International Oil Pollution Compensation Funds

Fonds internationaux d'indemnisation pour les dommages dus à la pollution par les hydrocarbures

Fondos internacionales de indemnizacion de daños debidos a contaminacion por hidrocarburos

Prestige

Date of incident	13-11-2002
Place of incident	Spain
Cause of incident	Breaking and sinking
Quantity of Spill	Approximately 63 200 tonnes of heavy fuel oil
Area Affected	Spain, France and Portugal
Flag State of Ship	Bahamas
Gross Tonnage	42 820 GT
P&I Insurer	London Steamship Owners' Mutual Insurance Association Ltd (London P&I Club)
CLC Limit	EUR 22 777 986
STOPIA/TOPIA applicable	N/A
CLC + Fund limit	EUR 171 520 703
Compensation Paid	EUR 147.9 million paid by the Fund, and EUR 22.8 paid by the London Club
Year last featured in Annual/Incident Report	2022

Incident

On 13 November 2002, the Bahamas-registered tanker *Prestige* (42 820 GT), carrying 76 972 tonnes of heavy fuel oil, began listing and leaking oil some 30 kilometres off Cabo Finisterre, Galicia, Spain. On 19 November 2002, while under tow away from the coast, the vessel broke in two and sank some 260 kilometres west of Vigo, Spain. The bow section sank to a depth of 3 500 metres and the stern section to a depth of 3 830 metres. The break-up and sinking released an estimated 63 200 tonnes of cargo. Over the following weeks, oil continued to leak from the wreck at a declining rate. It was subsequently estimated that approximately 13 700 tonnes of cargo remained in the wreck.

Impact

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

Response operations

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

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

In anticipation of a large number of claims and after consultation with the Spanish and French authorities, the London P&I Club (the shipowner's insurer) and the 1992 Fund established a claims-handling office in La Coruña, Spain. A claims-handling office was also established in Bordeaux, France, later transferred to the Lorient-based claims-handling office which had been established for the *Erika* incident.

Applicability of the Conventions

At the time of the incident Spain, France and Portugal were Parties to the 1992 Civil Liability Convention (CLC) and the 1992 Fund Convention. The *Prestige* was insured for oil pollution liability with the London P&I Club.

The limitation amount applicable to the *Prestige* under the 1992 CLC is approximately SDR 18.9 million or EUR 22 777 986 . On 28 May 2003, the shipowner deposited this amount with the Criminal Court in Corcubión, Spain, for the purpose of constituting the limitation fund required under the 1992 CLC.

The maximum amount of compensation under the 1992 CLC and the 1992 Fund Convention is SDR 135 million which corresponds to EUR 171 520 703. Pursuant to Article 4.4(e) of the 1992 Fund Convention, and in accordance with past practice, the 1992 Fund Executive Committee decided at its 20th session in February 2003 that the conversion of SDR 135 million into euros should be made on the basis of the value of that currency *vis-à-vis* the SDR on the date of the adoption of the Executive Committee's Record of Decisions of that session, i.e. 7 February 2003. The rate of exchange on 7 February 2003 was EUR 1 = SDR 0.78707700.

Level of payments

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

In May 2003, the 1992 Fund 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 P&I Club. The decision was taken in light of the figures provided by the delegations of the three affected States (Spain, France and Portugal) and an assessment by the 1992 Fund and Club's experts, which indicated that the total amount of the damage could be as high as EUR 1 000 million. The Executive Committee further decided that the 1992 Fund should, in view of the particular circumstances of the *Prestige* case, make payments to claimants, although the London P&I Club would not pay compensation directly to them.

In October 2005, the Executive Committee considered a proposal by the Director for an increase in the level of payments. This proposal was based on a provisional apportionment between the three affected States of the maximum amount payable by the 1992 Fund on the basis of the total amount of the admissible claims as established by the assessment which had been carried out at that time. The proposed increase was also subject to the provision of certain undertakings and guarantees by the States of Spain, France and Portugal.

On the basis of the figures presented by the Governments of the three States affected by the incident, which indicated at that time that the total amount of the claims could be as high as EUR 1 050 million, it was considered 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, the level of payments 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 judgments of competent courts.

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

State	Estimated final admissible claims (EUR) (rounded figures)
Spain	500 million
France	70 million
Portugal	3 million
Total	**573 million**

The Director, therefore, considered that the level of payments could be increased to 30% (EUR 171.5 million/EUR 573 million = 29.9%) if the 1992 Fund was provided with appropriate undertakings.

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

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

In March 2006, the Spanish Government gave the required bank guarantee and undertaking to compensate all claimants in Spain and, as a consequence, a payment of EUR 56 365 000 was made in March 2006 by the 1992 Fund to the Spanish Government. As requested by the Spanish Government the 1992 Fund retained EUR 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 La Coruña, Spain. These payments would be made on behalf of the Spanish Government in compliance with its undertaking, and any amount left after paying all the claimants submitted to the claims-handling office would be returned to the Spanish Government. If the amount of EUR 1 million were to be insufficient to pay all the claims submitted to the claims-handling office, the Spanish Government undertook to make payments to these claimants up to 30% of the amount assessed by the London P&I Club and the 1992 Fund.

Since the conditions set by the 1992 Fund Executive Committee had been met, the Director increased the level of payments to 30% of the assessed amount for damage in Spain and France with effect from 5 April 2006.

*EUR 171.5 million/EUR 573 million = 29.9%.

Investigation into the cause of the incident

An investigation into the cause of the incident was carried out by the Bahamas Maritime Authority (the authority of the flag State of the *Prestige*) and the report of the investigation was published in November 2004 . A summary of the findings of the investigations into the cause of the incident carried out by the Bahamas Maritime Authority, the Spanish Ministry of Public Works, and the French Ministry of Transport and the Sea can be found in the IOPC Funds Annual Report 2005, pages 116.

The Spanish Ministry of Public Works (Ministerio de Fomento) also carried out an investigation into the cause of the incident through the Permanent Commission on the Investigation of Maritime Casualties, which is tasked with determining the technical causes of maritime accidents.

