FONDOS INTERNACIONALES DE INDEMNIZACIÓN DE DAÑOS DEBIDOS A CONTAMINACIÓN POR HIDROCARBUROS

Punto 4 del orden del día	IOPC/OCT15/**4/7**	
Original: INGLÉS	27 de agosto de 2015	
Asamblea del Fondo de 1992	**92A20**	●
Comité Ejecutivo del Fondo de 1992	**92EC65**	
Asamblea del Fondo Complementario	**SA11**	

PROCEDIMIENTO JUDICIAL DERIVADO DEL SINIESTRO DEL *PLATE PRINCESS*

Nota de la Secretaría

Resumen:

En mayo de 2015, se entregó al Director la copia de una orden emitida por el Tribunal Superior inglés para inscribir una sentencia del Tribunal Superior Marítimo de Venezuela de 24 de septiembre de 2009.

La sentencia venezolana se había otorgado a favor del Sindicato Único de Pescadores de Puerto Miranda, con respecto a las demandas derivadas del siniestro del *Plate Princess* ocurrido en 1997 en Venezuela.

La orden de inscripción se obtuvo contra el Fondo internacional de indemnización de daños debidos a contaminación por hidrocarburos. Sin embargo, no queda claro si estaba dirigida contra el Fondo de 1992 o el Fondo de 1971, que se había disuelto y dejó de existir el 31 de diciembre de 2014, o contra ambos.

Más adelante, en el mismo mes, el Fondo de 1992 solicitó i) una declaración de que la orden de inscripción no se aplicaba a él, o bien ii) la anulación de la orden de inscripción por motivo de que el Fondo de 1992 tenía inmunidad de jurisdicción y ejecución de conformidad con el Acuerdo relativo a la sede entre el Gobierno del Reino Unido y el Fondo de 1992 (Acuerdo de sede). La vista se fijó para el 22 de julio de 2015.

El 5 de junio de 2015, pese a que el Fondo de 1992 había impugnado la orden de inscripción, un funcionario encargado de la ejecución, que actuaba en nombre del Sindicato Único de Pescadores de Puerto Miranda, entregó al Director una notificación de ejecución, por la que se exigía el pago de una suma de aproximadamente £52 millones. La notificación de ejecución exigía el pago de la suma pendiente en virtud de la orden de inscripción antes del 13 de junio de 2015. En consecuencia, el Fondo de 1992 presentó una solicitud para anular el mandamiento ejecutivo, según el cual se había emitido la notificación de ejecución y se había nombrado al funcionario encargado. Se fijó una vista para el 11 de junio de 2015.

En la vista del 11 de junio de 2015, el juez anuló definitivamente el mandamiento ejecutivo. Además, concedió al Fondo de 1992 la devolución de sus costas procesales de un monto de aproximadamente £29 000, suma que el Sindicato Único de Pescadores de Puerto Miranda pagó posteriormente.

El 22 de julio de 2015, el tribunal tomó conocimiento de la solicitud del Fondo de 1992 relativa a la orden de inscripción. El Fondo de 1992 sostuvo que, aunque no era evidente si la orden de inscripción estaba dirigida contra el Fondo de 1992 o el Fondo de 1971, o contra ambos, la sentencia venezolana se

	había dictado claramente contra el Fondo de 1971; en consecuencia, el tribunal debía anular la orden de inscripción. El Fondo de 1992 alegó también que tenía inmunidad de jurisdicción concedida por el Acuerdo de sede con el Gobierno del Reino Unido. En un fallo pronunciado inmediatamente después de la vista, el juez anuló la orden de inscripción y confirmó la inmunidad de jurisdicción del Fondo de 1992. Asimismo, concedió al Fondo de 1992 la devolución de sus costas procesales, que ascendían a aproximadamente £61 000. En el anexo figura una copia de la sentencia.
Medida que se ha de adoptar:	Asamblea del Fondo de 1992 Tomar nota de la información.

1 Antecedentes

Orden de inscripción

1.1 En marzo de 2015, el Tribunal Superior inglés inscribió una sentencia del Tribunal Superior Marítimo de Venezuela de 24 de septiembre de 2009 (la «sentencia venezolana»), de una cuantía de 56,3 millones DEG (£52 millones), como sentencia en la Queen's Bench Division (Sala de lo Civil) del Tribunal Superior de Justicia (la "orden de inscripción").

1.2 La sentencia venezolana se había otorgado a favor del Sindicato Único de Pescadores de Puerto Miranda, con respecto a las demandas derivadas del siniestro del *Plate Princess,* ocurrido en 1997 en Venezuela.

1.3 La orden de inscripción se había obtenido contra el "Fondo internacional de indemnización de daños debidos a contaminación por hidrocarburos". Por consiguiente, no quedaba claro si la intención era dirigirla contra el Fondo de 1992 o el Fondo de 1971, que había sido disuelto y había dejado de existir el 31 de diciembre de 2014, o contra ambos.

1.4 El 6 de mayo de 2015, el Fondo de 1992 recibió una notificación con una copia de la orden de inscripción de la sentencia, enviada por los abogados que representaban al Sindicato Único de Pescadores de Puerto Miranda. La carta que adjuntaba la orden de inscripción estaba dirigida al Director de los "Fondos internacionales de indemnización de daños debidos a contaminación por hidrocarburos".

1.5 Dicha orden concedía al Fondo de 1971 un plazo de 21 días para solicitar la anulación de la inscripción de la sentencia venezolana en Inglaterra. El Director discutió el asunto con los asesores jurídicos del Fondo de 1992 en el Reino Unido. El dictamen jurídico recibido confirmó que el Fondo de 1992, en calidad de tercero interviniente, debía elevar una solicitud al Tribunal Superior para que se declarase que la sentencia del tribunal venezolano no se aplicaba al Fondo de 1992, ya que se había dictado claramente contra el Fondo de 1971 (ahora disuelto).

1.6 La solicitud del Fondo de 1992 se presentó el 27 de mayo de 2015. El Fondo de 1992 solicitó i) una declaración de que la orden de inscripción en el registro no se aplicaba a él, o bien ii) la anulación de la orden de inscripción por motivo de que el Fondo de 1992 tenía inmunidad de jurisdicción y ejecución de conformidad con el Acuerdo de sede y el artículo 5 de la Orden 1996. La vista se fijó para el 22 de julio de 2015.

1.7 El Director informó al Gobierno del Reino Unido, como país anfitrión del Fondo de 1992, de la orden de inscripción y discutió el asunto con el presidente de la Asamblea del Fondo de 1992.

Entrega de la notificación de ejecución

1.8 No obstante, el 5 de junio de 2015, antes de que se atendiera a la solicitud del Fondo de 1992 de anular la orden de inscripción en el registro, un funcionario encargado de la ejecución actuando en nombre del Sindicato Único de Pescadores de Puerto Miranda, entregó al Director una notificación de ejecución, en la que se exigía el pago de la suma de £52 134 475,60. La notificación de ejecución exigía el pago de la suma pendiente antes del 13 de junio de 2015.

1.9 En consecuencia, el Fondo de 1992 presentó una solicitud para anular el mandamiento ejecutivo, conforme al cual se había emitido la notificación de ejecución y se había nombrado al funcionario encargado. Se fijó una vista para el 11 de junio de 2015.

2 Vista judicial en junio de 2015 para anular el mandamiento ejecutivo

2.1 En la vista del 11 de junio de 2015, el Fondo de 1992 solicitó que se anulase el mandamiento ejecutivo al que se refería la notificación de ejecución. El Fondo de 1992 alegó que el mandamiento ejecutivo no debía haberse obtenido contra el Fondo de 1992, no solo porque la sentencia venezolana era contra el Fondo de 1971 (no contra el Fondo de 1992), sino también porque según las normas de procedimiento civil de Inglaterra (Civil Procedure Rules), en caso de que se hubiese elevado una solicitud para anular la orden de inscripción, como en la situación presente, no debían tomarse medidas para ejecutar la sentencia. Además, el Fondo de 1992 sostuvo que tenía inmunidad de todas las formas de proceso jurídico, a menos que se aplicase una de las excepciones a la inmunidad en el Acuerdo de sede entre el Gobierno del Reino Unido y el propio Fondo, que no era la situación en el caso presente.

2.2 El Fondo de 1992 presentó una serie de observaciones, entre las cuales, que 1) el Fondo de 1992 era una persona jurídica que gozaba de inmunidad amplia, y que no había renunciado a su inmunidad; 2) el Fondo de 1971 era una persona jurídica que gozaba de inmunidad amplia, pero ahora había sido disuelto; 3) los antecedentes del siniestro del *Plate Princess* y la adhesión de Venezuela al Convenio del Fondo de 1992; 4) el contenido de la sentencia venezolana y el hecho de que se refería al Fondo de 1971, y 5) el hecho de que la orden de inscripción era ambigua y motivo de preocupación para el Fondo de 1992 porque, aunque se refería al Fondo de 1971, también aludía a la inscripción de sentencias contra el Fondo de 1992, y la notificación se había enviado al Director del Fondo de 1992.

2.3 El Fondo de 1992 destacó igualmente que, al amparo de las normas procesales inglesas, no podría tomarse medida alguna para ejecutar una sentencia extranjera reconocida mientras estuviese pendiente la oposición al reconocimiento.

2.4 En consecuencia, el Fondo de 1992 solicitó al juez que anulara o suspendiera el mandamiento ejecutivo, que era obviamente un paso más para la ejecución de la sentencia.

