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INCIDENTS INVOLVING THE 1992 FUND

ERIKA

Note by the Director

Objective of document:	To inform the Executive Committee of the latest developments regarding this incident.
Summary of the incident so far:	On 12 December 1999 the *Erika* sank in the Bay of Biscay, some 60 nautical miles off the coast of Brittany, France. Some 400 kilometres of shoreline were affected by oil, causing a considerable impact in particular on businesses in the fisheries and tourism sector. As at 19 February 2008, 7 130 claims for compensation, other than those made by the French Government and Total SA, have been submitted for a total of €211 million (£159 million)[1] and 99.7% of these claims have been assessed. Compensation payments totalling €129.5 million (£97.8 million) have been made in respect of 5 927 claims (section 3). Four hundred and twenty legal actions against the shipowner, his insurer and the 1992 Fund have been taken by 796 claimants. The courts have rendered 129 judgements and 48 actions involving 94 claimants remain pending. (section 6).
Recent developments:	The Criminal Court in Paris delivered a judgement in January 2008, convicting the representative of the registered owner (Tevere Shipping), the president of the management company (Panship Management and Services Srl), the classification society Registro Italiano Navale (RINA) and Total SA. The judgement made the convicted parties joint and severally liable for the damage caused by the incident and assessed the damages at €192.8 million (£145.7 million) (section 5). In the legal actions pending in the Civil Courts, eleven judgements have been rendered since the last session of the Executive Committee (section 7).
Action to be taken:	Information to be noted.

[1] The rate of conversion of Euros into Pounds sterling has been made on the basis of the rate at 19 February 2008 (€1 = £0.7556), except in the case of claims paid by the 1992 Fund where conversions have been made at the rate of exchange on the date of payment.

1 Summary of incident

Ship	*Erika*		
Date of incident	12.12.1999		
Place of incident	France		
Cause of incident	Breakage, sinking		
Quantity of oil spilled	Approximately 19 800 tonnes of heavy fuel oil		
Area affected	West coast of France		
Flag State of ship	Malta		
Gross tonnage (GT)	19 666 GT		
P&I insurer	Steamship Mutual Underwriting Association (Bermuda) Ltd (Steamship Mutual)		
CLC Limit	€12 843 484 (£9.7 million)		
STOPIA/TOPIA applicable	No		
CLC + Fund limit	€184 763 149 (£139.7 million)		
Compensation (€ million):	Claimed but not yet assessed	Assessed but not yet paid	Paid
Property damage	0	0.09	2.55
Clean up/preventive measures	0.56	1.91	31.90
Fisheries	0	0.19	10.73
Tourism	0.24	2.21	75.96
Miscellaneous	1.37	1.27	8.38
TOTAL	2.17	5.67	129.52
Notes:	The French Government and Total SA brought legal actions against the 1992 Fund claiming €190.5 million (£140 million) and €143 million (£105 million). These claims have not been included in the table since the French Government and Total SA undertook to stand last in the queue.		

2 Introduction

2.1 This document sets out the general situation in respect of the *Erika* incident, which occurred off the coast of Brittany (France) on 12 December 1999, and deals with recent developments.

2.2 As regards details about the incident, the clean-up operations, the removal of the oil from the wreck of the *Erika* and the impact of the spill, reference is made to the Annual Report 2006 (pages 82-94).

2.3 As regards the investigations into the cause of the incident and recourse actions by the 1992 Fund reference is made to document 92FUND/EXC.34.6/Add 1.

3 Claims situation

3.1 As at 19 February 2008, 7 130 claims for compensation, other than those made by the French Government and Total SA, had been submitted for a total of €211 million (£159 million). By that date 99.7% of these claims had been assessed. Some 1 012 claims, totalling €31.8 million (£24 million), had been rejected.

3.2 Payments of compensation had been made in respect of 5 927 claims for a total of €129.5 million (£97.9 million), out of which Steamship Mutual had paid €12.8 million (£9.4 million) and the 1992 Fund €116.7 million (£85.7 million).