The French Ministry of Transport and the Sea (Secrétariat d'État aux Transports et à la Mer) carried out a preliminary investigation into the cause of the incident through the General Inspectorate of Maritime Affairs, Investigations Bureau, accidents/sea (Inspection générale des services des affaires maritimes, Bureau Enquêtes Accidents/Mer (BEAmer)).

Shortly after the incident, the Criminal Court in Corcubión, Spain, started an investigation into the cause of the incident to determine whether there was any criminal liability in relation to the incident (see section on Criminal proceedings).

A criminal investigation into the cause of the incident had already commenced by an examining magistrate in Brest, France. Subsequently, the magistrate reached an agreement with the Criminal Court in Corcubión by which the criminal file was transferred from Brest to Corcubión.

Claims for compensation

Spain

General overview

The claims-handling office in La Coruña received 845 claims totalling EUR 1 037 million. These included 15 claims from the Spanish Government totalling EUR 984.8 million. The claims, excluding those of the Spanish Government, were assessed at EUR 3.9 million. Provisional payments totalling EUR 565 310 were made in respect of 176 of the assessed claims, mainly at 30% of the assessed amount. Compensation payments made by the Spanish Government to claimants have been deducted when calculating the provisional payments. Some claims were either rejected or could not be assessed due to lack of documentation and no response to the repeated requests from the 1992 Fund.

The experts engaged by the 1992 Fund and the Club also assessed the court claims (see section on Criminal proceedings) submitted by individual claimants in Spain. Provisional payments totalling EUR 101 625 were made at 30% of the assessed amount, taking into account the aid received, in respect of those court claims that had not been submitted to the claims-handling office.

Claims submitted by the Spanish Government

The Spanish Government submitted a total of 15 claims for an amount of EUR 984.8 million in the claims-handling office. 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 to the spill on the basis of national legislation (Royal Decrees); tax relief for businesses affected by the spill; administration costs; costs

relating to publicity campaigns; costs incurred by local authorities and paid by the State; costs incurred by 67 towns that had been paid by the State; costs incurred by the regions of Galicia, Asturias, Cantabria, and the Basque Country; and costs incurred in respect of the treatment of the oily residues. For details regarding the scheme of compensation set up by the Spanish Government see the IOPC Funds Annual Report 2006, pages 109–111.

Removal of oil from the wreck

The claim for the removal of the oil from the wreck, initially for EUR 109.2 million, was reduced to EUR 24.2 million as funding obtained from another source was taken into account.

At its February 2006 session, the 1992 Fund Executive Committee decided that some of the costs incurred in 2003 prior to the oil removal from the wreck, including sealing the oil leaking from the wreck and various surveys and studies that had a bearing on the assessment of the pollution risk posed, were admissible in principle, but that the claim for costs incurred in 2004 relating to the oil removal from the wreck was inadmissible. Following the Executive Committee's decision, the claim was assessed at EUR 9.5 million. For details regarding the assessment of the claim in respect of the cost incurred in the removal of oil from the wreck see the IOPC Funds Annual Report 2006, pages 111–114.

Payments to the Spanish Government

The first claim received from the Spanish Government in October 2003 for EUR 383.7 million was assessed on a provisional basis in December 2003 at EUR 107 million. The 1992 Fund made a payment of EUR 16 050 000 to the Spanish Government, corresponding to 15% of the provisional assessment. The 1992 Fund also made a general assessment of the total admissible damage in Spain and at that time concluded that the admissible damage would be at least EUR 303 million. On that basis, and as authorised by the 1992 Fund Assembly at its October 2003 session, the Director made an additional payment of EUR 41 505 000, corresponding to the difference between 15% of EUR 383.7 million (i.e. EUR 57 555 000) and 15% of the preliminarily assessed amount of the State's claim (i.e. EUR 16 050 000). For further details regarding payments to the Spanish Government see IOPC Funds Annual Report 2006, pages 103–104. That payment was made against the provision by the Spanish Government of a bank guarantee covering the above-mentioned difference (i.e. EUR 41 505 000) from the Instituto de Crédito Oficial, a Spanish bank with high standing in the financial market, and an undertaking by the Spanish Government to repay any amount of the payment decided by the Executive Committee or the Assembly. In March 2006, the 1992 Fund made an additional payment of EUR 56 365 000 to the Spanish Government.

Assessment of the claims submitted by the Spanish Government

The claims by the Spanish Government, totalling EUR 984.8 million, were assessed at EUR 300.5 million.

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

- costs incurred in clean-up operations: applying the Fund's criteria of technical reasonableness, there was found to be a disproportion between the response carried out by the Spanish Government and the pollution and threat thereof, both with regard to the human and material resources employed, and with regard to the length of the operations;
- subrogated claim for the compensation payments made in the fisheries sector in relation to the spill on the basis of national legislation, including tax relief for businesses affected by the spill: some of these payments and tax relief had the character of aid and were paid to the population in the affected areas without consideration for the damage or losses suffered by the recipients of the payments. The 1992 Fund's assessment of these claims was based on an estimation of the losses actually suffered by the fisheries sector;
- value added tax (VAT): the amount claimed by the Spanish Government included VAT. Since the Government recovers the VAT, the corresponding amounts were deducted; and

- removal of oil from the wreck: as noted above, the assessed amount was limited to some of the costs incurred in 2003, prior to the removal of the oil from the wreck, in respect of sealing the oil leaking from the wreck and various surveys and studies that had a bearing on the assessment of the pollution risk posed.

It should be noted that the admissibility criteria regarding the inclusion of VAT in claims has now changed. Please refer to the latest version of the 1992 Fund Claims Manual for more information.

France

The claims-handling office in France received 482 claims totalling EUR 109.7 million. This includes the claims by the French Government totalling EUR 67.5 million. The claims submitted to the claims-handling office were assessed at EUR 61.2 million and provisional payments totalling EUR 5.8 million were made at 30% of the assessed amounts. Some claims were either rejected or could not be assessed due to lack of documentation and no response to the repeated requests by the 1992 Fund.