Decisión de junio de 2015

2.5 El juez aceptó anular el mandamiento ejecutivo, declarando que el Sindicato Único de Pescadores de Puerto Miranda no tenía derecho a tomar medidas de ejecución mientras estuviese pendiente la solicitud del Fondo de 1992 para que se emitiese una orden declarando que la sentencia del tribunal venezolano no se aplicaba al Fondo de 1992. El juez dictaminó también que la orden de inscripción y el mandamiento ejecutivo eran ambiguos en sus referencias al deudor judicial.

2.6 El juez rehusó tomar una decisión sobre la manera como la inmunidad del Fondo de 1992 afectaba a la ejecución de la sentencia, ya que ese asunto se abordaría en la vista de julio y no necesitaba decidirse en este momento, dado que el mandamiento se había anulado por otros motivos. El juez concedió al Fondo de 1992 la devolución de la totalidad de sus costas procesales de un monto de £28 753, suma que el Sindicato Único de Pescadores de Puerto Miranda pagó posteriormente.

3 Vista judicial en julio de 2015 para anular la orden de inscripción

3.1 El 22 de julio de 2015, la solicitud del Fondo de 1992 relativa a la orden de inscripción fue oída por el tribunal. Se hicieron las siguientes observaciones en nombre del Fondo de 1992:

- El Fondo de 1992 y el Fondo de 1971 se habían constituido mediante las órdenes 1996 y 1979 como personas jurídicas separadas en el Derecho inglés. Dichas órdenes conferían a ambos Fondos una inmunidad similar pero por separado.

- El Fondo de 1992 y el Fondo de 1971 son organizaciones internacionales separadas y distintas tal como se estipula en los Convenios del Fondo de 1971 y del Fondo de 1992.

- El siniestro se produjo en mayo de 1997. Venezuela pasó a ser parte en el Convenio del Fondo de 1992 y el CRC de 1992 en julio de 1998, y los Convenios no entraron en vigor hasta julio de 1999. Por tanto, el Convenio del Fondo de 1971 y el CRC de 1969 eran pertinentes en este caso, y quien había sido declarado responsable en Venezuela era el Fondo de 1971, no el Fondo de 1992.

- Esto se reconocía implícitamente en el propio procedimiento venezolano: la sentencia venezolana se refería al Fondo de 1971 y al Convenio del Fondo de 1971.

- Por consiguiente, no se registró sentencia alguna contra el Fondo de 1992.

- La sentencia venezolana contra el Fondo de 1971 no cumplía las condiciones para su reconocimiento al amparo del artículo 8 del Convenio del Fondo de 1992 y, en consecuencia, el Fondo de 1992 era inmune a la sentencia venezolana de conformidad con la Orden 1996.

3.2 Por lo tanto, el Fondo de 1992 pidió al tribunal que declarase que no tenía jurisdicción para inscribir la sentencia venezolana en su contra y que la orden de inscripción no se aplicaba al Fondo de 1992.

3.3 Además, el Fondo de 1992 destacó que su participación en el procedimiento jurídico no constituía en modo alguno una renuncia a la inmunidad de la jurisdicción declarativa o ejecutiva del tribunal otorgada por el Acuerdo relativo a la sede entre el Gobierno del Reino Unido y el Fondo de 1992, por la Orden 1996 o por el Derecho común/Derecho internacional consuetudinario. El Fondo de 1992 había interpuesto el recurso únicamente para reivindicar su inmunidad de jurisdicción.

3.4 En cambio, el Sindicato Único de Pescadores de Puerto Miranda adujo que:

- El Fondo de 1992 era el objeto de la sentencia venezolana. Esto se debía a que:
  - en la sentencia, se había referencia a "los Fondos", lo que incluía el Fondo de 1992, y
  - el Fondo de 1992 había intervenido en el procedimiento venezolano.
- La sentencia venezolana se había dictado con arreglo al Convenio del Fondo de 1992 porque:
  - Las alusiones al Convenio del Fondo de 1971 que allí constaban se referían en realidad al Convenio del Fondo de 1992, dado que el Convenio del Fondo de 1992 era de hecho simplemente el Convenio del Fondo de 1971 "enmendado" por el Protocolo de 1992.
  - Las disposiciones transitorias al amparo del artículo 36 bis) del Convenio del Fondo de 1992 se aplicaban al periodo comprendido entre la "entrada en vigor" del Convenio del Fondo de 1992 y la denuncia del Convenio del Fondo de 1971. El Sindicato Único de Pescadores de Puerto Miranda adujo que la "entrada en vigor" pertinente fue el momento en que el Convenio de 1992 surtió efecto en mayo de 1996, cuando se habían satisfecho los requisitos del artículo 30 para la entrada en vigor (por ejemplo, la firma por ocho Estados,

etc.). Por consiguiente, las disposiciones transitorias tenían efecto retrospectivo en Venezuela, tras la firma o ratificación del Protocolo de 1992.

- Por lo tanto, la sentencia venezolana se había dictado con arreglo al Convenio del Fondo de 1992, estaba comprendido en el ámbito del artículo 8 del Convenio del Fondo de 1992 y podía acogerse a la excepción a la inmunidad del Fondo de 1992.

  Se admitió que el Fondo de 1971 ya no existía y que la intención del Sindicato Único de Pescadores de Puerto Miranda era hacer ejecutar la sentencia contra el Fondo de 1992.

Sentencia de julio de 2015

3.5 El juez declaró que:

1) Si bien la orden de inscripción mencionaba al Fondo de 1971, el Fondo de 1992 tenía razón en preocuparse de que se ejecutase en su contra. Esta preocupación se concretó cuando se obtuvo el mandamiento ejecutivo y se entregó la notificación de ejecución en las oficinas del Fondo de 1992. La intervención del Fondo de 1992 estaba totalmente justificada, puesto que el Sindicato Único de Pescadores de Puerto Miranda admitió que tenía la intención de hacer ejecutar la sentencia contra el Fondo de 1992.

2) No se presentaron pruebas ante el tribunal de que el Fondo de 1992 había intervenido en los procedimientos venezolanos.

3) Al Sindicato Único de Pescadores de Puerto Miranda se le reprochó el no haber puesto en evidencia que el Fondo de 1971 ya no existía, aunque el juez observó que ahora se admitía este punto.

4) El argumento basado en las disposiciones transitorias del Convenio del Fondo de 1992 estaba fuera de lugar, ya que:

   a) Las disposiciones no se aplicaban a un siniestro en Venezuela en 1997, antes de que Venezuela hubiese ratificado el Convenio del Fondo de 1992.

   b) No solo era necesario que Venezuela firmase, sino también que ratificase, aceptase y aprobase el Convenio. Esto se desprendía claramente del artículo 28 2) del Convenio del Fondo.

   c) Venezuela no pasó a ser parte en el Convenio del Fondo de 1992 sino en 1998/1999.

   d) Las disposiciones transitorias del artículo 36 bis) se aplicaban a un Estado únicamente si este había "ratificado, aceptado y aprobado" el Convenio.

   e) Las disposiciones transitorias no tenían efecto retrospectivo al momento en que se cumplieron los requisitos del artículo 30 1) en mayo de 1996. Se hubiese necesitado una redacción clara para llegar a tal interpretación, que además carecía de sentido práctico para el funcionamiento del Fondo de 1992.

5) La sentencia venezolana se refería únicamente al Fondo de 1971 y al Convenio del Fondo de 1971, mas no al Convenio del Fondo de 1971 "enmendado". En la vista, el Sindicato Único de Pescadores de Puerto Miranda no invocó ninguna razón de peso que explicase por qué no se había mencionado nunca el Convenio del Fondo de 1992 ni el Fondo de 1992 en los procedimientos venezolanos.

6) La sentencia venezolana no estaba comprendida en el ámbito del artículo 8 del Convenio del Fondo de 1992 y no podía acogerse a una excepción a la inmunidad del Fondo de 1992.

3.6 En la conclusión de su fallo, el juez declaró que:

- Los tribunales ingleses no tenían jurisdicción para inscribir la sentencia venezolana contra el Fondo de 1992 porque dicho Fondo era inmune en virtud de la orden 1996.
- La orden de inscripción en el registro quedaba anulada.
- Se concedió al Fondo de 1992 la devolución del importe total de sus costas (£60 881,07).

3.7 En el anexo figura una copia de la sentencia.

3.8 Después que el juez dictó su fallo, el Sindicato Único de Pescadores de Puerto Miranda solicitó la autorización para interponer recurso, pero le fue denegada. Sin embargo, se le concedió un plazo de seis semanas, es decir, del 22 de julio al 2 de septiembre de 2015, para solicitar dicha autorización al Tribunal de Apelaciones.

3.9 En la fecha de redacción del documento, no hay certeza de que el Sindicato Único de Pescadores de Puerto Miranda haya solicitado o intente solicitar la autorización para interponer recurso.

4 Consideraciones del Director

4.1 Al Director le complace observar que el tribunal inglés ha declarado no tener jurisdicción para registrar la sentencia venezolana contra el Fondo de 1992, porque el Fondo de 1992 es inmune en virtud de la Orden 1996.

4.2 La sentencia venezolana se dictó en relación con el siniestro del *Plate Princess*, que era explícitamente un siniestro del Fondo de 1971, pero que no afectaba al Fondo de 1992. Queda por ver ahora si el Sindicato Único de Pescadores de Puerto Miranda solicitará la autorización para interponer recurso y si la obtendrá.

4.3 Al Director le complace que el Tribunal Superior de Inglaterra haya reconocido que la sentencia venezolana no estaba comprendida en el ámbito de aplicación del artículo 8 del Convenio del Fondo de 1992 y no podía ejecutarse contra el Fondo de 1992.

