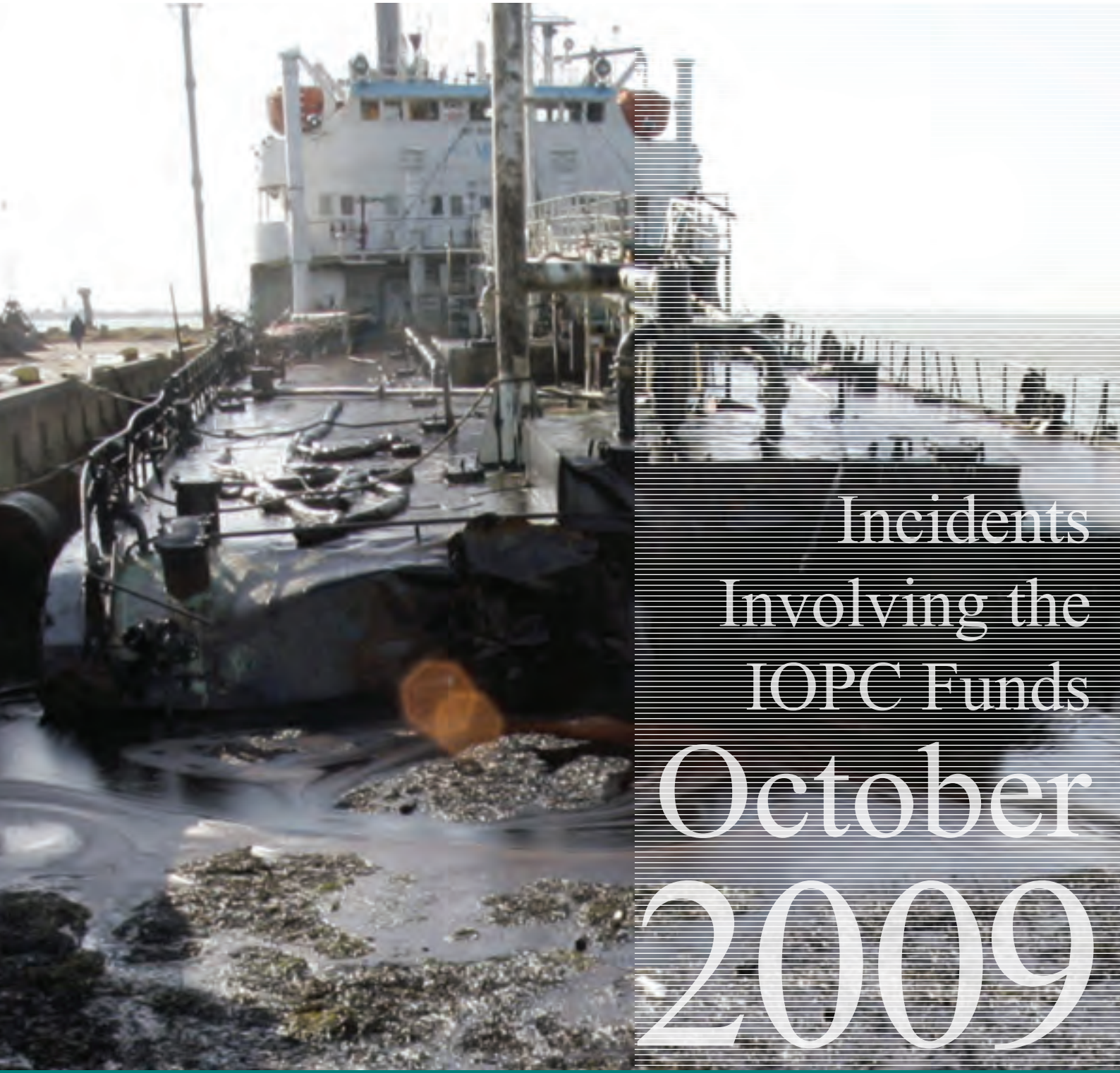

Incidents Involving the IOPC Funds

October 2009

INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS


HEBEI
HONG

Incidents Involving the IOPC Funds October 2009

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Opposite:
The Hong Kong flag VLCC *Hebei Spirit* spilling oil near Taean, Republic of Korea, shortly after being struck by the crane barge *Samsung N°1*.

Cover:
Stern section of the Russian tanker *Volgoneft 139* in the port of Kavkaz on the Kerch Strait in Krasnodar Krai, Russian Federation.

Introduction

This report provides information on incidents in which the IOPC Funds were involved up to October 2009. It sets out the developments in the various cases, 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, which may be found in the Records of Decisions of the meetings of these bodies, available on the IOPC Funds' website (**www.iopcfund.org**).

Figures in this 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. Claim amounts have been rounded, and conversions of currencies into Pounds Sterling have been made at the rate of exchange on the date when the currency was purchased.

Note that the Supplementary Fund was not involved in any incidents up to October 2009.

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 ten 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 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.

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 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

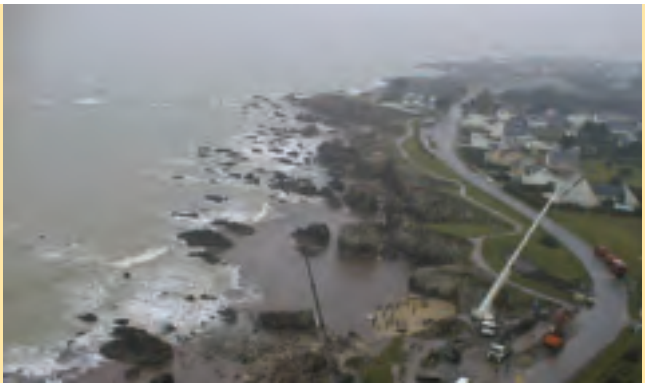
The maximum amount available for compensation under the 1992 Civil Liability Convention and the 1992 Fund Convention for the *Erika* incident is 135 million SDR, equal to FFr1 211 966 811 or €184 763 149.

For an explanation of the decision by the Executive Committee on the conversion of the SDR into French Francs or Euros, reference is made to the Annual Report 2008 (page 77).

Since April 2003 the level of payments has been increased to 100%.

Undertakings by Total SA and the French Government

For details of the undertakings by the French State and by Total SA to 'stand last in the queue' reference is made to the Annual Report 2008 (page 78).



Emulsified oil on the beaches of Le Pouliguen following the *Erika* incident

Claims handling

As at the October 2009 session of the Executive Committee, 7 131 claims for compensation had been submitted for a total of €388.9 million. Payments of compensation had been made in respect of 5 939 claims for a total of €129.7 million, out of which Steamship Mutual, the shipowner's insurer, had paid €12.8 million and the 1992 Fund €116.9 million. Some 1 016 claims, totalling €31.8 million, had been rejected.

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

Assessment and payment of the French State's claim for clean-up

For details of the assessment and payment of the claim by the French State in respect of costs incurred in the clean-up response, reference is made to Annual report 2008 (pages 79 and 80).

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 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.

A number of claimants, including the French Government and several local authorities, joined the criminal proceedings as civil parties, claiming compensation totalling €400 million.

The trial lasted for four months and was concluded on 13 June 2007. The 1992 Fund, although not a party, followed the proceedings through its French lawyers.

Criminal Court of First Instance in Paris

In its judgement, delivered in January 2008, the Criminal Court held the following four parties criminally liable: the representative of the shipowner (Tevere Shipping), the president of the management company (Panship Management and Services Srl), the classification society (RINA) and Total SA. The representative of the shipowner and the president of the management company were sentenced to pay a fine of €75 000 each. RINA and Total SA were sentenced to pay a fine of €375 000 each. All the other accused parties were acquitted.

Regarding civil liabilities, the judgement held the four parties jointly and severally liable for the damage caused by the incident and awarded claimants in the proceedings compensation for economic losses, damage to the image of several regions and municipalities, moral damages and damages to the environment. The Court assessed the total damages in the amount of €192.8 million, including €153.9 million for the French State.

The four parties held criminally liable and a number of civil parties have appealed against the judgement.

Consideration by the Executive Committee in March and June 2008

At the Executive Committee's 40th session, held in March 2008, the French delegation stated that this was the first judgement in France where a court had awarded compensation for damage to the environment in favour of some claimants, such as the Department of Morbihan, which had been able to show actual damage to sensitive areas the Department was responsible

Claims situation as at the October 2009 session of the Executive Committee

Category	Claims submitted	Claims assessed	Claims rejected	Claims paid	Amount paid €
Mariculture and oyster farming	1 007	1 004	89	846	7 763 339
Shellfish gathering	534	534	116	373	892 502
Fishing boats	319	319	30	282	1 099 551
Fish and shellfish processors	51	51	7	44	977 631
Tourism	3 696	3 693	457	3211	76 113 602
Property damage	711	711	250	460	2 556 905
Clean-up operations	150	145	12	128	31 904 886
Miscellaneous	663	655	55	595	8 387 521
Total	**7 131**	**7 112**	**1 016**	**5 939**	**129 695 937**

for protecting. That delegation also stated that the judgement recognised the right of environmental protection organisations to claim compensation for material, moral and also environmental damage caused to the collective interest, which it was their purpose to protect. That delegation pointed out that the judgement was subject to appeal and that, for this reason, the Fund would have to await the decision by the Court of Appeal.

Several delegations expressed concern that the Criminal Court in Paris had awarded compensation for moral and environmental damages when Article I.6(a) of the 1992 Civil Liability Convention (1992 CLC) restricts compensation for impairment of the environment to the costs of reasonable measures of reinstatement actually undertaken or to be undertaken. The point was also made that the judgement had interpreted Article III.4 of the 1992 CLC in such a manner that parties which normally would have been covered by that provision were found not to fall within its scope. It was pointed out that the judgement could have serious consequences for the international compensation regime.

The Director stated that the Secretariat would have to study the judgement in detail to examine the implications it might have for the international compensation regime and for the 1992 Fund and that an examination of the possibilities of a recourse action against any of the parties found responsible for the damages caused by the incident would be part of such a study. The Director considered, however, that it would be difficult at this stage to ascertain what implications the judgement would have since it was subject to appeal and that it would be more efficient for the Secretariat to examine the implications once the Court of Appeal had rendered its judgement.

At the June 2008 session the French delegation informed the Committee that the French State had reached an agreement with Total SA, whereby Total SA had paid, in full and final settlement, the French State €153.9 million, ie the amount awarded by the Criminal Court, which took into account the compensation amounts already received from the 1992 Fund. That delegation also stated that, as a result of this payment, the French State had withdrawn all its civil actions, including those against the Fund.

The hearing before the Criminal Court of Appeal took place in October and November 2009. The judgement is expected in early 2010.

Recourse actions taken by the 1992 Fund

For details of the recourse actions taken by the 1992 Fund in the Civil Court (Tribunal de Grande Instance) in Lorient against various parties, reference is made to the Annual Report 2008 (pages 81 and 82).

Given that, as mentioned above, the judgement of January 2008 by the Criminal Court of First Instance in Paris has been appealed, the 1992 Fund will have to await the outcome of the appeal before making any further decisions regarding these recourse actions.

Legal proceedings

Legal actions against the shipowner, Steamship Mutual and the 1992 Fund were taken by 796 claimants. By 31 October 2009 out-of-court settlements had been reached with a great number of these claimants and the courts had rendered judgements in respect of most of the other claims. Seventeen actions are still pending. The total amount claimed in the pending actions, excluding the claims by Total, is some €20.9 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.

For further details on the various legal proceedings brought in various courts reference is made to the Annual Report 2008 (pages 82 and 83).

Court judgements during 2009 in respect of claims against the 1992 Fund

During 2009, six judgements were rendered by French courts, all 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).

The governing bodies of the 1971 and 1992 Funds have adopted criteria for the admissibility of claims, including those for pure economic loss, which are laid down in the 1992 Fund's Claims Manual.

The judgements rendered in 2009 are summarised below[<1>].

As to judgements rendered before 1 January 2009, reference is made to the Annual Reports 2003, 2004, 2005, 2006, 2007 and 2008.

[<1>] The judgements were also rendered against the shipowner and Steamship Mutual. In order not to complicate the text, reference is made only to the 1992 Fund.

Civil Court in Saint Nazaire

Oyster grower

An oyster grower had submitted two claims totalling €12 796 for losses suffered in the period of December 1999 to February 2000 as a result of the *Erika* incident. The claimant received a payment of €4 048 from the 1992 Fund and third party payments (from OFIMER and the Conseil Général de Loire Atlantique) totalling €12 796. The claimant also submitted a claim totalling €8 030 for losses during the period of March and April 2000, in respect of which the claimant received third party payments totalling €5 240 from the organizations mentioned above. The claimant claimed from the Fund €1 796 allegedly for the balance of his losses. The Fund considered that this claim had no object since the claimant had already been compensated for all the losses claimed.

The Civil Court in Saint Nazaire delivered a judgement in October 2009 in which it concluded that the claimant had not suffered any losses in addition to the losses already compensated and for that reason rejected the claim.

The claimant has not yet appealed against the judgement.

Court of Appeal in Rennes

Tourist train operator

A tourist train operator had submitted a claim for economic losses suffered in 2000 and 2001. The 1992 Fund had accepted the claim related to losses in 2000 and the assessed amount had been paid to the claimant. The Fund had rejected the claim for 2001, totalling €69 625, considering that there was not a sufficiently close link of causation between the losses claimed for 2001 and the pollution caused by the *Erika* incident.

In a judgement delivered in September 2007 the Commercial Court in Lorient accepted the Fund's assessment for losses for 2000 and rejected the claim for 2001 since it considered that there was not a sufficiently close link of causation between the losses claimed and the contamination. The claimant appealed against the judgement.

The Court of Appeal in Rennes delivered its judgement in January 2009. The Court considered that the statistics published by official tourism bodies showed that factors other than the *Erika* incident were to blame if some businesses in the tourism sector had not recovered completely from the declined business results obtained in 1999. The Court concluded that the claimant had not proved the existence of a causal link between the reduction in its business turnover and the pollution caused by the *Erika* and for that reason rejected the claim.

The claimant has not appealed. The judgement is now final.

Two mussel processors

Two mussel processors had submitted claims for economic losses in 2000 and 2001. The claims relating to losses suffered in 2000 had been settled with the 1992 Fund but the claims relating to losses in 2001 had been rejected.

In a judgement delivered in December 2007, the Commercial Court in Lorient agreed with the Fund's assessment as regards losses in 2000. As regards the claim for losses in 2001, the Court stated that the fact that there was no pollution in the area where the claimant's business operated in 2001, which in the Court's opinion was not proved, was not relevant if it was proved that the claimant had suffered losses as a direct consequence of the incident. The Court, however, concluded that the claimant had not proved that he had suffered losses in 2001 as a consequence of the *Erika* incident and therefore rejected the claim. Both claimants appealed against this judgement.

The Court of Appeal delivered its judgement in February 2009 and confirmed the judgement of the Commercial Court. It concluded that the claimants had not proved that there was a sufficiently close link of causation between the alleged losses and the contamination as a result of the *Erika* incident.

The claimants have not appealed. The judgement is now final.

Owner of rental apartments

An owner of rental apartments submitted a claim for economic losses totalling €5 751. The 1992 Fund rejected the claim since the claimant had not proved to have suffered losses as a result of the contamination caused by the *Erika* incident.

The Commercial Court in Lorient rendered its judgement in April 2008. The Court stated that it was not bound by the 1992 Fund's criteria for admissibility and that it was for the Court to interpret the concept of 'pollution damage' and to apply it to the individual claim by determining whether there was a sufficiently close link of causation between the event that lead to the damage ('le fait générateur') and the losses suffered. The Court, however, rejected the claim on the grounds that the claimant had not proved to have suffered losses.

The claimant appealed against the judgement.

The Court of Appeal delivered its judgement in June 2009 confirming the judgement of the Commercial Court on the grounds that the claimant had not proved that there was a sufficiently close link of causation between the alleged losses and the contamination as a result of the *Erika* incident.

The claimant has not appealed. The judgement is now final.

Estate Agent

An estate agent submitted a claim totalling €74 564 for economic losses allegedly suffered in 2000 and linked to the *Erika* incident. The 1992 Fund rejected the claim since the claimant had not proved to have suffered losses as a result of the contamination caused by the *Erika* incident.

The Commercial Court in Lorient rendered its judgement in April 2008. After stating that it was not bound by the 1992 Fund's criteria, the Court rejected the claim on the grounds that the claimant had not proved to have suffered losses as a result of the *Erika* incident.

The claimant appealed against the judgement. In September 2008, the claimant presented an additional claim to the Court for €37 280 for losses incurred in 2001.

The Court of Appeal delivered its judgement in June 2009 and confirmed the decision of the Commercial Court on the grounds that the claimant had not proved that there was a sufficiently close link of causation between the alleged losses and the contamination as a result of the *Erika* incident. With regard to the claim for losses in 2001, the Court of Appeal held that the additional claim was time-barred under Article VIII of the 1992 Civil Liability Convention and Article 6 of the 1992 Fund Convention.

The claimant has not appealed. The judgement is now final.

Shop selling boats and nautical accessories

A company selling, hiring and repairing boats and accessories had submitted a claim for €151 717 for losses suffered as a result of the *Erika* incident. The 1992 Fund had assessed the losses in respect of the sale of accessories at €35 835 (£28 200) and had paid this amount to the claimant. The Fund considered, however, that the purchase of boats was a long-term investment and that it was unlikely to be permanently affected by the consequences of an oil spill since at most the decision to purchase a boat might be postponed. The 1992 Fund had therefore rejected the part of the claim related to the sale of boats since it considered that it had not been proved that there was a sufficiently close link of causation between this loss and the contamination caused by the *Erika* incident. The claimant did not agree with the 1992 Fund and brought a legal action claiming €73 512 for the losses related to the sale of boats.

In a decision rendered in December 2004 the Court appointed a court expert to assess the loss related to the sale of new boats. The court expert issued his report in August 2006 and assessed the claim in the amount of €42 504.

In a judgement rendered in May 2008 the Court, after making a reference to the statement by the Court of Appeal in Rennes in a previous case that it was for the Court to interpret the concept of 'pollution damage' in the 1992 Conventions and to apply it to the individual claim by determining whether there was a sufficiently close link of causation between the event that lead to the damage ('le fait générateur') and the losses suffered, accepted the assessment made by the court expert and awarded the claimant €42 504 for losses related to the sale of new boats. In addition, the court appointed the same court expert to assess the other items claimed, such as the losses incurred in the sale of second hand boats, trailers and electronic material.

The Director, after considering the arguments used by the Court, as well as the views of the 1992 Fund's experts and its French lawyer, appealed against the judgement since he considered the method of calculation and the conclusions reached by the court expert to be questionable.

The Court of Appeal delivered its judgement in October 2009. In its judgement the Court considered that the claimant had not suffered losses in the sale of new boats nor in the other items claimed and for that reason decided to reject the claims.

The claimant has not yet appealed against the judgement.

Legal proceedings by the Commune de Mesquer against Total

Considerations by the Executive Committee in June and October 2007

At its June 2007 session, the Committee was informed that a legal action had been brought by the Commune de Mesquer against Total before the French Courts, where it had argued that the cargo on board the *Erika* was in fact a waste under European law. It was also mentioned that the Court of Cassation had referred this question to the European Court of Justice for an opinion. The Director was asked to explain what impact, if any, these legal proceedings would have on the 1992 Fund.

The Director informed the Committee that the Court of Cassation had referred three questions to the European Court of Justice (ECJ) for an opinion, namely:

- Whether the fuel oil transported as cargo on board the *Erika* was in fact a waste under European law.
- Whether a cargo of fuel oil that accidentally escaped from a ship would, once it had been mixed with seawater and sediments, become a waste under European law.

- If the cargo on board the *Erika* was not a waste but became a waste after accidentally escaping from the ship, should the companies of the Total group be considered responsible for the waste under European law even though the cargo was being transported by a third party?

Considerations by the Executive Committee in June 2008

At its June 2008 session the Committee took note of the legal opinion delivered by Advocate-General Kokott of the ECJ, that stated, *inter alia,* that heavy fuel oil must be treated as a waste when it was discharged as a result of an incident and became mixed with seawater and sediments, but that, in her opinion, this provision of European law was compatible with the provisions of the 1992 Civil Liability and Fund Conventions.

Considerations by the Executive Committee in October 2008

At its October 2008 session the Committee took note of the judgement delivered by the ECJ on 24 June 2008.

The ECJ concluded that the fuel oil transported as cargo on board the *Erika* did not constitute a waste within the meaning of Directive 75/442 on waste[<2>], but that a cargo of fuel oil that accidentally escaped from a ship, once it had been mixed with seawater and sediments, must be considered as waste within the meaning of the Directive.

In its answer to the third question, namely whether, in the event of the sinking of an oil tanker, the producer of the heavy fuel oil spilled at sea and/or the seller of the fuel and charterer of the ship carrying the fuel may be required to bear the cost of disposing of the waste thus generated, even though the substance spilled at sea was transported by a third party, the ECJ stated that the national court may regard the seller of those hydrocarbons and charterer of the ship carrying them as a producer of that waste within the meaning of the Directive, and thereby as a 'previous holder' for the purposes of applying that Directive, if that court reached the conclusion that the seller-charterer had contributed to the risk that the pollution caused by the shipwreck would occur, in particular if he had failed to take measures to prevent such an incident, such as measures concerning the choice of ship.

The Director, after studying the judgement by the ECJ and discussing it with the 1992 Fund's French lawyer, considered that, although it might be too early to reach a conclusion on the possible consequences that the judgement by the ECJ could have for the 1992 Civil Liability and Fund Conventions, the judgement appeared to have taken into account all the relevant international commitments of the EU Member States, including the 1992 Civil Liability and Fund Conventions and that therefore it would appear that the judgement would not affect the applicability of these Conventions.

Judgement by the Court of Cassation

The Court of Cassation rendered its decision in December 2008. In its decision the Court of Cassation followed the advice delivered by the ECJ in its judgement of June 2008. The Court of Cassation quashed in part an earlier judgement by the Court of Appeal in Rennes in which, although the Court of Appeal had considered as 'waste' the fuel oil spilled mixed with sand and water, had rejected the claim by the Commune de Mesquer on the ground that Total could not be considered as a holder or producer of that 'waste' within the meaning of Directive 75/442 on 'waste'. The Court of Cassation concluded that the fuel oil spilled and mixed with seawater and sediment was a 'waste', that Total could be considered as 'previous holder' and/or 'producer' of the waste under the circumstances set out by the ECJ and that the producer of the 'waste' could be required to bear the cost of disposing of the 'waste' if it was established that it had contributed to the risk that the pollution caused by the shipwreck would occur.

The Court of Cassation has transferred the case to the Court of Appeal in Bordeaux for a decision on whether Total contributed or not to the occurrence of the pollution caused by the *Erika* incident. As some questions thereto related will be examined by the Court of Appeal in Paris, which will decide on the appeal of the judgement delivered by the Criminal Court in Paris in January 2008 (see section dealing with the criminal proceedings above), it is likely that the Court of Appeal in Bordeaux will postpone its decision until the Court of Appeal in Paris has delivered its judgement.

