INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS

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1992 Fund Assembly	**92A17**	
1992 Fund Executive Committee	**92EC56**	•
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INCIDENTS INVOLVING THE IOPC FUNDS – 1992 FUND

VOLGONEFT 139

Note by the Secretariat

Objective of document:	To inform the 1992 Fund Executive Committee of the latest developments regarding this incident.
Summary of the incident so far:	On 11 November 2007, the Russian-registered tanker *Volgoneft 139* broke in two in the Kerch Strait which links the Sea of Azov and the Black Sea between the Russian Federation and Ukraine. It is believed that up to 2 000 tonnes of fuel oil were spilled at the time of the incident. Some 250 kilometres of shoreline both in the Russian Federation and in Ukraine were affected by the oil. The ship was owned by JSC Volgotanker which has since been declared bankrupt by the Commercial Court (Arbitration Court) in Moscow. The shipowner was insured for protection and indemnity by Ingosstrakh (Russian Federation), which does not belong to the International Group of P&I Clubs. The insurance cover is limited to 3 million SDR (RUB 116.3 million) which is well below the minimum limit under the 1992 Civil Liability Convention (1992 CLC) of 4.51 million SDR. There is therefore an 'insurance gap' of some 1.5 million SDR. All claims with supporting documentation have been assessed and the total established losses have been determined as RUB 338.78 million (£6.7 million) [<1>].
Recent developments:	In July 2012 the Court delivered its judgement on quantum which awarded claimants RUB 503.2 million (£9.9 million) including legal interest. In the judgement it was held that the insurers had a liability of 3 million SDR in accordance with Russian law as published in the official Gazette at the time of the incident. The 1992 Fund and a local authority have appealed against the judgement.
Action to be taken:	1992 Fund Executive Committee Information to be noted.

[<1>] The conversion of currencies has been made on the basis of the exchange rate as at 1 August 2012, £1 = RUB 50.4401. The exchange rate used in the Annex, however, is the exchange rate as at 31 October 2011 (ie £1 = RUB 47.9391).

1 Summary of incident

Ship	*Volgoneft 139*
Date of incident	11.11.2007
Place of incident	Kerch Strait, between the Sea of Azov and the Black Sea, Russian Federation and Ukraine
Cause of incident	The vessel broke into two sections
Quantity of oil spilled	Up to 2 000 tonnes of fuel oil
Area affected	Taman Peninsula, Tuzla Spit and Chushka Spit, Russian Federation and Ukraine
Flag State of ship	Russian Federation
Gross tonnage	3 463 GT
P&I insurer	Ingosstrakh
P&I cover	3 million SDR or RUB 116.3 million (£2.5 million)
CLC limit	4.51 million SDR or RUB 174.4 million (£3.7 million)
Insurance gap	1.5 million SDR or RUB 58.1 million (£1.2 million)
CLC & Fund limit	203 million SDR or RUB 7 868.3 million (£169 million)
STOPIA/TOPIA applicable	Not applicable
Claims received	RUB 597.2 (£11.8 million)
Claims assessed	RUB 338.78 million assessed (£6.7 million)
Court judgement	RUB 503.2 million (£9.9 million) including interest

2 Background information

The background information to this incident is summarised above and provided in more detail at the Annex.

3 Legal issues

3.1 Insurance gap

In February 2008, the Arbitration Court of the city of Saint Petersburg and Leningrad Region issued a ruling, declaring that the limitation fund had been constituted by means of a letter of guarantee for 3 million SDR (RUB 116.3 million). In April 2008, the 1992 Fund appealed against the Court's ruling, arguing that at the time of the incident the limit of the shipowner's liability under the 1992 CLC was 4.51 million SDR (RUB 174.4 million) and that therefore the Court's ruling which had established the shipowner's limitation fund at only 3 million SDR (RUB 116.3 million) should be amended. The Court of Appeal, the Court of Cassation and the Supreme Court confirmed the decision of the Arbitration Court of the city of Saint Petersburg and Leningrad Region, maintaining that Russian Courts should apply the limits as published in the Russian Official Gazette.

3.2 Quantum and merits of claims for compensation

3.2.1 Court hearings took place in February, April and June 2012 at the Arbitration Court of the City of Saint Petersburg and Leningrad Region[<2>]. At the February 2012 hearing the Court decided that all claimants had the right to legal interest according to Russian law and ordered the claimants to submit their interest calculations.