5 Medida que se ha de adoptar

Asamblea del Fondo de 1992

Se invita a la Asamblea del Fondo de 1992 a tomar nota de la información que se recoge en el presente documento.

* * *

ANEXO

2015 EWHC 2476 (QB)

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Case No: FJ103/15 and IHQ/15/02

The Royal Courts of Justice
Strand
London
WC2A 2LL

Wednesday, 22nd July 2015

Before:

THE HONOURABLE MR JUSTICE PICKEN

B E T W E E N:

SINDICATO UNICO DE PESCADORES DEL MUNICIPIO MIRANDA DEL ESTADO ZULIA

Applicant

and

INTERNATIONAL OIL POLLUTION COMPENSATION FUND

Respondent

THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1992

Part 11 Applicant

Hearing Date: 22 July 2015

Transcript from a recording by Ubiqus
61 Southwark Street, London SE1 0HL
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Stewart Patterson (appearing on a Direct Professional Access basis) for the **Applicant/Claimant**
No appearance by, or on behalf of, the **Respondent**
Jonathan Hirst QC and **Oliver Jones** (instructed by Reed Smith LLP) for the **Part 11 Applicant**

JUDGMENT

MR JUSTICE PICKEN:

Introduction

1. This is an application by The International Oil Pollution Compensation Fund 1992 (the 'IOPC Fund 1992') which concerns an order made on 18 March 2015 by Master Eastman (the 'Registration Order') registering a judgment of the Honourable Judge Freddy Belisario Capella of the Maritime Court of Appeal with National Competence in the City of Caracas (Bolivarian Republic of Venezuela) dated 24 September 2009 (the 'Venezuelan Judgment') as a judgment in the Queen's Bench Division of the High Court of Justice.

2. The IOPC Fund 1992 seeks a declaration that the Registration Order does not apply to it, or alternatively an order that the Registration Order be set aside on the basis that the IOPC Fund 1992 is immune from jurisdiction and enforcement pursuant to the 1992 Headquarters Agreement entered into between the Government of the United Kingdom and the IOPC Fund 1992 (the 'HQ Agreement') and/or by virtue of Article 5 of the International Oil Pollution Compensation Fund 1992 (Immunities and Privileges) Order 1996 (the '1996 Order').

3. The matter comes before me following a hearing on 11 June 2015, when I made an Order setting aside a Writ of Control which had been obtained in relation to the Registration Order. I made that Order on the basis that the Writ of Control should not have been obtained, in circumstances: (i) where CPR 74.9(1) provides that, where an application has been made to set aside a registration order, '*no steps may be taken to enforce the judgment*' until that application has been determined; and (ii) where, as it would appear, the Registration Order itself stipulated that no steps were to be taken in the event that a setting aside application were to be made.

4. On the previous occasion, the IOPC Fund 1992 was represented both by solicitors, Reed Smith LLP, and by counsel, Mr Jonathan Hirst QC and Mr Oliver Jones. The IOPC Fund 1992 continues to be represented by this legal team.

5. The Applicant, Sindicato Unico De Pescadores Del Municipio Miranda Del Estado Zulia (the 'SUP'), a trade union representing fishermen in Venezuela, was not, however, formally represented on that occasion. Although there was attendance by two representatives of the firm of solicitors then on the record for the SUP, Alberto Perez Cedillo, I was informed that neither of the representatives of that firm who attended before me had conduct of the proceedings on behalf of the SUP. I was told also that Alberto Perez Cedillo were in the process of coming off the record. This has now happened. Alberto Perez Cedillo no longer act for the SUP. The SUP appointed new solicitors, Dutton Gregory LLP, although, in the event, at the hearing of these applications, counsel, Mr Stewart Patterson, appeared on a direct access basis and was not instructed by Dutton Gregory LLP.

The IOPC Fund 1971

6. It is important, by way of background, to explain something about the establishment of the IOPC Fund 1992. This is a matter which was addressed in the witness statement of Mr Andrew Taylor, a partner in Reed Smith LLP, made on 27 May 2015. Mr Taylor has conduct of this matter on behalf of the IOPC Fund 1992.

7. As explained by Mr Taylor, the IOPC Fund 1992 is established as a body corporate pursuant to Article 4 of the 1996 Order. Before enlarging on this, as I shall come on to do, I need, first, to say something about The International Oil Pollution Compensation Fund 1971 (the 'IOPC Fund 1971'). For the present, I shall endeavour to deal only with matters which are uncontroversial, since, as will appear, on behalf of the SUP, Mr Patterson advances a case that the IOPC Fund 1992 has taken over, as he puts it, the IOPC Fund 1971's *"rights and liabilities"*.

8. The IOPC Fund 1971 was an international organisation which possessed a legal personality recognised under both international law and the law of the United Kingdom. It was established on 16 October 1978 when the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971 (the '1971 Fund Convention') entered into force, having earlier been adopted on 18 December 1971. Specifically, Article 2(1) of the 1971 Fund Convention established, '*The International Oil Pollution Compensation Fund*' as an international organisation. This was followed by Article 2(2), which required that the IOPC Fund 1971 should be given legal personality in the Contracting States. Thus, in the United Kingdom, Article 4 of the International Oil Pollution Compensation Fund (Immunities and Privileges) Order 1979 (the '1979 Order') provided that "*[t]he IOPC Compensation Fund is an organisation of which the United Kingdom and foreign sovereign Powers are members"* and Article 5 provided that, "*[t]he Fund shall have the legal capacities of a body corporate*".

9. As explained in Mr Taylor's witness statement, the IOPC Fund existed as part of "*two separate well-demarcated, international regimes for the compensation of certain types of damage caused by oil spills from tankers"*. This involved a two-tier system: the primary liability of shipowners established under the International Convention on Civil Liability for Oil Pollution Damage 1969 (the '1969 Civil Liability Convention'), and supplementary compensation provided by the IOPC Fund 1971 pursuant to the 1971 Fund Convention. A convenient summary of this two-tier system is set out in ***Gard v Oil Pollution Compensation Fund*** [2014] 2 Lloyd's Rep. 219, in which Hamblen J described the position in the following way at [6] and [7]:

"The CLC

6. The Convention on Civil Liability for Oil Pollution Damage of 1969 (the 'CLC') provides for compensation for parties who suffer loss as a result of marine oil pollution incidents. The general scheme of the CLC Convention is as follows:

(1) Shipowners are made strictly liable in respect of oil pollution damage, with very limited exceptions (Art III).
(2) The amount of that liability is however limited to an amount calculated by reference to the tonnage of the vessel (Art V (1)).
(3) Shipowners may lose the right to rely on the limit of liability if the incident was due to their actual fault or privity (Art V (2)).
(4) Shipowners may avail themselves of the benefit of limitation by establishing a fund with the competent court for the limitation amount, and this may be constituted by means of a bank guarantee if acceptable to the court (Art V(3)).
(5) If they have established a fund, and are entitled to limit liability, the court shall order the release of any ship or other property of the owner which has been arrested (Art VI (1)).

(6) The courts with exclusive jurisdiction in relation to Convention claims are the courts for the place in which the damage occurred (Art IX (1)).
(7) Shipowners are required to have insurance in respect of this liability (Art VII).
(8) Claimants have a right of direct action against the insurer (here Gard) (Art VII (8)).
(9) However, the insurer is entitled to rely on the limit of liability even where there is actual fault or privity on the part of the shipowner (Art VII (8)).
(10) Where the amount of the limit of liability is insufficient to meet all claims, then each claimant is only entitled to recover its prorated share of its claim (Art V (4)).

The Fund Convention

7. The Fund Convention provides a second tier of compensation for parties who suffered loss by reason of oil pollution incidents, over and above the layer of compensation provided by the CLC. Its general scheme is as follows:

(1) The Fund is to provide compensation in respect of amounts which are irrecoverable under CLC either because shipowners are not liable under CLC, or because the amounts in question cannot be recovered from shipowners, or because the limit under CLC is too little to provide adequate compensation (Art 4(1)).
(2) The Fund's liability is limited to an amount of SDR 60 million (Art 4(4) (a)).
(3) In addition to the compensation payable to third parties, the Fund Convention provides for the payment to Shipowners of the top slice of the CLC liability (Art 5(1)).
(4) The Courts with exclusive jurisdiction in relation to Convention claims are the courts for the place in which the damage occurred (Art 7).
(5) Where claims are made against the shipowner or its guarantor, then either party to the relevant proceedings may notify the Fund of those proceedings and if the Fund has had the opportunity to intervene, the Fund is bound by the facts and findings in that judgment even if the Fund has not in fact intervened (Art 7(5) and (6)).
(6) Where the amount of the limit of liability is insufficient to meet all claims, then each claimant is only entitled to recover its prorated share of its claim (Art 4(5)).”

10. Mr Taylor went on to explain, however, that the 1971 Fund Convention ceased to be in force and have any binding effect from 24 May 2002 onwards. The reason for this was described by Hamblen J in ***Gard*** at [16] as follows:

“Following the entry-into-force in 1996 of the modified version of the compensation regime contained in the 1992 Civil Liability and Fund Conventions, the number of State parties to the Fund Convention reduced progressively to the extent that the Fund Convention ceased to be in force on 24 May 2002. … .”

