# The Fund Convention 1971 and its 1976 Protocol

### Pollution damage (art.1(2))

**France**

Court of Appeal of Rennes 24 May 2005, *IOPCF* c. *M. Gouzer, Tevere Shipping and Steamship Mutual Underwriting* (2006 DMF 1014)

After the pollution  caused by the shipwreck of the “*Erica*” on 12th December 1999 the IOPCF and Steamship Mutual Underwriting Association set up an office at Lorient where claims for pollution damage could be submitted. The owner of an oyster farm situated at Saint Philibert, in the bay of Quiberon, Mr. Gouzer, filed a claim for € 70,292 for loss of earnings in the period between 1st January and 31st May 2000. After that claim had been settled, Mr. Gouzer filed a second claim in respect of loss of earnings during the period between 1st October and 31st December 2000. That second claim was rejected by the IOPCF and Steamship Mutual on the ground that the pollution caused by the “*Erica*” had not affected anymore the oyster farms during that period. Mr. Gouzer did not accept that decision and brought proceedings against IOPCF and Steamship Mutual in the Tribunal de Commerce of Lorient. By judgment of 11th December 2002 the Tribunal de Commerce held that the claim was justified and that it was not bound by the criteria adopted by the IOPCF for the evaluation of the loss and that it sufficed that a causal relationship existed between the escape of oil and the loss. The IOPCF appealed.

Held by the Court of Appeal of Rennes, that:

 *[1]    The courts are exclusively competent for the interpretation and application of the legal notion of pollution damage under the CLC and the Fund Convention 1992 and the criteria established by the IOPCF for the settlement of pollution claims are not binding on them, but may only constitute a reference of an indicative values.*

### Preventive measures (Art. 1(2), referring to art. 1(7) of the Civil Liability Convention))

**Japan**

*Japan* v. *The International Fund established by the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage of 1971*, Nagasaki District Court 6 December 2000 (Hanrei Times no.1101, p.228)

A Korean Tanker stranded within the territorial waters of Korea and the oil that escaped from it reached the coast of the islands of Tsushima, Japan. The Japanese government had its Self Defence Force and the Japan Coast Guard undertake measures to prevent or minimise pollution damage and incurred costs in the amount of 50,755,568 Japanese yen. Since the tonnage of the stranded tanker was 786 tons, the financial security had not been provided. Having found that the owner of the ship was insolvent, the Japanese government claimed compensation for the above costs from the IOPC Fund. The Fund disputed the reasonableness of some of the measures taken by the Self Defence Force.

Held, by the Nagasaki District Court, that:

*(1) Reconnoitring by airplanes on the day after the oil reached the coast was reasonable as a preventive measure, there being no evidence that prevention of oil pollution had been possible to the same extent without the reconnoitring.*

*(2) Taking photographs of the site was reasonable as a measure to ascertain the situation easily and accurately*

*(3) Search by naval vessels of the Self Defence Force was reasonable even though it was undertaken simultaneously with the activities by the Coast Guard.*

### Time bar (Art. 6)

**Italy**

Tribunal of Genoa 21 April 2007, *Mauro Pesca S.r.l. and Others v. Venha Maritime Ltd., The United Kingdom Mutual Steamship Assurance Association Ltd. and International Oil Compensation Fund – The “Haven” (*not yet reported).

Mauro Pesca S.r.l. and other claimants submitted their claims in the limitation proceedings commenced in the Tribunal of Genoa by Venha Maritime Ltd., following the pollution damage caused by the *Haven*, who exploded and sank west of the Genoa harbour. Venha Maritime filed an opposition, together with its P&I Club and the 1971 International Oil Pollution Compensation Fund, on the ground, inter alia, that claims that are not included in the list of liabilities drawn up by the Court are forfeited.
The Tribunal of Genoa rejected the claims belatedly submitted on the ground that in the applications reference had wrongly been made to procedural provisions of bankruptcy law. The Court of Appeal reversed that decision and Venha Maritime, its P&I Club and the Fund appealed to the Corte di Cassazione.
Following the decision of the Corte di Cassazione to the effect that there is no prescribed time limit for the submission of late claims, the limitation proceedings were resumed in the Tribunal of Genoa. After it was established that the CLC limitation fund had been exhausted, the remaining issue was whether the claims of the claimants should be settled by the Fund.

Held, by the Tribunal of Genoa, that:

*[1]    Since the offence resulting from the explosion and sinking of the “Haven” must, pursuant to the principle laid down by the Supreme Court and by the Constitutional Court in respect of criminal offences, be qualified as “instantaneous”, the three years time bar in respect of claims against the Fund commences to run as from the date of the incident and not from the date when the damage occurred.*

*[2]    The expiry of the time bar period set out in article 6 (1) of the 1971 Fund Convention is only prevented by an action being brought against the Fund and to this effect it is irrelevant that the Fund is a party to the limitation proceedings in which the claim of the claimants has been filed.*