments made by the Funds should be rejected as the expert had relied on photocopied documents to reach his conclusion.

In November 2006 the Court instructed the expert to submit a supplementary report addressing the issues raised by the shipowner and the Funds. Between November 2006 and September 2007 the Court adjourned the case six times as the expert had not submitted the report.

In September 2007 the Funds submitted pleadings to the Court setting out the work carried out by the Funds in order to assist the expert to complete the report and requested the Court to instruct the expert to submit the report within a fixed time frame. The Court agreed with the Funds' request and instructed the expert to submit the report by October 2007. As at 31 December 2007 the expert had not submitted his supplementary report.

14.12 ALAMBRA

(Estonia, 17 September 2000)

The incident

The Maltese tanker *Alambra* (75 366 GT) was loading a cargo of heavy fuel oil in the Port of Muuga, Tallinn (Estonia), when an alleged 300 tonnes of cargo escaped from a crack in the vessel's bottom plating. The *Alambra* remained in its berth whilst clean-up operations were carried out but was subsequently detained by the Estonian authorities pending a decision by the

Tallinn Port Authority to allow the remaining 80 000 tonnes of cargo on board to be removed. The cargo transfer was eventually undertaken in February 2001, and in May 2001 the vessel finally left Estonia for scrapping.

Limitation of liability

The limitation amount applicable to the *Alambra* under the 1969 Civil Liability Convention is estimated at 7.6 million SDR (£5.8 million).

Claims for compensation

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

A claim by the Estonian State for EEK 45.1 million (£2.1 million), which had the character of a fine or charge, was settled by the shipowner and the London Club at US$655 000 (£329 000). 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 (£50 200) was presented to the shipowner and the London Club by a charterer of a vessel said to have been delayed whilst clean-up operations were being undertaken.

The owner of the berth in the Port of Muuga from which the *Alambra* was loading cargo at the time of the incident, and a company contracted by the owner of the berth to carry out oil-loading activities on its behalf, have submitted claims to the shipowner and the London Club for EEK 29.1 million (£1.4 million) and EEK 9.7 million (£455 300), respectively, for loss of income due to the unavailability of the berth whilst clean-up operations were being undertaken.

Legal actions

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

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

The constitutional issue

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

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

On 1 December 2003 the Court of first instance rendered its decision on the constitutional issue.

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

Constitutional review

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

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

Other issues raised in the legal proceedings

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

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

As at 31 December 2007 the proceedings were ongoing in the Court of first instance and no date had been fixed for the next hearing.

15 1992 FUND INCIDENTS

15.1 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 in the North Sea close to the border with Denmark. 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 unsuccessful, they would claim against the 1992 Fund.

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 (£955 000). The claim was subsequently increased to DM2.8 million or €1.4 million (£1 million) plus interest.

The 1992 Fund was notified in November 1998 of the legal actions and 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 102-103.

In order to prevent its claims against the Fund from 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 successfully 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.

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 that the circumstantial evidence pointed overwhelmingly to that conclusion.

The shipowner and the West of England Club appealed against the judgement. As regards the main grounds of appeal and the responses by the parties, reference is made to the Annual Report 2005, pages 70-71.

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 (£88 000) 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.

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 authorised 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 Committee session, the West of England Club and the shipowner increased their offer from 18% to 20%. The Director considered that in the circumstances there was no possibility of persuading them to increase the offer beyond 20% and, in the light of the Committee's decision, therefore decided to accept the proposed settlement offer.

In July 2005 the 1992 Fund and the West of England Club, with the assistance of their joint experts, completed a preliminary assessment of the claim submitted by the German authorities. In February 2006 and January 2007 the German authorities provided further documentation in support of their claim and, following a meeting between the authorities and the 1992 Fund in Hamburg, Germany in June 2007, the claim was settled for DM2 513 055 or €1 284 905 (£944 000).

Negotiations took place with the German Government in respect of the interest to be paid by the 1992 Fund and of the costs incurred by the German Government in respect of the proceedings before the District Court in Flensburg and the Schleswig-Holstein Court of Appeal. At a Court hearing In November 2007 a settlement agreement was concluded between the Federal Republic of Germany, the shipowner, the West of England Club and the 1992 Fund. In compliance with the agreement, in December 2007 the 1992 Fund paid €1 766 903 (£1 214 151), in respect of the principal settlement amount plus interest, followed by a further payment of €45 293 (£32 818) in respect of court costs incurred by the German Government. In accordance with the agreement, the West of England Club has reimbursed the Fund 20% of the amounts paid by it in respect of the payment of the principal plus interest and will shortly also reimburse 20% of the payment in respect of court costs.

As a result of the agreement all legal actions by the German Government against the shipowner, the West of England Club and the 1992 Fund will be withdrawn.

15. 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 in 20 metres of water in Robert Bay, Martinique.

There is a national park, a coral reef and mariculture near the site of the sinking, 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 to remove the wreck by the authorities 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 had subsequently been 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 was 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 (£800 000).

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 had 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.

Legal action

In October 2002 the French Government took legal action against the shipowner and the 1992 Fund provisionally claiming €232 000 (£170 000) in respect of the cost 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 (£1.6 million) would be claimed in respect of the removal of the wreck and cargo.

Claims for compensation

In March 2006 the French Government submitted a claim for € 388 361 (£1 million) for the cost of removing the bunker fuel and the bitumen cargo from the wreck. In June 2006 the claim was increased to € 457 753 (£1 070 000) to take into account additional costs arising from the technical and meteorological problems.

The shipowner did not have financial resources to pay any compensation. The ship did not have any liability insurance. For these reasons the Director decided that the 1992 Fund should compensate the French Government under Article 4.1(b) of the 1992 Fund Convention.

In August 2006 the 1992 Fund approved the claim for € 457 753 (£1 070 000) as claimed. The settlement amount was paid to the French Government in September 2006.

As a result of the settlement of the claim, the French Government withdrew its legal action against the Fund in October 2006.

There are no outstanding claims arising from the *Dolly* incident and the 1992 Fund will therefore not be required to make any further payments.

15.3 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 were collected from shorelines and temporarily stockpiled. Total SA, the French oil company, engaged a contractor to deal with the disposal of the recovered waste and the operation was completed in December 2003. The cost of the waste disposal was estimated at some €46 million (£33.8 million).

Removal of the oil remaining in the wreck

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

Shipowner's limitation fund

At the request of the shipowner, the Commercial Court in Nantes issued an order on 14 March 2000 opening limitation proceedings. The Court determined the limitation amount applicable to the *Erika* at FFr84 247 733 corresponding to €12 843 484 (£9.4 million) and declared that the shipowner had constituted the limitation fund by means of a letter of guarantee issued by the shipowner's liability

insurer, the Steamship Mutual Underwriting Association (Bermuda) Ltd (Steamship Mutual).

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

Maximum amount available for compensation

The maximum amount available for compensation under the 1992 Civil Liability Convention and the 1992 Fund Convention 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 (£136 million).

Undertakings by Total SA and the French Government

Total SA undertook not to pursue claims against the 1992 Fund or against the limitation fund constituted by the shipowner or his insurer relating to its costs arising from operations in respect of the wreck, the clean-up of shorelines, the disposal of oily waste and from a publicity campaign to restore the image of the Atlantic coast if and to the extent that the presentation of such claims would result in the total amount of all claims arising out of this incident exceeding the maximum amount of compensation available 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 (£3.1 million) to claimants in the fishery sector and €2.1 million (£1.5 million) to salt producers.

The French Government also introduced a scheme to provide supplementary payments in the tourism sector. Payments totalling €10.1 million (£7.4 million) were made under that scheme.

Level of the 1992 Fund's payments

In view of the uncertainty as to the total amount of claims arising from the *Erika* incident, the Executive Committee decided in July 2000 that the payments by the 1992 Fund should be limited to 50% of the amount of the loss or damage actually suffered by the respective claimants, as assessed by the 1992 Fund's experts. The Committee decided in January 2001 to increase the level of the 1992 Fund's payments from 50% to 60% and in June 2001 to 80%. In February 2003 the Committee authorised the Director to increase the level of payments to 100% when he considered it safe to do so. In April 2003 the Director increased the level of payments to 100%.

Claims Handling Office

The Steamship Mutual and the 1992 Fund established a Claims Handling Office in Lorient to serve as a focal point for the claimants and the

technical experts engaged to examine the claims for compensation.

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

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

Claims handling

As at 31 December 2007, 7 130 claims for compensation had been submitted for a total of €389.9 million[6] (£155 million). By that date, 99.7% of the claims had been assessed. Some 1 018 claims, totalling €1.8 million (£23.4 million), had been rejected.

Payments of compensation had been made in respect of 5 926 claims for a total of €129.5 million (£95.1 million), out of which Steamship Mutual had paid €12.8 million (£9.4 million) and the 1992 Fund €116.7 million (£85.7 million).

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

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

The procedure for assessing the claim by the French State in respect of costs incurred by French authorities in the clean-up response was considered by the Executive Committee in February 2006. The claim, which comprised some 250 000 pages of documentation, was for a total of €178.8 million (£131.3 million). If the claim were to be assessed by the Fund's experts in the normal way, it would take at least two years to complete the work. At the time of the Committee's session, the payments made to claimants (except a €15 million payment on account to the French State for clean-up costs) totalled €102.4 million (£67.1 million). The Director estimated that the payments to be made to claimants (other than the French State) would total at least some €120 million (£81 million). Since the amount available for compensation for this incident was €184.8 million (£135 million), the amount payable to the French State for clean-up operations would not exceed some €65 million (£48 million). For these reasons the Director had looked for a more pragmatic way of assessing the French State's claim up to that amount by carrying out a broad assessment of three major components of the claim in order to establish the lowest conceivable admissible amount.

CLAIMS SITUATION AS AT 31 DECEMBER 2007

Category	Claims submitted	Claims assessed	Claims rejected	Payments made	
				Number of claims	Amounts €
Mariculture and oyster farming	1 007	1 004	90	846	7 763 339
Shellfish gathering	534	534	117	370	889 189
Fishing boats	319	319	30	282	1 099 551
Fish and shellfish processors	51	51	7	43	976 832
Tourism	3 695	3 691	458	3 205	75 954 269
Property damage	711	711	249	459	2 554 705
Clean-up operations	150	145	12	127	31 872 606
Miscellaneous	663	654	55	594	8 383 921
Total	**7 130**	**7 109**	**1 018**	**5 926**	**129 494 412**

[6] *This figure includes the amount of €178.8 million claimed by the French Government in respect of the costs incurred in the clean-up operations, although as mentioned above, the French State undertook to stand last in the queue.*

The largest component of the claim was €128 million (£94 million) for shoreline clean-up costs incurred by the Prefectures of the five affected departments in support of the coastal communes. This had been assessed at €64 million (£47 million). Another major component of the claim was €23 million (£17 million) for costs of providing military personnel to assist with beach cleaning. This had been assessed at €16 million (£12 million). The third major component of the claim was €18.4 million (£13.5 million) for the cost of at-sea operations, including towing the casualty, monitoring the wreck, aerial surveillance of the oil and clean-up operations. This had been assessed at €1 million (£730 000), although it was anticipated that a more detailed assessment would inevitably increase this amount to some €9 million (£6.6 million).

On the basis of such a broad assessment of the three major components of the claim by the French State, the minimum total admissible amount was estimated at some €81 million (£60 million), well in excess of the maximum amount that was likely to be available (some €65 million) to the French State after all other claims arising from the incident (except that of Total SA) had been settled and paid. Whilst a full assessment of the claim by the French State would inevitably result in the admissible amount increasing substantially, in the Director's view such a full assessment would not be justified given the enormous amount of time that would be required to complete the work and the limited amount of money that would be available to pay the claim.

In February 2006 the Executive Committee gave its unanimous support for the Director's approach to the assessment of the French State's claim for clean-up costs. The point was made that, in view of the size of the claim in relation to the maximum amount of money likely to be available for payment, a full assessment of the claim could not be justified. The Committee noted that the assessment would be without prejudice to the French Government's position in any recourse action against third parties.

Payments to the French State

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

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

The Director continues to monitor the situation and will consider, in the light of the developments of the court proceedings involving the Funds, as well as the outcome of the criminal proceedings, whether a further payment can be made to the French State.

Criminal proceedings

On the basis of a report by an expert appointed by a magistrate in the Criminal Court in Paris, criminal charges were brought in that Court against the master of the *Erika*, the representative of the registered owner (Tevere Shipping), the president of the management company (Panship Management and Services Srl), the management company itself, the deputy manager of Centre Régional Opérationnel de Surveillance et de Sauvetage (CROSS), three

Erika: Oily waste was collected and deposited into temporary storage facilities

officers of the French Navy who were responsible for controlling the traffic off the coast of Brittany, the classification society Registro Italiano Navale (RINA), one of RINA's managers, Total SA and some of its senior staff.

The trial lasted for four months and was concluded on 13 June 2007. The 1992 Fund, although not a party, followed the proceedings through its lawyer in France. The judgement is expected in January 2008.

Recourse actions taken 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 2002 whether the Fund should take such actions as were necessary to prevent its rights from becoming time-barred. The Committee decided that the 1992 Fund should challenge the shipowner's right to limit his liability under the 1992 Civil Liability Convention and that it should take recourse actions, as a protective measure before the expiry of the three-year time-bar period, against the following parties:

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

On 11 December 2002 the 1992 Fund brought actions in the Civil Court (Tribunal de Grande

Instance) in Lorient against the parties listed above.

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

There were no developments in respect of these actions during 2007. The 1992 Fund has informed the Court that it will consider further steps as regards these actions when the criminal trial has been terminated.

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.

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

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

Legal proceedings

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

The French State brought actions in the Civil Court in Lorient against Tevere Shipping Co Ltd, Panship Management and Services Srl, Steamship Mutual, Total Transport Corporation, Selmont International Inc, the shipowner's limitation fund referred to above and the 1992 Fund, claiming €190.5 million (£140 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 (£105 million).

Steamship Mutual brought action in the Commercial Court in Rennes against the 1992 Fund, requesting the Court *inter alia* to note

that, in the fulfilment of its obligations under the 1992 Civil Liability Convention, Steamship Mutual had paid €12 843 484 (£9.4 million) corresponding to the limitation amount applicable to the shipowner, in agreement with the 1992 Fund and its Executive Committee. Steamship Mutual further requested the Court to declare that it had fulfilled all its obligations under the 1992 Civil Liability Convention, that the limitation amount had been paid and that the shipowner was exonerated from his liability under the Convention. Steamship Mutual also requested the Court to order the 1992 Fund to reimburse it any amount the shipowner's insurer will have paid in excess of the limitation amount.

Claims totalling €497 million (£365 million) were lodged against the shipowner's limitation fund constituted by Steamship Mutual. This amount includes the claims by the French Government and Total SA. However, most of these claims, other than those of the French Government and Total SA, have been settled and it appears therefore that these claims should be withdrawn against the limitation fund to the extent that they relate to the same loss or damage. The 1992 Fund received from the liquidator of the limitation fund formal notifications of the claims lodged against that fund.

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

Legal actions against the shipowner, Steamship Mutual and the 1992 Fund were taken by 796 claimants. By 31 December 2007 out-of-court settlements had been reached with 443 of these claimants. The courts had rendered judgements in respect of 118 claims. Actions by 96 claimants were pending. The total amount claimed in the pending actions, excluding the claims by the French State and Total SA, was €53.8 million (£39.5 million).

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

Court judgements in respect of claims against the 1992 Fund

During 2007, 33 judgements were rendered in various French courts, the majority of which were in favour of the 1992 Fund. These judgements related mainly to issues of admissibility in respect of claims for loss of earnings suffered by persons whose property had not been polluted (so-called pure economic loss).

As mentioned in Section 12, the governing bodies of the 1971 and 1992 Funds have adopted criteria for the admissibility of claims. 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.

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

All judgements rendered in respect of claims against the 1992 Fund in 2007 are reported in documents submitted to the Executive Committee which are available on the IOPC Funds' website (www.iopcfund.org).

Summaries of some judgements rendered in 2007 that are of particular interest because of the issues addressed or the statements made by the courts are summarised below.[7]

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

Commercial Court in Lorient

Claim by a tour operator

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

In a judgement rendered in February 2007 the Court stated that the Fund's criteria for admissibility of claims were not binding on the national courts 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 and the damage. The Court considered

[7] *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.*

that other businesses in the area had not been affected and that the camping activity in 2001 was normal bearing in mind the weather conditions. The Court held that the claimant had not provided evidence of the alleged loss nor of a link of causation between the alleged loss and the incident and for these reasons rejected the claim. The claimant has appealed against the judgement.

Court of Appeal in Rennes

Claim by a student who had failed to obtain expected employment

A claim for loss of income for €978 (£700) presented by a student who, unlike in 1998 and 1999, had not been employed in the summer of 2000 at a camping site in Névez, Department of Finistère, had been rejected by the 1992 Fund on the grounds that there was not a sufficient link of causation.

In a judgement issued in July 2005 the Commercial Court in Rennes accepted the claim. Since this claim involved a matter of principle the Executive Committee instructed the Secretariat to appeal against the judgement.

In a judgement rendered in February 2007, the Court of Appeal in Rennes accepted the appeal by the 1992 Fund, reversed the first instance judgement and rejected the claim.

The Court stated that the criteria for the admissibility of claims contained in the Claims Manual could not be assimilated to agreements between the parties in the sense of Article 31.3 of the Vienna Convention on the Law of Treaties nor to international custom in the sense of the same Vienna Convention. The Court also stated that it was for the national courts to decide the interpretation of the term 'pollution damage', but that in doing so they should take into account the terms of the 1992 Conventions, which by virtue of the French Constitution had a higher value than internal law, and that the criteria for the admissibility of claims, in particular the criterion not to compensate 'second degree' tourism claims, was internal to the Fund. The Court stated that the student who was employed in August 2000 had not shown that he had not been employed in July 2000 as a consequence of the reduction in tourism resulting from the *Erika* incident and had not provided evidence that he had attempted to obtain employment elsewhere.

Claim by a company letting commercial premises

The owner of a company letting commercial premises to a take-away business had submitted a claim for €6 329 (£4 650) for loss of income allegedly suffered in 2000, 2001 and 2002 due to the *Erika* incident. The Fund had rejected the claim on the grounds that the claimant provided services to other businesses in the tourist 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 its judgement rendered in December 2005, the Civil Court in Saint-Nazaire ordered the 1992 Fund to pay compensation to the claimant for loss of rental income in 2000 at €1 618 (£1 200) plus €1 300 (£950) for costs, and rejected the claim for losses in 2001 and 2002. Since the judgement was at variance with the criteria for admissibility of claims adopted by the 1992 Fund governing bodies with regard to 'second degree' claims in the tourism sector, the Executive Committee instructed the Secretariat to appeal against the judgement in spite of the very low amount involved.

In a judgement rendered in February 2007, the Court of Appeal in Rennes accepted the appeal by the 1992 Fund, reversed the first instance judgement and rejected the claim.

The Court stated that the 1992 Fund criteria for the admissibility of claims were not binding on the national courts. The Court considered that the premises had been let every year, even in 2000, the year after the *Erika* incident took place. The Court also considered that in 2001, although the tourism activity was similar to that before the incident, the premises were let for a similar amount as in 2000. The Court considered that other factors unrelated to the

incident, such as the annual increase in the letting price of FF 5 000 (€762 or £560) for the low season period, had had an impact on the business. The Court decided that the claimant had not established that there was a link of causation between the alleged loss and the contamination, and for this reason rejected the claim.

Claim by the owner of a bar

The owner of a bar in Carnac, which had commenced business in June 2000, had submitted a claim for €12 552 (£9 200) relating to losses allegedly suffered in 2000 as a result of the *Erika* incident. The action was brought before the Court on 8 September 2003. In accordance with the position taken by the Executive Committee in February 2003, the 1992 Fund had argued that as regards losses before 8 September 2000 the claim was time-barred under Article 6 of the 1992 Fund Convention. The 1992 Fund had also maintained that the rest of the claim should be rejected on the ground that it had not been proved that there was a sufficient link of causation between the alleged losses and the contamination resulting from the *Erika* incident.

In its judgement rendered in December 2005, the Court did not address the issue of the time bar but rejected the claim on the ground that the claimant had not proved that he had suffered any loss. The claimant appealed against the judgement.

In a judgement rendered in February 2007, the Court of Appeal in Rennes rejected the appeal. The Court stated that the 1992 Fund's criteria for the admissibility of claims were not binding on the national courts. The Court, after stating that Article VIII of the 1992 Civil Liability Convention and Article 6 of the 1992 Fund Convention established a double condition, namely that a legal action should be presented within three years of the date when the damage occurred and within six years of the date when the incident took place, decided that the claimant's right to receive compensation for losses suffered before 8 September 2000 was time-barred since the legal action was presented on 8 September 2003. The Court also rejected the rest of the claim, ie for the losses allegedly suffered after 8 September 2000, since the claimant had not proved that he had suffered a loss nor that there was a link of causation with the *Erika* incident.

Claim by an insurer for loss after cancellation of a millennium party

An insurer had made a subrogated claim against the 1992 Fund for €630 000 (£462 000) in respect of a claim it had paid to a group of hotels in La Baule for losses incurred as a result of the cancellation of a major millennium party which was to have taken place on the local beach. This payment had been made pursuant to an insurance policy covering costs incurred in organising the cancelled party. The Mayor of La Baule had issued a decree on 27 December 1999 prohibiting all access to the beaches in La Baule, as a result of which the party had to be cancelled.

The 1992 Fund had rejected the claim on the grounds that the claimant had not proved that the alleged loss was incurred as a result of the *Erika* incident.

In a judgement rendered in December 2004, the Court of first instance ordered the 1992 Fund to pay the insurer €430 000 (£315 000). The 1992 Fund appealed against the judgement.

In November 2006 the Court of Appeal in Rennes overturned the judgement by the Court of first instance and rejected the claim. The Court stated that it was not bound by the criteria for admissibility laid down by the 1992 Fund but that they could provide a useful point of reference for national courts. The Court referred to the fact that the decision by the Municipal Council of La Baule in December 1999, before the oil spill occurred, to reduce the permitted area of the marquees under which the festivities were to be held from 1 400 m^2 to 800 m^2, had reduced by some 50% the potential income from the festivities and had made them non-profitable. The Court also stated that the severe storm which occurred on 26 and 27 December 1999 had made it impossible to erect the

marquees and that the storm had caused damage to the roof of the hotel in front of which the festivities were to have taken place, constituting a risk to participants in the festivities. The Court considered it evident that, due to the damage caused by the storm, the festivities could not for safety reasons have been held on that beach. The Court held that, although in the mayor's decision to prohibit access to the beach reference was made to the oil on the beach, this did not in itself constitute an obstacle to holding the festivities under the marquees and the fact that the marquees could not be erected was due to the storm. In the Court's view, the decision to cancel the festivities was due to the storm and not to the pollution. The Court of Appeal considered therefore that there was no link of causation between the cancellation of the festivities and the *Erika* incident, and that the insurer had not established any direct and certain relationship between his obligation to indemnify the hotel group and the *Erika* incident.

The claimant has lodged a further appeal against the judgement before the Court of Cassation.

Claim by the owner of a crêperie
The owner of a crêperie in Morbihan had submitted a claim for €52 806 (£39 000) relating to loss of income allegedly due to the *Erika* incident. The claim had been rejected by the 1992 Fund since the claimant had bought the crêperie on 31 May 2000, ie six months after the *Erika* incident took place, when he was fully aware of the consequences the incident could have on his commercial activity.

In its judgement, the Commercial Court in Vannes 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 of the consequences it could have on its activities. The Court held that the claimant had not proved that the reduction in turnover was a consequence of the pollution and, for this reason, rejected the claim. The claimant appealed against this judgement.

In January 2007 the Court of Appeal in Rennes confirmed the judgement rendered by the Commercial Court in Vannes. In its judgement the Court of Appeal held that the claimant had not established that he had suffered a loss. The Court stated that the claimant, when he decided to purchase the crêperie, was fully aware of the consequences of the pollution on the 2000 tourism season.