11. The IOPC Fund 1971 was subsequently dissolved and ceased to exist with effect from 31 December 2014. This was pursuant to a resolution adopted by the IOPC Fund 1971 on 24 October 2014. As explained in the announcement accompanying publication of this resolution on 17 November 2014:

"*The 1971 Fund Convention ceased to be in force on 24 May 2002 in accordance with Article 43(1) of the 1971 Fund Convention as amended by Article 2(a) of the Protocol of 2000 to the Convention, however the 1971 Fund retained its legal personality in accordance with Article 44(3).*

The Director would like to inform all States having at any time being Members of the 1971 Fund, the Secretary-General of the International Maritime Organisation (IMO) in his capacity as Depositary of the 1971 Fund Convention, and all other relevant organisations, as well as the Government of the United Kingdom of Great Britain and Northern Ireland that at its thirty-third session, the 1971 Fund Administrative Council adopted Resolution No. 18 on the Dissolution of the International Oil Pollution Compensation Fund (1971 Fund), which is enclosed for information.

In accordance with this Resolution, the 1971 Fund with effect from the expiry of the last day of the financial year 2014 (31 December 2014), shall be dissolved and its legal personality shall cease to exist.

In view of the above, in particular the imminent dissolution of the 1971 Fund as from 31 December 2014, all States having at any time been Members of the 1971 Fund may wish to take action as they deem appropriate.

This decision does not affect the functioning of the international compensation regime as implemented by the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (1992 Fund Convention) and the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (Supplementary Fund Protocol) and therefore the 1992 Fund and the Supplementary Fund will continue to operate after the dissolution of the 1971 Fund."

The IOPC Fund 1992

12. Like the IOPC Fund 1971, the IOPC Fund 1992 is an international organisation possessing a legal personality recognised both under international law and United Kingdom law. As stated in the 17 November 2014 announcement, the IOPC Fund 1992 was established by the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (the '1992 Fund Convention'). Consistent with the last paragraph in the announcement accompanying the resolution concerning the dissolution of the IOPC Fund 1971, the IOPC Fund 1971 and the IOPC Fund 1992 are separate legal entities, recognised as such by both international law (namely the 1971 Fund Convention and the 1992 Fund Convention) and under English law (namely the 1979 Order and the 1996 Order).

13. The 1992 Fund Convention entered into force on 30 May 1996, having itself been adopted on 27 November 1992 at an international conference convened by the International Maritime Organisation (the 'IMO'). The relevant provisions of the 1992 Fund Convention were, as they had been in relation to the 1971 Fund Convention, Articles 2(1) and 2(2). Specifically, Article 2(2) provided as follows:

"The Fund shall in each Contracting State be recognised as a legal person capable under the laws of that State of assuming rights and obligations and of being a party of legal proceedings before the courts of that State…".

14. Like the IOPC Fund 1971, the IOPC Fund 1992 also involved a two-tier system, but not the same as that with which the IOPC Fund 1971 was concerned: the primary liability of shipowners established under the International Convention on Civil Liability for Oil Pollution Damage 1992 (the '1992 Civil Liability Convention') and supplementary compensation provided by the IOPC Fund 1992, pursuant to the 1992 Fund Convention.

Immunity

15. I return, later on, to the SUP's case that the IOPC Fund 1992 has taken over the IOPC Fund 1971's "*rights and liabilities*". First, however, I need to address the topic of immunity. I focus, for these purposes, on the IOPC Fund 1992, rather than the IOPC Fund 1971. In view of the fact that the IOPC Fund 1992 has its headquarters in London, the IOPC Fund 1992 entered into the HQ Agreement with the Government of the United Kingdom of Great Britain and Northern Ireland. The HQ Agreement contains introductory wording by way of recital, as follows:

"*The Government of the United Kingdom and Northern Ireland and the International Oil Pollution Compensation Fund 1992;*

Desiring to define the status, privileges and immunities of the 1992 Fund and persons connected with it;

Have agreed as follows: ...".

16. Amongst the matters agreed in the HQ Agreement is that the IOPC Fund 1992 should have immunity. Thus, Article 5 ("*Immunity*") provides as follows:

"*(1) Within the scope of its official activities the 1992 Fund shall have immunity from jurisdiction and execution except:*

(a) to the extent that the 1992 Fund waives such immunity from jurisdiction or immunity from execution in a particular case;

(b) in respect of actions brought against the 1992 Fund in accordance with the provisions of the Convention;

(c) in respect of any contract for the supply of goods or services, and any loan or other transaction for the provision of finance and any guarantee or indemnity in respect of any such transaction or of any other financial obligation;

(d) in respect of a civil action by a third party for damage arising from an accident caused by a motor vehicle belonging to, or operated on behalf of, the 1992 Fund or in respect of a motor traffic offence involving such a vehicle;

(e) in respect of a civil action relating to death or personal injury caused by an act or omission in the United Kingdom;

(f) in the event of the attachment, pursuant to the final order of a court of law, of the salaries, wages or other emoluments owed by the 1992 Fund to a staff member of the 1992 Fund;

(g) in respect of the enforcement of an arbitration award made under Article 23 of this Agreement; and

(h) in respect of a counter-claim directly connected with proceedings initiated by the 1992 Fund."

17. The immunities of the IOPC Fund 1992 contained in Article 5 of the HQ Agreement are replicated in Article 5(1) of the 1996 Order. The only difference is that the introductory wording is slightly, and not materially, as far as I can tell, different, since it refers to the IOPC Fund having "*immunity from suit and legal process*" subject to the same exceptions at (a) to (h) above.

18. Mr Hirst QC submits that the only exception of any potential relevance in the present case is the exception contained in Article 5(1)(b) of both the HQ Agreement and the 1996 Order, namely that the IOPC Fund 1992 is not immune "*in respect of actions brought against the 1992 Fund in accordance with the provisions of the [1992] Convention"*. As I understand it, Mr Patterson agrees with this. Unless, therefore, that exception can be shown to apply, then the IOPC Fund 1992 cannot be the subject of any adjudicatory or enforcement proceedings brought before the courts of the United Kingdom.

The Venezuelan Judgment

19. The Venezuelan Judgment, the judgment to which the Registration Order made by Master Eastman relates, was a judgment given by the Honourable Judge Freddy Belisario Capella on appeal, and was concerned with an oil spillage from the tanker *'PLATE PRINCESS'*. As Mr Patterson helpfully explains in his skeleton argument, this spillage took place on 27 May 1997, when the *'PLATE PRINCESS'* was docked in the port of Puerto Miranda in the State of Zulia. Specifically, she was loading crude oil whilst at the same time discharging ballast into the waters of Lake Maracaibo, when it became clear that the ballast had become polluted with the oil. This was the result of the ballast line's couplings having become loose in circumstances where the ballast line passed through the tanks into which the cargo of crude oil was being loaded, so meaning that the crude oil was able to seep into the ballast line during de-ballasting. Before it was appreciated that there was a problem and operations were stopped, something in the region of 8,000 tonnes of polluted ballast had been discharged. Through the operation of tides and currents, the resultant pollution was spread over a wide area, affecting the nets and other equipment of over 800 fishing boats and some 300 or so cast-net fishermen. Accordingly, the day after the incident, the SUP's Secretary General lodged a claim before the Venezuelan authorities with regard to the damage caused to the boats, fishing nets and other equipment owned by the local fishermen.

20. After proceedings lasting several years, culminating in an appeal, the SUP was awarded Bs.F 2,844,982.95 against the owner of the *'PLATE PRINCESS'*, and, as will appear later, Bs.F 400,628,021.85 (corresponding to 56,300,000 special drawing rights, or SDRs, and the equivalent, as I understand it, in today's money, of about £51 million) against "*The INTERNATIONAL FUND FOR COMPENSATION FOR OIL POLLUTION DAMAGE*". Mr Patterson highlights, in particular, that the Venezuelan Judgment contains the following criticism:

"*With respect to the attitude of the IOPC Funds not to fulfil its obligation to compensate, citing a hypothetical lack of notification to the said international body to efficiently*

intervene in this trial, this Court considers that as smokescreen to justify a breach, especially since the IOPC Funds had in its favour all procedural lapses and exercised its defences in a timely manner, so that their attitude causes prejudice and incommensurable problems to 676 under-privileged fishermen, because every day they run the risk that the lake scene where they conduct their fishing operations will be constantly threatened by oil spills, also unpredictable, and the risk as well that the international body that has to compensate them will use a rational argument and sphinx-like viewpoints to elude of the sacred obligation assigned to them by the legal system to which they owe their international existence."

That, I stress, is a translation from the Spanish, and this might explain some of the expressions used.

21. Mr Taylor explains in his witness statement that, because the spillage took place on 27 May 1997, it is the 1969 Civil Liability Convention and the 1971 Fund Convention which are relevant. This, Mr Taylor goes on to explain, is because, at the time of the incident, Venezuela was a party only to those Conventions. This is a matter to which I shall have to return, but it is the case that Venezuela only became a party to the 1992 Civil Liability Convention and the 1992 Fund Convention on 22 July 1999. This is demonstrated by the IMO document entitled "*Status of Multilateral Conventions and Instruments in respect of which the International Maritime Organisation or its Secretary-General performs depositary or other functions"*. This makes it clear at page 253, as it appears in my bundle, that Venezuela deposited the relevant instrument (see Article 12.3) on 22 July 1998, and that 22 July 1999, in other words a year later, is the relevant "*date of entry into force*" as far as Venezuela is concerned. On this basis, Mr Hirst QC submits that only the IOPC Fund 1971 could find itself with any potential liability to the SUP.

