



## INCIDENTS INVOLVING THE 1971 FUND

### PLATE PRINCESS

#### Note by the Director

**Summary:**

At the October 2005 session of the 1971 Fund Administrative Council the Venezuelan delegation stated that, although it had been assumed that claims arising from this incident had become time-barred, its legal advisers were of the opinion that this was not the case and stated that it wished to include the *Plate Princess* incident on the agenda of the next session of the 1971 Fund Administrative Council.

In October 2005 the 1971 Fund was formally notified by the Venezuelan authorities of actions for compensation brought by two fishermen's unions against the shipowner and the master of the *Plate Princess* in June 1997. The Director maintains that the actions by the fishermen's unions are time barred as regards the 1971 Fund.

**Action to be taken:**

Decide whether the claims are time barred.

### 1 The incident

- 1.1 On 27 May 1997 the Maltese tanker *Plate Princess* (30 423 GRT) was loading a cargo of 44 250 tonnes of Lagotreco crude oil at an oil terminal at Puerto Miranda on Lake Maracaibo (Venezuela) when 3.2 tonnes of oil was reportedly discharged into Lake Maracaibo together with ballast water.
- 1.2 A few days before the incident satisfactory examinations of the vessel's cargo and ballast tanks had been carried out by an independent inspector and by a pollution inspector, following which the master had been granted permission by a government inspector to discharge the vessel's ballast water into Lake Maracaibo. The master suspected that, since the ballast line passed through the tanks into which the cargo of crude oil was being loaded, oil from those tanks had seeped into the ballast line during deballasting and had spilled in Lake Maracaibo. The master reported that he believed that couplings on the ballast line might have become loose during bad weather encountered on the voyage to Puerto Miranda.
- 1.3 An expert engaged by the 1971 Fund and the shipowner's insurer attended the site of the incident on 7 June 1997 and reported that there were no signs of oil pollution in the immediate vicinity of where the *Plate Princess* was berthed at the time of the spill, nor at nearby tug and launch jetties.

The expert was informed that the oil was observed to have drifted in the direction of mangroves approximately one kilometre distant.

- 1.4 The limitation amount applicable to the *Plate Princess* under the 1969 Civil Liability Convention is estimated at 3.6 million SDR (£3 million). The shipowner provided a bank guarantee from Banco Venezolano de Credito (BVC) in the amount of Bs 2 844 million (£740 000)<sup><1></sup>.
- 1.5 At its 54th session held in June 1997, the Executive Committee considered that, if it were confirmed that the spilt oil was the same Lagotreco crude as was being loaded on to the *Plate Princess*, then it would appear that the oil which escaped via a defective coupling in the ballast line had first been loaded into the cargo tanks. The Committee took the view that the incident would therefore fall within the scope of the Conventions, as the oil was carried on board as cargo (document 71FUND/EXC.54/10, paragraph 3.6.2).

## **2 Court proceedings**

- 2.1 Immediately after the incident the Criminal Court of first instance in Cabimas commenced an investigation into the cause of the incident. The Court decided that criminal proceedings should be brought against the master of the *Plate Princess*.
- 2.2 In June 1997 a fishermen's trade union (FETRAPESCA) brought an action against the master and the owner of the *Plate Princess* in the Criminal Court on behalf of 1692 fishing boat owners, claiming an estimated US\$10 060 per boat (£5 650), ie a total of US\$17 million (£9.5 million)<sup><2></sup>. The claim was for alleged damage to fishing boats and nets and for loss of earnings. FETRAPESCA also brought a claim for fishermen's loss of earnings against the shipowner and the master of the *Plate Princess* before the Civil Court of Caracas for an estimated amount of US\$10 million (£5.6 million).
- 2.3 In June 1997 a local fishermen's union, the Sindicato Único de Pescadores de Puerto Miranda, also presented a claim in the Civil Court in Caracas against the shipowner and the master of the *Plate Princess* for an estimated amount of US\$20 million (£11.2 million).

## **3 Considerations by the Administrative Council in October 2005**

- 3.1 At the October 2005 session of the Administrative Council, the Venezuelan delegation stated that although it had been assumed that claims arising from this incident had become time-barred, its legal advisers were of the opinion that this was not the case by virtue of Article 7.6 of the 1971 Fund Convention. The Venezuelan delegation referred to a recent decision by the Venezuela Supreme Court in respect of this incident and stated that it wished to include the *Plate Princess* incident on the agenda of the next session of the 1971 Fund Administrative Council (document 71FUND/AC.17/20, paragraph 15.3).
- 3.2 The Director stated that, although he had not seen the decision by the Supreme Court, the 1971 Fund had not been notified in accordance with Article 7.6 of an action against the shipowner and/or the insurer within three years of the date of the damage, nor had a legal action been brought against the 1971 Fund within six years from the date of the incident. In his view, claims arising from this incident were therefore time-barred pursuant to Article 6 of the 1971 Fund Convention.

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<1> The conversion of the Venezuelan Bolivar has been made on the basis of the exchange rate as at 23 January 2006 (£1 = Bs 3,826.2).

<2> The conversion of the US\$ has been made on the basis of the exchange rate as at 23 January 2006 (£1 = US\$ 1.7842)

**4 Notification of the 1971 Fund**

The Fund has recently learned that both fishermen's unions had in 1997 requested the Court to notify the 1971 Fund of their actions. However, it was only on 31 October 2005 that the 1971 Fund was formally notified through diplomatic channels of the actions for compensation brought by FETRAPESCA and the Sindicato Único de Pescadores de Puerto Miranda against the shipowner and the master of the *Plate Princess* in June 1997 (cf. paragraphs 2.2 and 2.3).

**5 Time bar issue**

5.1 Article 6.1 of the 1971 Fund Convention provides as follows:

Rights to compensation under Article 4 or indemnification under Article 5 shall be extinguished unless an action is brought thereunder or a notification has been made pursuant to Article 7, paragraph 6, within three years from the date when the damage occurred. However, in no case shall an action be brought after six years from the date of the incident that caused the damage.

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

5.3 The Director has examined the judgement by the Supreme Court referred to by the Venezuelan delegation at the Council's October 2005 session and has noted that it relates to an action by Sindicato Único de Pescadores de Puerto Miranda against BVC, the bank that issued the guarantee provided by the shipowner in connection with the incident (cf paragraph 1.4). The issue dealt with in the judgement was whether the bank guarantee should be given back to BVC. In the Director's view, the judgement has no bearing on the 1971 Fund, since it relates to an action which is entirely different from those brought by the fishermen's unions against the shipowner.

**6 Action to be taken**

The Administrative Council is invited:

- (a) to take note of the information contained in this document;
  - (b) to consider the Director's position as regards the issue of time bar; and
  - (c) to give the Director such instructions in respect of this incident as it deems appropriate.
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