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

Claims situation as at 19 February 2008					
Category	**Claims submitted**	**Claims assessed**	**Claims rejected**	**Payments made**	
				Number of claims	**Amounts €**
Mariculture and oyster farming	1 007	1 004	89	846	7 763 339
Shellfish gathering	534	534	116	371	889 372
Fishing boats	319	319	29	282	1 099 551
Fish and shellfish processors	51	51	7	43	976 832
Tourism	3 695	3 691	457	3 205	75 954 268
Property damage	711	711	248	459	2 554 705
Clean-up operations	150	145	12	127	31 894 444
Miscellaneous	663	654	54	594	8 383 921
Total	**7 130**	**7 109**	**1 012**	**5 927**	**129 516 432**

4 Payments to the French State

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

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

4.3 The Director continues to monitor the situation and will consider, in the light of the developments of the court proceedings involving the Funds, as well as the outcome of the criminal proceedings mentioned in section 5, whether a further payment can be made to the French State.

5 Criminal proceedings

5.1 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.

5.2 A number of claimants, including the French Government and several local authorities, joined the Criminal proceedings as civil parties, claiming compensation totalling €400 million (£302 million).

5.3 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.

5.4 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.

5.5 Regarding civil liabilities, the judgement made the four parties jointly and severally liable for the damage caused by the incident and awarded claimants in the proceedings 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 (£145.7 million), including €153.9 million (£116.3 million) for the French State.

5.6 The judgement is 278 pages long. A summary by the Fund's French lawyer is set out at the Annex.

6 Legal proceedings involving the Fund

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

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

6.3 Four companies in the Group Total SA took legal actions in the Commercial Court in Rennes against the shipowner, Steamship Mutual, the 1992 Fund and others claiming €143 million (£105 million).

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

6.5 Claims totalling €497 million (£376 million) were lodged against the shipowner's limitation fund constituted by Steamship Mutual. This amount includes the claims by the French Government and Total SA. However, most of these claims, other than those of the French Government and Total SA, have been settled and paid and it appears therefore that these claims should be withdrawn against the limitation fund to the extent that they relate to the same loss or damage. The 1992 Fund received from the liquidator of the limitation fund formal notifications of the claims lodged against that fund.

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

6.7 Legal actions against the shipowner, Steamship Mutual and the 1992 Fund were taken by 796 claimants. By 19 February 2008 out-of-court settlements had been reached with a great number of these claimants (444 actions) and the courts had rendered judgements in respect of 129 claims. Forty-eight actions by some 94 claimants were pending. The total amount claimed in the pending actions, excluding the claims by the French State and Total SA, was some €50 million (£37.8 million).

6.8 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.

7 Court judgements in respect of claims against the 1992 Fund

7.1 Commercial Court in Lorient

7.1.1 The Commercial Court in Lorient delivered five judgements in September and December 2007, a summary of which is provided in the table and paragraphs below:

Claimant	Claimed 2000	Claimed 2001	Fund's assessment	Court's assessment
Tourist train operator	€ 69 546	€ 69 625	€67 291 (2000) & rejected (2001)	Agreed with Fund (2000) & rejected (2001)
Seller of cleaning equipment for oyster farms	€ 201 150		€52 927	Agreed with Fund (2000)
Owner of rental property	€ 76 599	€ 32 341	€33 035 (2000) & rejected (2001)	Agreed with Fund (2000) & rejected (2001)
Estate agent	€ 180 486	€ 118 977	€102 039 (2000) & rejected (2001)	Agreed with Fund (2000) & rejected (2001)
Mussel processor		€ 218 993	Rejected (2001)	Rejected (2001)
Mussel processor		€ 459 214	Rejected (2001)	Rejected (2001)

Tourist train operator

7.1.2 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 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.

7.1.3 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 has appealed.

Seller of cleaning equipment for oyster farms

7.1.4 A seller of cleaning equipment for oyster farms had submitted a claim for economic losses suffered in 2000, which was assessed by the 1992 Fund for a lower amount.

