



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1971

EXECUTIVE COMMITTEE
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Agenda item 3

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INCIDENTS INVOLVING THE 1971 FUND

NISSOS AMORGOS

Note by the Director

1 Introduction

1.1 The Greek tanker *Nissos Amorgos* (50 563 GRT), carrying approximately 75 000 tonnes of Venezuelan crude oil, ran aground whilst passing through the Maracaibo Channel in the Gulf of Venezuela on 28 February 1997. The tanker sustained damage to three cargo tanks, and an estimated 3 600 tonnes of crude oil was subsequently spilled.

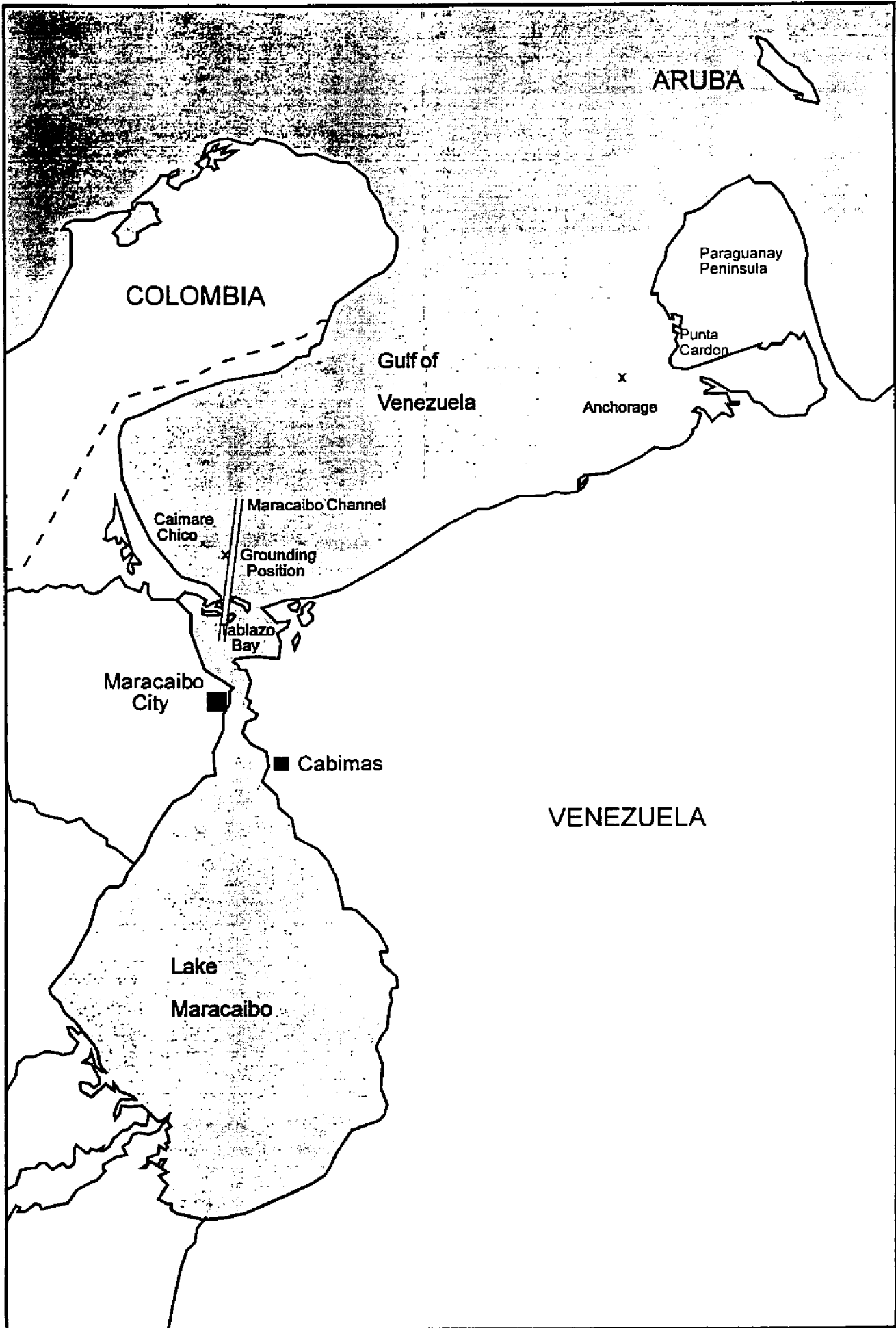
1.2 The tanker was refloated six hours after the grounding and proceeded under her own power towards Punta Cardon in the eastern part of the Gulf of Venezuela. Apart from the initial spill of oil at the grounding position, further small releases occurred over a period of several days at the anchorage off Punta Cardon, until temporary repair work on the damaged hull was completed. After a short delay, the cargo remaining on board the *Nissos Amorgos* was transhipped to another tanker.

