



International Oil Pollution
Compensation Funds

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LESSONS LEARNED FROM THE *HEBEI SPIRIT* INCIDENT

INCIDENT HANDLING, CLAIMS ASSESSMENT AND SETTLEMENT PROCESS

Note by the Secretariat

Summary:	The Director, in cooperation with Assuransföreningen Skuld (Gjensidig) (the Skuld Club) and the Government of the Republic of Korea, has undertaken a review of the claims-handling process and the lessons learned in respect of the management of the <i>Hebei Spirit</i> incident. Some of the lessons learned from this incident have already been incorporated in the IOPC Funds' claims-handling policy. Others will be taken into account in the management of future incidents.
Action to be taken:	<u>1992 Fund Assembly</u> Information to be noted.

1 Introduction

- 1.1 In order to review the way in which major incidents are handled, the IOPC Funds have over the years held meetings ('wash-up' meetings) with representatives of the P&I Club concerned, Claims Handling Office staff and experts involved. Such meetings took place for the 1971 Fund in connection with the *Haven* (Italy, 1991), *Braer* (United Kingdom, 1993) and *Sea Empress* (United Kingdom, 1996) incidents. The objective of those meetings was to examine the manner in which claims had been handled and to identify what went well, what went less well and what should be done differently in the future. These meetings proved to be very useful and the conclusions reached were taken into account when setting up claims-handling procedures in respect of later incidents.
- 1.2 The 1992 Fund continued this approach, by holding wash-up meetings to review the way in which major incidents were handled. Such meetings were held in respect of the *Nakhodka* (Japan, 1997) and *Erika* (France, 1999) incidents. The lessons learned from those incidents were taken into account in the organisation of the handling of claims arising from subsequent incidents, with a view to improving the speed and efficiency of the process in order to reduce the financial burden on claimants as quickly as possible.
- 1.3 At the October 2019 session of the 1992 Fund Executive Committee, the Director stated that it was his intention to hold such a meeting for the *Hebei Spirit* incident to discuss the experience gained in dealing with it and to determine whether that experience should lead to changes in the Funds' claims handling procedures (IOPC/OCT19/11/1, para 2.1.4).
- 1.4 In view of the very close involvement of the Government of the Republic of Korea in the handling of the *Hebei Spirit* incident from the beginning, the Director agreed with the proposal by the

Government that it should participate in the wash-up meeting as an equal party to the proceedings together with the Fund and the ship's insurer, the Skuld Club.

- 1.5 The wash-up meeting, initially scheduled for May 2020, had to be postponed due to the COVID-19 pandemic. Following the easing of travel restrictions, the meeting could finally be held in Seoul in June 2022, with the Korean Government taking care of the logistical arrangements in the Republic of Korea. The meeting saw the attendance of 36 participants from 20 organisations who were involved in the *Hebei Spirit* incident (see Annex II). It covered the whole lifecycle of the incident, from the immediate response after the spill to the end of the legal proceedings.
- 1.6 A large number of issues were raised and discussed during the wash-up meeting, including cooperation between P&I Clubs and national governments, claims handling, legal matters and national mechanisms that the Government of Korea considered it could put in place to deal with future large oil spills in Korean waters. A detailed report on the matters discussed during the wash-up meeting, including those not directly related to Funds' matters, has been prepared by the former Director of the IOPC Funds, Mr José Maura. The report is attached at Annex I.
- 1.7 This document focuses on the specific issues faced by the 1992 Fund which arose from the handling of several thousands of claims and the management of the incident, in particular those issues related to the mechanisms that had to be put in place to avoid double payments of claims and to correctly match the claims submitted to the Club and Fund with the claims submitted in court.
- 1.8 General conclusions are drawn regarding the future handling of claims arising from major incidents. In reaching these conclusions it is recognised that the claims-handling procedures adopted by the Funds in different countries will sometimes be determined by factors outside the Funds' control and that some flexibility will therefore be necessary in the light of the circumstances of each incident.
- 1.9 No criticism of the objectivity and professionalism of any of the parties involved in handling the incident should be inferred from the statements in this document, the lessons learned or the conclusions drawn.

2 The incident

- 2.1 On 7 December 2007, the Hong Kong-registered tanker *Hebei Spirit* (146 848 GT) was struck by the crane barge Samsung N^o1 while at anchor about five nautical miles off Taean on the west coast of the Republic of Korea. As a result of the collision, a total of 10 900 tonnes of oil escaped into the sea.
- 2.2 Some 375 kilometres of shoreline along the west coast of the Republic of Korea was affected to varying degrees. The oil impacted large numbers of mariculture facilities, fisheries and shellfish cultivation areas. The oil also impacted amenity beaches and tourist destinations.
- 2.3 The Government of the Republic of Korea undertook a number of actions in response to the spill and to support the victims.
 - In January 2008, the Government concluded a Cooperation Agreement with the shipowner, Skuld Club and Korea Marine Pollution Response Corporation (KMPRC). The 1992 Fund was consulted during the negotiations but was not a party to the agreement. In accordance with the agreement, in exchange for the Club's expedited payment to large numbers of individuals engaged by clean-up contractors, the Government undertook to facilitate cooperation with the experts appointed by the Club and the 1992 Fund, and KMPRC undertook to request the release of the *Hebei Spirit* from arrest;

- In July 2008, a Second Cooperation Agreement was concluded between the shipowner, Skuld Club and the Government under which the Skuld Club undertook to make interim payments to claimants at 100% of the assessed amounts up to the shipowner's limit of liability under the 1992 CLC. In return, the Government undertook to pay in full all claims as assessed by the Club and the 1992 Fund once the 1992 Fund Convention limit was reached, as well as any amount awarded by judgments, mediation and settlement agreements. The Government further undertook to deposit the amount already paid out by the Skuld Club to claimants in court should the Limitation Court order a deposit of the limitation fund;
- 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 also approved by the National Assembly of the Republic of Korea in March 2008 and entered into force on 15 June 2008. Under the provisions of the Special Law, the Government of the Republic of Korea was authorised to make payments in full to claimants based on the assessments made by the Skuld Club and the 1992 Fund within 14 days of the date they submitted proof of assessment to the Government. If the Fund and the Skuld Club paid claimants compensation on a *pro rata* basis, the Government would pay the claimants the remaining percentage so that all claimants would receive 100% of the assessment;
- Under the Special Law, the Government also set up a scheme to provide loans to victims of pollution damage for an amount fixed in advance if they had submitted a claim to the Skuld Club and the 1992 Fund but had not received an offer of compensation within six months; and
- The Government of the Republic of Korea also declared its intention to 'stand last in the queue'^{<1>} in respect of claims for compensation by the central and local governments.

- 2.4 The scheme enacted by the Special Law, in particular the advance payments and the payments in excess of the limit under the 1992 Fund Convention, allowed all private claimants to receive full compensation, which would not have otherwise been possible, due to the fact that the Republic of Korea was not, at the time of the incident, a member of the Supplementary Fund.
- 2.5 In view of the extent of the pollution, and because it was apparent from an early stage that the incident would result in thousands of claims for compensation, the 1992 Fund and the Skuld Club immediately signed a Memorandum of Understanding (MoU) and started to work together to manage the incident. In January 2008, the 1992 Fund and the Skuld Club opened a claims handling office (*Hebei Spirit* Centre, or HSC) in Seoul to assist claimants in the presentation of their claims for compensation and appointed a team of Korean and international surveyors to monitor the clean-up operations and investigate the potential impact of the pollution on fisheries, mariculture and tourism activities.
- 2.6 Some 127 483 claims, totalling KRW 4 227 billion, were submitted with respect to this incident. The vast majority of the claims were brought by means of civil proceedings in the Korean Court.
- 2.7 By 2018, the Korean Courts had assessed the losses arising out of the *Hebei Spirit* incident at KRW 432.9 billion, in respect of 59 596 claims. The remaining claims were rejected. All legal proceedings were finalised by 2019. The Skuld Club paid KRW 186.8 billion in compensation. The 1992 Fund made payments totalling KRW 134.8 billion in compensation to the Government of the Republic of Korea. The Fund further reimbursed the Skuld Club the difference (due to the timing of

^{<1>} Standing last in the queue, is an initiative undertaken in the past by governments to overcome situations where the value of the established claims is likely to exceed the funds available under the liability Conventions. By standing last in the queue, a government would not pursue their claims until non-government claims have been satisfied and, if there were no monies remaining, they would forgo compensation.

the exchange rates) between the amount paid and the limitation amount determined by the Limitation Court.