Claims submitted by the French Government

The French Government submitted claims for EUR 67.5 million in relation to the costs incurred for clean-up and preventive measures. Several meetings have taken place, between the Secretariat, its experts, and the French Government to discuss the assessment of the Government's claims. The 1992 Fund, with the help of its experts, reassessed the claim at EUR 42.2 million. The French Government did not agree with that assessment and decided to maintain its claim in court against the 1992 Fund and other parties.

One of the reasons for the difference between the claimed amount and the assessed amount was that VAT had been deducted when calculating the assessment. At the October 2013 sessions of the governing bodies, the Director submitted a document on the inclusion of VAT in claims for compensation and the French Government submitted a document containing a legal opinion on the issue. The issue of recoverability of VAT by central governments claiming from the IOPC Funds studied further at subsequent sessions of the governing bodies and at the April 2016 session, a new text for the Claims Manual was adopted reflecting the governing bodies' decision at their October 2015 sessions that the IOPC Funds may pay compensation for claims for VAT by central governments if a State's national law allowed for the inclusion of VAT in the State's claim for compensation, and use criteria based on the principles of the law of damages to be applied in cases where the national law was not clear in respect of compensation for VAT by central governments. The Record of Decisions of the relevant sessions, which detail the discussions on VAT are available via the Document Services section of the website (documents IOPC/OCT13/11/1, IOPC/OCT14/11/1, IOPC/OCT15/11/1 and IOPC/APR16/9/1).

No payments have been made to the French Government since the French Government is 'standing last in the queue'.

Portugal

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

Updated on: 30.06.2023

Criminal proceedings

In July 2010, upon conclusion of an investigation into the cause of the incident, the Criminal Court in Corcubión decided that four persons should stand trial for criminal and civil liability as a result of the *Prestige* oil spill, namely, the master, the chief officer, and the chief engineer of the *Prestige* and the civil servant who had been involved in the decision not to allow the ship into a place of refuge in Spain. In the decision, the Court stated that the London P&I Club and the 1992 Fund were directly liable for the damages arising from the incident and that their liability was joint and several. The Court also decided that the shipowner, the ship's management company and the Spanish

Government were vicariously liable.

The proceedings were transferred to a Court in La Coruña, to conduct the criminal trial. The hearing started on 16 October 2012 and continued until July 2013. Since the chief officer of the *Prestige* could not be located, the proceedings continued only against the master, the chief engineer of the *Prestige* and the civil servant.

CIVIL CLAIMS IN THE CRIMINAL PROCEEDINGS

Under Spanish law, civil claims may be submitted in the criminal proceedings as the Criminal Court will decide not only on criminal liability but also on civil liability derived from the criminal action. The Criminal Court acts as a limitation court awarding compensation for losses suffered as a result of the spill.

In May 2003, the shipowner deposited with the Criminal Court in Corcubión the estimated limitation amount applicable to the *Prestige* under the 1992 CLC of approximately SDR 18.9 million or EUR 22 777 986, for the purpose of constituting the limitation fund required under the 1992 CLC.

The 1992 Fund has been a party to the proceedings from the beginning, as a party with strict civil liability under the 1992 Fund Convention.

Two thousand five hundred and thirty-one claims were lodged in the legal proceedings before the Criminal Court in Corcubión. The Criminal Court in Corcubión appointed court experts to examine the claims. In January 2010, the experts appointed by the Court submitted their assessment report. The experts engaged by the 1992 Fund examined the report and concluded that, in general, the court experts had noticed the lack of supporting documentation submitted in most claims. In their assessments, the court experts had not, in most cases, examined the link of causation between the damage and the pollution.

The total amount claimed in the criminal proceedings in Spain was EUR 2 317 million including some EUR 1 214 million claimed for pure environmental damage, mainly by the Spanish Government, and some EUR 2.37 million claimed for moral damage by a number of individuals. However, the Spanish public prosecutor argued that the total cost of the damage in Spain as a result of the incident is EUR 4 328 million and in France EUR 108.7 million, on the basis of a theoretical study on the economic consequences of the *Prestige* incident, which included the claim by the Spanish Government.

In their interventions, some claimants have argued that, since their claims were not against the 1992 Fund but against whoever resulted in being criminally liable, the admissibility criteria applicable under the Civil Liability and Fund Conventions should not be applied in these proceedings. It was further argued that the shipowner should not be entitled to limit its liability.

The 1992 Fund has, in its interventions, defended the application of the Conventions in the proceedings.

JUDGMENT OF THE COURT IN LA CORUÑA

The Court in La Coruña issued its judgment on 13 November 2013. In its judgment, the Court found the master, the chief engineer of the *Prestige* and the civil servant who had been involved in the decision not to allow the ship into a place of refuge in Spain, not criminally liable for damages to the environment. The master was convicted of disobeying the Spanish authorities during the crisis and was sentenced to nine months in prison. He did not, however, need to serve any additional time in prison since he had already served a period under detention.

In regards to the damages arising out of the incident, the Criminal Court can only declare civil liability when there has been a criminal offence. The judgment found that the only criminal offence was the disobedience of the master. However, since this was not the cause of the damage, the Court could not judge on any civil liability arising from the damage.

On the subject of the limitation fund established by the London P&I Club totalling EUR 22 777 986, the Court decided that the limitation fund was at the Club's disposal for the Club to decide on its distribution, subject to any appeal by the affected parties.

Nineteen parties appealed against the judgment of the Court in La Coruña to the Supreme Court.

In view of the fact that the London P&I Club did not participate in the hearing and was mentioned in several of the appeals submitted, the Supreme Court ordered that the Club should be notified of the judgment of the Court in La Coruña.

The 1992 Fund submitted pleadings in reply to the appealing parties' arguments against the civil liability decision. In its pleadings, the 1992 Fund defended the application of the Conventions and reiterated the assessments of the damages claimed by the different parties that the Fund had carried out.

