

 <p>INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS</p>	Agenda item: 3	IOPC/OCT10/3/2
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	1992 Fund Assembly	92A15
	1992 Fund Executive Committee	92EC49
	Supplementary Fund Assembly	SA6
	1971 Fund Administrative Council	71AC25 •

INCIDENTS INVOLVING THE IOPC FUNDS – 1971 FUND

VISTABELLA, AEGEAN SEA, ILIAD, NISSOS AMORGOS AND EVOIKOS

Note by the Director

Summary:	In this document the latest information is provided regarding the following 1971 Fund incidents: <i>Vistabella</i> , <i>Aegean Sea</i> , <i>Iliad</i> , <i>Nissos Amorgos</i> , and <i>Evoikos</i> .
Action to be taken:	<u>1971 Fund Administrative Council:</u> Information to be noted.

1 Vistabella

Summary of the incident

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|-----|-------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.1 | Ship | <i>Vistabella</i> |
| | Date of incident | 07.03.91 |
| | Place of incident | Guadeloupe, France |
| | Cause of incident | Sinking |
| | Quantity of oil spilled | Unknown |
| | Flag State of ship | Trinidad and Tobago |
| | Gross tonnage (GRT) | 1 090 GRT |
| | Shipowner's Insurer | Maritime General Insurance Company Limited |
| | CLC Limit | €359 000 |
| | Compensation | €1.3 million paid by the 1971 Fund |
| | Legal proceedings | The 1971 Fund brought recourse action against the shipowner's insurer. The Court of Appeal in Guadeloupe rendered judgement in favour of the Fund for €1 289 483 plus interest and costs. |
- 1.2 While being towed, the sea-going barge *Vistabella* (1 090 GRT), registered in Trinidad and Tobago, sank to a depth of over 600 metres, 15 miles south-east of Nevis. An unknown quantity of heavy fuel oil cargo was spilled as a result of the incident, and the quantity that remained in the barge is not known.
- 1.3 The *Vistabella* was not entered in any P&I Club but was covered by third party liability insurance with a Trinidad insurance company. The insurer argued that the insurance did not cover this incident. The limitation amount applicable to the ship was estimated at FFr2 354 000 or €359 000. No limitation fund was established. It was unlikely that the shipowner would be able to meet his obligations under the 1969 Civil Liability Convention (1969 CLC) without effective insurance cover. The shipowner and his insurer did not respond to invitations to co-operate in the claims settlement process.

Claims for compensation

- 1.4 The 1971 Fund paid compensation amounting to FFfr8.2 million or €1.3 million (£955 000) to the French Government in respect of clean-up operations. Compensation was paid to private claimants in St Barthélemy and the British Virgin Islands and to the authorities of the British Virgin Islands for a total of some £14 250.

Legal proceedings in Guadeloupe

- 1.5 In a judgement rendered in 1996 the Court of First Instance accepted that, on the basis of subrogation, the 1971 Fund had a right of action against the shipowner and a right of direct action against his insurer, and awarded the Fund the right to recover the total amount which it had paid for damage caused in the French territories. The insurer appealed against the judgement.
- 1.6 The Court of Appeal rendered its judgement in March 1998. The Court of Appeal held that the 1969 CLC applied to the incident and that the Convention applied to the direct action by the 1971 Fund against the insurer, even though in this particular case the shipowner had not been obliged to take out insurance since the ship was carrying less than 2 000 tonnes of oil in bulk as cargo. The case was referred back to the Court of First Instance.
- 1.7 In a judgement rendered in March 2000 the Court of First Instance ordered the insurer to pay FFfr8.2 million or €1.3 million to the 1971 Fund plus interest. The insurer appealed against the judgement.
- 1.8 The Court of Appeal rendered its judgement in February 2004 in which it confirmed the judgement of the Court of First Instance of March 2000. The insurer has not appealed to the Court of Cassation.

Legal proceedings in Trinidad and Tobago

- 1.9 In consultation with the Fund's Trinidad and Tobago lawyers, the Fund commenced summary proceedings against the insurer in Trinidad and Tobago to enforce the judgement of the Court of Appeal in Guadeloupe.
- 1.10 The 1971 Fund submitted an application for a summary execution of the judgement to the High Court in Trinidad and Tobago. The insurer filed defence pleadings opposing the execution of the judgement on the grounds that it was issued in application of the 1969 CLC to which Trinidad and Tobago was not a Party.
- 1.11 The 1971 Fund submitted a reply arguing that it was not requesting the Court to apply the 1969 CLC, but that it was seeking to enforce a foreign judgement under common law.
- 1.12 In March 2008, the Court delivered a judgement in the 1971 Fund's favour. The insurer has appealed against this judgement in the Court of Appeal in Trinidad and Tobago.
- 1.13 Hearings at the Court of Appeal took place in January and July 2010. At the hearing in July 2010 the Court indicated that it wished to hear further submissions from the parties on the issue pleaded by the insurer of whether enforcement of the judgement would be against public policy. The insurer filed its written submissions in August 2010. The 1971 Fund is examining the insurer's submissions and will prepare a reply to be submitted in September 2010.