Commercial Court in La Roche sur Yon

Claim by an estate agent for loss of property letting
An estate agent based in Saint Jean de Monts had submitted a claim for €37 068 (£27 225) for losses in his commercial activity in 2000 and 2001, namely letting property to tourists, allegedly as a consequence of the *Erika* incident. The 1992 Fund had rejected the claim on the grounds that the claimant had failed to establish that there was a link of causation between the reduction in income and the incident.

In a judgement rendered in December 2006, the Court stated that the Fund's criteria for the admissibility of claims were not binding on the judge who should determine in each individual case whether there was a sufficient link of causation between the event and the damage. The Court agreed with the Fund that the reduction in the claimant's income was as a result of factors unrelated to the incident such as a reduction in the number of property owners letting their properties through the claimant and an increase in the number of estate agents operating in the area. The Court held that the claimant had not proved that there was a link of causation between the reduction in income and the incident, and for this reason rejected the claim.

Claim by the owner of a restaurant
The owner of a restaurant in Noirmoutier had submitted a claim in the amount of €19 803

(£14 500) in respect of losses suffered during 2000. The 1992 Fund had considered that the claimant had not suffered a loss and rejected the claim. In taking its decision, the 1992 Fund had considered that the claimant's turnover in 2000 had increased in relation to 1999 and that the claimant had obtained a benefit from the incident as a result of the additional meals provided to the fire brigade personnel who carried out clean-up operations in the area.

In a judgement rendered in December 2006, the Court, after stating that the Fund's criteria for admissibility of claims were not binding on the judge, held that it had not been demonstrated that the claimant had suffered a loss as a result of the incident, and for this reason rejected the claim.

Commercial Court in Quimper

Claim by tourist boat operator
The owner of a company operating sailing boats for tourists in Concarneau had submitted claims totalling €118 260 (£87 000) for losses between January and September 2000 and €104 757 (£77 000) for losses between October 2000 and September 2001. The claimant and the 1992 Fund had agreed that the losses between January to September 2000 were €5 378 (£40 000). The 1992 Fund had rejected the claim for losses between October 2000 and September 2001, however, since it considered that the claimant had not suffered an economic loss.

In a judgement rendered in February 2007, the Commercial Court made a similar statement to that of the Commercial Court La Roche sur Yon held that, although the Fund's criteria for the admissibility of claims were not binding on a national judge, the claimant had not established a link of causation between the alleged loss and the contamination and had not demonstrated that it had suffered a loss as a result of the incident either. For these reasons the Court rejected the claim.

Commercial Court in Lorient

Claim by the owner of a restaurant
The owner of a restaurant in Guidel-Plage had submitted a claim for €43 617 (£32 000) for losses in 2000 and €107 265 (£78 800) for losses in 2001. The 1992 Fund had assessed the losses in 2000 at €29 039 (£21 300) but had rejected the claim for 2001 because, in the Fund's view, there was not a sufficient link of causation between the claimed losses in 2001 and the *Erika* incident. The claimant did not agree with the assessments and had brought proceedings before the Commercial Court in Lorient.

In a judgement rendered in July 2007 the Court stated that it was not bound by the Fund's criteria for the admissibility of claims 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 and the damage. The Court considered that the *Erika* incident had not had a significant impact on the 2001 tourism season since, according to studies carried out, the results of 2001 were the consequence of factors unrelated to the oil spill. The Court therefore adopted the Fund's views on the absence of a link of causation and held that the claimant had not proved that he had suffered losses beyond the loss of income assessed by the Fund.

Commercial Court in Saint Nazaire

Claims by salt producers
In May 2007 the Civil Court in Saint Nazaire rendered its judgement in respect of 136 claims from salt producers in Guérande for losses caused by the lack of production in 2000 as a result of an ban imposed on water intake, as well as for losses caused by the late start of the 2001 season and for the costs of restoration of salt ponds in 2001.

With regard to the claim for loss of production in 2000, the Court, after reviewing the scientific analysis carried out by the court expert and considering the views expressed by other experts presented by the salt producers, considered that there was no scientific consensus on the health risks and efficiency of the booms deployed. The risk of pollution from the presence of oil in the

vicinity of the salt ponds, the operations to remove oil from the *Erika* and the oil remaining on the rocky shore nearby had made it reasonable to maintain a complete closure of the salt ponds to prevent the entry of oil that would have caused substantial damage to the ponds. For these reasons the Court held that the decision not to produce salt in 2000 had been a reasonable measure to prevent or minimise pollution damage.

The Court accepted that the loss of salt production in 2001 was also a consequence of the *Erika* incident since the oil in the vicinity of the salt ponds had not been removed until the spring of 2001 and clean-up operations were still carried out in 2001 on rocky shores nearby. However, the Court decided to reduce the compensation amount by 50% to take into account the impact that the exceptional rainfall in 2001 had had on the salinity of the salt ponds. The Court accepted that the costs incurred to restore the salt ponds in 2001 were an unavoidable consequence of the decision not to produce salt in 2000 but decided to reduce the compensation amount by 50% due to the exceptional rainfall in 2001.

The Court granted the salt producers the amount of €1 494 257 (£1 097 000) and ordered the provisional execution of the judgement which took place during the summer of 2007.

The Secretariat, with the help of the 1992 Fund's French lawyer and the Fund's experts, examined the judgements to decide whether the 1992 Fund should appeal. With regard to the judgements in respect of the 136 claims by salt producers in Guérande, the Secretariat considered that there was no matter of principle involved in the dispute since the Fund had agreed that the spill had caused pollution damage in Guérande and that the Court had arrived at a balanced judgement by considering that the costs incurred to restore the salt ponds in 2001 was an unavoidable consequence of the decision not to produce salt in 2000, which in the Court's view had been a reasonable decision in the circumstances, and by reducing the compensation amounts by 50% to take into account the impact of the exceptional rainfall in 2001. The Secretariat also considered that the salt producers had informed the 1992 Fund that they were prepared not to appeal against the judgement provided the Fund took the same decision. The Director therefore decided that the best interest of the 1992 Fund would be protected by agreeing with the salt producers that the parties would not appeal against these judgements.

Civil Court of Sables d'Olonne

Claim by a Co-operative of salt producers

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

With regard to the claim for commercial loss in the amount of €7.1 million (£5.2 million), the Court stated that it was not the Co operative but the salt producers who actually produced salt, that the claim by the Co-operative could therefore not be for loss of production but for loss of sales and that it was for the Co-operative to prove that it had suffered a loss of profit as a result of the pollution. The Court considered that the Co-operative had a stock of some 28 611 tonnes of salt and that it had therefore been able to maintain sales at the normal level, even in the absence of salt production in 2000. The Court decided that the Co-operative had not been able to demonstrate that it had suffered a commercial loss as a result of the *Erika* incident and had for that reason rejected the claim.

With regard to the claim for loss of image in the amount of €378 042 (£277 000), the Court stated that the Co-operative's decision to inform the public that it had a substantial stock of salt available for sale and to run a marketing campaign to inform and reassure consumers had been a reasonable measure to mitigate its loss which had been effective, since the Co-operative had not experienced a substantial reduction in sales. For that reason the Court granted the amount claimed.

With regard to the claim for additional costs incurred to minimise pollution damage (costs of monitoring the booms, filtration devices, analysis of the water, etc), the Court decided that those measures were reasonable and were taken to prevent pollution damage and granted the amount of €21 347 (£15 600). The Court rejected other additional costs incurred in the amount of €136 345 (£100 000) since they referred to the time spent by the salt producers defending their interests and co-ordinating their activities, which were not directly linked to the *Erika* incident.

The Co-operative of salt producers has appealed against the judgement.

Court of Cassation – Confirmation of judgement rendered by the Commercial Court in Rennes

Claims by a fisherman and by a local fishermen's union

A fisherman had submitted a claim for €8 027 (£5 900) relating to loss of income due to the *Erika* incident. The claimant had accepted the assessment of his claim made by the Fund for €1 357 (£900). 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 a payment of €272 (£160) outstanding. Before the last compensation payment was made, the claimant brought proceedings against the 1992 Fund arguing that the previous agreement reached with the Fund was not valid, claiming compensation for losses totalling €6 942 (£5 000).

A local fishermen's union joined in these legal proceedings supporting this claimant, who is one of its members. The union 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 (£0.70) for non-defined damages.

In a judgement rendered in May 2006, the Court of Appeal in Rennes confirmed the judgement of the Commercial Court with regard to the individual claimant, since, having signed a full and final receipt and release agreement, the claimant had lost his right to sue the Fund and Steamship Mutual. The Court considered that the 1992 Fund and Steamship Mutual, by providing an amicable compensation to the victims of the pollution caused by the *Erika*, had avoided the need for the claimant to be involved in a lengthy and expensive litigation and had also acted according to the requirements of French law. The Court also considered that if the claimant had agreed to the amicable settlement at the time, it was because he had found it convenient to do so, and that his opposition two years later was to be considered too late and invalid.

The Court stated that the legal action by the union was admissible, since any trade union could be party in legal proceedings to defend the general interests of the members of the profession it represented. The Court recognised the right of the union to question in general terms the processes and modalities of compensation of fishermen and others deriving their income from the sea. The Court considered, however, that the union should not deal with individual losses suffered by the victims of the pollution and decided that the union's claim was not well founded. The claimants have lodged a further appeal before the Court of Cassation.

In December 2007 the Court de Cassation rejected the appeal holding that the settlement reached between the claimant and the Fund was valid since it contained concessions by each party.

15.4 AL JAZIAH 1

(United Arab Emirates, 24 January 2000)

See pages 70-71.

15.5 SLOPS

(Greece, 15 June 2000)

The incident

On 15 June 2000 the Greek-registered waste oil reception facility *Slops* (10 815 GT), laden with some 5 000 m³ of oily water, of which 1 000 – 2 000 m³ 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.

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 sealing the engine and removing the propeller was 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.

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. A number of delegations, basing themselves on a decision by the 1992 Fund Assembly regarding floating storage units (FSUs) and floating production, storage and offloading units (FPSOs), expressed the view that since the *Slops* was not 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 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

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 the cost of clean-up operations and preventive measures for €1 536 528 (£1.1 million) and €786 832 (£578 000) 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.

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 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 €3 000

(£68 000). The Fund appealed to the Greek Court of Appeal.

The Court of Appeal rendered its judgement on 16 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 carries oil from place A to place B. The claimants appealed to the Greek Supreme Court.

The Supreme Court issued its judgement in June 2006. In the judgement, the majority of the judges (17:5) expressed the opinion that the provisions on the definition of ship in the 1992 Conventions appeared to describe two types of 'ships', namely: (a) the type which was defined as 'any sea-going vessel and seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo', and (b) the type which was defined as 'a ship capable of carrying oil in bulk and other cargoes…', in other words 'combination cargo' ships. Moreover, relying principally on the grammatical phraseology used in defining a ship in the 1992 Conventions, the majority of the judges concluded that the proviso referred only to combination cargo ships, ie those ships which were 'capable of carrying oil in bulk and other cargoes', rather than all ships in general, and that consequently there was no requirement for ships in the first category (tankers and seaborne craft) to be actually carrying oil in bulk as cargo in order to be characterised as a ship. In the view of the majority of the judges, in order to fall within the definition of 'ship' it was sufficient for tankers and seaborne craft to have the capability of movement by self-propulsion or by way of towage, as well as the ability to carry oil in bulk as cargo, without it being necessary for the incident to have occurred during the carriage of oil in bulk as cargo, ie during the voyage.

The majority of the judges held that the Court of Appeal had contravened the substantive law provisions of the 1992 Conventions pertaining to the definition of 'ship'. Consequently, the majority held that at the time of the incident, the *Slops* should be regarded a 'ship' as defined in the 1992 Conventions as it had the character of a seaborne craft which, following its modification into a floating separating unit, stored oil products in bulk and, furthermore, it had the ability to move by towing with a consequent pollution risk without it being necessary for the incident to take place during the carriage of the oil in bulk.

The Supreme Court, having decided that the 1992 Conventions were applicable to the incident, held that the Court of Appeal's judgement should be set aside and the case be referred back to that Court to examine the merits of the substance of the dispute ie the quantum of the claims.

In October 2007 a hearing took place in the Court of Appeal. The issue considered by the Court was the quantum of the claims submitted by the two Greek companies. As at 31 December 2007 the Court of Appeal had not rendered its judgement.

Claims for compensation

The two Greek companies had submitted documents to the Fund in respect of costs totalling US$2 536 419 (£1.3 million). The Fund provisionally assessed the claims at US$1 308 778 (£657 000).

In August 2007 the Fund received a letter from a third Greek company requesting compensation for a sum of US$985 000 (£495 000) in respect of preventive measures carried out in response to the incident. Further information has been requested from this claimant.

Since the response activities were supervised by the Hellenic Coastguard, the Director has written to the Coastguard requesting them to provide details of these activities in order to assist with the assessment of the above claims.

Possible recourse actions

Although the claimants have maintained that the owner of the *Slops* had no assets apart from the *Slops* itself, which had been destroyed in the fire

at the time of the incident and did not even have scrap value, the Director is investigating the possibility of recovering any compensation paid to claimants for damage arising from the incident from the owner of the *Slops*, who is liable under Article III.1of the 1992 Civil Liability Convention. The Director is also investigating the possibility of a recovery from the Greek authorities, which allowed the *Slops* to operate within Greek waters without insurance, possibly in contravention of Article VII.1 of the 1992 Civil Liability Convention.

At the October 2007 session of the 1992 Fund Executive Committee the Greek delegation stated that, given the possible intention of the 1992 Fund of commencing legal action against the Hellenic Republic, the Greek Government had sought legal advice from the competent legal office of the State. The legal opinion had concluded that the competent Greek Authorities had not been called upon to intervene in the legal proceedings which had been initiated by the two Greek companies in 2002 and that the Hellenic Republic had no legitimate interest to intervene in such legal proceedings. The legal opinion stated that at the time of the *Slops* incident there was no requirement imposed by law that Floating Storage Facilities should have compulsory insurance. It further stated that the legal uncertainty had been clarified in the legal proceedings which ended with the judgement rendered by the Greek Supreme Court which, according to Article 7.6 of the 1992 Fund Convention, was binding for the parties involved in such proceedings, namely the 1992 Fund and the two anti-pollution companies, but not for the Greek Government, since it was not a party to those proceedings. According to the legal opinion it could not reasonably be claimed nor justified that the competent Greek authorities had any liability for the *Slops* incident and the consequent pollution, and that such a claim could not become enforceable by law, either. The legal opinion also underlined that, by virtue of Article 6 of the 1992 Fund Convention, no action could be brought after six years from the date of the incident which had caused the damage.

The Director stated that the 1992 Fund was complying with its obligation to investigate the cause of the incident and that, if the *Slops* had been found to be a ship under the 1992 Civil Liability Convention, the Greek State could have been in breach of its obligations under that Convention. The Director stated that the 1992 Fund would continue the investigation and would report to the Committee in due course.

15.6 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 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 onshore in Spain. Significant clean-up operations were also undertaken in France. Clean-up operations at sea were undertaken off Portugal.

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

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

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

Claims Handling Offices

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

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

Shipowner's liability

The limitation amount applicable to the *Prestige* under the 1992 Civil Liability Convention is approximately 18.9 million SDR or €22 777 986 (£16.7 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 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 (£126 million).

Level of payments

London Club's position

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

Consideration by the Executive Committee in May 2003

In May 2003 the Executive Committee decided that the 1992 Fund's payments should for the time being be limited to 15% of the loss or damage actually suffered by the respective claimants as assessed by the experts engaged by the Fund and the London Club. The decision was taken in the light of the figures provided by the delegations of the three affected States and an assessment by the Director, which indicated that the total amount of the damage could be as high as €1 000 million (£734.5 million). The Committee further decided that the 1992 Fund should, in view of the particular circumstances of the *Prestige* case, make payments to claimants, although the London Club would not pay compensation directly to them.

Consideration in October 2005

In October 2005 the Executive Committee

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

In the past the level of the Fund's payments had been determined on the basis of the total amount of presented and possible future claims against the Fund and not on the basis of the Fund's assessment of the admissible losses. On the basis of the figures presented by the Governments of the three States affected by the incident, which indicated that the total amount of the claims could be as high as €1 050 million (£734.5 million), it was likely that the level of payments would have to be maintained at 15% for several years unless a new approach could be taken. The Director therefore proposed that, instead of the usual practice of determining the level of payments on the basis of the total amount of claims already presented and possible future claims, it should be determined on an estimate of the final amount of admissible claims against the 1992 Fund, established either as a result of agreements with claimants or by final judgements of a competent court.

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

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

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

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

Developments after the October 2005 session

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

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

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

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

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

Claims for compensation

Spain
As at 31 December 2007 the Claims Handling Office in La Coruña had received 842 claims totalling €763.9 million (£561 million). These include twelve claims from the Spanish Government totalling €713.6 million (£524 million) submitted during the period October 2003 – December 2007.

The table below provides a breakdown of the different categories of claims received by the Claims Handling Office in La Coruña as at 31 December 2007.

As at 31 December 2007, 760 (91.57%) of the claims other than those of the Spanish Government had been assessed for €3.9 million (£2.8 million). Interim payments totalling €503 942 (£370 145)[9] had been made in respect of 162 of the assessed claims, mainly at 30% of the assessed amount. Of the remaining claims, three were pending clarification, two were awaiting approval by the 1992 Fund and the London Club, four were awaiting approval by the London Club, 176 were awaiting a response from the claimant, 53 were awaiting further documentation, 411 (totalling €29 million (£21.3 million)) had been rejected and 19 had been withdrawn by the claimants.

France
By 31 December 2007, 480 claims totalling €109.7 million (£80.6 million) had been received by the Claims Handling Office in France.

Of the 480 claims submitted to the Claims Handling Office, 92% had been assessed by 31 December 2007. Many of the remaining claims lack sufficient supporting documentation and such documentation has been requested from the claimants. Four hundred and thirty-six claims had been assessed for €48.7 million (£35.8 million) and interim payments totalling €4.85 million (£3.56 million) had been made at 30% of the assessed amounts in respect of 315 claims. The remaining claims were awaiting a response from the claimants or were being re-examined following the claimants' disagreement with the assessed amount. Fifty-five claims totalling €3.7 million (£2.7 million) had been rejected because the claimants had not demonstrated that a loss had been suffered due to the incident.

In May 2004 the French Government submitted a claim for €67.5 million (£49.5 million) in relation to the costs incurred for clean-up and preventive measures. The 1992 Fund and the

Category of claim (Spain)	No. of claims	Amount claimed €
Property damage	232	2 066 103
Clean up	17	3 011 744
Mariculture	14	19 097 581
Fishing and shellfish gathering	180	3 610 886[10]
Tourism	14	688 303
Fish processors/vendors	299	20 027 881
Miscellaneous	74	1 761 785
Spanish Government	12	713 646 135
Total	**842**	**763 910 418**

[9] *Compensation payments made by the Spanish Government to claimants were deducted when calculating the interim payments.*

[10] *One claim totalling €132 million (£96.9 million) from a group of 58 associations had been withdrawn following a settlement with the Spanish Government.*

Category of claim (France)	No. of claims	Amount claimed €
Property damage	9	87 772
Clean up	60	10 466 654
Mariculture	126	2 336 501
Shellfish gathering	3	116 810
Fishing boats	59	1 601 717
Tourism	194	25 268 942
Fish processors/vendors	9	301 446
Miscellaneous	19	2 029 820
French Government	1	67 499 154
Total	**480**	**109 708 816**

London Club have provisionally assessed the claim at €31.2 million (£23 million). Further documentation has since been provided by the French Government. The Fund's experts are carrying out a detailed further assessment of the claim.

A further 59 claims, totalling €10.5 million (£7.7 million), were submitted by local authorities for costs of clean-up operations. Forty-three of these claims were assessed at €4.2 million (£3 million). Interim payments totalling €1 million (£0.7 million) have been made in respect of 28 claims at 30% of the assessed amounts.

One hundred and twenty-six claims were submitted by oyster farmers, totalling €2.3 million (£1.7 million), for losses allegedly suffered as a result of market resistance due to the pollution. The experts engaged by the London Club and the 1992 Fund examined these claims and as at 31 December 2007, 120 of them, totalling €1.9 million (£1.4 million), have been assessed at €468 231 (£343 915). Payments totalling €127 539 (£93 677) had been made in respect of 85 of these claims at 30% of the assessed amounts.

As at 31 December 2007 the Claims Handling Office had received 194 tourism-related claims totalling €25.3 million (£18.6 million). One hundred and eighty-three of these claims have been assessed at a total of €12.8 million (£9.4 million) and interim payments totalling €3.4 million (£2.5 million) have been made at 30% of the assessed amounts in respect of 132 claims.

Portugal

In December 2003 the Portuguese Government submitted a claim for €3.3 million (£2.4 million) in respect of the costs incurred for clean-up and preventive measures. Additional documentation submitted in February 2005 included a supplementary claim for €1 million (£734 500), also in respect of clean-up and preventive measures. The claims were finally assessed at €2.2 million (£1.6 million). The Portuguese Government accepted this assessment. In August 2006 the 1992 Fund made a payment of €328 488 (£222 600), corresponding to 15% of the final assessment. This payment does not preclude a further payment to the Portuguese Government if the Executive Committee were to increase the level of payments unconditionally.

Claims by the Spanish Government

Claims submitted

The Spanish Government has submitted twelve claims totalling €713.6 million (£524 million). 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 made in relation

Prestige: Fishing fleet in the Puerto de Fisterra, Galicia

to the spill on the basis of national legislation (Royal Decrees)[11], tax relief for businesses affected by the spill, administration costs, costs relating to publicity campaigns and costs incurred by local authorities and paid by the Government.

In May 2006 the Spanish Government submitted to the 1992 Fund a claim for the cost incurred in the payment of claims based on Royal Decrees that were assessed by the Consorcio de Compensación de Seguros (Consorcio)[12].

In August 2006 the Spanish Government submitted to the Claims Handling Office a claim for the costs incurred by the 67 towns that had been paid by the Government, 51 in Galicia, 14 in Asturias and two in Cantabria, for a total of €5.8 million (£4.2 million). The 1992 Fund's experts are examining the claim. The Spanish Government has also submitted claims for the costs incurred by the regions of Galicia for €28 million (£20.5 million), Asturias for €3.3 million (£2.4 million), Cantabria for €49.4 million (£36.3 million) and the Basque Country for €45.6 million (£33.5 million).

After a number of adjustments, the Spanish Government indicated in August 2007 that the total amount of its claims was €654 341 636 (£480.6 million). The Spanish Government has also indicated that further adjustments to claims would be made in respect of the cost for treatment and disposal of oily residues extracted during the clean-up operations and the compensation payments made by the Spanish Government to individual claimants as assessed by the Consorcio, the latter having been submitted in October and December 2007, totalling €59.3 million (£43.5 million).

Removal of oil from the wreck

The claim for the removal of the oil from the wreck, initially for €109.2 million (£80.2 million), was reduced to €24.2 million (£17.8 million) to take account of funding obtained from another source (see below).

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

12 *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.*

At its February 2006 session the Executive Committee decided that some of the costs incurred in 2003 in respect of sealing the oil leaking from the wreck and various surveys and studies were admissible in principle, but that the claim for costs incurred in 2004 relating to the removal of oil from the wreck was inadmissible (cf Annual Report 2006, pages 111-114). In accordance with the Executive Committee's decision, an assessment is being carried out of the admissible costs of activities that had a bearing on the assessment of the pollution risk posed by the oil in the wreck, incurred by the Spanish Government in 2003 prior to the removal of the oil from the wreck.

Payments to the Spanish Government

The first claim received from the Spanish Government in October 2003 for €83.7 million (£281.8 million) was assessed on an interim basis by the Director in December 2003 at €107 million (£78.6 million), and the 1992 Fund made a payment of €16 050 000 (£11.1 million), corresponding to 15% of the interim assessment. The Director also made a general assessment of the total of the admissible damage in Spain, and concluded that the admissible damage would be at least €303 million (£222.5 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 €83.7 million (ie €57 555 000) and 15% of the preliminarily assessed amount of the Government's claim (€16 050 000). That payment was made against the provision by the Spanish Government of a bank guarantee covering the above-mentioned difference (ie €41 505 000) from the Instituto de Credito Oficial, a Spanish bank with high standing in the financial market, and an undertaking by the Spanish Government to repay any amount of the payment decided by the Executive Committee or the Assembly.