3.2.2 In July 2012 the Court delivered its judgement on quantum, awarding amounts totalling RUB 503.2 million (£9.9 million), including legal interest. In addition, the Court awarded some claimants court fees totalling RUB 164 445 (£3 260) to be paid by Ingostrak, the shipowner and the 1992 Fund in equal parts.

[<2>] Information regarding earlier court hearings in 2008, 2009, 2010 and 2011 can be found in the Annex attached to this document.

3.2.3 The Court decided that the shipowner/Ingostrakh should pay the awarded amounts up to 3 million SDR and that the 1992 Fund should pay all amounts above 3 million SDR. Since the 1992 CLC limit applicable at the time of the incident was 4.5 million SDR, there remains an 'insurance gap' of some 1.5 million SDR. In the judgement, the Court decided that the shipowner's limit should be 3 million SDR since that was the limit of liability under the 1992 CLC at the time of the incident as published by the Russian Official Gazette.

3.2.4 In August 2012, the 1992 Fund appealed against the judgement on, *inter alia*, the following points:

- The judgement does not explain the assessment of the amounts of compensation adjudicated in favour of the various claimants. Therefore, it remains unclear how the Court calculated the awarded amounts and on what evidence the judgement was reached.
- Concerning the claim by the Port of Kerch, the judgement does not take into account that Ukraine was not a Party to either the 1992 Civil Liability or the Fund Conventions at the time of the incident, and that therefore only the costs incurred in measures to prevent pollution damage in the Russian Federation would be covered under the international Conventions.
- The limit of the shipowner's liability under the 1992 CLC at the time of the incident was 4.51 million SDR (RUB 174.4 million) and therefore the Court's ruling establishing the shipowner's limitation fund at only 3 million SDR (RUB 116.3 million) should be amended.

3.2.5 A local authority claiming for the costs incurred in clean up and preventive measures also appealed against the judgement since the amount awarded was lower than the claimed amount.

3.2.6 Both appeals will be heard in September 2012.

4 Claims for compensation and amounts awarded by the judgement

4.1 The table below summarises the claims situation[<3>] as of August 2012 and the amounts awarded by the judgement:

	Claimed amount (RUB)	**1992 Fund assessment (RUB)**	**Court judgement (RUB)**	
			Principal	**Legal interest**
Clean up contractor	63 926 933	50 766 549	50 766 549	17 413 621
Regional government	434 687 072	241 045 047	337 866 060	41 350 713
Local government	42 960 768	24 949 162	33 954 965	4 456 180
Port of Kerch (Ukraine)	9 170 697	1 739 454	3 770 772	1 089 164
Charterer	9 499 078	2 312 714	2 312 714	891 050
Tourist operator (private)	8 524 153	8 524 153	8 524 153	
Shipowner	27 706 290	8 755 555		
Federal agency (Rosprirodnadzor)	753 332	688 487	688 487	92 974
Total	**597 228 323** (£11 840 347)	**338 781 121** (£6 716 503)	**437 883 700**	**65 293 702**
			503 177 402 (£9.9 million)	

4.2 In addition, the Court awarded some claimants their court fees totalling RUB 164 445 (£3 260) to be paid by Ingostrak, the shipowner and the 1992 Fund in equal parts.

[<3>] There are some differences in the claimed and assessed amounts in relation to the figures provided in the Annex. This is due to changes in the claimed and assessed amounts in respect of some claims since the October 2011 session of the 1992 Fund Executive Committee.

5 Director's considerations

5.1 The Arbitration Court of the City of Saint Petersburg and Leningrad Region has already rendered judgement in respect of some of the issues arising from this incident, namely the issue of *force majeure* and 'metodika' (see sections 6.1 and 6.2 of the Annex to this document).

5.2 There remains, however, the issue of the 'insurance gap' to be resolved. In its judgement of July 2012 the Court decided that the 1992 Fund should pay all amounts above the limit of 3 million SDR and therefore the 'insurance gap' of some 1.5 million SDR needs to be resolved before the Fund can commence payments.

5.3 In its judgement, the Court awarded amounts to some claimants that were in excess of the amounts assessed by the 1992 Fund. However, the Court did not give any reasoning for the awards nor did it provide any detailed calculation. It is therefore not possible to ascertain how the Court reached its decision.