22. Mr Hirst QC submits that this is the case is confirmed by the Venezuelan Judgment itself, specifically how the parties to the proceedings in Venezuela are identified. As to this, after identification of the SUP as the claimant and then the defendant being named as Subramania Balakrishna Subramanian, "*captain of the tanker PLATE PRINCESS, acting as Commercial Agent and Legal Representative (Factor Mercantil) of the owner of the tanker PLATE PRINCESS according to Venezuelan law"*, the "*Third Party Appellant"* is identified as being "*INTERNATIONAL FUND FOR COMPENSATION FOR OIL POLLUTION DAMAGE, 1971, domiciled in Portland House, Stagg Place, London SW1E 5PN, United Kingdom"*. The Venezuelan Judgment goes on to contain repeated references to "*INTERNATIONAL FUND FOR COMPENSATION FOR OIL POLLUTION DAMAGE, 1971*".

23. It is clear that the Venezuelan Judgment makes no express reference to the IOPC Fund 1992. Nevertheless, it is right to acknowledge that the various references to which I have referred are immediately followed in brackets by the words, "*IOPC Funds*", which does seem a little curious, given that the IOPC Fund 1971 is (or was) a single fund. It is also right to point out that, in some places, the references are to "*INTERNATIONAL FUND FOR COMPENSATION FOR OIL POLLUTION DAMAGE*", without the addition of the "*1971*". Against this, however, the Venezuelan Judgment is very specific in its identification of the IOPC Fund 1971, including most significantly at page 20 where reference is made to the first instance judgment "*published on 5 February 2009"* declaring that:

"*SECOND: Is Ordered to the INTERNATIONAL FUND FOR COMPENSATION FOR OIL POLLUTION DAMAGE created in accordance with International Convention on Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, in accordance with the procedures provided in the said International Convention and the decisions adopted by its internal organisms, must compensate to the 676 Fisherman identified in the civil law suit filed by the aforementioned SINDICATO UNICO DE PESCADORES DEL MUNICIPIO MIRANDA DEL ESTADO ZULIA, …* ".

Further, in a section at the end entitled *"DISPOSITIVE OF JUDGMENT"*, the following is declared:

"<u>FIRST</u>: DENIED, Motion to appeal filed on 01 December 2008, by attorney HENRY MORIAN-PINERO, acting his capacity as judicial representative of INTERNATIONAL FUND FOR COMPENSATION FOR OIL POLLUTION DAMAGE, 1971 (IOPC Funds), against the judgment issued on 24 November 2008 by the Maritime Court of Appeals with National Jurisdiction and Based in the city of Curacaos …

…

<u>EIGHTH:</u> The INTERNATIONAL FUND FOR COMPENSATION FOR OIL POLLUTION DAMAGE, constituted according to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, in accordance with the mechanisms set out in the aforementioned international convention and the resolutions adopted by its internal bodies, IS HEREBY SENTENCED to pay the amounts of money exceeding TWO MILLION EIGHT HUNDRED AND FORTY FOUR THOUSAND NINE HUNDRED AND EIGHTY TWO BOLIVARES FUERTES AND NINETY FIVE CENTS (Bs.F. 2844,982.95), which is the amount that constitutes the FUND by CIVIL LIABILITY LIMITATION for Material Damages, Loss of Earnings, Interests and Costs. "

Elsewhere in the Venezuelan Judgment, or perhaps more strictly a related document which followed the Venezuelan Judgment and was concerned with the assessment of the appropriate compensation, at page 22, the following appears:

"… the International Fund for Compensation for Oil Pollution Damage (IOPC Funds) must pay the amount of Four Hundred Million Six Hundred and Twenty Eight Thousand Twenty One and 85/100 Dollars (Bs. 400,628,021.85) which correspond to the amount exceeding the payment that must be paid by the defendant up to the maximum limit equivalent in bolivars to 60 Million of Special Drawing Rights (SDR)."

24. As will appear, Mr Patterson does not agree with Mr Taylor and Mr Hirst QC that the Venezuelan Judgment was concerned with the IOPC Fund 1971 rather than the IPOC Fund 1992. His position, and that of the SUP, is that it is the IOPC Fund 1992 to which the Venezuelan Judgment relates, and that this is because the relevant regime at the time when the spillage occurred, on 27 May 1997, was no longer the 1969 Civil Liability Convention and the 1971 Fund Convention, as a result of The Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971 (the '1992 Fund Protocol').

The Registration Order

25. The Registration Order made on 18 March 2015 by Master Eastman refers to the Venezuelan Judgment and to the fact that an application for permission had been made by the SUP to register a foreign judgment under Section 2 of the Foreign Judgments (Reciprocal Enforcement) Act 1933 and Section 177(2)(4) of the Merchant Shipping Act 1995. The Registration Order then continues in paragraph 1 as follows:

"*The judgment dated 24 September 2009 in which it was ordered that the Sindicato Unico de Pescadores del Municipio Miranda del Estado Zulia ('the Judgment Creditor'), a Venezuelan Fisherman Union, organisation duly incorporated on 4 October 1959, and registered as such before the Ministry of Labour, on 9 January 1960, case file no. 214, recover against the International Oil Pollution Compensation Fund ('the Judgment Debtor') of 23rd Floor Portland House, Bressenden place, London, SW1E 5PN, United Kingdom created according to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, the sum of fifty six million three hundred thousand special drawing rights (SDRs 56,300,000.00) plus interest accrued be registered as a judgment in the Queen's Bench Division of the High Court of Justice under the Statute.* "

26. It will be noted that the description of the Judgment Debtor refers to the "*International Oil Pollution Compensation Fund*" which was "*created according to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971*". There is no mention here of the IOPC Fund 1992. On learning of the Registration Order, the IOPC Fund 1992 was, however, concerned that the Registration Order purported to have been made pursuant to Section 177 of the 1995 Act, in circumstances where Section 172 makes it clear that the powers contained in Section 177 concern the registration of judgments against the IOPC Fund 1992, rather than as against the IOPC Fund 1971. Section 172(1)(c), in particular, defines "*the Fund*" as "*the International Fund established by the Fund Convention*" and Section 172(1)(b) defines "*the Fund Convention*" as "*the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1992*". In these circumstances, the IPOC Fund 1992's concern was, and remains, that the Registration Order might be treated as having been made against it, rather than as against the IOPC Fund 1971. I interject here to point out that, in the light of the submissions made by Mr Patterson, that concern has proven justified. In fact, the position has now been made clear that the Registration Order, so far as the SUP is concerned, is an order which relates only to the IOPC Fund 1992 and does not relate to the IOPC Fund 1971, that being an entity which, it is accepted by the SUP, no longer exists as a result of the resolution made last October declaring that the IOPC Fund 1971 would cease to exist with effect from 31 December 2014.

27. The Registration Order was served on 6 May 2015 when a process server went to the IOPC Fund 1992's offices at Portland House, Bressenden Place, London, SW1E 5PN, where he met with Mr Jose Maura, the Director of the IOPC Fund 1992, and previously, as I understand it, also the director of the IOPC Fund 1971, and served him with the Registration Order. Neither the application for registration filed by the SUP with the Court nor the witness statement made in support of the application for registration was provided to the IOPC Fund 1992 at the time of such service; these were only obtained by the IOPC Fund 1992's solicitors, Reed Smith LLP, from the Court file on 24 June 2015.

28. Subsequent to service of the Registration Order on 6 May 2015, Reed Smith LLP wrote on 21 May 2015 to the SUP's then solicitors, stating as follows:

"*You may not already be aware that the 1971 Fund was dissolved and its legal personality ceased to exist with effect from 31 December 2014, following a resolution made at a meeting of the 1971 Fund on 24 October 2014. It therefore no longer exists. A copy of the resolution is attached for your reference.*

In light of the above, could you kindly confirm by return on behalf of your client, Sindicato Unico de Pescadores del Municipio Miranda del Estado Zulia, that (i) the Judgment and the Order concern only the now non-existent 1971 Fund and (ii) that no steps will be taken towards recognition or enforcement of the Judgment or the Order against the 1992 Fund. Unless such confirmation is given, the 1992 Fund will make an application to the High Court."

No response having been received to this letter, the IOPC Fund 1992, accordingly, on 27 May 2015, issued the present application.

29. The IOPC Fund 1992's concern that the Registration Order might be regarded as having been made against it, concerns which I repeat have now proven justified, were heightened when a Notice of Enforcement was delivered to its offices on 5 June 2015. This Notice of Enforcement gave the IOPC Fund 1992's address, an address which is not shared with the IOPC Fund 1971, albeit that it previously was, for the simple reason that, as I have mentioned, the IOPC Fund 1971 has now been dissolved. The Notice of Enforcement also referred to a Writ of Control having been obtained in relation to the Registration Order, before going on to state that the "*International Oil Pollution Compensation Fund*" must pay the full sum due under the Registration Order by 4.30pm on 13 June 2015 or risk the Enforcement Agent "*taking control*" (a reference, as I understand it, to taking control of assets). Similarly, the Writ of Control was somewhat imprecise in whether it was referring to the IOPC Fund 1971 or the IOPC Fund 1992.

The IOPC Fund 1992's position

30. It is the IOPC Fund 1992's position that, as Mr Hirst QC submits, there is in existence no judgment against it (as opposed to as against the IOPC Fund 1971), and as such there is no judgment which falls to be registered against the IOPC Fund 1992. In this respect, Mr Hirst QC refers to Article 8 of the 1992 Fund Convention, which states as follows:

"*Subject to any decision concerning the distribution referred to in Article 4, paragraph 5, any judgment given against the Fund by a court having jurisdiction in accordance with Article 7, paragraphs 1 and 3, shall, when it has become enforceable in the State of origin, and is in the State no longer subject to ordinary forms of review, be recognised and enforceable in each Contracting State on the same conditions as are prescribed in Article X of the 1992 Liability Convention.*"

Mr Hirst QC submits that Article 8 has no application in the present case for the simple reason that the Venezuelan Judgment has nothing to do with the IOPC Fund 1992.