As already mentioned, in March 2006 the 1992 Fund made an additional payment of €56 365 000[13] (£38.5 million) to the Spanish Government.

Progress on the assessment

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

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

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

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

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

Time bar

Under the 1992 Civil Liability Convention, rights to compensation from the shipowner and his insurer are extinguished (time-barred) unless

[13] *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.*

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

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

Payments and other financial assistance by the Spanish and French Authorities

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

Investigations into the cause of the incident

Bahamas Maritime Authority

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

Spanish Ministry of Public Works

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

Criminal Court in Corcubión

The Criminal Court in Corcubión in Spain is carrying out an investigation into the cause of the incident in the context of criminal proceedings. The Court is investigating the role of the master of the *Prestige* and of a civil servant who was involved in the decision not to allow the ship into a place of refuge in Spain.

French Ministry of Transport and the Sea

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

Examining magistrate in Brest

An examining magistrate in Brest is carrying out a criminal investigation into the cause of the incident.

1992 Fund's involvement

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

Court actions in Spain

Some 3 780 claims have been lodged in the legal proceedings before the Criminal Court in Corcubión (Spain). Six hundred and fifteen of these claims involve persons who have submitted claims directly to the London Club and 1992 Fund through the Claims Handling Office in La Coruña. Details of the claims made in some of these court actions have been provided to the Court and are being examined by the experts engaged by the London Club and the 1992 Fund.

Some 1 900 of these claims have been paid by the Spanish Government under the Royal

Decrees[14] or by the 1992 Fund through the Claims Handling Office in La Coruña. A number of claimants who have been paid by the Spanish Government under the Royal Decrees have withdrawn their claims from the court proceedings. It is expected that more claimants will withdraw their court actions for the same reason.

The Spanish Government has taken legal action in the Criminal Court in Corcubión on its own behalf and on behalf of regional and local authorities as well as on behalf of 1 308 other claimants or groups of claimants. A number of other claimants have also taken legal actions and the Court is assessing whether these claimants are eligible to join the proceedings.

Court actions in France

The French Government and 227 other claimants have taken legal action against the shipowner, the London Club and the 1992 Fund in 16 courts in France, requesting compensation totalling some €122 million (£89.7 million), including €67.7 million (£49.7 million) claimed by the Government.

Judgement by the Civil Court in Paris

Claim by the owners of a company in liquidation

The owners of a company selling boats, which had been liquidated in 2004, submitted a claim for €403 205 (£296 000) for the loss of the capital that they had invested in the company. The 1992 Fund had assessed the loss of income suffered by the claimant in 2003 as a result of the reduction in boat sales in the amount of €21 452 (£15 750). The Fund, however, rejected the claim for loss of the capital invested in the company, since it considered that they had not established a link of causation between the liquidation of the company and the contamination caused by the incident. The owners of the company brought proceedings before the Civil Court in Paris.

In a judgement rendered in October 2007 the Court stated that the Fund's criteria for the admissibility of claims followed good sense and observed that prior to the incident the financial status of the company was not strong enough to survive in a competitive market. The Court held that the claimants had not provided evidence of the alleged loss nor of a link of causation between the alleged loss and the contamination and for these reasons rejected the claim. The claimants have not appealed against the judgement.

Court actions in Portugal

The Portuguese Government took legal action in the Maritime Court in Lisbon against the shipowner, the London Club and the 1992 Fund claiming compensation for €4.3 million (£3.1 million). Following the settlement of the claim referred to above, the Portuguese State withdrew its action in December 2006.

Court actions in United States

Claim and counter-claim

The Spanish State has taken legal action against the classification society of the *Prestige*, namely the American Bureau of Shipping (ABS), before the Federal Court of first instance in New York requesting compensation for all damage caused by the incident, estimated initially to exceed US$700 million (£352 million) and estimated later to exceed US$1 000 million (£502 million). The Spanish State has maintained, *inter alia*, that ABS had been negligent in the inspection of the *Prestige* and had failed to detect corrosion, permanent deformation, defective materials and fatigue in the vessel and had been negligent in granting classification.

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

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

entitled to sovereign immunity. ABS sought reconsideration by the Court or permission to appeal.

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

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

ABS acting as agent or servant of the shipowner

In August 2005 ABS submitted a request to the New York Court for a summary judgement dismissing the Spanish State's action. ABS argued that it was an agent or servant of the shipowner and that therefore, in accordance with Article III.4(a) of the 1992 Civil Liability Convention, no claim for compensation for pollution damage could be made against it unless the damage resulted from ABS's personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result. ABS also maintained that since the United States was not a Contracting State to the 1992 Civil Liability Convention and the pollution damage had occurred in Spain, the United States' Courts were not competent to hear the case. The Court has not yet taken a decision on the request.

Discovery of the criminal file in Corcubión

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. In August 2005, after having taken into account the various interests involved, the judge supervising discovery denied the Spanish State's assertion of privilege and ordered the production of the documents. The Spanish State appealed against this decision.

In September 2005 the Spanish State submitted a petition to the Criminal Court in Corcubión maintaining that the documents and material were privileged under Spanish procedural law and could not be provided to ABS. The Criminal Court decided that the documents and material were privileged to the parties who had joined in the criminal proceedings and should therefore not be made available to ABS.

In August 2006 the New York Court rejected the appeal by the Spanish State. The Court considered that both parties to the proceedings should have access to the same material and that failure by the Spanish State to make the documents and material requested available to ABS would place ABS in a situation of unfair disadvantage in that it would affect ABS's right of defence. In a decision which is not subject to appeal, the Court ordered the Spanish State to produce the documents and material by 30 August 2006.

The Spanish State reviewed its position and in August 2006 submitted a request to the Court in Corcubión to be authorised to disclose to ABS the documents and material referred to above. The Spanish State argued that the decisions by the New York Court and the Corcubión Court placed the Spanish State in a difficult position in that a New York Court had ordered the State to do something, namely to disclose all documents in the Corcubión Court file, and the Court in Corcubión had ordered the State to do the contrary, namely not to disclose those documents. The Spanish State mentioned that a confidentiality agreement had been concluded

Prestige: Rocky shorelines were cleaned using high pressure washing

between the State and ABS in respect of any documents and material disclosed. The Spanish State further argued that if the documents and materials requested were not made available, it would damage the Spanish State's position before the New York Court. In September 2006 the Court in Corcubión authorised the disclosure to the New York Court of all the documentation relevant to the *Prestige* case. In January 2007 a lawyer acting on behalf of ABS visited the Court in Corcubión and examined the documents in the Court file.

Discovery of financial records

In June 2006 the Spanish State submitted a request to the New York Court that the Court should order ABS to produce financial records. The Spanish State argued that the financial records would demonstrate that ABS had diverted revenue and resources, and that, as a result, ABS had not adequately addressed surveyor training and staffing deficiencies. ABS maintained that the financial records were not relevant at the liability stage of the litigation.

The New York Court denied the Spanish State's request holding that the financial records were not relevant to the issue of whether or not there were deficiencies in ABS's performance in respect of the *Prestige*. The Spanish State has not appealed against this decision.

Discovery of e-mail communications

In November 2006 the judge supervising discovery ruled on a motion by ABS to compel the Spanish State to produce all e-mail communications from the casualty period of 12 - 20 November 2002. The judge found that the State had failed either to preserve e-mail communications or to conduct a diligent search when ABS first sought production of those communications. Finding that a search for the e-mail communications at this late date might be futile, the judge invited ABS to make a request for the relief, remedy or sanction it deemed appropriate. A request by the Spanish State that the judge should reconsider his decision was denied. The State has appealed.

In the light of the judge's invitation, ABS filed a motion seeking sanctions for the Spanish State's failure to produce the e-mail communications.

ABS requested dismissal of the action or dismissal of certain parts of the action, or a ruling that at trial an adverse inference should be drawn against the State for its failure to produce the e-mails. ABS requested, in any event, recovery of its costs and fees associated with the dispute over the production of the e-mails.

In June 2007 the New York Court issued an order partly granting and partly denying ABS's motion. The Court awarded ABS its legal fees incurred in seeking to compel the production of the e-mails by the Spanish State and ordered ABS to submit an account of the time spent and costs incurred in making its motion. However, the Court did not dismiss the action by the Spanish State, nor any part thereof, as requested by ABS, finding that although the State had a duty to preserve the evidence and had breached that duty, there was no evidence that the State's actions were wilful, intentional, taken in bad faith or the result of gross negligence. In similar terms, the judge did not accept ABS' position that negative inferences should be drawn from the failure of the Spanish State to produce the e-mails, finding that ABS had not proved that the missing e-mails were relevant to its case. The Court has ordered the Spanish State to continue its search for the relevant e-mail records and, if found, to produce them to ABS on an on-going basis. The Spanish State has not appealed against the New York Court's decision.

ABS has filed a motion asking the judge to reconsider his decision partially. The Spanish State has filed pleadings opposing that motion for reconsideration.

In July 2007 ABS filed a motion seeking an award of legal fees and costs incurred in making its motion to compel discovery, in the amount of $1.2 million (£603 000). The Spanish State has opposed that motion. There has been no decision from the Court as yet.

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

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

15.7 N°7 Kwang Min

(Republic of Korea, 24 November 2005)

The incident

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

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

Clean-up operations

The Korean Coast Guard, the Korean Marine Pollution Response Corporation and seven private clean-up contractors promptly mobilised 36 pollution response vessels. Defensive booms were deployed to protect port installations such as shipyards and fish markets as well as the hulls of a number of ships berthed in the port. As a result of this rapid response, serious property

damage and consequential economic losses were prevented. Most of the on-water clean-up resources were withdrawn on 27 November 2005.

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

Impact of the spill

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

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

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

Applicability of the 1992 Fund Convention

The limitation amount applicable to the *N°7 Kwang Min* under the 1992 Civil Liability Convention is 4.51 million SDR (£3.6 million).

In December 2005 the Korean Ministry of Maritime Affairs and Fisheries informed the 1992 Fund that the owner of the *N°7 Kwang Min* was not insured for pollution liabilities and had insufficient financial assets to cover the claims for compensation for pollution damage arising from the incident.

Claims for compensation

Twelve claims totalling Won 2.7 billion (£1.5 million) in respect of the cost of clean-up and preventive measures were settled for a total of Won 1.9 billion (£1.1 million). One claim was rejected.

The owners of six live seafood restaurants located in the polluted area submitted claims for alleged mortalities of fish as a result of oil entering their aquaria via submerged seawater intakes, and for loss of earnings as a result of the cancellation of bookings and other unspecified damages. The claims, which totalled Won 163 million (£87 000), were settled at Won 3.1 million (£1 860).

Claims totalling Won 154 million (£83 000) by 81 women divers for loss of earnings due to the interruption of their shellfish harvesting and sales activities were settled for Won 36 million (£20 000).

Further fishery claims totalling Won 93 million (£51 000) by 10 boat owners were settled at Won 51 million (£28 000).

Claims by nine seaweed (sea mustard) cultivators totalling Won 371 million (£204 000) for property damage and production disruption were assessed at Won 42 million (£23 000). One claim was rejected. Six of the claimants settled their claims for Won 22 million (£12 000). Two claimants who had initially agreed with the assessed amount, later refused to accept the proposed settlement and commenced legal actions against the owners of the two vessels involved in the incident.

Legal actions

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

Upon investigating the financial status of the owner of the fishing vessel *No1Chil Yang*, it has emerged that he owns a building, the value of which is unknown, but it is estimated to exceed the limitation amount applicable to the vessel under the Korean Commercial Code, ie 83 000 SDR (£64 000).

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

Limitation proceedings by owner of fishing vessel

In January 2007 the owner of the *No1 Chil Yang* made an application to the Busan District Court (Limitation Court) for the commencement of proceedings in order to limit his liability to the applicable limitation amount under the Korean Commercial Code, ie SDR 83 000 or Won 125 638 796 (£67 500).

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

In August 2007 the Limitation Court delivered its decision in relation to the limitation proceedings. The Limitation Court assessed the claim by the 1992 Fund in the amount of Won 1 327 million (£712 000), and the claim by the seaweed cultivators at the amount assessed by the 1992 Fund. The Limitation Court also assessed the claim of the *No7 Kwang Min* owner against the *No7 Kwang Min* owner at Won 26 million (£13 800).

In September 2007 the seaweed cultivators lodged an appeal against the assessment of the Limitation Court before the Busan Appeal Court.

In December 2007 the Busan Appeal Court referred the matter to mediation between the two shipowners and the seaweed cultivators. The mediation failed and the Busan Appeal Court decided to consider the appeal in 2008.

Recourse action against the owner of *No7 Kwang Min*

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

The owner of the *No7 Kwang Min* also had, as a result of the collision, a claim against the owner of the *No1 Chil Yang* that was assessed by the Limitation Court at Won 26 million (£13 800). If the limitation fund were to be distributed in proportion with the court assessment, the owner of the *No7 Kwang Min* would be entitled to some Won 2 400 000 (£1 200) and therefore the only amount which the 1992 Fund could recover would be limited to this figure.

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

15.8 SOLAR 1

(Philippines, 11 August 2006)

The incident

The Philippines registered tanker *Solar 1* (998 GT), laden with a cargo of 2 081 tonnes of industrial fuel oil, sank in heavy weather in the Guimaras Straits, some 10 nautical miles south of Guimaras Island, Republic of the Philippines (see map on page 107).

Location of the Solar 1 incident

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

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

The Shipowners' Club and the 1992 Fund jointly requested an expert from the International Tanker Owners Pollution Federation Limited (ITOPF) to travel to the Philippines and monitor the spill response and to provide technical advice.

For details of the impact of the spill and the clean-up operations reference is made to Annual Report 2006, pages 120-123.

The 1992 Fund engaged a lawyer in the Philippines to assist it in dealing with any legal issues which might arise from the incident.

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

The 1992 Conventions and STOPIA 2006

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

The limitation amount applicable to the *Solar 1* in accordance with the 1992 Civil Liability Convention is 4.51 million SDR (£3.6 million), but the owner of the *Solar 1* is a party to the Small Tanker Oil Pollution Indemnification Agreement (STOPIA 2006) whereby the limitation amount applicable to the tanker under that Convention is increased, on a voluntary

basis, to 20 million SDR (£15.8 million). However, the 1992 Fund continues to be liable to compensate claimants if and to the extent that the total amount of admissible claims exceeds the limitation amount applicable to the *Solar 1* under the Convention. Under STOPIA 2006, the 1992 Fund has legally enforceable rights of indemnification from the shipowner of the difference between the limitation amount applicable to the tanker under the 1992 Civil Liability Convention and the total amount of admissible claims up to 20 million SDR (£15.8 million).

The Director and the Shipowners' Club agreed that the 1992 Fund should assume responsibility for compensation payments once the Club had paid compensation up to the limitation amount applicable to the *Solar 1* under the 1992 Civil Liability Convention and that the 1992 Fund would then seek regular reimbursements from the Club up to the STOPIA 2006 limit, with payments to be made by the Club within two weeks of being invoiced by the Fund.

Concerns expressed by the Shipowners' Club

In October 2006 the Shipowners' Club informed the 1992 Fund that, on the basis of its investigations into the incident, and in particular issues of causation, it had serious concerns over the shipowner's operation of the vessel, which could warrant the Club revoking insurance cover. The Club also informed the Fund that it had decided, however, not to attempt to avoid any liability pursuant to Article VII.8 of the 1992 Civil Liability Convention, which provides, inter alia, that the insurer may avail itself of the defence that the pollution damage resulted from the wilful misconduct of the shipowner.

The Shipowners' Club informed the Director that it intended, nevertheless, to reserve its right under Article III.3 of the 1992 Civil Liability Convention, to oppose claims from Petron Corporation, the charterer of the *Solar 1*, whose negligence, in the Club's view, caused or contributed to the pollution damage.

The Fund's position as regards claims for the cost of preventive measures is different from that of the shipowner in the light of the last sentence of Article 4.3 of the 1992 Fund Convention, which reads 'However, there shall be no such exoneration of the Fund with regard to preventive measures'.

In accordance with Article 4.3, the 1992 Fund would therefore be liable to pay any claims for reasonable costs of preventive measures even where the claimant's negligence may have caused or contributed to the pollution damage. If the Fund were to pay such claims, it would not, or at least not for the time-being, be reimbursed by the Shipowners' Club under the terms of STOPIA 2006.

In May 2007 the Club informed the Director that they had examined the issues of causation in relation to this incident and had decided not to continue to oppose claims by Petron Corporation under Article III.3 of the 1992 Civil Liability Convention. In June 2007 the Club reimbursed the Fund the amount of PHP118 Million (£1.25 million) paid by the Fund to Petron Corporation early in 2007.

Operation to remove the remaining cargo from the vessel

At its October 2006 session the Executive Committee considered whether an operation to remove the remaining oil from the wreck was technically justified and whether a claim for the cost of such an operation was admissible in principle. Early indications were that the costs of operations to quantify and remove any remaining oil would be between US$8 to 12 million (£4 to £7 million), depending on the quantity of oil found on board.

The Committee noted that the experts appointed by the Shipowners' Club and the Fund were of the view that, whilst the most likely outcome of leaving the oil in the vessel would be the gradual release of oil over many years through pinholes and cracks as a result of corrosion, a major release of oil due to the effects

of a severe seismic event on the structure or stability of the vessel could not be ruled out. The Committee also noted that the experts had considered the sensitivity of Guimaras Island and its vulnerability to pollution from the vessel during the south-west monsoon as demonstrated by the oil released following the incident, which had had a significant effect on economic resources, although it was too early to say what the environmental consequences had been.

The Committee noted that given the circumstances, in particular the likelihood that a significant quantity of oil remained on board and the fact that the vessel was located in a seismically active area and in close proximity to sensitive economic and environmental resources, the Director had agreed with the experts that provided that the cost of an operation to remove as much of the remaining cargo from the vessel was not disproportionate to the risks of pollution damage resulting from the further release of oil, such an operation would, in principle, be justified.

The Executive Committee decided that the claim for the cost of removing the oil from the *Solar 1* was admissible in principle.

In November 2006 the Shipowners' Club signed a contract with an underwater engineering company to carry out the removal of the oil remaining in the wreck of the *Solar 1*. The operation was carried out in March 2007. The total cost of the operation was US$7 million (£3.5 million). However, only nine tonnes of oil was found to be remaining in the wreck. This oil was successfully removed without any spillage.

Claims for compensation

The claims situation up to 31 December 2007 is summarised in the table below.

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

The Shipowners' Club and the 1992 Fund have received a further 146 280 claim forms, not included in the above table, mainly from fisherfolk and seaweed producers in Guimaras Island and in the Province of Iloilo. The majority of the claim forms were incomplete and a significant number were from people under the age of 18 years, which is the minimum age at which people are allowed to engage in fishing in the Philippines. After a detailed screening process which included comparison of the details on the claims forms with the electoral register, a small number of claims were identified that merited further assessment. These claims are included in the table above. The Club and Fund decided not to process further the remaining claim forms in this batch, since it was clear that they did not relate to valid claims.

Clean-up and preventive measures

Five claimants who were involved in operations at sea responding to the incident submitted

Category	Claims presented	Assessments		Total Paid		Rejected
		No	Amount PHP	No	Amount PHP	No
Capture Fishery	23 774	23 643	187 216 082	22 288	174 893 300	120
Mariculture	728	25	2 226 586	6	556 282	347
Miscellaneous	167	1	2 846 882	1	2 846 881	15
Property Damage	3 253	199	2 921 560	72	2 193 561	459
Tourism	392	59	2 323 814	58	2 261 414	1
Clean-up	25	11	746 803 637	12	725 368 765	8
Totals	**28 339**	**23 938**	**944 338 561 (£11.5million)**	**22 437**	**908 120 203 (£11million)**	**950**

claims for some US$15 million (£7.5 million). This included the costs of the underwater survey conducted in September 2006 and the subsequent oil removal operation that was conducted in April 2007. Four of these claimants have been paid a total of US$11.3 million (£5.7 million) in full and final settlement of their claims. The fifth claimant has accepted an interim payment of US$2 million (£1 million) and has yet to agree to a proposed full and final settlement that was offered in May 2007.

A claim by Petron Corporation for PHP210 million (£2.6 million) for the cost of shoreline clean-up was provisionally assessed for a total of PHP118 million (£1.25 million) and an interim payment for this amount was made. Further details have been requested from Petron in order to complete the assessment of their claim.

The Philippine Coastguard submitted a claim for PHP440 million (£5.4 million) in respect of its role in the response to the spill for both at sea and shoreline cleaning. The claim did not have sufficient supporting information to allow the Club and the Fund to carry out an assessment. The Club and the Fund have written to the Coastguard requesting detailed supporting information in respect of its claim.

Seven claims for a total of PHP838 000 (£10 200) were received for hardship and inconvenience due to enforced evacuation by local authorities. These claimants had been evacuated by the authorities due to concerns on their part about possible dangerous levels of hydrogen sulphide in the vicinity of their homes. The experts appointed by the Shipowners' Club and the 1992 Fund have confirmed that the alleged hydrogen sulphide could not have originated from the oil spilt from the *Solar 1*. The Club and the Fund have therefore taken the view that claims for compensation for the economic consequences of the evacuation are not admissible in principle. These claims have therefore been rejected.

Property damage

The Shipowners' Club and the 1992 Fund received some 3 185 claims for damage to fishing gear and fishing boats. Compensation payments were made to some 71 claimants for a total of PHP2 133 251 (£23 372). A further 206 claimants have been offered compensation but the claimants have not yet replied to the offer. The majority of the remaining claims were rejected due to lack of evidence.

Claims were also received from 69 owners of beach front properties in the Municipality of Nueva Valencia. Many of these property claims related to the removal of sand during the shoreline clean-up operations. During subsequent site inspections by the experts appointed by the Club and the Fund, it was reported that on beaches where sand had been removed, the sand had been replaced by natural accretion. One of these claimants received compensation for PHP60 310 (£662). Thirteen of these claims have been rejected and the remaining 55 claims are being assessed.

Economic losses in the Fisheries sector

The Shipowners' Club and the 1992 Fund received 23 774 claims from fisherfolk living in the five municipalities on Guimaras Island and the coastal areas of Iloilo province. In view of the fact that the claimants were not represented by any fishery association or co-operative that could act on their behalf, the Shipowners' Club and the 1992 Fund decided to pay each claimant individually. A total of 22 288 claimants have received a total of PHP174 893 300 (£1 833 210) in compensation. One hundred and twenty of the claims submitted have been rejected. The remaining claimants have been offered compensation and the payments will be made shortly.

In February 2007 a law firm in Manila informed the Fund that it represented some 1 027 fisherfolk from Guimaras Island in the pursuit of their claims. Shortly afterwards the law firm submitted claims totalling PHP280.3 million (£3.4 million) and increased the number of claimants to 1 218. Although no details were provided in support of the alleged losses they were reportedly based on the assumption that the effects of the spill would last 20 months. The

Club and the Fund informed the law firm that of their 1 218 clients, 180 had already settled their claims, and had signed full and final settlement agreements to that effect, and that a further 228 claimants had already received settlement offers. In April 2007 and subsequently in August 2007, the Club and the Fund informed the law firm that since the remaining oil had been successfully removed from the wreck of the *Solar 1*, there was no possibility of paying any further compensation to the group of claimants that had already settled their claims and that the offers already made to the group of 228 claimants still stood. The Club and the Fund also informed the law firm that as regards their remaining clients further documentary evidence was required to confirm that they were bona fide fisherfolk and that they had suffered pollution damage. The experts engaged by the Club and Fund are examining the information provided by the law firm to determine whether there are claimants in this group who could be entitled to compensation.

Economic losses in the mariculture sector

The Club and Fund have received 728 claims from seaweed farmers and fishpond operators for alleged damage to their crop as a result of the contamination.

Three hundred and one claims from seaweed farmers are being examined by the Club and Fund experts. Additionally, some 6 000 claims from seaweed farmers from Guimaras Island have been received. While investigating these claims, it became apparent that a large number of these claimants were not involved in seaweed farming at the time of the incident. As a result the Club and Fund have rejected these claims on the basis that the individuals who submitted the claims did not belong to a seaweed association and there were no records of their having harvested seaweed prior to the incident. The claims lacked detailed information in respect of the amount of seaweed harvested prior to the incident and the experts appointed by the Club and Fund are continuing their investigation to determine who are bona fide seaweed farmers and what loss they have sustained due to the contamination.