There were no developments in these legal proceedings during 2009.

Al Jaziah 1

United Arab Emirates, 24 January 2000

See pages 65–66.

<2> Directive 75/442/EEC of 15 July 1975 on waste, as amended by Commission Decision 96/350/EC of 24 May 1996.

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 63 000 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 on shore in Spain. Significant clean-up operations were also undertaken in France. Clean-up operations at sea were undertaken off Portugal.

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

The *Prestige* had insurance for oil pollution liability with the London Steamship Owners' Mutual Insurance Association Ltd (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 1992 Fund 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 1992 Fund 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. 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.

The *Prestige* under tow

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.

May 2003 session of the Executive Committee

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 1992 Fund's experts, which indicated that the total amount of the damage could be as high as €1 000 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.

October 2005 session of the Executive Committee

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, 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 €
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%[<3>] if the 1992 Fund was provided with appropriate undertakings and guarantees from the three States concerned to ensure that it was protected against an overpayment situation and that the principle of equal treatment of victims was respected.

The Executive Committee agreed 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

[<3>] €171.5 million / €573 million = 29.9%

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 undertaken to make payments to these claimants up to 30% of the amount assessed by the London Club and the 1992 Fund.

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

Claims for compensation

Spain

As at the October 2009 session of the Executive Committee the Claims Handling Office in La Coruña had received 844 claims totalling €1 020.7 million. These include 14 claims from the Spanish Government totalling €968.5 million. The table below provides a breakdown of the different categories of claims:

Category of claim	No. of claims	Amount claimed €
Property damage	232	2 066 103
Clean up	17	3 011 744
Mariculture	14	20 198 328
Fishing and shellfish gathering[4]	180	3 610 886
Tourism	14	688 303
Fish processors/vendors	299	20 833 237
Miscellaneous	74	1 775 068
Spanish Government	14	968 524 084
Total	**844**	**1 020 707 753**

As at the October 2009 session of the Executive Committee, 794 (95.66%) of the claims other than those of the Spanish Government had been assessed for €3.9 million. Interim payments totalling €527 327 (£461 991)[5] had been made in respect of 173 of the assessed claims, mainly at 30% of the assessed amount. Of the remaining claims three were pending clarification, 166 were awaiting a response from the claimant, 21 were awaiting further documentation, 412 (totalling €29.8 million) had been rejected and 19 had been withdrawn by the claimants.

France

As at the October 2009 session of the Executive Committee, 482 claims totalling €109.7 million had been received by the Claims Handling Office in Lorient. This includes the claims by the French Government totalling €67.5 million. The table below provides a breakdown of the different categories of claims:

Category of claim	No. of claims	Amount claimed €
Property damage	9	87 772
Clean up	61	10 512 569
Mariculture	126	2 336 501
Shellfish gathering	3	116 810
Fishing boats	59	1 601 717
Tourism	195	25 166 131
Fish processors/vendors	9	301 446
Miscellaneous	19	2 029 820
French Government	1	67 499 154
Total	**482**	**109 651 920**

Of the 482 claims submitted to the Claims Handling Office, 94% had been assessed by 31 October 2009. Four hundred and fifty-four claims had been assessed for €50 million and interim payments totalling €5.3 million (£4.6 million) had been made at 30% of the assessed amounts in respect of 346 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-six claims totalling €3.8 million had been rejected because the claimants had not demonstrated that a loss had been suffered due to the incident.

Sixty-one claims, totalling €10.5 million, had been submitted by local authorities for costs of clean-up operations. Fifty-four of these claims had been assessed at €4.6 million. Interim payments totalling €1.2 million (£1.1 million) had been made in respect of 41 claims at 30% of the assessed amounts.

[4] One claim totalling €132 million from a group of 58 associations has been withdrawn following a settlement with the Spanish Government.

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

One hundred and twenty-six claims, totalling €2.3 million, had been submitted by oyster farmers for losses allegedly suffered as a result of market resistance due to the pollution. The experts engaged by the London Club and the 1992 Fund had examined these claims and 120 of them, totalling €2.4 million, had been assessed at €468 231. Payments totalling €131 955 (£0.1 million) had been made in respect of 90 of these claims at 30% of the assessed amounts.

The Claims Handling Office had received 195 tourism-related claims totalling €25.2 million. One hundred and eighty-five of these claims had been assessed at a total of €13.2 million and interim payments totalling €3.7 million (£3.2 million) had been made at 30% of the assessed amounts in respect of 149 claims.

Portugal

In December 2003 the Portuguese Government submitted a claim for €3.3 million in respect of the costs incurred for clean up and preventive measures. Additional documentation submitted in February 2005 included a supplementary claim for €1 million, also in respect of clean up and preventive measures. The claims were finally assessed at €2.2 million. The Portuguese Government accepted this assessment. In August 2006 the 1992 Fund made a payment of €328 488 (£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 submitted a total of 14 claims for an amount of €968.5 million. The claims by the Spanish Government relate to costs incurred in respect of at sea and on shore clean-up operations, removal of the oil from the wreck, compensation payments made in relation to the spill on the basis of national legislation (Royal Decrees), tax relief for businesses affected by the spill, administration costs, costs relating to publicity campaigns, costs incurred by local authorities and paid by the Government, costs incurred in the payment of claims based on national legislation (Royal Decrees)[<6>], costs incurred by 67 towns that had been paid by the Government, costs incurred by the regions of Galicia, Asturias, Cantabria, Basque Country and costs incurred in respect of the treatment of the oily residues.

Removal of oil from the wreck

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

At its February 2006 session the Executive Committee decided that some of the costs incurred in 2003 prior to the removal of the oil from the wreck, in respect of sealing the oil leaking from the wreck and various surveys and studies that had a bearing on the assessment of the pollution risk posed, were admissible in principle, but that the claim for costs incurred in 2004 relating to the removal of oil from the wreck was inadmissible (see Annual Report 2006, pages 111–114). Following the Executive Committee's decision, the claim was assessed at €9 487 996.83.

Payments to the Spanish Government

The first claim received from the Spanish Government in October 2003 for €383.7 million was assessed on an interim basis in December 2003 at €107 million, and the 1992 Fund made a payment of €16 050 000 (£11.1 million), corresponding to 15% of the interim assessment. The 1992 Fund also made a general assessment of the total of the admissible damage in Spain, and concluded that the admissible damage would be at least €303 million. On that basis, and as authorised by the Assembly, the Director made an additional payment of €41 505 000 (£28.5 million), corresponding to the difference between 15% of €383.7 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[<7>] (£38.5 million) to the Spanish Government.

Assessment of the claims

The claims by the Spanish Government, totalling €968.5 million, have been assessed at €266.5 million and a letter explaining the assessment has been sent to the Government.

[<6>] For details regarding the scheme of compensation set up by the Spanish Government reference is made to the Annual Report 2006, pages 109–111.

[<7>] See section on the level of payments, pages 10 to 11.

The reason for the difference between the claimed and assessed amounts in respect of the costs incurred in clean-up operations is that, applying the Fund's criteria of technical reasonableness, there was found to be a disproportion between the response carried out by the Spanish State and the pollution and threat thereof, as regards human and material resources and also as regards the extension in time of the operations.

Regarding the compensation payments made in relation to the spill on the basis of national legislation and tax relief for businesses affected by the spill, some of the payments had the character of aid and were paid to the population in the affected areas without consideration of the damage or losses suffered by the recipients of the payments. The tax relief was applied in a similar fashion. Applying the Fund's criteria, an assessment has been made of the losses suffered by the fisheries sector in Spain as a result of the incident.

The amount claimed by the Spanish Government includes VAT and since the Government recovers the VAT payments through the levies, the corresponding amounts have been deducted from the claim.

Another reason for the difference between the claimed and assessed amount can be found in the claim for the removal of oil from the wreck for €109.2 million. At its February 2006 session, the 1992 Fund Executive Committee decided that some of the costs incurred in 2003, prior to the removal of the oil from the wreck, in respect of sealing the oil leaking from the wreck and various surveys and studies that had a bearing on the assessment of the pollution risk posed, were admissible in principle, but that the claim for costs incurred in 2004 relating to the removal of oil from the wreck was inadmissible (see Annual Report 2006, pages 111–114). Following the Executive Committee's decision, the claim was assessed at €9.5 million.

There is insufficient supporting documentation in respect of costs incurred by one of the affected regions and in respect of some compensation payments made on the basis of national legislation. In this regard, the experts are still examining further documentation recently submitted in support of those compensation payments (some 120 000 pages).

Claim by the French Government

In May 2004 the French Government submitted claims for €67.5 million in relation to the costs incurred for clean up and preventive measures. The 1992 Fund and the London Club made a provisional assessment of the claim at €31.2 million. After the analysis of further documentation submitted by the French Government, the claim was reassessed at €38.5 million. A letter was sent to the Government explaining the assessment.

The amount claimed by the French Government includes VAT and, as in the claim by the Spanish Government, this amount has been deducted from the claim.

Part of the difference between the claimed and assessed amounts lies in the lack of sufficient supporting documentation for some items of the claim. Therefore it is possible that the assessed amount could increase if the French Government were to submit the required information. Other parts of the claim have been rejected for being not admissible according to the Fund's criteria.

A meeting took place in November 2009 between the Secretariat, its experts and the French Government, to discuss the assessment of the Government's claim. Further meetings will take place in 2010.

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).

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

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

1992 Fund's involvement

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

Legal proceedings in Spain

Criminal investigation

Shortly after the incident, the Criminal Court in Corcubión (Spain) started an investigation into the cause of the incident to determine whether any criminal liability could arise from the events. The Court was investigating the role of the Master, Chief Officer and Chief Engineer of the *Prestige* and of a civil servant who had been involved in the decision not to allow the ship into a place of refuge in Spain.

In March 2009 the Criminal Court in Corcubión issued a decision declaring the instruction of the case concluded. In the decision the Court exonerated from liability the civil servant who had been involved in the decision not to allow the ship into a place of refuge in Spain and decided to continue the proceedings against the Master, Chief Officer and Chief Engineer of the *Prestige*.

Some of the parties to the criminal proceedings have appealed against this decision, pleading that the Appeal court declares the nullity of the Corcubión Court's decision in respect of the non-liability of the civil servant mentioned above. The French Government has also appealed, pleading that some employees of the American Bureau of Shipping (ABS), the classification society of the *Prestige,* should be incriminated and that proceedings should be initiated against them as well.

In October 2009 the Court of Appeal in La Coruña (Audiencia Provincial) overturned the Criminal Court's decision and decided to reinstate the proceedings against the civil servant who had been involved in the decision not to allow the ship into a place of refuge in Spain.

Civil claims

As at the October 2009 session of the Executive Committee some 4 010 claims have been lodged in the legal proceedings before the Criminal Court in Corcubión (Spain). Six hundred and twelve of these claims involve persons who have submitted claims directly to the 1992 Fund through the Claims Handling Office in La Coruña. Details of the claims made in some of these court actions have been provided by the Court and are being examined by the experts engaged by the 1992 Fund. The Claims Handling Office has examined documentation relating to 382 of the claims submitted in court, out of which three have been settled and paid for a total amount of €24 267.

One thousand nine hundred and ninety-four of these claims have been paid by the Spanish Government under the Royal Decrees[<8>] 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 itself taken legal action in the Criminal Court in Corcubión as well as on behalf of regional and local authorities and 1 867 other claimants or groups of claimants. A number of other claimants have also taken legal action and the Court is considering whether these claimants are eligible to join the proceedings.

Legal proceedings in France

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

Thirty-nine of these claimants have withdrawn their actions, therefore the actions by 193 claimants remain pending in court for compensation claims amounting to a total of €92.6 million.

The courts have granted a stay of proceedings in 28 legal actions, either in order to give the parties time to discuss their claims out of court, or until the outcome of the criminal proceedings in Corcubión is known. Three judgments were rendered during 2009 by the Civil Courts in Bordeaux, Saint Nazaire and Bayonne (see below).

Some 140 French claimants, including various communes, have joined the legal proceedings in Corcubión, Spain.

[<8>] Some 397 claims under the Royal Decrees have been rejected by the Spanish Government.

Judgements by courts in France during 2009

Civil Court in Bordeaux

The owner of a health spa and hotel located near Biarritz brought an action in the Civil Court of Bordeaux claiming €571 270 for loss of income incurred as a result of the *Prestige* incident. The 1992 Fund had assessed the losses at €183 983 based on the claimant's results between 2000 and 2002. The claimant, who had based his claim on a business plan, did not agree with the Fund's assessment.

In a judgement rendered in March 2009, the Court agreed with the 1992 Fund's assessment of the claim. It also took note that any payment of compensation in respect of the *Prestige* incident should currently be limited to 30% of the assessed loss.

The claimant has not appealed and the judgement is therefore final.

Civil court in Saint Nazaire

Two owners of fishing vessels brought an action before the Court of First Instance of Saint Nazaire claiming €419 333 for loss of income allegedly incurred through a reduction in the anchovy population as a result of the *Prestige* incident and €81 000 for the replacement of a fishing net damaged by oil. The 1992 Fund had assessed the damage to the net at €3 000 and rejected the claim for loss of income since no sufficient link of causation was established between the contamination and the alleged loss.

In a judgement rendered in May 2009 the Court agreed with the 1992 Fund's assessment of the claim for loss of income and rejected the claim. As to the claim for the fishing net, the Court assessed the damage at €6 000 to be paid at the current level (30%) of the payments applied by the Fund.

One of the claimants has appealed against the judgement.

Civil court in Bayonne

The operator of two hotels and a health spa in Biarritz submitted a claim, totalling €1 653 083 for losses suffered in 2003 allegedly due to the *Prestige* incident. The 1992 Fund assessed the claim at €398 193 and the claimant received an interim payment of €119 457.60, i.e. 30% of the assessed amount. The Fund based its assessment on the claimant's business results in 2000 and 2001, whereas the claimant had based the calculation of his losses on a provisional budget. After consideration of further information submitted by the claimant in support of the claim, the Fund reassessed the claim at €390 463.

The claimant brought an action against the Fund for €1 653 083 for economic losses suffered and €500 000 for moral damage.

In a judgement rendered in October 2009 the court agreed with the 1992 Fund's assessment of the claimant's losses. In its judgement the court considered that the Fund's criteria for admissibility of claims contained in the 1992 Fund's Claims Manual, even if not binding for the national courts, was a reference and that the assessment of losses should not be based on projected figures but on the claimant's results in the periods before the incident comparable to the affected period. Concerning the claim for moral damages, the Court considered that the claimant had not proved to have suffered damage beyond the economic losses suffered and that moral damages were not included in the definition of pollution damage contained in Article 1.6 of the 1992 Civil Liability Convention.

The claimant has not yet appealed against the judgement.

Court actions in the 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 and estimated later to exceed US$1 000 million. The Spanish State has maintained, *inter alia,* that ABS had been negligent in the inspection of the *Prestige* and had failed to detect corrosion, permanent deformation, defective materials and fatigue in the vessel and had been negligent in granting classification.

ABS denied the allegation made by the Spanish State and in its turn took action against the State, arguing that if the 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.

Defence of sovereign immunity

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

Discovery

For details about the discovery of e-mail communications reference is made to Annual Report 2007, pages 101–104 and Annual Report 2008, page 104.

ABS's defence that it acted as 'the pilot or any other person, (…), who performs services for the ship'

For details about ABS's request for a summary judgement dismissing the Spanish State's action and the counterarguments by the Spanish State, reference is made to Annual Report 2008, page 104.

District Court's decision

In January 2008 the New York 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 argued that the text of the treaty had to be interpreted in accordance with the ordinary meaning given to the terms of the treaty in their context and in light of its object and purpose. It further argued that the *ejusdem generis* rule of construction did not apply because it was only to be used where there was uncertainty as to the meaning of a particular clause in a statute. The Court found no uncertainty or ambiguity in the wording of Article III.4(b) and, therefore, held that it did not need to refer to *ejusdem generis*, negotiation history or other extrinsic sources. The Court further ruled that, under Article IX.1 of the 1992 CLC, Spain could only make claims against ABS in its own courts and it therefore granted ABS's motion for summary judgement, dismissing the Spanish State's claim.

In its decision, the New York Court also denied all pending motions as now being non actionable, except for the pending motions over sanctions for Spain's failure to comply with the discovery requests relating to e-mails.

The Spanish State has appealed against the New York Court's decision.

ABS has also filed an appeal against the Court's decision to dismiss its counterclaims for lack of jurisdiction. The Spanish State has also filed a motion with the Court of Appeal seeking to dismiss ABS's appeal.

For details about the appeal by the Spanish State, its request that the Fund present an *amicus curiae* brief and ABS's counter appeal, reference is made to Annual Report 2008, pages 104–105.

In March 2009 the Court of Appeal granted a motion allowing the Natural Resources Defense Council to file an *amicus curiae* brief. The Court of Appeal also invited the United States to participate in the oral argument and file an *amicus curiae* brief addressing the following questions:

- Whether the 1992 CLC applies to Spain's action against ABS;
- Whether ABS, as a classification society, falls within the scope of the 1992 CLC provision that exempts from liability 'the pilot or any other person who, without being a member of the vessel's crew, performs services for the ship'; and
- Whether the 1992 CLC requires that the Spanish State claim against ABS be adjudicated in a 1992 CLC-Contracting State.

The United States Department of Justice declined the Court's invitation to comment on the interpretation of the 1992 CLC, as the United States is not a Party to the Convention. Instead, the Department of Justice commented only on the issue of whether the 1992 CLC could deprive a District court of subject matter jurisdiction over the claim by Spain against ABS. The Department of Justice stated that the 1992 CLC, to which the United States is not a signatory, cannot divest a United States court of its jurisdiction conferred by a United States statute. However, the Department of Justice did offer the opinion that the District Court Judge would be free to consider the 1992 CLC in the context of whether to decline to exercise its jurisdiction over the case. While taking no position on the forum selection provision of the 1992 CLC, the Department of Justice noted that said provision could be viewed as analogous to a contractual forum selection clause in a private contract and, as such, might be the basis for a court's decision to decline jurisdiction. The Department of Justice also suggested that a District Court would be free to grant international comity to such a forum provision in an international treaty, or to consider the doctrine of *forum non conveniens* and to decline jurisdiction on that basis.

The appeal hearing was held in March 2009. Both Spain and ABS agreed that the basis for the District Court Judge's dismissal of the claim by the Spanish State, that is, that the 1992 CLC ousted the United States District Court from jurisdiction over the case, was wrong. Spain argued that this error required a reversal of the District Court's dismissal of its action, while ABS argued that the Court of Appeal could affirm the dismissal on other grounds, finding that the District Court Judge had exercised her discretion to decline jurisdiction, either on the basis of extending comity to the jurisdictional provisions of the 1992 CLC or on the basis of *forum non conveniens*.

Court of Appeal's decision

The Court of Appeal rendered its decision in June 2009, reversing both the dismissal of Spain's case and the dismissal of ABS's counterclaims, which the District Court had held did not fall under an exception to the Foreign Sovereign Immunities Act (FSIA).

With respect to Spain's claim, the Court of Appeal held that the 1992 CLC cannot divest a U.S. federal court of subject matter jurisdiction. However, in sending the case to the District Court, the Court of Appeal stated that the District Court may still exercise its discretion to decline jurisdiction based on *forum non conveniens* or principles of international comity. The Court of Appeal's decision made the point that ABS' willingness to fully submit to jurisdiction in Spain was a relevant factor in any decision to decline jurisdiction. The Court of Appeal also points out that the District Court should consider the equities in declining jurisdiction at this advanced stage in the litigation process. If the District Court decides to retain jurisdiction, then the Court of Appeal has instructed it to conduct a conflict of laws analysis to determine which law should govern this case.

The Court of Appeal reinstated the original counterclaims by ABS that had been dismissed under the U.S. FSIA, holding that ABS's counterclaims did arise out of issues of duty and causation which were 'similar, if not identical' to the issues raised by Spain's claim.

The case has now been sent to the District Court Judge for further consideration. It is expected that the hearing by the District Court will take place in early 2010.

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.

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 *N°1 Chil Yang* (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 (£4.37 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

All claims arising from this incident except for two have been settled.

Twelve claims in respect of the cost of clean up and preventive measures were settled for a total of KRW 1.9 billion (£1.1 million). Claims by the owners of six restaurants were settled at KRW 3.1 million (£1 860). Claims by 81 women divers for loss of earnings were settled for KRW 36 million (£20 000). Further fishery claims by ten boat owners were settled at KRW 51 million (£28 000). Claims by seven seaweed cultivators were also settled at KRW 33 million (£12 000).

Two seaweed culturists who had initially agreed with the assessed amount, later refused to accept it and commenced legal actions against the two vessels involved in the incident.

Polluted seaweed farm near the port of Busan, Republic of Korea, following the *N°7 Kwang Min* 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 *Nº7 Kwang Min* and the owner of the fishing vessel *Nº1 Chil Yang* was 40:60.

Upon investigating the financial status of the owner of the fishing vessel *Nº1 Chil 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 or KRW 126 million.

As mentioned above, two seaweed cultivators commenced legal actions against 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 83 000 SDR or KRW 126 million.

The 1992 Fund intervened as a claimant in the limitation proceedings in order to recover, to the extent possible, the sums paid in compensation for this incident and registered its claim with the Limitation Court.

In August 2007 the Limitation Court delivered its decision. The Limitation Court assessed the claim by the 1992 Fund in the amount of KRW 1 327 million, and the losses by the two seaweed cultivators at the amount assessed by the 1992 Fund, namely KRW 9.9 million, plus interest. The Limitation Court also assessed the claim of the *Nº7 Kwang Min* against the *Nº1 Chil Yang* at KRW 26 million. The two claimants appealed.

In July 2008 the Court of Appeal decided to consolidate the legal action of the two seaweed cultivators against the *Nº7 Kwang Min* and the *Nº1 Chil Yang* and the action against the *Nº1 Chil Yang* and the 1992 Fund to set aside the decision of the Limitation Court.

In August 2008, the Court of Appeal delivered its judgement in relation to both lawsuits. The Court upheld the assessment decision made by the Limitation Court, which had confirmed the Fund's assessment of the claims. The Court further ordered the owners of the two vessels to pay the losses of the two seaweed cultivators as assessed by the Limitation Court, plus interest. The Court also decided that, if the owner of the *Nº7 Kwang Min* were unable to pay the two claimants, the 1992 Fund would be liable to pay compensation to them. The two claimants appealed.

In September 2009 the Supreme Court delivered its judgement upholding the decision made by the Court of Appeal.

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 *Nº1 Chil Yang* that had been assessed by the Limitation Court at KRW 26 million (£13 800). If the limitation fund were to be distributed in proportion with the court assessment, the *Nº7 Kwang Min* would be entitled to 1.97% of the limitation amount, corresponding to some KRW 2.4 million (£1 280) and therefore the 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 *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 *Nº7 Kwang Min*.

Application for a retrial

In October 2009 the two seaweed cultivators filed an application for retrial to the Busan High Court. As a matter of Korean law, a retrial of a case which has become final is allowed only in very restrictive circumstances. The first hearing of the Court is expected in 2010.

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

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).