JUDGMENT OF THE SUPREME COURT

In January 2016, the Spanish Supreme Court rendered its judgment after consideration of the appeals submitted against the judgment of the Court in La Coruña. The Supreme Court judgment set aside the judgment of the Court in La Coruña.

Criminal liability

The judgment of the Supreme Court confirmed the acquittal of the chief engineer of the *Prestige* and of the civil servant who had been involved in the decision not to allow the ship into a place of refuge in Spain. However, the Court found the master guilty of a crime against the environment.

The Court considered that the master, as the person responsible for the safe navigation of the ship, including the prevention of pollution, was responsible for the adequacy of the equipment of the ship, undertaking the essential repairs for safe navigation and especially responsible for controlling the weight of the cargo. The Court found that the master had breached his duty of care and acted recklessly in relation to the importance of the affected natural resources and the foreseeability of the risk.

The master was given a two-year prison sentence.

Civil liability

Under Spanish criminal law, the person with criminal liability also has civil liability for any damage caused by the criminal act.

Civil liability of the master

In relation to the civil liability arising from the criminal act, the Court found the master liable for damages; this was to be quantified in subsequent proceedings. The Court found that this civil liability should be established in accordance with civil law. Since it is civil liability arising from a spill from a ship transporting oil, the Court considered that the compensation was regulated by the 1992 Civil Liability and Fund Conventions.

After recognising the channelling of liability under the 1992 CLC, the Court considered, however, that the master could not benefit from the protection under Article III(4) of the 1992 CLC because the damage was a consequence of the master's recklessness, with the knowledge that the damage could occur. This, the Court argued, justified a finding of civil liability of the master.

Civil liability of the shipowner

In the judgment, the Court held that the shipowner had subsidiary civil liability. The Court considered that the shipowner was responsible for the lack of proper maintenance of the ship and that the fault that caused the fracture of the ship was due to a structural failure known to the shipowner.

The judgment also stated that the same considerations which applied to the master also applied to the shipowner. The Court, therefore, considered that the shipowner had acted recklessly and with the knowledge that damage would probably result and that therefore, applying Article V(2) of the 1992 CLC, the shipowner could not benefit from the limitation of liability established by the Convention.

Civil liability of the insurer

The judgment also found that the insurer, the London P&I Club, had direct civil liability, up to the limit of the insurance policy of USD 1 000 million. The Court applied domestic law (criminal law, law of insurance and law of maritime transport) to decide that the insurer should pay compensation up to the amount in the policy of insurance.

Liability of the 1992 Fund

The judgment recognised that the 1992 Fund had strict liability, limited in accordance with the 1992 Fund Convention.

Damages

The judgment established that the quantification of the damages, to be made at a later stage in separate legal proceedings in the Court in La Coruña, should be based on the evidence submitted by all the parties, including experts' reports.

Moral damage

In the judgment, the Court recognised the possibility of moral damage, which includes not only the sense of fear, anger and frustration that may have affected many of the Spanish and French citizens, but also the mark that may have been left by the notion that catastrophes like the *Prestige* incident could affect these citizens at any time. The Court decided that in those cases where moral damage had been claimed, the amount awarded could not exceed 30% of the assessed material damages.

Appeal by the master

The master submitted a motion for dismissal of the Supreme Court judgment, arguing mainly that the judgment breached his fundamental rights of defence, his right to a trial with all the guarantees and his right to legality. The Supreme Court rejected the master's motion. The master requested leave to appeal to the Constitutional Court but was denied leave to appeal.

Proceedings for the quantification of the losses

Following the judgment of the Supreme Court, the case was sent to the Court in La Coruña for the commencement of the proceedings to quantify the losses.

The 1992 Fund, with the help of its experts, examined the information the claimants had submitted to the Court and submitted replies to the claimants' submissions.

The shipowner's insurer, the London P&I Club, also participated in the quantification proceedings. The insurer entered an appearance in the quantification proceedings, without prejudice to the insurer's right to exercise all defences available to it in the appropriate forum, stating that this appearance did not mean the insurer consented

to the Supreme Court judgment. The insurer insisted that it did not admit liability over the CLC limit but that in case this limit was not accepted, its liability could not go over the limit of the insurance policy of USD 1 000 million.

Judgment of the Court in La Coruña on quantum

In November 2017, the Court in La Coruña delivered a judgment awarding compensation totalling EUR 1 654 355 475, including:

- EUR 1 573 622 828 to the Spanish State, including environmental and moral damages;
- EUR 61 258 854 to the French State, which is the amount claimed after deduction of the VAT; and
- EUR 19 473 793 to the remainder of the claimants, including private individuals and regional and local entities.

It should be noted that the operative part of the judgment gave the figure of EUR 1 652 564 284, as reported previously. However, taking the judgment as a whole and navigating through its inconsistencies and calculation errors, it can be seen that the total amount awarded is in reality EUR 1 654 355 475.

The judgment ordered that the amount of EUR 22 777 986 deposited by the London P&I Club is to be distributed among the claimants pro rata to the amounts awarded in the judgment.

The judgment stated that: the liability of the 1992 Fund was strict and limited according to the 1992 Fund Convention; the amount available from the 1992 Fund had to be distributed pro rata among all the victims of the spill; and that the Fund's liability had to be fixed according to the rules that regulate the Fund.

Concerning environmental damage, the judgment also recognised that, under the 1992 Civil Liability and Fund Conventions, compensation for impairment of the environment, other than loss of profit resulting from that impairment, is limited to the cost of reasonable reinstatement measures. However, the wording of the operative part of the judgment was ambiguous as to which party should pay for the environmental damage.

Several parties, including the 1992 Fund, requested from the Court some clarifications and corrections on the quantification judgment. In response, the Court amended its judgment in January 2018, upholding the amount awarded to the Spanish and French States but reducing the amount awarded to the rest of the claimants. As a result of that amendment, the compensation awarded was reduced to EUR 1 650 046 893 . The operative part of the correcting judgment gave the figure of EUR 1 648 255 701, as reported in previous documents. However, taking the judgment as a whole, the amount awarded is in reality EUR 1 650 046 893.