3 The organisation of the handling of claims arising from the *Hebei Spirit* incident

Claims Handling Office (The Hebei Spirit Centre (HSC))

- 3.1 Once the decision was taken to open a claims handling office and following consultations with the Ministry of Ocean and Fisheries, as well as a review of the potential security risks, Seoul was chosen as the location for the HSC.
- 3.2 The Head of the HSC was appointed on the basis of a series of interviews carried out by the Skuld Club and the 1992 Fund. While attempts were made to appoint a national of the Republic of Korea as Head of the HSC, it was not possible to find a willing candidate with the necessary experience. The Skuld Club and the 1992 Fund therefore appointed British experts with a background and familiarity with handling P&I Club claims and experience in managing a Claims Handling Office. Those experts rotated their time acting as Head of the HSC in the country. Skuld Club and Fund personnel also regularly attended the HSC on a rolling basis.
- 3.3 Premises were found in Seoul in early January 2008 and local administrative personnel were hired to staff the office by the end of the same month. The personnel demonstrated IT and administrative skills, and were also native Korean speakers which enabled them to assist the Head of the HSC in his work. The location of the HSC, whilst not readily accessible to the public, was in close proximity to the Government's premises.
- 3.4 In line with the lessons learned from the *Nakhodka* and *Erika* incidents, the 1992 Fund and the Skuld Club decided that the staff of the HSC should not become involved in the assessment of claims but should focus on facilitating the submission and prompt processing of claims. The Head of the HSC did however, occasionally make comments on the experts' assessments using his knowledge in the field. Ultimately, the role of the HSC was to:
 - receive and register claims on the Club/Fund's Web-based Claims Management System (WCMS);
 - receive supporting documentation for the submitted claims;
 - assign registered claims to the respective appointed experts;
 - check and confirm that the protocols for registering claims had been followed; and
 - prepare assessment letters to the claimants and arrange for payments to claimants.
- 3.5 Because of the requirements of the Special Law (see paragraph 2.3), the checking of claims documents became much more extensive than initially envisioned and the workload of the office was vastly increased. The high volume of claims, as well as the workload created for checking claims for the purpose of avoiding double payments, quickly became the focus of the work of the HSC.
- 3.6 For each payment to be made by either the Club or the Government, the HSC was required to check the claims to ensure that the claimants had not already received compensation, or if they had received a loan. Equally, when the limit of the 1992 Civil Liability Convention (1992 CLC) was reached, every subrogated claim by the Government needed to be checked against existing records to ensure that no payment or assignment against that claim already existed.
- 3.7 The focus of the work of the HSC in verifying claims and payment procedures worked well for the *Hebei Spirit* because of the specific circumstances of this incident and the need to accommodate the requirements of the Special Law. However, in other incidents it might be appropriate to have the Head

of the HSC more involved in the assessment of claims, depending on the circumstances of the case and the level of work.

Exchange of Information and IT issues

- 3.8 When claims started to be filed in the HSC, claims for economic losses in the fisheries sector were submitted by fisheries cooperatives and fishing villages on behalf of all their members. This was in line with past practice involving incidents in the Republic of Korea. However, because of the requirements of the Special Law, the Government needed to have individual information on all persons who were included in a claim submitted to the HSC. At the same time, the 1992 Fund had an obligation to maintain the privacy and confidentiality of the claimants. Furthermore, the system deployed at the time, the WCMS, had not been developed to differentiate between the individual members of the fisheries cooperatives.
- 3.9 In order to resolve the above two issues, the 1992 Fund had to make changes to the WCMS so that it could separate each of the individual claimants (around 100 000 individuals). Once that was achieved the Fund worked in cooperation with the Government of the Republic of Korea to establish a protocol for the exchange of information, under which the relevant details could be transmitted to and from the two parties while maintaining the confidentiality of the rest of the information provided by the claimants. At the same time, the HSC asked all the claimants to authorise the HSC to provide their data to the Government for payment purposes.
- 3.10 While the WCMS provided significant support to the work of the HSC, the technology available at the time it was deployed was not as advanced as it became in later years, so most of the work had to be carried out manually by staff at the HSC.
- 3.11 It is undeniable, however, that such a large incident could not have been managed as efficiently as it was without the WCMS and the use of information technology. The 1992 Fund has developed a new Claims Handling System (CHS) which was built on the model of the WCMS, and which is being deployed as the standard management tool for all new incidents.

4 Assessment of claims

Technical reasonableness

- 4.1 From the beginning of the *Hebei Spirit* incident there was very strong cooperation between the government agencies in charge of the incident and the Club and Fund's experts and personnel, with the latter being given access to the Incident Command Centre and participating in all relevant meetings. While experts and Club/Fund personnel spoke to as many responders as possible, the sheer size of the contamination and the response to it made it impossible for the experts to access all sites at the same time and the information and advice provided at the Command Centre level was not always transmitted to those working on the ground.
- 4.2 One practice to be encouraged in any future incident is for the responders and claimants to be made aware of the importance of the technical reasonableness of the measures to be undertaken and how that is taken into account in the assessment of the claim. It is therefore crucial to set up procedures by which general principles of technical reasonableness are explained early on and that the information is passed on to the actual responders on site. Such procedures should ideally be agreed with the authorities in charge from the outset of the response.

Managing expectations

- 4.3 It is also important to clarify from the beginning that claims are assessed before any payment is made to ensure that the claims realistically reflect the losses suffered. At the beginning of the incident, the Club/Fund personnel, including the Fund's Director, as well as the Head of the HSC, had a number of meetings with central Government, local authorities, the media and claimants' representatives to explain how the compensation regime works and what to expect from the claims assessment process.
- 4.4 Despite these meetings, the amounts claimed were vastly in excess of the amounts finally assessed and awarded by the national courts. It was suggested during the wash-up meeting that dissemination of information about the practicalities of the compensation regime in roadshows and local community meetings should continue beyond the first few weeks after the incident, to ensure that the message is not lost or forgotten. While the usefulness of such endeavours is undeniable, it may be difficult to maintain the delivery of such events on a regular basis and for an extended period of time, as it would put a significant strain on personnel and resources.
- 4.5 However, the possibility for the Fund, in cooperation with the affected State's Government, to organise such meetings should be kept under review when an incident occurs.

Handling of large numbers of small claims in the fisheries and tourism sectors

- 4.6 The *Hebei Spirit* incident produced a large number of undocumented claims, not just in the fisheries sector, but also, for the first time in the Funds' history, in the tourism sector. The two types of claims were approached differently, both because of the sheer number of claimants, and because the economic structure of the two activities were different and therefore the way of assessing these claims also largely differed.
- 4.7 In the case of the fisheries claims, which were mainly claims by handgatherers, a triaging system was developed in consultation with the Government of Republic of Korea, which covered the following steps:
- the claims by registered handgatherers and those with supporting information would be assessed first;
 - then the central and local authorities would provide the Club/Fund experts with lists of genuine but not registered handgatherers; and
 - finally, those not recognised by the authorities would have their claims rejected unless and until they provided supporting information.
- 4.8 Once this was established, the Club/Fund experts set up a system of surveys and interviews, in cooperation with the fisheries representatives and the local authorities, to assess the handgathering claims. This process involved interviewing more than 50 000 claimants over two years.
- 4.9 In the case of the tourism claims, the issue was raised about the minbak (rooms rental) category which, due to the size of the business, were not required to keep financial records and had therefore difficulties in providing supporting information. The minbak did not have the same cooperative layout as the handgatherers and there was therefore no reference body to help to identify the genuine claimants. While the Government of the Republic of Korea had proposed to use an income estimate model to assess those claims, the Fund was constrained by the assessment criteria as approved by the Member States to only assess claims which were supported by sufficient information.

- 4.10 In order to assess those claims which were not required by law to maintain records, the Club/Fund's experts developed a system based on existing data from those minbak which did have some kind of financial records and from businesses of a similar size. In addition, some 1 200 interviews were arranged with individual minbak claimants. The assessments were mostly confirmed by the Korean courts.
- 4.11 The assessment of undocumented claims was carried out by a combination of income estimation and actual interviews and surveys, which allowed the Club/Fund's experts to check the reasonableness of the claims.
- 4.12 One of the main lessons resulting from the *Hebei Spirit* incident was that there may be groups of claimants who have suffered losses conducting legitimate economic activities (ie non-subsistence claimants) but who do not possess verifiable revenue data. As a result, new text was inserted into the latest edition of the Claims Manual which allows the Funds' Secretariat to apply models, when authorised in advance by the Executive Committee, to assess large numbers of small, undocumented claims. However, for such models to be applicable, there will still need to be sufficient background information on the sector to be assessed, which may or may not be the case depending on the incident and the sector affected.