7.1.5 In September 2007 the Commercial Court in Lorient, after stating that the court was not bound by the Fund's criteria, agreed with Fund's assessment of the losses. The claimant has not appealed.

Owner of rental property

7.1.6 The owner of rental property had submitted a claim for economic losses suffered in 2000 and 2001. The losses suffered in 2000 had been assessed by the Fund and the assessed amount had been paid to the claimant. The claim for losses in 2001 had been rejected since the Fund considered that there was not a sufficiently close link of causation between the loss and the contamination caused by the *Erika* incident.

7.1.7 In its judgement issued 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.

Estate agent

7.1.8 An estate agent submitted a claim for loss of income related to rental property in 2000 and 2001. The 1992 Fund had compensated the claimant for his loss in 2000 but had rejected the claim for 2001.

7.1.9 In its judgement issued in December 2007 the Commercial Court in Lorient, after making the same statement as the one mentioned in paragraph 7.1.7, agreed with the Fund's assessment as regards losses in 2000 and rejected the claim for 2001, since it considered that the claimant had not suffered losses as a result of the incident. The claimant has not appealed against the judgement.

Two mussel processors

7.1.10 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.

7.1.11 In its judgement delivered in December 2007 the Court, after making the same statement as the one mentioned in paragraph 7.1.7, rejected the claims since it considered that the claimants had not suffered losses in 2001 as a result of the incident. Both claimants have appealed.

7.2 Court of appeal in Poitiers

7.2.1 In February 2008 the Court of Appeal in Poitiers rendered judgements in respect of five claims from businesses in the tourism sector relating to 'pure economic loss' in cases where the 1992 Fund had appealed.

Water sports equipment retailer

7.2.2 A company selling water sports equipment had submitted a claim for €19 291 (£13 095) for losses suffered in 2000 as a result of the *Erika* incident, in its dual activity of sales to individual tourists and to sailing schools in Vendée. The 1992 Fund had assessed the claim for losses due to reduced sales to tourists at €549 (£370), but had rejected the claim for loss of sales to sailing schools on the ground

that such sales related to services provided to other businesses in the tourism industry but not directly to tourists (so called 'second degree' claims) and that, for this reason, there was not a sufficient link of causation between the contamination and the alleged loss.

7.2.3 In its judgement the Commercial Court in La Roche sur Yon had 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' 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, and by assessing the extent of the damage suffered by the victims according to the criteria of French law. The Court held that there was no doubt that there was a direct link of causation between the contamination caused by the *Erika* incident and the losses suffered and that the losses suffered could not be doubted. For these reasons the Court accepted the claimed amount in its entirety and ordered the Fund to compensate the claimant accordingly. The 1992 Fund appealed against the judgement.

7.2.4 In its judgement in February 2008, the Court of Appeal in Poitiers stated that national courts have to interpret the notion of pollution damage according to the 1992 Conventions and that in doing so national courts were not bound by the admissibility criteria developed by the Fund, in particular the criteria of non admissibility of so called 'second degree' claims. The Court however considered that the losses suffered by the claimant in 2000 were recovered in 2001, since some of the sales that would have taken place in 2000 were only postponed until 2001, and concluded that the claimant had not suffered losses in 2000. The Court therefore accepted the quantum of the 1992 Fund's assessment of the claim.

Seasonal letting activities

7.2.5 In September 2005 the Commercial Court in La Roche sur Yon had rendered four other judgements relating to claims by estate agencies in Vendée for losses suffered in their activity of seasonal lettings of furnished apartments and villas in the year 2000, allegedly as a consequence of the reduction in the number of tourists in the affected area due to the *Erika* incident. The Fund had as regards three of the claims assessed the losses at amounts lower than those claimed. The fourth claim was rejected by the 1992 Fund since, in the Fund's opinion, the claimant had not proven any losses.