Appeal to the Supreme Court

Several parties, including the 1992 Fund, appealed to the Supreme Court.

The 1992 Fund appealed, *inter alia,* on the basis of an infringement of the provisions in the Conventions, of arbitrary assessment of the evidence and for an internal contradiction between the reasonings and the findings as to the damages. In particular, in its pleadings the 1992 Fund requested the Court to declare that:

- The 1992 Fund's liability does not include pure environmental damage and moral damage, since these types of damages are outside the scope of the 1992 Fund Convention;
- for the purpose of the distribution of the compensation available under the Conventions, account should be taken of the losses recognised under the Conventions to all victims whether or not party to the proceedings, and that the level of payments eventually fixed by the 1992 Fund Executive Committee is respected at least regarding the payments to be made by the 1992 Fund; and
- the material losses awarded should be EUR 300 471 622 to the Spanish State and EUR 42 174 451 to the French State.

Judgment of the Supreme Court on quantum

In December 2018, the Spanish Supreme Court delivered its judgment on the quantification of the losses. After requests for corrections and clarifications, the judgment was amended in January and March 2019. The total amount awarded, after the amendments, was EUR 1 439.08 million (pollution damage EUR 884.98 million + pure environmental and moral damages EUR 554.10 million), as follows:

- The amount awarded to the Spanish State is EUR 1 357.14 million (pollution damage EUR 803.04 million + pure environmental and moral damages EUR 554.10 million).
- The amount awarded to the French State is the full claimed amount i.e. EUR 67.5 million.
- The Supreme Court decided to include VAT in the compensation awarded to the Spanish and French States.
- The amount awarded to individual claimants in Spain and France is EUR 14.44 million.

In addition, the judgment awarded interest, to be quantified by the Court in charge of the enforcement of the judgment.

The judgment clarified that pure environmental and moral damages were not recoverable from the 1992 Fund.

The judgment confirmed its previous decision that the London P&I Club was liable for all the damages caused by the incident, including moral and pure environmental damages, up to the limit of its policy of USD 1 000 million.

Enforcement of the Judgment

The Court in charge of the enforcement of the judgment issued an order requesting the 1992 Fund to pay the limit of its liability after deducting the amounts already paid, i.e. EUR 28 million.

It is, however, the obligation of the 1992 Fund, under the 1992 Fund Convention, to treat all claimants equally and therefore, it is necessary to keep an amount available to pay compensation to those claimants whose claims have not been dealt with by the Spanish judgment.

At its April 2019 session, the 1992 Fund Executive Committee authorised the Director to pay to the Spanish Court EUR 28 million less:

- EUR 800 000 which should be kept available to pay any judgments by French courts; and
- EUR 4 800 which should also be kept available to pay the Portuguese Government to ensure that the principle of equal treatment between claimants is maintained.

In April 2019, the 1992 Fund paid into the Court some EUR 27.2 million. The Fund also provided the Court with a list of the amounts due to the claimants in the Spanish legal proceedings prorated at 12.65% (for the amounts to be paid under the 1992 Fund Convention) and 2.57% (for compensation available under the 1992 CLC).

The final level of payments will not be confirmed until the legal proceedings in France have been resolved, and the distribution made by the Court has been considered. At that time, the Executive Committee will have to decide how to distribute the balance of EUR 800 000 that would not have been used to pay compensation in France and whether EUR 4 800 was due to the Portuguese Government.

In April 2019, the 1992 Fund paid into the Court some EUR 27.2 million. The Fund also provided the Court with a list of the amounts due to the claimants in the Spanish legal proceedings prorated at 12.65% (for the amounts to be paid under the 1992 Fund Convention) and 2.57% (for compensation available under the 1992 1992 Civil Liability Convention (CLC)).

Distribution of payments by the Court

In November 2019, the Court in La Coruña issued an order on the distribution of the amount deposited in Court by the 1992 Fund and the amount corresponding to the Limitation Fund. The distribution of the amounts ordered by the Court largely corresponds with the lists provided by the 1992 Fund of how the compensation available under the 1992 Fund Convention and the 1992 CLC should be distributed among all the claimants in the Spanish legal proceedings.

The Court in La Coruña has made payments totalling EUR 51.7 million to claimants in the Spanish legal proceedings. The Spanish State, who had carried out clean-up operations and had provided advance compensation to victims in Spain, received EUR 40.7 million from the Court. The French State, who had carried out clean-up operations on the French coast after the spill, received EUR 9.3 million. Other claimants in Spain and France have received a total of EUR 1.7 million.

Updated on: 30.06.2023

Civil proceedings

France

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

As at November 2024, there are 42 legal actions pending before the French courts. This figure does not include the action that the French Government brought to protect its rights since its claim has been fully satisfied by the Spanish Supreme Court and the action against the 1992 Fund in France has been withdrawn.

Among the 42 legal actions pending in France, the following should be noted:

- Twenty-three actions totalling EUR 5.2 million are by claimants who also brought actions in the legal proceedings in Spain and in respect of which there is a final judgment in Spain. It would be expected that these actions should be withdrawn as far as the damages comprising the claims overlap with those included in the judgment by the Spanish Court.
- There remain 19 actions totalling EUR 1.2 million pending before French courts.

There are also 38 actions totalling EUR 824 700 brought by claimants in France but the 1992 Fund reached agreements with those claimants, paying EUR 123 906 at 30% of the established losses, as guaranteed by the French Government's claim standing last in the queue.

The French courts have rendered judgments awarding some EUR 1.18 million to claimants in France. The 1992 Fund has paid these claims at 30%.

