



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1971

ADMINISTRATIVE COUNCIL
15th session
Agenda item 16

71FUND/AC.15/14/3
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INCIDENTS INVOLVING THE 1971 FUND

NISSOS AMORGOS

Note by the Director

Summary:

Legal proceedings relating to claims for compensation for very high amounts, including claims by the Republic of Venezuela, have been brought in five Venezuelan courts, including the Supreme Court. The amount of settled and outstanding claims far exceeds the amount available for compensation under the Conventions.

At the Council's 14th session held in May 2004, the Venezuelan 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 and that the Republic would stand 'last in the queue'. The Council noted that the Vice-Minister of Foreign Affairs, in a letter to the Director, had stated that the Republic of Venezuela accepted that the claims by the Republic of Venezuela would be dealt with after the Fund had paid full compensation to claimants already recognised by it and those who would be recognised legally by a final court judgement.

The Council instructed the Director to seek the necessary assurance from the Republic of Venezuela that its understanding of the meaning of the term 'standing last in the queue' coincided with his. The Council authorised the Director to increase the level of payments to 100% of the established claims, when he had received the necessary assurance.

In August 2004 the Director obtained the necessary assurance from the Republic of Venezuela and the level of payments was accordingly increased to 100%. A final payment was made to the shrimp fishermen and processors of Lake Maracaibo in August 2004. Offers of further payments have been made to other claimants with settled claims.

Action to be taken: Information to be noted

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 Venezuelan authorities have maintained that the actual grounding occurred outside the Channel itself. An estimated 3 600 tonnes of crude oil was spilled.
- 1.2 The incident has given rise to legal proceedings in a Criminal Court in Cabimas, Civil Courts in Caracas and Maracaibo, the Criminal Court of Appeal in Maracaibo and the Supreme Court. A number of claims have been settled out of court and the corresponding legal actions have been withdrawn.

2 Criminal proceedings

- 2.1 Criminal proceedings were brought against the master. In his pleadings to the Criminal Court the master maintained that the damage was substantially caused by negligence imputable to the Republic of Venezuela.
- 2.2 The 1971 Fund submitted pleadings to the Court maintaining that the damage had been principally caused by negligence imputable to the Republic of Venezuela.
- 2.3 In a judgement rendered in May 2000, the Criminal Court dismissed the arguments made by the master and held him liable for the damage arising as a result of the incident and sentenced him to one year and four months in prison. The master appealed against the judgement before the Criminal Court of Appeal in Maracaibo.
- 2.4 The 1971 Fund presented pleadings to the Court of Appeal arguing that the evidence presented had not been sufficiently considered by the Court.
- 2.5 In a decision rendered in September 2000 the Court of Appeal decided not to consider the appeal and to order the Court of Cabimas to send the file to the Supreme Court (Sala Politico-Administrativa) due to the fact that the Supreme Court was considering a request for 'avocamiento'^{<1>}. The Court of Appeal's decision appears to imply that the judgement of the Criminal Court of Cabimas is null and void.
- 2.6 On 4 August 2004 the Supreme Court decided to remit the file on the criminal action against the master to the Criminal Court of Appeal. That Court has not yet rendered its decision.
- 2.7 The 1971 Fund's Venezuelan lawyers have advised the Fund that in accordance with Venezuelan procedural law the criminal action against the master is time barred, since under Venezuelan law a final sentence would have to be delivered within four and half years from the date of the criminal act.

3 Claims for compensation in court

- 3.1 The situation in respect of the significant claims for compensation pending before the Courts in Venezuela is as follows:

<1> Under Venezuelan law, in exceptional circumstances, the Supreme Court may assume jurisdiction, 'avocamiento', and decide on the merits of a case. Such exceptional circumstances are defined as those which directly affect the 'public interest and social order' or where it is necessary to re-establish order in the judicial process because of the great importance of the case. If the request of 'avocamiento' is granted, the Supreme Court would act as a court of first instance and its judgement would be final.