For details of the impact of the spill and the clean-up operations reference is made to the Annual Report 2006, pages 120–125.

The Shipowners' Club and the Fund established a claims office in Iloilo to assist with the handling of claims. Throughout 2009, the office continued to be managed by the Club's correspondent in the Philippines with a view to closing it in early 2010 after the majority of claims had been dealt with.

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, 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 is increased, on a voluntary basis, to 20 million SDR. However, the 1992 Fund continues to be liable to compensate claimants if and to the extent that the total amount of admissible claims exceeds the limitation amount applicable to the *Solar 1* under the 1992 Civil Liability 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.

The Fund and the Shipowners' Club agreed that the 1992 Fund would make compensation payments once the limitation amount under the 1992 Civil Liability Convention had been reached and that the Club would reimburse the Fund any payments made within two weeks of being invoiced by the Fund, an arrangement that has worked smoothly throughout.

Claims for compensation

The claims situation as at the October 2009 session of the Executive Committee 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.

Category	Claims submitted	Assessments		Total Paid		Rejected
		No.	Amount PHP	No.	Amount PHP	No.
Capture Fishery	27 812	27 812	206 457 198	25 942	190 396 758	598
Mariculture	771	771	3 682 488	205	3 316 993	463
Miscellaneous	170	168	6 893 874	9	5 590 577	156
Property Damage	3 260	3 260	5 310 184	633	5 121 654	2 505
Tourism	425	424	5 457 164	75	5 381 627	341
Clean up	28	27	789 815 750	15	775 594 885	13
Totals	**32 466**	**32 462**	**1 017 616 658 (£13.6 million)**[<9>]	**26 879**	**985 402 494 (£10.8 million)**	**4 076**

[<9>] While the figure of £13.6 million in the 'Assessments' column has been obtained by using the PHP/£ conversion rate as at 31 December 2009 (£1 = PHP 74.6545) for both paid and unpaid assessments, the £ figure used in the 'Total Paid' column represents actual amounts paid on the basis of the various exchange rates on the dates when payments were made.

The Shipowners' Club and the 1992 Fund have received a further 132 642 claims, not included in the table, mainly from fisherfolk and seaweed producers in Guimaras Island and in the Province of Iloilo. The majority of the associated claim forms were incomplete and a significant number were from people under the age of 18 years, which is the minimum age at which people are allowed to engage in fishing in the Philippines. After a detailed screening process which included comparison of the details on the claims forms with the electoral register, the Club and Fund decided not to process further those forms that did not relate to valid claims.

Economic losses in the capture fishery sector

The Shipowners' Club and the 1992 Fund received 27 812 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. Some 25 942 claimants have received a total of PHP 190 396 758 (£2.04 million) in compensation.

A further 248 claimants have failed so far to collect their compensation. For safety reasons, cheque payments have a limited period of validity, requiring claimants to request re-issue of their payment after the expiry of that period. This creates some fluctuation when payments made are reported as in the table above, since figures relate to cheques issued, not necessarily collected. With some payments having been reissued several times without being collected, a final consolidation of accounts cannot be undertaken until it can be established with some certainty that there is no further demand for compensation for valid and assessed claims.

Five hundred and ninety-eight of the claims submitted have been rejected.

Economic losses in the mariculture sector

The Club and Fund have received 771 claims predominantly from seaweed farmers and fishpond operators for alleged damage to their crops and structures as a result of the contamination. Some 205 claims for a total of PHP 3 316 993 (£41 221) have been paid for losses incurred following losses of harvestable produce. Over a hundred additional seaweed farmers received offers of payment but chose not to accept the compensation, considering it inappropriately low. Significant efforts have been made to assist claimants in supporting the quantum of their losses, however in the absence of additional corroborating evidence, the Club and Fund have been unable to resolve this issue to the satisfaction of the claimants.

A further 463 claims in this category have had to be rejected in the light of very poor documentation, the absence of necessary licences and tenureship documents and often a complete lack of evidence that the resources supposedly damaged were actually affected by oil or existed at all.

Miscellaneous claims

Some 170 claims have been received in this category of which 156 have had to be rejected since the Club and Fund considered that they related to damages not sufficiently closely linked to the contamination, or had not been proven even at the most basic level. This applied in particular to a number of claims from retail businesses on Guimaras.

Nine claims for a total of PHP 5 590 577 (£67 281) have been paid in respect of costs incurred by a number of provincial government units chiefly to compensate for part of the fixed costs of salaries and overtime for municipal staff involved in the response to the incident. An offer has also been made relating to a tenth claim from a local municipality but has not yet been settled.

Dispersant application at sea following the *Solar 1* oil spill

Among the remaining claims is a notification by the Department of Environment and Natural Resources (DENR) that costs were incurred, but despite direct communication, no details or supporting claims documents were ever submitted. Since over three and a half years have lapsed since the costs were incurred, the Club and the Fund now consider this claim time barred.

Property damage

The Shipowner's Club and the 1992 Fund received some 3 260 claims for damage to fishing gear and boats, as well as beach front properties directly affected by oil. Compensation payments were made to 633 claimants for a total of PHP 5 121 654 (£61 204) for the costs of cleaning and in some cases replacing oiled property. The majority of the remaining claims had to be rejected since claimants were unable to provide any evidence of having been affected.

Tourism

The Club and Fund have received some 425 claims in the tourism sector from owners of small resorts, tour boat operators and service providers (eg tour guides) to the tourism industry. Seventy-five claims have been settled and paid for a total of PHP 5 381 627 (£63 904) relating mainly to a reduction in beach tourism following the incident. Several claimants have submitted follow-up claims pertaining to additional losses several months after the incident which were caused by public perception rather than physical contamination of the beaches. These have been assessed in the light of corroborating evidence such as visitor numbers to the island and ferry receipts and were settled and paid where appropriate. In the absence of supporting evidence, over 340 claims had to be rejected despite best efforts by experts engaged by the Club and the Fund to assess alleged losses.

Clean up and preventive measures

Claims from contractors and Petron Corporation for clean-up at sea and on shore, as well as underwater surveys and oil recovery operations, have been settled for a total of PHP 775 220 967 (£8 493 106). Seven individual claims for small scale additional clean-up measures have also been assessed as reasonable and six thereof have now been settled for PHP 373 918 (£4 682). The seventh offer of settlement has not been accepted despite extensive contact with the claimant.

Two claims submitted by the Philippine Coastguard (PCG) in respect of its role in incident response at sea, on shore and during oil removal operations have been received and assessed. The settlement offer made by the Club and the Fund is pending.

Claims in Court

Legal proceedings by 967 fisherfolk

A civil suit was filed in August 2009 by a law firm in Manila that had previously represented a group of fisherfolk from Guimaras Island. The suit pertains to claims of 967 of these fisherfolk for damages totalling PHP 286.4 million for property damage as well as economic losses. The claimants reject the Funds assessment of a 12-week business interruption as applied to all similar claims in this area, arguing that fisheries were disrupted for over 22 months without however providing any factual evidence or support. Under the law of the Philippines the claimants have to prove their losses and it is therefore expected that additional information will be submitted. If and when that information is provided it will be examined and assessments reviewed if justified.

Legal proceedings by the Philippine Coastguard

The Philippine Coastguard (PCG) has brought legal proceedings to ensure its rights are safeguarded in relation to the two claims for costs incurred during clean-up and pumping operations. Since an offer of settlement has been made for both claims, the Club and the Fund are awaiting a decision from the PCG. If the settlement offer is accepted, it is expected that the proceedings will be withdrawn.

Director's considerations

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

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 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 from the bunker oil tank of the *Shosei Maru*. The remaining oil on board was transferred to another vessel. The *Shosei Maru* was subsequently towed to the port of Tonosho in Shodoshima.

The *Shosei Maru* and the *Trust Busan* were both insured with the Japan Ship Owners' Mutual Protection and Indemnity Association (Japan P&I Club). The cargo on board the *Shosei Maru* was insured by Sompo Japan Insurance Inc..

The Japan P&I Club and the 1992 Fund appointed a team of Japanese 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. Several vessels were deployed to apply chemical dispersants on the oil in the water.

On-shore 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.

The clean-up operations were concluded by 31 January 2007.

Applicability of the 1992 Conventions and STOPIA 2006

The limitation amount applicable to the *Shosei Maru* under the 1992 Civil Liability Convention (1992 CLC) is 4.51 million SDR or ¥738 629 760. The ship is not entered in STOPIA 2006. As a consequence, the 1992 Fund is liable to pay the loss or damage caused by the spill in excess of the 1992 CLC limit and within the 1992 Fund's limit.

Claims for compensation

All the claims submitted with regard to this incident were assessed jointly by the 1992 Fund and the Japan P&I Club at a total amount of ¥899 693 953. These claims have been paid by the Japan P&I Club.

Legal proceedings

Investigation into the cause of the incident

In November 2007 the Kobe Marine Accident Inquiry Agency delivered its report in which it concluded that the collision occurred mainly because the *Trust Busan* failed to maintain a proper lookout and turned to port contrary to the regulation under which she was required to alter her course to starboard. However, the *Shosei Maru* also failed to take early action to alter her course to starboard. No decision was made as to the apportionment of liabilities between the *Shosei Maru* and the *Trust Busan*.

Oiled cliffs on an island in the Seto Inland Sea, Japan, following the *Shosei Maru* incident

Volgoneft 139

Limitation proceedings of the *Shosei Maru*

In March 2008 the owner of the *Shosei Maru* established a limitation fund in the Takamatsu District Court in accordance with the 1992 CLC. The Court commenced the limitation proceedings in April 2008 and the 1992 Fund intervened in the proceedings.

In July 2008 the 1992 Fund and the Japan P&I Club reached a settlement agreement, by which the 1992 Fund recognised that it was liable to pay the difference between the total amount paid in compensation by the Japan P&I Club and the limitation amount in accordance with the 1992 CLC. The 1992 Fund then paid to the Japan P&I Club, ¥161 064 193 (£754 823) in compensation for the pollution damage and ¥11 091 695 (£51 981) as its share of the joint survey costs incurred. As a consequence, the 1992 Fund acquired by subrogation the corresponding share of the rights the claimants had against any third party including the owners/demise charterers of the *Trust Busan*.

The limitation proceedings of the *Shosei Maru* were terminated in October 2008.

Limitation proceedings of the *Trust Busan*

In November 2007 the bareboat charterer of the *Trust Busan* made an application to the Okayama District Court for the commencement of the limitation proceedings in order to limit his liability to the applicable limit in accordance with Japanese law, ie 2 076 000 SDR or ¥371 469 060.

The 1992 Fund intervened as a claimant in the limitation proceedings in respect of the *Trust Busan* to recover ¥172 155 888 (£806 804) which the 1992 Fund had paid in compensation and costs for this incident.

In August 2009 the owners of the *Shosei Maru*, the 1992 Fund, Sompo Japan Insurance Inc. and the bareboat charterer of the *Trust Busan* reached a settlement agreement.

In September 2009 the 1992 Fund received ¥74 553 897 from the bareboat charterer of the *Trust Busan* in execution of the settlement agreement. This amount corresponds to about 43% of the amount of compensation and survey costs paid by the 1992 Fund for the *Shosei Maru* incident.

The limitation proceedings of the *Trust Busan* were terminated in November 2009.

This incident was closed in November 2009.

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 severe storm caused rough seas with heavy swell. The aft part of the vessel remained afloat and using the casualty's own engines, the captain managed to beach it on a nearby sand bank. The crew were then rescued and taken to the nearby port of Kavkaz (Russian Federation). The fore part remained afloat at anchor for a while and then sank.

The tanker was loaded with 4 077 tonnes of heavy fuel oil. It is understood that between 1 200 and 2 000 tonnes of fuel oil were spilt. Following removal of 913 tonnes of heavy fuel oil, the aft section was towed to Kavkaz, where it remains for inspection. A month after the incident, the fore part was temporarily raised and 1 200 tonnes of fuel oil from tanks one and two were recovered. In August 2008 the fore part of the wreck was raised again and towed to the port of Kavkaz to prevent further pollution.

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

Clean-up operations and response

Some 250 kilometres of shoreline both in the Russian Federation and in Ukraine are understood to have been affected by the oil. A significant part of the shoreline of the Taman Peninsula, the Tuzla Spit, Chushka Spit and the beaches near the village of Ilyich were allegedly affected by the oil. A joint crisis centre was set up to coordinate the response between the Russian Federation and Ukraine and attempts were made to contain and recover the oil at sea. Shoreline clean up in the Russian Federation is understood to have been undertaken by the Russian military and civil emergency forces under the supervision of the Prime Minister, Mr Viktor Subkov.

During at-sea operations, 200 tonnes of heavy fuel oil were reported to have been recovered. The Ukrainian authorities indicated that an unknown amount of oil sank to the sea bed. However, officials of the Regional Administration of the Krasnodar Region believe this is unlikely. During the shoreline clean up in the Russian Federation some 70 000 tonnes of oily debris with a mixture of soil, sand and sea grass were said to have been recovered.

Heavy bird casualties, in excess of 30 000, were 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. Ukraine deposited an instrument of ratification to the 1992 CLC with the Secretary-General of IMO on 28 November 2007 and this Convention did not, therefore, enter into force in Ukraine until November 2008. Ukraine has not acceded to, or ratified, the 1992 Fund Convention.

The shipowner and his insurer

The *Volgoneft 139* was owned by JSC Volgotanker. In March 2008, Volgotanker was declared bankrupt by the Commercial Court in Moscow.

The *Volgoneft 139* was insured by Ingosstrakh for 3 million SDR, ie the minimum limit of liability under the 1992 CLC prior to November 2003. The minimum limit under the 1992 CLC after November 2003 is however 4 510 000 SDR. There is therefore an 'insurance gap' of some 1.5 million SDR.

The *Volgoneft 139* was not insured by a P&I Club belonging to the International Group of P&I Clubs and was therefore not covered by the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006.

Initial contacts between the Russian authorities and the Secretariat

In November and December 2007, the Secretariat contacted the Russian Embassy in London and the Ministry of Transport in Moscow, offering the help of the 1992 Fund to the Russian authorities to deal with the incident. A number of meetings took place at the 1992 Fund offices at which the compensation regime was explained in detail and information was provided to the Russian authorities. In particular, the 1992 Fund offered to send experts from the International Tanker Owners Pollution Federation (ITOPF) who were on stand-by, ready to travel to the Russian Federation to monitor the situation and provide advice to the Russian authorities in the event claims for compensation were to be made in the future. However, no official reply was received from the Russian authorities and without the required letters of invitation and visas neither the representatives of the 1992 Fund nor the experts from ITOPF could visit the affected area to monitor the clean-up operations.

Further meetings between the Russian Government, claimants and the Secretariat took place in London and in the Russian Federation during 2008. Details can be found in the Annual Report 2008 (pages 117 and 118).

Limitation proceedings and the 'insurance gap'

In February 2008, legal proceedings were brought by a Russian clean-up contractor against the shipowner, the P&I insurer and the 1992 Fund before the Arbitration Court of Saint Petersburg and Leningrad Region. A number of other claimants also brought proceedings in the same court.

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

In April 2008, the 1992 Fund appealed against the Court's ruling. In its pleadings the 1992 Fund argued that the current limit of the shipowner's liability under the 1992 CLC is 4.51 million SDR and that, under the Russian constitution, international conventions to which the Russian Federation is party take precedence over Russian internal law and that therefore the Court's ruling establishing the shipowner's limitation fund at only 3 million SDR should be amended.

In May 2008, the Court of Appeal rendered a decision dismissing the 1992 Fund's request and confirming the interim ruling by the Arbitration Court of Saint Petersburg and Leningrad Region.

The *Volgoneft 139* following the incident in the Kerch Strait, between the Russian Federation and Ukraine

The 1992 Fund appealed to the Second Appeal Court (Court of Cassation).

In September 2008, the Court of Cassation rendered a decision dismissing the 1992 Fund's appeal. The Court of Cassation in its reasoning considered that, since Russian law still provided that the shipowner's limit of liability under the 1992 CLC was, in the case of the *Volgoneft 139*, RUB 116 636 700 equivalent to 3 million SDR, it was for Russian Courts to apply the limits of liability as published in the Russian official Gazette.

The 1992 Fund appealed to the Supreme Court in Moscow, since the Court's decision was in clear contravention of the 1992 CLC as amended with effect from 1 November 2003.

In December 2008 the Supreme Court confirmed the decision by the Court of Cassation.

Hearings took place in December 2008 and March, June, September and December 2009 before the Arbitration Court of Saint Petersburg and Leningrad Region where the Court agreed to postpone its consideration of the merits of the claims until the 1992 Fund and the claimants had had time to discuss the merits and quantum of the claims.

The Fund also used the hearings to ask the Court to reconsider its earlier decision on the shipowner's limitation fund, on the ground that the amendments to the limits of the amount available under the 1992 Civil Liability and Fund Conventions had been officially published in the Russian Federation in October 2008 and that therefore the amended limits were now officially part of Russian national law. The Court stated that it would take a decision on the issue of the increase of the limitation fund when it rendered its judgement on the merits of the claims. The next hearing is scheduled to take place in March 2010.

Considerations by the Executive Committee in March, June and October 2008

The Executive Committee considered the issue of the 'insurance gap' in March, June and October 2008. At the Committee's October 2008 session many delegations expressed their deep concern and disappointment with the fact that the Russian Government had not been prepared to acknowledge that it had failed to correctly implement the Conventions. These delegations stated that they would expect the Russian Government to pay the 'insurance gap' since it was the Government, and not the insurance company, who was responsible for the correct implementation of the Conventions. Two delegations suggested that if the Russian Government did not accept its responsibility for the 'insurance gap', the 1992 Fund, which had an overall responsibility to pay compensation to victims of pollution damage caused by oil spill incidents, would have to pay the missing amount and would then have to take a recourse action against the Russian Government. It was also suggested that the 1992 Fund could deduct the amount corresponding to the 'insurance gap' from the compensation due to the Russian Government.

Cause of the incident

Ingosstrakh has submitted a defence in Court arguing that the incident was wholly caused by a natural phenomenon of an exceptional, inevitable and irresistible character and that therefore no liability should be attached to the owner of the *Volgoneft 139* (Article III.2(a) of the 1992 CLC). If this argument were to be accepted by the Court, the shipowner and its insurer would be exonerated from liability and the 1992 Fund would have to pay compensation to the victims of the spill from the outset (Article 4.1(a) of the 1992 Fund Convention).

The 1992 Fund has appointed a team of experts to examine the weather conditions in the area and the circumstances at the time of the incident to determine the validity of the shipowner's defence. The experts have visited the area where the incident took place and have inspected the aft part of the wreck in the port of Kavkaz.

For details regarding the preliminary conclusions reached by the 1992 Fund's experts, reference is made to the Annual Report 2008, pages 119–122. In summary the conclusion of the experts is as follows:

(i) The storm of 11 November 2007 was not exceptional since there are records of similar and comparable storms being experienced in the region four times in the past 20 years.
(ii) It was not inevitable that the *Volgoneft 139* would be caught in the storm, since there were timely forecasts of the storm and conditions were accurately predicted, so that there had been sufficient opportunities to avoid the vessel being exposed to the storm in the way it had been.
(iii) The storm of 11 November 2007 was irresistible insofar as the *Volgoneft 139* was concerned, as the conditions associated with the storm were in excess of the vessel's design criteria.

Administrative proceedings before Arbitration Court of Krasnodar

Shortly after the incident the Russian authorities imposed an administrative sanction on the shipowner for having caused pollution damage in breach of Russian law and imposed a fine of RUB 40 000. The shipowner appealed against the fine before the Arbitration Court of Krasnodar.

In February 2008, the Arbitration Court of Krasnodar decided to reject the appeal and confirmed the sanction. In its reasoning the Court stated that no evidence had been provided to the Court that the storm of 11 November 2007 had a special or abnormal character. The Court stated that the incident was not unavoidable and that the Master had not taken all possible measures to avoid the breaking of the vessel and the pollution.

It can be inferred from this decision that the Court in Krasnodar considered that this was not a case of *force majeure*.

Arbitration Court of Saint Petersburg and Leningrad Region

At a hearing in September 2009 the Arbitration Court of Saint Petersburg and Leningrad Region noted that the majority of the claimants represented in the proceedings did not agree with Ingosstrakh's position in respect of the storm. The Court also stated that its preliminary view was that the storm did not seem to be something exceptional or unavoidable and that it was a normal maritime risk which shipowners should always take into account.

Considerations of the Executive Committee in June and October 2008

The Executive Committee considered the issue of *force majeure* at its June and October 2008 sessions. At the Committee's October session most delegations agreed with the Director's preliminary conclusion that the incident was not caused by a natural phenomenon of an exceptional, inevitable and irresistible character and expressed the view that in this case the shipowner should not be exonerated from liability in accordance with Article III.2(a) of the 1992 CLC.

The Russian delegation stated that it did not agree with the information provided by the Director that the storm of 11 November 2007 was not exceptional, since according to official reports the weather conditions in the Kerch Strait on that date were absolutely abnormal and had not been encountered in the area for 50 years.

One delegation asked what was meant in the 1992 CLC by 'natural phenomenon of an exceptional, inevitable and irresistible character' and whether, in the interpretation of these words, account would be taken of subjective considerations such as the size of the ship. The Director replied that the concept of 'natural phenomenon of an exceptional, inevitable and irresistible character' was equivalent to what was called *'force majeure'* or 'act of god' in most jurisdictions and that it was meant to be an objective test that would not take into account considerations such as the size of a ship.

Visit to the Kerch (Ukraine) and Kavkaz VTS by the 1992 Fund and its experts

During a visit by the Secretariat and the Fund's experts to the Russian Federation in August 2009 the Russian authorities offered their help to allow the Fund's experts to visit the Vessel Traffic System (VTS) in Kavkaz and speak to those responsible for it. This visit has been scheduled to take place in early 2010.

In November 2009, the Secretariat and the Fund's experts visited the Kerch VTS, in Ukraine, to fully understand the circumstances of the incident.

Claims for compensation

The table on page 28 summarises the claims situation as at the October 2009 session of the Executive Committee. The claims are presented according to the progress made in the assessment or settlement of claims.

A Russian clean-up contractor submitted a claim, totalling RUB 63.9 million, for the cost of clean-up and preventive measures. The claim has been assessed in the amount of RUB 50.8 million and the claimant has agreed with the assessment.

A claim submitted by a local authority in the affected area, totalling RUB 1.1 million, has been assessed as claimed. Another claim submitted by the same local authority, totalling RUB 853 560 in relation to clean-up costs, has been assessed at RUB 805 618. A letter explaining the assessment has been sent to the claimant.

The Federal service on the supervision in the sphere of the use of nature (Rosprirodnadzor) has submitted a claim, totalling RUB 600 000, for costs incurred in environmental monitoring, which has been assessed in the amount of RUB 400 000. Several discussions have taken place between the Fund and Rosprirodnadzor and it is expected that agreement will be reached in the near future.

Claims submitted by the Regional Government totalling RUB 100.2 million for costs incurred in clean-up operations, have been provisionally assessed at RUB 52.9 million. Several meetings have taken place with the claimant, where additional information was provided. The assessment of these claims is very advanced.