5.4 The Director remains of the view that it is important to ensure that the 1992 Fund pays compensation to the victims of the *Volgoneft 139* incident as soon as possible. Whilst claimants have cooperated with the 1992 Fund and its experts and almost five years have passed since the incident occurred, no payments have been made to the claimants.

5.5 The July 2012 judgement of the Arbitration Court of the City of Saint Petersburg and Leningrad Region is subject to appeal. However, once a final court decision is reached, the 1992 Fund may, in the future, have to make payments according to a final judgement. The Director will continue monitoring the legal proceedings before the Russian Courts and will report on the outcome to the 1992 Fund Executive Committee at its next session.

6 Action to be taken

1992 Fund Executive Committee

The 1992 Fund Executive Committee is invited:

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

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

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ANNEX

BACKGROUND INFORMATION – VOLGONEFT 139

1 Incident

1.1 On 11 November 2007, the Russian-registered tanker *Volgoneft 139* (3 463 GT, built in 1978) broke in two in the Strait of Kerch linking the Sea of Azov and the Black Sea between the Russian Federation and Ukraine. The tanker was at anchor when it was caught in a severe storm and heavy seas. After the vessel had broken in two, the stern section remained afloat and using the casualty's own engines, the Captain managed to beach it on a nearby sand bank. The crew were then rescued and taken to the Port of Kavkaz (Russian Federation). The fore section remained afloat at anchor for a while and then sank.

1.2 The tanker was loaded with 4 077 tonnes of heavy fuel oil. It is understood that between 1 200 and 2 000 tonnes of fuel oil were spilt. Following removal of 913 tonnes of heavy fuel oil, the aft section was towed to Kavkaz, from where it was eventually sold. A month after the incident, the fore section was temporarily raised and 1 200 tonnes of a mixture of fuel oil and water were recovered from tanks one and two. In August 2008 the fore section of the wreck was raised again and towed to the Port of Kavkaz where it was dismantled for scrap.

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

2 Impact

Some 250 kilometres of shoreline, both in the Russian Federation and in Ukraine, are understood to have been affected by the oil and heavy bird casualties, numbering in excess of 30 000, were reported.

3 Response operations

3.1 A joint crisis centre was set up to coordinate the response between the Russian Federation and Ukraine and operations at sea were reported to have recovered some 200 tonnes of heavy fuel oil.

3.2 In the Russian Federation significant parts of the shorelines of the Taman peninsula and the Tuzla and Chushka Spits were affected by the oil. Shoreline clean up was undertaken by the Russian military and civil emergency forces, and some 70 000 tonnes of oily debris, sand and sea-grass were taken away for disposal.

3.3 In Ukraine some 6 500 tonnes of oily waste were collected, mainly from Tuzla Island, and were transferred to the Port of Kerch prior to disposal.

4 Applicability of the Conventions

4.1 The Russian Federation is a Party to the 1992 Civil Liability Convention (1992 CLC) and 1992 Fund Convention. Ukraine was not, at the time of the incident, Party to the 1992 Civil Liability or Fund Conventions. Although it had deposited an instrument of ratification of the 1992 CLC with the Secretary-General of IMO on 28 November 2007, this did not enter into force in Ukraine until November 2008.

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

4.3 The *Volgoneft 139* was insured by Ingosstrakh (Russian Federation) for 3 million SDR, ie the minimum limit of liability under the 1992 CLC prior to November 2003. The minimum limit under the 1992 CLC after November 2003 is however 4.51 million SDR. There is therefore an 'insurance gap' of some 1.51 million SDR.

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

5 Claims for compensation

5.1 General

The table below summarises the claims situation as of October 2011.

Category of claim	Claimant	Claimed amount (RUB)	Assessed amount (RUB)	Status
Clean up	Ministry of Emergencies	4 311 700	0	Time-barred
Clean up	Regional government	446 817 636	241 045 047	Agreed
Clean up	Local government	43 249 922	23 807 017	Agreed
Clean up	Port of Kerch (Ukraine)	9 170 697	1 739 454	Under discussion
Clean up	Contractor	63 926 933	50 766 549	Agreed
Clean up	Shipowner	27 706 290	8 755 555	Agreed
Clean up	Charterer	9 499 078	2 312 714	Agreed
Fisheries	Private industry	15 381 895	0	Time-barred
Tourism	Private industry	8 524 153	8 524 153	Agreed
Environmental restoration	Regional government	1 819 600 000	0	Time-barred
Environmental monitoring	Federal Agency	753 332	688 487	Under discussion
Total		**2 448 941 636 (£50.2 million)**	**337 638 976 (£6.9 million)**	