Claimant	Category	Claimed amount US\$	Status of claim
Republic of Venezuela	Environmental damage	\$60 250 396	Pending in criminal court (see paragraph 3.3)
Republic of Venezuela	Environmental damage	\$60 250 396	Pending in civil court (see paragraph 3.3)
Three fish processors	Loss of income	\$ 30 000 000	Pending in civil court (no loss proven)
Total		\$150 500 792	
		(£83.9 million)	

- 3.2 At its 11th session, held in July 2003, the Administrative Council reiterated the 1971 Fund's position that the components of the claims by the Republic of Venezuela did not relate to pollution damage falling within the scope of the 1969 Civil Liability Convention and the 1971 Fund Convention and that these claims should therefore be treated as not admissible (document 71FUND/AC.11/3, paragraphs 3.33).
- 3.3 At that session the Administrative Council noted that the two claims presented by the Republic of Venezuela were duplications, since they were based on the same university report and related to the same items of damage. It was also noted that the Procuraduria General de la Republica (Attorney General) had accepted this duplication in a note submitted to the 1971 Fund's Venezuelan lawyers in August 2001 (document 71FUND/AC.11/3, paragraph 3.5).
- 3.4 Two claims submitted by ICLAM^{<2>} for \$36 000 (£20 000) each have been settled but have not been withdrawn from the Courts.
- 3.5 Two claims, one by the Republic of Venezuela's former lawyers for Bs440 million (\$229 000) and the other by experts engaged by fishermen's trade union (FETRAPESCA) for Bs100 million (\$52 000), have been submitted in the Supreme Court against parties other than the shipowner, his insurer (Assuranceforeningen Gard, the "Gard Club") and the 1971 Fund.

4 Settled claims

The following claims have been settled out of court:

Claimant	Category	Settlement amount Bs	Settlement amount US\$
Petroleos de Venezuela S.A. (PDVSA)	Clean up		\$8 364 223
ICLAM ^{<2>}	Preventive measures	Bs15 268 867	
Shrimp fishermen and processors	Loss of income		\$16 033 389
Other claims ^{<3>}	Property damage and loss of income	Bs289 000 000	
Total		Bs304 268 867 (£85 000)	\$24 397 612 (£13.6 million)

5 Maximum amount available for compensation

- 5.1 Immediately after the incident, the *Nissos Amorgos* was detained pursuant to an order rendered by the Criminal Court of first instance in Cabimas. The shipowner provided a guarantee to the Cabimas Court for Bs3 473 million (£1 million), being the limitation amount applicable to the

^{<2>} Instituto para el Control y la Conservación de la Cuenca del Lago de Maracaibo

^{<3>} Paid in full by the shipowner's insurer with the exception of the claim by Corpozulia, the tourism authority of the Venezuelan State of Zulia.

Nissos Amorgos under the 1969 Civil Liability Convention. The Cabimas Court ordered the release of the ship on 27 June 1997 (document 71FUND/EXC.55/9, paragraphs 5.1.1 and 5.1.2).

- 5.2 On 27 June 1997 the Cabimas Court issued an order which provided that the maximum amount payable under the 1969 Civil Liability Convention and the 1971 Fund Convention, namely 60 million SDR, corresponded to Bs 39 738 million or \$83 221 800 (£46.4 million).

6 Level of payments

Consideration of the issue up to July 2003

- 6.1 In view of the uncertainty as to the total amount of the claims arising from this incident, the Executive Committee and later the Administrative Council decided to limit payments to a percentage of the loss or damage actually suffered by each claimant.
- 6.2 In July 2003, the Administrative Council decided to increase the 1971 Fund's level of payments from 40% to 65%, since the claims by the Republic of Venezuela were duplicated. The Council stated that, in the unlikely event that the Venezuelan Courts were to accept both claims submitted by the Republic, the 1971 Fund would nevertheless disregard one of them (document 71FUND/AC.11/3, paragraphs 3.25 and 3.26).
- 6.3 At its July 2003 session, the Administrative Council noted that if both claims by the Republic of Venezuela were withdrawn or not pursued to the detriment of other claimants, the 1971 Fund would be able to increase its level of payments to 100%.