5 Cooperation with the national authorities in handling claims

Incident response and incident management

- 5.1 The cooperation between the Government, the first responders and the Club/Fund's experts during the emergency phase was good.
- 5.2 However, once the emergency phase was concluded and the incident moved to a project management phase, there emerged a lack of coordinated lines of communication between the HSC, on behalf of the Fund and the Skuld Club, and the Korean authorities. That was resolved by setting up a regular meeting between the HSC, representatives of the *Hebei Spirit* Task Force created by the Government, and other central and local authorities' representatives, who attended when required to do so depending on the issues on the agenda.
- 5.3 The creation of this coordination system enabled all parties to come together and discuss the issues and formulate better communication protocols, with contact points established with the *Hebei Spirit* Task Force for certain areas, such as clean up, tourism, the Special Law, and payments. Communications became well established and a good working relationship between the HSC and the Task Force was maintained until the HSC was closed. This approach to dealing with the incident allowed both the Club/Fund and the Government of the Republic of Korea to be aware of each other's actions and to work together to manage the incident successfully. Such strategy will be worth bearing in mind in future incidents where the role of the Government is prominent.
- 5.4 Since the usual practice of the Government of the Republic of Korea is to change the position of government officials at regular intervals, members of the *Hebei Spirit* Task Force would often be assigned to other appointments and removed from the Task Force, which meant time had to be taken to train their replacements. At times, this affected the effectiveness of the coordination meetings. The impact of this practice was mitigated after 2011, when Mr Sungbum Kim, former Head of the *Hebei Spirit* Task Force, became Chair of the Supplementary Fund Assembly. In that position he was able to help facilitate the discussions between the 1992 Fund Secretariat and the Task Force over the years.

- 5.5 Staff continuity is something that should be taken into consideration when setting up a coordination process between the IOPC Funds, or Fund/Club and the national government in future incidents.

Legal proceedings

- 5.6 The *Hebei Spirit* incident led to the most claims ever to have been brought to court in comparison to previous incidents involving the IOPC Funds, with almost all the claims in the limitation proceedings being appealed and going through all levels of civil proceedings in the Republic of Korea. This required the courts to deal with over 120 000 claims.
- 5.7 From the beginning of the incident, claims were submitted to the HSC, as well as to the Limitation Court. However, not all the claims submitted to the HSC corresponded to the claims submitted in the limitation proceedings. Some discussions were held between the HSC and the Limitation Court with regard to the numbering and recording of the claims, so that the two sets of claims could be identified and matched. However, no agreement was reached as to how to ensure that the two claim-recording systems could recognise each other's data.
- 5.8 This resulted in the courts having to reconcile the claims that had been submitted to the HSC and paid by either the Club or the Government, with the claims that the courts were assessing, to ensure that their decisions took into account the amounts already paid. Equally, the Club and the Fund were asked by the courts to match the claims on their files with the claims submitted in court and to confirm whether those claims had already received compensation.
- 5.9 While, thanks to WCMS, some 90% of the claims were matched very quickly, there remained some 15 000 claims that needed to be matched manually. This took a significant effort both on the part of the Fund's lawyers and on that of the national courts.
- 5.10 During the discussion in the wash-up meeting, it was noted that, with the increased use of technology for filing and sorting claims, the matching of claims in future incidents, at least in the Republic of Korea, should be more straightforward. However, the matching exercise had highlighted the need for all organisations handling claims after an incident to either use a unified classification system or to ensure that compatible claim numbering systems are applied, so as to avoid complications and delays later on. This was considered a crucial factor to be taken into account in future incidents.
- 5.11 Another element that was considered to be crucial in avoiding delays in the assessment of claims was the need to provide clear information to the claimant as to how to maintain and preserve the evidence supporting the claims. During the course of the incident, both the Fund/Club and the courts found themselves in the position of being unable to assess a claim because the supporting documents had been submitted to the other or vice versa, and no protocol was in place for each party to access the data held by the other party. This lack of an established communication channel between the Fund/Club (through the HSC) and the national courts caused frustration on the part of claimants and delays in the assessment of claims.
- 5.12 In some respects, this issue was exacerbated by the perceived lack of communication between the Club/Fund and the national courts in the early stages of the legal proceedings. Although some meetings had taken place between the Fund's personnel and some judges, these were sporadic and upon specific request by the judges. However, continuous contacts were maintained through the attendance of the Fund's and the Skuld Club's lawyers at all the meetings with the Korean judges. In view of the comments received by the judges, requesting more frequent meetings directly with the Fund's personnel, it may be worth considering whether a system of ongoing cooperation between the

parties involved, similar to the one that was set up with the *Hebei Spirit* Task Force, should be adopted (para 5.2-5.4).

6 Director's considerations

6.1 The *Hebei Spirit* incident is the largest incident to date handled by the IOPC Funds in terms of both the amounts claimed and the large variety of types of claims submitted. It brought to the fore a number of issues that had started to emerge from previous incidents, and helped formalise a series of policies that were subsequently implemented by the Funds. Details of those policies are set out below.

- The involvement of governments in the management of an incident is always important for its resolution and was crucial in the case of the *Hebei Spirit* incident. It led the Funds' governing bodies to discuss and approve a guidance document for Member States which provides a set of measures that governments could undertake to facilitate the handling of claims as well as to alleviate economic hardship caused to the victims of future spills;
- The handling of large numbers of claims by small-scale businesses in both the fisheries and tourism sectors provided a template which allows for more flexibility in the way such claims can be assessed by the Funds' Secretariat in future incidents;
- It is important to minimise the impact of fisheries restrictions imposed by a government on claimants, while protecting the health and safety of the public. For this purpose, the 1992 Fund developed a guidance document for Member States on how to impose fisheries restrictions following an oil spill;
- The production of claim forms in the language of the country of the incident, even when that is not one of the Funds' official language, helps the claimants' understanding of the requirements for the submission of claims. The translation and publication of the form has therefore been undertaken for the incidents that occurred after the *Hebei Spirit* and will continue to be undertaken in the future;
- Equally, it is helpful to have the Claims Manual translated into the language of the affected State. The Funds' supervision of the translation of the Manual, rather than leaving it to be carried out by a third party, ensures that the information and guidance provided to the claimants is accurate and correct and this practice will continue wherever possible in future incidents.

6.2 Several other considerations were brought to the IOPC Funds' attention following this incident, which may be taken into account for the successful management of future incidents, such as:

- Establishing and maintaining regular channels of communication with the Government throughout the incident and not just during the emergency phase;
- Engaging with the public and potential claimants, not just at the beginning of the incident but also for some time afterwards in order to educate the claimants on the claims handling process and to manage expectations;
- Creating a system by which the Club and Fund can cooperate with the national courts as soon as possible after limitation proceedings or civil proceedings are commenced, to ensure that the claims-related information is shared from the beginning, and means are established to harmonise the way claims are recorded.

- 6.3 The Director wishes to acknowledge the excellent work of the *Hebei Spirit* Centre staff and all experts engaged by the Skuld Club and the 1992 Fund to deal with the claims arising from the *Hebei Spirit* incident. No criticism of their objectivity and professionalism should be inferred from the statements in this document or lessons learned and the conclusions drawn.
- 6.4 The Director would like to emphasise how the close cooperation with the Skuld Club as well as the cooperation and assistance provided by the Government of the Republic of Korea were paramount in resolving this major incident.

7 Action to be taken

1992 Fund Assembly

The 1992 Fund Assembly is invited to take note of the information contained in this document.