Assessment is progressing in respect of the other claims submitted where supporting documentation is available.

Category	Claimant	Claim RUB	Assessed RUB	Status
Clean-up	Contractor	63 926 933	50 766 549	Agreement reached with claimant.
Clean-up	Local Government	1 108 771	1 108 771	Agreement reached with claimant.
Clean-up	Local Government	853 560	805 618	Assessment communicated to claimant.
Environmental monitoring	Federal service on the supervision in the sphere of the use of nature (Rosprirodnadzor)	578 347	393 971	Assessment communicated to claimant.
Clean-up	Regional Government	100 200 000	52 936 178	Preliminary assessment. Advanced assessment is being completed.
Clean-up	Local Government	260 100		Being assessed.
Clean-up	Shipowner and Charterer	37 065 742		Being assessed.
Tourism	Private Industry	21 463 000		Being assessed.
Fisheries	Private Industry	9 688 423		Being assessed.
Clean-up	Port of Kerch (Ukraine)<10>	15 341 177		Being assessed.
Clean-up	Ministry of Emergencies regional and local Government	16 510 643		No supporting documentation submitted.
Fisheries	Private Industry	12 702 000		No supporting documentation submitted.
Environmental restoration	Regional Government	1 819 600 000		More information requested from claimant.
Environmental damage	Federal service on the supervision in the sphere of the use of nature (Rosprirodnadzor)	6 048 078 981		Claim calculated on basis of Metodika.
TOTAL		**RUB 8 147.4 million**	**RUB 106 million**	

It appears from discussions with the Russian authorities that the claim for environmental damage submitted by Rosprirodnadzor on the basis of Metodika (see below section on meetings between the Russian authorities and the Secretariat), totalling RUB 6 048.1 million, has been submitted in court to comply with national legislation and cannot be withdrawn without prior authorisation from the Ministry of Natural Resources. However, the claimants accept the claim is not admissible under the 1992 Conventions and that it is likely to be rejected by the Court. The Russian central Government has, upon a petition by the Ministry of Transport, requested the Ministry of Natural Resources to withdraw the Metodika claim.

<10> Ukraine was not a Party to the 1992 CLC at the time of the incident and it is not a Party to the 1992 Fund Convention. The admissible parts related to measures to prevent pollution damage in the Russian Federation are being assessed.

Request by the Russian delegation

At the Executive Committee's June 2009 session the Russian delegation requested the Committee to consider the possibility of authorising the Director to make payments since, in particular, the salvage contractor mentioned above had incurred substantial costs in preventive measures. In this context, that delegation requested that the Committee consider the possibility of providing an interim payment by the 1992 Fund to the salvage contractor.

The Secretariat replied that, since the shipowner's insurer had deposited a limitation fund with the Court, the salvage contractor should, in principle, be paid from that limitation fund, as under the 1992 Conventions the liability of the 1992 Fund only arose once the shipowner's limitation fund had been exhausted.

Metodika claim

At a meeting in May 2008 the Russian authorities informed the 1992 Fund that the Ministry of Natural Resources had submitted a claim for environmental damage for some RUB 6 048.1 million. This claim is based on the quantity of oil spilled, multiplied by an amount of Roubles per ton ('Metodika'). The Secretariat informed the Russian authorities that a claim based on an abstract quantification of damages calculated in accordance with a theoretical model was in contravention of Article I.6 of the 1992 CLC and therefore not admissible for compensation, but that the 1992 Fund was prepared to examine the activities undertaken by the Ministry of Natural Resources to combat oil pollution and to restore the environment to determine if and to what extent they qualified for compensation under the Conventions.

At the Executive Committee session in October 2008, many delegations expressed deep concern about the use of the 'Metodika' formula. These delegations stated that the 1992 Fund's criteria for admissibility of claims were clear in that only claims for loss or damage actually incurred, or to be incurred, which were substantiated, were admissible under the Conventions and that claims based on an abstract quantification calculated in accordance with a theoretical model were not admissible. It was pointed out that the Russian Government had the obligation to implement the 1992 Civil Liability and Fund Conventions and that apparently the provisions of Russian internal law were in conflict with these Conventions. Some delegations suggested that the Russian Government should amend its internal law in order to comply with its obligations under the Conventions.

Statement by the Russian Delegation and other delegations at the Executive Committee meeting in October 2008

Details of the statement by the Russian Delegation and of the interventions by other delegations can be found in the Annual Report 2008 (pages 123 to 125).

Statement by the Russian Delegation at the Executive Committee meeting in June 2009

At the Executive Committee's June 2009 session the Russian delegation submitted a document in which it stated that the Ministry of Transport of the Russian Federation, acting as coordinator of the incident on behalf of the Government, had forwarded a formal request to the Russian Government with the proposal to invite Rosprirodnadzor to reconsider its claim. The document also stated that the Russian Government had initiated investigations and possible amendments of the related legal Act of the Ministry of the Environment to ensure full compliance with the international provisions.

Regarding the issue of the 'insurance gap', the document stated that the Ministry of Transport of the Russian Federation had initiated all necessary national procedures to make the latest amendments to the 1992 Conventions fully effective in the Russian Federation. It also stated that all the certificates issued to Russian-flagged vessels had been verified and all discrepancies corrected.

The document also stated that the Krasnodar Regional Government and the Ministry of Emergencies of the Russian Federation had applied to the Federal Government of Russia with a request for compensation for their participation in the oil spill response and clean-up operations, that the Federal Government had paid a total amount of about RUB 45 million in compensation and that those payments were not included in any claim currently being considered by the Court. It was also stated that in the view of the Russian Federation, to solve the issue of the 'insurance gap' in the case of the *Volgoneft 139,* consideration could be given to use the payments from the national reserve fund to the mentioned claimants, in order to offset the 'insurance gap'.

At that session several delegations expressed their appreciation of the developments in this case, in particular the positive approach of co-operation between the Russian authorities and the Secretariat, which in their view differed from the initial position of isolation on the part of the Russian authorities.

Meetings between the Russian authorities and the Secretariat

During 2009, a number of meetings were held in London and Moscow between the Russian authorities, the Secretariat and the Fund's experts to facilitate the exchange of information and to monitor the progress of claims.

Meetings in Moscow and Krasnodar in August 2009

Representatives of the Secretariat and the Fund's experts visited Moscow and Krasnodar in August 2009, where they held meetings with the Ministry of Transport, Rosprirodnadzor, several local authorities in the Krasnodar area and a representative of the owner and the charterer of the *Volgoneft 139*.

At the meeting with the Ministry of Transport, the representative of that Ministry explained that the Minister of Transport had sent a formal request to the Deputy Prime Minister of the Russian Federation requesting him to instruct the Ministry of Natural Resources to review the claim by Rosprirodnadzor against the 1992 Fund so that this claim would meet the requirements of the 1992 Conventions and to make amendments to Russian legislation so as to bring it in line with those Conventions. A copy of the letter was provided to the 1992 Fund's delegation.

The Ministry of Transport's representative recalled that the Russian Government, through the Federal Fund of the Ministry of Emergencies, had paid some RUB 48 million towards costs of clean-up operations and that local authorities had requested additional funds from the Federal Government. It was suggested the Russian Government could submit a claim for the amounts paid from the Federal Fund and put it as a guarantee to cover the insurance gap. The Ministry of Transport's representative stated that the Russian Government would provide documents to support these payments so that the Fund's experts could assess those costs in accordance with the Fund's criteria.

At the meeting with Rosprirodnadzor in Moscow the issue of 'Metodika' was discussed, including the letter from the Minister of Transport to the Deputy Prime Minister of the Russian Federation. Rosprirodnadzor stated that the Deputy Prime Minister had contacted the Minister of Natural Resources. It also stated that there was a conflict between an international treaty and national legislation, that Rosprirodnadzor had submitted the 'Metodika' claim only to comply with national legislation and that it could not withdraw the claim without prior authorisation from the Ministry of Natural Resources.

In Krasnodar, the 1992 Fund attended meetings with the regional branch of Rosprirodnadzor and local authorities that had submitted claims for costs incurred during the response to the pollution. During these meetings the assessment of their claims was explained to the claimants, and additional information was provided to the 1992 Fund in response to the assessment queries. The claimants stated that they would submit further information in support of some claims.

Meetings in Kiev and Kerch in November 2009

Representatives of the Secretariat and the Fund's experts had planned to visit Moscow, Kavkaz and Kerch in November 2009. Since no visas were obtained in time for the visit, the Fund representatives decided to accept the offer of a claimant and to hold the meeting in Kiev.

As stated above, representatives of the Secretariat and the Fund's experts visited the Kerch VTS where a number of questions were put to the officers in the VTS regarding the organisation of the VTS in general and communications with the *Volgoneft 139* at the time of the incident. The information provided is being examined by the Fund's experts.

A visit to the VTS in Kavkaz is planned for early 2010.

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 N°1* while at anchor about five nautical miles off Taean on the west coast of the Republic of Korea. The crane barge was being towed by two tugs (*Samsung N°5* and *Samho T3*) when the tow line broke. Weather conditions were poor and it was reported that the crane barge drifted into the tanker, puncturing three of its port cargo tanks.

The *Hebei Spirit* was laden with about 209 000 tonnes of four different crude oils. Due to inclement weather conditions, repairs of the punctured tanks took four days to complete. In the meantime, the crew of the *Hebei Spirit* tried to limit the quantity of cargo spilled through holes in the damaged tanks by making it list and transferring cargo between tanks. However, as the tanker was almost fully laden, the possibilities for such actions were limited. As a result of the collision a total of 10 900 tonnes of oil (a mix of Iranian Heavy, Upper Zakum and Kuwait Export) escaped into the sea. The remaining oil in the damaged tanks was transferred to other tanks on board and to another vessel. Once stabilised, the *Hebei Spirit* proceeded to the Hyundai Oilbank terminal in the port of Daesan (Republic of Korea), where the cargo was discharged.

Shortly after the incident the Korean Government declared it a national disaster and on 24 December 2007 the *Hebei Spirit* was arrested at the suit of the Korean Marine Pollution Response Corporation (KMPRC), a state-owned pollution response agency.

The *Hebei Spirit* is owned by Hebei Spirit Shipping Company Limited. It is insured by Assuranceföreningen Skuld (Gjensidig) (Skuld Club) and managed by V-Ships Limited. The crane barge and the two tugs are owned and/or operated by Samsung Corporation and its subsidiary Samsung Heavy Industries, which belong to the Samsung Group, Korea's largest industrial conglomerate.

The Fund and the Skuld Club appointed a team of Korean and international surveyors to monitor the clean-up operations and investigate the potential impact of the pollution on fisheries, mariculture and tourism activities.

Impact of the spill

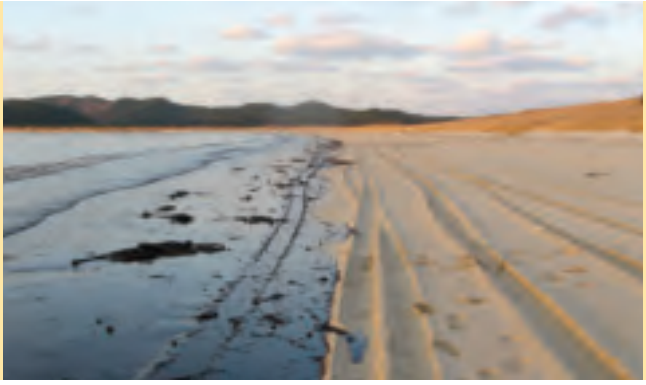
Much of Korea's western coast has been affected to varying degrees. Shoreline composed of rocks, boulders and pebbles, as well as long sand amenity beaches and port installations in the Taean Peninsula and in the nearby islands, were polluted. Over a period of several weeks, mainland shorelines and islands further south also became contaminated by emulsified oil and tar balls. A total of some 375 kilometres of shoreline were affected along the west coast of Korea. A considerable number of commercial vessels were also contaminated.

The west coast of the Republic of Korea hosts a large number of mariculture facilities, including several thousand hectares of seaweed cultivation. It is also an important area for shellfish cultivation and for large-scale hatchery production facilities. The area is also exploited by small and large-scale fisheries. The oil affected a large number of these mariculture facilities, as it passed through the supporting structures, contaminating buoys, ropes, nets and the produce. The Korean Government financed the removal operations of the most affected oyster farms in two bays in the Taean Peninsula. The removal operations were completed in early August 2008.

The oil has also impacted amenity beaches and other areas of the Taean National Park. The Taean Peninsula is a favourite tourist destination for visitors from the Seoul metropolitan area, with an estimated 20 million visitors every year, mostly in the months of July and August.

Clean-up operations

The Korea National Coast Guard Agency, a department of the Ministry of Maritime Affairs and Fisheries (MOMAF), has overall responsibility for marine pollution response in the waters under the jurisdiction of the Republic of Korea. By the first quarter of 2008, responsibility for overseeing onshore clean up had been passed on to the affected local governments.



Oil stranding following the *Hebei Spirit* incident

The Coast Guard coordinated the response at sea. Over 100 vessels of the Coast Guard, the Navy and KMPRC were deployed to carry out clean-up operations. Over 1 500 fishing vessels were also deployed. The Coast Guard applied dispersants from vessels and later helicopters over patches of floating oil. Tens of kilometres of booms were also deployed at sea and along coastal areas.

The government-led response at sea was completed within two weeks although a large number of fishing vessels were still deployed in the following weeks to tow sorbent booms and collect tar balls. Some were used to transport manpower and materials to offshore islands in support of clean-up operations until later in the year.

The Korean Coast Guard tasked a total of 21 licensed clean-up contractors, supported by local authorities and fisheries cooperatives to undertake shoreline clean-up operations. Onshore clean-up operations were carried out at numerous locations along the western coast of Korea. Local villagers, army and navy cadets and volunteers from all over Korea also participated in the clean-up operations. In excess of one million man-days were worked during the first two months. Clean-up operations involved both manual and mechanical removal of bulk oil and the work of a large number of volunteers wiping rocks and pebbles using sorbent materials.

The removal of the bulk oil was completed by the end of March 2008. The major part of secondary clean-up operations, involving, among other techniques, surf washing, flushing and hot water high-pressure treatment, were completed by the end of June 2008. Some clean-up operations in remote areas continued until October 2008.

The 1992 Civil Liability and Fund Conventions

The Republic of Korea is a Party to the 1992 Civil Liability Convention (CLC) and a Member State of the 1992 Fund, but not a Member State of the Supplementary Fund.

As a consequence, since it is very likely that the total amount of damages will exceed the limitation amount applicable under the 1992 CLC, the Fund will be liable to pay compensation to the victims of the spill.

The tonnage of the *Hebei Spirit* (146 848 GT) is in excess of 140 000 GT. The limitation amount applicable is therefore the maximum under the 1992 CLC, namely 89.77 million SDR. The total amount available for compensation under the 1992 CLC and the 1992 Fund Convention is 203 million SDR.

Level of payments

The Executive Committee, at its March 2008 session, authorised the Director to settle and pay claims arising from this incident to the extent that they did not give rise to questions of principle not previously decided by the Committee. The Executive Committee also decided that the conversion of 203 million SDR into KRW would be made on the basis of the value of that currency *vis-à-vis* the SDR on the date of the adoption of the Executive Committee's Record of Decisions of its 40th session, ie 13 March 2008 at the rate of 1 SDR = KRW 1 584.330, giving a total amount available for compensation of KRW 321 618 990 000.

At the same session the Committee noted that, based on a preliminary estimation by the Fund's experts, the total amount of the losses arising as a result of the *Hebei Spirit* incident was likely to exceed the amount available under the 1992 Civil Liability and Fund Conventions. In view of the uncertainty as to the total amount of the losses, the Committee decided that payments should for the time being be limited to 60% of the established damages.

In June 2008, the Executive Committee took note of new information which indicated that the extent of the damage was likely to be superior to that initially estimated in March 2008. At that session, the Committee decided that, in view of the increased uncertainty as to the total amount of the potential claims, and in view of the need to ensure equal treatment to all claimants, payments made by the Fund should for the time being be limited to 35% of the established damages.

The Executive Committee decided to maintain the level of payment at 35% of the amount of the established damages, and to review the situation at its next session, at the October 2008 session, as well as in March, June and October 2009.

As of October 2009, the latest estimate of the total amount of the losses caused by the spill was between KRW 542 000 million and KRW 577 000 million.

Actions by the Korean Government

Hardship payments made by the Korean Government

The Korean Government informed the Fund that payments totalling KRW 117.2 billion had been made to residents in the affected areas. Out of this amount, the Central Government has provided KRW 76.8 billion, the Chungcheongnam Province KRW 15 billion and private donors KRW 25.4 billion. The local authorities in the affected provinces have distributed the payments.

It has been reported in the press that in Taean County, which is one of the most affected areas, a total of 18 757 households received payments between KRW 746 862 and KRW 2 916 600.

In June 2008 the Korean Government informed the Executive Committee that these payments were made as donations to the affected residents. The payments therefore did not constitute payment for compensation of pollution damage and would not fall within the scope of Article 9.3 of the Fund Convention.

Payments by local authorities

A number of local authorities in the affected provinces have made payments totalling KRW 4 770 million to claimants in the clean-up sector in respect of the cost of villagers' labour in January and February 2008, corresponding to the difference between the amount claimed against the Fund and the Skuld Club and the amount assessed. A number of local authorities in the affected provinces have also made payments totalling KRW 9 569 million to claimants in the clean-up sector for similar costs incurred during the period March to June 2008, corresponding to the amounts claimed against the Skuld Club and the Fund. One local authority has made payment totalling KRW 23.5 million to claimants for villagers' labour costs incurred in the period after August 2008. All these local authorities have submitted claims in respect of these payments.

Special Law for the support of the victims of the *Hebei Spirit* incident

At the June 2008 session of the Executive Committee, the Korean Government informed the Fund that a Special Law for the Support of Affected Inhabitants and the Restoration of the Marine Environment in respect of the *Hebei Spirit* Oil Pollution Incident was approved by the National Assembly in March 2008. Under the provisions of the Special Law, the Korean Government was authorised to make payments in full to claimants based on the assessments made by the Skuld Club and the Fund within 14 days from the date they submit proof of assessment to the Government. Claimants could therefore receive compensation in full for the losses suffered as a result of the incident based on the assessments of claims by the Fund and the Skuld Club. The Special Law entered into force on 15 June 2008.

At the same session the Korean Government also informed the Fund that if the Fund and the Skuld Club paid claimants compensation on a pro-rata basis, the Korean Government would pay the claimants the remaining percentage so that all claimants would receive 100% of the assessment.

As at the October 2009 session of the Executive Committee the Korean Government had made payments totalling KRW 29 900 million to 292 claimants in the clean-up sector based on assessments by the Fund and the Skuld Club. The Korean Government has submitted a subrogated claim for these payments.

Loans granted by the Korean Government

As a measure to assist victims of pollution damage as a result of the incident, the Korean Government has granted loans totalling KRW 1 330 million to 16 clean-up contractors through an agreement with the National Federation of Fisheries Cooperative.

Korean Government decision to 'stand last in the queue'

At the June 2008 Session of the Executive Committee the Korean Government informed the Committee of its decision to 'stand last in the queue' in respect of compensation for clean-up costs and other expenses incurred by the central and local governments. The Korean Government further informed the Executive Committee that it expected its claims for which it would 'stand last in the queue' to be in the region of KRW 89 billion, but that this figure was likely to increase as the Government continued to incur costs in order to regenerate the local economy, including works to reinstate the environment and promote consumer spending.

The Fund and the Skuld Club are in frequent contact with the Korean Government to maintain a coordinated system for the exchange of information regarding compensation in order to avoid duplication of payments.

Cooperation Agreements between the Korean Government, the shipowner and the Skuld Club

In January 2008, discussions took place on compensation issues which resulted in the First Cooperation Agreement concluded between the shipowner, Skuld Club, KMPRC and MOMAF. The Fund was consulted during the negotiations but is not a party to the Agreement. Details on the contents of the First Cooperation Agreement can be found in document 92FUND/EXC.40/9.

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

In July 2008 a Second Cooperation Agreement was concluded between the shipowner, Skuld Club and the Korean Government (Ministry of Land, Transport and Maritime Affairs (MLTM), which had incorporated part of the functions of MOMAF). Under this Agreement, the Club undertook to pay claimants 100% of the assessed amounts up to the shipowner's limit of liability under the 1992 CLC, namely 89.77 million SDR. In return, the Korean Government undertook to pay all claims in full, as assessed by the Club and Fund, as well as all amounts awarded by judgements under the 1992 CLC and 1992 Fund Convention in excess of the limit so as to ensure that all claimants would receive compensation in full. The Korean Government further undertook to deposit the amount already paid out by the Skuld Club to claimants into court should the Limitation Court order a deposit of the limitation fund.

Claims office

In January 2008, in anticipation of receiving a large number of claims, and after consultation with the Korean Government, the Fund and the Skuld Club opened a Claims Office (the Hebei Spirit Centre) in Seoul to assist claimants in the presentation of their claims for compensation. The office became fully operational on 22 January 2008. The Hebei Spirit Centre has a manager and six supporting staff members.

Claims for compensation

As at the October 2009 session of the Executive Committee the Skuld Club and the Fund had received 7 960 claims totalling KRW 1 503 billion on behalf of 51 970 claimants. A further 30 155 claims, totalling about KRW 325 billion, were being registered.

Out of all the claims reviewed by the Skuld Club and the Fund, 929 had been approved for KRW 77 171 million and 978 claims had been rejected. Interim payments totalling KRW 65 926 million (£36.4 million) had been made by the Skuld Club in respect of 740 claims, including payments made to the Korean Government totalling KRW 25 105 million in respect of 260 claims paid under the Special Law. These payments had been made at 100% of the assessed amount.

The remaining claims had been queried and were awaiting response from the claimant. Most claims were submitted with very poor or no supporting documentation.

As at the October 2009 session of the Executive Committee the Fund had received 82 125 claims, most of them from small-scale fishermen affected by the oil spill. These claimants are represented by fishery cooperatives or committees. In past incidents in the Republic of Korea, the fishery cooperatives or committees submitted the claims on behalf of their members and the Fund registered and assessed the collective losses of each cooperative or committee who would then distribute the compensation to its members.

The practice of previous incidents in the Republic of Korea cannot however be applied in the *Hebei Spirit* incident as a consequence of the Special Law, which entitles any claimant, who has submitted a claim for compensation and has not received an offer of compensation within six months of the submission of their claim, to receive a loan from the Korean Government.

In order to comply with the provisions of Korean Law, the Fund has to register the names and details of each fisherman member of the cooperative or committee individually. The Fund has therefore had to redesign the Web-based Claims Management System (WCMS) to enable registration of each claim individually while maintaining the possibility of assessing the loss of the cooperatives or committees as single groups.