1.3 The *Nissos Amorgos* is entered in Assuranceföreningen Gard (Gard Club).

1.4 Venezuela is Party to the 1969 Civil Liability Convention and the 1971 Fund Convention, but not to the 1992 Protocols thereto.

2 Clean-up operations

2.1 Under the Venezuelan National Contingency Plan for Oil Pollution, Lagoven and Maraven (wholly owned subsidiaries of the national oil company, Petroleos de Venezuela SA – PDVSA) are responsible for implementing oil spill response measures in the Gulf of Venezuela.



2.2 Maraven deployed a skimming vessel at the anchorage off Punta Cardon in response to the leakage of oil from the damaged tanker. No oil is reported to have come ashore in the eastern part of the Gulf of Venezuela.

2.3 A long sandy beach south-west of the grounding position was contaminated by oil, which later spread along a stretch of 45 kilometres. Some of the beached oil was quickly buried under fresh deposits of sand on successive tides, while some of the spilled oil sank in the surf zone, ie the sea adjacent to the intertidal zone, adjacent to the polluted beach.

2.4 Lagoven organised a beach cleaning operation comprising some 550 people recruited mostly from nearby fishing villages. Oil contaminated sand in the intertidal zone was removed manually. Collected oily beach material was deposited in dune areas adjacent to the beach. The clean-up operations have been hampered by frequent re-distribution of stranded oil by tidal action, and by the fact that some oil became buried under layers of sand.

2.5 Lagoven estimates that there are approximately 1 360 tonnes of oil remaining in the surf zone along a five kilometres stretch of coastline, and that some 85 000m³ of sand/oil will have to be removed. Trials are being carried out to recover sunken oil in the surf zone by amphibious dredging equipment, at a depth of 0.5-1 metre.

2.6 It has been estimated that the remaining clean-up of the beach and the removal of sunken and buried oil in the surf zone will take several months.

2.7 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, 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.

3 Claims Agency

3.1 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.

3.2 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) has visited Venezuela to assist in the establishment of the Claims Agency and in the setting up of the claims handling procedures, and he will continue to monitor the operation of the Agency.

3.3 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. Meetings with several hundred potential claimants took place on 7 and 8 April 1997 at several locations in the affected area. Since then there have been numerous meetings at the Claims Agency between the Agency's staff and actual and potential claimants.

3.4 Meetings have also been held with Lagoven and Maraven to co-ordinate the handling of the clean-up claims and to discuss their experience of fishing-related claims.

3.5 The staff of the Claims Agency have visited the offices of Servicio Autonomo de Recursos Pesquero y Agrícola (SARPA), which is part of the Ministry of Agriculture and Fishery and is the licensing authority for artisanal fishery. Discussions have been held with the Director of SARPA, and certain statistical data has been provided by SARPA concerning fishery catches in the affected area. The Agency has requested, in addition to the information already provided, a list of licenced fishermen operating in the area affected by the oil, but so far no such list has been provided.

4 Claims presented to the Claims Agency

4.1 General situation

As at 28 May 1997, claims for compensation for Bolivar (Bs) 1 029 million and US\$ 1 117 915 (£2 million) have been presented to the Claims Agency in Maracaibo. These claims are being examined by the staff of the Agency and by the experts engaged by the 1971 Fund and the Gard Club. So far no claims have been approved and no payments have been made.

4.2 Claims for clean-up operations

Lagoven has presented a claim to the Claims Agency for Bs 548 688 655 (£693 000) relating to the cost of the beach clean-up. Maraven has presented a claim for US\$1 117 915 (£683 000) for the costs incurred for clean-up operations. Additional claims by Lagoven and Maraven are expected.