The Club and Fund have also received 427 claims from fishpond operators. The nature of the losses differs among the claimants, with some alleging that oil entered their ponds through broken dykes or open sluices (gates) causing fish mortalities, others claiming losses due to their decision to harvest their fish early to avoid contamination and others claiming for losses due to a reduction in fish prices. The claims were poorly documented with many claimants being unable to prove that they had the necessary licenses, ownership or tenureship to operate the ponds legally or that the ponds were in operation at the time of the incident. Six claims have been paid for a total of PHP556 282 (£6 100). Most other claims have been rejected on the basis that the fishponds to which the claims related were not impacted by the contamination. The Club and the Fund have written to the remaining claimants requesting further information from them.

Tourism

The Club and Fund have received some 392 claims in the tourism sector from owners of small resorts, tour boat operators and service providers (eg tour guides) to the tourism industry. Fifty-eight claims have been settled and paid for a total of PHP2 261 414 (£23 000). These include claims from tour boat operators and small resort owners. A claim for PHP100 million (£1.2 million) for the alleged loss of investment in an island resort over a period of 25 years was rejected on the grounds that such a claim was inadmissible in principle. Some of the small resort owners have submitted claims for further losses during the first half of 2007. The experts appointed by the Club and Fund are examining these claims.

Miscellaneous claims

A claim submitted by the Regional Department of Social Welfare (DSWD) in respect of costs of providing relief assistance to the 5 400 households whose livelihoods were most adversely affected by the incident has been settled and paid at PHP2 846 881 (£31 000).

Claims have been submitted by owners of convenience stores in Guimaras Island alleging

Solar 1: Clean-up operations included the manual cleaning of cobbles

reduction in sales as a result of the incident. The Club and Fund considered that these claims related to damage that was not sufficiently closely linked to the contamination and for this reason the claims have been rejected.

The local government units in several municipalities in Guimaras and Iloilo province have submitted claims in respect of costs and salaries of the municipal staff who were involved in the response to the incident. The Club and Fund experts are examining these claims.

Post-spill studies and reinstatement measures

In November 2006 the Department of Environment and Natural Resources (DENR) submitted to the Shipowers' Club and the 1992 Fund its proposed financial requirements for undertaking a post-spill environmental monitoring programme and the rehabilitation of coastal natural resources. The proposal, the costs of which had been put at PHP130 million (£1.6 million), focused on the reinstatement of mangroves affected by the oil, including the establishment of mangrove nurseries to grow mangrove saplings for eventual transplantation in affected areas. The proposal also included various air, water and soil quality monitoring studies.

The Shipowners' Club and the Fund informed DENR that, whilst it supported in principle the proposal to monitor the effects of the oil on mangroves, it was too early to decide on the need for reinstatement measures or the establishment of nurseries. The Shipowners' Club and the Fund agreed in principle, however, to the proposal to collect debris from the tidal channels of eight mangrove sites in order to promote greater tidal exchange and flushing, which would help to reinstate mangrove trees that were under stress from the oil adhering to their root systems and the surrounding sediments. The Club and the Fund advised DENR that the proposed studies to measure air, water and soil quality were not, in their view, technically justified and that it was unlikely that claims for the costs of these programmes would meet the Fund's admissibility criteria. As no further correspondence has been received from the DENR, this proposal has not been registered as a claim.

Claims considered by the Executive Committee

Claim by the Regional Department of Social Welfare and Development

The Regional Department of Social Welfare (DSWD) also submitted a claim for PHP2 million (£21 000) in respect of the funding of a 'cash for work' programme instigated to relieve economic hardship of those fisherfolk most adversely affected by the pollution who had not been engaged in the 'cash for work' programme instigated by Petron Corporation for undertaking shoreline clean-up operations. The 'cash for work' programme instigated by DSWD lasted for a period of five to seven days and involved about 1 000 families in a number of activities, such as improvements to roads and drainage, food production and community cleaning. DSWD considered that the activities provided the families with a more dignified source of income than relief assistance.

Most, if not all, of the people engaged as a result of the DSWD's initiative had eventually been compensated by the Shipowners' Club and the Fund for their economic losses arising from the disruption to fishing, considered to have lasted 12 weeks, and it could therefore be argued that those that were engaged in DSWD's cash for work programme and were compensated by the Shipowners' Club and the Fund had received compensation in excess of their actual losses.

The Fund's normal policy is to make deductions in respect of extra income as a result of an incident and to ask claimants to indicate whether they have received any payments or interim compensation from public bodies in connection with the incident. However, deductions are not normally made for small amounts paid to individuals who have taken part in clean-up operations.

The Executive Committee at its June 2007 session noted that the work carried out under the DSWD 'cash for work' programme did not relate to clean-up operations, but concerned activities of general benefit to the local communities and that, in the Director's view, it could be argued that the income earned by those engaged by DSWD should have been deducted from the assessed losses of those fisherfolk that were involved in its 'cash for work' programme. It was noted, however, that such deductions had not been considered, since, at the time of the assessments, the Shipowners' Club and the Fund had not been aware of DSWD's initiative, and because of the particular economic circumstances of the claimants and the method of assessment of their losses, they had not been asked to declare any additional income. The Committee noted that, in the Director's view, the claim by DSWD for the costs of its 'cash for work' programme was not admissible and that he proposed that the claim should be rejected on the grounds that the work carried out under the programme did not relate directly to clean-up or preventive measures and that the fisherfolk engaged in the programme had received full compensation from the Shipowners' Club and the Fund for their economic losses resulting from the contamination.

Most delegations agreed that despite the good intention of the 'cash for work' programme, this claim was not admissible because the work carried out under the programme did not relate to clean-up or preventive measures. One delegation also stated that the Fund should not recover any amounts paid in compensation to the fisherfolk involved in the 'cash for work' programme.

The Executive Committee agreed with the Director's conclusion that the DSWD claim in respect of the 'cash for work' programme was not admissible and should be rejected.

Claim for the loss of a barge

A claim was submitted for PHP5 274 980 (£55 000) for the loss of a barge, which sank on 20 November 2006 whilst transporting oily waste generated from the clean-up operations to an oil disposal facility at Lugait, Misamis Occidental. The claimant also claimed PHP720 940 (£7 600) for the loss of equipment which was on board the barge at the time of the

sinking. The claimant stated that at the time of the sinking, the barge did not carry any hull and machinery insurance and was not classed.

In addition to participating in the clean-up at sea, the claimant was directed by the Philippine Coastguard to deploy three barges to serve as temporary storage facilities for the oily waste, one of which was the barge subject of this claim, and the claimant later was requested to transport the oily waste from Guimaras Island to the disposal facility. Attempts by the claimant to obtain P&I insurance for the barge and the other two barges were unsuccessful but the claimant subsequently managed to secure the necessary permits from the Iloilo Regional Office of the Maritime Industry Authority (MARINA) to transport hazardous cargo. Following pre-departure surveys by representatives of the Environmental Management Bureau (EMB) and the company that had agreed to receive the oily waste, the barge, laden with approximately 750 tonnes of oily waste contained in sacks, had departed for Lugait on 13 October 2006 under the tow of a tug and, after discharging its cargo in Lugait, the tug/barge combination returned to Guimaras Island.

The same tug/barge combination was subsequently used to transport a further 750 tonnes of oily waste and, following a pre-departure survey by MARINA and the company receiving the waste, departed for Lugait on 19 November. On 20 November, despite there having been no adverse weather forecast, the tug and barge encountered heavy seas and, since there was no immediate area available to take shelter, the crew of the tug decided to continue to head for Lugait. On the night of 20 November the barge started listing and taking in seawater and the tug master ordered his crew to cut the towline, but the towline parted and the barge sank in about 300 metres of water, some three nautical miles off the coast of Misamis Occidental. When the tug returned to the location of the sinking the following day it recovered nothing and did not detect oil pollution in the area.

The owners of the barge stated that, but for the need to transport the oily debris from Guimaras Island to Lugait, the barge would not have encountered the rough seas which were the cause of the loss and that there was a direct causal link between the contamination caused by the spill from the *Solar 1* and the loss of the barge, since the barge was part of the clean-up measures to prevent or minimise pollution damage. The owners maintained that they were not to blame for the loss of the barge, that proper steps had been taken to examine the weather and sea conditions before the tug and barge proceeded to Lugait, that they had at all times acted reasonably in undertaking the tow and that the loss of the barge was a direct cause of the company's involvement in the clean-up operation and was not from a new cause. The owners of the barge referred to the 1992 Fund Claims Manual and, in particular, the statement that 'loss or damage caused by reasonable measures to prevent or minimise pollution damage was also compensated' and that such measures should include operations undertaken at sea.

The owners of the barge also made the point that had the barge not sunk the Fund would have been liable to pay for the costs of treating the 750 tonnes of oily waste, which would have been more than the claim for the loss of the barge, and that the Fund would therefore unjustly benefit at the expense of the barge owner if it were not compensated for the loss of the barge.

The Director was of the opinion that the damage caused by the sinking of the barge could only be linked to the pollution caused by the *Solar 1* incident if it could be construed as 'further loss or damage caused by preventive measures' within the meaning of Article I.6(b) of the 1992 Civil Liability Convention. Since the text of that provision used the words 'caused by', in order for the damage to be admissible the claimant would have to demonstrate that at the time the preventive measure was taken there was a sufficiently close link of causation between the preventive measure and the further loss or damage that it allegedly caused and that for such a link to be established the claimant would at least have to demonstrate that, at the time the preventive

measure was taken, there was a significant likelihood that the barge laden with oily debris would sink during the voyage. The Director was of the opinion that such likelihood did not exist at all and that the sinking of the barge had been due to unforeseen adverse weather conditions and therefore, in relation to the preventive measure of disposing of the oily debris, was merely coincidental. There was not, in the Director's opinion, a sufficiently close link of causation between the relevant preventive measure, ie the decision to transport oily debris by barge from Guimaras Island to Lugait, and the loss suffered by the sinking of the barge. The Director accepted that 'but for' the need to transport the oily debris from Guimaras Island to Lugait, the barge would not have encountered rough seas which had been the cause of the loss, but in his view the need to transport oily debris by barge was, in legal terminology, only a conditio sine qua non for the damage, and not the legally relevant cause. On these grounds the Director proposed that the claim be rejected.

Most delegations supported the Director's analysis and agreed that there was not a sufficiently close link of causation between the preventive measures and the damage resulting from the sinking of the barge and that therefore the claim should be rejected.

The Executive Committee decided that the claim for the loss of the barge was not admissible.

Director's considerations
This is the first incident where STOPIA 2006 has applied and the 1992 Fund is receiving regular reimbursements from the Shipowner's Club. It is difficult at this stage however to predict whether the amount of compensation payable in respect of this incident will exceed the STOPIA 2006 limit of 20 million SDR (£15.8 million). It is therefore not yet known whether the 1992 Fund will be called to pay compensation in excess of that limit.

15.9 SHOSEI MARU

(Japan, 28 November 2006)

The incident

The Japanese tanker *Shosei Maru* (153 GT) collided with the Korean cargo vessel *Trust Busan* (4 690 GT) three kilometres off the port of Teshima, in the Seto Inland Sea in Japan. About 60 tonnes of heavy fuel oil and bunker diesel oil escaped into the sea from a damaged cargo tank and the bunker oil tank of the *Shosei Maru*. The remaining oil onboard was transferred to another vessel. The *Shosei Maru* was subsequently towed to the port of Tonosho in Shodoshima.

The 1992 Fund and the insurer of the *Shosei Maru*, the Japan Ship Owners' Mutual Protection and Indemnity Association (Japan P&I Club), appointed a team of surveyors to monitor the clean-up operations and investigate the potential impact of the pollution on fisheries and mariculture.

Impact of the spill

Approximately five kilometres of shoreline composed of rocks, boulders and pebbles, as well as port installations, were polluted to varying degrees. Drifting oil at sea contaminated the hulls of a number of commercial and fishing vessels, including those engaged in the clean-up operations. The oil also affected a number of seaweed cultivation farms as it passed through the supporting structures contaminating the seaweed growing on the nets. The supporting structures, buoys, ropes and nets had to be destroyed and replaced.

Clean-up operations

The owner of the *Shosei Maru* requested the Japan Maritime Disaster Prevention Centre to organise clean-up operations by using a number of private contractors. The Kagawa prefectural government and several local authorities also participated in the operations. One vessel was deployed to apply chemical dispersants on the oil in the water.

Shosei Maru: Boat pier being cleaned using a high pressure gun spraying hot water and chemical solvent

Onshore clean-up operations were carried out in four locations in the Kagawa Prefecture. Private contractors were appointed by the Japan P&I Club to undertake shoreline clean-up operations using predominantly manual methods to remove bulk oil, followed by high-pressure water washing to remove oil stains. Several oil-stained piers, wharves and sea walls were cleaned by means of high-pressure hot water guns using chemical solvents.

Applicability of the 1992 Conventions

The limitation amount applicable to the *Shosei Maru* under the 1992 Civil Liability Convention is 4.51 million SDR (£3.6 million). The ship is not entered in STOPIA 2006. If the total amount of damages exceeds the limitation amount applicable under the 1992 Civil Liability Convention, the Fund will therefore be liable to pay the difference between the total assessed amount and the CLC limit.

In September 2007 the Japan P&I Club informed the 1992 Fund of its intention to establish a limitation fund in accordance with the relevant provisions of the 1992 CLC.

Claims for compensation

The clean-up and preventive operations resulted in claims by the Japanese Government, regional and local authorities and claims for the cleaning of hulls of commercial and fishing vessels moored in the ports of Tonosho and Kose. Claims were also received for the replacement of seaweed cultivating nets affected by the oil and for loss of earnings due to damaged seaweed.

Experts have been appointed by the Japan P&I Club and the 1992 Fund to assess the claims for compensation arising from the incident. When the experts have assessed the claims, their reports will be submitted to the Japan P&I Club and the 1992 Fund for consideration and approval.

As at 31 December 2007 thirteen claims, totalling ¥653 632 458 (£2.9 million), for the costs of clean-up and preventive measures taken by the Marine Disaster Prevention Center and a number of private contractors had been assessed by the Japan P&I Club and the 1992 Fund at ¥608 696 701 (£2.7 million). These claims have been settled by the Japan P&I Club.

A number of fisheries associations operating in the area affected by the spill submitted claims for loss and damage to seaweed farms, other fishing operations and for the cost of measures against the contamination in the amount of ¥304 480 561 (£1.4 million). The claims were assessed at ¥270 500 000 (£1.2 million) and have been settled by the Japan P&I Club.

Claims totalling ¥11 793 845 (£53 000) were submitted by a number of local authorities for costs of preventive measures. These claims are being assessed.

A further six claims totalling ¥13 536 861 (£61 000) have been submitted for the cost of cleaning hulls of commercial vessels. These claims have been assessed by the Fund and the Club for a total amount of ¥10 332 801 (£46 000). One of these claims has been settled by the Japan P&I Club for ¥616 890 (£3 000).

15.10 VOLGONEFT 139

(Russian Federation, 11 November 2007)

The incident

On 11 November 2007 the Russian-registered tanker *Volgoneft 139* (3 463 GT, built in 1978) broke in two in the Strait of Kerch linking the Sea of Azov and the Black Sea between the Russian Federation and the Ukraine. The tanker was at anchor when a heavy storm caused rough seas with heavy swell of up to 6 metres. The aft part of the vessel remained afloat and eventually ran aground. The fore part of the vessel sank.

The tanker was allegedly loaded with a cargo of 4 077 tonnes of fuel oil and it is believed that between 1 200 and 2 000 tonnes of fuel oil was spilled at the time of the incident. It was reported by the press that the tanker's 13 crew members were rescued.

It was also reported that three other vessels loaded with sulphur, namely the *Volnogorsk*, *Nakhichevan* and *Kovel*, also sank in the area within two hours of the incident.

Clean-up operations and response

According to the media reports of the incident, some 50 kilometres of shoreline both in the Russian Federation and in the Ukraine were affected by oil. A significant part of the shoreline of the Taman Peninisula, the Tuzla Spit,

Location of the Volgoneft 139 incident

Volgoneft 139: Operations to remove oil from the fore part of the Volgoneft 139

Chushka Spit and the beaches near the villages of Ilyich and Priazovskii were allegedly affected by oil. A joint crisis centre was set up to co-ordinate the response between the Russian Federation and the Ukraine, and it was reported that attempts were made to contain and recover the oil at sea. Shoreline clean-up in the Russian Federation was reported to have been undertaken by the Russian military under the supervision of the Prime Minister, Viktor Subkov.

Heavy bird casualties, in excess of 30 000, have been reported and a representative of the Sea Alarm Foundation, an environmental agency based in Belgium, travelled to the Russian Federation in an attempt to assist with wildlife rehabilitation efforts.

1992 Civil Liability and Fund Conventions

The Russian Federation is a Party to the 1992 Civil Liability and Fund Conventions, whereas the Ukraine is a Party to the 1992 Civil Liability Convention only.

The Shipowner and his insurer

The ship was owned by JSC Volgotanker and insured for protection and indemnity liability by Ingosstrakh (Russian Federation). It is alleged that the shipowner's P&I insurance cover is limited to US$5 million (£2.5 million). If this information were correct, this insurance cover would be well below the minimum limit under the 1992 Civil Liability Convention of 4 510 000 SDR (£3.6 million). The vessel was not insured by one of the International Group of P&I Clubs and therefore STOPIA does not apply.

It is not known whether the shipowner has commenced limitation proceedings.

15.11 HEBEI SPIRIT

(Republic of Korea, 7 December 2007)

The incident

The Hong Kong flag tanker *Hebei Spirit* (146 848 GT) was struck by the crane barge *Samsung Nº1* while at anchor about five nautical miles off Taean on the west coast of the Republic of Korea. The crane barge was being towed by two tugs (*Samsung Nº5* and *Samho T3*) when the tow line broke. Weather conditions were poor

and it was reported that the crane barge drifted into the tanker, puncturing three of its port cargo tanks.

The *Hebei Spirit* was laden with about 209 000 tonnes of four different crude oils. Due to inclement weather conditions, repairs of the punctured tanks took four days to complete. In the meantime, the crew of the *Hebei Spirit* tried to limit the quantity of cargo spilled through holes in the damaged tanks by making it list and transferring cargo between tanks. However, as the tanker was almost fully laden, the possibilities for such actions were limited. As a result of the collision a total 9 400 tonnes of oil (a mix of Iranian Heavy, Upper Zakum and Khafji) escaped into the sea. The remaining oil in the damaged tanks was transferred to other tanks on board and to another vessel. The *Hebei Spirit* was subsequently towed to the port of Taean, southwest of Seoul.

The 1992 Fund and the insurer of the *Hebei Spirit*, the Assuranceföreningen Skuld (Gjensidig) (Skuld Club) appointed a team of surveyors to monitor the clean-up operations and investigate the potential impact of the pollution on fisheries, mariculture and tourism activities.

Impact of the spill

Approximately 200 kilometres of shoreline composed of rocks, boulders and pebbles, as well as amenity beaches and port installations, were polluted to varying degrees. A considerable number of commercial and fishing vessels were contaminated. The oil also affected a large number of mariculture facilities, including seaweed and shellfish cultivation farms as it passed through the supporting structures, contaminating buoys, ropes, nets and the produce.

Clean-up operations

The Korean National Coast Guard Agency, a Department of the Ministry of Maritime Affairs and Fisheries, has overall responsibility for marine pollution response in the waters under the jurisdiction of the Republic of Korea, and it put into action the Korean National Disaster Prevention Master Plan to provide for a proper response to oil spills in the marine environment.

A number of Coast Guard and Navy vessels, as

Hebei Spirit: Thousands of workers, including many volunteers, participated in the clean-up operations

Hebei Spirit: Approximately 200 kilometres of shoreline were polluted

well as private vessels, were deployed to carry out clean-up operations at sea.

Onshore clean-up operations were carried out at several locations along the coast of the Taean province. The Korean Coast Guard tasked a total of 18 licensed clean-up contractors to undertake shoreline clean-up operations. Fishermen, army and navy cadets and many thousands of volunteers from all over Korea participated in the clean-up operations, which are expected to continue well into 2008.

The 1992 Civil Liability and Fund Conventions

As the tonnage of the *Hebei Spirit* is in excess of 140 000 GT the limitation amount applicable to the shipowner is therefore the maximum available under the 1992 Civil Liability Convention, namely 89.77 million SDR (£69 million). The total amount available for compensation under the 1992 Civil Liability and Fund Conventions is 203 million SDR (£156 million).

Claims for compensation

Claims are expected in the clean-up sector, for operations both at sea and onshore.

The area has a high density of aquaculture and mariculture facilities, and significant capture fishery activities. Claims are therefore expected in the fisheries and mariculture sectors.

The affected coastline is also known to be a favourite tourist destination for the Seoul metropolitan area, with an estimated 21 million visitors per year, and is characterised by a high number of small scale tourism establishments. Claims are therefore also expected from the tourism sector.

It appears possible that the total amount of admissible claims may exceed the limitation amount applicabl to the *Hebei Spirit* under the 1992 Civil Liability Convention and, therefore, that the 1992 Fund will be required to pay compensation in respect of this incident.

ANNEXES

ANNEX I

STRUCTURE OF THE IOPC FUNDS

1992 FUND GOVERNING BODIES

ASSEMBLY

Composed of all Member States

12th extraordinary session and 12th session

Chairman: Mr Jerry Rysanek (Canada)
Vice-Chairmen: Professor Seiichi Ochiai (Japan)
Mr Edward K. Tawiah (Ghana)

EXECUTIVE COMMITTEE

36th to 38th sessions

Chairman: Mr John Gillies (Australia)
Vice-Chairman: Mr Léonce Michel Ogandaga Agondjo (Gabon)

Australia
Bahamas
Cameroon
Canada
Denmark
France
Gabon
Germany
Japan
Lithuania
Malaysia
Netherlands
Singapore
Spain
Turkey

39th session

Chairman: Mr John Gillies (Australia)
Vice-Chairman: Mr Léonce Michel Ogandaga Agondjo (Gabon)

Australia
Bahamas
Denmark
Gabon
Germany
India
Italy
Japan
Lithuania
Malaysia
Netherlands
Qatar
Republic of Korea
United Kingdom
Venezuela

1971 FUND ADMINISTRATIVE COUNCIL

Composed of all States having at any time been Members of the 1971 Fund

21st and 22nd sessions

Chairman:	Mrs Teresa Martins de Oliveira (Portugal)
Vice-Chairman:	Captain David J.F. Bruce (Marshall Islands)

SUPPLEMENTARY FUND ASSEMBLY

3rd session

Chairman:	Rear-Admiral Giancarlo Olimbo (Italy)
Vice-Chairmen:	Mrs Birgit Sølling Olsen (Denmark)
	Mr Yukio Yamashita (Japan)

JOINT SECRETARIAT

Director:	Mr Willem Oosterveen
Deputy Director/Technical Adviser:	Mr Joe Nichols (to 17 August 2007)
Legal Counsel:	Mr Nobuhiro Tsuyuki
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 (to 23 November 2007)
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 (to 19 July 2007)
Office Manager:	Mr Modesto Zotti
IT Administrator:	Mr Johann Spies (to 11 May 2007)
	Mr Stuart Colman (from 23 July 2007)
Finance Assistant:	Mrs Elisabeth Galobardes (on leave without pay)
	Ms Kathy McBride (temporary)
Finance Assistant:	Mrs Patricia Morgan (to 30 April 2007)
	Mrs Paloma Scolari de Oliviera (from 1 August 2007)

Office Assistant:	Mr Laurent Tresse (to 30 June 2007)
	Mr Paul Davis (from 1 August 2007)
Receptionist/Travel Assistant:	Ms Alexandra Hardman
Head, External Relations & Conference Department:	Ms Catherine Grey
Information Officer:	Mrs Stephanie Mulot (to 19 July 2007)
Translation Administrator (Spanish):	Mrs Natalia Ormrod
Translation Administrator (French):	Ms Françoise Ploux
Translation Administrator (French):	Ms Aurélie Chollat
Conference Administrator:	Mrs Victoria Turner
Conference Administrator:	Ms Christine Geffert (temporary)
Publications Administrator:	Mr Jonathan North (to 8 June 2007)

AUDITORS OF THE 1971 FUND, THE 1992 FUND AND THE SUPPLEMENTARY FUND

Sir John Bourn
Comptroller and Auditor General, United Kingdom

JOINT AUDIT BODY

Mr Charles Coppolani (France) (Chairman)
Mr Maurice Jaques (Canada)
Mr Mendim Me Nko'o (Cameroon)
Dr Reinhard Renger (Germany)
Mr Wayne Stuart (Australia)
Professor Hisashi Tanikawa (Japan)
Mr Nigel Macdonald (Outside expert)

JOINT INVESTMENT ADVISORY BODY

Mr David Jude
Mr Brian Turner
Mr Simon Whitney-Long

ANNEX II

NOTE ON IOPC FUNDS' PUBLISHED FINANCIAL STATEMENTS FOR 2006

The financial statements reproduced in Annexes V to VIII, XI to XIV and XVI are an extract of information contained in the audited financial statements of the International Oil Pollution Compensation Funds 1971, 1992 and Supplementary Fund for the year ended 31 December 2006, approved by the Administrative Council of the 1971 Fund at its 22nd session, by the Assembly of the 1992 Fund at its 12th session and by the Assembly of the Supplementary Fund at its 3rd session.