2 *Aegean Sea*

Summary of the incident

2.1	Ship	<i>Aegean Sea</i>
	Date of incident	03.12.92
	Place of incident	La Coruña, Spain
	Cause of incident	Grounding
	Quantity of oil spilled	73 500 tonnes of crude oil
	Flag State of ship	Greece
	Gross tonnage (GRT)	57 801 GRT
	P&I insurer	United Kingdom Mutual Steamship Assurance Association (Bermuda) Limited (UK Club)
	CLC limit	€6.7 million
	CLC + Fund limit	€57.2 million
	Compensation	An agreement was concluded between the Spanish State, the 1971 Fund, the shipowner and the UK Club whereby the total amount due from the owner of the <i>Aegean Sea</i> , the UK Club and the 1971 Fund to the victims amounted to Pts 9 000 million or €54 million and the Spanish State undertook to compensate all the victims who obtained a final judgement by a Spanish court in their favour which condemned the shipowner, the UK Club or the 1971 Fund to pay compensation as a result of the incident.

- 2.2 During heavy weather, the *Aegean Sea* (57 801 GRT) ran aground while approaching La Coruña harbour in the north-west of Spain. The ship, which was carrying approximately 80 000 tonnes of crude oil, broke in two and burnt fiercely for about 24 hours. The forward section sank some 50 metres from the coast. The stern section remained largely intact. The oil remaining in the aft section was removed by salvors working from the shore. The quantity of oil spilled was not known, since most of the cargo was either dispersed in the sea or consumed by the fire on board the vessel, but it was estimated at some 73 500 tonnes. Several stretches of coastline east and north-east of La Coruña were contaminated, as well as the sheltered Ria de Ferrol. Extensive clean-up operations were carried out at sea and on shore.

Claims for compensation

- 2.3 Claims totalling Pts 48 187 million or €289.6 million were submitted before the criminal and civil courts. A large number of claims were settled out of court but many claimants pursued their claims in court.

Criminal proceedings

- 2.4 With regard to the criminal proceedings initiated in relation to this incident, reference is made to the Annual Report 2009, Part 2, page 53. There have been no developments in respect of the criminal proceedings since the last time this case was reported, in October 2009.

Global settlement

- 2.5 With regard to the agreement signed between the Spanish State, the shipowner and the UK Club on a global solution of all outstanding issues in the *Aegean Sea* case, reference is made to the Annual Report 2009, Part 2, page 53.

Civil proceedings

- 2.6 With regard to the civil proceedings initiated by six claimants from the fisheries and mariculture sectors who did not reach agreement with the Spanish State on the amount of their losses reference is made to the Annual Report 2009, Part 2, page 54.
- 2.7 A boat fisherman, a fish processor and a fishing boat owner requested leave to appeal to the Supreme Court but by July 2009 the Court had denied the leave to appeal in all three cases. The fish processor has appealed to the Constitutional Court. The judgements by the Court of Appeal in respect of the fishing boat owner and the boat fisherman have become final.
- 2.8 The Spanish State will, under the agreement with the 1971 Fund, pay any amounts awarded by the Courts.
- 2.9 There have been no developments in this case since October 2009.

3 *Iliad*

Summary of the incident

3.1	Ship	<i>Iliad</i>
	Date of incident	09.10.93
	Place of incident	Pylos, Greece
	Cause of incident	Grounding
	Quantity of oil spilled	200 tonnes of light crude oil
	Flag State of ship	Greece
	Gross tonnage (GRT)	33 837 GRT
	P&I insurer	North of England Protection and Indemnity Association Limited
	CLC limit	€4.4 million
	Compensation	All claims filed in the limitation proceedings are time-barred against the 1971 Fund except for two: 1) a claim from the shipowner and his insurer in respect of reimbursement for any compensation payments in excess of the shipowner's limitation amount and for indemnification under Article 5.1 of the 1971 Fund Convention; and 2) a claim from the owner of a fish farm for €3 million.