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ANNEX I

Report by José Maura, Former Director of the IOPC Funds

WORKSHOP ON THE HEBEI SPIRIT OIL SPILL INCIDENT

Seoul, 15 and 16 June 2022

AGENDA
OPENING
0.1 Opening remarks by: (1) the Director of the IOPC Funds; (2) the Vice President of the Skuld P&I Club; and (3) the General Director of the Ministry of Oceans and Fisheries (MOF)
0.2 Introduction of participants
SESSION 1: COOPERATION BETWEEN THE P&I CLUB, THE 1992 FUND AND THE KOREAN AUTHORITIES IN THE INITIAL STAGES OF THE INCIDENT
1.1 Cooperation between the P&I Club/the 1992 Fund (including ITOFF) and the Korean authorities
1.2 Logistics of the <i>Hebei Spirit</i> Centre (location, security, etc.)
1.3 Establishment of regular communication channels. Cooperation between the Task Force to support the victims and the HSC, the P&I Club and the 1992 Fund
1.4 Compensation for villagers' labour costs included in clean-up operations costs in the early stages of the incident
1.5 Compensation coverage for beach clean-up operations
SESSION 2: ASSESSMENT OF CLAIMS AND PAYMENT BY THE P&I CLUB AND 1992 FUND
2.1 Handling of large number of undocumented or small amount claims (minbak, etc)
2.2 Handling of claims submitted by handgatherers
2.3 Fisheries restrictions
2.4 Sourcing and exchange of information/IT issue
2.5 Payment process
SESSION 3: LIMITATION PROCEEDINGS AND CIVIL PROCEEDINGS
3.1 Matching of claims
3.2 Gathering and examination of documents supporting claims by the Limitation Court
3.3 Differences in the 1992 Fund's assessment and the Korean Court's decision on the quantum of losses
3.4 Communication issues during the limitation proceedings
3.5 Six-year time bar issue
3.6 Impact of the <i>Hebei Spirit</i> incident on the compensation policy of the IOPC Funds
SESSION 4: ACTIONS OF THE KOREAN GOVERNMENT – CONTRIBUTIONS AND LIMITATIONS
4.1 Second Cooperation Agreement between the P&I Club and the Korean Government
4.2 Impact of the Korean Government standing last in the queue (SLQ claims)
4.3 Impact and limitations of the two Korean Government's payment schemes – advance payment and payment of compensation in excess of the 1992 Civil Liability and Fund Convention limits
4.4 Impact and limitations of loan programme
4.5 More discussion on the Special Law in addition to 1.4 above – Contributions and limitations, lessons learned.
SESSION 5: CONCLUSIONS
5.1 Concluding discussion about achievements, limitations and lessons learned
5.2 Proposals to improve the Korean legal system in dealing with future oil spill incidents

0. OPENING

Chaired by Liliana Monsalve (Deputy Director, IOPC Funds)

0.1 Opening remarks by: (1) the Deputy Director of the IOPC Funds; (2) the Vice President of the SKULD P&I Club; and (3) the General Director of the Ministry of Oceans and Fisheries (MOF).

0.1.1 During the opening remarks, the point was made that this case, being the biggest incident the 1992 Fund has been involved in, has been resolved satisfactorily in 15 years which, bearing in mind that some 127 000 claims were submitted, is a relatively short period.

0.1.2 It was also pointed out that, after such a difficult and important case, lessons are learnt to improve the international compensation regime. It was, however, accepted that in a two-day workshop it is impossible to cover all the activities which took place during these 15 years and that necessarily, the meeting would need to focus on the fundamental aspects of the case.

0.1.3 The three hosts thanked all participants and briefly introduced them to the meeting.

1. SESSION 1: COOPERATION BETWEEN THE P&I CLUB, THE 1992 FUND AND THE KOREAN AUTHORITIES IN THE INITIAL STAGES OF THE INCIDENT

Chaired by Nicola Mason (Senior Vice President, Skuld P&I Club)

1.1 Cooperation between the P&I Club/the 1992 Fund (including ITOPF) and the Korean authorities

Background

1.1.1 Response to oil spills in Korea is normally led by the Ministry of Oceans and Fisheries (MOF), the Korean Coast Guard (KCG) or local authorities. In the case of the *Hebei Spirit* incident response and clean-up operations were commenced following recommendations from ITOPF (acting on behalf of the Skuld Club and the IOPC Fund) as they oversaw the paying for the clean-up costs.

1.1.2 Due to differences in response measures wanted by the KCG, local authorities and residents compared to those recommended by ITOPF, conflicts arose during the clean-up operations. Since a large number of persons were mobilised for clean-up operations, it was difficult to follow ITOPF's advice.

1.1.3 The ship was arrested for the clean-up costs on 24 December 2007. On 5 January 2008, the first Cooperation Agreement was entered into which set forth: (1) the cooperation between the shipowners/P&I Club and the Korean authorities in general; and (2) the settlement of labour costs etc., prior to the then Lunar New Year Holiday with the undertaking by the Government of the Republic of Korea that any excessive payment (over the limitation) would be reimbursed to the shipowners.

1.1.4 Issues to be discussed:

- a) How to improve the cooperation between the response authorities and ITOPF acting on behalf of the P&I Club and 1992 Fund.
- b) How to improve the emergency response in the initial stages of an incident.
- c) An effective incident response and compensation require a cooperation arrangement between the Government of the Republic of Korea, the P&I Club and the IOPC Funds from an early stage of the incident. What is the view of the Funds?
- d) What are the views of the IOPC Funds regarding the establishment of a cooperation agreement with the Government of the Republic of Korea and insights on how to improve it?

- e) Cooperation between Incident Command and Club and Fund experts
- f) Access to information regarding response and economic impact.

Discussion

- 1.1.5 The Skuld Club recommended that a Memorandum of Agreement (MOA) between the International Group (IG) of P&I Clubs and States, which should be agreed in peace time, would be very helpful to set up how to deal with big casualties. This is common practice between the IG Clubs and several States (Australia, New Zealand and others).
- 1.1.6 The involvement of delegates representing the State affected at the meetings of the IOPC Funds governing bodies should also be encouraged early on to open or facilitate contact with the authorities.
- 1.1.7 ITOPF found that joint surveys and joint aerial surveillance conducted by ITOPF with the KCG could have been better. Having access to the same information on how the spill and clean-up is evolving is very important at the time of making recommendations and taking decisions.
- 1.2 Logistics of the *Hebei Spirit* Centre (location, security, etc)

Background

- 1.2.1 In January 2008, the Government of the Republic of Korea and Skuld Club agreed to set up a local claims office to facilitate the submission of claims. The *Hebei Spirit* Centre (HSC) was established in Seoul following security concerns expressed by the Government.
- 1.2.2 The role of the HSC was originally envisioned to receive and register claims, and monitor the assessment process. The HSC's role was expanded to check payments and match claims to accommodate the requirements of the Special Law. The HSC's role was further expanded to attend regular coordination meetings with the Government task force.
- 1.2.3 The role of the HSC was to receive and register claims and to input them into the Web Claims Management System (WCMS), receive supporting documentation, assign the claims to relevant experts, check and confirm that the protocol for registering claims had been followed and prepare proposal letters to claimants and arrange payments of compensation.
- 1.2.4 Because of the Special Law, the HSC's list of tasks was increased (Powers of Attorney, assignment documentation, etc.).
- 1.2.5 Issues to be discussed:
 - a) Was the decision to set up the HSC in Seoul the correct decision?
 - b) To agree on a clearer division of work between the Government of the Republic of Korea and the HSC as to who is checking what.
 - c) Data had to be registered into the two databases manually with risk of errors and time-consuming.

Discussion

- 1.2.6 Due to security concerns, where in previous spills in Korea experts had suffered threats, this led the Skuld Club to decide to open the HSC in Seoul. This was considered the correct location since a major role of the HSC was to liaise with the Government task force created to deal with the consequences of the incident.

1.2.7 The role of the HSC expanded over time but that was probably unavoidable bearing in mind the size and complexities of the incident.

1.3 Establishment of regular communication channels. Cooperation between the Task Force to support the victims and the HSC, P&I Club and 1992 Fund.

Background

1.3.1 The Government of the Republic of Korea and the 1992 Fund agreed to hold regular meetings to monitor the developments on the management of the *Hebei Spirit* incident and to facilitate the prompt payment of compensation.

1.3.2 The *Hebei Spirit* Government Liaison Committee (HSGLC) was established to facilitate communication and address the many issues that arose on clean-up claims, tourism, Special Law, payments, etc.

1.3.3 The members of the task force changed regularly and that created a problem of lack of continuity and delayed progress.

1.3.4 Issues to be discussed:

a) Were there any issues during the Government-HSC communication?

b) Results of the Government-HSC regular bilateral meetings

c) Ensure good handover notes are available when personnel are changed.

Discussion

1.3.5 Communication with claimants was discussed. At the beginning of the incident, the P&I Club and Fund organised roadshows to explain the compensation regime to potential victims. These proved very valuable.

1.3.6 It was stated that, although the HSC played a crucial role in the management of the case, the decision-making always remained in London and Oslo. This is important as otherwise experts engaged by the P&I Club and Fund could be put in compromising situations.

1.3.7 Technology will play an important role in future incidents and the use of social media should be encouraged.

1.3.8 The relationship with local media is always an important element in every spill.

1.4 Compensation for villagers' labour costs included in clean-up operations costs in the early stages of the incident

Background

1.4.1 The vessel was arrested and the P&I Club was under pressure to make sure compensation of labour costs involved in clean-up operations was swift. The first Cooperation Agreement facilitated the payment of clean-up labour costs before the Lunar New Year celebrations. A payment of KRW 9.7 billion was made. Further assessments and payments of claims for labour costs were made early in the incident.