EXTERNAL AUDITOR'S STATEMENT

The extracts of the financial statements set out in Annexes V to VIII, XI to XIV and XVI are consistent with the audited financial statements of the International Oil Pollution Compensation Funds 1971, 1992 and Supplementary Fund for the year ended 31 December 2006.

G Miller
Director
for the Comptroller and Auditor General
National Audit Office, United Kingdom
31 January 2008

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 2006

CONTENTS

EXECUTIVE SUMMARY

Overall results of the Audit

1 We have audited the Financial Statements of the International Oil Pollution Compensation Fund 1971 in accordance with the Financial Regulations and in conformity with the Common Auditing Standards of the Panel of External Auditors of the United Nations, the Specialized Agencies and the International Atomic Energy Agency and with International Standards on Auditing. I have provided a separate audit opinion and report in relation to the Financial Statements of the International Oil Pollution Compensation Fund 1992 and an opinion in relation to the financial statements of the Supplementary Fund.

2 **The audit examination revealed no weaknesses or errors which we considered to be material to the accuracy, completeness and the validity of the financial statements as a whole and I have placed an unqualified audit opinion on the Fund's financial statements for the year ended 31 December 2006.**

3 Observations and recommendations arising from the audit are set out in summary below. A more detailed analysis of key issues is provided in the section of the report entitled Detailed Report Findings.

Main findings and recommendations

Financial Reporting

4 The detailed findings of this report provide a commentary on the Fund's financial position. For the financial year ended 31 December 2006, the 1971 Fund reported shortfall of income over expenditure of £463,025 compared with surplus income of £669,740 in 2005 (excluding reimbursements to contributors from Major Claims Funds). This was due to a significant

increase in claims and claims related expenditure, mainly due to large payments in respect of the *Pontoon 300* incident (£276,289) and the fact that no contributions were levied in the period.

5 Overall we found that internal financial controls operated effectively in each of the account areas that we audited and combined with assurance gained from tests of detail there was sufficient reliable evidence to support our audit opinion.

6 We reviewed the need to realign the Fund's Financial Regulations to meet the requirements of International Public Sector Accounting Standards (IPSAS). We have highlighted the key changes relevant to the Fund's accounts and recommended that the Secretariat draw up an implementation plan to address the areas highlighted in the report and eventually seek approval from the Administrative Council to make changes to the Fund's Financial Regulations.

Financial management issues

7 In addition to the work necessary to provide assurance on the financial statements, we reviewed the major areas of the Secretariat's operations in the audit period and provided guidance and support to the Secretariat as required.

8 In 2006 the Fund upgraded its accounting system (FundMan) to improve access, control, data interrogation and IT support options. Our audit looked at the project management, data integrity and access and input controls relating to this upgrade. Apart from some minor issues relating to access controls, reported to management separately, we were satisfied that the project had been executed appropriately, that data remained intact and that the new system provides greater control of the financial information, which can now be externally supported.

9 We noted that the Secretariat does not record staff time spent on different activities. We have recommended that the Secretariat consider the benefits of being able to allocate actual time spent to the cost of ad hoc projects.

10 We also carried out a follow-up on the recommendations of our 2005 audit report and confirmed that the Secretariat has taken steps to address all the audit recommendations.

DETAILED REPORT FINDINGS

Financial reporting

Income and expenditure

11 During the financial period 2006, the 1971 Fund reported a General Fund operating deficit of £376,833, a contrast to the surplus of £357,859 in 2005. The deficit is explained by an increase in claims related expenditure and the fact that no contributions were levied in the period. When the respective surpluses and deficits on the General Fund and Major Claims Funds are taken into account, the 1971 Fund reported an overall deficit for the year of £463,025 (2005: £669,740 surplus – excluding reimbursements to Member States).

Contributions income

12 The 1971 Fund did not levy any contributions for receipt in 2006. The only movements on contributions related to prior year contributions waived during 2006 (£2,965). There were no reimbursements of contributions in the period arising from closure of any Major Claims Fund.

Miscellaneous income

13 Miscellaneous income received in 2006 amounted to £455,420 (£1,231,605 in 2005). Interest from investments accounted for £431,518 of total miscellaneous income, which represents a 36 per cent decrease on the previous year, mainly as a result of the much smaller cash balances available for investment in the period. The value of interest income reflects the accounting policy of recording interest on the basis of cash received, rather than on an accruals basis when income is due.

Secretariat expenses

14 Secretariat expenses amounted to £290,640 which represented a reduction on the 2005 figure of £337,500. This cost comprises mainly the agreed management fee paid to the 1992 Fund of £275,000, which is approximately 8 per cent of the obligations incurred by the 1992 Fund for the cost of running the joint Secretariat. This payment was disclosed to and approved by the 1971 Fund Administrative Council and the 1992 Fund Assembly. The reducing nature of the fees is in line with ongoing reduction in 1971 workload as it is wound up.

Claims and claims related expenses

15 There was a sharp increase in the value of compensation payments made during 2006, which totalled £224,052 compared with £15,764 in 2005. This increase was due to compensation payments of £224,052 relating to the *Pontoon 300* incident (2004: £0).

16 Claims related expenditure doubled in the period and consisted mainly of technical and legal fees totalling £400,788 (£208,601 in 2005). This increase arose from increased activity on the *Pontoon 300* incident and the General Fund. The General Fund increase reflects the fact that several Major Claims Funds, which still incur some expenditure, have been closed and this expenditure is now incurred by the General Fund.

Assets and liabilities

17 Cash held by the 1971 Fund amounted to £11,666,191 at 31 December 2006, compared with £12,301,681 for the previous year. This reduction reflected the deficit of income over expenditure seen in the period.

18 The level of outstanding assessed contributions decreased from £368,769 in 2005 to £328,558 in 2006. Even though outstanding contributions remained low in percentage terms, we would continue to encourage all Member States to assist the Funds in obtaining outstanding amounts from contributors in their respective States; and for the Fund to continue to actively seek the payment of these outstanding balances.

19 The contributors' account balance has reduced slightly from £2,024,968 in 2005 to £1,836,738 in 2006. This balance relates to amounts held by the Fund as credit balances pending allocation to future levies or requests for repayment. The reduction is consistent with amounts returned to contributors during the financial period.

Contingent liabilities

20 Schedule III to the financial statements discloses the contingent liabilities of the 1971 Fund, which are defined in the accounting policies as all known or likely claims against the 1971 Fund and claims related expenditures estimated for the next financial year. Contingent liabilities as at 31st December 2006 have been estimated at £39,155,000.

21 Such liabilities would need to be funded through further levies of contributions to Major Claims Funds. As at 31st December 2006, the *Nissos Amorgos* Major Claims Fund recorded a balance of £2,908,808 but has a disclosed contingent liability of £30,410,000. This represents a significant reduction from 2005 (£90,320,000). During 2006 the level of compensation payments was increased after a legal action against the Fund was withdrawn. At the year end all admissible claims had been assessed and there was no longer any need for a large contingency to cover legal action. The *Pontoon 300* contingent liability decreased from £49,050,000 in 2005 to £235,000 in 2006.

Other financial matters: fraud, presumptive fraud or money laundering

22 No cases of fraud, presumptive fraud or money laundering were reported to us by the Secretariat or identified in the items examined as part of our audit of the 2006 financial period.

Adoption of International Public Sector Accounting Standards (IPSAS)

23 The Fund continues to provide timely and well presented financial statements supported by well maintained accounting records in accordance with its Financial Regulations. As part of our audit we reviewed the Fund's current alignment with United Nations System Accounting Standards (UNSAS) and their continued applicability. Annex II provides an overview of the significant differences between IPSAS and UNSAS and the likely affect on the Funds' financial reporting.

24 In July 2006 the UN General Assembly passed a resolution that approved the adoption of IPSAS as the United Nations system's accounting standards by 2010. Beyond this date it is likely that UNSAS as an accounting framework will be phased out.

25 IPSAS are generally accepted, high quality, independently produced accounting standards which are comprehensive and supported by Governments, professional accounting bodies and international organisations. They represent international best practice for financial reporting in the public sector and not for profit organisations. They are issued by the International Public Sector Accounting Standards Board, a standing committee of the International Federation of Accountants. Information on the key differences between UNSAS and IPSAS is presented in Annex II of this document.

26 The benefits of adoption of IPSAS include the following:

- Improved stewardship and transparency with respect to all assets and liabilities;
- More comprehensive and consistent information about costs and income; and
- Improved consistency and comparability of financial statements over time, and between different organisations.

27 The impact on accounting and financial reporting for the Fund would include the following:

- The recognition of expenses on the basis of the delivery principle, which is more restrictive than the current obligation principle. Under the delivery principle expenditure is recognised on the basis of good or services actually received in the accounting period.
- A change in the basis of the recognition of revenue in full accruals accounting. This would involve the Fund recognising all income on an accruals basis, when due rather than when received as at present.

- Full recognition of liabilities for employee benefit obligations, such as annual leave and repatriation grants.
- Recognition and depreciation of capital assets such as furniture and equipment.

28 Compliance with IPSAS accounting and reporting requirements would involve an analysis of the existing financial systems ensuring that information on capital assets, depreciation, employee benefits, income and expenditure recognition is complete, sufficiently reliable and correctly captured.

29 Further, to enable the reconciliation between budgeted and actual results, budgeting methodology must be modified to comply with full accruals accounting. These changes would not result in any additional cost, but it would change the timing of those costs (funding requirements) and fall into two categories:
- Accounting timing differences with no change to funding requirements, e.g. the recognition of assets and their subsequent depreciation over useful economic lives and the adoption of the delivery principle of expenditure.
- Areas where funding may be required sooner than under UNSAS requirements. This derives primarily from the need to accrue and provide for the liabilities of the organisation e.g. full recognition of employee benefit obligations.

30 The existing Financial Regulations, particularly those governing the carry-over of budgetary appropriations for unliquidated obligations for a period of 24 months, will need to be reviewed and aligned with IPSAS where relevant. In accordance with Financial Regulation 17 all amendments to the Financial Regulations will require Administrative Council approval.

31 Finally, adoption of IPSAS would also require staff training on the application of the new standards, changes to the financial management system and any modified business processes.

Recommendation 1: We recommend that the Secretariat submit a proposal at least by the 2008 regular session of the Administrative Council which seeks the adoption of IPSAS by the Fund in principle from 2010. This proposal should include a provisional action plan detailing the necessary tasks which include an initial impact analysis, consideration of alternate budgeting practices, implications for the financial rules and regulations and the impact on the financial system.

Financial management issues

Internal controls

32 As part of our audit we reviewed the Fund's internal controls, established by management to ensure the regularity of transactions and to provide effective stewardship of resources. We found the controls in operation to be effective for the purpose of supporting our audit opinion.

Accounting system upgrade (FundMan)

33 In 2006 the Fund's accounting system was upgraded and the new system was used from 1st January 2006. As part of our audit we looked at the following aspects of this system upgrade:
- Project management;
- Data integrity; and
- Access and input controls.

Project management

34 We reviewed the supporting documentation provided by the client relating to the upgrade and found that although evidence of risk assessment and system mapping was apparent, the minutes for project team meetings were not always complete and did not always clearly document progress. In addition, although the costs of hardware and the consultant were known, no budget had been developed for the project to recognise staff time. Without a budget, the Secretariat were unaware of the likely cost of the upgrade, and could not monitor progress of the project against budgeted cost. Monitoring against budgets for projects is a powerful tool that ensures that costs are controlled and overspends identified. This in turn improves the quality of financial information available to the management team, and allows them to react and learn from the information.

Recommendation 2: We recommend that the Secretariat prepare budgets that include staff time for the execution of project work, to ensure that the full costs of decisions can be assessed and monitored. This will also help project teams to ensure that work is delivered on time and to budget.

Data integrity

35 The accounting data was not transferred to a new system but the application used to access and manipulate the data was changed. It was therefore necessary to confirm that the new platform presented the same data correctly and we reviewed in detail the work done by the client to ensure this. We concluded that the results of the work done provided sufficient audit assurance that the upgrade of the system had not affected the content of the database. In addition, the testing showed that the new user interface software was satisfactory in processing and presenting the database information in the same way as the previous system but with increased viewing flexibility, allowing greater use to be made of management information.

36 Finally, the upgrade of the system and all related programming information has been fully documented. This now allows any IT service provider to support the system, and represents a significant improvement in IT support, as previously the Fund relied solely on the internal IT manager. The Funds now have a maintenance contract with a software house for the support of the upgraded FundMan system.

Access and input controls

37 We tested the controls in operation around the FundMan system and found them to be effective, with many pre-defined user authentication and authorisation controls. The segregated checking of all input information by the Finance Manager prior to posting is also a powerful prevention and detection control.

38 No payment information is stored or used from the system, and the controls over the standing data are adequate. A few minor points on defined user access where improvements can be made have been reported to management, but have no impact on our audit opinion.

Secretariat management fees & project management

39 During our audit we reviewed the process for setting Fund's management fees, including the ability of the Secretariat to monitor staff time spent on ad hoc projects and in administering the different Funds. As this review focuses on the Secretariat rather than just the 1971 Fund, our review and recommendations are reported on fully in the 1992 Fund 2006 long form report.

40 From this work we concluded that the Secretariat should review the benefits of being able to record and monitor staff time on project and Fund work, as this would allow the true cost of projects to be identified and help increase control of these costs.

41 In our report on the 1992 Fund, we also commended the Secretariat on its progress in introducing a staff performance management system, which we expect to be operational in 2007 and intend to review in our 2007 audit.

PROGRESS ON 2005 AUDIT RECOMMENDATIONS

42 As part of our responsibilities as external auditors, we routinely report to the Administrative Council on management's implementation of prior year audit recommendations. This serves to provide assurance to the Administrative Council that appropriate action is taken in response to audit recommendations.

Contributor's account

43 In 2005 we identified one contributor owed almost £1 million from the Funds (1971:£487,209 and 1992: £509,071). This had not been repaid, as the contributor was a dissolved joint venture between two oil companies. We recommended that the Secretariat address this issue and repay the balance. Our follow-up concluded that the Fund has pursued the repayment of this money, but that progress with the companies had been slow. We encourage the Secretariat to continue its work to return this outstanding balance.

Contribution recoverability

44 In 2005 we also recommended that the Secretariat review the recoverability of all contributions outstanding (Financial Regulation 11.5). We can confirm that the Secretariat has indeed performed such a review in 2006, which resulted in the write off of £2,965 in 2006, and we were satisfied with the Secretariat's rationale for doing so.

Other prior year recommendations

45 The remaining areas for follow-up of our prior year recommendations relate to the Secretariat's administration of all the Funds and are included in our 2006 report on the 1992 Fund:

- Service supplier selection
- Claims handling offices
- Register of interests
- Risk management

ACKNOWLEDGEMENT

46 We are grateful for the continued assistance and co-operation provided by the Director and Secretariat staff during our audit.

Sir John Bourn
Comptroller and Auditor General, United Kingdom
External Auditor

ANNEX I: SCOPE AND AUDIT APPROACH

Audit scope and objectives

Our audit examined the financial statements of the International Oil Pollution Compensation Fund 1971 (1971 Fund) for the financial period ended 31 December 2006 in accordance with Financial Regulation 14. The main purpose of the audit was to enable us to form an opinion on whether the financial statements fairly presented the Fund's financial position, its surplus, Funds and cash flows for the year ended 31 December 2006; and whether they had been properly prepared in accordance with the Financial Regulations.

Audit standards

Our audit was conducted in accordance with International Standards on Auditing as issued by the International Auditing and Assurance Standards Board. These standards required us to plan and carry out the audit so as to obtain reasonable assurance that the financial statements are free from material misstatement. Management were responsible for preparing these financial statements and the External Auditor is responsible for expressing an opinion on them, based on evidence obtained during the audit.

Audit approach

Our audit included a general review of the accounting systems and such tests of the accounting records and internal control procedures as we considered necessary in the circumstances. The audit procedures are designed primarily for the purpose of forming an opinion on the Fund's financial statements. Consequently our work did not involve detailed review of all aspects of financial and budgetary systems from a management perspective, and the results should not be regarded as a comprehensive statement of all weaknesses that exist or all improvements that might be made.

Our audit also included focused work in which all material areas of the financial statements were subject to direct substantive testing. A final examination was carried out to ensure that the financial statements accurately reflected the Fund's accounting records; that the transactions conformed to the relevant financial regulations and governing body directives; and that the audited accounts were fairly presented.

ANNEX II: MAJOR DIFFERENCES BETWEEN IPSAS AND UNSAS WHICH AFFECT THE IOPC FUNDS

UNSAS	IPSAS	Effect
1 Reporting requirements take a 'modified accruals' approach that is similar to cash accounting	• Requirements are on a 'full accrual' basis	• IPSAS reports a larger group of items (assets and liabilities) on the balance sheet than UNSAS
2 Costs of fixed assets are reported as expenditure, in the statement of Income and Expenditure, when the assets are purchased	• Cost of fixed assets are capitalised and are included on the balance sheet when first acquired. The original cost is then spread over the useful life of that asset (depreciation expense)	• There will be a decrease on reported expenditure and an increase in assets reported • A capital reserve will need to be established upon initial recognition of existing fixed assets
3 Accrued employee benefits in respect of repatriation grants and annual leave are to be reported in a note to the accounts	• Full recognition of liabilities for employee benefits and reported as an expense	• An increase in reported expenditure and a corresponding increase in liabilities for the amounts accrued
4 Reported expenditure represents disbursements and unliquidated obligations (ULOs)	• Recognition of expenditure on the basis of goods and services received (the delivery principle)	• There would be a reduction in reported expenditure as not all ULOs of the period would be recognised as expenditure
5 Preparation of budgets on a cash basis	• Preparation of budget on an accrual basis	• Changes of content and format of budget due to adoption of accruals basis or a reconciliation between the two basis

ANNEX IV

FINANCIAL STATEMENTS OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1971 FOR THE YEAR ENDED 31 DECEMBER 2006 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 2006. 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 2006 and the results of operations and cash flows for the period then ended in accordance with the 1971 Fund's stated accounting policies set out in Note 1 of the financial statements, which were applied on a basis consistent with that of the preceding financial period.

Further, in my opinion, the transactions of the 1971 Fund, which I have tested as part of my audit have in all significant respects been in accordance with the Financial Regulations and legislative authority.

In accordance with Financial Regulation 14, I have also issued a long-form Report on my audit of the Fund's financial statements.

Sir John Bourn
Comptroller and Auditor General, United Kingdom
External Auditor
National Audit Office
London, 27 June 2007

ANNEX V

GENERAL FUND
1971 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 2006

	2006 £	£	2005 £	£
INCOME				
Contributions				
Contributions waived	(2 283)		-	
Total contributions		(2 283)		-
Miscellaneous				
Sundry income	-		2 789	
Transfer from *Aegean Sea* MCF	-		132 467	
Transfer from *Keumdong N°5* MCF	-		169 762	
Transfer from *Sea Empress* MCF	-		120 417	
Transfer from *Nakhodka* MCF	-		130 833	
Interest on overdue contributions	27 013		2 023	
Less interest on overdue contributions waived	(3 111)		-	
Interest on investments	200 538		269 566	
Total miscellaneous		**224 440**		**827 857**
TOTAL INCOME		**222 157**		**827 857**
EXPENDITURE				
Secretariat expenses				
Obligations incurred		**290 640**		**337 500**
Claims				
Compensation		-		-
Claims-related expenses				
Fees	308 296		130 552	
Travel	-		1 860	
Miscellaneous	64		86	
Total claims-related expenses		**308 350**		**132 498**
TOTAL EXPENDITURE		**598 990**		**469 998**
(Shortfall)/excess of income over expenditure		(376 833)		357 859
Balance b/f: 1 January		5 249 494		4 891 635
Balance as at 31 December		**4 872 661**		**5 249 494**

ANNEX VI

MAJOR CLAIMS FUNDS
1971 FUND: INCOME AND EXPENDITURE ACCOUNT
FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 2006

	Nissos Amorgos		*Vistabella*	
	2006	**2005**	**2006**	**2005**
	£	**£**	**£**	**£**
INCOME				
Contributions				
Contributions waived	-	-	(682)	-
Total contributions	**-**	**-**	(682)	-
Miscellaneous				
Interest on investments	119 181	143 795	2 487	3 324
Total miscellaneous	**119 181**	**143 795**	**2 487**	**3 324**
TOTAL INCOME	**119 181**	**143 795**	**1 805**	**3 324**
EXPENDITURE				
Compensation/Indemnification	-	15 764	-	-
Fees	21 482	34 873	16 351	-
Travel	2 293	-	-	-
Miscellaneous	24	48	51	-
TOTAL EXPENDITURE	**23 799**	**50 685**	**16 402**	**-**
(Shortfall)/excess of income over expenditure	95 382	93 110	(14 597)	3 324
Balance b/f: 1 January	2 813 426	2 720 316	73 396	70 072
Balance as at 31 December	**2 908 808**	**2 813 426**	**58 799**	**73 396**

	Pontoon 300	
	2006	**2005**
	£	**£**
	-	-
	-	-
	109 312	132 708
	109 312	**132 708**
	109 312	**132 708**
	224 052	-
	52 135	41 114
	-	-
	102	68
	276 289	**41 182**
	(166 977)	91 526
	2 592 385	2 500 859
	2 425 408	**2 592 385**

ANNEX VII

BALANCE SHEET OF THE 1971 FUND AS AT 31 DECEMBER 2006

	General Fund £	*Vistabella* £
ASSETS		
Cash at banks and in hand	6 284 552	51 649
Contributions outstanding	317 397	7 150
Interest on overdue contributions outstanding	126 791	-
Tax recoverable	4 266	-
TOTAL ASSETS	**6 733 006**	**58 799**
LIABILITIES		
Unliquidated obligations	-	-
Accounts payable	817	-
Contributors' account	1 836 738	-
Due to 1992 Fund	22 790	-
TOTAL LIABILITIES	**1 860 345**	**-**
FUNDS' BALANCES		
Working Capital	5 000 000	-
Surplus / (Deficit)	(127 339)	58 799
GENERAL FUND & MAJOR CLAIMS FUNDS (MCFs) BALANCES	**4 872 661**	**58 799**
TOTAL LIABILITIES, GENERAL FUND & MCFs BALANCES	**6 733 006**	**58 799**

Pontoon 300 £	*Nissos Amorgos* £	2006 Total £	2005 Total £
2 424 118	2 905 872	11 666 191	12 301 681
1 290	2 721	328 558	368 769
-	215	127 006	103 796
-	-	4 266	270
2 425 408	**2 908 808**	**12 126 021**	**12 774 516**
-	-	-	12 500
-	-	817	-
-	-	1 836 738	2 024 968
-	-	22 790	8 347
-	**-**	**1 860 345**	**2 045 815**
-	-	5 000 000	5 000 000
2 425 408	2 908 808	5 265 676	5 728 701
2 425 408	**2 908 808**	**10 265 676**	**10 728 701**
2 425 408	**2 908 808**	**12 126 021**	**12 774 516**

ANNEX VIII

CASH FLOW STATEMENT OF THE 1971 FUND FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 2006

	2006		2005	
	£	£	£	£
Cash as at 1 January		12 301 681		22 350 629
OPERATING ACTIVITIES				
Operating Deficit	(894 543)		(10 204 042)	
Decrease/(Increase) in Debtors	13 005		17 247	
Increase/(Decrease) in Creditors	(271 184)		(630 650)	
Net cash flow from operating activities		(1 152 722)		(10 817 445)
RETURNS ON INVESTMENTS				
Interest on investments	517 232		768 497	
Net cash inflow from returns on investments		517 232		768 497
Cash as at 31 December		**11 666 191**		**12 301 681**

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 2006

CONTENTS

EXECUTIVE SUMMARY

Overall results of the audit

1 We have audited the Financial Statements of the International Oil Pollution Compensation Fund 1992 in accordance with the Financial Regulations and in conformity with the Common Auditing Standards of the Panel of External Auditors of the United Nations, the Specialized Agencies and the International Atomic Energy Agency and with International Standards on Auditing. I have provided a separate audit opinion and report in relation to the Financial Statements of the International Oil Pollution Compensation Fund 1971 and an opinion in relation to the Supplementary Fund.

