



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1971

EXECUTIVE COMMITTEE
53rd session
Agenda item 3

71FUND/EXC.53/7/Add.1
11 April 1997

Original: ENGLISH

INCIDENTS INVOLVING THE 1971 FUND

NISSOS AMORGOS

Note by the Director

1 Clean-up operations

1.1 Clean-up operations have continued in the area affected by the spill. The manual removal of oil contaminated sand in the intertidal zone is coming to an end. Some 600 people are at present involved in this work, but it is expected that this number will drop in the near future.

1.2 Lagoven estimates that there are approximately 1 360 tonnes of oil remaining in the surf zone ie the sea adjacent to the intertidal zone along a five kilometres stretch of coastline, and that some 85 000m³ of sand/oil will have to be removed. Plans are being made for this removal.

1.3 It has been estimated that the clean-up will take several months.

1.4 The clean-up operations are being monitored by a committee set up locally, comprising representatives from Lagoven, Maraven, the Instituto para el Control y la Conservación de la Cuenca del Lago de Maracaibo (ICLAM), which is a public research institute, and several local government departments. This committee will determine the clean-up policy to be followed and when the clean-up operations should be terminated.

2 Claims Agency

2.1 As stated in document 71FUND/EXC.53/7, the Gard Club and the 1971 Fund have established a Claims Agency at Maracaibo. The Claims Agency opened on 2 April 1997. Claimants are invited to contact the agency to obtain information on how to present claims for compensation against the Gard Club and the 1971 Fund.

2.2 The staff of the Claims Agency with the help of a Venezuelan surveyor will assist those who have suffered damage or loss caused by the oil pollution to submit their claims. The senior partner of Brookes Bell & Co (a firm of United Kingdom marine consultants with considerable experience of handling claims for oil pollution damage) is in Venezuela to assist in the establishment of the Claims Agency and in the setting up of the claims handling procedures.

2.3 Staff of the Claims Agency have visited the area affected by the spill in order to meet potential claimants and to explain how claims will be handled. A meeting with several hundred potential claimants took place on 7 April 1997, and further meetings are planned in the near future.

2.4 A meeting has also been held with Lagoven to co-ordinate the handling of the clean-up claims and to discuss Lagoven's experience of fishing-related claims. A similar meeting is to be arranged with Maraven.

2.5 The staff of the Claims Agency will also visit the offices of Servicio Autonomo de Recursos Pesquero y Agricola (SARPA), which is part of the Ministry of Agriculture and Fishery and is the licensing authority for the artisanal fisheries.

3 Claims situation

3.1 As the Claims Agency has been open for less than ten days, only a few potential claimants have contacted the Agency so far. Claims are expected from the owners of vehicles which offer transport services to tourists, owners of beach huts, owners of restaurants in the area affected by the oil, operators of tourist launches in the area affected by the pollution, factories processing shellfish, boat fishermen, shrimp fishermen, shellfish harvesters and the owner of a beach resort.

3.2 The 1971 Fund has been informed by its Venezuelan lawyer that the State of Venezuela has presented a claim against the shipowner, the master of the *Nissos Amorgos* and the Gard Club for an estimated amount of US\$20 million (£12.3 million) before a first instance court in Caracas. The Venezuelan State has requested that the 1971 Fund should be notified as an interested party. The Venezuelan State has further requested that the Caracas Court should arrest the *Nissos Amorgos* and order the owner/insurer to provide security for US\$40 million (£24.6 million) plus US\$6 million (£3.7 million) for legal costs and expenses in order to avoid arrest.

3.3 It is not clear what types of damage are covered by the claim presented by the State of Venezuela, nor how the amount claimed has been calculated. In the pleading presented to the Court, the State has maintained that it was a very significant incident which seriously affected the environment and the ecosystem in general, and which resulted in considerable expenditure being incurred in respect of "pollution damage" and "preventive measures". The State has indicated that, for procedural reasons, a prudent estimate of US\$20 million has been made on the basis of information available at present.

3.4 It is not possible for the Director to express any opinion at this stage on the admissibility of the claim submitted by the Venezuelan State. However, if and to the extent that the claim relates to damage to the environment per se, the 1971 Fund Assembly and Executive Committee have consistently taken the position that such claims are not admissible under the 1969 Civil Liability Convention and the 1971 Fund Convention. It is recalled that the Assembly has decided that compensation can be granted only if a claimant has suffered a quantifiable economic loss. The 1971 Fund accepts claims for reasonable costs of reinstatement of the damaged environment, as well as claims for loss of profit (income, revenue) resulting from damage to the marine environment suffered by persons who depend directly on earnings from coastal or sea-related activities, eg loss of earnings suffered by fishermen or by hoteliers and restaurateurs at seaside resorts (cf documents FUND/WGR.7/4, paragraph 7.1 and FUND/A.17/23, paragraphs 7.3.5 and 7.3.6).

3.5 In document 71FUND/EXC.53/7 the Executive Committee was invited to consider whether it would be prepared to authorise the Director to make final settlements on behalf of the 1971 Fund of all claims arising out of this incident, to the extent that the claims do not give rise to questions of principle which have not previously been decided by the Committee.

3.6 The question also arises of whether and, if so, to what extent the Executive Committee is prepared to authorise the Director to make payments. As stated in paragraphs 4.2 and 4.3 of document 71FUND/EXC.53/7, it is not possible at this stage to make an accurate estimate of the total amount of claims which may be submitted. In that document the Director stated that he believed, nevertheless, that the total amount of the claims would not approach the total amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention (60 million SDR, corresponding to approximately £51 million). However, the claim presented by the State of Venezuela has changed the situation. It should be noted that payments will first have to be made by the shipowner and the Gard Club up to the limit applicable to the *Nissos Amorgos*, ie approximately 5.2 million SDR (£4.5 million). The Committee may wish to consider, therefore, whether it is premature to take a decision at this session authorising the Director to make payments.

4 Limitation proceedings

As stated in paragraph 5.1 of document 71FUND/EXC.53/7, the shipowner has not yet commenced limitation proceedings. However, the shipowner has offered to provide the Court in Cabimas which is in charge of the limitation proceedings with a bank guarantee for the limitation amount applicable to the *Nissos Amorgos*, ie approximately 5.2 million SDR (£4.5 million).

5 Action to be taken by the Executive Committee

The Executive Committee is invited:

- (a) to take note of the information contained in this document;
 - (b) to consider whether to authorise the Director to make final settlement of claims arising from this incident;
 - (c) to consider whether to authorise the Director to make payments (paragraph 3.6); and
 - (d) to give the Director such other instructions in respect of the handling of this incident and of claims arising therefrom as it may deem appropriate.
-