4.3 Property claims

The Claims Agency has received claims totalling Bs 13 611 500 (£17 000) from seven individuals for damage to nets, boats and outboard motors. The local surveyor engaged by the Gard Club and the 1971 Fund has inspected some of the damaged items, and others will be inspected soon.

4.4 Fishery claims

Claims for loss of income totalling Bs 466 645 652 (£589 000), as a result of having been prevented from carrying out their normal activity, have been presented to the Claims Agency by:

- the owners of 81 inshore fishing boats
- 70 clam harvesters
- 51 shrimp fishermen
- 12 persons engaged in transporting fish from the affected area
- 2 persons engaged in fishing on foot.

4.5 Fish processing plants

The Claims Agency has been informed by the lawyer representing 21 fish processing plants in the Maracaibo area that his clients believe they will suffer losses from a long term reduction in catches as a result of the effects of the pollution on fish stocks. The Claims Agency has not received any claims from this sector.

4.6 Claims from the tourism industry

Claims are expected from some 110 individuals who own or operate hotels, beach huts, shops, cafés and restaurants in the affected area.

5 Court proceedings

5.1 Immediately after the incident, the ship was detained pursuant to an order rendered by a first instance court in Cabimas.

5.2 On 2 April 1997, the State of Venezuela presented a claim against the shipowner, the master of the *Nissos Amorgos* and the Gard Club for an estimated amount of US\$20 million (£12.2 million) before a first instance court in Caracas. The Venezuelan State has requested that the 1971 Fund should be notified of its action.

5.3 At the request of the Venezuelan State, on 4 April 1997 the Caracas Court ordered the arrest of the *Nissos Amorgos*. The Caracas Court also ordered the owner and the Gard Club to provide security for US\$40 million (£24.4 million) plus US\$6 million (£3.6 million) for legal costs and expenses.

5.4 Negotiations are being held between the shipowner and the Attorney General, who represents the Venezuelan State, for the purpose of persuading the latter to accept a bank guarantee for the limitation amount applicable under the 1969 Civil Liability Convention offered by the shipowner and the Gard Club for the constitution of the limitation fund at the Court in Cabimas as sufficient security (cf paragraph 10 below) and therefore to accept the release of the vessel.

5.5 A fishermen's trade union (FETRAPESCA) has presented a claim against the shipowner, the Gard Club and the master of the *Nissos Amorgos* for an estimated amount of US\$130 million (£79 million) plus legal costs, before the same first instance court in Caracas. The 1971 Fund's Venezuelan lawyer has been notified of this action.

5.6 At the request of FETRAPESCA the Caracas Court appointed a committee composed of lawyers and technical experts to assess the value of the damage to the environment caused by the spill.

5.7 FETRAPESCA has obtained an order by the Court in Caracas for the arrest of the shipowner's property, of the vessels which are not his property but which are under associated management and of assets belonging to the Gard Club, up to a total of US\$292.5 million, plus US\$32.5 million in respect of legal costs.

6 Consideration by the Executive Committee at its 53rd session

6.1 At its 53rd session, the Executive Committee noted the action taken by the Venezuelan State referred to in paragraphs 5.1 and 5.2 above.

6.2 Several delegations expressed concern that the action taken by the Venezuelan State might not be in conformity with the Conventions.

6.3 The Director was instructed to contact the Venezuelan Government to provide further information regarding the functioning of the regime of liability and compensation established by the 1969 Civil Liability Convention and 1971 Fund Convention.

6.4 The Committee recognised that it was not possible for the Director to express any opinion at this stage on the admissibility of the claim submitted by the Venezuelan State. If and to the extent that the claim were to relate to damage to the environment *per se*, it was recalled that the 1971 Fund Assembly and Executive Committee had consistently taken the position that such claims were not admissible under the 1969 Civil Liability Convention and 1971 Fund Convention. It was also recalled that the Assembly had decided that compensation could be granted only if a claimant had suffered a quantifiable economic loss (cf documents FUND/WGR.7/4, paragraph 7.1, FUND/A.17/23, paragraphs 7.3.5 and 7.3.6 and FUND/A.17/35, paragraph 26.8).

6.5 The Executive Committee authorised the Director to make final settlements of all claims arising out of this incident, to the extent that the claims did not give rise to questions of principle which had not previously been decided by the Committee (document 71FUND/EXC.53/12, paragraph 3.7.7).