2 **The audit examination revealed no weaknesses or errors which we considered to be material to the accuracy, completeness and the validity of the financial statements as a whole and I have placed an unqualified audit opinion on the Fund's financial statements for the year ended 31 December 2006.**

3 Observations and recommendations arising from the audit are set out in summary below. A more detailed analysis of key issues is provided in the section of the report entitled Detailed Report Findings.

Main findings and recommendations

Financial reporting

4 The detailed findings of this report provide a commentary on the Fund's financial position. For the financial year ended 31 December 2006, the 1992 Fund reported shortfall of income over expenditure (excluding the Provident Fund) of £52,770,943 compared with surplus income of £24,833,625 in 2005. This was due to a significant increase in claims expenditure, mainly due to compensation payments in respect of the *Prestige* incident (£40,537,569) and the fact that

no contributions were levied in the period.

5 Overall we found that internal financial controls operated effectively in each of the account areas that we audited and combined with assurance gained from tests of detail there was sufficient reliable evidence to support our audit opinion.

6 We reviewed the need to realign the Fund's Financial Regulations to meet the requirements of International Public Sector Accounting Standards (IPSAS). We have highlighted the key changes relevant to the Fund's accounts and recommended that the Secretariat draw up an implementation plan to address the areas highlighted in the report and eventually seek approval from the Assembly to make changes to the Fund's Financial Regulations.

Financial management issues

7 In addition to the work necessary to provide assurance on the financial statements, we reviewed the major areas of the Secretariat's operations in the audit period and provided guidance and support to the Secretariat as required.

8 In 2006 the Fund upgraded its accounting system (FundMan) to improve access, control, data interrogation and IT support options. Our audit looked at the project management, data integrity and access and input controls relating to this upgrade. Apart from some minor issues relating to access controls, reported to management separately, we were satisfied that the project had been executed appropriately, that data remained intact and that the new system provides greater control of the financial information, which can now be externally supported.

9 We also examined transactions on respect of the recent *Solar 1* incident which occurred in 2006 and on which the Fund has made compensation payments. As a part of this review we looked at the accounting treatment of the compensation income from the P&I Club, under the Small Tankers Oil Pollution Indemnification Agreement (STOPIA) and the methodology for the distribution of compensation payments to local fishermen who had made claims. We are satisfied that the Secretariat has accounted for the income correctly and that they took adequate precautions to ensure the regularity of compensation payments made.

10 We noted that the Secretariat does not record staff time spent on different activities. We have recommended that the Secretariat consider the benefits of being able to allocate actual time spent on specific areas of work, which would help to identify the true cost of ad hoc projects. In addition, if the Fund is requested also to administer the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS Convention 1996), it might be necessary for the Secretariat to justify any management fee charged, since this fee would be paid by a different group of contributors in Member States.

11 Finally we commend the progress the Secretariat has made in implementing a staff performance management system, which we expect to be fully operational in 2007. We also followed-up on the recommendations from our 2005 audit report and found that the Secretariat had taken steps to address all the audit recommendations.

DETAILED REPORT FINDINGS

Financial reporting

Income and expenditure

12 During the financial period 2006, the 1992 Fund reported a General Fund operating deficit of

£4,733,325 in significant contrast to the surplus of £4,008,178 reported in 2005. This is explained by an increase in claims expenditure and the fact that no contributions were levied in the period. When the respective surpluses and deficits on the General Fund and Major Claims Funds are taken into account (excluding the Provident Fund), the 1992 Fund reported an overall deficit for the year of £52,770,943 (2005: £24,833,625 – Surplus).

Contributions income

13 The 1992 Fund did not levy any contributions for receipt 2006. The only movements on contributions related to prior year contributions received (£28,794) or waived (£6,277) during 2006. There were no reimbursements of contributions arising from closure of any Major Claims Fund in the period.

Miscellaneous income

14 Miscellaneous income received in 2006, including interest relating to the Provident Fund, amounted to £6,944,284 (£7,119,811 in 2005). Interest from investments accounted for £4,801,113 of total miscellaneous income, which represents a 25 per cent decrease on the previous year, mainly as a result of the much smaller cash balances available for investment. The value of interest income reflects the accounting policy of recording interest on the basis of cash received, rather than on an accruals basis when income is due.

Secretariat expenses

15 Obligations incurred by the 1992 Fund for joint Secretariat expenses totalled £3,288,685, representing an under spend of £313,215 against the approved budgetary appropriations. This under spend is accounted for mainly by lower than expected personnel costs (£88,179) and lower expenditure on public information (£92,447) and office machines (£53,648).

16 Total obligations for the 1992 Fund were £3,275,185, representing an increase of £427,986 or 15 per cent on the previous year's obligations. Almost 80 per cent of this increase related to expenditure on personnel. Significant separation and recruitment costs were key factors in this increase.

Claims and claims related expenses

17 There was a sharp increase in the value of compensation payments made during 2006, which totalled £52.6 million compared with £12.6 million in 2005. This increase was attributed mainly to compensation payments of £40.5 million in relation to the *Prestige* incident (2005: £621,316) and significantly increased payments from the General Fund of £4.1 million (2005: £304,827).

18 Claims related expenditure consisted mainly of technical and legal fees and amounted to £4.2 million (£4.7 million in 2005), reflecting the fact that claims related activity in 2006 remained broadly similar for the General Fund, with decreases in activity for the *Erika* and *Prestige* incidents. Overall claims related expenditure for 2006 was reduced by a payment of £1 million from a P&I Club. This was an interim payment made by the P&I Club towards their share of the joint costs incurred in respect of the *Prestige* incident.

Staff Provident Fund

19 The balance on the Staff Provident Fund at the year end stood at £1,883,640. This represented a decrease of 21 per cent on the closing balance for 2005. The reason for the decrease was withdrawals on separation, from the departure of key secretariat staff in the period.

20 The Provident Fund earned interest of £155,819 during the year, a return on investment of 7.1 per cent on the average net assets held throughout the year.

Assets and liabilities

21 Cash held by the 1992 Fund amounted to £91.4 million as at 31 December 2006. The level of outstanding assessed contributions decreased from £376,482 in 2005 to £328,916 at the end of 2006, and consisted mainly of amounts still due in respect of the *Prestige* Major Claims Fund. Even though the contributions outstanding remained low in percentage terms, we would continue to encourage all Member States to assist the Funds to obtain outstanding amounts from contributors in their respective States; and for the Fund to continue to actively seek the payment of outstanding balances. The contributors' account balance decreased from £1,036,045 (2005) to £718,927, with the reduction due to repayments made to contributors.

Contingent liabilities

22 Schedule III to the financial statements discloses the contingent liabilities of the 1992 Fund, which are defined in the accounting policies as all known or likely claims against the 1992 Fund and claims related expenditures estimated for the next financial year. Contingent liabilities as at 31 December 2006 have been estimated at £67,400,000.

23 At 31 December 2006, the *Erika* Major Claims Fund had a balance of £42,032,556 and the *Prestige* Major Claims Fund a balance of £24,106,692, both of which were higher than the estimated contingent liabilities relating to these incidents at 31 December 2006. Liabilities for the remaining incidents, amounting to £4,700,000, are covered by the General Fund.

Other financial matters: fraud, presumptive fraud or money laundering

24 No cases of fraud, presumptive fraud or money laundering were reported to us by the Secretariat or identified in the items examined as part of the audit of the 2006 financial period.

Adoption of International Public Sector Accounting Standards (IPSAS)

25 The Fund continues to provide timely and well presented financial statements supported by well maintained accounting records and in accordance with its Financial Regulations. As part of our audit we reviewed the Fund's current alignment with United Nations System Accounting Standards (UNSAS) and their continued applicability. Annex II provides an overview of the significant differences between IPSAS and UNSAS, and the likely impact on the Fund of a change in accounting standards.

26 In July 2006 the UN General Assembly passed a resolution that approved the adoption of IPSAS as the United Nations system's accounting standards by 2010. Beyond this date it is likely that UNSAS as an accounting framework will be phased out.

27 IPSAS are generally accepted, high quality, independently produced accounting standards which are comprehensive and supported by Governments, professional accounting bodies and international organisations. They represent international best practice for the public sector and not for profit organisations and utilise the "full accruals" basis for financial reporting. They are issued by the International Public Sector Accounting Standards Board, a standing committee of the International Federation of Accountants. Information on the key differences between UNSAS and IPSAS is set out in Annex II of this report.

28 The benefits of adoption of IPSAS include the following:

- Improved stewardship and transparency with respect to all assets and liabilities;
- More comprehensive and consistent information about costs and income; and
- Improved consistency and comparability of financial statements over time, and between organisations.

29 The impact on accounting and financial reporting for the Fund would include the following:
- The recognition of expenses on the basis of the delivery principle, where expenditure is recognised on the basis of good or services actually received in the accounting period.
- A change in the basis of the recognition of revenue to full accruals accounting, which would recognise all income when properly due rather than when actually received.
- Full recognition of liabilities for employee benefit obligations, such as annual leave and repatriation grants.
- The recognition and depreciation of capital assets such as furniture and equipment.

30 Compliance with IPSAS accounting and reporting requirements will involve an analysis of the existing financial systems to ensure that information on capital assets, depreciation, employee benefits, income and expenditure recognition is complete, sufficiently reliable and correctly captured.

31 Further, to facilitate the reconciliation between budgeted and actual financial results, budgeting methodology will need to be modified to comply with the accruals accounting concept.

32 The existing financial regulations, particularly those governing the carry-over of budgetary appropriations for unliquidated obligations for a period of 24 months, will need to be reviewed and aligned with IPSAS where relevant. In accordance with Financial Regulation 17, all amendments to the Financial Regulations will require Assembly approval.

33 Finally, adoption of IPSAS will require staff training on the application of the new standards, changes to the financial management system and any modified business processes.

Recommendation 1: We recommend that the Secretariat submit a proposal to the Assembly by its 2008 regular session which seeks the adoption of IPSAS by the Fund in principle from 2010. This proposal should include a provisional action plan, detailing the necessary tasks which should include an initial impact analysis, consideration of alternate budgeting practices, implications for the Financial Regulations and the impact on the financial system.

Financial management issues

Internal controls

34 As part of our audit we reviewed the Fund's internal controls, established by management to ensure the regularity of transactions and to provide effective stewardship of resources. We found the controls in operation to be effective for the purpose of supporting our audit opinion.

Accounting system upgrade (FundMan)

35 In 2006 the Fund's accounting system was upgraded and the new system was used from 1st January 2006. As part of our audit we looked at the following aspects of this system upgrade:
- Project management;
- Data integrity;
- Access and input controls.

Project management

36 We reviewed supporting documentation relating to the upgrade and found that, although evidence of risk assessment and system mapping were in place, the minutes for project team meetings were not always complete and did not always clearly record progress. In addition, while the costs of hardware and the consultant were known, no budget had been developed for the

project to include the costs of staff time. Without a proper budget, the Secretariat were unaware of the real cost of the upgrade, and could not monitor progress of the project against budget. Monitoring against budgets for projects is a powerful tool that ensures that costs are controlled and potential overspends identified. This in turn improves the quality of financial information available to the management team, and allows them to react, learn from the information, and make sound decisions.

Recommendation 2: We recommend that the Secretariat prepare budgets that include staff time for the execution of project work, to ensure that the full costs of such work can be assessed and monitored. This will also help the project team ensure that work is delivered on time and to budget.

Data integrity

37 The accounting data was not transferred to a new system but the application used to access and interrogate the data was changed. It was therefore necessary for us to confirm that the new accounting platform presented data correctly and we reviewed in detail the work done to ensure this. We concluded that the results of the work done provided sufficient assurance that the upgrade of the system had not affected the content of the database. In addition, the testing showed that the new user interface software was processing and presenting the database information in the same way as the previous system but with increased viewing flexibility allowing greater use to be made of management information.

38 Finally, we confirmed that the upgrade of the system and all related programming information had been fully documented. This now allows any IT service provider to support the system, which represents a significant improvement in IT support, since previously the Fund relied solely on the internal IT Manager. The Funds now have a maintenance contract with a software house for the support of the upgraded FundMan system.

Access and input controls

39 We tested the controls in operation around the FundMan system and found them to be effective, with many pre-defined controls for user authentication and authorisation. The segregated checking of all input information by the Finance Manager prior to posting represents a powerful prevention and detection control.

40 No payment information is stored or used from the system, and the controls over standing data are adequate. We have reported to management on a few minor points on defined user access where improvements can be made but these have no impact on our audit opinion.

Solar 1 Incident

41 In 2006, there were two new incidents for the 1992 Fund: the *Solar 1* (Philippines) on 11th August 2006 and the *Shosei Maru* (Japan) on 28th November 2006. Only the *Solar 1* incident affected the financial statements for 2006.

42 The *Solar 1* incident invoked the STOPIA 2006 memorandum of understanding between the 1992 Fund, the ship owner and the P&I Club. Under this agreement, the Fund is entitled to indemnification by the ship owner and the P&I Club of the difference between the limitation amount applicable to the ship under the 1992 Civil Liability Convention and the total amount of admissible claims or 20 million Special Drawing Rights, whichever is lower. The Fund invoices the ship owner and the P&I Club for the amounts paid by the Fund on a regular basis, for payment within 14 days of the date of the invoice. Our audit work examined the following three aspects of this situation:

- The appropriate accounting treatment required;
- Disbursement methodology; and
- The STOPIA 2006 operation.

Accounting treatment

43 We reviewed the treatment of STOPIA 2006 income against the Fund's Financial Regulations and UNSAS requirements. We concluded that all income should be accounted for as miscellaneous income in the accounts as it was by nature different from assessed contributions. This recommendation has been incorporated by the Secretariat into the 2006 financial statements.

Disbursement methodology

44 Many claimants from the *Solar 1* incident were local independent fishermen. This resulted in numerous small claims from rural communities in the Philippines. We reviewed the process and controls in operation over payments to the fishermen. We confirmed that the Fund had identified and utilised a clear and controlled process for ensuring fair claims assessment, using an independent expert to assess the loss suffered by fishermen and to ensure payments to claimants.

STOPIA 2006 operation

45 *Solar 1* was the first instance of the operation of the STOPIA 2006 agreement between the Fund, the ship owner and the P&I Clubs. The key element of this agreement was that the ship owner and the P&I Club would reimburse the Fund for compensation payments made within 14 days of the date of invoice. We can confirm that, at the time of audit, all invoices to the ship owner and the P&I Club for the *Solar 1* incident had been paid within 14 days of invoice issue, in accordance with the STOPIA 2006 agreement.

Secretariat management fees

46 The Secretariat for the 1992 Fund also operates as the Secretariat for the 1971 Fund and the Supplementary Fund. It is possible that the Secretariat may become responsible in the future for administering the Hazardous and Noxious Substances (HNS) Fund. We noted that charges to the 1971 Fund and the Supplementary Fund for 2006 were based on the Director's best estimate of staff time spent on administering the two Funds. Activity on each of the Funds fluctuates within the year and, since there is no monitoring of the actual time spent by staff on a particular Fund, it is not possible to fully verify the accuracy of management fee estimates by the Secretariat.

47 While we recognise that the current apportionment of fees is carried out on a reasonable basis and agreed by the governing bodies of all three Funds, the Secretariat could become responsible for the HNS Fund, at which point it would be important to justify any management fee allocated to the new Fund.

Recommendation 3: We recommend that if the Secretariat were to become responsible for the HNS Fund, a more formal and accurate system of allocation of Secretariat time to such work should be considered, since any such fee would need to be adequately justified to Member States.

Performance management

48 The Secretariat has engaged with a consultant and Funds staff to design a performance management system. The introduction of staff performance management provides many benefits, including setting challenging work programmes and identifying training needs and opportunities. During our audit we reviewed the progress the Secretariat had made in developing an improved

system of performance management. We confirm that the Secretariat has made good progress in establishing such a system, which we expect to be fully operational in 2007.

Recommendation 4: We recommend that the Secretariat continue with its plans to introduce a full staff performance management system in 2007. The introduction of such a system reflects the Fund's continued openness to adapt and incorporate best practice into all areas of its operation.

PROGRESS ON 2005 AUDIT RECOMMENDATIONS

49 As part of our responsibilities as external auditors, we routinely report to the Assembly on management's implementation of prior year audit recommendations. This serves to provide assurance to the Assembly that appropriate action is taken in response to audit recommendations.

Contributor's account

50 In 2005 we identified one contributor which was owed almost £1 million from the Funds. This had not been repaid, since the contributor was a dissolved joint venture between two oil companies. We recommended that the Secretariat should address this issue and repay the balance. On follow-up, we concluded that the Fund had pursued the repayment of this money but that progress with the companies had been slow. We encourage the Secretariat to continue its efforts to return this outstanding balance.

Procedure manuals

51 We reviewed progress made by the Secretariat in documenting and issuing procedures to capture and preserve the knowledge of the current staff, and document best practice, thus ensuring that operations and decisions remain transparent for management review and audit purposes. The following procedure manuals had been issued by the completion of our 2006 audit:

- Investment manual;
- Payments manual;
- Claims Department procedures; and
- Guidelines for procurement (IT and administration).

52 We found that each of the manuals laid out procedures clearly and logically, such that the users of these manuals would be able to use them easily. We commend the Secretariat for reacting promptly to our recommendations and encourage them to continue to document and standardise procedures to ensure consistency of application.

Service supplier selection

53 We recommended that the basis of service supplier selection should be documented to support internal or external review and to assure good procurement practice. We noted that all purchasing staff had been reminded to ensure that this is done via a memorandum issued in the financial period. We identified new business partners and reviewed their selection; and we cross-referenced all business partners on FundMan to the Fund's register of interests. We found the supplier selection procedures to be transparent and logical.

Claims handling offices

54 In our 2005 report we reviewed expenditure at satellite Claims Handing Offices set up for the *Erika* and *Prestige* incidents. In 2006, the administration of these functions was re-organised with the closure of two offices as a result of the lessening of the administrative aspects of claims handling undertaken by the offices concerned. As part of our testing, we reviewed the average

monthly cost to the Fund of old and new claims handling operations over the financial period. After re-organisation, the average monthly cost fell by approximately 60 per cent, while the total value of claims processed by the operations year on year increased by 60 percent. We commend the Secretariat for identifying the opportunity to review and improve this administration process.

Register of Interests

55 As mentioned above, we reviewed the operation of the new Register of Interests, which included cross reference to all business partners. We confirmed that the system was operating effectively and we identified no undeclared interests that could be considered as a conflict of interest.

Recoverability of contributions

56 In 2005 we recommended that the Secretariat should review the recoverability of all outstanding contributions (Financial Regulation 11.5). We can confirm that the Secretariat performed such a review in 2006, which resulted in the write off of £6,277 in the year, and we were satisfied with the Secretariat's rationale for approving write off.

Risk management

57 In our 2004 and 2005 audit reports, we noted that the Fund had continued to make progress in completing the mapping process for all its operations. As part of our audit, we confirmed that this process was still in progress, but we would again encourage a greater impetus to complete the exercise. It is essential that the Secretariat consolidate and prioritise the key risks from all the operational areas into a risk register.

Recommendation 5: We recommend that the Secretariat prioritise the completed risk register to identify key risks facing the organisation. These risks, where there is high likelihood of occurrence and where high impact would ensue, should be regularly monitored by the Secretariat, to ensure that appropriate controls are in place to mitigate and manage the risks to an acceptable level.

ACKNOWLEDGEMENT

58 We are grateful for the continued assistance and co-operation provided by the Director and Secretariat staff during our audit.

Sir John Bourn
Comptroller and Auditor General, United Kingdom
External Auditor

ANNEX I: SCOPE AND AUDIT APPROACH

Audit scope and objectives

Our audit examined the financial statements of the International Oil Pollution Compensation Fund 1992 (1992 Fund) for the financial period ended 31 December 2006 in accordance with Financial Regulation 14. The main purpose of the audit was to enable us to form an opinion on whether the financial statements fairly presented the Fund's financial position, its surplus, funds and cash flows for the year ended 31 December 2006; and whether they had been properly prepared in accordance with the Financial Regulations.

Audit standards

Our audit was conducted in accordance with International Standards on Auditing as issued by the

International Auditing and Assurance Standards Board. These standards required us to plan and carry out the audit so as to obtain reasonable assurance that the financial statements are free from material misstatement. Management were responsible for preparing these financial statements and the External Auditor is responsible for expressing an opinion on them, based on evidence obtained during the audit.

Audit approach

Our audit included a general review of the accounting systems and such tests of the accounting records and internal control procedures as we considered necessary in the circumstances. The audit procedures are designed primarily for the purpose of forming an opinion on the Fund's financial statements. Consequently our work did not involve detailed review of all aspects of financial and budgetary systems from a management perspective, and the results should not be regarded as a comprehensive statement of all weaknesses that exist or all improvements that might be made.

Our audit also included focused work in which all material areas of the financial statements were subject to direct substantive testing. A final examination was carried out to ensure that the financial statements accurately reflected the Fund's accounting records; that the transactions conformed to the relevant financial regulations and governing body directives; and that the audited accounts were fairly presented.

ANNEX II: MAJOR DIFFERENCES BETWEEN IPSAS AND UNSAS WHICH AFFECT THE IOPC FUNDS

UNSAS	IPSAS	Effect
1 Reporting requirements take a 'modified accruals' approach that is similar to cash accounting	• Requirements are on a 'full accrual' basis	• IPSAS reports a larger group of items (assets and liabilities) on the balance sheet than UNSAS
2 Costs of fixed assets are reported as expenditure, in the statement of Income and Expenditure, when the assets are purchased	• Cost of fixed assets are capitalised and are included on the balance sheet when first acquired. The original cost is then spread over the useful life of that asset as a depreciation expense	• There will be a decrease on reported expenditure and an increase in assets reported • A capital reserve will need to be established upon initial recognition of existing fixed assets
3 Accrued employee benefits in respect of repatriation grants and annual leave are to be reported in a note to the accounts	• Full recognition of liabilities for employee benefits and reported as an expense	• An increase in reported expenditure and a corresponding increase in liabilities for the amounts accrued
4 Reported expenditure represents disbursements and unliquidated obligations (ULOs)	• Recognition of expenditure on the basis of goods and services received (the delivery principle)	• There would be a reduction in reported expenditure as not all ULOs of the period would be recognised as expenditure
5 Preparation of budgets on a cash basis	• Preparation of budget on an accrual basis	• Changes of content and format of budget due to adoption of accruals basis or a reconciliation between the two basis

ANNEX X

FINANCIAL STATEMENTS OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1992 FOR THE YEAR ENDED 31 DECEMBER 2006 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 2006. 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 2006 and the results of operations and cash flows for the period then ended in accordance with the 1992 Fund's stated accounting policies set out in Note 1 of the financial statements, which were applied on a basis consistent with that of the preceding financial period.

