



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1971

ADMINISTRATIVE COUNCIL
14th session
Agenda item 3

71FUND/AC.14/2/Add.2
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INCIDENTS INVOLVING THE 1971 FUND

NISSOS AMORGOS

Note by the Director

Summary:

The Director has received a letter from the Vice-Minister of Foreign Affairs of Venezuela. In his letter, the Vice-Minister welcomed the willingness of the Fund to settle the *Nissos Amorgos* case. The Vice-Minister also stated that the Republic of Venezuela welcomed the proposal that the claims by the Republic of Venezuela would be dealt with after full payment by the Fund of the already settled claims.

The Director sets out the undertakings which he considers should be given by the Republic of Venezuela to enable the 1971 Fund to increase the level of payments to 100%.

In the Director's opinion the text of the Vice-Minister's letter does not provide sufficient legal certainty to the 1971 Fund to allow an increase in the level of payments.

Action to be taken:

- (a) to decide whether to instruct the Director to reply to the Vice-Minister of Foreign Affairs setting out the elements which an undertaking by the Republic of Venezuela should contain in order to enable the 1971 Fund to increase the level of payments to 100%; and
- (b) to consider whether to authorise the Director to increase the level of payments to 100% in the event that the required undertakings are given by the Republic of Venezuela

1 Letter from the Republic of Venezuela

- 1.1 In the present session of the Administrative Council, the Venezuelan delegation stated that, considering the delay of more than seven years in the payment of compensation due to various differences between the parties, that delegation wished to assist the Fund in finding a prompt and practical solution.
- 1.2 The delegation stated that the Republic of Venezuela proposed that any claim by the Republic be dealt with after the victims had been fully indemnified so that the pending and settled claims

against the Fund were compensated to the benefit of the victims so that the Republic would stand 'last in the queue' and subject to the amount available for compensation from the Fund.

- 1.3 The Venezuelan delegation stated that the Government of Venezuela had responded very positively and proactively to the possibility of placing the Government's claims last in the queue in order to facilitate payment to the victims according to the settlements reached with the Fund. That delegation also stated that it had been informed that an official letter would be produced in this regard by the Venezuelan Ministry of Foreign Affairs and would be sent to the Fund within the next few days.
- 1.4 On the evening of Wednesday 26 May 2004, the Director received a letter from the Vice-Minister of Foreign Affairs of Venezuela in response to his letter to the Minister of Foreign Affairs of 20 April 2004 in which the Director set out the elements of a possible global solution of all outstanding significant issues (cf document 71FUND/AC.14/2, paragraph 7.13).
- 1.5 In his response to the Director's letter, the Vice-Minister welcomed the willingness of the 1971 Fund to settle the *Nissos Amorgos* case but stated that the Republic of Venezuela considered that the proposition was unfeasible, not for lack of interest on the part of the Venezuelan Government, but because the conditions were impossible to fulfil given that they involved decisions which legitimately belonged to autonomous authorities. Nevertheless, in his letter, the Vice-Minister stated that the Republic of Venezuela welcomed the proposal that the claims by the Republic of Venezuela would be dealt with after the Fund had made full payment to all already recognised claimants.
- 1.6 The letter from the Vice-Minister is attached at the Annex.

2 Director's considerations

- 2.1 The Director has examined the letter from the Vice-Minister of Foreign Affairs and is very pleased to note that the Republic of Venezuela wished to take positive steps to enable the 1971 Fund to make full payment of the claims submitted by the victims of the *Nissos Amorgos* incident as soon as possible. It is, in the Director's opinion, clear from the letter that the intention of the Republic of Venezuela is that the claims submitted by Venezuela should stand 'last in the queue'.
- 2.2 In the Director's view any undertaking by the Republic of Venezuela to stand 'last in the queue' should, in the interest of legal certainty, contain the following elements:
 - Undertaking by the Republic of Venezuela not to seek payment of the claims submitted by Venezuela against the master, the shipowner and the Gard Club and notified to the Fund until all other claims submitted as a result of the *Nissos Amorgos* incident have been paid in full either for the settled amount or for the amount awarded by a final court judgement; and
 - Undertaking by the Republic of Venezuela not to seek payment in excess of the difference between the maximum amount available under the 1969 Civil Liability and 1971 Fund Conventions, as determined by the order issued by the Cabimas Court on 27 June 1997, and the total amount paid with respect to all other claims.
- 2.3 In the Director's opinion, although the letter from the Vice-Minister indicates the willingness of the Republic of Venezuela to 'stand last in the queue', the text does not give the 1971 Fund sufficient legal certainty to enable the Director to recommend to the Administrative Council to increase the level of payments.
- 2.4 The Director proposes therefore that he should be instructed to reply to the Vice-Minister of Foreign Affairs setting out the elements referred to in paragraph 2.2 above required in any undertaking by the Republic of Venezuela in order to enable the 1971 Fund to increase the level of payments to 100%.

- 2.5 The Council may wish to consider whether to authorise the Director to increase the level of payments to 100% in the event that an undertaking containing the elements set out in paragraph 2.2 is given by the Republic of Venezuela.

3 Action to be taken by the Administrative Council

The Administrative Council is invited:

- (a) to take note of the information contained in this document;
- (b) to decide whether to instruct the Director to reply to the Vice-Minister of Foreign Affairs setting out the elements mentioned in paragraph 2.2 above which should be contained in an undertaking by the Republic of Venezuela in order to enable the 1971 Fund to increase the level of payments to 100%;
- (c) to consider whether to authorise the Director to increase the level of payments to 100% in the event that an undertaking containing the elements set out in paragraph 2.2 is given by the Republic of Venezuela; and
- (d) to give the Director such other instructions in respect of this matter as it may deem appropriate.

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