- 3.2 The Greek tanker *Iliad* (33 837 GRT) grounded on rocks close to Sfaktiria Island after leaving the port of Pylos (Greece), resulting in a spill of some 200 tonnes of Syrian light crude oil. The Greek national contingency plan was activated and the spill was cleaned up relatively rapidly.
- 3.3 The shipowner and his insurer took legal action against the 1971 Fund in order to prevent their rights to reimbursement from the 1971 Fund for any compensation payments in excess of the shipowner's limitation amount and to indemnification under Article 5.1 of the 1971 Fund Convention from becoming time-barred. The owner of a fish farm, whose claim is for Drs 1 044 million or €3 million, also interrupted the time-bar period by taking legal action against the 1971 Fund. All other claims have become time-barred *vis-à-vis* the 1971 Fund.

Limitation proceedings

- 3.4 In March 1994 the shipowner's P&I insurer established a limitation fund amounting to Drs 1 497 million or €4.4 million with the Court in Nafplion by the deposit of a bank guarantee.
- 3.5 The Court decided that claims should be lodged by 20 January 1995. By that date, 527 claims had been presented in the limitation proceedings, totalling Drs 3 071 million or €9 million plus Drs 378 million or €1.1 million for compensation of 'moral damage'.

- 3.6 In March 1994, the Court appointed a liquidator to examine the claims in the limitation proceedings. The liquidator submitted his report to the Court in March 2006. In his report, the liquidator assessed the 527 claims at € 125 755, which is below the limitation amount applicable to the shipowner. However, 446 of these claimants, including the shipowner and his insurer, have filed objections to the report. The Fund also filed pleadings to the Court in which it dealt with the criteria for the admissibility of claims for compensation under the 1969 CLC and the 1971 Fund Convention. The Fund, in its pleadings, argued that all claims except those mentioned in paragraph 3.3 were time-barred.
- 3.7 In October 2007, the Court in Nafplion decided that it did not have jurisdiction in respect of the limitation proceedings and referred the case to the Court of Kalamata as the court closest to the area where the incident took place. A number of claimants have appealed against the decision. The 1971 Fund, following advice received from its Greek lawyer, has joined in the appeal.
- 3.8 A hearing took place in March 2010. In April 2010 the Court of Kalamata decided that the Court of Nafplion had jurisdiction in respect of the limitation proceedings and that therefore these proceedings should be referred back to that Court.
- 3.9 Taking into account the total claim amount approved by the Liquidator (€ 125 755) and applicable interest, it seems unlikely that the final adjudicated amount will exceed the limitation sum of €4.4 million. Moreover, all claims other than those mentioned in paragraph 3.3, representing approximately one third of the liquidator-approved amount, may well be found to be time-barred by the Court. However, although based on the above facts the likelihood of the Fund having to pay compensation appears to be slim, it should be noted that 446 claimants have filed appeals against the Liquidator's Report. The total claim amount has yet to be assessed by the Court. The Fund will therefore have to continue monitoring the legal proceedings.

4 Nissos Amorgos

Summary of the incident

4.1	Ship	<i>Nissos Amorgos</i>
	Date of incident	28.02.97
	Place of incident	Maracaibo, Republic of Venezuela
	Cause of incident	Grounding
	Quantity of oil spilled	3 600 tonnes of crude oil
	Flag State of ship	Greece
	Gross tonnage (GRT)	50 563 GRT
	P&I insurer	Assuranceföreningen Gard (Gard Club)
	CLC Limit	Bs3 473 million or BsF 3.5 million ^{<1>}
	CLC + Fund limit	Bs39 738 million or \$83 221 800
	Compensation	Claims have been settled for Bs350 075 468 (£69 000) and \$24 397 612 (£13 million). All the settled claims have been paid.
	Legal proceedings	Three claims remain in Court as follows: Two claims by the Republic of Venezuela, for US\$60 250 396 each. These claims are duplicated and time-barred. One claim by three fish processors for US\$30 000 000.

- 4.2 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 were spilled.

^{<1>}

In January 2008 the Bolivar Fuerte (BsF) replaced the Bolivar (Bs) at the rate of 1 BsF = 1000 Bs.