31. Mr Hirst QC goes on to explain that there is no other provision in the 1992 Fund Convention permitting foreign judgments to be registered or enforced against the IOPC Fund 1992. As a consequence, he submits that there is no relevant exception to the

IOPC Fund 1992's immunity under Article 5 of the 1996 Order and Article 5 of the HQ Agreement. In short, Mr Hirst QC submits, the IOPC Fund 1992 is immune, and the Registration Order ought not to be permitted to stand if and insofar as it relates to the IOPC Fund 1992.

32. Mr Hirst QC submits that this is consistent with how the registration scheme in the 1995 Act works. First, he says, the Venezuelan Judgment does not fall for recognition under Section 177(4) of the 1995 Act because that section only concerns judgments given in Venezuela under a provision which corresponds to Section 175 of the 1995 Act. Secondly, as Section 175 concerns only the liability of the IOPC Fund 1992, rather than the liability of the IOPC Fund 1971, it follows, Mr Hirst QC submits, that there is no power to register the Venezuelan Judgment against the IOPC Fund 1992.

33. In these circumstances and for these reasons, the IOPC Fund 1992 seeks:

(1) an order that this court has no jurisdiction to register the Venezuelan Judgment against the IOPC Fund 1992 because the IOPC Fund 1992 is immune pursuant to Article 5 of the 1996 Order and Article 5 of the HQ Agreement: and

(2) a declaration that the IOPC Fund 1992 is not the subject of, or a party to, the Registration Order; alternatively

(3) if and to the extent that the Judgment Debtor identified in the Registration Order constitutes a reference to IOPC Fund 1992, an order that the Registration Order is set aside either in its entirety or insofar as it relates to the IOPC Fund 1992.

34. I should observe that the Registration Order went on to provide, in paragraph 2, as follows:

"*The Judgment Debtor has permission to apply to set aside registration within 21 days after service on it of notice of the registration under RSC 0.71r7(3) (Schedule 1 to the Civil Procedure Rules 1998) if it has grounds for doing so and execution on the judgment will not issue until:*

a) After the expiration of that period or

b) After the expiration of any extension of that period granted by the court, or

c) Where an application is made to set aside the registration, the application has been disposed of. "

It is the IOPC Fund 1992's position that it is entitled to make the current applications both under this express liberty to apply and under CPR 11.

The SUP's position

35. Mr Patterson explains in his skeleton argument that the SUP resists the IOPC Fund 1992's applications for a variety of reasons. First, Mr Patterson takes what he describes as a "*preliminary point*". This is an argument that, not having filed an acknowledgment of service, it is not open to the IOPC Fund 1992 to make a challenge under CPR 11 because of the requirement in CPR 11(2) that an acknowledgment of service is filed in the event that an application under CPR 11(1) is made. Secondly, and more substantively, Mr Patterson

submits that, as he puts it, "*in respect of signatories*" to the 1992 Fund Protocol, the IOPC Fund 1971 "*does not co-exist with*" the IOPC Fund 1992, such that the IOPC Fund 1971 "*has been replaced together with rights and liabilities by*" the IOPC Fund 1992. So, Mr Patterson goes on to submit, the Venezuelan Judgment takes effect only as against the IOPC Fund 1992 and, likewise, the Registration Order applies only to the IOPC Fund 1992, not also the IOPC Fund 1971. It follows, too, Mr Patterson submits, that the IOPC Fund 1992 does not enjoy the immunity which Mr Hirst QC suggests it has because Article 5(1)(b) (of both the HQ Agreement and the 1996 Order) applies.

36. Mr Patterson relies, in these respects, on a number of provisions contained in the 1992 Fund Protocol, which he points out came into being on 27 November 1992 at a convention, or conference, between 55 states, including Venezuela, which took place at the IMO Headquarters in London. First, he points to Article 1, which states as follows:

"*The Convention which the provisions of this Protocol amend is the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, hereinafter referred to as the '1971 Fund Convention'. For States Parties to the Protocol of 1976 to the 1971 Fund Convention, such reference shall be deemed to include the 1971 Fund Convention as amended by that Protocol.*"

37. Then, Mr Patterson refers to Article 3, which states as follows:

"Article 2 of the 1971 Fund Convention is amended as follows:

Paragraph 1 is replaced by the following text:

1. An International Fund for compensation for pollution damage, to be named 'The International Oil Pollution Compensation Fund 1992' and hereinafter referred to as 'the Fund', is hereby established with the following aims:

(a) to provide compensation for pollution damage to the extent that the protection afforded by the 1992 Liability Convention is inadequate;

(b) to give effect to the related purposes set out in this Convention."

Mr Patterson highlights that, therefore, the 1992 Fund Protocol amends the 1971 Fund Convention and stipulates that the amended version of the 1971 Fund Convention shall be known as what I have been describing as the 1992 Fund Convention and that the "*International Oil Pollution Fund 1992*", or what I have been describing as the IOPC Fund 1992, shall be referred to as "*the Fund*".

38. Mr Patterson stresses also the fact that the preamble to the 1992 Fund Protocol emphasises "*the importance of maintaining the viability of the international oil pollution liability and compensation system*" and recognises the "*advantage for the States Parties of arranging for the amended Convention to coexist with and be supplementary to the original convention for a transitional period"*. Mr Patterson does this as a precursor to referring to certain provisions in the 1992 Fund Protocol dealing with the so-called "*transitional period*", which is defined as starting with "*the date of entry into force of this Convention*" and ending with the date on which the denunciations of the unamended 1971 Fund Convention take place. Thus, Article 26 provides as follows:

"After Article 36 of the 1971 Fund Convention four new articles are inserted as follows:

ARTICLE 36 bis

The following transitional provisions shall apply in the period, hereinafter referred to as the transitional period, commencing with the date of entry into force of this Convention and ending with the date on which the denunciations provided for in Article 31 of the 1992 Protocol to amend the 1971 Fund Convention take effect:

(a) In the application of paragraph 1(a) of Article 2 of this Convention, the reference to the 1992 Liability Convention shall include reference to the International Convention on Civil Liability for Oil Pollution Damage, 1969', either in its original version or as amended by the Protocol thereto of 1976 (referred to in this Article as 'the 1969 Liability Convention'), and also the 1971 Fund Convention.

(b) Where an incident has caused pollution damage within the scope of this Convention, the Fund shall pay compensation to any person suffering pollution damage only if, and to the extent that, such person has been unable to obtain full and adequate compensation for the damage under the terms of the 1969 Liability Convention, the 1971 Fund Convention and the 1992 Liability Convention, provided that, in respect of pollution damage within the scope of this Convention in respect of a Party to this Convention but not a Party to the 1971 Fund Convention, the Fund shall pay compensation to any person suffering pollution damage only if, and to the extent that, such person would have been unable to obtain full and adequate compensation had that State been party to each of the above-mentioned Conventions.

...

ARTICLE 36 quater

Notwithstanding the provisions of this Convention, the following provisions shall apply to the administration of the Fund during the period in which both the 1971 Fund Convention and this Convention are in force:

(a) The Secretariat of the Fund, established by the 1971 Fund Convention (hereinafter referred to as "the 1971 Fund"), headed by the Director, may also function as the Secretariat and the Director of the Fund."

39. I interject to point out that Mr Hirst QC in his submissions also drew attention to sub-paragraph (e) of Article 36 *quater*, which states as follows:

"*The Fund may succeed to the rights, obligations and assets of the 1971 Fund if the assembly of the 1971 Fund so decides, in accordance with Article 44(2) of the 1971 Fund Convention*."

40. Mr Patterson also relies on Article 27, which is in the following terms:

"1. The 1971 Fund Convention and this Protocol shall, as between the Parties to this Protocol, be read and interpreted together as one single instrument.

2. Articles 1 to 36 quinquies of the 1971 Fund Convention as amended by this Protocol shall be known as the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (1992 Fund Convention)."

41. Mr Patterson additionally refers to the fact that Article 31 provides:

"Subject to Article 30, within six months following the date on which the following requirements are fulfilled:

(a) at least eight States have become Parties to this Protocol or have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General of the Organization, whether or not subject to Article 30, paragraph 4, and

(b) the Secretary-General of the Organization has received information in accordance with Article 29 that those persons who are or would be liable to contribute pursuant to Article 10 of the 1971 Fund Convention as amended by this Protocol have received during the preceding calendar year a total quantity of at least 750 million tons of contributing oil;

each Party to this Protocol and each State which has deposited an instrument of ratification, acceptance, approval or accession, whether or not subject to Article 30, paragraph 4, shall, if Party thereto, denounce the 1971 Fund Convention and the 1969 Liability Convention with effect twelve months after the expiry of the above-mentioned six-month period."

42. Lastly, he refers to Article 34 (6), which states:

"As between the Parties to this Protocol, denunciation by any of them of the 1971 Fund Convention in accordance with Article 41 thereof shall not be construed in any way as a denunciation of the 1971 Fund Convention as amended by this Protocol."