7.2.6 In the four judgements, the Commercial Court in La Roche sur Yon had made the same statements concerning the 1992 Fund's criteria for admissibility and the interpretation of the concept of 'pollution damage' in the 1992 Conventions as the ones set out in paragraph 7.2.3. The Court stated that no doubt had been raised as to the existence of a link of causation between the contamination caused by the *Erika* incident and the losses suffered. The Court considered that the assessment of the loss could not be calculated only on the basis of the number of 'mandats' (portfolio of lettings received by the agent), but that account should also be taken of the number of weeks that the apartments or houses were let. The Court therefore awarded the full claimed amounts to three of the four claimants and decided that the judgements were immediately enforceable, whether or not appeals were lodged. In the case of the claimant whose claim had been rejected by the 1992 Fund, the Court awarded the claimant an amount of €11 696 (£7 900), compared to the claimed amount of €25 383 (£17 200).

7.2.7 The 1992 Fund's experts examined the judgements and considered them to be unreasonable since the court had not carried out a quantitative assessment of the claims. Based on the expert's opinion, the 1992 Fund lodged appeals against the judgements.

7.2.8 The Court of Appeal in Poitiers delivered its judgements in February 2008. In the four judgements the Court stated that the liability of the Fund according to the 1992 Fund Convention is subsidiary to that of the shipowner according to the 1992 Civil Liability Convention, and that the Fund and the shipowner cannot use as a defence to a legal action for compensation the criteria developed by the Fund in the context of the 1992 Fund Convention, that deals specifically with the creation of the 1992 Fund. In assessing the quantum of the losses the Court disagreed with the method of

assessment used by the Fund. In three cases the Court considered that the assessment could not be calculated on the basis of the number of 'mandats', but on the number of weeks that the apartments or houses were let. However, in the fourth case the Court simply calculated the loss by comparing sales in 2000 with those in 1999. The Court accepted the quantum of the assessment carried out by the Fund in respect of one of the claims and awarded amounts lower than those awarded in the first instance in respect of the other three claims. Details of the four claims are summarised in the table below:

	Amount claimed	Amount assessed by the Fund	Amount awarded by the Court of 1st instance	Amount awarded by the Court of Appeal
1 - Property letting	€12 096	€5 851	€12 096	€5 851
2 - Property letting	€39 179	€12 016	€39 179	€29 852
4 - Property letting	€17 080	€12 550	€17 080	€15 022
5 - Property letting	€25 338	€0	€11 696	€1 632

7.2.9 The Director has examined these four judgements, in particular those where the Court of Appeal has not agreed with the Fund's assessment of the claim, and since none of them raised matters or questions of principle he has decided that the Fund should not appeal.

7.3 Court of Cassation - Confirmation of judgement rendered by the Commercial Court in Rennes

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

7.3.1 A fisherman had submitted a claim for €8 027 (£5 900) relating to loss of income due to the *Erika* incident. The claimant had accepted the assessment of his claim made by the Fund for €1 357 (£900). The claimant had received two provisional payments totalling €1 085 (£740) and had signed full and final receipts and releases in respect of that amount, leaving a payment of €272 (£160) outstanding. Before the last compensation payment was made, the claimant brought proceedings against the 1992 Fund arguing that the agreement reached with the Fund was not valid and claiming compensation for losses totalling €6 942 (£5 000).

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

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

7.3.4 The Court stated that the legal action by the union was admissible, since any trade union could be party in legal proceedings to defend the general interests of the members of the profession it represented. The Court recognised the right of the union to question in general terms the processes and modalities of compensation of fishermen and others deriving their income from the sea, although it determined that the union should not deal with individual losses suffered by the victims of the

pollution. However, the Court dismissed the union's claim, since it was not well founded. The claimants have lodged a further appeal before the Court of Cassation.

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

8 Action to be taken by the Executive Committee

The Committee is invited:

(a) to take note of the information contained in this document; and

(b) to give the Director such instructions in respect of the handling of this incident as it may deem appropriate.

* * *

ANNEX

« ERIKA »

Summary of the judgement of 16 January 2008 handed down by the Paris Criminal Court

On 16 January, following eight years of investigation and four months of trial proceedings, the Paris High Court ruling on a criminal matter, in a judgement of 278 pages, pronounced on the liabilities arising out of the sinking of the "*Erika*" on 12 December 1999 and the claims for civil compensation filed by some one hundred civil parties.