Category of claim	Number of claims	Claimed amount (KRW million)	Claims assessed > 0	Assessed amount (KRW million)	Claims paid	Paid amount (KRW million)	Claims rejected
Clean up and preventive measures	251	193 053	162	60 829	117	50 889	6
Property damage	18	2 819	8	349	5	301	1
Fisheries and mariculture	1 244	684 807	141	9 929	131	8 365	42
Tourism and other economic damage	6 446	620 126	618	6 064	487	6 371	929
Environmental damage	1	2 195	-	-	-	-	-
Total	**7 960**	**1 503 000**	**929**	**77 171**	**740**	**65 926 (£36.4 million)**	**978**

Fisheries restrictions

Following the incident, the Korean Government established a number of fisheries restrictions. The restrictions began to be lifted in some areas in April 2008. The last restrictions were lifted in September 2008. Details of the process followed by the Korean Government to lift the restrictions can be found in document IOPC/OCT09/3/8/1, paragraph 2.3.

Examination of the data provided by the Korean Government regarding the basis on which the fisheries restrictions were imposed and lifted indicated, in the Secretariat's view, that on the basis of the scientific and technical information available, all of the fisheries should reasonably have been reopened before the actual date when the restrictions were lifted.

In June 2009 the 1992 Fund Executive Committee decided that the assessment of claims in the fisheries sector should be based on conclusive scientific information available to the Fund. Therefore, any losses suffered by fishermen after a point in time when the Korean Government could have reasonably had the opportunity to lift the restrictions should not be considered due to the contamination caused by the incident and should, in principle, not be considered admissible for compensation. The Skuld Club and the Fund are assessing claims from fishermen affected by the fisheries restrictions in accordance with the Executive Committee decision.

Investigations into the cause of the incident

Investigation in Korea

An investigation into the cause of the incident was initiated soon after the incident by the Incheon District Maritime Safety Tribunal in Korea.

In September 2008, in a decision rendered by the Incheon Tribunal, both the two tugs and the *Hebei Spirit* were considered at fault for causing the collision. The Tribunal found that the Master and the Duty Officer of the *Hebei Spirit* were also partly liable for the collision between the crane barge and the *Hebei Spirit.*

A number of defendants, including Samsung Heavy Industries, the Masters of the tug boats and the Master and Duty Officer of the *Hebei Spirit* have appealed against the decision to the Central Maritime Safety Tribunal.

In December 2008 the Central Maritime Safety Tribunal delivered its decision. The decision of the Central Tribunal is similar to the one of the Incheon Tribunal in that the two tugs were found mainly responsible and the Master and the Duty Officer of the *Hebei Spirit* were also found partly liable for the collision between the crane barge and the *Hebei Spirit*.

Investigation in China (Hong Kong Special Administrative Region) (China (HKSAR))

An investigation into the cause of the incident had also been initiated by the ship's flag State administration in China (HKSAR). The results of the investigation have not yet been published.

Legal proceedings

Criminal proceedings

In January 2008, the Public Prosecutor of the Seosan Branch of the Daejeon District Court (Seosan Court) brought criminal charges against the Masters of the crane barge and the two tugs. The Masters of the two tugs were arrested. Criminal proceedings were also brought against the Master and Chief Officer of the *Hebei Spirit*. The Master and Chief Officer of the *Hebei Spirit* were not arrested, but they were not permitted to leave the Republic of Korea.

In June 2008, the Seosan Court delivered its judgement to the effect that (i) the Master of one of the tugboats was sentenced to three years imprisonment and a fine of KRW 2 million, (ii) the Master of the other tug boat was sentenced to one year imprisonment, (iii) the owner of the two tug boats (Samsung Heavy Industries), was sentenced to a fine of KRW 30 million, (iv) the Master of the crane barge was found not guilty and (v) the Master and Chief Officer of the *Hebei Spirit* were also found not guilty.

The Public Prosecutor and the owner of the tug boats filed an appeal against the judgement, pending which the Master and Chief Officer of the *Hebei Spirit* were still not permitted to leave the Republic of Korea.

In December 2008, the Criminal Court of Appeal (Daejeon Court) rendered its judgment. In its judgment, the Daejeon Court reduced the sentence against the Masters of the two tugboats. The judgement overturned the not-guilty judgements for the Master of the crane barge and the Master and Chief Officer of the *Hebei Spirit.* The owner of the *Hebei Spirit* was also given a fine of KRW 30 million and the Master and Chief Officer of the *Hebei Spirit* were arrested.

In April 2009, the Korean Supreme Court annulled the Court of Appeal's decision to imprison the crew members of the *Hebei Spirit* and they were allowed to leave the Republic of Korea. The Supreme Court, however, upheld the decision to imprison the Masters of one of the towing tugs and of the crane barge and confirmed the fines imposed by the Court of Appeal.

In June 2009 the Master and Chief Officer of the *Hebei Spirit* were released from arrest and left the Republic of Korea.

Civil Proceedings

Limitation proceedings by the owners of the *Hebei Spirit*

In February 2008, the owners of the *Hebei Spirit* made an application to commence limitation proceedings before the Seosan Branch of the Daejeon District Court (Limitation Court). The Limitation Court decided to postpone its decision on the shipowners' right to limit his liability since the shipowners had not provided evidence that claims in excess of the limitation amount had been submitted and since the results of the criminal investigation had not been presented to the Court.

In August 2008, at a hearing, the owner of the *Hebei Spirit* requested the Court to issue an order granting the shipowner's right to limit its liability. The Court however, decided not to grant the request and to give time to the victims of the oil spill to register their claims.

In February 2009, the Limitation Court rendered an order for the commencement of the limitation proceedings. According to the Limitation Order, the persons who have claims against the owners of the *Hebei Spirit* had to register their claims by 8 May 2009, failing which the claimants would lose their rights against the limitation fund. Also in February 2009 a number of claimants appealed to the Daejeon Court of Appeal against the decision of the Limitation Court to commence limitation proceedings. In July 2009 the appeal was dismissed. A number of claimants appealed to the Supreme Court. The appeal is still pending.

One hundred and twenty six thousand three hundred and sixteen claims totalling KRW 3 597 billion were submitted to the Limitation Court. The Limitation Court indicated that it would not accept further claims. The claimants would however still have time to modify the amount of their claim until such time as the Limitation Court would complete the assessment of the claims.

The Limitation Court held a first hearing in June 2009. The Korean lawyers acting for the Skuld Club, the Fund and for a number of claimants, attended the meeting. It was agreed among the parties present that the Court Administrator would review the assessments by experts engaged by the Skuld Club and the Fund as well as the assessments by the experts engaged by the claimants, rather than appointing Court experts.

In August 2009, the Limitation Court indicated its intention to monitor on a regular basis the progress in the registration and assessment of claims, and to schedule its subsequent hearings when the claims assessment process was more advanced.

The 1992 Fund, through its Korean lawyers, is following the developments in the limitation proceedings.

Limitation proceedings by the bareboat charterer of the two tugboats and the crane barge

In December 2008, the bareboat charterer of the two tug boats and of the crane barge, Samsung Heavy Industries (SHI), filed a petition requesting the Seoul Central District Court to issue an order granting the right to limit its liability in the amount of 2.2 million SDR.

In March 2009, the Limitation Court rendered the order for the commencement of the limitation proceedings. The Court decided to grant SHI the right to limit its liability and set the limitation fund to KRW 5 600 million (£2.9 million) including legal interest. SHI deposited this amount in court. The Limitation Court also decided that claims against the limitation fund should be registered with the Court by 19 June 2009.

In June 2009, a number of claimants appealed to the Seoul Court of Appeal against the decision of the Limitation Court to grant to the bareboat charterer the right to limit its liability. The Seoul Court of Appeal has not made a decision yet.

Claims by fishery interests

In December 2007, a group of fishery claimants belonging to the Seosan Fisheries Cooperatives made an application to Seosan Court requesting the Court to order the preservation of evidence and to appoint a court expert to assess the losses.

In March 2008, another group of fishery claimants from the area of Boryeong City and Hongsung County made a similar application to the Hongsung Court.

The 1992 Fund has instructed its Korean lawyers to intervene in the proceedings to ensure that the interests of the Fund are protected.

In January and April 2008 respectively, the Courts of Seosan and Hongsung appointed the Maritime Research Institute of Pukyong National University and the Fishery Science Institute of the Jeonnam University as the court expert tasked with the assessment of the damages arising from the *Hebei Spirit* incident. The Courts ordered that any material that the court experts receive from the claimants is made available to the experts engaged by the Skuld Club and the Fund who should have unrestricted access to any material necessary to conduct the assessment of losses.

Injunction against the experts engaged by the Club and Fund

In March 2008, three fishermen and two owners of raw-fish restaurants filed an application for an injunction with the Seoul Central District Court. This was aimed at preventing the experts appointed by the Club and the Fund from carrying out the assessments on the grounds that they were not qualified under Korean Law to carry out such work.

In April 2008, the Court dismissed the application since the claimants still had the right to bring the claims into court if they did not agree with the assessment. The Court stated that under Korean law the experts engaged by the Club and Fund were authorised to carry out the investigation and assessment of damages arising from an oil pollution incident. The claimants appealed against the decision.

In March 2009, the Seoul Court of Appeal rejected the appeal and confirmed the decision by the Seoul Central District Court. In April 2009, the claimants appealed against the decision to the Supreme Court of Korea.

In July 2009, the appeal was dismissed by the Supreme Court of Korea. This decision is final.

Recourse action against Samsung C&T Corporation (Samsung C&T) and SHI

In January 2009, the owners and insurers of the *Hebei Spirit* commenced a recourse action against Samsung C&T and SHI the owner and operator/bareboat charterer of the two towing tugs, the anchor boat and the crane barge, in the Court of Ningbo in the People's Republic of China, combined with an attachment of SHI's shares in the shipyards in China as security.

In January 2009, the Director decided that in order to protect the interests of the 1992 Fund, the Fund should also commence its own recourse action against Samsung C&T and SHI in the Court of Ningbo in the People's Republic of China, combined with an attachment of SHI's shares in the shipyards in China as security.

In January 2009, the Ningbo Maritime Court accepted the two recourse actions filed by the owner/Skuld Club and the 1992 Fund. The total amount claimed in each action is RMB 1 367 million or US$200 million. The Court also accepted the two applications for attachment of SHI's shares in the shipyards and issued orders accordingly.

In relation to the attachment of SHI's shares, the Fund arranged for the deposit of the required countersecurity, corresponding to 10% of the amount claimed or US$20 million (£12.3 million) through the Skuld Club.

At its session in March 2009, the 1992 Fund Executive Committee endorsed the decision taken by the Director in January 2009 to commence recourse action against Samsung C&T and SHI in the Ningbo Maritime Court in China at the same time as the owner and the insurer of the *Hebei Spirit*. The Committee also decided that the Fund should continue the recourse action.

Service of proceedings on both Samsung C&T and SHI was effected in September 2009 but both have filed applications objecting to the jurisdiction of the Court of Ningbo and, in the case of SHI, objecting to the attachment. Submissions in response to the applications have been lodged on behalf of the 1992 Fund and the decision of the Court of Ningbo on all applications is expected shortly.

Incident in Argentina

Argentina, 25/26 December 2007

The incident

Following reports of oil at sea on 26 December 2007 the Argentine authorities undertook over-flights of the coastal area off Caleta Córdova, Chubut Province, Argentina, and reported a slick covering about 14 km^2 and estimated to contain about 50–200 tonnes of crude oil. Later the same day, a significant quantity of oil impacted the shoreline in Caleta Córdova. A total of 5.7 kilometres of coast was reported to have been affected and shoreline clean-up operations were undertaken by local contractors under the supervision of the provincial Government.

An investigation into the cause of the incident was commenced by the Criminal Court of Comodoro Rivadavia (Argentina). Shortly before the pollution was discovered, the Argentine tanker *Presidente Arturo Umberto Illia (Presidente Illia)* (35 995 GT) had been loading oil at a loading buoy off Caleta Córdova. The vessel was detained by the Court and an inspection of the ship was carried out by the maritime authorities. This revealed a fault in the vessel's ballast system and an inspection carried out subsequently at the port of discharge also revealed that there were residues of crude oil in three ballast tanks.

The owner of the *Presidente Illia* and its insurer, however, contest liability and argue that the oil which impacted the coast must have come from another source.

Impact of the spill

Some 400 birds were reported to have died as a result of the spill. Animal welfare and environmental associations, together with some 250 volunteers, undertook bird rescue and rehabilitation. A bird recovery centre was set up in an abandoned poultry farm.

Local fishing activities were disrupted, although the operator of the loading buoy arranged for transport of the subsistence fishermen to alternative sites further along the coastline to enable them to continue their fishing operations. Nevertheless, economic losses have been suffered by the fisheries sector.

The area affected by the spill is used for recreational purposes and it is therefore expected that there will be losses in the tourism sector.

Clean-up operations

Clean-up operations on the shoreline were undertaken from 27 December 2007 to 22 February 2008 by local contractors under the supervision of the local Government.

Clean up was concentrated on the 1.5 kilometres of coastline most heavily oiled and involved, *inter alia*, the removal of some oiled beach substrate. Local environmental scientists advised against this measure and less intrusive methods of clean up were used thereafter.

Approximately 160 m^3 of oily water and 900 m^3 of oily debris were collected during the clean-up operations.

1992 Civil Liability and Fund Conventions

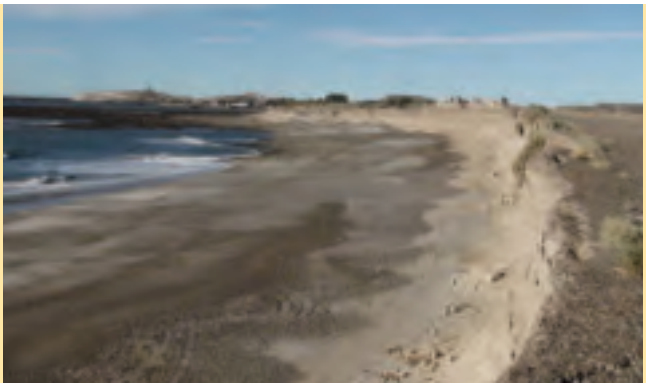
Argentina is a Party to the 1992 Civil Liability (1992 CLC) and Fund Conventions. The limit of liability of the owner of the *Presidente Illia* under the 1992 CLC is estimated to be 24 067 845 SDR.

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

Investigations into the cause of the incident

Soon after the spill the Prefectura Naval (maritime authorities) started an investigation into the incident. The maritime authorities inspected the *Presidente Illia*, both in Caleta Córdova and in the port of discharge, Campana. These inspections revealed a fault in the ballast system, residues of crude oil in three ballast tanks and traces of crude oil in the ballast-discharging line. In addition, measurement reports allegedly showed that the quantity received ashore at the discharge port was notably less than the quantity transferred to the vessel at the loading port.

A number of other vessels in the area were inspected by the maritime authorities but none was detained.



Oil on the beach at Caleta Córdova, Argentina

Legal proceedings

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

Following a court order, the *Presidente Illia* was detained at Campana in January 2008. The ship remained under detention in connection with the investigation into the cause of the incident until March 2009. An inspection of the ship revealed a leak in the ballast line passing through Nº1 Centre cargo tank. In a second inspection, residues of crude oil were found in three ballast tanks. The Court investigated in particular the role of the shipowner's representative (superintendente), the Master and several other officers of the *Presidente Illia,* the operator of the loading buoy and the inspector of the cargo.

In March 2008 the Criminal Court rendered a preliminary decision that named the shipowner's representative (superintendente), the master and several other officers of the *Presidente Illia*, as parties responsible for the incident.

The Court considered that whilst the *Presidente Illia* was loading Escalante crude oil on 25 and 26 December 2007 at a loading buoy off Caleta Córdova, an unknown quantity of the oil that was being loaded had entered the ballast system due to a fault in the ballast line, and had subsequently been spilled emulsified with water during the deballasting process.

The conclusions of the Court are supported by chemical analyses which show that remains of hydrocarbons were found in the ballast pipes as well as in the pump of segregated ballast from the *Presidente Illia,* and that these remains matched the Escalante type oil loaded at the loading buoy, and were also substantially similar to the samples taken on the shore in Caleta Córdova. When the authorities carried out their inspection and took samples upon the vessel's arrival at the port of discharge, they observed the dripping of hydrocarbon from the ballast-discharging pipe. Moreover, the information contained in the relevant reports by the cargo inspector allegedly indicates that the quantity received ashore at the discharge port was notably less than the quantity transferred to the vessel at the loading port.

The accused parties have appealed.

The shipowner and the insurer maintain that the *Presidente Illia* was unlikely to have caused the damage. They argue that any spill caused by the *Presidente Illia* was very minor and highly unlikely to have reached the coast and that the oil that reached the coast must therefore have come from another source. The shipowner and the insurer also argue that anonymous oil spills are frequent in Caleta Córdova and question the validity of the analysis carried out by the laboratory appointed by the Court.

Claims handling

Representatives of the shipowner, the West of England Club and the 1992 Fund met in Buenos Aires with their lawyers and experts in April 2009. It was agreed that there would be three joint experts to cooperate in the claims handling process and that one of the experts would also act as a focal point to coordinate the claims process.

The Fund, with the experts and lawyer, also visited the area affected by the spill. During that visit, meetings took place with a representative of the Chubut Province, small groups of fishermen in Caleta Córdova and a representative of the Municipality of Comodoro Rivadavia, who stated that the Municipality would be likely to make a claim for costs incurred following the incident, in relation to aid paid to fishermen. At these meetings, the compensation regime was explained and claims forms were handed out to the fishermen.

Between May and September 2009, meetings between the Club's and Fund's expert acting as the focal point and the claimants took place in Caleta Córdova to gather additional information.

Claims for compensation

Claims in Court

Shortly after the spill, the province of Chubut submitted a request for security for US$50 million (£30 million) to the Criminal Court of Comodoro Rivadavia. The Court dismissed the request for security on procedural grounds.

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

Thirty-two inhabitants of the area have so far been admitted by the Court as claimants.

Claims outside Court

Claims have been submitted by some 74 individuals for a total of some AR$9.7 million (£1.6 million). Of these individuals, 71 work in the fisheries sector and three in the tourism sector. A large number of the claimants in the fisheries sector fish on foot for octopus, limpets and mussels, while others fish from a boat, mainly for silverside, and a further number are buyers and resellers of fish. One is the owner of a fish processing plant and five are employees of that plant; a further 18 individuals process fish at home. Claims from the tourism sector are from two grocery store workers and a tourist/fishing tours operator. The claims are being assessed by the Club's and Fund's experts.

Further claims are expected.

Actions taken by the 1992 Fund

The Secretariat was informed about this incident in May 2008 and has since been following the investigations into the cause of the incident carried out by the Criminal Court of Comodoro Rivadavia. The Secretariat has learnt that the preliminary decision by that Court points to the *Presidente Illia* as the origin of the pollution.

The limit of liability of the owner of the *Presidente Illia* under the 1992 CLC is estimated to be 24 million SDR (£23.2 million) and although the admissible quantum of the damages as a result of the incident is still uncertain, according to the initial estimates it is likely that the total amount of the damage will be within the shipowner's limit, in which case the 1992 Fund would not be called upon to pay compensation.

The shipowner and his insurer, however, maintain that the *Presidente Illia* did not cause the spill that impacted the coast and have appealed against the Court's decision. If they were successful in their appeal, but it was established nevertheless that the spill came from a 'ship' as defined in the 1992 Civil Liability and Fund Conventions, the 1992 Fund would have to pay compensation from the outset.

The Secretariat, through the 1992 Fund's Argentine lawyer, is following the developments with regard to this incident.

King Darwin

Canada, 27 September 2008

The incident

On September 27, 2008, the Marshall Islands-registered oil tanker *King Darwin* (42 010 GT) released approximately 64 tonnes of bunker C fuel oil into the waters of the Restigouche River during discharge operations in the port of Dalhousie, New Brunswick, Canada.

Some of the spill was contained on the tanker's deck, but an unknown quantity of oil spilled in the water and contaminated the shoreline and port structures in the immediate vicinity.

1992 Civil Liability and Fund Conventions

Canada is a Party to the 1992 Civil Liability (1992 CLC) and the 1992 Fund Convention (1992 Fund). The limit of liability of the owner of the *King Darwin* under the 1992 CLC is estimated to be 27 863 310 SDR.

The *King Darwin* was insured for pollution liabilities with the Steamship Mutual Underwriting Association (Bermuda) Limited (Steamship Mutual).

Clean-up operations

Initial oil spill response operations were carried out by the terminal. Operations included containment of the oil within the port area through the use of solid floatation booms and the addition of straw to absorb the oil. The owners of the *King Darwin* engaged a private contractor to conduct clean-up operations on the shoreline, ice defences, exterior cladding and the port structures. The majority of the clean-up operations were completed by 5 October 2008.

The final area to be cleaned related to the area of the wharf closest to where the *King Darwin* was berthed, which was also contaminated following the spill. The Canadian authorities considered that the only acceptable level of cleaning of the area was to bring it back to a state where no sheen was observed emanating from the wharf in order to protect migratory birds which come to the area in springtime. The private contractor engaged by the owners of the *King Darwin* carried out the necessary cleaning of the jetty to the standard ordered by the authorities before the winter season. Monitoring of the area for release of oil after the winter season continued in the following months. The local authorities declared the clean-up operations complete by September 2009.

Claims for compensation

Two claims were submitted for the costs of the clean-up operations carried out. The total amount paid by Steamship Mutual for these two claims was US$ 1 332 488, well within the limitation amount.

One claim was submitted by the Port authorities for additional expenses. From the analysis of the supporting documents provided, it appeared, however, that the expenses were either a duplication of costs already submitted or paid on the clean up or for expenses not related to the incident. The claim was queried by Steamship Mutual.

A dredging company, operating in the port of Dalhousie at the time of the incident, submitted a claim for losses since the company had to interrupt their work whilst dock clean up was undertaken. However, on the basis of the supporting documentation provided, it appeared that the contracted work was finalised within the scheduled timeframe, that the company incurred no penalty under the contract terms and that no other loss was established. Steamship Mutual requested further information which was not provided.

No further claims are expected.

Legal actions

In September 2009, the *King Darwin* was arrested in connection with the claim by the dredging company. The vessel was released upon submission of a bank guarantee by the shipowner.

In September 2009, the dredging company also filed an action in the Federal Court in Halifax, Nova Scotia, against the owners of the *King Darwin*, Steamship Mutual, the Canadian Ship Source Oil Pollution Fund and the 1992 Fund, claiming property damage due to fouling of the equipment caused by the spilled oil and consequential losses totalling C$143 417.

The 1992 Fund has appointed a lawyer in Canada and has submitted a statement of defence. The Federal Court in Halifax has not set yet the date of the hearing.

Director's considerations

The 1992 Fund was informed of this spill in November 2009 when it was notified of the action brought by the dredging company. From the information available to the 1992 Fund it seems that this was a small operational spill, well contained within the Port of Dalhousie and the damage caused appears to be well within the 1992 CLC limit. It is therefore unlikely that the 1992 Fund will be called upon to pay compensation.