5.2 Clean up

5.2.1 The regional government has submitted claims for costs incurred in clean-up operations, including costs for treatment of oily waste collected and environmental restoration. The regional government has also reimbursed a local authority in the affected area for most of the costs incurred by it in relation to the clean-up operations. The regional government has increased its claimed amount to RUB 446.8 million to include the amounts claimed in subrogation of the local authority's rights. The regional government claims, including the subrogated claims, have been assessed at RUB 241 million. The claimant agreed with the assessment and signed an agreement to that effect. However the claimant has subsequently argued that it was not in their power to renounce amounts spent from their official budget and has withdrawn their agreement, maintaining their claimed amount in court. The reason for the difference between the claimed and assessed amounts is the large quantity of waste collected in the clean-up operations. The 1992 Fund considers that due to the use of unreasonable clean-up techniques, the waste collected was, taking into account the Fund's previous experience in dealing with oil spill incidents, considerably out of proportion to the amount of oil spilled, thereby substantially increasing the cost of the clean-up operations. The remaining claims submitted by the regional government, including a claim for costs incurred in environmental restoration totalling RUB 1 819.6 million, lacked the necessary documentation required for assessment and, since the regional government did not protect its rights in respect of these claims, the claims have now become time-barred.

5.2.2 Since the regional government reimbursed most of the local authority's clean-up costs, the local authority's claim has been reduced to RUB 43.2 million. The claims by the local authority were assessed at RUB 23.8 million and the claimant agreed with the assessed amount. However, for the same reasons as the regional government, the local authority has also withdrawn their agreement. The reasons for the difference between the claimed and assessed amounts are the same as per the regional government claim.

5.2.3 The Port of Kerch in Ukraine submitted a claim, totalling RUB 9 170 697, for the costs incurred in clean up and preventive measures. Ukraine was not a Party to the 1992 CLC at the time of the incident and is not a member of the 1992 Fund. In the 1992 Fund's assessment of the claim at RUB 1 739 454, only a proportion of the costs for preventive measures carried out in Ukraine for the purpose of preventing pollution damage in the Russian Federation were taken into consideration. The claimant did not agree with the Fund's assessment. The shipowner's insurers have made their own assessment of the claim for an amount of RUB 5 636 611, ie higher than the Fund's assessment. The main reason for the difference between the assessment carried out by the 1992 Fund and that carried out by the insurer is that the insurer has not taken into account the fact that Ukraine was not a Party to the 1992 CLC at the time of the incident, and has therefore considered elements of the claim beyond those related to prevention of pollution damage in the Russian Federation.

5.2.4 A Russian clean-up contractor submitted a claim for the amount of RUB 63.9 million for the cost of clean-up operations, discharging oil from the aft section of the tanker, towage of the aft section to Kavkaz (Russian Federation) and removal of the oil from the sunken fore section. The claim was assessed at the amount of RUB 50.8 million and the claimant agreed with the assessment.

5.2.5 The charterer of the *Volgoneft 139*, a subsidiary company of the shipowner, has presented a claim for RUB 9.4 million for the cost of cleaning the aft section of the *Volgoneft 139* and for disposal of part of the oil collected from the wreck. The claim was assessed at RUB 2.3 million and the claimant agreed with the assessed amount.

5.2.6 The shipowner has also submitted a claim, totalling RUB 27.7 million, for the cost of cleaning the aft section of the *Volgoneft 139* and for disposal of part of the oil collected from the wreck. The claim was assessed at RUB 8.8 million and the claimant agreed with the assessment.

5.3 Fisheries/Aquaculture

Four companies in the fisheries sector submitted claims for losses allegedly related to the *Volgoneft 139* incident. The experts engaged by the 1992 Fund have examined two of the claims but the claimants have not shown that they had suffered any losses as a result to the pollution. No documentation was submitted in support of the other two fisheries claims, and these claims have become time-barred since the claimants have not protected their rights.

5.4 Tourism and other economic losses

A claim from a company in the tourism sector providing holidays for children at the seaside in the affected area has been assessed as claimed at RUB 8.5 million.