6.6 The Executive Committee also considered whether, and, if so, to what extent the Director should be authorised to make payments. The Executive Committee noted that it was not yet possible to make an accurate estimate of the total amount of claims which might be submitted, in particular due to the claim presented by the State of Venezuela and its request for security to be provided by the shipowner. The Committee considered it necessary, therefore, for the 1971 Fund to exercise caution in the payment of claims. It was noted that the 1971 Fund was liable to pay compensation only when the total amount of the payments made by the shipowner exceeded the limitation amount applicable to the vessel, in this case approximately £4.5 million. In view of the uncertainty as to whether the total amount of the claims might exceed the total amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention (60 million SDR, corresponding to approximately £51 million), the Committee decided that the Director was not authorised to make any payments for the time being (document 71FUND/EXC.53/12, paragraph 3.7.8).

7 Contacts with the Venezuelan Government

As instructed by the Executive Committee, the Director has provided the Venezuelan Ambassador in London with information on the functioning of the regime of liability and compensation established by the 1969 Civil Liability Convention and the 1971 Fund Convention.

8 Director's assessment of the claims situation

8.1 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 pleadings presented to the Court in Caracas, 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. For this reason, the Director maintains the position he took at the Executive Committee's 53rd session that it is not possible for him to express any opinion on the admissibility of the claim submitted by the Venezuelan State.

8.2 As regards the claim presented by FETRAPESCA referred to in paragraph 5.5 above, the situation is also unclear. It is not known what types of damage are covered by the claim, nor how the amount claimed has been calculated. In the pleadings presented to the Court, FETRAPESCA has maintained that the oil spill prevented the fishermen from fishing thereby causing loss of earnings. It has been stated by FETRAPESCA that the amount claimed, US\$130 million (£79.4 million), is a prudent estimate.

8.3 The 1971 Fund has been given access to a study of the cost of the *Nissos Amorgos* incident carried out by a professor at the Simon Bolivar University in Caracas. The study sets out a formula for assessing the ecological damage caused by the oil spill. According to the study, the application of this formula leads to a total damage of Bs 129 235 million (US\$267 million or £163 million).

8.4 As set out above, claims have been presented in court by the Venezuelan State for US\$20 million (£12.2 million) and by FETRAPESCA for US\$130 million (£79.4 million). The figures have been indicated as provisional. In view of the great uncertainty as to the total amount of the claims, the Committee may wish to maintain its position that it is premature to take any decision at this session authorising the Director to make payments.

9 Investigation into the cause of the incident

9.1 The Director is following, through the 1971 Fund's Venezuelan lawyer, the investigation into the cause of the incident which is being carried out by the Venezuelan authorities.

9.2 The shipowner and the Gard Club have provided the following information:

The *Nissos Amorgos* was the first of three vessels to run aground in the Maracaibo Channel within a six week period. On 10 March 1997 the 96 547 dwt tanker *Olympic Sponsor* grounded at the same location, and on 10 April the 38 000 dwt tanker *Corelli* also grounded in the Channel. The owner of the *Nissos Amorgos* and the Gard Club have made their own investigations into the cause of the incident and have agreed to provide the Director with the evidence they have obtained. This includes statements by the master and other members of the crew, together with ship's documents and various other material relating to the incident.

The *Nissos Amorgos* ran aground whilst sailing on a draft of 39 feet, when the official recommended draft was 39 feet 6 inches. The official draft was then reduced to 38 feet, and the *Olympic Sponsor* ran aground whilst sailing at that draft. Thereafter the official draft was reduced to 36 feet, and it currently remains at this level.

9.3 The Director will examine the material to be submitted on behalf of the shipowner.

10 Limitation proceedings

The shipowner has commenced limitation proceedings by a petition filed with the Court in Cabimas and has offered the Court a bank guarantee for the limitation amount applicable to the *Nissos Amorgos*, ie approximately 5.2 million SDR (£4.5 million). The shipowner has sought the release of the ship, but the Court has not yet taken any decision on this request. According to the shipowner, one of the reasons for the delay is that a conflict of jurisdiction appears to have arisen between the Court in Cabimas and the Court in Caracas. The shipowner has informed the Director that efforts are being made on his behalf to resolve this apparent conflict, so that the vessel can be released and a clear decision made as to which Court is competent to administer the limitation fund.

11 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 payment of claims arising from this incident (paragraph 8); and
 - (c) 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.
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