1.4.2 Some type of agreement in the future would be required to ensure that clean-up companies' costs are paid promptly.

1.4.3 Issues to be discussed:

- a) Assessment of clean-up operation claims by residents (residents' labour costs).
- b) Views on residents' labour costs claims following the first and the second Cooperation Agreements.
- c) Impact of SLQ declaration by the Government of the Republic of Korea.
- d) The IOPC Funds' recommendations on claims, assessment, and compensation of clean-up claims.

Discussion

1.4.4 The difficulties encountered by the P&I Club at the beginning of the incident were described and the need for early communication with decisions makers was emphasised. From the Skuld Club's perspective, ensuring that the vessel is not detained is extremely important.

1.4.5 The P&I Club and the Fund will have to enter into an interim funding agreement based on the Agreement on Standard Terms relating to Interim Payments of December 2016.

1.5 Compensation coverage for beach clean-up operations

Background

1.5.1 A significant proportion of clean-up claims were rejected on the grounds that most residents continued clean-up activities after a considerable amount of oil had been removed.

1.5.2 Approximately 1.2 million volunteers were engaged in clean-up operations and local governments submitted claims for the costs of material and meals provided to them.

1.5.3 The 1992 Fund accepted the volunteers' costs for December 2007 as reasonable but rejected those incurred in January 2008 and afterwards.

1.5.4 Issues to be discussed:

- a) In cases of private clean-up costs, what are the 1992 Fund's recommendations on beach clean-up operations?
- b) Volunteer costs: any recommendations regarding the participation of volunteers in the clean-up operations.
- c) Any feedback on the need to encourage or restrict voluntary participation with clean-up operations.
- d) How to ensure that clean-up operations do not continue beyond what is technically reasonable.

Discussion

1.5.5 It was recognised that prompt payment of clean-up costs was essential to ensure the operations are carried out efficiently.

1.5.6 On the use of volunteers work to carry out clean operations, it was accepted that volunteers carried out very important work but that it was necessary to ensure that pregnant women and children were not allowed to participate, as that would increase the risk of accidents.

2. SESSION 2: ASSESSMENT OF CLAIMS AND PAYMENT BY THE P&I CLUB AND 1992 FUND

Chaired by Liliana Monsalve (Deputy Director, IOPC Funds)

2.1 Handling of large number of undocumented or small amount claims (minbak, etc)

Background

2.1.1 Some 127 000 claims were presented. In total, 54 285 claims (42.6%) were rejected through the assessment and subsequent legal proceedings.

2.1.2 The Government of the Republic of Korea requested that claims from small businesses with incomes below KRW 24 million should be accepted, even if no documentation was provided. The 1992 Fund accepted to apply the Income Estimation Model to minbak category (rooms rental) claimants with revenue below KRW 24 million.

2.1.3 Many claims had little supporting information and the experts engaged by the Fund had to develop a methodology to assess those claims. Methodology developed in previous incidents like the *Solar 1* in the Philippines, was used in the *Hebei Spirit* incident. This methodology was applied to some 600 claims which otherwise would have been inadmissible for lack of information. It was also applied to some 450 claims which were borderline trading the KRW 24 million threshold.

2.1.4 Issues to be discussed:

a) How were a large number of undocumented claims for small amounts managed?

b) Why the P&I Club, 1992 Fund and Korean courts rejected compensation.

Discussion

2.1.5 Tourism experts described the difficulties encountered with claims with little information and how assessments were made sometimes based on the number of units available in each business (tables for restaurants and rooms for accommodation businesses).

2.1.6 The Judge, who dealt with all those claims in Court, made clear that a link of causation between the loss and the pollution had to be established by the claimants but that the decision by the 1992 Fund to accept claims up to KRW 24 million gave some leeway, which was highly appreciated by the Court.

2.1.7 The point was made that sometimes the information provided was false, and that even the business address did not exist which made the visits to each claimant's business essential.

2.1.8 Often claimants engaged experts who managed the claims, and did not know that they had submitted a claim and for which amount. These arrangements were conducted on a 'no cure, no pay basis' which led to many spurious claims.

2.2 Handling of claims submitted by handgatherers

Background

- 2.2.1 Some 90 000 claims by handgatherers were submitted. This represented 70.8% of the total number of claims submitted. Many claims were excessive and false. The question was how to determine which were good claims and which were not.
- 2.2.2 The 1992 Fund decided to conduct interviews with handgatherers to determine if they were *bona fide* claimants. The interview process took a long time and a substantial number of claims were rejected.
- 2.2.3 The Court used the Fund's interviews as the most reliable information available. The Court decided to reject some 43 000 claims (some 50%).
- 2.2.4 The degree of illegality of the activity was also an issue since hand-gathering is not a criminal activity and it is largely tolerated by the authorities.
- 2.2.5 Issues to be discussed:
- a) Why were so many hand-gathering claims submitted? How can the number of rejected claims be reduced?
 - b) Why were claims rejected, i.e., reasons?
 - c) How to keep evidence in the hand-gathering sector?
 - d) How to determine early on if the hand-gathering activity is legal?
 - e) How to identify genuine handgatherers?

Discussion

- 2.2.6 A suggestion was made that a declaration that the information provided in the claim submitted is truthful and that failure to abide by the declaration might result in criminal proceedings could be included.
- 2.2.7 The Judge in charge of the *Hebei Spirit* incident, however, suggested that it is not a criminal activity but a private matter. However, how do you identify false claims?
- 2.2.8 It was explained that the only solution was to interview each claimant which took six years. In addition, information from Fishery Cooperatives was very useful in the assessment process.

2.3 Fisheries restrictions

Background

- 2.3.1 The Government of the Republic of Korea imposed fishery restrictions at the beginning of the *Hebei Spirit* incident, affecting eleven local cities and three provinces. These restrictions were lifted in a progressive manner in eight rounds of a phased resumption of fishing operations across regions and industries where the safety of fishery products was assured.
- 2.3.2 The Government requested that the 1992 Fund accept fishery restrictions ranging from four and a half months to nine months, depending on the affected area but an agreement was not possible.

The decision was then taken by the courts which accepted the whole period of fishery restrictions as decided by the Government.

2.3.3 Following a proposal by the Government of the Republic of Korea, the 1992 Fund developed a Guidance on Management of Fishery Closures and Restrictions Following an Oil Spill for future cases.

2.3.4 Issues to be discussed:

a) The criteria and guidelines for imposing and lifting fishing bans should be shared with the 1992 Fund as soon as possible, to facilitate an understanding and allow a decision on the admissibility of claims.

b) The application of the 1992 Fund's Guidance on fisheries closures and restrictions to future spills

Discussion

2.3.5 The 1992 Fund's position is that the imposition and lifting of fishery restrictions should follow scientific data. It was mentioned that even fisherfolk had requested the reopening of the fisheries.

2.3.6 In a future incident, the Guidelines will be used as they are a very useful tool for the Government of the Republic of Korea.

2.4 Sourcing and exchange of information/IT issues

Background

2.4.1 The Government of the Republic of Korea took an active role in providing compensation to victims of the *Hebei Spirit* incident through advance payments, loan programme, etc. It was therefore important that the Korean Government and the 1992 Fund exchanged information on the assessment and compensation paid to avoid double payments.

2.4.2 The 1992 Fund decided that it would share information on claimants with the Korean Government on the condition that consent to information disclosure was given. Additionally, the 1992 Fund had reservations in allowing access to the WCMS by the Korean Government as the Government was also a claimant.

2.4.3 The 1992 Fund and the Korean Government's information technology (IT) experts eventually agreed a joint protocol to exchange information between the Government and the 1992 Fund, and ensured that all information regarding loans and payments would be shared.

2.4.4 Issues to be discussed:

a) Was the WCMS efficient in handling a large number of claims submitted in the *Hebei Spirit* incident?

b) How has the WCMS developed into the Claims Handling System (CHS)?

c) The exchange of data between databases.

Discussion

2.4.5 Data entry in the WCMS was done by the HSC with a risk of errors. Nowadays claims would be submitted online with data entry done by the claimants. It was felt that the WCMS was a very efficient tool for group claims and proved invaluable. Evidence of that is that some 127 000 claims were received and none were lost.

- 2.4.6 Registration of claims from hard copies was nevertheless hard work. Powers of Attorney (POA) which had to be reviewed by the lawyers and registered by HSC, proved to be a massive problem. It was suggested that for future cases, a standard POA could be used which would facilitate matters.
- 2.4.7 The use of the same claims number was discussed as this would greatly facilitate the matching of claims and it was suggested that the limitation court should use the HSC claim number. This issue was discussed later during Session 3.
- 2.4.8 The Judge dealing with the case in the Republic of Korea emphasised the importance that the 1992 Fund, Skuld Club and the Court should agree to share data as this would make the work more efficient.