Further, in my opinion, the transactions of the 1992 Fund, which I have tested as part of my audit have in all significant respects been in accordance with the Financial Regulations and legislative authority.

In accordance with Financial Regulation 14, I have also issued a long-form Report on my audit of the Fund's financial statements.

Sir John Bourn
Comptroller and Auditor General, United Kingdom
External Auditor
National Audit Office
London, 27 June 2007

ANNEX XI

GENERAL FUND
1992 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 2006

	2006		2005	
	£	£	£	£
INCOME				
Contributions				
Contributions	-		5 366 024	
Adjustment to prior years' assessment	28 794		114 944	
Less contributions waived	-		(2 965)	
Total contributions		**28 794**		**5 478 003**
Miscellaneous				
Management fee	345 000		450 000	
Recovery under STOPIA 2006 (*Solar 1* incident)	1 337 568		-	
Sundry income	2 465		9 120	
Transfer from *Nakhodka* MCF	-		117 834	
Interest on loan to HNS Fund	4 331		3 083	
Interest on loan to Supplementary Fund	8 496		2 203	
Interest on overdue contributions	165		5 956	
Less interest on overdue contributions waived	-		(569)	
Interest on investments	1 248 120		1 365 824	
Total miscellaneous		**2 946 145**		**1 953 451**
TOTAL INCOME		**2 974 939**		**7 431 454**
EXPENDITURE				
Secretariat expenses				
Obligations incurred		**3 275 185**		**2 847 199**
Claims				
Compensation		**4 160 033**		**304 827**
Claims-related expenses				
Fees	233 916		266 067	
Travel	35 031		5 033	
Miscellaneous	4 099		150	
Total claims-related expenses		**273 046**		**271 250**
TOTAL EXPENDITURE		**7 708 264**		**3 423 276**
(Shortfall)/excess of income over expenditure		(4 733 325)		4 008 178
Exchange adjustment		(28)		11
Balance b/f: 1 January		29 372 402		25 364 213
Balance as at 31 December		**24 639 049**		**29 372 402**

ANNEX XII

MAJOR CLAIMS FUNDS
1992 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 2006

	Erika		*Prestige*	
	2006	**2005**	**2006**	**2005**
	£	**£**	**£**	**£**
INCOME				
Contributions				
Contributions	-	-	-	32 894 926
Adjustment to prior years' assessment	-	-	-	362 855
Less contributions waived	-	-	(6 277)	(50 456)
Total contributions	**-**	**-**	**(6 277)**	**(33 207 325)**
Miscellaneous				
Sundry income	-	9 531	-	-
Interest on overdue contributions	-	3 777	2 482	81 182
Less interest on overdue contributions waived	-	-	(336)	(4 147)
Interest on investments	2 089 653	2 650 429	1 307 521	2 250 699
Total miscellaneous	**2 089 653**	**2 663 737**	**1 309 667**	**2 327 734**
TOTAL INCOME	**2 089 653**	**2 663 737**	**1 303 390**	**35 535 059**
EXPENDITURE				
Compensation	7 921 605	11 718 025	40 537 569	621 316
Fees	1 480 682	1 785 899	2 463 784	2 617 861
Reimbursement of joint costs from P&I Club	-	-	(1 000 000)	-
Travel	1 706	1 954	19 286	26 924
Miscellaneous	2 090	551	3 939	4 633
TOTAL EXPENDITURE	**9 406 083**	**13 506 429**	**42 024 578**	**3 270 734**
Excess/(Shortfall) of income over expenditure	(7 316 430)	(10 842 692)	(40 721 188)	32 264 325
Exchange adjustment	(310 757)	(277 446)	(302 581)	(12 922)
Balance b/f: 1 January	49 659 743	60 779 881	65 130 461	32 879 058
Balance as at 31 December	**42 032 556**	**49 659 743**	**24 106 692**	**65 130 461**

ANNEX XIII

BALANCE SHEET OF THE 1992 FUND AS AT 31 DECEMBER 2006

	General Fund £	*Erika* £
ASSETS		
Cash at banks and in hand	25 953 613	41 983 026
Contributions outstanding	45 379	-
Interest on overdue contributions outstanding	3 888	-
Due from HNS Fund	114 537	-
Due from Supplementary Fund	259 738	-
Due from 1971 Fund	22 790	-
Tax recoverable	127 917	49 530
Receivable from P&I Club under STOPIA 2006 (*Solar 1* incident)	845 491	-
Miscellaneous receivable	57 798	-
TOTAL ASSETS	**27 431 151**	**42 032 556**
LIABILITIES		
Staff Provident Fund	1 883 640	-
Payable to P&I Club under STOPIA 2006 (*Solar 1* incident)	8 603	-
Accounts payable	44 247	-
Unliquidated obligations	136 685	-
Contributors' account	718 927	-
TOTAL LIABILITIES	**2 792 102**	**-**
FUNDS' BALANCES		
Working capital	22 000 000	-
Surplus / (Deficit)	2 639 049	42 032 556
GENERAL FUNDS & MAJOR CLAIMS FUNDS (MCFs) BALANCES	**24 639 049**	**42 032 556**
TOTAL LIABILITIES, GENERAL FUND & MCFs BALANCES	**27 431 151**	**42 032 556**

Prestige	2006 Total	2005 Total
23 508 837	91 445 476	146 305 576
283 537	328 916	376 482
31 186	35 074	87 735
-	114 537	82 398
-	259 738	177 742
-	22 790	8 347
282 936	460 383	664 317
-	845 491	-
196	57 994	28 719
24 106 692	**93 570 399**	**147 731 316**
-	1 883 640	2 382 373
-	8 603	-
-	44 247	6 965
-	136 685	143 327
-	718 927	1 036 045
-	**2 792 102**	**3 568 710**
-	22 000 000	22 000 000
24 106 692	68 778 297	122 162 606
24 106 692	**90 778 297**	**144 162 606**
24 106 692	**93 570 399**	**147 731 316**

ANNEX XIV

CASH FLOW STATEMENT OF THE 1992 FUND FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 2006

	2006		2005	
	£	£	£	£
Cash as at 1 January		146 305 576		121 617 345
OPERATING ACTIVITIES				
Operating Surplus/(Deficit)	(58 029 603)		18 154 673	
Decrease/(Increase) in Debtors	(699 183)		241 682	
Increase/(Decrease) in Creditors	(972 661)		(153 570)	
Net cash flow from operating activities		(59 701 447)		18 242 785
RETURNS ON INVESTMENTS				
Interest on investments	4 841 347		6 445 446	
Net cash inflow from returns on investments		4 841 347		6 445 446
Cash as at 31 December		**91 445 476**		**146 305 576**

ANNEX XV

FINANCIAL STATEMENTS OF THE INTERNATIONAL OIL POLLUTION COMPENSATION SUPPLEMENTARY FUND FOR THE PERIOD 1 JANUARY TO 31 DECEMBER 2006: OPINION OF THE EXTERNAL AUDITOR

To: the Assembly of the International Oil Pollution Compensation Supplementary Fund

I have audited the accompanying financial statements, comprising Statements I to III and the supporting Notes of the International Oil Pollution Compensation Supplementary Fund for the financial period ended 31 December 2006. 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 2006 and the results of operations for the period then ended in accordance with the Supplementary Fund's stated accounting policies set out in Note 1 of the financial statements.

Further, in my opinion, the transactions of the Supplementary Fund, which I have tested as part of my audit have in all significant respects been in accordance with the Financial Regulations and legislative authority.

I have no observations to make on these financial statements.

Sir John Bourn
Comptroller and Auditor General, United Kingdom
External Auditor
National Audit Office
London, 27 June 2007

ANNEX XVI

GENERAL FUND
SUPPLEMENTARY FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 2006

	2006 £	2005* £
INCOME		
Total income	**NIL**	**NIL**
EXPENDITURE		
Secretariat expenses		
Obligations incurred	81 996	177 742
TOTAL EXPENDITURE	**81 996**	**177 742**
(Shortfall)/excess of income over expenditure	(81 996)	(177 742)
Balance b/f: 1 January	(177 742)	-
Balance as at 31 December	**(259 738)**	**(177 742)**

** Financial period 3/3/2005 - 31/12/2005*

BALANCE SHEET OF THE SUPPLEMENTARY FUND AS AT 31 DECEMBER 2006

	2006 £	2005
ASSETS		
Total assets	**NIL**	**NIL**
LIABILITIES		
Due to 1992 Fund	259 738	177 742
TOTAL LIABILITIES	**259 738**	**177 742**
General Fund balance	(259 738)	(177 742)
TOTAL LIABILITIES AND GENERAL FUND BALANCE	**NIL**	**NIL**

ANNEX XVII

1971 FUND: KEY FINANCIAL FIGURES FOR 2007

(2007 INCOME/EXPENDITURE FIGURES ROUNDED AND SUBJECT TO AUDIT BY THE EXTERNAL AUDITOR)

INCOME

	2007 £
2006 Annual Contributions due in 2007	-
Other income:	
Interest on investments	509 000
TOTAL INCOME	**509 000**

ADMINISTRATIVE COSTS

	2007 £	2006 £
Only 1971 Fund		
Management fee payable to 1992 Fund	275 000	275 000
External Audit	10 000	10 000
Winding up		
Budget	250 000	250 000
Expenditure	-	5 640

CLAIMS EXPENDITURE

Incident	2007 £ Compensation	2007 £ Claims-related expenditure	2007 £ Total
Pontoon 300	209 000	3 000	212 000
Iliad	-	40 000	40 000
Vistabella	-	19 000	19 000
Al Jaziah 1	-	13 000	13 000
Other incidents	-	230 000	230 000
TOTAL CLAIMS EXPENDITURE	**209 000**	**305 000**	**514 000**

ANNEX XVIII

1992 FUND: KEY FINANCIAL FIGURES FOR 2007

(2007 INCOME/EXPENDITURE FIGURES ROUNDED AND SUBJECT TO AUDIT BY THE EXTERNAL AUDITOR)

INCOME

	2007 £
2006 Annual Contributions due in 2007:	
General Fund	3 000 000
Other income:	
Interest on investments	5 300 000
Management fee payable by 1971 Fund	275 000
Management fee payable by Supplementary Fund	70 000
STOPIA 2006[15]	4 487 900
TOTAL INCOME	**13 132 900**

ADMINISTRATIVE COSTS

	2007 £	2006 £
Joint Secretariat		
Budget (excluding external auditor's fees)	3 530 250	3 541 400
Expenditure (excluding external auditor's fees for respective IOPC Funds)	2 867 500	3 228 100
External Auditor's fees in respect of 1992 Fund	47 000	47 000

CLAIMS EXPENDITURE

Incident	2007 £ Compensation	2007 £ Claims-related expenditure	2007 £ Total
Prestige	1 109 000	1 943 400	3 052 400
Less interim reimbursement from P&I Club for joint costs	-	(20 100)	(20 100)
Sub-total			**3 047 200**
Solar 1	3 835 500	194 500	4 030 000
Erika	1 009 700	1 071 200	2 080 900
Incident in Germany	961 300	45 200	1 006 500
Other incidents	-	102 100	102 100
TOTAL CLAIMS EXPENDITURE	**6 915 500**	**3 336 300**	**10 251 800**

[15] *Under the STOPIA 2006 agreement the 1992 Fund is entitled to indemnification by the shipowner involved of the difference between the limitation amount applicable to the ship under the 1992 Civil Liability Convention and the total amount of the admissible claims or 20 million SDR, whichever is the less. The income figure also includes payment made by the 1992 Fund at the end of December 2006 which was reimbursed in 2007.*

ANNEX XIX

SUPPLEMENTARY FUND: KEY FINANCIAL FIGURES FOR 2007
(2007 INCOME/EXPENDITURE FIGURES ROUNDED AND SUBJECT TO AUDIT BY THE EXTERNAL AUDITOR)

INCOME

	2007 £
2006 Annual Contributions due in 2007:	
General Fund	1 400 000
Other income:	
Interest on investments	52 000
TOTAL INCOME	**1 453 000**

ADMINISTRATIVE COSTS

	2007 £	2006 £
Loans from 1992 Fund brought forward to cover expenditure prior to receipt of contributions (excluding interest on loans)[16]	-	246 000
External Auditor's fees	3 500	3 500
Management fee payable to 1992 Fund	70 000	70 000

[16] *Loans repaid with interest in 2007 total £260 526.*

ANNEX XX

1992 FUND: CONTRIBUTING OIL RECEIVED IN THE CALENDAR YEAR 2005 IN THE TERRITORIES OF STATES WHICH WERE MEMBERS OF THE 1992 FUND ON 31 DECEMBER 2007

As reported by 31 December 2007

Member State	Contributing Oil (Tonnes)	% of Total
Japan	254 439 315	17.38%
Italy	137 560 090	9.39%
India	125 036 877	8.54%
Republic of Korea	123 559 892	8.44%
Netherlands	103 599 137	7.08%
France	100 272 035	6.85%
Singapore	78 309 227	5.35%
United Kingdom	71 879 284	4.91%
Canada	68 510 937	4.68%
Spain	64 169 876	4.38%
Germany	38 488 964	2.63%
Australia	28 649 233	1.96%
Turkey	23 996 537	1.64%
Sweden	23 799 328	1.63%
Greece	21 898 465	1.50%
Malaysia	21 408 885	1.46%
Norway	17 838 899	1.22%
Portugal	15 294 262	1.04%
Argentina	14 202 906	0.97%
Israel	12 167 340	0.83%
Finland	12 072 978	0.82%
Philippines	11 643 078	0.80%
Bahamas	11 338 813	0.77%
Mexico	10 792 426	0.74%
Venezuela	8 356 267	0.57%
Bulgaria	7 120 230	0.49%
China (Hong Kong Special Administrative Region)	6 471 650	0.44%
Belgium	5 701 534	0.39%
Denmark	5 643 575	0.39%
New Zealand	4 740 148	0.32%
Trinidad and Tobago	4 415 577	0.30%
Ireland	4 204 280	0.29%
Panama	3 508 969	0.24%
Lithuania	2 960 545	0.20%
Croatia	2 549 886	0.17%
Sri Lanka	2 314 748	0.16%
Jamaica	2 259 467	0.15%
Malta	2 020 082	0.14%
Uruguay	1 856 075	0.13%
Angola	1 850 871	0.13%
Ghana	1 711 637	0.12%
Cambodia	1 704 339	0.12%
Cyprus	1 151 829	0.08%
Poland	915 669	0.06%
Algeria	801 108	0.05%
Mauritius	510 557	0.03%
Colombia	328 782	0.02%
Barbados	242 120	0.02%
	1 464 268 729	**100.00%**

Notes

Nil return from 22 States: Albania, Antigua and Barbuda, Brunei Darussalam, Estonia, Fiji, Gabon, Georgia, Iceland, Latvia, Liberia, Madagascar, Marshall Islands, Monaco, Namibia, Qatar, Seychelles, Sierra Leone, Slovenia, Switzerland, Tonga, United Arab Emirates and Vanuatu.

No report from 28 States: Bahrain, Belize, Cambodia, Cape Verde, Comoros, Congo, Djibouti, Dominica, Dominican Republic, Grenada, Guinea, Kenya, Luxembourg, Maldives, Morocco, Mozambique, Nigeria, Oman, Papua New Guinea, Russian Federation, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, South Africa, Tunisia, Tuvalu and United Republic of Tanzania.

ANNEX XXI

SUPPLEMENTARY FUND: CONTRIBUTING OIL RECEIVED IN THE CALENDAR YEAR 2005 IN THE TERRITORIES OF STATES WHICH WERE MEMBERS OF THE SUPPLEMENTARY FUND ON 31 DECEMBER 2007

As reported by 31 December 2007

Member State	Contributing Oil (Tonnes)	% of Total
Japan	254 439 315	28.91%
Italy	137 560 090	15.63%
Netherlands	103 599 137	11.77%
France	100 272 035	11.39%
United Kingdom	69 494 881	7.90%
Spain	64 169 876	7.29%
Germany	38 488 964	4.37%
Sweden	23 799 328	2.70%
Greece	21 898 465	2.49%
Norway	17 838 899	2.03%
Portugal	15 294 262	1.74%
Finland	12 072 978	1.37%
Belgium	5 701 534	0.65%
Denmark	5 643 575	0.64%
Ireland	4 204 280	0.48%
Lithuania	2 960 545	0.34%
Croatia	2 549 886	0.29%
Barbados[17]	242 120	0.03%
Latvia[17]	0	0.00%
Slovenia[17]	0	0.00%
	875 126 899	**100.00%**

[17] *Deemed to have received a total of 1 million tonnes for the purposes of contributions to the Supplementary Fund.*

ANNEX XXII

1971 FUND: SUMMARY OF INCIDENTS (31 DECEMBER 2007)

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 Quwain, United Arab Emirates	Panama	2 621	US$364 182 (estimate)
27	*Brady Maria*	3.1.86	Elbe Estuary, Federal Republic of Germany	Panama	996	DM324 629
28	*Take Maru N°6*	9.1.86	Sakai-Senboku, Japan	Japan	83	¥3 876 800
29	*Oued Gueterini*	18.12.86	Algiers, Algeria	Algeria	1 576	Din1 175 064
30	*Thuntank 5*	21.12.86	Gävle, Sweden	Sweden	2 866	SKr2 741 746
31	*Antonio Gramsci*	6.2.87	Borgå, Finland	USSR	27 706	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 N°1*	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 N°13*	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 N°1*	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 N°12*	15.5.89	Shiogama, Japan	Japan	94	¥2 198 400
43	*Tsubame Maru N°58*	18.5.89	Shiogama, Japan	Japan	74	¥2 971 520
44	*Tsubame Maru N°16*	15.6.89	Kushiro, Japan	Japan	56	¥1 613 120
45	*Kifuku Maru N°103*	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	€58 865 (estimate)
57	*Hokunan Maru N°12*	5.4.91	Okushiri island, Japan	Japan	209	¥3 523 520
58	*Agip Abruzzo*	10.4.91	Livorno, Italy	Italy	98 544	LIt 21 800 000 000 (estimate)

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1971 Fund, unless indicated to the contrary)		Notes
Mishandling of cargo	0.2	Fishery-related Clean-up Indemnification	¥1 792 100 ¥368 510 ¥1 049 920 **¥3 210 530**	
Mishandling of cargo	3	Clean-up Indemnification	¥5 490 570 ¥623 840 **¥6 114 410**	
Collision	30	Clean-up Fishery-related Indemnification	¥48 883 038 ¥560 588 ¥869 040 **¥50 312 666**	¥45 038 833 recovered by way of recourse.
Overflow during supply operation	Unknown	Clean-up Indemnification	¥96 431 ¥1 338 000 **¥1 434 431**	¥430 329 recovered by way of recourse.
Collision	800	Clean-up Fishery-related Indemnification	SKr15 523 813 SKr530 239 SKr795 276 **SKr16 849 328**	
Mishandling of cargo	Unknown	Other damage to property Indemnification	¥1 087 700 ¥200 800 **¥1 288 500**	
Mishandling of cargo	20			Total damage less than shipowner's liability (clean-up £130 000 agreed).
Grounding	185	Clean-up	Can$12 831 892	
Sinking	110	Clean-up Fishery-related Indemnification	£249 630 £9 879 £17 155 **£276 663**	
Sinking	Unknown	Clean-up Clean-up	€ 255 803 £14 250	1971 Fund brought recourse action against shipowner's insurer and Court of Appeal in Guadeloupe rendered judgement in favour of Fund for € 289 483 plus interest and costs. Fund now applying for summary judgement in Trinidad and Tobago in execution of Court of Appeal's judgement.
Grounding	Unknown	Clean-up Fishery-related Indemnification	¥2 119 966 ¥4 024 863 ¥880 880 **¥7 025 709**	
Collision	2 000	Indemnification	LIt 1 666 031 931	Total damage less than shipowner's liability.

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
59	*Haven*	11.4.91	Genoa, Italy	Cyprus	109 977	LIt 23 950 220 000
60	*Kaiko Maru N°86*	12.4.91	Nomazaki, Japan	Japan	499	¥14 660 480
61	*Kumi Maru N°12*	27.12.91	Tokyo Bay, Japan	Japan	113	¥3 058 560
62	*Fukkol Maru N°12*	9.6.92	Ishinomaki, Japan	Japan	94	¥2 198 400
63	*Aegean Sea*	3.12.92	La Coruña, Spain	Greece	57 801	Pts 1 121 219 450
64	*Braer*	5.1.93	Shetland, United Kingdom	Liberia	44 989	£4 883 840
65	*Kihnu*	16.1.93	Tallinn, Estonia	Estonia	949	113 000 SDR (estimate)
66	*Sambo N°11*	12.4.93	Seoul, Republic of Korea	Republic of Korea	520	Won 77 786 224 (estimate)

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1971 Fund, unless indicated to the contrary)		Notes
Fire and explosion	Unknown	Italian State Two Italian contractors **LIt 71 584 970 783** French State Other French public bodies Principality of Monaco **FFr23 510 228** Indemnification	LIt 70 002 629 093 LIt 1 582 341 690 FFr12 580 724 FFr10 659 469 FFr270 035 £2 500 000	Agreement on a global settlement of all outstanding claims between Italian State, shipowner/Club and 1971 Fund was signed in Rome on 4 March 1999. 1971 Fund's payments are set out in previous column. Shipowner's insurer paid LIt47 597 370 907 to Italian State. Shipowner/insurer paid all accepted claims by other Italian public bodies and private claimants.
Collision	25	Clean-up Fishery-related Indemnification **¥96 732 933**	¥53 513 992 ¥39 553 821 ¥3 665 120	
Collision	5	Clean-up Indemnification **¥1 821 159**	¥1 056 519 ¥764 640	¥650 522 recovered by way of recourse.
Mishandling of oil supply	Unknown	Other damage to property Indemnification **¥4 793 597**	¥4 243 997 ¥549 600	
Grounding	73 500	Fishery-related Clean-up Preventive measures Tourism Financial costs Amounts awarded by criminal court Previously settled claims Miscellaneous **Pts 13 928 783 000** Indemnification	Pts 8 696 000 000 Pts 1 729 240 000 Pts 708 033 000 Pts 13 810 000 Pts 371 680 000 Pts 893 880 000 Pts 1 263 150 000 Pts 252 990 000 Pts 278 197 307	Shipowner/insurer paid Pts 840 000 000. Pursuant to agreement between Spanish State, shipowner/insurer and 1971 Fund, Fund paid the Spanish State Pts 6 386 921 613. Fund also paid Pts 1 263 150 000 to claimants that had settled their claims at an early stage and were not included in the above agreement.
Grounding	84 000	Clean-up Fishery-related Tourism-related Farming-related Other damage to property Other loss of income **£51 938 938**	£593 883 £38 538 451 £77 375 £3 572 392 £8 904 047 £252 790	£6 213 497 paid by shipowner's insurer. 1971 Fund paid £45 725 441 in compensation. The last outstanding claim that was the subject of litigation has been withdrawn following settlement agreement between claimant, shipowner's insurer and 1971 Fund. In accordance with the agreement, the claimant has paid £75 000 to shipowner's insurer and £20 000 to 1971 Fund as a contribution to the costs incurred in respect of the court action.
Grounding	140	Clean-up	FM543 618	
Grounding	4	Clean-up Fishery-related **Won 219 714 755**	Won 176 866 632 Won 42 848 123	US$22 504 recovered from shipowner's insurer.