5.5 Environmental damage

The Federal Service on the Supervision in the Sphere of the use of Nature (Rosprirodnadzor (an agency of the Ministry of the Environment of the Russian Federation)) has submitted a claim totalling RUB 753 332 for costs incurred in environmental monitoring which has been assessed at RUB 688 487. As of October 2011, the 1992 Fund was awaiting a response from the claimant.

6 Legal issues

6.1 'Metodika' claim

6.1.1 At a meeting in May 2008 the Russian authorities informed the 1992 Fund that Rosprirodnadzor had submitted a claim for environmental damage for some RUB 6 048.6 million. This claim was based on the quantity of oil spilled, multiplied by an amount of Roubles per ton ('Metodika'). The Secretariat informed the Russian authorities that a claim based on an abstract quantification of damages calculated in accordance with a theoretical model was in contravention of Article I.6 of the 1992 CLC and therefore not admissible for compensation, but that the 1992 Fund was prepared to examine the activities undertaken by Rosprirodnadzor to combat oil pollution and to restore the environment to determine if and to what extent they qualified for compensation under the Conventions. The 1992 Fund has assessed the costs incurred by Rosprirodnadzor at RUB 688 487 (see paragraph 5.5).

Judgement of the Arbitration Court of Saint Petersburg and Leningrad Region

6.1.2 At the hearing in September 2010, the Arbitration Court of Saint Petersburg and Leningrad Region issued a judgement rejecting the 'Metodika' claim. In its judgement the Court noted that, under Article I.6 of the 1992 CLC, compensation for damage to the environment, other than loss of benefit caused by such damage, should be limited to the expenses for the reasonable reinstatement measures, as well as the expenses for the preventive measures and subsequent damage caused by such measures. The Court also noted that the expenses included in the other claims arising from the incident covered any preventive and reinstatement measures actually taken as a result of the incident.

6.1.3 Rosprirodnadzor has not appealed and the judgement is therefore final.

6.2 *Force majeure*

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

6.2.2 The 1992 Fund appointed a team of experts to examine the weather conditions in the area and the circumstances at the time of the incident to determine the validity of the shipowner's defence. In June 2008 the experts visited the area where the incident took place and inspected the aft section of the wreck in the Port of Kavkaz.

6.2.3 In summary[<4>], the conclusions of the experts were as follows:

(i) the storm of 11 November 2007 was not exceptional since there are records of similar and comparable storms being experienced in the region four times in the past 20 years;

(ii) it was not inevitable that the *Volgoneft 139* would be caught in the storm, since there were timely forecasts of the storm and conditions were accurately predicted, so that there had been sufficient opportunities to avoid the vessel being exposed to the storm in the way it had been; and

(iii) the storm of 11 November 2007 was irresistible in so far as the *Volgoneft 139* was concerned, as the conditions associated with the storm were in excess of the vessel's design criteria.

[<4>] For details regarding the preliminary conclusions reached by the 1992 Fund's experts, reference is made to the IOPC Funds' Annual Report 2008, pages 119–122.

6.2.4 To fully understand the circumstances of the incident, the Secretariat and the 1992 Fund's experts visited the Kerch Vessel Traffic System (VTS) in Ukraine in November 2009 and the VTS in Kavkaz, Russian Federation, in February 2010.

6.2.5 On the basis of the additional information made available during the visits, the 1992 Fund's experts broadly confirmed their preliminary conclusions that the storm of 11 November 2007 was not exceptional. They concluded that it was not inevitable that the *Volgoneft 139* would be caught in the storm, since there had been sufficient opportunities to avoid the vessel being exposed to the storm in the way it had been. The experts also confirmed their initial view that the *Volgoneft 139* should not have been in the area at the time of the incident since the conditions associated with the storm were in excess of the vessel's design criteria.

6.2.6 However, whereas the 1992 Fund's experts' initial view had been that the Kerch Strait anchorage was considered as a commercial port, the experts understood from their visits in November 2009 and February 2010 that the Strait was not operated as a port. During the visits to the VTS in Kerch and in Kavkaz, the experts learned that none of the port authorities had powers to close the anchorage in case of a storm warning or to direct vessels to vacate the anchorage. It was therefore the conclusion of the experts that it was the responsibility of the master and the shipowner to take action to avoid the casualty.