2.5 Payment process

Background

- 2.5.1 Claimants could submit their claims to the HSC or to the Korean Government which had enacted the Special Law. This made the payment process complicated as many checks were required to avoid double payments to the same claimant, as well as for the same claim, by the two organisations.
- 2.5.2 An MOA was agreed between the 1992 Fund and the Korean Government to prevent double payments.
- 2.5.3 Issues to be discussed:
- a) Was the conclusion of an MOA to prevent double payments effective in handling multiple claims?
 - b) Were there actual cases of double payments and if yes, how were they handled? What can be done to improve the payment process in the future?
 - c) There was no unified way for claimants to submit claims.
 - d) In the future, it would be helpful to agree a common way to register claims and to ensure that claims are checked when registered rather than later.

Discussion

- 2.5.4 The point was made by a claimant's representative that there was a substantial gap between the amount claimed, assessed and paid. The issue of managing claimants' expectations was discussed and recognised as very important, and was referred to again a few times throughout the workshop.
- 2.5.5 The Judge dealing with the case emphasised the importance of sharing data between the 1992 Fund and the Korean Court to facilitate the work of the Court. It was recognised that most losses were established by the court proceedings either by mediation or judgment, and the question was whether the court should do all the work. The Judge stated that many handgatherers should not have submitted claims and agreed with the 1992 Fund's handling of this very important group of claims.

3. SESSION 3: LIMITATION PROCEEDINGS AND CIVIL PROCEEDINGS

Chaired by Jose Maura (Former Director, IOPC Funds)

3.1 Matching of claims

Background

- 3.1.1 Some 127 000 claimants had submitted claims to the HSC and each was given a registration claims number. These claimants also submitted claims to the Limitation Court, sometimes for different amounts and different losses, and were given different registration numbers.
- 3.1.2 The difficulty arose to match the two sets of claims so that the Limitation Court could consider the interim payments made by the HSC on behalf of the P&I Club and 1992 Fund.
- 3.1.3 Eight judges of the Limitation Court conducted matching for cases allocated to them (10 000–30 000 cases per judge) which took approximately two months to complete.
- 3.1.4 Issues to be discussed:
 - a) How to manage cases to prevent matching issues.
 - b) How to agree, at an early stage of an incident, to use the same claim number by the courts and the Claims Office.
 - c) How to ensure harmonisation of the two sets of data in the future.
 - d) The current level of IT development which should be sufficient to achieve the above.

Discussion

- 3.1.5 In the discussion, the two Judges present pointed out that the Court had had to do the matching exercise manually and that this was time consuming.
- 3.1.6 The overall view was that the Limitation Court and the HSC (on behalf of the P&I Club and 1992 Fund) should use the same numbering system or at least to provide each other with their registration number so that electronic matching was possible.
- 3.1.7 The participants agreed that going forward the situation would be different as technology is now available to assist on this very important exercise. It was, therefore, felt that as technology stands now, it should not be a problem in a future incident.

3.2 Gathering and examination of documents supporting claims by the Limitation Court

Background

- 3.2.1 Court proceedings start after a significant amount of time has passed after the incident and establishing the evidence of the losses is difficult. Although the evidence of losses was available just after the incident, often genuine claimants failed to secure it for future Court proceedings. Claims were then rejected on the grounds that the evidence had not been provided by the claimants.
- 3.2.2 In addition, many documents were submitted to the HSC but were not available to the Court and since the claimants had not kept copies, this left them in a difficult position to prove their losses.

3.2.3 It was also argued by claimants that the evidence of losses collected by the surveyors engaged by the P&I Club and 1992 Fund represented the views of those liable to pay compensation, and raised questions on their objectivity.

3.2.4 Issues to be discussed:

- a) How can the P&I Club and 1992 Fund make sure that their experts assess losses objectively and do not try to minimise the assessment to please the P&I Club and Fund?
- b) Could the P&I Club and 1992 Fund, unless under exceptional circumstances, accept the existence of damages based on the Court's assessment even if the evidence is no longer available.
- c) The possibility of using the evidence preservation procedure to estimate losses at an early stage of the incident and to split the cost of gathering the evidence between claimants and the IOPC Funds.
- d) The number of experts specialising in oil pollution incidents in the Republic of Korea is limited. What can the P&I Club and 1992 Fund do to help resolve this shortage of expertise?
- e) How to ensure that the P&I Club, 1992 Fund and Limitation Court can exchange information and data on claims from an early stage in the proceedings.

Discussion

3.2.5 It was recognised that the availability of experts was a substantial problem in case of a big incident and that there is a shortage of expertise in the Republic of Korea but also all over the world. It was suggested that P&I Club, 1992 Fund and Limitation Court could remedy the situation by appointing joint surveyors, who would act on behalf of the three parties. It was, however, felt that a better option would be to have joint surveys instead when each of the parties would appoint its own surveyor but that they would jointly inspect the evidence.

3.2.6 A suggestion was also made that gathering evidence could be done by joint experts appointed by the P&I Club, 1992 Fund and Court, while the actual assessment of losses could be done by the surveyors separately. A question was raised as to whether claimants would accept joint surveys by P&I Club, 1992 Fund and Court experts when the claimants would not have their own experts.

3.2.7 It was pointed out that the evidence provided by claimants was stored by the HSC but since claimants had not given their consent, the HSC could not have made them available to the Limitation Court. It was, therefore, suggested that claimants should keep copies (electronically or otherwise) of the evidence provided so that they could use it if required.

3.3 Differences in the 1992 Fund's assessment and the Korean Court's decision on the quantum of losses

Background

3.3.1 The losses claimed in the *Hebei Spirit* incident varied substantially between the amount claimed in Court (KRW 4.2 trillion) and in the HSC (KRW 2.8 trillion). The Limitation Court awarded losses in the region of KRW 700 billion and, after a long legal process of objections and appeals, the amount admitted by the Korean Courts was KRW 423 billion. This disparity in the figures claimed and finally awarded raises important questions on the expectations claimants had at the beginning of the incident, and the difficulties they encountered when the losses awarded by the Court were substantially lower. The need to manage claimants' expectations is therefore crucial for any future incident.

3.3.2 Issues to be discussed:

- a) Main reasons why there is a discrepancy between the claimed and assessed amounts.
- b) How to manage claimants' expectations so that there is not such a big disparity between the amount claimed and the amount finally established.
- c) What are the reasons for the differences between the claimed and assessed amounts on different types of claims?

Discussion

3.3.3 It was stated that the difference between the assessments by the P&I Club/Fund and the Limitation Court were fundamentally due to either a matter of principle or because there was a different understanding of the facts:

- 1) Matters of principle, which had an impact in the assessment of claims, were for instance: illegal income; length of fishing bans; alleged massive mortality in aquaculture; value added tax; and admissibility of certain claims, such as claims for mental damage or losses suffered by employees.
- 2) Matters where there was a difference in the recognition of facts, for instance: the boundaries of the contaminated areas; the reasonable period for clean-up operations for each contaminated area; the period of damage for fishing or tourism business in each area; the income of the month immediately preceding the incident of each claimant as a ground for determination of the lost revenue.

3.3.4 These differences gave rise to gaps in the assessment of damages in some businesses, for example: handgatherers (which submitted some 90 000 claims, by far the largest number of claims); fishing boats; tourism claims; accommodation businesses (such as minbaks); food service businesses, clean up expenses and the use of volunteers to conduct clean-up operations. Time constraints made it impossible to get into details on each of these areas where there were differences on matters of principle or a different recognition of facts.

3.3.5 It was agreed that it was important to manage claimants' expectations to avoid a similar situation occurring in a future incident.

3.3.6 The reasons for the disparities between the assessments by the Court and the experts engaged by the P&I Club and 1992 Fund were discussed in each of the areas of activity, and the main reasons were the requirements to comply with the provisions in the 1992 Fund's Claims Manual which provides for strict criteria for admissibility of claims, that claims sometimes were not logical, that no supporting evidence was provided or that the period of recognised losses (in particular, fisheries claims) was different from the period of losses claimed.

3.3.7 The point was made that on the examination of claims, the P&I Club and 1992 Fund experts found false claims where non-victims tried to obtain compensation, for instance: residents living in inland areas claiming to be handgatherers, business that did not exist, etc.

3.3.8 Reference was made to claims for minbaks, where income below KRW 24 million does not need to be recorded for tax purposes, were accepted by the P&I Club and 1992 Fund, provided after a visit by the experts it was established that the business exists but the claimant cannot prove its loss.

3.3.9 One of the Judges present was very pleased that the P&I Club and 1992 Fund had taken that initiative since this had greatly facilitated the work of the Court.