Updated on: 03.12.2024

Recourse actions

Legal action by Spain against the American Bureau of Shipping (ABS) in the United States of America (USA)

The Spanish Government took legal action against ABS before the Federal Court of First Instance in New York, USA, requesting compensation for all damage caused by the incident, estimated initially to exceed USD 700 million and estimated later to exceed USD 1 000 million. The Spanish Government has maintained 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 Government and in its turn, took action against the Government, arguing that if Spain had suffered damage this was caused in whole or in part by its own negligence. ABS made a

counterclaim and requested that Spain should be ordered to indemnify ABS for any amount that ABS may be obliged to pay pursuant to any judgment against it in relation to the *Prestige* incident.

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

First judgment by the District Court in New York

In January 2008, the District Court accepted ABS's argument that ABS fell into the category of 'any other person who performs services for the ship' under Article III(4)(b) of the 1992 CLC. The Court further ruled that, under Article IX(1) of the 1992 CLC, the Spanish Government could only make claims against ABS in its own courts and it therefore granted ABS's motion for summary judgment, dismissing the Government's claim.

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

Decision by the Court of Appeal for the Second Circuit

The Court of Appeal rendered its decision in June 2009, reversing both the dismissal of the Spanish Government's case and the dismissal of ABS's counterclaims, which the District Court had held did not fall under an exception to the FSIA.

With respect to the Spanish Government's claim, the Court of Appeal held that the 1992 CLC could not divest a United States of America federal court of subject matter jurisdiction. However, in sending the case to the District Court, the Court of Appeal stated that the District Court might still exercise its discretion to decline jurisdiction based on *forum non conveniens* or principles of international comity.

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

Second judgment by the District Court in New York

The District Court issued its second judgment in August 2010, granting ABS's motion for summary judgment and again dismissing the Spanish Government's claims against ABS.

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

Spain appealed against the judgment of the District Court.

Judgment by the Court of Appeal for the Second Circuit

The Court of Appeal for the Second Circuit delivered its judgment in August 2012, dismissing the claim by the Spanish Government. In its judgment, the Court held that the Spanish Government had not produced sufficient evidence to establish that ABS had acted in a reckless manner. In the absence of such evidence of reckless behaviour, the Court avoided ruling on whether ABS owed a duty to coastal states to avoid reckless behaviour.

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

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

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

The Court of Appeal did not address the legal issue of whether ABS owed a duty to coastal states to avoid reckless behaviour. Instead, the Court held that Spain had not proved that ABS had acted in a reckless manner. This approach by the Court of Appeal has left the possibility for that legal issue to be decided in another case.

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

Spain has not appealed against the judgment and therefore, the judgment is final.

Legal action by the French Government against ABS

In April 2010 , the French Government brought a legal action in the Court of First Instance in Bordeaux against three companies in the group of the classification society of the *Prestige*, namely the ABS, arguing that the failings of ABS in its activity of classification of ships had contributed to the occurrence of the incident. The defendants opposed this action relying on the defence of sovereign immunity, arguing that its activity of classification was closely linked to the certification activity which is related to the sovereignty of states, in particular the Bahamas (the flag State of the *Prestige*). The Judge referred the case for a preliminary ruling by the Court on the question of whether ABS was entitled to sovereign immunity from legal proceedings. In a judgment rendered in March 2014, the Court decided that ABS was entitled to sovereign immunity as the Bahamas would be, since ABS was carrying out functions delegated to it by the Government of the Bahamas. The French Government appealed against the judgment.

In March 2017, the Court of Appeal in Bordeaux overturned the ruling of the Court of First Instance, deciding that ABS could not benefit from sovereign immunity. In its decision, the Court considered that France was not relying upon faults committed by ABS in its activity of statutory certification on behalf of the Bahamas State but in the alleged negligence committed by ABS in the performance of its obligations in the technical visits and periodic inspections carried out in the context of its classification activity, which are related to a private agreement between

ABS and the owner of the *Prestige*.

The Court of Appeal ordered the case to be remitted to the Court of First Instance for the continuation of the proceedings in which it would consider pending procedural objections and the merits of the claims. In June 2017, ABS lodged an appeal against the Court of Appeal's decision. The proceedings before the Court of First Instance were, therefore, suspended until the Court of Cassation rendered its decision.

Judgment by the Court of Cassation

The Court of Cassation rendered its judgment in April 2019. The Court considered that the certification and classification work came under different legal regimes and were separable. In the Court's view, only the certification work authorised a private-law company to avail itself of the sovereign immunity of the flag State, which had specially authorised it to issue the statutory certification, on its behalf, to the shipowner.

The Court of Cassation recalled that the Court of Appeal in Bordeaux, in its judgment, had held that the liability of the ABS organisations in this case, which are private law companies, was raised, not for their certification work on behalf of the State of the Bahamas, but for their classification work. This was due to infringements committed in fulfilling obligations to carry out periodic visits and inspections required of them by the agreement ABS had entered into with the owner of the *Prestige*. The Court of Cassation, therefore, upheld the previous judgment and decided that ABS could not avail itself of the defence of sovereign immunity in this case.

Following the Court's decision, the case has gone back to the Court of First Instance in Bordeaux to consider the other issues relating to France's claim against ABS.

Legal action by the 1992 Fund against ABS

Previous considerations

In October 2004, the 1992 Fund Executive Committee decided that the 1992 Fund should not take recourse action against ABS in the USA. The Director was instructed to follow the ongoing litigation in the USA, monitor the ongoing investigations into the cause of the incident and take any steps necessary to protect the 1992 Fund's interests in any relevant jurisdiction.

As regards a possible recourse action in Spain, the Director was advised by the 1992 Fund's Spanish lawyer that an action against ABS in Spain would face procedural difficulties. Criminal proceedings were brought in Spain against four parties, namely the master, the chief officer and the chief engineer of the *Prestige* and the civil servant who had been involved in the decision not to allow the ship into a place of refuge in Spain. ABS was not a defendant in the proceedings. Under Spanish law, when a criminal action has been brought, any action for compensation based on the same or substantially the same facts as those forming the basis of the criminal action, whether against the defendants in the criminal proceedings or against other parties, cannot be pursued until the final judgment has been rendered in the criminal case. On the basis of the advice of the 1992 Fund's Spanish lawyer, the Director did not recommend bringing an action against ABS in Spain.