1. The persons charged and the charges: According to an indictment of 3 February 2006, fifteen legal and natural persons were sent for trial at the Paris Criminal Court charged with the following:

- Pollution and endangering the lives of others:
  - Mr Giuseppe Savarese, owner-operator of the "*Erika",*
  - Mr Antonio Pollara, official of the Panship company responsible for the technical management of the ship,
  - Messrs Mauro Clemente and Alessandro Ducci, directors of the Selmont and Amarship companies, time charterers of the "*Erika"*,
  - The Italian classification society RINA as a legal person,
  - Mr Gianpierro Ponasso, Director of RINA,
  - Mr Karun Mathur, master of the "*Erika*".
- Pollution, complicity in endangering the lives of others and deliberate refusal to take measures to prevent the incident:
  - Mr Bertrand Thoullin, head of "Legal Affairs - Contracts and Safety" in the Trading & Shipping Department of TotalFinaElf
- Pollution and complicity in endangering the lives of others:
  - Total SA, as a legal person,
  - Total Gas & Power Services Ltd, formerly Total Petroleum Services, as a legal person (hereinafter TPS),
  - Total Transport Corporation, as a legal person (hereinafter TTC),
- Deliberate refusal to take measures to prevent the incident:
  - Commander Geay, officer of the Brest Maritime Prefecture,
  - Admiral de Montval, officer of the Brest Maritime Prefecture,
  - Chief Officer Velut, officer of the Brest Maritime Prefecture,
  - Mr Le Jeune, deputy director of the Regional Operational Surveillance and Rescue Centre (CROSS).

2. Acquittals pronounced by the Court: The Paris Criminal Court acquitted Admiral de Montval, Commander Geay, Chief Officer Velut, Messrs Lejeune, Thouillin, Ponasso, Clemente, Ducci and Mathur, and the TTC and TPS companies of the charges of pollution, endangering the lives of others, complicity in endangering the lives of others and deliberate refusal to prevent the incident.

The TTC and TPS were acquitted for the following reasons:

- *Acquittal of TTC*: TTC which was the charterer of the "*Erika*" was criticised by the examining magistrate for imprudence giving rise to its criminal liability for chartering the ship beyond the limit of validity of the charter fixed by the Total vetting service. Neither the legal information nor the submissions to the Court were able to eliminate the doubt as to the causal link between the conduct qualified as at fault by the examining magistrate and the sinking. As the accused must be given the benefit of the doubt, the Court acquitted TTC.

- *Acquittal of TPS*: TPS, which acted as intermediary between the charterer of the "*Erika*" and its owners, was criticised by the examining magistrate for imprudence for not noticing that the limit of validity of the charter fixed by the Total vetting service had expired at the time when the charter was concluded. It was also criticised for not carrying out further checks during the process of chartering the "*Erika*". TPS was acquitted on the same grounds as TTC because of the doubt as to the causal link between the conduct qualified as at fault by the examining magistrate and the sinking.

3. The legal grounds for the charges upheld by the Court: It was in application of the Law of 5 July 1983 on the punishment of offences of pollution that the Court found the following accused to be guilty of pollution of French waters and navigable waterways:

- Mr Savarese, owner of the "*Erika*", was sentenced to pay a criminal fine of 75,000 €,
- Mr Pollara, manager of the ship, was sentenced to pay a criminal fine of 75,000 €,
- RINA, as classification society of the ship which had renewed its certificates following the repairs carried out under its supervision, was sentenced to pay a criminal fine of 375,000 €,
- Total SA, which had exercised a power of management and control of the operation of the ship in the course of the vetting operations, was sentenced to pay a criminal fine of 375,000 €.