Administrative proceedings before the Arbitration Court of Krasnodar

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

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

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

Judgement of the Arbitration Court of Saint Petersburg and Leningrad Region

6.2.10 At a hearing in September 2010 the Arbitration Court decided that the shipowner and its insurer had not provided evidence that the oil spill resulted from an act of God, exceptional and unavoidable. The Court concluded that the master, having had all the necessary storm warnings, had not taken all necessary measures to avoid the incident and that therefore the incident was not unavoidable for the vessel. The Court also concluded that the storm was not exceptional since there was data of comparable storms in the area. In its judgement the Court decided that the spill did not result from a natural phenomenon of an exceptional nor inevitable character, and that the shipowner and his insurer were therefore liable for the pollution damage caused by the spill.

6.2.11 Ingosstrakh has not appealed and the judgement is therefore final.

6.3 Limitation proceedings and the 'insurance gap'

6.3.1 In February 2008, the 1992 Fund received a notification from the Arbitration Court of Saint Petersburg and Leningrad Region of proceedings brought by a Russian clean-up contractor against the shipowner, Ingosstrakh and the 1992 Fund. A number of other claimants have also brought proceedings in the same Court.

6.3.2 In February 2008, in the context of these proceedings, the Court issued a ruling declaring that the shipowner's limitation fund had been constituted by means of an Ingosstrakh letter of guarantee for RUB 116 280 000, equivalent to 3 million SDR.

6.3.3 In April 2008, the 1992 Fund appealed against the Court's ruling. In its pleadings the 1992 Fund argued that at the time of the incident the limit of the shipowner's liability under the 1992 CLC was 4.51 million SDR (RUB 175.3 million) and that, under the Russian Constitution, international conventions to which the Russian Federation is Party, take precedence over Russian internal law and that therefore the Court's ruling establishing the shipowner's limitation fund at only 3 million SDR (RUB 116.3 million) should be amended. In May 2008, the competent Court of Appeal (Thirteenth Arbitration Appeal Court) rejected the 1992 Fund's appeal.

6.3.4 The 1992 Fund lodged a further (second) appeal (cassation complaint). In September 2008 the competent Court of Cassation (Federal Arbitration Court of the North-Western circuit) rendered a decision dismissing the 1992 Fund's appeal. In its reasoning, the Court of Cassation considered that, since Russian Law still provided that the shipowner's limit of liability under the 1992 CLC was, in the case of the *Volgoneft 139*, RUB 116 280 000 (3 million SDR), it was for Russian courts to apply the limits of liability as published in the Russian Official Gazette. The 1992 Fund appealed to the Supreme Court (Highest Arbitration Court) in Moscow, since the Court's decision was in clear contravention of the 1992 CLC as amended with effect from 1 November 2003. In November 2008 the Supreme Court confirmed the decision by the Court of Cassation.

6.3.5 At a hearing in March 2010 the Court decided to bring the Ministry of Transport as a third party into the proceedings since it could assist the Court and the parties to resolve the 'insurance gap' issue.

Judgement on 'the insurance gap'

6.3.6 In September 2010 the Arbitration Court of the city of Saint Petersburg and Leningrad Region decided to maintain its original decision that the shipowner's limitation fund was 3 million SDR or RUB 116.6 million. The Court reached this decision on the grounds that the amendments to the limits available under the 1992 CLC and 1992 Fund Convention had not been published in the Russian Official Gazette at the time of the incident.

6.3.7 The 1992 Fund appealed to the Appeal Court against this decision on the grounds that, at the time this judgement was rendered, the new limit of the shipowner's liability, namely 4.51 million SDR, had been officially published in the Russian Official Gazette and therefore properly incorporated into Russian legislation.

6.3.8 The Appeal Court confirmed the decision by the Arbitration Court of Saint Petersburg. The 1992 Fund submitted a cassation complaint to the Court of Cassation.

6.3.9 In its decree in April 2011 the Court of Cassation decided to reject the appeal submitted by the 1992 Fund and to maintain the decision on the establishment of the shipowner's limitation fund of 3 million SDR. The 1992 Fund appealed to the Supreme Court.

6.3.10 The Supreme Court sustained the decisions of the Arbitration Court of the city of Saint Petersburg and Leningrad Region, the Court of Appeal and the Court of Cassation.

6.4 Quantum and merits of claims for compensation

6.4.1 At a hearing in January 2011, the Court requested that the 1992 Fund present a justification for its position on the relationship between the amount of oil spilled and the amount of waste collected, which was the main contentious issue in the assessment of some clean-up claims.