43. Mr Patterson submits that, as he puts it, *"in other words each party to the Protocol is to denounce the 1971 Fund Convention while continuing to be a party to the 1971 Convention as amended by the Protocol of 1992 to amend 1971 Fund Convention, which is in fact the 1992 Convention"*. Since, as Mr Patterson explains, Venezuela denounced the 1971 Fund Convention on 3 June 1998, then, in accordance with Article 26, under Article 36 *bis* (a), in the application of paragraph 1(a) of Article 2 of the 1992 Fund Protocol, the reference to the 1992 Liability Convention shall include reference to the 1969 Civil Liability Convention and also the 1971 Fund Convention, and, under Article 36 *bis* (b), where an incident has caused damage within the scope of the 1971 Fund Convention, the IOPC Fund 1992 shall pay compensation to any person suffering pollution damage only if, and to the extent that, such person has been unable to obtain full and adequate compensation for the damage under the terms of the 1969 Civil Liability Convention, the 1971 Fund Convention and the 1992 Civil Liability Convention. This means, Mr Patterson submits, that the IOPC Fund 1992 will pay compensation if adequate compensation has not been made by the owner of the ship under either of the 1969 and 1992 Civil Liability Conventions, or by the IOPC Fund 1971 for any reason, for example because the state in question has denounced the 1971 Fund Convention.

44. Mr Patterson points out also that, under Article 36 *quater* (a), during the period in which both the 1971 Fund Convention and the 1992 Fund Convention are in force, the Secretariat of the IOPC Fund 1971, headed by the Director, may also function as the Secretariat (and

the Director) of the IOPC Fund 1992. Mr Patterson then goes on to place reliance on Article 7(6) of the 1992 Fund Convention, which provides as follows:

"Without prejudice to the provisions of paragraph 4, where an action under the 1992 Liability Convention for compensation for pollution damage has been brought against an owner or his guarantor before a competent court in a Contracting State, each party to the proceedings shall be entitled under the national law of that State to notify the Fund of the proceedings. Where such notification has been made in accordance with the formalities required by the law of the court seized and in such time and in such a manner that the Fund has in fact been in a position effectively to intervene as a party to the proceedings, any judgment rendered by the court in such proceedings shall, after it has become final and enforceable in the State where the judgment was given, become binding upon the Fund in the sense that the facts and findings in that judgment may not be disputed by the Fund even if the Fund has not actually intervened in the proceedings."

Mr Patterson highlights how, therefore, if the IOPC Fund 1992 has had the opportunity to intervene as a party to any legal proceedings instituted in accordance with Article IX of the 1969 Civil Liability Convention before a competent court of a Contracting State, it is bound by the facts and findings of the judgment even if it has not intervened in the proceedings.

45. Mr Patterson cites Article 7(6) by way of response to what Mr Taylor has to say in his first witness statement, namely that at no stage was the IOPC Fund 1992 formally notified of the Venezuelan proceedings or given an opportunity to participate in them, something which Mr Hirst QC submits makes sense, given that the proceedings related to the IOPC Fund 1971, not the IOPC Fund 1992. Mr Patterson then proceeds to make a number of points which he derives from the witness statement of Mr Alfonso Rubio, a lawyer having conduct of this matter on behalf of the SUP, and who has made a witness statement dated 13 July 2015.

46. First, Mr Patterson refers to the fact that, on 19 September 2005, the SUP's lawyer in Venezuela requested notification of the proceedings to the IOPC Fund 1971, as Mr Patterson put it, "*to put the Director in full knowledge of the lawsuit against the Captain, the ship's operator or the owner of the tanker Plate Princess"*. Secondly, Mr Patterson refers also to how, on 13 June 1997, according to information contained in a document with a reference *"71FUND/EXC.54/7"*, "*the Director of the Fund*" by which Mr Patterson means the Director, as I understand it, of both the IOPC Fund 1971 and the IOPC Fund 1992, was notified of the incident. Mr Patterson highlights that "*the Director*" as he puts it, set the amount at 3.6 million SDRs as the limitation of liability amount applicable to the owner of the *'PLATE PRINCESS'* under the 1969 Civil Liability Convention. Thirdly, Mr Patterson goes on to point out that, on 17 June 1997, according to information contained in a document with a reference *"71FUND/EXC.54/10"*, "*the Executive Committee of the International Oil Pollution Compensation Fund"* (Mr Patterson would say, as I understand it, the IOPC Fund 1992) authorised the Director (again, Mr Patterson would say, as I understand it, the Director of both the IOPC Fund 1971 and the IOPC Fund 1992) to make final settlements as to the quantum of all claims arising out of the incident, to the extent that the claims could not give rise to questions of principle which had not previously been decided by the committee and to make payments. Fourthly, Mr Patterson then observes that, on 8 June 1997, "*the Fund Director*" granted before the Consular Section of the Embassy of the Bolivarian Republic

of Venezuela in the United Kingdom and Northern Ireland, power of attorney to Venezuelan lawyers to act on its behalf and to represent it in actions which arose in the Republic of Venezuela relating to the incident concerning the *'PLATE PRINCESS'*. Lastly, Mr Patterson explains that, on 12 June 2008, as he puts it, "*the International Oil Pollution Compensation Fund*" (a reference, he submits, to the IOPC Fund 1992, not least because by that time the 1971 Fund Convention had ceased to be in force, and so, he submits, the Director was only the Director of the IOPC Fund 1992) voluntarily intervened as a party to the legal proceedings instituted before the competent court of Venezuela, submitting a written response to the law suit.

47. In these circumstances, despite the fact that a number of the documents plainly emanate from the IOPC Fund 1971 (as demonstrated by the references to *"71FUND"* at the beginning of the various document reference numbers), it is Mr Patterson's submission that the reason why there are, as he himself puts it, "*many references*" in the Venezuelan Judgment to the 1971 Fund Convention, and, indeed, to the IOPC Fund 1971 rather than the IOPC Fund 1992, is that it is the 1971 Fund Convention (as amended by the 1992 Fund Protocol), which is applicable, and, as Mr Patterson submitted, "*it was possible for the 1971 Fund or 1992 Fund to be named without distinction"*. In fact, as previously noted, in many (and perhaps most) places, Mr Patterson points out, the Venezuelan Judgment refers, in brackets after a reference to the IOPC Fund 1971, or a reference which contains no date, simply to "*IOPC Funds*" in the plural, so indicating, Mr Patterson suggests, that the intention was to refer not only to the IOPC Fund 1971, but also to the IOPC Fund 1992, which, in effect, Mr Patterson submits, were by this stage interchangeable. Mr Patterson submits that this is also the explanation for the Registration Order's reference to "*the International Oil Pollution Compensation Fund created according to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971*". As he puts it in his skeleton argument, "*in respect of the states subscribing to the 1992 Fund Protocol, the 1971 Fund Convention referred to the 1971 Fund Convention as amended*".

48. Mr Patterson then explains that it follows from this that, when the Registration Order identifies the Judgment Debtor as, "*the Fund*", it is referring not to the IOPC Fund 1971 but to the IOPC Fund 1992, since, although the IOPC Fund 1971 and the IOPC Fund 1992 were, in effect, interchangeable, by the time that the Registration Order was made "*there was only one Fund*", and that was (and is) the IOPC Fund 1992. This, of course, is a reference to the dissolution of the IOPC Fund 1971, which took effect from 31 December 2014. It is for this reason, as I understand it, that in his witness statement in support of the application to register the Venezuelan Judgment, Mr Rubio did not disclose that the IOPC Fund 1971 had been dissolved at the end of last year. It is also why, Mr Patterson suggests, no reference was made in this witness statement to the fact that the Venezuelan Judgment does not refer, in terms at least, to the IOPC Fund 1992, or to the 1992 Fund Convention, or to any liability arising in relation to the IOPC Fund 1992 or the 1992 Fund Convention. I consider that these were matters which should have been explained, but, be that as it may, it follows, Mr Patterson submits, that if he is right in relation to what he submits concerning the 1992 Fund Protocol, then the IOPC Fund 1992 does not have immunity under Article 5(1)(b) of both the HQ Agreement and the 1996 Order, because the exception contained in Article 5(1)(b) applies in respect of actions brought against the IOPC Fund 1992 in accordance with the provisions of the 1992 Fund Convention (or the 1971 Fund Convention as amended by the 1992 Fund Convention). As Mr Patterson puts it in his skeleton argument, the Venezuelan Judgment "*is an action*

brought against the Fund in accordance with the provisions of the Convention and is a claim for the very compensation that the Fund was set up to provide".

Discussion and decision

49. I have considered the parties' respective submissions. Having done so, my conclusion is that Mr Hirst QC's submissions are clearly to be preferred to those advanced by Mr Patterson. I can state my reasons for arriving at this conclusion relatively briefly since, in truth, the only issue between Mr Hirst QC and Mr Patterson concerns Mr Patterson's reliance on the 1992 Fund Protocol.

50. The 1992 Fund Protocol is at the heart of the SUP's case that the IOPC Fund 1992 is subject (indeed, was a party) to the Venezuelan Judgment, that the Registration Order relates to the IOPC Fund as a result, and that the exception contained in Article 5(1)(b), accordingly, applies. I am clear, however, that Mr Patterson's reliance on the 1992 Fund Protocol is misplaced. The reason why I say this is straightforward. It is that, contrary to Mr Patterson's submissions, the 1992 Fund Protocol has no application in the present case, involving as it does an oil spillage which occurred in 1997 and so before Venezuela ratified, accepted, approved or acceded to the 1992 Fund Protocol. It is not sufficient, as Mr Patterson suggests, certainly in his skeleton argument, that Venezuela was a signatory to the 1992 Fund Protocol from the outset, on 27 November 1992, at the meeting of the conference at the IMO's offices in London, since, for the 1992 Fund Protocol to operate in this case, Venezuela needed not only to have been a signatory prior to the incident but by that stage also to have ratified, accepted, approved or acceded to the 1992 Fund Protocol.