Legal action by the 1992 Fund against ABS in France

At its October 2012 session, the Executive Committee took note of the judgment rendered by the Court of Cassation in France in the context of the *Erika* incident. It was noted that in its judgment the Court of Cassation had stated that, in relation to the classification society, Registro Italiano Navale (RINA), the Court of Appeal had been wrong in deciding that a classification society could not benefit from the channelling provisions contained in Article III(4) of the 1992 CLC. It was also noted, however, that the Court of Cassation had decided that the damage had resulted from RINA's recklessness and that therefore RINA could not rely on the protection awarded by the 1992 CLC.

It was further noted that the Court of Cassation had not addressed the question of whether the classification society would have been entitled to invoke sovereign immunity since RINA was deemed to have renounced such immunity by having taken part in the preliminary criminal proceedings.

The Director noted that he had previously been advised by the 1992 Fund's French lawyer that in a possible action against ABS in France in the context of the *Prestige* incident, the Court would most likely apply French law. It was also noted that the Court of Cassation judgment in the *Erika* incident, which held RINA liable for the pollution arising from the *Erika* incident, could constitute a precedent that would be followed by a French court in an action against ABS in relation to the *Prestige* incident.

Following the decision of the 1992 Fund Executive Committee at their October 2012 session, the 1992 Fund brought a recourse action against ABS in the Court of First Instance in Bordeaux as an interim measure to avoid the action becoming time-barred under French law.

ABS submitted points of defence alleging that it was entitled to sovereign immunity as the Bahamas (the flag State of the *Prestige*) would be.

The proceedings in the Court of First Instance in Bordeaux were stayed pending the resolution of the legal proceedings in Spain, but have since been reinstated.

A case management hearing took place in January 2020, at which both ABS and the 1992 Fund argued that the issue of sovereign immunity should be dealt with as a priority by the judge in charge of the merits, together with the other admissibility arguments raised by ABS.

ABS has raised the following arguments against the admissibility of the Fund's action against ABS:

- Sovereign immunity: ABS intends to challenge the question of sovereign immunity up to the level of the Court of Cassation in the hope that it might reverse its judgment of April 2019 in the case of the French State against ABS;
- Authority of *res judicata* of a foreign decision: On this point, the 1992 Fund has had to accept that it would have to renounce its claim for the amounts paid in compensation in Spain, since the decision by the US Court of Appeal in the action by Spain against ABS, rejecting Spain's claim, had the authority of *res judicata*. The 1992 Fund nevertheless maintains the claim in subrogation of the rights of the French claimants and the Portuguese State, totalling EUR 14 365 908.
- Channelling: in the case of the *Erika* incident, the Court of Cassation expressed the view that the Registro Italiano Navale (RINA), the classification society that certified the *Erika*, was covered under Article III(4) of the 1992 CLC as persons who perform services for the ship (but the protection was denied because the Court decided that the damage had resulted from RINA's recklessness). ABS argues that, on the basis of that decision, ABS would be protected by Article III(4) of the 1992 CLC and therefore, the Fund's action against ABS would not be admissible.
- Time bar: ABS argues that the 1992 Fund's action is time-barred under the 1992 Civil Liability and Fund Conventions, according to Article VIII of the 1992 CLC.

The 1992 Fund argues as follows:

- Sovereign immunity: ABS cannot benefit from sovereign immunity because ABS is not an emanation of the State of the Bahamas and does not contribute to exercising the sovereignty of that State. In addition, the 1992 Fund has argued that the solution adopted by the Court of Cassation in its April 2019 judgment in the action of France against ABS should be applied in the 1992 Fund's action. In its judgment, the Court of Cassation stated the principle that even if a classification society conducts activities of certification and classification simultaneously, these activities are severable and the classification society is only entitled to benefit from sovereign immunity in the framework of its activity of statutory certification, but not for its activity of classification. The 1992 Fund's action relates to faults committed by ABS in its classification

activity.

- Authority of *res judicata* of a foreign decision: On this point, the 1992 Fund has had to accept that it would have to renounce its claim for the amounts paid in compensation in Spain, since the decision by the US Court of Appeal in the action by Spain against ABS, rejecting Spain's claim, had the authority of *res judicata*. The 1992 Fund nevertheless maintains the claim in subrogation of the rights of the French claimants and the Portuguese State, totalling EUR 14 365 907.98.
- Channelling: Classification societies cannot benefit from channelling of liability, because:

– The classification society is not a 'servant or agent of the owner' of the ship, nor a 'member of the crew' (Article III(4) paragraph (a) of the 1992 CLC). According to the terms of the agreement of classification of vessels, ABS is an independent contractor and cannot act as a servant or agent of any other party.

– The classification society is not a 'pilot or any other person who… performs services for the ship' (Article III(4) paragraph (b) of the 1992 CLC) since it does not participate in the nautical operation of the ship, and the inspections which it is supposed to carry out on the ship are not services provided to the ship but only to the shipowner, at the latter's request or that of the ship's insurers.

- Time bar: Since the 1992 CLC does not apply to actions in tort brought against third parties such as ABS, these actions are not governed by the 1992 CLC. The 1992 Fund's action against ABS would therefore be governed by French law, that provides for a 10-year limitation period. This period started to run on 13 November 2002, the date the *Prestige* Since the 1992 Fund brought its action on 30 October 2012, the 1992 Fund's action is not time barred.
- On the merits of the action, the 1992 Fund argues that the liability of classification societies, follows the rule whereby a party who performs a contract badly shall be liable in tort to those who suffer detriment caused by that bad execution. In the case of the *Prestige*, ABS's contractual breach is based on their failure to comply with stipulations laid down in their classification regulation. In addition, in the context of the criminal proceedings in Spain, the Spanish Court concluded, on the basis of the testimony of several experts, that ABS had displayed gross negligence and recklessness.