Settled claims

- 4.3 The incident has given rise to a number of claims. The table below summarises the settled claims, which have all been paid in full:

Claimant	Category	Settlement amount Bs	Settlement amount US\$
Petroleos de Venezuela S.A. (PDVSA)	Clean up		\$8 364 223
ICLAM ^{<2>}	Preventive measures	Bs61 075 468	
Shrimp fishermen and processors	Loss of income		\$16 033 389
Other claims ^{<3>}	Property damage and loss of income	Bs289 000 000	
Total		Bs350 075 468 (£69 000)	\$24 397 612 (£13 million)

Claims for compensation in court

- 4.4 The situation in respect of the claims for compensation pending before the courts in Venezuela is as follows:

Claimant	Category	Claimed amount US\$	Court	Fund's position
Republic of Venezuela	Environmental damage	\$60 250 396	Criminal Court	Time-barred
Republic of Venezuela	Environmental damage	\$60 250 396	Civil Court	Time-barred
Three fish processors	Loss of income	\$30 000 000	Civil Court	No loss proven
Total		\$150 500 792		

Claims by the Republic of Venezuela

- 4.5 The Republic of Venezuela presented a claim for environmental damage for US\$60 250 396 against the Master, the shipowner and his insurer, Gard Club, in the Criminal Court in Cabimas. The Republic of Venezuela also presented the same claim before the Civil Court of Caracas.
- 4.6 The 1971 Fund Administrative Council, in July 2003, decided that the components of the claims by the Republic of Venezuela did not relate to pollution damage falling within the scope of the 1969 CLC and the 1971 Fund Convention, that the claims should be treated as not admissible and that they were duplications since they related to the same items of damage (document 71FUND/AC.11/3). The 1971 Fund Administrative Council, in October 2005, decided that the claims by the Republic of Venezuela were also time-barred *vis-à-vis* the 1971 Fund (document 71FUND/AC.17/20).

Claims by fish processors

- 4.7 Three fish processors presented claims totalling US\$30 million in the Supreme Court against the 1971 Fund and the Instituto Nacional de Canalizaciones (INC). These claims were presented in the Supreme Court not as a result of an 'avocamiento' but because one of the defendants is an agency of the Republic of Venezuela and, under Venezuelan law, claims against the Republic have to be presented before the Supreme Court. The Supreme Court would in this case act as court of first and

^{<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, a tourism authority of the Republic of Venezuela.

last instance. At its July 2003 session, the 1971 Fund Administrative Council noted that the claims had not been substantiated by supporting documentation and that they should therefore be treated as not admissible.

- 4.8 In August 2003, the 1971 Fund submitted pleadings to the Supreme Court arguing that, as the claimants had submitted and subsequently renounced claims in the Criminal Court in Cabimas and the Civil Court in Caracas against the Master, the shipowner and the Gard Club for the same damage, they had implicitly renounced any claim against the 1971 Fund. The 1971 Fund also argued that not only had the claimants failed to demonstrate the extent of their loss but the evidence they had submitted indicated that the cause of any loss was not related to the pollution. There have been no developments in respect of these claims.

Criminal proceedings

- 4.9 Criminal proceedings were brought against the Master. In a judgement rendered in May 2000, the Criminal Court in Cabimas 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.
- 4.10 In a judgement rendered in February 2005, the Criminal Court of Appeal in Maracaibo held that the Master had incurred criminal liability due to negligence causing pollution damage to the environment, but that, since more than four and a half years from the date of the criminal act had passed, the criminal action against the Master was time-barred. In its judgement the Court stated that this decision was without prejudice to the civil liabilities which could arise from the criminal act dealt with in the judgement which was declared time-barred.
- 4.11 In October 2006, the public prosecutor requested the Supreme Court (Constitutional Section) to revise the judgement of the Criminal Court of Appeal on the grounds that the Court had not decided in respect of the claim for compensation submitted by the public prosecutor on behalf of the Republic of Venezuela.
- 4.12 The Supreme Court (Constitutional section), in a judgement rendered in March 2007, decided to annul the judgement of the Court of Appeal and send back the criminal file to the Court of Appeal where a different section would render a new judgement. In its judgement the Supreme Court stated that the judgement of the Court of Appeal was unconstitutional since it had not decided on the claim for compensation submitted by the Republic of Venezuela that had been presented to obtain compensation for the Venezuelan State for the damage caused. The criminal file was returned to the Court of Appeal.
- 4.13 A different section of the Criminal Court of Appeal issued a new judgement in February 2008, confirming that the criminal action against the Master was time-barred but preserving the civil action arising from the criminal act. In the judgement the Court of Appeal decided to send the file to a Criminal Court of First Instance in Maracaibo to decide on the civil action filed by the Republic of Venezuela.
- 4.14 The 1971 Fund has submitted pleadings arguing that by not notifying the 1971 Fund of the judgement the Court had denied the Fund a proper defence. In its pleadings the Fund also submits its conclusions, as follows:
- The claims by the Republic of Venezuela are time-barred in respect of the 1971 Fund.
 - All admissible claims for pollution damage have already been compensated by the Club and the Fund.
 - The claim by the Republic of Venezuela is not admissible under the 1969 Civil Liability Convention and 1971 Fund Convention and the alleged damage is not proved.