6.4.2 The 1992 Fund submitted its report to the Court at a hearing in March 2011. The report compared the amount of oily waste collected during the response to the incident and the oily waste collected in a number of other incidents. The report concluded that in the *Volgoneft 139* incident, the amount of oily waste collected was some 40 times the amount of oil spilled whereas in other spills this proportion was between 2.5 times and 15 times. The cost of this additional clean up and disposal of oily waste would therefore not be considered reasonable and therefore would not be admissible for compensation.

6.4.3 Hearings took place in May, July and October 2011. Further hearings of the Arbitration Court of Saint Petersburg and Leningrad Region were expected to take place in November and December 2011.

7 Meetings between the Russian authorities and the Secretariat

7.1 In November and December 2007, the Secretariat contacted the Russian Embassy in London and the Ministry of Transport in Moscow, offering the help of the 1992 Fund to the Russian authorities in dealing with the incident. A number of meetings took place at the 1992 Fund Secretariat's offices at which the compensation regime was explained in detail. The 1992 Fund offered to send experts to the Russian Federation to monitor the situation and provide advice to the Russian authorities. However, no official reply was received from the Russian authorities and, without the required letters of invitation and visas, neither the representatives of the 1992 Fund nor its experts could visit the affected area to monitor the clean-up operations.

7.2 During 2009, a number of meetings were held in London and Moscow between the Russian authorities, the Secretariat and the 1992 Fund's experts to facilitate the exchange of information and to monitor the progress of claims. The Secretariat and the Fund's experts visited Moscow, Krasnodar and the VTS in Kavkaz in February 2010, where they held meetings with the Ministry of Transport, a representative of the owner and the charterer of the *Volgoneft 139*, several local authorities in the Krasnodar area, the Harbour Masters of Kavkaz and Temryuk and a claimant in the tourism sector.

7.3 The Secretariat and the 1992 Fund's experts visited Krasnodar in February 2011 to meet with claimants to try to solve the issues pending in the claims. Meetings were held with the regional and municipal authorities, whose claims, relating to clean up and preventive measures, constitute the majority of the claimed amount. The main point of disagreement with these claimants was the amount of waste collected, which, in the Fund's view, was not technically reasonable. A meeting was also held with a representative of the Port of Kerch, to discuss the claim submitted by the Port for clean up and preventive measures. During that visit, meetings also took place with representatives of some individual claimants in the fisheries and tourism sectors.

7.4 A meeting took place in London in late February 2011 between the 1992 Fund, its lawyer and experts and representatives of the Russian Ministry of Transport. The Fund and its experts made a further visit to Moscow in March 2011, to meet with representatives of the Russian Government and the insurer.

8 Considerations

8.1 At its March 2011 session the 1992 Fund Executive Committee decided not to authorise the Director to commence payments of established losses arising from the *Volgoneft 139* incident and instructed him to continue with the efforts to try to resolve the three outstanding issues, namely:

- payment by the insurer up to 3 million SDR;
- the submission of outstanding oil reports; and
- a solution to the 'insurance gap'.

8.2 Payment of compensation by the insurer

In a meeting in March 2011, the insurer confirmed to the 1992 Fund its intention to pay compensation once the Russian courts render a final judgement in respect of this incident.

8.3 Submission of oil reports

As of October 2011 the Russian Federation had submitted all its outstanding oil reports.

8.4 Insurance gap

A number of discussions have been held to investigate ways to resolve the insurance gap but without resolution. Efforts continue to identify a solution acceptable to all parties.

8.5 Conclusion

8.5.1 The Director is of the view that it is important to ensure that the 1992 Fund pays compensation to the victims of the *Volgoneft 139* incident as soon as possible. However, whilst claimants have cooperated with the 1992 Fund and its experts and almost four years have passed since the incident occurred, two issues remain which need to be addressed, namely the payment of compensation by the insurer and the 'insurance gap'.

8.5.2 From the discussions with the shipowner's insurer, it seems that the payment of compensation by the insurer will only take place when the Russian courts have rendered a final judgement in respect of this incident.

8.5.3 The Director intends to pursue the discussions with the claimants and Russian authorities to explore a solution to the insurance gap and will revert to the Executive Committee with a proposal at a future session.