1992 Fund: Summary of Incidents

	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GT)	Limit of shipowner's liability under applicable CLC	Cause of incident
1	Incident in Germany	20.06.1996	North Sea coast, Germany	Unknown	Unknown	Unknown	Unknown
2	*Nakhodka*	02.01.1997	Oki Island, Japan	Russian Federation	13 159	1 588 000 SDR	Breaking
3	*Osung N°3*	03.04.1997	Tunggado, Republic of Korea	Republic of Korea	786	104 500 SDR	Grounding
4	Incident in United Kingdom	28.9.1997	Essex, United Kingdom	Unknown	Unknown	Unknown	Unknown
5	*Santa Anna*	01.01.1998	Devon, United Kingdom	Panama	17 134	10 196 280 SDR	Grounding
6	*Milad 1*	05.03.1998	Bahrain	Belize	801	Not available	Damage to hull
7	*Mary Anne*	22.07.1999	Philippines	Philippines	465	3 000 000 SDR	Sinking
8	*Dolly*	05.11.1999	Martinique	Dominican Republic	289	3 000 000 SDR	Sinking
9	*Erika*	12.12.1999	Brittany, France	Malta	19 666	€12 843 484	Breaking

Estimated quantity of oil spilled (tonnes)	Types of claims paid out by insurer and/or 1992 Fund	Compensation paid by the 1992 Fund up to 31.12.2009 (Pounds Sterling)	Notes
Unknown	Clean-up & preventive measures	961 364	Following out-of-court settlement, shipowner/insurer paid 20% and 1992 Fund paid 80% of final assessment amount.
6 200	Clean-up & preventive measures Fishery-related Tourism-related Causeway	61 136 355	A global settlement agreement was reached between shipowner/insurer and IOPC Funds whereby insurer paid ¥10 956 930 000 and IOPC Funds paid ¥15 130 970 000, of which 1992 Fund paid ¥7 422 192 000 and 1971 Fund paid ¥7 708 778 000.
Unknown	Clean-up & preventive measures Oil removal operation Fishery-related	Nil	1992 Fund paid ¥340 million to claimants. This amount was later reimbursed by 1971 Fund.
Unknown	Clean-up & preventive measures	Nil	Claim not pursued.
280	Clean-up & preventive measures	Nil	Claim paid by shipowner's insurer.
0	Pre-spill preventive measures	35 145	
Unknown	Clean-up & preventive measures	Nil	Claim paid by shipowner's insurer.
Unknown	Clean-up & preventive measures	1 029 174	1992 Fund paid €1 457 753 to French Government in full settlement of all its losses as a result of the incident.
19 800	Clean-up & preventive measures Fishery-related Property damage Tourism-related Loss of income	77 021 437	Total paid the French State €153.9 million, ie, the amount awarded by the Criminal Court which took into account the compensation amounts already received from the Fund.

	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GT)	Limit of shipowner's liability under applicable CLC	Cause of incident
10	*Al Jaziah 1*	24.01.2000	Abu Dhabi, UAE	Honduras	681	3 000 000 SDR	Sinking
11	*Slops*	15.06.2000	Piraeus, Greece	Greece	10 815	8.2 million SDR (estimated)	Fire
12	Incident in Spain	05.09.2000	Spain	Unknown	Unknown	Unknown	Unknown
13	Incident in Sweden	23.09.2000	Sweden	Unknown	Unknown	Unknown	Unknown
14	*Natuna Sea*	03.10.2000	Indonesia	Panama	51 095	22 400 000 SDR	Grounding
15	*Baltic Carrier*	29.03.2001	Denmark	Marshall Islands	23 235	DKr118 million	Collision
16	*Zeinab*	14.04.2001	United Arab Emirates	Georgia	2 178	3 000 000 SDR	Sinking
17	Incident in Guadeloupe	30.06.2002	Guadeloupe	Unknown	Unknown	Unknown	Unknown

Estimated quantity of oil spilled (tonnes)	Types of claims paid out by insurer and/or 1992 Fund	Compensation paid by the 1992 Fund up to 31.12.2009 (Pounds Sterling)	Notes
100-200	Clean-up & preventive measures	566 166	The 1971 and 1992 Funds have taken recourse action against shipowner claiming reimbursement of Dhs 6.4 million. The Court has decided in favour of the Funds, but it will be very difficult to execute the judgement since the shipowner has no sufficient assets.
1 000-2 000	Clean-up & preventive measures	3 217 421	The Executive Committee decided in 2000 that the *Slops* should not be considered a 'ship' for the purpose of the 1992 Conventions and that therefore these Conventions did not apply to this incident. However, the Greek Supreme Court ultimately decided that the *Slops* was a 'ship' as defined in the 1992 Conventions.
Unknown	Clean-up & preventive measures	Nil	Spanish authorities have recovered their costs from alleged source of the pollution.
Unknown	Clean-up & preventive measures	Nil	Swedish State brought legal action against owner of the *Alambra*, his insurer and 1992 Fund. Following out-of-court settlement between the State and shipowner/insurer, action against Fund was withdrawn.
7 000	Singapore, Malaysia, Indonesia: Clean-up & preventive measures Fishery-related	Nil	All claims have been paid by shipowner's insurer.
2 500	Clean-up & preventive measures Oil disposal Economic loss Fishery-related Environmental monitoring	Nil	All claims paid by shipowner's insurer.
400	Clean-up & preventive measures	248 011	1971 and 1992 Funds have each contributed 50% of the amounts paid.
Unknown	Clean-up & preventive measures	Nil	Source of spill appears to have been a general cargo vessel. Therefore unlikely that 1992 Fund will be called upon to make any compensation payments.

	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GT)	Limit of shipowner's liability under applicable CLC	Cause of incident
18	Incident in United Kingdom	29.09.2002	United Kingdom	Unknown	Unknown	Unknown	Unknown
19	*Prestige*	13.11.2002	Spain	Bahamas	42 820	€22 777 986	Breaking
20	*Spabunker IV*	21.01.2003	Spain	Spain	647	3 000 000 SDR	Sinking
21	Incident in Bahrain	15.03.2003	Bahrain	Unknown	Unknown	Unknown	Unknown
22	*Buyang*	22.04.2003	Geoje, Republic of Korea	Republic of Korea	187	3 000 000 SDR	Grounding
23	*Hana*	13.05.2003	Busan, Republic of Korea	Republic of Korea	196	3 000 000 SDR	Collision
24	*Victoriya*	30.08.2003	Syzran, Russian Federation	Russian Federation	2 003	3 000 000 SDR	Fire

Estimated quantity of oil spilled (tonnes)	Types of claims paid out by insurer and/or 1992 Fund	Compensation paid by the 1992 Fund up to 31.12.2009 (Pounds Sterling)	Notes
Unknown	Clean-up & preventive measures	5 949	
63 000	Spain, France: Clean-up & preventive measures Property damage Mariculture Fishing and shellfish gathering Tourism-related Fish processors/vendors Miscellaneous Spanish Government French Government Portugal: Clean-up & preventive measures	82 812 138	Shipowner has deposited limitation amount (€22 777 986) with competent Spanish Court. 1992 Fund has paid €113 920 000 to Spanish Government and €523 243 to claimants in Spain, €5 million to claimants in France and €328 448 to Portuguese Government.
Unknown	Spain: Preventive measures and wreck removal Clean-up & preventive measures Gibraltar: Clean-up & preventive measures	Nil	
Unknown	Clean-up & preventive measures Fishery-related	667 599	All claims paid by 1992 Fund.
35-40	Clean-up & preventive measures Fishery-related	Nil	All claims paid by shipowner's insurer.
34	Clean-up & preventive measures Fishery-related Property damage	Nil	All claims paid by shipowner's insurer.
Unknown	Clean-up & preventive measures	Nil	Since total amount claimed is well below limitation amount applicable to *Victoriya*, the 1992 Fund will not be required to make any compensation payments.

	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GT)	Limit of shipowner's liability under applicable CLC	Cause of incident
25	*Duck Yang*	12.09.2003	Busan, Republic of Korea	Republic of Korea	149	3 000 000 SDR	Sinking
26	*Kyung Won*	12.09.2003	Namhae, Republic of Korea	Republic of Korea	144	3 000 000 SDR	Stranding
27	*Jeong Yang*	23.12.2003	Yeosu, Republic of Korea	Republic of Korea	4 061	4 510 000 SDR	Collision
28	*N°11 Hae Woon*	22.07.2004	Geoje, Republic of Korea	Republic of Korea	110	4 510 000 SDR	Collision
29	*N°7 Kwang Min*	24.11.2005	Busan, Republic of Korea	Republic of Korea	161	4 510 000 SDR	Collision
30	*Solar 1*	11.08.2006	Guimaras Straits Philippines	Philippines	998	4 510 000 SDR	Sinking
31	*Shosei Maru*	28.11.2006	Seto Inland Sea, Japan	Japan	153	4 510 000 SDR	Collision
32	*Volgoneft 139*	11.11.2007	Strait of Kerch, between Russian Federation and Ukraine	Russian Federation	3 463	4 510 000 SDR	Breaking

Estimated quantity of oil spilled (tonnes)	Types of claims paid out by insurer and/or 1992 Fund	Compensation paid by the 1992 Fund up to 31.12.2009 (Pounds Sterling)	Notes
300	Clean-up & preventive measures Economic loss	Nil	All claims paid by shipowner's insurer.
100	Clean-up & preventive measures Fishery-related	1 567 229	
700	Clean-up & preventive measures Fishery-related Economic loss Post-spill studies	Nil	All claims paid by shipowner's insurer.
12	Clean-up & preventive measures	Nil	All claims paid by shipowner's insurer
37	Clean-up & preventive measures Fishery-related Tourism-related	1 164 982	1992 Fund has taken recourse action against fishing vessel that collided with tanker.
2 100	Clean-up & preventive measures Property damage Fishery-related Tourism-related	6 473 825	Since STOPIA 2006 applies, 1992 Fund is receiving regular reimbursements from shipowner's insurer up to 20 million SDR (£21.3 million).
60	Clean-up & preventive measures Fishery-related Property damage	754 823	In 2009, the shipowner, the 1992 Fund and the colliding ship interests reached a settlement agreement and the Fund received ¥74 553 897 (£494 063) from the colliding ship.
1 200-2 000	Clean-up & preventive measures Fishery-related Tourism-related Environmental damage and reinstatement	Nil	

	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GT)	Limit of shipowner's liability under applicable CLC	Cause of incident
33	*Hebei Spirit*	07.12.2007	Off Taean, Republic of Korea	China (Hong Kong Special Administrative Region)	146 848	89 770 000 SDR	Collision
34	Incident in Argentina (*Presidente Illia*)	26.12.2007	Caleta Córdova, Argentina	Argentina	35 995	24 067 845 SDR	Unknown
35	*King Darwin*	27.09.2008	Port of Dalhousie, New Brunswick	Canada	42 010	27 863 310 SDR	Discharge

Estimated quantity of oil spilled (tonnes)	Types of claims paid out by insurer and/or 1992 Fund	Compensation paid by the 1992 Fund up to 31.12.2009 (Pounds Sterling)	Notes
10 900	Clean-up & preventive measures Fishery-related Tourism-related Property damage Environmental damage	Nil	Claims totalling Won 1 503 000 million on behalf of 51 970 claimants have been submitted. A further 30 155 claims totalling about Won 325 000 million are being registered. More claims are expected. The insurer has so far paid Won 65 926 million (£36.4 million) in compensation and the 1992 Fund will start paying compensation as soon as the CLC limit has been reached.
50-200	Clean-up & preventive measures Environmental damage	Nil	The shipowner and its insurer contest liability and argue that the oil which impacted the coast must have come from another source.
64	Clean-up & preventive measures Property damage	Nil	

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. No limitation fund was established. The shipowner and his insurer did not respond to invitations to cooperate 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.

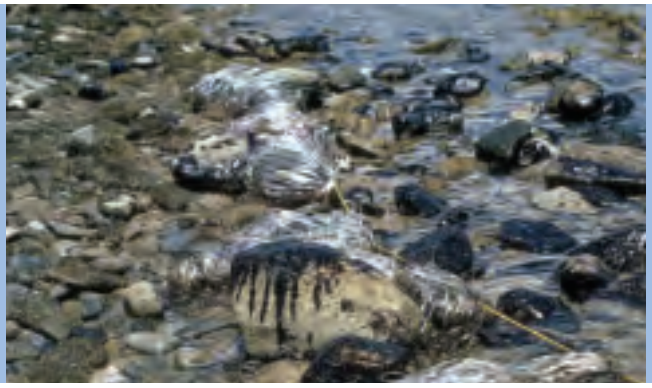
In consultation with the Fund's Trinidad and Tobago lawyers the Fund has commenced summary proceedings against the insurer in Trinidad and Tobago to enforce the judgement of the Court of Appeal.

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.

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

There have been no further developments in this case during 2009.



Oiled sorbents on a rocky shore in the Virgin Islands, following the *Vistabella* incident

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, since most of the cargo was either dispersed in the sea or consumed by the fire on board the vessel, but it was estimated at some 73 500 tonnes. Several stretches of coastline east and north-east of La Coruña were contaminated, as well as the sheltered Ria de Ferrol. 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 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. 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 1971 Fund 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 ('Real 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. As a consequence of the distribution of liabilities determined by the Court of Appeal in La Coruña, the Spanish State undertook to compensate all the victims who might obtain a final judgement by a Spanish court in their favour which condemned the shipowner, the UK Club or the 1971 Fund to pay compensation as a result of the incident.

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

Oil removal operations after the *Aegean Sea* incident, La Coruña, Spain

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. 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

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 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 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. The procedural error has not been rectified by the claimant and therefore this claim has now been dismissed by the Court of First Instance.

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

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 summarised in the following table.

Supreme Court

The boat fisherman, the fish processor and the fishing boat owner requested leave to appeal to the Supreme Court but by July 2009

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	€55 640
Boat fisherman (sea urchin and octopus)	€503 538	€16 128
Total	**€3 640 793**	**€250 221**

the Court had denied the leave to appeal in all three cases. The judgements by the Court of Appeal have therefore become final.

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 plus interest.

No developments in the criminal proceedings have taken place during 2009.

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.

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 200 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, 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 with the court in Nafplion by the deposit of a bank guarantee.

The Court decided that claims should be lodged by 20 January 1995. By that date, 527 claims had been presented in the limitation proceedings, totalling Drs 3 071 million or €9 million plus Drs 378 million or €1.1 million for compensation 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, 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 is expected that the next hearing will take place in 2010.

Clean-up operation after the tanker *Iliad* ran aground off the island of Sfaktiria, Greece

Kriti Sea

Greece, 9 August 1996

The incident

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 by means of a bank guarantee.

Claims for compensation

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.

A hearing took place at the Court of Appeal in March 2008. The Court of Appeal issued its judgements in December 2008, reducing the initial awards to the claimants. These judgements have now become final.

The aggregate amount adjudicated to all claimants in respect of this incident falls within the limitation fund established under the 1969 Civil Liability Convention. Therefore no liability will be attached to the 1971 Fund in respect of this incident.

The 1971 Fund has decided to discontinue monitoring the proceedings. This case is now closed.

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. The great majority 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'[<11>]. The Court of Appeal's decision appeared to imply that the judgement of the Court of First Instance 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

<11> Under Venezuelan law, in exceptional circumstances, the Supreme Court may assume jurisdiction, 'avocamiento', and decide on the merits of a case. Such exceptional circumstances are defined as those which directly affect the 'public interest and social order' or where it is necessary to re-establish order in the judicial process because of the great importance of the case. If the request for 'avocamiento' is granted, the Supreme Court would act as a court of first instance and its judgement would be final.

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 declared time-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.

A different section of the Criminal Court of Appeal issued a new judgement in February 2008, confirming that the criminal action against the Master was time-barred but preserving the civil action arising from the criminal act. In the judgement the Court of Appeal decided to send the file to a criminal court of First Instance, in which the civil action filed by the Republic of Venezuela would be decided. The Master submitted pleadings to the Criminal Court of First Instance in which he argued that the Court did not have jurisdiction and that the case should be transferred to the Maritime Court in Caracas.

In March 2009 the Criminal Court of First Instance issued a decision rejecting the plea of lack of jurisdiction. This decision was notified to the Master, but not to the shipowner and his insurer or the 1971 Fund. In the decision the Court also fixes the commencement of the presentation of conclusions.

The 1971 Fund submitted pleadings arguing that by not notifying the 1971 Fund of the decision the Court had denied the Fund a proper defence. In its pleadings the Fund also submitted its conclusions, as follows:

- The claims by the Republic of Venezuela are time-barred in respect of the 1971 Fund.
- All admissible claims for pollution damage have already been compensated by the Club and the Fund.
- The claim by the Republic of Venezuela is not admissible under the 1969 Civil Liability Convention and 1971 Fund Convention and the alleged damage is not proved.

The Court has not issued its decision yet.

Claims for compensation in court

There are significant claims for compensation pending before the Courts in Venezuela. The situation in respect of these claims is as follows.

Claims by the Republic of Venezuela

The Republic of Venezuela presented a claim for environmental damage for US$60 250 396 against the Master, the shipowner and the Gard Club in the Criminal Court in Cabimas. The 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. 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.

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**		

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 there under or a notification has been made pursuant to Article 7, paragraph 6, within three years from the date when the damage occurred. However, in no case shall an action be brought after six years from the date of the incident 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 1971 Fund Administrative Council endorsed the Director's view that the claims by the Republic of Venezuela were time-barred *vis-à-vis* the 1971 Fund.

Claims by fish processors

Three fish processors presented claims totalling US$30 million in the Supreme Court against the 1971 Fund and the Instituto Nacional de Canalizaciones (INC). These claims were presented in the Supreme Court because one of the defendants is an agency of the Republic of Venezuela and, under Venezuelan law, claims against the Republic have to be presented before the Supreme Court. The Supreme Court would in this case act as court of first and last instance. In July 2003 the 1971 Fund 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.

Level of payments

In August 2004 the Director increased the level of payments in respect to this incident to 100%. Reference is made to the Annual Report 2008 (pages 63 and 64).

Settled claims

The table below summarises the settled claims: All settled claims have been paid in full.

Claimant	Category	Settlement amount Bs	Settlement amount US$
Petroleos de Venezuela SA (PDVSA)	Clean-up		8 364 223
ICLAM [12]	Preventive measures	70 675 468	
Shrimp fishermen and processors	Loss of income		16 033 389
Other claims [13]	Property damage and loss of income	289 000 000	
Total		**359 675 468 (£81 900)**	**24 397 612 (£12.6 million)**

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

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

Attempts to resolve the outstanding issues

At the 1971 Fund 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 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.

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 what measures 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.

Clean-up operation after the *Nissos Amorgos* grounded in the Maracaibo Channel, Venezuela

Plate Princess

In December 2008 a meeting was held in Caracas between representatives of the 1971 Fund, visiting Venezuela on other business, and representatives of the Venezuelan Ministry of Foreign Affairs. The representatives conducted a general review of the outstanding issues.

With regard to the claims by the Republic of Venezuela, the representatives of the Ministry of External Affairs expressed surprise that the claim by the Procuraduria had not been withdrawn. It was suggested that the Ministry of Foreign Affairs would convene a meeting with the interested parties, including the Public Prosecutor, Attorney General and Ministry of the Environment, to examine whether a solution could be found.

With regard to the outstanding claims by three fish processors against the 1971 Fund and the Instituto Nacional de Canalizaciones, the representatives of the Ministry of External Affairs stated that the Government could not intervene since the plaintiffs were private companies.

The representatives of the Ministry of External Affairs were not able to convene a meeting while the representatives of the 1971 Fund were in Caracas but a meeting did take place later in December 2008 attended by only representatives of the Ministry of External Affairs. The 1971 Fund was represented by its Venezuelan Lawyers. At that meeting, the representatives of the Ministry of External Affairs expressed their intention to reactivate the case and to bring the matter to the attention of the Minister of Foreign Affairs. The representatives of the Ministry of Foreign Affairs stated that, once they had received instructions from the Minister, they would convene a meeting of all interested parties and the 1971 Fund would be invited to attend.

There have been no developments since December 2008.

Venezuela, 27 May 1997

The incident

On 27 May 1997 the Maltese tanker *Plate Princess* (30 423 GRT) was berthed at an oil terminal at Puerto Miranda on Lake Maracaibo (Venezuela). While the ship was loading a cargo of 44 250 tonnes of Lagotreco crude oil, some 3.2 tonnes were reportedly spilled.

The vessel was entered with the Standard Steamship Owners' Protection and Indemnity Association (Bermuda) Limited (the Standard Club).

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

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

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

Claims by FETRAPESCA

Criminal proceedings

In June 1997 a fishermen's trade union (FETRAPESCA) presented a claim in the Criminal Court of Cabimas on behalf of 1 692 fishing boat owners, claiming an estimated US$10 060 per boat, ie a total of US$17 million. The claim was for alleged damage to fishing boats and nets and for loss of earnings. There have been no developments on this claim.

Civil proceedings

In June 1997 FETRAPESCA also presented a claim against the shipowner and the Master of the *Plate Princess* before the Civil Court of Caracas for an estimated amount of US$10 million. The claim is for the fishermen's loss of income as a result of the spill.

In December 2006 the claim in the Civil Court of Caracas by FETRAPESCA was transferred to the Maritime Court of Caracas.

In July 2008 the shipowner and the Master of the *Plate Princess* requested the Maritime Court of Caracas to declare the claim by FETRAPESCA time-barred (perencion de instancia) since the plaintiffs had not taken steps to duly pursue their claim in court. In a decision published later that month the Court decided that the claim was not time-barred. The shipowner and the Master appealed against this decision but, in October 2008, the Maritime Court of Appeal upheld the judgement of the Maritime Court of Caracas.

In a judgement rendered in February 2009 the Court accepted the claim by FETRAPESCA and ordered the payment of the damages suffered by the claimant, to be quantified by a Court expert. The Fund has not been formally notified of the judgement.

Claim by the Sindicato Único de Pescadores de Puerto Miranda

Civil Court of Caracas

In June 1997, another fishermen's union, Sindicato Único de Pescadores de Puerto Miranda, (Sindicato Miranda) presented a claim in the Civil Court of Caracas against the shipowner and the Master of the *Plate Princess* for an estimated amount of US$20 million plus legal costs.

In December 2006, the claim in the Civil Court of Caracas by the Sindicato Miranda was transferred to the Maritime Court of Caracas.

Maritime Court of First Instance in Caracas

In April 2008 the Sindicato Miranda submitted an amended claim against the shipowner, Master of the *Plate Princess* and the 1971 Fund. The amended claim which now totals BsF53.5 million is for losses suffered by some 650 fishermen in respect of damage to nets and boats and in respect of loss of income for a period of six months. The Maritime Court of Caracas accepted the amended claim. The Fund requested copies of the documents in support of the claim submitted by the claimants.

In July 2008 the 1971 Fund, although not having received copies of the supporting documents and to comply with the time requirement under Venezuelan procedural law, submitted pleadings stating that the claim was time-barred since the 1971 Fund:

- had not been notified of the action against the shipowner within three years from the occurrence of the damage, as provided in Article 6 of the 1971 Fund Convention and in accordance with the decision by the Administrative Council at its May 2006 session; and
- had not been named as defendant in the action within the six-year period since the date of the incident as also provided in Article 6 of the 1971 Fund Convention.