In September 2023 the judge in charge of the proceedings decided, in both the French action and the 1992 Fund action, to invite the parties to send their final submissions on the sole questions of admissibility by 12 December 2023. It is only if the actions are held admissible that the Court will re-open the proceedings to deal with the merits of the cases, mainly the cause of the incident and the liability of ABS.

In accordance with the above, the 1992 Fund presented its final submissions on admissibility in November 2023, largely along the lines described previously, with the addition of the following in regards to the channelling provisions in Article III(4) of the 1992 CLC:

- Following the *ejusdem generis* rule, the category of other persons performing services for the ship referred to in Article III(4) of the 1992 CLC is limited to persons other than the pilot, performing services for the ship similar to those of the pilot.
- Such other person, although not a member of the crew, must be a person performing services for the ship similar to those performed by the crew. Such services must, therefore, be performed on board in the course of navigation.

Case management hearings took place in December 2023 and March 2024. At the March 2024 case management hearing, the judge decided to fix the date of the oral pleadings on the questions of admissibility for 11 December 2024.

In view of the resemblances between the actions against ABS by both the French State and the 1992 Fund, the Court has decided that the two cases should be heard on the same date, albeit in two separate hearings.

If the 1992 Fund's action against ABS is considered admissible by the Court, the Fund will have to prove that ABS

was negligent in the way it carried out its work in respect of the classification of the vessel.

The 1992 Fund's lawyer is working with the lawyers engaged by the French Government in consideration of how to proceed with their respective actions against ABS.

Updated on: 30.06.2023

Considerations

The judgment by the Spanish Supreme Court does not have a financial impact on the 1992 Fund. Although the damages caused by the incident exceed by far the amount available for compensation under the international Conventions, the Supreme Court judgment recognised that the 1992 Fund's liability is limited to EUR 148.7 million. The judgment does not have a financial impact on contributors as the 1992 Fund had already levied all the contributions payable in relation to this incident.

The Director, however, considers that the Supreme Court judgment constitutes a dangerous precedent for other incidents in the future.

Application of the criteria for admissibility of claims

Reflecting its experience over many years, the governing bodies of the 1992 Fund have adopted detailed criteria for the assessment of the losses of all classes of claims which are set out in the Claims Manual. While the question of the recoverability of any loss will ultimately be a matter for the courts of Member States, in practice, they are guided by and follow the criteria in the Claims Manual. The Supreme Court ignored the criteria adopted by Member States and made no proper assessment as to their applicability to the claims. In the Director's view, this decision and approach creates a dangerous precedent which other courts might follow in future cases and which endangers the uniform application of the international Conventions in all Member States.

Putting this argument in figures, the losses suffered by the Spanish State were assessed by the 1992 Fund at EUR 300 million. The Supreme Court has awarded EUR 803 million. In the case of France, the 1992 Fund's assessment of the claim by the French Government totalled EUR 42.2 million, whereas the Supreme Court has awarded EUR 67.5 million.

Pure environmental damages and moral damages

The Supreme Court judgment awarded EUR 554.10 million for pure environmental damages and moral damages based on 30% of the losses awarded. The judgment confirmed that the 1992 Fund is not liable for these two types of damages, as Article I(6) of the 1992 CLC does not recognise them. The Director is satisfied that the Court has applied the Conventions on this point. However, this does not apply to the master, the shipowner and the London P&I Club and therefore, these parties would be liable for the pure environmental damages and moral damages.

It is difficult to understand the rationale of the judgment on this point since the 1992 Fund's liability and the shipowner and Club's liability arise from the same Article I(6) of the 1992 CLC. It appears that on this point the Supreme Court has applied internal law (criminal law, law of insurance and law of maritime transport) to the shipowner and Club, and the international Conventions to the Fund.

The international Conventions clearly provide that compensation for impairment of the environment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken. In addition, the Assembly in a Resolution in 1980 decided that compensation could not be paid based on theoretical models.

Applying in part the international Conventions and in part national law is a way to circumvent the Conventions and again sets a dangerous precedent for the future.

Enforcement of the judgment

In order to comply with the judgment of the Spanish Supreme Court, and as authorised by the Executive Committee, the 1992 Fund has paid into Court the amount available from the 1992 Fund under the 1992 Fund Convention, less the amounts already paid by the 1992 Fund and leaving aside a small amount to cover potential liabilities in France and Portugal. The amount paid to the Court is EUR 27.2 million, with EUR 804 800 being retained by the 1992 Fund.

In addition to the payment, the Fund also provided the Court with a list of the amounts due to the claimants in the Spanish legal proceedings, pro-rated at 12.65% (for the amounts to be paid under the 1992 Fund Convention) and 2.57% (for compensation available under the 1992 CLC, i.e. the amount of EUR 22.8 million deposited in Court by the London P&I Club). It is for the Court, however, to distribute the compensation between the claimants. The Court issued an order with a distribution list that largely corresponds with the Fund's suggestion.

The Director is pleased to note that the court in La Coruña has distributed the amount deposited in court by the 1992 Fund and the amount corresponding to the limitation fund except for a small part.

Although the judgment by the Court in La Coruña imposed liability on the London P&I Club up to the limit of the insurance policy of USD 1 000 million, it is uncertain whether it will be enforceable on the Club for any amounts in excess of the limit provided under the 1992 CLC.

Recourse action of the 1992 Fund against ABS

The Court of Cassation in France, in the context of the action of the French Government against ABS, decided that ABS cannot rely on the defence of sovereign immunity. The proceedings will now continue on the merits of the French Government claim against ABS.

In the action of the 1992 Fund against ABS in France, ABS announced its intention to raise again its arguments on sovereign immunity up to the level of the Court of Cassation, with the hope of obtaining, at that level, a decision contradicting the decision rendered by that Court in April 2019. ABS is also arguing that it can benefit from the channelling provisions in the 1992 CLC. The 1992 Fund has presented submissions opposing ABS's arguments.

The 1992 Fund is working with the French Government in consideration of how to proceed with their respective actions against ABS.