3.3.10 It was stated that the Government of the Republic of Korea could greatly assist the claims assessment process by encouraging claimants to provide documentation in support of their claims, and by statistical data which would assist the experts assess the claims.

3.4 Communication issues during the limitation proceedings

Background

3.4.1 The IOPC Funds has documentation of large-scale oil pollution incidents which could be valuable for the Court.

3.4.2 In addition, contact with decision-makers in the IOPC Funds, dealing with compensation such as the Claims Managers dealing with the incident, the Head of the Claims Department or the Director would be invaluable for the Court. Having the views of both the subjective parties but also the views of an objective and reasonable intergovernmental organisation in the legal proceedings would greatly help the Court.

3.4.3 The IOPC Funds Secretariat visited the Republic of Korea on a regular basis but did not stay in Korea permanently, leading to a significant delay in reconciliation recommendations by the Court.

3.4.4 Issues to be discussed:

a) How can the Court have access to the documentation of the IOPC Funds?

b) Whether the Court could have a direct communication with IOPC Funds Secretariat handling the *Hebei Spirit* claims.

Discussion

3.4.5 The Judge present in the meeting stated that this was a challenging case and that the Court did not have experience on the many matters which needed to be decided. Direct contact with the IOPC Funds Secretariat would greatly facilitate and expedite the Court's work. He suggested that someone from the IOPC Funds Secretariat should be based in Seoul to be able to discuss the claims with the Court.

3.4.6 The IOPC Funds replied that since the decisions by the IOPC Funds are taken in London and not in Seoul, having someone from the Secretariat in Seoul would not expedite the Court work. The P&I Club and 1992 Fund have their Korean lawyers available to discuss any matters with the Court and to answer any questions or requests from the Court, and to pass them on to the IOPC Funds in London.

3.5 Six-year time bar issue

Background

3.5.1 Article 6 of the 1992 Fund Convention provides that no action shall be brought after six years from the date of the incident.

3.5.2 There were some 127 000 claims filed in the limitation proceedings initiated by the shipowner. The 1992 Fund was a party to the limitation proceeding although not a defendant. The question raised was whether claimants need to file separate lawsuits against the 1992 Fund before six years of the incident occurring to prevent their claims becoming time-barred.

- 3.5.3 This question was discussed in the Republic of Korea by the Korean Government and the 1992 Fund, and it was agreed that the matter should be referred to an eminent retired Korean Supreme Court Judge to provide an opinion.
- 3.5.4 The opinion by the retired Korean Supreme Court Judge confirmed the interpretation of Article 6 in that, compensation rights against the 1992 Fund would be lost after six years from the date of the incident, unless an agreement on the quantum between the claimant and the 1992 Fund was reached or legal proceedings were brought against the 1992 Fund.
- 3.5.5 Some 120 000 separate lawsuits had to be commenced and had to be stayed. The Court did not initiate the proceedings, it only received a complaint and allocated the case to a designated chamber.
- 3.5.6 In addition, under Korean law, stamp duty has to be paid when bringing legal proceedings which made the situation more difficult. The payment of such stamp duty was waived by the Court.
- 3.5.7 Issues to be discussed:
- a) How to avoid the six-year time bar provision?
 - b) How to ensure that protecting compensation rights by bringing proceedings before the courts does not become onerous for claimants.

Discussion

- 3.5.8 It was agreed that the need to bring separate lawsuits would not occur if the claimants and the 1992 Fund reached a settlement as to the quantum of the losses before six years. It was, however, recognised that many claimants who would like their claims to be adjudicated by a court had to protect their rights to receiving compensation by bringing separate legal proceedings against the 1992 Fund.
- 3.5.9 Since separate legal proceedings are required, a suggestion was made that there were two possible ways to resolve this problem occurring in the future, namely, to amend the 1992 Fund Convention or to amend Korean law.
- 3.5.10 It was felt that amending the conventions was not a realistic solution as it would be very difficult to get an international agreement. The best solution was to examine whether and how to amend national legislation to avoid this problem.

3.6 Impact of the *Hebei Spirit* incident on the compensation policy of the IOPC Funds

Background

- 3.6.1 The *Hebei Spirit*, being the biggest incident involving the 1992 Fund, has assisted the IOPC Funds to develop and improve the compensation regime. Examples, for instance, are the guidelines on fishery restrictions which were developed and approved following the *Hebei Spirit* incident, the agreement with the International Group of P&I Clubs on interim payments, the compensation to employees made redundant, as well as the amendments to the Claims Manual to clarify the criteria for admissibility of claims for value added tax by Governments.
- 3.6.2 Issues to be discussed:
- a) Guidelines adopted.
 - b) Changes to the Claims Manual following the experience gained during the *Hebei Spirit* incident.

- c) Other areas where improvements have taken place as a result of the *Hebei Spirit* incident: large number of claims for small amounts; claims by employees; and the role of Governments in the handling of claims.

Discussion

- 3.6.3 There was agreement that the *Hebei Spirit*, being such a big and important incident, has contributed in a significant manner to the development of the international compensation regime for oil pollution incidents.

4. SESSION 4: ACTIONS OF THE KOREAN GOVERNMENT – CONTRIBUTIONS AND LIMITATIONS

Chaired by Sungbum Kim (Director General, Ministry of Oceans and Fisheries, Republic of Korea)

4.1 Second Cooperation Agreement between the P&I Club and the Korean Government

Background

- 4.1.1 The second Cooperation Agreement between the Korean Government and the Skuld Club was required so that the shipowners could pay compensation at 100% to claimants up to the 1992 Civil Liability Convention (CLC) limit (SDR 89.77 million) while the amount claimed exceeds the limitation.
- 4.1.2 Article 8 of the Agreement provides that the P&I Club and the Korean Government, without having to deposit the limitation fund, agree to comply with the limitation procedures and cooperate to the best of their abilities to recognise and maintain the right of the P&I Club and shipowners to limitation, and satisfy the claimant's right to compensation.
- 4.1.3 As per the Agreement, shipowners would make interim payments to victims of pollution damage and subrogate their rights of compensation. These subrogated rights would then be recognised by the Limitation Court and would then allow the shipowner to reduce the amount of cash needed to be deposited to establish limitation.
- 4.1.4 Issues to be discussed:
 - a) What was the impact of the second Cooperation Agreement from the perspective of the victims of the spill?
 - b) What burden did the second Cooperation Agreement impose on the Korean Government at the early stages of the incident?
 - c) What could be improved in the second Cooperation Agreement for similar cases in the future.

Discussion

- 4.1.5 The negotiation of the Cooperation Agreement was not easy. The P&I Club agreed to set up the HSC and provide prompt compensation to claimants at 100%. In exchange for the P&I Club making interim payments at 100%, the Government of the Republic of Korea undertook to make a deposit into Court and thus avoid the P&I Club making a double payment of the 1992 CLC limit.
- 4.1.6 The parties also agreed that a 6% interest per annum on the 1992 CLC limit would be paid into an escrow account, which would be available to pay compensation.
- 4.1.7 The P&I Club also had suffered the consequence of an unfavourable rate of exchange between the SDR and the KRW.

- 4.1.8 The 1992 Fund did not participate in the first or second Cooperation Agreement since the limitation fund is a matter for the shipowner and not for the 1992 Fund. The 1992 Fund was, however, pleased that as a result of the second Cooperation Agreement, claimants were paid at 100% of their losses. It should be noted that, at the time, the level of payments authorised by the 1992 Fund Executive Committee to pay claims was 35%.
- 4.1.9 The Republic of Korea is now a party to the Supplementary Fund and, therefore, compensation up to SDR 750 million is now available to victims. It is unlikely that losses in a future incident would exceed that amount.

4.2 Impact of the Korean Government standing last in the queue (SLQ claims)

Background

- 4.2.1 At its March 2008 session, the Executive Committee of the 1992 Fund established the level of payments of the Fund at 60%. However, in June 2008, the Executive Committee was forced to reduce the level of payments to 35%. This was due to a substantial increase of the compensation claimed. The amount claimed was approximately KRW 4.7 trillion.
- 4.2.2 In order to improve the level of payments provided by the 1992 Fund, the Korean Government decided to SLQ a number of its claims. The amount of SLQ claims was KRW 604 billion. However, since the total amount claimed was so high, the SLQ declaration served only as a humanitarian gesture and did not have a significant impact on the level of payments.
- 4.2.3 Issues to be discussed:
- a) What are the impact and limits of the SLQ declaration?
 - b) The intention of the Korean Government to increase the compensation to victims.