The 1971 Fund engaged experts to examine the claim and requested the Court to provide copies of the documentation submitted by the claimants to demonstrate the losses. The documentation amounted to thousands of pages and was beyond the resources of the Maritime Court to copy. The Maritime Court therefore subcontracted the work. The documentation was only received by the 1971 Fund in August 2008.

The 1971 Fund's experts issued their report in early October 2008. In their report, the experts concluded that:

- the claimants had not demonstrated that any damage suffered by the fishermen had been caused by the spill from the *Plate Princess*;
- the quantity of oil spilled was so small that it could not explain the extensive damage alleged;
- the inspection reports submitted to demonstrate the extent of damage to nets and boats were of doubtful accuracy; and
- that the documents submitted to support the claim for loss of income had in many instances been falsified and produced for the purpose of making the claim.

The 1971 Fund's experts' report was submitted to the Maritime Court in November 2008 but the Court decided that the report was not admissible since it had not been submitted within five days from the date of filing the defence to the claim and once preliminary issues had been amended and decided, as provided by Venezuelan law. This time limit expired in June 2008. The 1971 Fund appealed against this decision on the grounds that the time limit was not sufficient for the Court to provide the 1971 Fund with copies of the documentation and for their experts to review them.

In November 2008, the Head of the Claims Department and one of the experts engaged by the 1971 Fund travelled to Caracas to assist the 1971 Fund's lawyers to prepare for the Maritime Court's main hearing of the claim, scheduled to commence in early December 2008. Discussions were held with both the 1971 Fund's lawyers and the lawyers appointed by the Master and shipowner. The hearing was, however, postponed until January 2009.

The Court issued its decision in February 2009. In its decision, the Court accepted the claim by the Sindicato Miranda and ordered the 1971 Fund to pay the damages suffered by the claimant, to be quantified by a court expert, together with interest from the date of the incident until the date of execution of the judgement. In its decision the Court also rejected the fraud allegations submitted by the Fund.

The Master, the shipowner and the 1971 Fund appealed against the judgement. The Master also submitted pleadings alleging lack of due process (desorden judicial).

Maritime Court of Appeal in Caracas

On 24 September 2009, the Maritime Court of Appeal issued its decision, dismissing the appeals by the Master, shipowner and 1971 Fund, and ordering the defendants to compensate the claimants in an amount to be determined by three experts to be appointed by the Maritime Court.

The Maritime Court of Appeal held that the claim against the 1971 Fund was not time-barred. In the judgement:

- the Court stated that the 1971 Fund had not been called to be a party to the legal proceedings brought by the victims against the shipowner since it merely provided a second level of compensation and it was, therefore, sufficient to bring an action against the shipowner or its guarantor;
- the Court further stated that, if the legal action was brought against the shipowner within the time limit established, as it happened in this case, it is not possible for the claim to be time-barred. The Court pointed out that the Sindicato Miranda had brought a legal action against the shipowner in July 1997, 38 days after the spill, and that therefore they had exercised their legal rights and that, as a result, their rights must be protected;
- the Court also pointed out that the Fund was notified of the legal action brought by the victims in sufficient time in accordance with the provisions of Articles 6 and 7 of the 1971 Fund Convention. The Court stated that the intention of notifying the Fund was not to prevent the claim becoming time-barred, since the submission of the claim in July 1997 had been sufficient to prevent the time bar from applying, but to allow the Fund sufficient time to intervene in the proceedings so that the judgement of the Court would be complete, definitive and binding on the Fund; and
- the Court stated that the attitude of the 1971 Fund, in opposing payment of compensation by using a hypothetical lack of notification, is not complying with its obligations. It further stated that, in the view of the Court, the 1971 Fund is using procedural arguments and defences in an opportunistic manner to damage the interests of 676 poor fishermen, who every day face, not only constant oil spills in the lake where they fish, but also the risk that the international Organisation, which is supposed to pay compensation to them, using irrational arguments, will avoid its sacred obligation given to it by the legal regime which created it.

In November 2009 the 1971 Fund appealed to the Supreme Court. The shipowner and Master of the *Plate Princess* also appealed.

Limitation proceedings

The limitation amount applicable to the *Plate Princess* under the 1969 Civil Liability Convention is estimated in 1998 at 3.6 million SDR or Bs 2 845 million.

In 1997, a bank guarantee for this amount was provided to the Criminal Court of Cabimas.

In the judgement delivered in February 2009 the Maritime Court of First Instance in Caracas decided that the shipowner was entitled to limit his liability under the 1969 Civil Liability Convention (CLC), to the amount of BsF 2.8 million, being the amount of the bank guarantee provided.

Time bar

In order to prevent a claim from becoming time-barred the claimant must, within three years of the date of the damage, either take legal action against the 1971 Fund or notify the Fund of an action against the shipowner and/or his insurer in accordance with Article 7.6 of the Convention. Even if the claimant has notified the 1971 Fund of an action against the shipowner and/or his insurer within that period, the claim is time-barred unless the claimant takes legal action against the 1971 Fund within six years of the date of the incident.

Notification of the 1971 Fund in October 2005

Shortly after the Administrative Council's October 2005 session the 1971 Fund learned that both fishermen's unions had in 1997 requested the Court to notify the 1971 Fund of their actions. However, it was only on 31 October 2005 that the 1971 Fund was formally notified through diplomatic channels of the actions for compensation brought in the Civil Court of Caracas by FETRAPESCA and the Sindicato Miranda against the shipowner and the Master of the *Plate Princess* in June 1997.

1971 Fund Administrative Council's February/March 2006 session

At the Administrative Council's February/March 2006 session the Director submitted a document in which he stated the following:

> 'Claims for compensation before the Venezuelan Courts were brought against the Master and the shipowner in June 1997. The 1971 Fund was not named as a defendant in these actions. The 1971 Fund was not notified of the action against the shipowner until 31 October 2005, ie nearly seven and a half years after the damage occurred. Since the Fund was not notified of the claims against the shipowner within three years from the date when the damage occurred, in the Director's opinion these claims are time-barred under the 1971 Fund Convention pursuant to the first sentence of Article 6. They are, in his view, also time-barred under the second sentence of that Article since no action was brought against the Fund within six years from the date of the incident.'

At that session the Venezuelan delegation stated that it did not share the Director's view that the claim by the fishermen was time-barred, since legal action had been taken against the shipowner within the time set out in Articles 6 and 7.6 of the 1971 Fund Convention. The Venezuelan delegation also stated that Article 6 of the 1971 Fund Convention referred directly to Article 7.6 of that Convention which established that there had to be an action for compensation against the shipowner under the 1969 Civil Liability Convention or a notification to the 1971 Fund of such an action. The delegation further stated that both conditions did not have to be fulfilled; one of them was sufficient. The Venezuelan delegation expressed the view that any decision by the Court was binding on the 1971 Fund and that the Fund had sufficient time to present its arguments before the courts since points of defence had not yet been submitted.

At that session the 1971 Fund Administrative Council instructed the Director to take the necessary action to defend the 1971 Fund's position on time bar before the Venezuelan courts.

1971 Fund Administrative Council's May 2006 session

In a document submitted to the Administrative Council's May 2006 session the Director stated that while he recognised that the final decision on whether the claims were time-barred *vis-à-vis* the 1971 Fund was a matter for the Venezuelan courts, he disagreed with the analysis by the Venezuelan delegation of the provisions of the 1971 Fund Convention.

In that document the Director stated that the provisions on time bar were always brutal in their application since, if not respected, claimants lost their rights to obtain compensation but that the 1971 Fund and the 1992 Fund governing bodies had decided that the provisions on time bar of the Conventions should be strictly adhered to.

A number of delegations, whilst expressing sympathy with the victims of the incident and regretting that the time-bar provisions had worked to their detriment, stated that it was necessary to adhere to the current text of the Conventions. The point was made that knowledge of an incident by the Fund was not the same as formal notification in accordance with Article 6.1 of the 1971 Fund Convention. Those delegations agreed with the Director's interpretation of Articles 6.1 and 7.6 of the 1971 Fund Convention and expressed the view that the claims arising from the incident were time-barred.

The Administrative Council decided that the claims referred to above were time-barred in respect of the 1971 Fund.

Notification of the 1971 Fund in March 2007

In March 2007, following a request from the Maritime Court, the 1971 Fund was formally notified through diplomatic channels for a second time of the actions for compensation brought against the shipowner and the Master of the *Plate Princess*.

1971 Fund Administrative Council's October 2009 session

In a document submitted to the Administrative Council's October 2009 session the Director stated that, in his view, on the basis of the interpretation of the time-bar provisions of the Conventions given in respect of previous incidents, it was certain that claims for compensation arising from the *Plate Princess* incident were time-barred under the 1971 Fund Convention.

The Director also stated that in his view the 1971 Fund should appeal against the decision by the Maritime Court of Appeal before the Supreme Court, but that if a final judgement by the Venezuelan courts were awarded against the 1971 Fund, it would follow from Article 8 of the 1971 Fund Convention, that the 1971 Fund had an obligation to comply with the provisions of the judgement.

Some delegations which took the floor were of the opinion that since the 1971 Fund had not been notified of the actions within the period required by the 1971 Fund Convention, claims arising from this incident were time-barred *vis-à-vis* the 1971 Fund.

The 1971 Fund Administrative Council endorsed the view taken by the Director that the 1971 Fund should appeal against the judgement by the Maritime Court of Appeal before the Supreme Court. It also decided that, once a final decision had been reached in the Venezuelan courts, the Director should, before taking any further action, report the issue to the Administrative Council again with a view to receiving further instructions.

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.

The *Evoikos* was insured for pollution liabilities by the United Kingdom Mutual Insurance Association (Bermuda) Limited (UK Club)

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.

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 UK Club 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 had informed the Fund that it was not prepared to withdraw its actions against the Fund in London and Malaysia until it had had the opportunity to establish that there were no outstanding claims against the shipowner which might result in the Fund becoming liable to pay compensation or indemnification.

In October 2009 the UK Club gave instructions to its lawyers to discontinue the legal action in Malaysia. It is expected that the legal action in London will be discontinued in 2010.

This case cannot be closed until all pending litigation has been finalised.

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 ten 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). The 1971 and 1992 Funds will not be required to make any further compensation payments.

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.

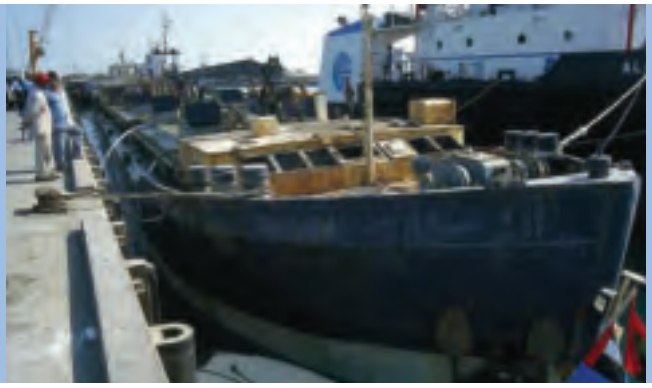
The Master was fined Dhs 5 000 for causing damage to the environment.

Recourse action

Consideration by the governing bodies of the 1971 and 1992 Funds in October 2002

At their October 2002 sessions, the governing bodies of the 1971 and 1992 Funds considered whether the Funds should take recourse action against the shipowner. It was noted that the Director had been advised by the Funds' UAE lawyers that there were reasonably good prospects for the Funds to obtain a favourable judgement against the person in question and that it was likely that he would not be entitled to limit his liability. It was also noted, however, that the Funds' lawyers had also advised the Director that the Funds might encounter considerable difficulties in enforcing a judgement against the assets of the defendant and that it was in any event uncertain whether the defendant would have sufficient assets to enable the Funds to recover any substantial amount.

Most delegations expressed the view that the question of whether or not to pursue a recourse action against the shipowner raised an important issue of principle and that the IOPC Funds should play a part in discouraging the operation of substandard ships and enforcing the 'polluter pays principle'. In recommending that the IOPC Funds should pursue a recourse action those delegations recognised that the prospects of enforcing a favourable judgement were limited, but that it was in their view nevertheless important for the Funds to take a stand. Some delegations considered, however, that the Funds should be realistic and not pursue a recourse action if the shipowner had no assets.



The *Al Jaziah 1* was originally designed as an inland water tanker

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*.

Legal action by the Funds

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 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.

In early 2008, the court expert submitted its final report confirming the conclusions reached in July 2006.

Judgement by the Abu Dhabi Court of First Instance

In a judgement rendered in March 2008 the Court ordered the shipowner to pay the Funds an amount of Dhs 6 402 282 and that this amount should be distributed equally between the 1971 Fund and the 1992 Fund.

The shipowner has not appealed against the judgement and therefore it has become final.

Execution of the judgement

The Funds have requested the Court to enforce the judgement and at a hearing in July 2008 the Court bailiff informed the Funds' lawyers that the shipowner was in serious financial difficulties. It was suggested that the Funds would have to investigate whether the shipowner had other financial resources to pay the judgement.

The Funds' lawyers have been advised by the Court that the shipowner had a heavy burden of debts of some Dhs 63 million including the judgement awarded in favour of the Funds, that the shipowner had been in prison due to his inability to pay his debts and that he had been released recently from prison after having given an undertaking to pay an amount of Dhs 4 200 per month from his salary towards the payment of his debts.

The Funds' lawyers have investigated whether the shipowner has additional assets available to pay the judgement but according to the investigation carried out the shipowner has no additional assets. Therefore it appears that it would be very difficult to execute the judgement against the shipowner.

At their October 2008 sessions, the governing bodies of the 1971 and 1992 Funds instructed the Director to approach the shipowner to discuss a settlement, taking into account his financial situation.

The Funds, through their lawyers in the United Arab Emirates, have approached the shipowner in accordance with the instructions by the Funds' governing bodies.

In September 2009, the Funds' United Arab Emirates lawyers informed the Funds that the negotiations with the shipowner had not progressed and that recently the Execution Judge had decided to transfer the file to the United Arab Emirates' nationals department where other debts would be added. The Funds' lawyers have advised that the Funds will have to compete with other creditors and that a certain amount will be set monthly to be distributed *pro rata* between the creditors. In their view, the best case scenario for the Funds now would be to receive between Dhs 2 000 and Dhs 3 000 per month. The Fund's lawyers also advised the Funds to appeal the Execution Judge's decision.

At their October 2009 sessions, the governing bodies took note of the Director's view that, since there was not a matter of principle involved in this case, it was not in the interest of the 1971 Fund, the 1992 Fund or their contributors to continue to incur costs in executing the judgement which might well exceed the amounts which would be recovered. The governing bodies endorsed the Director's proposal that the Funds should continue to try to recover what they could from the shipowner, and authorised him to discontinue the execution of the judgement once it was clear that the costs would exceed the recoverable amount and that the Funds should then write off the debt.

In November 2009 the Fund instructed its United Arab Emirates lawyers to appeal the Execution Judge's decision.

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.

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. 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, which had the character of a fine or charge, was settled by the shipowner and the London Club at US$655 000. 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 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 and EEK 9.7 million, 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 *Alambra* in dock at Muuga, Estonia

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.

Settlement agreement

Negotiations between the two claimants that took legal actions, mentioned above, and the shipowner were concluded in June 2009 with a settlement agreement between the claimants and the shipowner whereby the claimants undertook to withdraw their claims upon receipt of the sum of US$ 450 000 from the shipowner, as compensation for their claims. The London Club and the 1971 Fund are party to the agreement.

The agreed amount has been received by the claimants and, in compliance with the settlement agreement, the claims have been withdrawn from the Court of First Instance in Tallinn. As part of the agreement, the claimants released the London Club and the 1971 Fund of any obligations arising from the incident.

In June 2009 all legal proceedings regarding this incident were terminated and the Court of First Instance in Tallinn confirmed the settlement agreement stating that there is no valid claim against the 1971 Fund.

This case is now closed.

1971 Fund: Summary of Incidents

	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC	Cause of incident
1	*Irving Whale*	07.09.1970	Gulf of St Lawrence, Canada	Canada	2 261	Unknown	Sinking
2	*Antonio Gramsci*	27.02.1979	Ventspils, USSR	USSR	27 694	RUB 2 431 584	Grounding
3	*Miya Maru N°8*	22.03.1979	Bisan Seto, Japan	Japan	997	¥37 710 340	Collision
4	*Tarpenbek*	21.06.1979	Selsey Bill, United Kingdom	Federal Republic of Germany	999	£64 356	Collision
5	*Mebaruzaki Maru N°5*	08.12.1979	Mebaru, Japan	Japan	19	¥845 480	Sinking
6	*Showa Maru*	09.01.1980	Naruto Strait, Japan	Japan	199	¥8 123 140	Collision
7	*Unsei Maru*	09.01.1980	Akune, Japan	Japan	99	¥3 143 180	Collision
8	*Tanio*	07.03.1980	Brittany, France	Madagascar	18 048	FFr11 833 718	Breaking
9	*Furenäs*	03.06.1980	Oresund, Sweden	Sweden	999	SKr612 443	Collision

Estimated quantity of oil spilled (tonnes)	Types of claims paid by insurer and/or 1971 Fund	Compensation (and/or indemnification where applicable) paid by the 1971 Fund up to 31.12.2009 (GBP)	Notes
Unknown	Clean-up & preventive measures Refloating operations	Nil	*Irving Whale* refloated in 1996. Canadian Court dismissed action against 1971 Fund as Fund could not be held liable for events which occurred prior to entry into force of 1971 Fund Convention for Canada.
5 500	Clean-up & preventive measures	9 247 068	
540	Clean-up & preventive measures Fishery-related Indemnification	300 533	¥5 438 909 recovered by way of recourse.
Unknown	Clean-up & preventive measures	363 550	
10		21 138	
100	Clean-up & preventive measures Fishery-related Indemnification	199 359	¥9 893 496 recovered by way of recourse.
<140	Clean-up & preventive measures	Nil	Because of the distribution of liability between the two colliding ships, 1971 Fund not called upon to pay any compensation.
13 500	Clean-up & preventive measures Tourism-related Fishery-related Economic loss	18 340 766	US$17 480 028 recovered by way of recourse.
200	Clean-up & preventive measures (Sweden) Clean-up & preventive measures (Denmark) Indemnification	342 557	SKr449 961 recovered by way of recourse.

	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC	Cause of incident
10	*Hosei Maru*	21.08.1980	Miyagi, Japan	Japan	983	¥35 765 920	Collision
11	*Jose Marti*	07.01.1981	Dalarö, Sweden	USSR	27 706	SKr23 844 593	Grounding
12	*Suma Maru N°11*	21.11.1981	Karatsu, Japan	Japan	199	¥7 396 340	Grounding
13	*Globe Asimi*	22.11.1981	Klaipeda, USSR	Gibraltar	12 404	RUB 1 350 324	Grounding
14	*Ondina*	03.03.1982	Hamburg, Federal Republic of Germany	Netherlands	31 030	DM10 080 383	Discharge
15	*Shiota Maru N°2*	31.03.1982	Takashima Island, Japan	Japan	161	¥6 304 300	Grounding
16	*Fukutoko Maru N°8*	03.04.1982	Tachibana Bay, Japan	Japan	499	¥20 844 440	Collision
17	*Kifuku Maru N°35*	01.12.1982	Ishinomaki, Japan	Japan	107	¥4 271 560	Sinking
18	*Shinkai Maru N°3*	21.06.1983	Ichikawa, Japan	Japan	48	¥1 880 940	Discharge
19	*Eiko Maru N°1*	13.08.1983	Karakuwazaki, Japan	Japan	999	¥39 445 920	Collision
20	*Koei Maru N°3*	22.12.1983	Nagoya, Japan	Japan	82	¥3 091 660	Collision

Estimated quantity of oil spilled (tonnes)	Types of claims paid by insurer and/or 1971 Fund	Compensation (and/or indemnification where applicable) paid by the 1971 Fund up to 31.12.2009 (GBP)	Notes
270	Clean-up & preventive measures Fishery-related Indemnification	443 505	¥18 221 905 recovered by way of recourse.
1 000	Clean-up & preventive measures	Nil	Shipowner's defence that he should be exonerated from liability rejected in final court judgement.
10	Clean-up & preventive measures Indemnification	17 608	
>16 000	Indemnification	326 509	
200-300	Clean-up & preventive measures	3 004 900	
20	Clean-up & preventive measures Fishery-related Indemnification	234 706	
85	Clean-up & preventive measures Fishery-related Indemnification	1 058 460	
33	Indemnification	1 587	
3.5	Clean-up & preventive measures Indemnification	4 836	
357	Clean-up & preventive measures Fishery-related Indemnification	113 465	¥14 843 746 recovered by way of recourse.
49	Clean-up & preventive measures Fishery-related Indemnification	92 098	¥8 994 083 recovered by way of recourse.

	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC	Cause of incident
21	*Tsunehisa Maru N°8*	26.08.1984	Osaka, Japan	Japan	38	¥964 800	Sinking
22	*Koho Maru N°3*	05.11.1984	Hiroshima, Japan	Japan	199	¥5 385 920	Grounding
23	*Koshun Maru N°1*	05.03.1985	Tokyo Bay, Japan	Japan	68	¥1 896 320	Collision
24	*Patmos*	21.03.1985	Straits of Messina, Italy	Greece	51 627	LIt 13 263 703 650	Collision
25	*Jan*	02.08.1985	Aalborg, Denmark	Federal Republic of Germany	1 400	DKr1 576 170	Grounding
26	*Rose Garden Maru*	26.12.1985	Umm Al Quwain, United Arab Emirates	Panama	2 621	US$364 182	Mishandling of oil discharge
27	*Brady Maria*	03.01.1986	Elbe Estuary, Federal Republic of Germany	Panama	996	DM324 629	Collision
28	*Take Maru N°6*	09.01.1986	Sakai-Senboku, Japan	Japan	83	¥3 876 800	Discharge of oil
29	*Oued Gueterini*	18.12.1986	Algiers, Algeria	Algeria	1 576	Din1 175 064	Discharge
30	*Thuntank 5*	21.12.1986	Gävle, Sweden	Sweden	2 866	SKr2 741 746	Grounding
31	*Antonio Gramsci*	06.02.1987	Borgå, Finland	USSR	27 706	RUB 2 431 854	Grounding

Estimated quantity of oil spilled (tonnes)	Types of claims paid by insurer and/or 1971 Fund	Compensation (and/or indemnification where applicable) paid by the 1971 Fund up to 31.12.2009 (GBP)	Notes
30	Clean-up & preventive measures Indemnification	55 036	
20	Clean-up & preventive measures Fishery-related Indemnification	299 966	
80	Clean-up & preventive measures Indemnification	83 384	¥8 866 222 recovered by way of recourse.
700	Clean-up & preventive measures Salvage Damage to the marine environment	Nil	
300	Clean-up & preventive measures Indemnification	827 518	
Unknown	Fishery related Environmental damage	Nil	
200	Clean-up & preventive measures	1 106 289	DM333 027 recovered by way of recourse.
0.1	Indemnification	Nil	
15	Clean-up & preventive measures Economic loss Indemnification	222 949	
150-200	Clean-up & preventive measures Fishery-related Indemnification	2 364 575	
600-700	Clean-up & preventive measures	268 982	Clean-up claims in USRR (RUB 1 417 448) not paid by 1971 Fund since USSR not Member of 1971 Fund at time of incident.