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
67	*Taiko Maru*	31.5.93	Shioyazaki, Japan	Japan	699	¥29 205 120
68	*Ryoyo Maru*	23.7.93	Izu Peninsula, Japan	Japan	699	¥28 105 920
69	*Keumdong N°5*	27.9.93	Yeosu, Republic of Korea	Republic of Korea	481	Won 77 417 210
70	*Iliad*	9.10.93	Pylos, Greece	Greece	33 837	Drs 1 496 533 000
71	*Seki*	30.3.94	Fujairah, United Arab Emirates, and Oman	Panama	153 506	14 million SDR
72	*Daito Maru N°5*	11.6.94	Yokohama, Japan	Japan	116	¥3 386 560
73	*Toyotaka Maru*	17.10.94	Kainan, Japan	Japan	2 960	¥81 823 680
74	*Hoyu Maru N°53*	31.10.94	Monbetsu, Japan	Japan	43	¥1 089 280
75	*Sung Il N°1*	8.11.94	Onsan, Republic of Korea	Republic of Korea	150	Won 23 000 000 (estimate)
76	Spill from unknown source	30.11.94	Mohammédia, Morocco	-	-	-

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1971 Fund, unless indicated to the contrary)		Notes
Collision	520	Clean-up Fishery-related Indemnification	¥756 780 796 ¥336 404 259 ¥7 301 280 **¥1 100 486 335**	¥49 104 248 recovered by way of recourse.
Collision	500	Clean-up Indemnification	¥8 433 001 ¥7 026 480 **¥15 459 481**	¥10 455 440 recovered by way of recourse.
Collision	1 280	Clean-up Fishery-related Indemnification	Won 5 602 021 858 Won 10 673 130 111 **Won 16 275 151 969** Won 12 857 130	Won 64 560 080 paid by the shipowner's insurer.
Grounding	200	Clean-up 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**	Shipowner has paid Drs 356 204 011. All claims filed in the limitation proceedings are time-barred against 1971 Fund except for two: a claim from shipowner and his insurer in respect of reimbursement for any compensation payments in excess of shipowner's limitation amount and for indemnification under Article 5.1 of 1971 Fund Convention, and a claim from owner of a fish farm for Drs 1 044 million.
Collision	16 000			Settlement outside the Conventions concluded between Government of Fujairah and shipowner. Terms of settlement not known to 1971 Fund. 1971 Fund will not be called upon to pay any compensation.
Overflow during loading operation	0.5	Clean-up Indemnification	¥1 187 304 ¥846 640 **¥2 033 944**	
Collision	560	Clean-up Fishery-related Other loss of income Indemnification	¥629 516 429 ¥50 730 359 ¥15 490 030 ¥20 455 920 **¥716 192 738**	¥31 021 717 recovered by way of recourse.
Mishandling of oil supply	Unknown	Other damage to property Clean-up Indemnification	¥3 954 861 ¥202 854 ¥272 320 **¥4 430 035**	
Grounding	18	Clean-up Fishery-related	Won 9 401 293 Won 28 378 819 **Won 37 780 112**	Shipowner lost right to limit his liability because proceedings not commenced within period specified under Korean law.
Unknown	Unknown	Clean-up (claimed)	Mor Dhr 2 600 000	Not established that oil originated from a ship as defined in 1971 Fund Convention.

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
77	*Boyang N°51*	25.5.95	Sandbaeg Do, Republic of Korea	Republic of Korea	149	19 817 SDR
78	*Dae Woong*	27.6.95	Kojung, Republic of Korea	Republic of Korea	642	Won 95 000 000 (estimate)
79	*Sea Prince*	23.7.95	Yeosu, Republic of Korea	Cyprus	144 567	Won 18 308 275 906
80	*Yeo Myung*	3.8.95	Yeosu, Republic of Korea	Republic of Korea	138	Won 21 465 434
81	*Shinryu Maru N°8*	4.8.95	Chita, Japan	Japan	198	¥3 967 138
82	*Senyo Maru*	3.9.95	Ube, Japan	Japan	895	¥20 203 325
83	*Yuil N°1*	21.9.95	Busan, Republic of Korea	Republic of Korea	1 591	Won 351 924 060
84	*Honam Sapphire*	17.11.95	Yeosu, Republic of Korea	Panama	142 488	14 000 000 SDR
85	*Toko Maru*	23.1.96	Anegasaki, Japan	Japan	699	¥18 769 567 (estimate)
86	*Sea Empress*	15.2.96	Milford Haven, Wales, United Kingdom	Liberia	77 356	£7 395 748

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1971 Fund, unless indicated to the contrary)		Notes
Collision	160			Clean-up claim (Won 142 million) time-barred as necessary legal action not taken.
Grounding	1	Clean-up	Won 43 517 127	
Grounding	5 035	Clean-up	Won 20 709 245 359	Won 18 308 275 906 paid by shipowner's insurer.
		Fishery-related	Won 19 836 456 445	
		Tourism-related	Won 538 000 000	
		Oil removal	Won 8 420 123 382	
		Environmental studies	Won 723 490 410	
			Won 50 227 315 596	
		Clean-up	¥357 214	
		Indemnification	Won 7 410 928 540	
Collision	40	Clean-up	Won 684 000 000	Won 560 945 437 paid by shipowner's insurer.
		Fishery-related	Won 600 000 000	
		Tourism-related	Won 269 029 739	
			Won 1 553 029 739	
Mishandling of oil supply	0.5	Clean-up	¥8 650 249	¥3 718 455 paid by shipowner's insurer.
		Indemnification	¥984 327	
			¥9 634 576	
		Other damage to property	US$3 103	
		Other loss of income (agreed)	US$2 560	
			US$5 663	
Collision	94	Clean-up	¥314 838 937	¥279 973 101 recovered by way of recourse action.
		Fishery-related	¥46 726 661	
		Indemnification	¥5 012 855	
			¥366 578 453	
Sinking	Unknown	Clean-up	Won 12 393 138 987	
		Fishery-related	Won 7 960 494 932	
		Oil removal operation	Won 6 824 362 810	
			Won 27 177 996 729	
Contact with fender	1 800	Clean-up	Won 9 033 000 000	US$13.5 million paid by shipowner's insurer.
		Fishery-related	Won 1 112 000 000	
		Environmental studies (claimed)	Won 114 000 000	
			Won 10 259 000 000	
Collision	4			Total damage less than owner's liability. Indemnification not requested.
Grounding	72 360	Clean-up	£22 773 470	£7 395 748 paid by shipowner's insurer. £20 million recovered from Milford Haven Port Authority by 1971 Fund by way of recourse action.
		Other damage to property	£443 972	
		Fishery-related	£10 154 314	
		Tourism-related	£ 2 389 943	
		Other loss of income	£1 044 785	
			£36 806 484	
		Indemnification	£1 835 035	

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
87	*Kugenuma Maru*	6.3.96	Kawasaki, Japan	Japan	57	¥1 175 055 (estimate)
88	*Kriti Sea*	9.8.96	Agioi Theodoroi, Greece	Greece	62 678	₠6 576 100 (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
Mishandling of oil supply	0.3	Clean-up Indemnification	¥1 981 403 ¥297 066 **¥2 278 469**	¥1 197 267 recovered by way of recourse action.
Mishandling of oil supply	30	Clean-up and property damage Fishery-related Tourism Miscellaneous	€2 500 000 €1 100 000 €150 000 €24 000 **€3 774 000**	All settled claims paid by shipowner's insurer. Three claims totalling €3.4 million pending in court. These claims are from the Greek State, a fish farm and a seaside resort owner.
Grounding	28	Clean-up Salvage Fishery-related Loss of income Cargo transhipment Indemnification	Won 689 829 037 Won 20 376 927 Won 16 769 424 Won 6 161 710 Won 10 000 000 Won 28 071 490 **Won 771 208 588**	Won 690 million paid by shipowner's insurer.
Breaking	6 200	Clean-up Fishery-related Tourism-related Causeway	¥20 928 412 000 ¥1 769 172 000 ¥1 344 157 000 ¥2 048 152 000 **¥26 089 893 000**	All claims have been settled and paid. A global settlement agreement was reached between the shipowner/insurer and the IOPC Funds whereby the insurer paid ¥10 956 930 000 and the Funds paid ¥15 130 970 000, of which the 1971 Fund paid ¥7 422 192 000 and the 1992 Fund paid ¥7 708 778 000.
Overflow during loading operation	0.6	Clean-up Indemnification	¥7 673 830 ¥457 497 **¥8 131 327**	¥1 710 173 paid by shipowner's insurer.
Grounding	3 600	Clean-up Loss of income	US$8 364 223 US$16 033 389 **US$24 397 612**	Bs1 254 619 385 and US$4 008 347 paid by shipowner's insurer.
		Preventive measures Property damage and loss of income	Bs70 675 468 Bs289 000 000 **Bs350 075 468**	
		Environmental damage (claimed) Fisheries (claimed)	US$60 250 396 US$30 000 000 **US$90 250 396**	
Mishandling of oil supply	1	Clean-up Indemnification	¥415 600 000 ¥865 406 **¥416 465 406**	
Overflow during loading operation	124	Clean-up Indemnification	Won 418 000 000 Won 58 000 000 **Won 476 000 000**	

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC
95	*Osung N°3*	3.4.97	Tunggado, Republic of Korea	Republic of Korea	786	104 500 SDR (estimate)
96	*Plate Princess*	27.5.97	Puerto Miranda, Venezuela	Malta	30 423	3.6 million SDR (estimate)
97	*Diamond Grace*	2.7.97	Tokyo Bay, Japan	Panama	147 012	14 million SDR
98	*Katja*	7.8.97	Le Havre, France	Bahamas	52 079	€7.3 million
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	Won 866 906 355	1992 Fund paid ¥340 million to claimants. This amount was later reimbursed by 1971 Fund.
		Fishery-related	Won 68 795 729	
		Oil removal operation	Won 6 738 565 917	
			Won 7 674 268 001	
		Clean-up	¥669 252 879	
		Fishery-related	¥181 786 486	
			¥851 039 365	
		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	¥1 100 000 000	Total amount of established claims did not exceed shipowner's liability.
		Fishery-related	¥263 000 000	
		Tourism-related	¥23 000 000	
		Other loss of income	¥8 000 000	
		Miscellaneous (agreed)	¥22 000 000	
			¥1 416 000 000	
Striking a quay	190	Clean-up	€2 468 593	€2 558 406 paid by shipowner's insurer. Practically certain that total of established claims will be less than shipowner's liability.
		Clean-up (claimed)	€75 684	
		Fishery-related	€50 000	Claims pending in court.
		Other damage to property	€39 813	
			€3 534 090	
Collision	29 000	*Singapore*		All settled claims in Singapore and Malaysia paid by shipowner. All claims in Indonesia dismissed by limitation court in Singapore. Although any further claims are time-barred under the Conventions, insurer has informed Fund that it is not prepared to withdraw its actions against 1971 Fund in Malaysia and London until it has had the opportunity to establish that there are no outstanding claims against shipowner which might result in 1971 Fund being liable to pay compensation or indemnification.
		Clean-up	S$10 000 000	
		Other damage to property	S$1 500 000	
		Other damage to property (claimed)	S$67 000	
			S$11 567 000	
		Malaysia		
		Clean-up	RM1 424 000	
		Fishery-related	RM1 200 000	
			RM2 624 000	
		Indonesia		
		Clean-up (claimed)	US$152 000	
		Environmental damage (claimed)	US$3 200 000	
		Fishery-related (claimed)	US$11 000	
			US$3 363 000	
Grounding	15-20	Clean-up	Won 189 214 535	Shipowner has paid Won 26 622 030.
		Fishery-related	Won 82 818 635	
			Won 265 023 170	
Sinking	4 000	Clean-up	Dhs 6 345 655	1971 Fund has paid all claims but one where the claimant has yet to receive the balance outstanding of his claim (Dhs 66 069).
		Fishery-related	Dhs 1 597 963	
			Dhs 7 943 618	

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 (estimate)	3 000 000 SDR
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 196.

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	1971 Fund considers that the Conventions do not apply to this incident. Claims against Fund time-barred.
Sinking	100-200	Clean-up/preventive measures	Dhs 6 400 000	Funds have taken recourse action against shipowner claiming reimbursement of Dhs 6.4 million 1971 and 1992 Funds have each contributed 50% of the amounts paid.
Corrosion	300 (estimate)	Clean-up (settled) Economic loss (claimed) **US$720 000** Economic loss (claimed) **EEK38 800 000**	US$620 000 US$100 000 EEK38 800 000	All settled claims have been paid by the shipowner's insurer. Claims subject to legal proceedings.
Grounding	7 000 (estimate)	*Singapore* Clean-up and fisheries **US$8 400 000** *Malaysia* Clean-up Fishery-related **RM2 205 000** *Indonesia* Clean-up and fisheries **US$2 800 000**	 US$8 400 000 RM1 300 000 RM905 000 US$2 800 000	All claims paid by shipowner's insurer.
Sinking	400	Clean-up Clean-up	US$844 000 Dhs2 480 000	1971 and 1992 Funds have each contributed 50% of the amounts paid.
Collision	Unknown	Clean-up Preventive measures Preventive measures/environmental risk assessment Indemnification	US$62 896 ¥11 436 000 US$783 500 US$25 000	US$103 378 paid by shipowner's insurer. 1971 Fund has recovered £317 317 from shipowner's insurer. Insurer has recovered £185 000 from colliding vessel interests.

ANNEX XXIII

1992 FUND: SUMMARY OF INCIDENTS (31 DECEMBER 2007)

For this table, damage has been grouped into the following categories:

- Clean-up
- Preventive measures
- Fishery-related
- Tourism-related
- Other damage to property
- Environmental damage/studies

Where claims are shown in the table as settled this means that the amounts have been agreed with the claimants, but not necessarily that the claims have been paid or paid in full.

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GT)	Limit of shipowner's liability under applicable CLC
1	Incident in Germany	20.6.96	North Sea coast, Germany	Unknown	Unknown	Unknown
2	*Nakhodka*	2.1.97	Oki island, Japan	Russian Federation	13 159	1 588 000 SDR
3	*Osung N°3*	3.4.97	Tunggado, Republic of Korea	Republic of Korea	786	104 500 SDR (estimate)
4	Incident in United Kingdom	28.9.97	Essex, United Kingdom	Unknown	Unknown	Unknown
5	*Santa Anna*	1.1.98	Devon, United Kingdom	Panama	17 134	10 196 280 SDR
6	*Milad 1*	5.3.98	Bahrain	Belize	801	Not available
7	*Mary Anne*	22.7.99	Philippines	Philippines	465	3 000 000 SDR

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1992 Fund, unless indicated to the contrary)		Notes
Unknown	Unknown	Clean-up	€ 284 905	Following out-of-court settlement, shipowner/insurer paid 20% and 1992 Fund paid 80% of final assessed figure.
Breaking	6 200	Clean-up Fishery-related Tourism-related Causeway **¥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.
Grounding	Unknown	Clean-up Fishery-related Oil removal operation **Won 7 674 268 001** Clean-up Fishery-related **¥851 039 365**	Won 866 906 355 Won 68 795 729 Won 6 738 565 917 ¥669 252 879 ¥181 786 486	All claims have been settled and paid. 1992 Fund paid ¥340 million to claimants. This amount was later reimbursed by 1971 Fund.
Unknown	Unknown	Clean-up (claimed)	£10 000	Claim not pursued.
Grounding	280	Clean-up (settled)	£30 000	Claim paid by shipowner's insurer.
Damage to hull	0	Pre-spill preventive measures	BD 21 168	1992 Fund did not pursue recourse action against shipowner.
Sinking	Unknown	Clean-up Clean-up	US$2 500 000 PHP 1 800 000	Claims settled by shipowner's insurer without 1992 Fund's involvement.

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GT)	Limit of shipowner's liability under applicable CLC
8	*Dolly*	5.11.99	Martinique	Dominican Republic	289	3 000 000 SDR
9	*Erika*	12.12.99	Brittany, France	Malta	19 666	€12 843 484
10	*Al Jaziah 1*	24.1.00	Abu Dhabi, United Arab Emirates	Honduras	681	3 000 000 SDR
11	*Slops*	15.6.00	Piraeus, Greece	Greece	10 815	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	Preventive measures	€1 457 753	1992 Fund paid €1 457 753 to French Government in full settlement of all its losses as a result of the incident.
Breaking	14 000 (estimate)	Clean-up Fishery-related Property damage Tourism Other loss of income **€129 494 412** Claims in court (pending)	€31 872 606 €10 728 911 €2 554 705 €75 954 269 €8 383 921 €53 800 000	Payments made by shipowner's insurer for €12.8 million and by 1992 Fund for €16.7 million. Further claims totalling €33.5 million have been filed in court by French State and Total SA, but these will only be pursued to the extent that this would not conflict with all other claims being paid in full.
Sinking	100-200	Clean-up/preventive measures	Dhs 6 400 000	1971 and 1992 Funds have each contributed 50% of amount paid. Funds have taken recourse action against the shipowner.
Fire	Unknown	Clean-up (claimed)	€3 521 419	1992 Fund considered that the *Slops* did not fall within the definition of 'ship'. Greek Supreme Court held that the *Slops* fell within that definition. Three claims from clean-up contractors are outstanding.
Unknown	Unknown	Clean-up (settled)	€6 000	Spanish authorities have recovered their costs from alleged source of the pollution.
Unknown	Unknown	Clean-up (claimed)	SEK5 260 000	Swedish State brought legal action against owner of the *Alambra*, his insurer and 1992 Fund. Following out-of-court settlement between the State and shipowner/ insurer, action against Fund was withdrawn.
Grounding	7 000 (estimate)	*Singapore* Clean-up and fisheries *Malaysia* Clean-up Fishery-related **RM2 205 000** *Indonesia* Clean-up and fisheries	 US$8 400 000 RM1 300 000 RM905 000 US$2 800 000	All claims have been paid by shipowner's insurer.
Collision	2 500	Clean-up Oil disposal Property damage/economic loss Fishery-related Environmental monitoring **DKr104 858 000**	DKr65 900 000 DKr17 400 000 DKr1 600 000 DKr19 700 000 DKr258 000	All claims paid by shipowner's insurer. 1992 Fund 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

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1992 Fund, unless indicated to the contrary)		Notes
Sinking	400	Clean-up Clean-up	US$844 000 Dhs2 480 000	1971 and 1992 Funds have each contributed 50% of the amounts paid.
Unknown	Unknown	Clean-up (claimed)	€340 000	Source of the spill appears to have been a general cargo vessel. Therefore unlikely that 1992 Fund will be called upon to make any compensation payments.
Unknown	Unknown	Clean-up	£5 400	
Breaking	63 272 (estimate)	*Spain* Clean-up/preventive measures (claimed) Property damage (claimed) Fisheries and mariculture (claimed) Tourism (claimed) Miscellaneous (claimed) **€763 910 418** *France* Clean-up (claimed) Property damage (claimed) Fisheries and mariculture (claimed) Tourism (claimed) Miscellaneous (claimed) **€109 708 816** *Portugal* Clean-up (settled) **€2 189 923**	 €716 657 879 €2 066 103 €42 736 348 €688 303 €1 761 785 €7 965 808 €87 772 €4 356 474 €25 268 942 €2 029 820 €2 189 923	Shipowner has deposited limitation amount (€22 777 986) with competent Spanish Court. 1992 Fund has paid €13 920 000 to Spanish Government and €503 942 to claimants in Spain, €4.85 million to claimants in France and €328 448 to Portuguese 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 Fisheries **US$1 231 000**	US$689 000 US$542 000	All claims paid by 1992 Fund.
Grounding	35-40	Clean-up/preventive measures Fisheries **Won 1 335 000 000**	Won 1 007 000 000 Won 328 000 000	All claims paid by shipowner's insurer.
Collision	34	Clean-up/preventive measures Fisheries Property damage **Won 1 283 650 000**	Won 1 242 000 000 Won 22 500 000 Won 19 150 000	All claims paid by shipowner's insurer.

Ref	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GT)	Limit of shipowner's liability under applicable CLC
24	*Victoriya*	30.8.03	Syzran, Russian Federation	Russian Federation	2 003	3 000 000 SDR
25	*Duck Yang*	12.9.03	Busan, Republic of Korea	Republic of Korea	149	3 000 000 SDR
26	*Kyung Won*	12.9.03	Namhae, Republic of Korea	Republic of Korea	144	3 000 000 SDR
27	*Jeong Yang*	23.12.03	Yeosu, Republic of Korea	Republic of Korea	4 061	4 510 000 SDR
28	*№11 Hae Woon*	22.7.04	Geoje, Republic of Korea	Republic of Korea	110	4 510 000 SDR
29	*№7 Kwang Min*	24.11.05	Busan, Republic of Korea	Republic of Korea	161	4 510 000 SDR
30	*Solar 1*	11.8.06	Guimaras Straits, Philippines	Philippines	998	4 510 000 SDR
31	*Shosei Maru*	28.11.06	Seto Inland Sea, Japan	Japan	153	4 510 000 SDR
32	*Volgoneft 139*	11.11.07	Strait of Kerch, between Russian Federation and Ukraine	Russian Federation	3 463	4 510 000 SDR
33	*Hebei Spirit*	7.12.07	Off Taean, Republic of Korea	China (Hong Kong Special Administrative Region)	146 848	89 770 000 SDR

Notes

See page 196.

Cause of incident	Quantity of oil spilled (tonnes)	Compensation (amounts paid by 1992 Fund, unless indicated to the contrary)		Notes
Fire	Unknown	Clean-up/preventive measures (claimed)	US$500 000	Since total amount claimed is well below limitation amount applicable to Victoriya under 1992 Civil Liability Convention, 1992 Fund will not be required to make any compensation payments.
Sinking	300	Clean-up/preventive measures Property damage/economic loss **Won 2 926 000 000**	Won 2 883 000 000 Won 43 000 000	All claims paid by shipowner's insurer.
Stranding	100	Clean-up/preventive measures Fisheries **Won 3 328 000 000**	Won 2 921 000 000 Won 407 000 000	
Collision	700	Clean-up/preventive measures Fisheries Post-spill studies Economic loss **Won 4 325 400 000**	Won 3 992 000 000 Won 78 400 000 Won 140 000 000 Won 115 000 000	All claims paid by shipowner's insurer.
Collision	12	Clean-up/preventive measures **Won 354 000 000**	Won 354 000 000	All claims paid by shipowner's insurer.
Collision	64	Clean-up/preventive measures Fishery-related Tourism **Won 2 012 100 000** Fishery-related (claimed)	Won 1 900 000 000 Won 109 100 000 Won 3 100 000 Won 142 389 610	1992 Fund has taken recourse action against fishing vessel that collided with tanker.
Sinking	2 072 (estimate)	Clean-up/preventive measures Property damage Fishery-related Tourism-related Miscellaneous **PHP 908 120 203**	PHP 725 368 765 PHP 2 193 561 PHP 175 449 582 PHP 2 261 414 PHP 2 846 881	Further claims pending, but as many claimants did not indicate claimed amount, not possible to estimate total amount claimed. STOPIA 2006 applies: 1992 Fund is receiving regular reimbursements from shipowner's insurer up to 20 million SDR (£15.8 million) (see Section 10).
Collision	60	Clean-up (settled) Fishery-related (settled) Clean-up (claimed) Property damage (claimed) **¥25 330 706**	¥608 696 701 ¥270 500 000 **¥879 196 701** ¥11 793 845 ¥13 536 861	Ship not entered in STOPIA 2006. 1992 Fund will therefore have to pay amounts in excess of 1992 CLC limit.
Breaking	1 000-2 000 (estimate)			Claims expected.
Collision	9 400			Claims expected for substantial amounts for clean-up costs and losses in fisheries and tourism sectors.

Notes to Annexes XXII and XXIII

1 Amounts are given in national currencies. The relevant conversion rates as at 31 December 2007 are as follows:

£1 =

Algerian Dinar	Din	133.161	Moroccan Dirham	Mor Dhr	15.46
Bahrain Dinar	BD	0.7485	Philippines Peso	PHP	82.162
Canadian Dollar	Can$	1.9646	Republic of Korea	Won	1863.3
Danish Krone	DKr	10.1522	Russian Rouble	Rb	48.8468
Estonian Kroon	EEK	21.3029	Singapore Dollar	S$	2.8654
Euro	€	1.3615	Swedish Krona	SEK	12.8656
Indonesian Rupiah	Rp	18696.7	UAE Dirham	Dhs	7.3107
Japanese Yen	¥	222.38	United States Dollar	US$	1.9906
Malaysian Ringgit	RM	6.583	Venezuelan Bolivar	Bs	4274.42

£1 = 1.2678 SDR or 1 SDR = £0.7888

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 31 December 2007, are also given.

		€1=	£1=
Finnish Markka	FM	5.9457	8.0951
French Franc	FFr	6.5596	8.9309
German Mark	DM	1.9558	2.6628
Greek Drachma	Drs	340.75	463.9311
Italian Lira	LIt	1936.27	2636.2316
Spanish Peseta	Pts	166.386	226.5345

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.

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