In application of national law, the Court found that:

- national law referred to international texts (the Brussels Convention on the Right of Intervention on the High Seas of 29 November 1969 and the MARPOL Convention 1973),
- national law did not conflict with international law,
- the offence was committed in a French exclusive economic zone in which the coastal State has jurisdiction for the protection and preservation of the marine environment under the Convention on the Law of the Sea, Montego Bay, of 10 December 1982.

"*French criminal law is applicable to offences committed outside territorial waters where international conventions and the law so provide*" (pages 180 and 181 of the judgement).

4. More particularly, the criticism upheld against Total SA: Total SA was criticised by the examining magistrate for acts of imprudence committed at the time of the vetting operations carried out prior to the chartering of the "*Erika*" and the conditions of the charter itself. The Court considered that the causal link between this imprudence and the sinking were established and upheld the criminal liability of Total SA for pollution of French waters and navigable waterways by virtue of its acceptance of the "*Erika*" for charter:

- The inspection of the oil tanker, which was carried out under the direct responsibility of the Total vetting service, should not have allowed the chartering of a twenty-three year old ship which had had eight names under three different flags. Those findings led to a

presumption of several changes of owner and classification society. "That situation could give rise to a risk of discontinuity in the maintenance of the ship". The Court therefore found that:

> *"While the risk inherent in maritime transport is, by its nature, acceptable, it ceases to be so and becomes an offence of misfeasance when the perils resulting from the conditions of operating an oil tanker, even one in possession of all its certificates, were compounded by the age of the ship, lack of regular technical management and maintenance, the habitual mode of charter chosen and the nature of the product transported, which were all described as clearly identified circumstances, each having a real impact on safety, at the time of the acceptance of the Erika by the Total SA vetting service.*
> *Taken together, those circumstances should have been conclusively regarded as prohibitive for the transport of cargoes as polluting as oil products, so-called black products, such as fuel-oil n° 2.*
> *If the ship had been definitively ruled out on 24 November 1998, it would not have been chartered one year and two days later by TTC for its last voyage. This imprudence thus played a causal role in the sinking and, as such, provoked the maritime incident"* (page 217).

- For this imprudence to constitute an offence, the Court must establish whether its author, Total SA, had exercised "by law or de facto, a power of control or direction in the management or operation of the ship" (Article 8 of the Law of 5 July 1983). The Court held that, in fact, Total SA had held and exercised a power of control over the ship accepted for the voyage charter.

5. Damages awarded by the Court: The compensation awarded to the civil parties by the Court was based on national law. The Court held that:

- the 1992 Conventions regime did not deprive the civil parties of their right to obtain reparation of their injury in the criminal courts,

- the 1992 International Convention on Civil Liability for Oil Pollution Damage provides for an action which is different from that for compensation open to the civil parties.

Furthermore, the Court held that Article III § 4 of the 1992 International Convention on Civil Liability for Oil Pollution Damage which provided that no claim could be filed against the servants or agents of the shipowner, charterer, manager or others, did not apply in the case, so that it was competent to order the four persons found guilty to pay civil compensation (page 234 of the judgement).

The Court noted, in fact, that:

- Mr Savaresse stated that he was neither the owner of the ship, not the owner's servant or agent,

- Mr Pollara, according to his statements, was neither the servant or agent of Tevere Shipping,

- RINA claimed to belong to the category of "any other person who, without being a member of the crew, performs services for the ship" (Article III § 4 b). The Court, held, however, that this category of persons must refer to persons who, without being members of the crew, perform services for the ship by participating directly in its maritime operation (page 235 of the judgement),

- Total SA was "neither the charterer of the oil tanker, however described, nor the owner or one of their servants or agents".

The four persons who were found guilty did not therefore belong to any of the categories set out in Article III § 4 of the 1992 Convention. The civil action based on the offence of pollution was thus subject to the system of ordinary law enshrined in national law.

The total amount of civil compensation awarded by the Court, under all headings, came to the sum of 192,808,480 €. Of this amount, the French Government was awarded 153,808,690 € and 67 civil parties will share the difference representing 38,999,790 €.

The four parties found responsible for the wreck were jointly ordered to pay the full amount of the compensation.