	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC	Cause of incident
32	*Southern Eagle*	15.06.1987	Sada Misaki, Japan	Panama	4 461	¥93 874 528	Collision
33	*El Hani*	22.07.1987	Indonesia	Libya	81 412	£7 900 000	Grounding
34	*Akari*	25.08.1987	Dubai, United Arab Emirates	Panama	1 345	£92 800	Fire
35	*Tolmiros*	11.09.1987	West coast, Sweden	Greece	48 914	SKr50 000 000	Unknown
36	*Hinode Maru N°1*	18.12.1987	Yawatahama, Japan	Japan	19	¥608 000	Mishandling of cargo
37	*Amazzone*	31.01.1988	Brittany, France	Italy	18 325	FFr13 860 369	Storm damage to tanks
38	*Taiyo Maru N°13*	12.03.1988	Yokohama, Japan	Japan	86	¥2 476 800	Discharge
39	*Czantoria*	08.05.1988	St Romuald, Canada	Canada	81 197	Unknown	Collision with berth
40	*Kasuga Maru N°1*	10.12.1988	Kyoga Misaki, Japan	Japan	480	¥17 015 040	Sinking
41	*Nestucca*	23.12.1988	Vancouver Island, Canada	United States of America	1 612	Unknown	Collision
42	*Fukkol Maru N°12*	15.05.1989	Shiogama, Japan	Japan	94	¥2 198 400	Overflow from supply pipe

Estimated quantity of oil spilled (tonnes)	Types of claims paid by insurer and/or 1971 Fund	Compensation (and/or indemnification where applicable) paid by the 1971 Fund up to 31.12.2009 (GBP)	Notes
15	Clean up & preventive measures Fishery-related	Nil	
3 000	Clean-up & preventive measures	Nil	
1 000	Clean-up & preventive measures	240 351	US$160 000 refunded by shipowner's insurer.
200	Clean-up & preventive measures	Nil	
25	Clean-up & preventive measures Indemnification	8 786	
2 000	Clean-up & preventive measures Fishery-related	164 724	FFr1 000 000 recovered from shipowner's insurer.
6	Clean-up & preventive measures Indemnification	29 999	
Unknown	Clean-up & preventive measures	Nil	1971 Fund Convention not applicable, as incident occurred before entry into force of Convention for Canada.
1 100	Clean-up & preventive measures Fishery-related Indemnification	1 904 632	
Unknown	Clean-up & preventive measures	Nil	1971 Fund Convention not applicable, as incident occurred before entry into force of Convention for Canada.
0.5	Clean-up & preventive measures Indemnification	4 317	

	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC	Cause of incident
43	*Tsubame Maru N°58*	18.05.1989	Shiogama, Japan	Japan	74	¥2 971 520	Mishandling of oil transfer
44	*Tsubame Maru N°16*	15.06.1989	Kushiro, Japan	Japan	56	¥1 613 120	Discharge
45	*Kifuku Maru N°103*	28.06.1989	Otsuji, Japan	Japan	59	¥1 727 040	Mishandling of cargo
46	*Nancy Orr Gaucher*	25.07.1989	Hamilton, Canada	Liberia	2 829	Can$473 766	Overflow during discharge
47	*Dainichi Maru N°5*	28.10.1989	Yaizu, Japan	Japan	174	¥4 199 680	Mishandling of cargo
48	*Daito Maru N°3*	05.04.1990	Yokohama, Japan	Japan	93	¥2 495 360	Mishandling of cargo
49	*Kazuei Maru N°10*	11.04.1990	Osaka, Japan	Japan	121	¥3 476 160	Collision
50	*Fuji Maru N°3*	12.04.1990	Yokohama, Japan	Japan	199	¥5 352 000	Overflow during supply operation
51	*Volgoneft 263*	14.05.1990	Karlskrona, Sweden	USSR	3 566	SKr3 205 204	Collision
52	*Hato Maru N°2*	27.07.1990	Kobe, Japan	Japan	31	¥803 200	Mishandling of cargo

Estimated quantity of oil spilled (tonnes)	Types of claims paid by insurer and/or 1971 Fund	Compensation (and/or indemnification where applicable) paid by the 1971 Fund up to 31.12.2009 (GBP)	Notes
7	Damage to property Indemnification	77 256	
Unknown	Damage to property Indemnification	2 582	
Unknown	Clean-up & preventive measures Indemnification	36 113	
250	Clean-up & preventive measures	Nil	
0.2	Clean-up & preventive measures Fishery-related Indemnification	12 748	
3	Clean-up & preventive measures Indemnification	36 679	
30	Clean-up & preventive measures Fishery-related Indemnification	195 454	¥45 038 833 recovered by way of recourse.
Unknown	Clean-up & preventive measures Indemnification	5 843	¥430 329 recovered by way of recourse.
800	Clean-up & preventive measures Fishery-related Indemnification	1 523 103	
Unknown	Damage to property Indemnification	5 093	

	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC	Cause of incident
53	*Bonito*	12.10.1990	River Thames, United Kingdom	Sweden	2 866	£241 000	Mishandling of cargo
54	*Rio Orinoco*	16.10.1990	Anticosti island, Canada	Cayman Islands	5 999	Can$1 182 617	Grounding
55	*Portfield*	05.11.1990	Pembroke, Wales, United Kingdom	United Kingdom	481	£39 970	Sinking
56	*Vistabella*	07.03.1991	Caribbean	Trinidad and Tobago	1 090	€358 865	Sinking
57	*Hokunan Maru N°12*	05.04.1991	Okushiri Island, Japan	Japan	209	¥3 523 520	Grounding
58	*Agip Abruzzo*	10.04.1991	Livorno, Italy	Italy	98 544	LIt 22 525 000 000	Collision
59	*Haven*	11.04.1991	Genoa, Italy	Cyprus	109 977	LIt 23 950 220 000	Fire and explosion

Estimated quantity of oil spilled (tonnes)	Types of claims paid by insurer and/or 1971 Fund	Compensation (and/or indemnification where applicable) paid by the 1971 Fund up to 31.12.2009 (GBP)	Notes
20	Clean-up & preventive measures	Nil	
185	Clean-up & preventive measures	6 151 887	
110	Clean-up & preventive measures Fishery-related Indemnification	276 671	
Unknown	Clean-up & preventive measures Loss of income	1 002 512	1971 Fund brought recourse action against shipowner's insurer and Court of Appeal in Guadeloupe rendered judgement in favour of Fund for €1 289 483 plus interest and costs. Fund has applied for summary judgement in Trinidad & Tobago in execution of Court of Appeal's judgement. In March 2008 the Court in Trinidad & Tobago delivered a judgement in the 1971 Fund's favour. The insurer has appealed in the Court of Appeal in Trinidad and Tobago.
Unknown	Clean-up & preventive measures Fishery-related Indemnification	31 844	
2 000	Indemnification	635 290	Total damages less than shipowner's liability.
Unknown	Clean-up & preventive measures Tourism-related Fishery-related Environmental damage Indemnification	30 285 784	Agreement on a global settlement of all outstanding claims between Italian State, shipowner/Club and 1971 Fund signed in Rome on 4 March 1999. 1971 Fund's payments are set out in previous column. Shipowner's insurer paid LIt 47 597 370 907 to Italian State. Shipowner/insurer paid all accepted claims by other Italian public bodies and private claimants.

	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC	Cause of incident
60	*Kaiko Maru N°86*	12.04.1991	Nomazaki, Japan	Japan	499	¥14 660 480	Collision
61	*Kumi Maru N°12*	27.12.1991	Tokyo Bay, Japan	Japan	113	¥3 058 560	Collision
62	*Fukkol Maru N°12*	09.06.1992	Ishinomaki, Japan	Japan	94	¥2 198 400	Mishandling of oil supply
63	*Aegean Sea*	03.12.1992	La Coruña, Spain	Greece	57 801	Pts 1 121 219 450	Grounding
64	*Braer*	05.01.1993	Shetland, United Kingdom	Liberia	44 989	£4 883 840	Grounding
65	*Kihnu*	16.01.1993	Tallinn, Estonia	Estonia	949	113 000 SDR	Grounding
66	*Sambo N°11*	12.04.1993	Seoul, Republic of Korea	Republic of Korea	520	Won 77 786 224	Grounding
67	*Taiko Maru*	31.05.1993	Shioyazaki, Japan	Japan	699	¥29 205 120	Collision
68	*Ryoyo Maru*	23.07.1993	Izu Peninsula, Japan	Japan	699	¥28 105 920	Collision

Estimated quantity of oil spilled (tonnes)	Types of claims paid by insurer and/or 1971 Fund	Compensation (and/or indemnification where applicable) paid by the 1971 Fund up to 31.12.2009 (GBP)	Notes
25	Clean-up & preventive measures Fishery-related Indemnification	396 184	
5	Clean-up & preventive measures Indemnification	11 264	¥650 522 recovered by way of recourse.
Unknown	Damage to property Indemnification	27 392	
73 500	Clean-up & preventive measures Fishery-related Tourism-related Economic loss Indemnification	34 162 518	Global settlement reached between shipowner insurer/1971 Fund and Spanish State. Pursuant to the agreement Fund paid the Spanish State Pts 6 386 921 613. Fund also paid Pts1 263 150 000 to claimants that had settled their claims at an early stage and were not included in above agreement.
84 000	Clean-up & preventive measures Fishery-related Farming-related Tourism-related Damage to property Loss of income	46 947 721	
140	Clean-up & preventive measures	65 093	
4	Clean-up & preventive measures Fishery-related	168 426	US$22 504 recovered from shipowner's insurer.
520	Clean-up & preventive measures Fishery-related Indemnification	7 230 641	¥49 104 248 recovered by way of recourse.
500	Clean-up & preventive measures Indemnification	106 491	¥10 455 440 recovered by way of recourse.

	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC	Cause of incident
69	*Keumdong N°5*	27.09.1993	Yeosu, Republic of Korea	Republic of Korea	481	Won 77 417 210	Collision
70	*Iliad*	09.10.1993	Pylos, Greece	Greece	33 837	Drs 1 496 533 000	Grounding
71	*Seki*	30.03.1994	Fujairah, United Arab Emirates, and Oman	Panama	153 506	14 million SDR	Collision
72	*Daito Maru N°5*	11.06.1994	Yokohama, Japan	Japan	116	¥3 386 560	Overflow during loading operation
73	*Toyotaka Maru*	17.10.1994	Kainan, Japan	Japan	2 960	¥81 823 680	Collision
74	*Hoyu Maru N°53*	31.10.1994	Monbetsu, Japan	Japan	43	¥1 089 280	Mishandling of oil supply

Estimated quantity of oil spilled (tonnes)	Types of claims paid by insurer and/or 1971 Fund	Compensation (and/or indemnification where applicable) paid by the 1971 Fund up to 31.12.2009 (GBP)	Notes
1 280	Clean-up & preventive measures Fishery-related Indemnification	10 988 946	Won 64 560 080 paid by the shipowner's insurer.
200	Clean-up & preventive measures Fishery-related Loss of income Indemnification	Nil	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 (€3 million). In 1994, the limitation fund was established with the Court in Nafplion by the deposit of bank guarantee. In 2007, the Court in Nafplion decided it did not have jurisdiction. The Fund has appealed against this decision.
16 000	Clean-up & preventive measures Fishery-related Tourism-related Loss of income Environmental damage	Nil	Settlement outside Conventions concluded between Government of Fujairah and shipowner. Terms of settlement not known to 1971 Fund. 1971 Fund will not be called upon to pay any compensation.
0.5	Clean-up & preventive measures Indemnification	Nil	
560	Clean-up & preventive measures Fishery-related Loss of income Indemnification	5 206 943	¥31 021 717 recovered by way of recourse.
Unknown	Clean-up & preventive measures Damage to property Indemnification	27 722	

	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC	Cause of incident
75	*Sung Il N°1*	08.11.1994	Onsan, Republic of Korea	Republic of Korea	150	Won 23 000 000	Grounding
76	*Spill from unknown source*	30.11.1994	Mohammédia, Morocco	-	-	-	Unknown
77	*Boyang N°51*	25.05.1995	Sandbaeg Do, Republic of Korea	Republic of Korea	149	19 817 SDR	Collision
78	*Dae Woong*	27.06.1995	Kojung, Republic of Korea	Republic of Korea	642	Won 95 000 000	Grounding
79	*Sea Prince*	23.07.1995	Yosu, Republic of Korea	Cyprus	144 567	Won 18 308 275 906	Grounding
80	*Yeo Myung*	03.08.1995	Yosu, Republic of Korea	Republic of Korea	138	Won 21 465 434	Collision
81	*Shinryu Maru N°8*	04.08.1995	Chita, Japan	Japan	198	¥3 967 138	Mishandling of oil supply
82	*Senyo Maru*	03.09.1995	Ube, Japan	Japan	895	¥20 203 325	Collision
83	*Yuil N°1*	21.09.1995	Pusan, Republic of Korea	Republic of Korea	1 591	Won 351 924 060	Sinking

Estimated quantity of oil spilled (tonnes)	Types of claims paid by insurer and/or 1971 Fund	Compensation (and/or indemnification where applicable) paid by the 1971 Fund up to 31.12.2009 (GBP)	Notes
18	Clean-up & preventive measures Fishery-related	30 919	Shipowner lost right to limit his liability because limitation proceedings not commenced within period specified under Korean law.
Unknown	Clean-up & preventive measures	Nil	Not established that oil originated from a ship as defined in 1971 Fund Convention.
160	Clean-up & preventive measures	Nil	Clean-up claim (Won 142 million) time-barred as necessary legal action not taken.
1	Clean-up & preventive measures	395 926	
5 035	Clean-up & preventive measures Removal of oil and vessel Fishery-related Tourism-related Environmental studies Indemnification	21 088 059	Won 18 308 275 906 paid by shipowner's insurer.
40	Clean-up & preventive measures Fishery-related Tourism-related	1 037 502	Won 560 945 437 paid by shipowner's insurer.
0.5	Clean-up & preventive measures Damage to property Loss of income Indemnification	31 129	¥3 718 455 paid by shipowner's insurer.
94	Clean-up & preventive measures Fishery-related Indemnification	2 273 118	¥279 973 101 recovered by way of recourse.
Unknown	Clean-up & preventive measures Oil removal operation Fishery-related	15 936 615	

	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC	Cause of incident
84	*Honam Sapphire*	17.11.1995	Yosu, Republic of Korea	Panama	142 488	14 000 000 SDR	Contact with fender
85	*Toko Maru*	23.01.1996	Anegasaki, Japan	Japan	699	¥18 769 567	Collision
86	*Sea Empress*	15.02.1996	Milford Haven, Wales, United Kingdom	Liberia	77 356	£7 395 748	Grounding
87	*Kugenuma Maru*	06.03.1996	Kawasaki, Japan	Japan	57	¥1 175 055	Mishandling of oil supply
88	*Kriti Sea*	09.08.1996	Agioi Theodoroi, Greece	Greece	62 678	€6 576 100	Mishandling of oil supply
89	*N°1 Yung Jung*	15.08.1996	Pusan, Republic of Korea	Republic of Korea	560	Won 122 million	Grounding
90	*Nakhodka*	02.01.1997	Oki Island, Japan	Russian Federation	13 159	1 588 000 SDR	Breaking
91	*Tsubame Maru N°31*	25.01.1997	Otaru, Japan	Japan	89	¥1 843 849	Overflow during loading operation

Estimated quantity of oil spilled (tonnes)	Types of claims paid by insurer and/or 1971 Fund	Compensation (and/or indemnification where applicable) paid by the 1971 Fund up to 31.12.2009 (GBP)	Notes
1 800	Clean-up & preventive measures Fishery-related Environmental studies	Nil	US$13.5 million paid by shipowner's insurer.
4	Clean-up & preventive measures	Nil	Total damage less than owner's liability.
72 360	Clean-up & preventive measures Damage to property Fishery-related Tourism-related Loss of income Indemnification	31 243 826	£20 million recovered from Milford Haven Port Authority by 1971 Fund by way of recourse.
0.3	Clean-up & preventive measures Indemnification	5 435	¥1 197 267 recovered by way of recourse.
30	Clean-up & preventive measures Property damage Fishery-related Tourism-related	Nil	The aggregate amount of all claims falls within the limitation amount.
28	Clean-up & preventive measures Cargo transhipment Salvage Fishery-related Loss of income Indemnification	293 032	Won 690 million paid by shipowner's insurer.
6 200	Clean-up & preventive measures Causeway Fishery-related Tourism-related	49 629 799	A global settlement agreement was reached between shipowner/insurer and IOPC Funds whereby the insurer paid ¥10 956 930 000 and Funds paid ¥15 130 970 000, of which 1971 Fund paid ¥7 422 192 000 and 1992 Fund paid ¥7 708 778 000.
0.6	Clean-up & preventive measures Indemnification	31 984	¥1 710 173 paid by shipowner's insurer.

	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC	Cause of incident
92	*Nissos Amorgos*	28.02.1997	Maracaibo, Venezuela	Greece	50 563	Bs3 473 million	Grounding
93	*Daiwa Maru N°18*	27.03.1997	Kawasaki, Japan	Japan	186	¥3 372 368	Mishandling of oil supply
94	*Jeong Jin N°101*	01.04.1997	Pusan, Republic of Korea	Republic of Korea	896	Won 246 million	Overflow during loading operation
95	*Osung N°3*	03.04.1997	Tunggado, Republic of Korea	Republic of Korea	786	104 500 SDR	Grounding
96	*Plate Princess*	27.05.1997	Puerto Miranda, Venezuela	Malta	30 423	3.6 million SDR	Overflow during loading operation
97	*Diamond Grace*	02.07.1997	Tokyo Bay, Japan	Panama	147 012	14 million SDR	Grounding
98	*Katja*	07.08.1997	Le Havre, France	Bahamas	52 079	€7.3 million	Striking a quay

Estimated quantity of oil spilled (tonnes)	Types of claims paid by insurer and/or 1971 Fund	Compensation (and/or indemnification where applicable) paid by the 1971 Fund up to 31.12.2009 (GBP)	Notes
3 600	Clean up & preventive measures Fishery-related Tourism-related Property damage Environmental damage Indemnification	10 979 550	Bs1 254 619 385 and US$4 008 347 paid by shipowner's insurer. There are still three outstanding claims against the 1971 Fund totalling US$ 150 million pending before the Venezuelan courts. The Fund's position in respect of these claims is that they are either time barred *vis-a vis* the Fund or no loss proven.
1	Clean-up & preventive measures Indemnification	54 970	
124	Clean-up & preventive measures Indemnification	100 645	
Unknown	Clean-up & preventive measures Oil removal operation Fishery-related Indemnification	8 193 887	1992 Fund paid ¥340 million to claimants. This amount was later reimbursed by 1971 Fund.
3.2	Fishery-related	Nil	Claims against 1971 Fund are time-barred however, two claims have been accepted by the Venezuelan courts. The Fund has appealed to the Supreme Court.
1 500	Clean-up & preventive measures Fishery-related Tourism-related Loss of income	Nil	Total amount of established claims did not exceed shipowner's liability.
190	Clean-up & preventive measures	Nil	Total amount of established claims did not exceed the shipowner's liability.

	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC	Cause of incident
99	*Evoikos*	15.10.1997	Strait of Singapore	Cyprus	80 823	8 846 942 SDR	Collision
100	*Kyungnam N°1*	07.11.1997	Ulsan, Republic of Korea	Republic of Korea	168	Won 43 543 015	Grounding
101	*Pontoon 300*	07.01.1998	Hamriyah, Sharjah, United Arab Emirates	Saint Vincent and the Grenadines	4 233	Not available	Sinking
102	*Maritza Sayalero*	08.06.1998	Carenero Bay, Venezuela	Panama	28 338	3 000 000 SDR	Ruptured discharge pipe
103	*Al Jaziah 1*	24.01.2000	Abu Dhabi, UAE	Honduras	681	3 000 000 SDR	Sinking
104	*Alambra*	17.09.2000	Estonia	Malta	75 366	7 600 000 SDR	Corrosion

Estimated quantity of oil spilled (tonnes)	Types of claims paid by insurer and/or 1971 Fund	Compensation (and/or indemnification where applicable) paid by the 1971 Fund up to 31.12.2009 (GBP)	Notes
29 000	Singapore: Clean-up & preventive measures Damage to property Malaysia: Clean-up & preventive measures Fishery-related Indonesia: Clean-up & preventive measures Fishery-related Environmental damage	Nil	All settled claims in Singapore and Malaysia paid by shipowner. All claims in Indonesia dismissed by limitation court in Singapore. The insurer commenced legal actions against the 1971 Fund in London, Indonesia and Malaysia to protect its rights against the Fund. The action in Indonesia has been discontinued. In 2009, the insurer gave instructions to its lawyers to discontinue the legal action in Malaysia. It is expected that the legal action in London will be discontinued in 2010.
15-20	Clean-up & preventive measures Fishery-related	122 633	Shipowner has paid Won 26 622 030.
8 000	Clean-up & preventive measures Fishery-related	1 250 365	The 1971 Fund has settled and paid all claims.
262	Clean-up & preventive measures Environmental damage	Nil	1971 Fund considers that the Conventions do not apply to this incident.
100-200	Clean-up & preventive measures	566 166	The 1971 and 1992 Funds have taken recourse action against shipowner claiming reimbursement of Dhs 6.4 million. The Court has decided in favour of the Funds, but it will be very difficult to execute the judgement since the shipowner has no sufficient assets.
300	Clean-up & preventive measures Economic loss	Nil	In 2009, following a settlement agreement concluded between the two claimants who took legal actions, the shipowner and the insurer, the claims have been withdrawn and the insurer and the 1971 Fund have been released of any obligations arising from the incident.

	Ship	Date of incident	Place of incident	Flag State of ship	Gross tonnage (GRT)	Limit of shipowner's liability under 1969 CLC	Cause of incident
105	*Natuna Sea*	03.10.2000	Indonesia	Panama	51 095	6 100 000 SDR	Grounding
106	*Zeinab*	14.04.2001	United Arab Emirates	Georgia	2 178	3 000 000 SDR	Sinking
107	*Singapura Timur*	28.05.2001	Malaysia	Panama	1 369	102 000 SDR	Collision

Estimated quantity of oil spilled (tonnes)	Types of claims paid by insurer and/or 1971 Fund	Compensation (and/or indemnification where applicable) paid by the 1971 Fund up to 31.12.2009 (GBP)	Notes
7 000	Singapore: Clean-up & preventive measures Fishery-related Malaysia: Clean-up & preventive measures Fishery-related Indonesia: Clean-up & preventive measures Fishery-related	Nil	All claims paid by shipowner's insurer.
400	Clean-up & preventive measures	248 011	1971 and 1992 Funds have each contributed 50% of the amounts paid.
Unknown	Clean-up & preventive measures Environmental risk assessment Indemnification	538 486	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.

Acknowledgements

Photographs

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