Consideration at the Administrative Council's May 2004 session

- 6.4 At the Council's 14th session held in May 2004, the Venezuelan delegation stated that the Republic of Venezuela had 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 and that the Republic would stand 'last in the queue' and subject to the amount available for compensation from the Fund. The Council noted that the Vice-Minister of Foreign Affairs, in a letter to the Director, had stated that the Republic of Venezuela accepted that the claims by the Republic of Venezuela would be dealt with after the Fund had paid full compensation to claimants already recognised by it and those who would be recognised legally by a final court judgement, within the maximum amount available established by the Conventions (document 71FUND/AC.14/4, paragraphs 3.1.34 and 3.1.42).
- 6.5 The Director stated that in his opinion, and in view of the inter linkage between the 1969 Civil Liability Convention and the 1971 Fund Convention, and in accordance with long established practice within the 1971 and 1992 Funds, the expression 'standing last in the queue' meant that the government in question undertook not to pursue or seek payment for its claims for compensation under these Conventions, or under its national legislation implementing these Conventions, until all other admissible claims had been paid in full, either for the amount agreed in out-of-court settlement or decided by a competent court in a final judgement, or it was accepted by the Fund that all such claims would be paid in full.
- 6.6 The Council instructed the Director to seek the necessary assurance from the Republic of Venezuela as to whether its understanding of the meaning of the term 'standing last in the queue' coincided with his and authorised the Director to increase the level of payments to 100% of the established claims, when he had received the necessary assurance (document 71FUND/AC.14/4, paragraphs 3.1.53 and 3.1.54).

Developments after the May 2004 session

- 6.7 On 1 June 2004 the Director wrote to the Republic of Venezuela asking whether Venezuela, by undertaking to stand last in the queue, also agreed with his interpretation of the notion of 'standing

last in the queue' set out in paragraph 6.5 above. A letter from the Minister of Foreign Affairs of Venezuela received on 13 August 2004 gave, in the Director's opinion, the necessary assurance that the Republic agreed with his interpretation of that notion. As a result, the Director decided to increase the level of payments to 100%.

- 6.8 On 27 August 2004 a payment of US\$5 611 686 was made to the shrimp fishermen and processors of Lake Maracaibo. With this payment, these claimants had received the full amount of their compensation.
- 6.9 Letters have been written to the remaining claimants with settled claims (PDVSA, ICLAM and Corpozulia) offering a further payment.

7 Possible recourse action against Instituto Nacional de Canalizaciones (INC)

- 7.1 At its 14th session, held in May 2004, the Administrative Council considered the issue of whether the 1971 Fund should take recourse action against the Instituto Nacional de Canalizaciones (INC), the agency responsible for the maintenance of the Lake Maracaibo navigation channel (cf document 71FUND/AC.14/2, section 8).
- 7.2 The Council noted that, having taken into account all available information, the Director had considered on balance that it was unlikely that a recourse action by the 1971 Fund against INC would succeed and that for this reason he had proposed that the Fund should not pursue such an action.
- 7.3 In summing up the discussion that took place at the 14th session of the Council, the Chairman stated that it was important that there should be a wide consensus for a decision not to take recourse action against INC and that, since a slight majority of those delegations that had expressed a view had been in favour of postponing a decision and that even some of those delegations supporting the Director's proposal had been very hesitant, such consensus did not exist.
- 7.4 The Administrative Council decided that the 1971 Fund should postpone taking a position as to whether or not the Fund should take recourse action against INC (document 71FUND/AC.14/4, paragraph 3.1.93).

8 Action to be taken

The Administrative Council is invited

- (a) to take note of the information contained in this document; and
- (b) to give the Director such instructions in respect of this incident as it deems appropriate.
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