- 4.15 In a judgement rendered in February 2010 the Criminal Court of First Instance in Maracaibo held that the master, the shipowner and the Gard Club had incurred a civil liability derived from the criminal action and ordered them to pay to the Venezuelan State the amount claimed, namely US\$60 250 396 (cf paragraph 4.5).
- 4.16 The master, the shipowner and the Gard Club have appealed against the judgement. The 1971 Fund, although not notified of the judgement, has also appealed. A hearing at the Court of Appeal in Maracaibo is expected in the near future.

Attempts to resolve the outstanding issues

- 4.17 With regard to attempts made by the 1971 Fund over the years to resolve the outstanding issues, reference is made to the Annual Report 2009, Part 2, pages 59-60. There have been no developments since October 2009.

5 *Evoikos*

Summary of the incident

5.1	Ship	<i>Evoikos</i>
	Date of incident	15.10.97
	Place of incident	Strait of Singapore
	Cause of incident	Collision
	Quantity of oil spilled	29 000 tonnes of heavy fuel oil
	Area affected	Singapore, Malaysia and Indonesia
	Flag State of ship	Cyprus
	Gross tonnage (GRT)	80 823 GRT
	P&I insurer	United Kingdom Mutual Steamship Assurance Association (Bermuda) Limited (UK Club)
	CLC limit	8 846 942 SDR ^{<4>}
	Compensation	The total compensation paid by the shipowner is below the limitation amount applicable to the ship under the 1969 CLC.

- 5.2 The Cypriot tanker *Evoikos* (80 823 GRT) collided with the Thai tanker *Orapin Global* (138 037 GRT) whilst passing through the Strait of Singapore. The *Evoikos*, which was carrying approximately 130 000 tonnes of heavy fuel oil, suffered damage to three cargo tanks, and an estimated 29 000 tonnes of its cargo were subsequently spilled. The *Orapin Global*, which was in ballast, did not spill any oil. The spilt oil initially affected the waters and some southern islands of Singapore, but later oil slicks drifted into the Malaysian and Indonesian waters of the Strait of Malacca. In December 1997 oil came ashore in places along a 40-kilometre length of the Malaysian coast in the Province of Selangor.
- 5.3 At the time of the incident, Singapore was Party to the 1969 CLC but not to the 1971 Fund Convention, whereas Malaysia and Indonesia were Parties to the 1969 CLC and the 1971 Fund Convention.
- 5.4 All known admissible claims for compensation in Malaysia, Singapore and Indonesia have been settled by the shipowner. The 1971 Fund is not aware of any outstanding claims.
- 5.5 In the limitation proceedings commenced by the shipowner in Singapore, the Court determined the limitation amount applicable to the *Evoikos* under the 1969 CLC at 8 846 942 SDR.

⁴ The SDR (Special Drawing Rights) which is the unit of account used in the Conventions is valued on the basis of a basket of key international currencies and serves as the unit of account of the International Monetary Fund (IMF) and a number of other intergovernmental organisations.

- 5.6 The total compensation paid by the shipowner is below the limitation amount applicable to the ship under the 1969 CLC.
- 5.7 The UK Club commenced legal actions against the 1971 Fund in London, Indonesia and Malaysia to protect its rights against the Fund. The action in Indonesia has been discontinued. The actions in London and in Malaysia were stayed by mutual consent. Although any further claims are time-barred under the Conventions, the insurer had informed the Fund that it was not prepared to withdraw its actions against the Fund in London and Malaysia until it had had the opportunity to establish that there were no outstanding claims against the shipowner which might result in the Fund becoming liable to pay compensation or indemnification.
- 5.8 In October 2009 the UK Club gave instructions to its lawyers to discontinue the legal action in Malaysia. The UK Club has recently informed the 1971 Fund that the legal action against the Fund in London has now also been discontinued. This case is therefore now closed.

6 Action to be taken

1971 Fund Administrative Council:

The 1971 Fund Administrative Council is invited:

- a) to take note of the information contained in this document; and
 - b) to give the Director such other instructions as regards these incidents as it may deem appropriate.
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