Discussion

- 4.2.4 The SLQ declaration by the Korean Government was seen as a very good gesture that the Government was ready to sacrifice its own claim for the benefit of vulnerable claimants. In practice, however, it did not have a significant impact on the level of payments.
- 4.3 Impact and limitations of the two Korean Government's payment schemes – advance payment and payment of compensation in excess of the 1992 Civil Liability and Fund Convention limits

Background

- 4.3.1 The *Hebei Spirit* Special Act provides:
- 1) Article 8: Subrogated payments of damages to claimants is allowed.
 - 2) Article 9: In case the losses exceed the amount available for compensation of the 1992 Fund, the Government shall pay the losses in part or in full.
- 4.3.2 On the basis of these provisions, the Korean Government advanced the compensation payments to the victims and subrogated their claims against the 1992 Fund.

4.3.3 Issues to be discussed:

- a) What is the impact of the advance compensation payments made by the Korean Government to the victims of the spill?
- b) Will there be a Special Law in the future?

Discussion

- 4.3.4 It was noted that the Republic of Korea is now a party to the Supplementary Fund Protocol and that, therefore, there is SDR 750 million available to pay compensation to victims. In this situation, it is unlikely that the Korean Government would need to enact another Special Law in the event of another major spill.
- 4.3.5 Contrary views were expressed because of the high level of claims, which are traditional in oil spills in Korea, it is likely that the next spill (if one were to occur) would still need a Special Law. Again, the importance of managing claimants' expectations was emphasised.
- 4.3.6 It was also suggested that the Republic of Korea might set up a Korean Domestic Fund to work with the 1992 Fund in a similar manner as the Canadian Fund (SOPF) does. Although this is a matter entirely for the Korean Government to decide, the overall view of the participants was that setting up a Domestic Fund for the Republic of Korea was a good idea and that, in this case, a new Special Law would not be required.

4.4 Impact and limitations of loan programme

Background

- 4.4.1 Following the Special Law, the Government of the Republic of Korea set up a loan programme for the victims of the incident.
- 4.4.2 Article 8 provided that the State or local governments may provide loans and other support measures to qualified persons, in case the assessment of their claim is not completed within six months of the date of the claim submission to the IOPC Funds.
- 4.4.3 The loan amount per person was based on the amount claimed in the HSC, not on the amount assessed by the P&I Club and 1992 Fund. Being loans, the claimant would have to repay the amount of the loan once compensation has been received.
- 4.4.4 As at 2012, KRW 50.7 billion had been given as loans to 21 288 claimants. As at 2022, the outstanding amount, i.e., not repaid by claimants to the Government, was KRW 1.8 billion.
- 4.4.5 As claim numbers were required to receive a loan, claimants had to submit claims to the HSC even if they had suffered no losses.
- 4.4.6 The loan scheme increased the number and amounts of claims, and also increased the administration requirements to register and process claims where no real losses had been suffered.
- 4.4.7 Issues to be discussed:
- a) Did the subrogation and indemnity procedure work well?
 - b) What was the impact of the loan programme?

Discussion

- 4.4.8 It was clear from the HSC perspective that the loan programme added complexity to the compensation process and encourage the submission of spurious claims. In addition, claimants who had received no compensation found it difficult to return the loans granted.
- 4.4.9 The loan amount was small (between KRW 1 million to KRW 3 million) which added complexity to the programme.
- 4.4.10 The participants felt that the loan programme was not successful and should not be repeated in another incident.
- 4.5 More discussion on the Special Law in addition to paragraph 1.4 above – Contributions and limitations; lessons learned.

Background

- 4.5.1 The Korean Government agreed to provide compensation to victims of pollution damage (at 100%) based on the assessments made by the P&I Club and 1992 Fund. Since the Skuld Club had already finalised the payment of claims under the 1992 CLC and the 1992 Fund was prorating payments (initially 60% but later 35%), it became clear for the claimants that it was better to receive compensation from the Korean Government at 100%.
- 4.5.2 The Korean Government then subrogated the losses paid and claimed reimbursement from the 1992 Fund who compensated the Government at the level of payments established at that time.
- 4.5.3 Since the Korean Government became the main provider of compensation to claimants, the 1992 Fund attempted to reach a global settlement with the Korean Government on several occasions but failed, since it was difficult to agree the terms of a 'hold harmless agreement' which the 1992 Fund would have needed. Finally, in April 2019, a bilateral agreement between the Government of the Republic of Korea and the 1992 Fund was reached.
- 4.5.4 Issues to be discussed:
 - a) Are there any other matters not discussed regarding the Special Law?

Discussion

- 4.5.5 The participants agreed that the bilateral agreement between the Government of the Republic of Korea and the 1992 Fund was very important, and it worked well. The Government received a number of advanced payments from the 1992 Fund which allowed it to pay compensation to victims at 100% which the 1992 Fund would not have been able to do so as the losses exceeded the amount available for compensation from the 1992 Civil Liability and Fund Conventions.

5. SESSION 5: CONCLUSIONS

Chaired by Sungbum Kim (Director General, Ministry of Oceans and Fisheries, Republic of Korea)

5.1 Proposals to improve the Korean legal system in dealing with future oil spill incident

5.1.1 Three proposals to improve the Korean legal system were discussed:

(1) Set up a Korean National Fund (KNF).

- a) A presentation on how the KNF would work was made. The KNF would be modelled in a similar manner as the Canadian Ship-source Oil Pollution Fund (SOPF). The Republic of Korea would continue to participate in the international compensation regime and this KNF would follow the principles and criteria set up by the international compensation regime, would apply the Claims Manual, etc.
- b) Views were expressed by the participants, most in favour although some of them expressed reservations.
- c) The P&I Club and Fund both agreed that the set up was a matter for the Korean Government to decide but in their view, it was a good idea. A cooperation agreement between the P&I Clubs, IOPC Funds and the KNF could be agreed as an MOU in a similar manner as the MOU with SOPF.
- d) The matter is under internal discussions in the Republic of Korea.

(2) Interim payments.

- a) All participants agreed that it was important and beneficial for victims in the Republic of Korea if interim payments made by the P&I Club were recognised as valid payments by the Limitation Court. It was, however, recognised that legislation would be required to achieve it.

(3) How to avoid the separate legal proceedings against the 1992 Fund to prevent the six-year time bar. Reference was made to the discussions under section 3.5 of the programme earlier that day.

5.2 Concluding discussion about achievements, limitations and lessons learned

5.2.1 The parties were very pleased with the outcome of the wash-up meeting because a meaningful discussion had taken place over two days on the main issues brought by the *Hebei Spirit* incident. It was, however, recognised that it was not possible to discuss everything which had occurred over the last 15 years.

5.2.2 There were two main conclusions: how to encourage claimants to make genuine claims and avoid the submission of false claims; and how to help claimants to secure evidence of their losses (documentation, electronic or other evidence).

5.2.3 It was recognised that the training and education of claimants is a matter for the Korean Government but the P&I Clubs and 1992 Fund would be willing to assist the Government by conducting training courses.

- 5.2.4 It would also be needed to train surveyors acting for claimants to make sure they have the required qualifications and that they understand the importance of following the provisions in the Claims Manual.
- 5.2.5 If a KNF is set up, one of its initial tasks would be training and education of future claimants and surveyors, and the Secretariat of the IOPC Funds would be willing to participate and help.
- 5.2.6 Cooperation and communication between the parties involved in an oil spill is essential. This would mean that the P&I Club, 1992 Fund, Korean Government, victims' representatives and courts would need to work together to understand how the compensation regime works, and resolve the issues which a major spill would bring.
- 5.2.7 The importance of setting up the mechanisms required in the form of a Memorandum of Understanding (MOU) between the paying parties and the Korean Government in peace time, i.e., in advance of an oil spill, was stressed. It would be very important if this MOU was in place and could be applied in the early stages of a future incident.
- 5.2.8 The matching of claims is an area where this cooperation between the parties could work and the use of technology would greatly assist this endeavour.
- 5.2.9 It was felt by the P&I Club and 1992 Fund that it is very important that the communication channels are established early in an incident and that would require agreements to be ready before a spill, and to not wait until the accident occurs.

* * *

ANNEX II

List of organisations participating to the washup meeting

	Organisation	Participants
IOPC Funds/ Skuld Club	1992 Fund	5
	Skuld Club	1
	Choi&Kim	2
	Kim&Chang	1
	ITOPF	2
	KOMOS	2
	CMA	1
	Spark International	2
	Hyopsung	2
	HSC	1
Korean Government	Ministry of Ocean and Fisheries	4
	Korea Maritime Safety Tribunal	2
	Korea Coast Guard	2
	Taeon County	2
	Korea Marine Environment Management Corporation	2
	Seoul Southern District Court	1
	Seosan Branch of Daejeon District Court	1
	Seoul District Court	1
	Korea University	1
	Moon&Song	1