51. This seems to me to be made abundantly clear by Article 28, which is in the following terms. I refer here to Article 28 of the 1992 Fund Protocol. It is headed "*Signature, ratification, acceptance, approval and accession*" and it reads as follows:

"1. This Protocol shall be open for signature at London from 15 January 1993 to 14 January 1994 by any State which has signed the 1992 Liability Convention.

2. Subject to paragraph 4, this Protocol shall be ratified, accepted or approved by States which have signed it.

3. Subject to paragraph 4, this Protocol is open for accession by States which did not sign it.

4. This Protocol may be ratified, accepted, approved or acceded to only by States which have ratified, accepted, approved or acceded to the 1992 Liability Convention.

5. Ratification, acceptance, approval or accession shall be effected by the deposit of a formal instrument to that effect with the Secretary-General of the Organization.

6. A State which is a Party to this Protocol but is not a Party to the 1971 Fund Convention shall be bound by the provisions of the 1971 Fund Convention as amended by this Protocol in relation to other Parties hereto, but shall not be bound by the provisions of the 1971 Fund Convention in relation to Parties thereto.

7. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to the 1971 Fund Convention as amended by this

Protocol shall be deemed to apply to the Convention so amended, as modified by such amendment."

52. Whilst it is true that, as Mr Patterson points out, Venezuela did not denounce the 1971 Fund Convention until 3 June 1998, it is equally clear that Venezuela did not become a party to the 1992 Civil Liability Convention and the 1992 Fund Convention until 22 July 1999, having deposited the relevant instrument on 22 July 1998. In these circumstances, by virtue of Article 28(4) of the 1992 Fund Protocol, Venezuela cannot have "*ratified, accepted or approved*" in accordance with Article 28(2) (or, indeed, *"acceded"*, as also referred to in Article 28(4)) until after the oil spillage in 1997. Whether the relevant date in this regard is 1998 or 1999 is immaterial (I am referring here to the depositing of the instrument in 1998 and to the effective date a year later in 1999) since, either way, there cannot have been the required ratification, acceptance or approval (or accession) in 1997 at the time of the oil spillage which gave rise to the Venezuelan Judgment. It follows that the 1992 Fund Protocol, in my judgment, has no application, it being clear from Articles 28(1) and 28(2) that merely being a signatory to the 1992 Fund Protocol is not by itself sufficient to mean that the 1992 Fund Protocol is applicable. As to when Venezuela became a signatory, I am not aware that a date has been given for that, although it would appear that the mere attendance at the conference on 27 November 1992 is not going to have been the occasion when Venezuela became a signatory, given the terms of Article 28(1), which indicate that the Protocol was only "*open for signature*" starting from 15 January 1993.

53. Further, it is clear, as it seems to me, that, when Article 36 *bis* (a) refers to the transitional provisions as applying in "*the transitional period, commencing with the date of entry into force of this Convention*", it is referring to the "*date of entry into force*" insofar as the individual states are concerned. The relevant provision in this context is Article 30, which is entitled "*Entry into Force*" and which provides as follows:

> *"1. This Protocol shall enter into force twelve months following the date on which the following requirements are fulfilled:*
>
> *(a) at least eight States have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General of the Organization; and*
>
> *(b) the Secretary-General of the Organization has received information in accordance with Article 29 that those persons who would be liable to contribute pursuant to Article 10 of the 1971 Fund Convention as amended by this Protocol have received during the preceding calendar year a total quantity of at least 450 million tons of contributing oil.*
>
> *2. However, this Protocol shall not enter into force before the 1992 Liability Convention has entered into force.*
>
> *3. For each State which ratifies, accepts, approves or accedes to this Protocol after the conditions in paragraph 1 for entry into force have been met, the Protocol shall enter into force twelve months following the date of the deposit by such State of the appropriate instrument.*
>
> *4. Any State may, at the time of the deposit of its instrument of ratification, acceptance, approval or accession in respect of this Protocol declare that such instrument shall not*

take effect for the purpose of this Article until the end of the six-month period in Article 31."

54. As I see it, the effect of Article 30(3) is that the focus is on the individual state ratifying, approving or acceding to the 1992 Fund Protocol, and not the entry into force to which Article 30(1) relates. Otherwise, in my judgment, Article 36 *bis* makes little sense, particularly the reference to "*denunciations provided for"* in Article 31, which, as Mr Patterson accepts, is clearly focusing on denunciations from each state, that is viewing each state separately and individually, and so considering the position of each state on an individual basis. In my judgment, it makes no sense for the end date to be considering the position of the individual states individually, but for the start date to be considering something else, namely whether or not eight other states have deposited their instruments and 12 months has passed (as well as compliance with Article 30(1)(b)).

55. Mr Patterson, as I say, takes no issue with the proposition that the reference to *"denunciations"* (that is, the reference to the end date of the transitional period) is a reference to the position of individual states as referred to in Article 31. His argument is that the relevant start date in Article 36 *bis*, namely *"the date of entry into force of this Convention"*, should not have as its focus the position of the individual states but should instead be taken to be a reference to the entry into force provisions contained in Article 30(1), a point bolstered, he submits, by the reference on the front page of the 1992 Fund Protocol, in brackets, to the protocol entering into force on 30 May 1996. That is an argument which, as I have indicated, seems to me to make no sense. It seems to me to be quite clear that the reference in Article 36 *bis* to the start date being *"the date of entry into force of this Convention"* is a reference to the start date so far as the individual states are concerned. Were Mr Patterson's argument right, then it would, in effect, mean that the reference in Article 30(3) to the 1992 Fund Protocol coming into force 12 months following the date of the deposit by the individual states is redundant. I consider, on the contrary, that the fact that Article 30(3) contains the language of entry into force by reference to individual states makes the position entirely clear and is the only workable position. I repeat that Mr Patterson's argument would make the references in sub-paragraph (3) to the Protocol coming into force in relation to individual states surplusage. I consider also that Mr Patterson's submission makes no sense, since it would mean that a state could be a party to the 1971 Fund Convention, and do nothing by way of signature or ratification or approval or acceptance of (or accession to) the 1992 Fund Protocol, yet find itself subject to Article 36 *bis* and the other transitional provisions contained in Article 36 *bis* regardless, until such time as that state got round, if it ever got round, to denouncing the 1971 Fund Convention. As I see it, that is an utterly unrealistic scenario. It simply cannot have been the position that those drafting the 1992 Fund Protocol could have had in mind.

56. Nor do I consider it right that, as Mr Patterson submits, essentially in the alternative as I understand it, the transitional provisions contained in Article 36 *bis* and following apply retrospectively, that is that they come into play after a state has ratified, accepted, approved or acceded to the 1992 Fund Protocol, and not before. In my judgment, this, again, is a wholly unrealistic submission. For provisions such as this to have retrospective effect would require, Mr Hirst QC submitted in his reply submissions, and I agree, the clearest possible words, and yet there is not the slightest hint that that is what the draftspersons had in mind. Further, it seems to me that Mr Patterson's stance is unrealistic for an additional reason, which is that it would lead to the peculiar consequence that the 1971 Fund Convention would apply during a particular period, and apply exclusively, only for it to be

discovered, subsequently, and with the benefit of hindsight only, that actually the position was different, not because it was actually (or, as it were, in 'real time') different, but because of a subsequent event making it different. That is a very unlikely scenario. It is far more likely that the parties and the states should understand at any given moment during the relevant period, contemporaneously as it were, what regime applied and what regime did not apply.

57. I also consider that there is considerable force in Mr Hirst QC's submission that, if Mr Patterson's case about retrospectivity were right, then it would lead to the oddity, as Mr Hirst QC describes it, that a state could achieve for itself an ability to recover a higher amount under the 1992 Fund Convention through the operation of the 1992 Fund Protocol retrospectively, despite contemporaneously, in other words in the period that came before its ratification, acceptance, or approval of (or accession to) the 1992 Fund Convention, having made somewhat lower contributions consistent with an ability to claim lesser amounts under the 1971 Fund Convention than would be claimable under the 1992 Fund Convention. That is a very practical illustration of why, in my judgment, Mr Patterson's argument on retrospectivity simply cannot be accepted.

58. Put simply, and by way of summary, therefore, in my judgment, the transitional provisions to be found in Article 36 *bis* apply, and only apply, to states which have ratified, accepted or approved (or acceded to) the 1992 Fund Protocol through the deposit of a relevant instrument, but have yet to denounce the 1971 Fund Convention. They do not apply to states which, although they may have signed the 1992 Fund Protocol, have yet to ratify, accept or approve (or acceded to) the 1992 Fund Protocol. States which have not "*ratified, accepted, approved or acceded to the 1992 Liability Convention*" cannot ratify, accept or approve (or accede to) the 1992 Fund Protocol. Therefore, Venezuela being a state which had not ratified, accepted, approved or acceded to the 1992 Civil Liability Convention until after the 1997 oil spillage which gave rise to the Venezuelan Judgment, the SUP is not in a position where it can invoke the 1992 Fund Protocol in the manner suggested by Mr Patterson.

59. I should add that I am not swayed from the conclusion which I have reached by any of the matters relied upon by Mr Patterson in the context of his reliance on Article 7(6) of the 1992 Fund Convention. It is clear to me that the intervention made in the Venezuelan proceedings was made by the IOPC Fund 1971, rather than by the IOPC Fund 1992. As previously mentioned, this is demonstrated by the fact that a number of the documents plainly emanate from the IOPC Fund 1971, but it is also consistent with the analysis which entails the IOPC Fund 1971 and only that entity, being liable, given that the 1992 Fund Protocol has no application for the reasons which I have canvassed.

60. Mr Patterson, towards the end of his submissions, took me to a particular document dated 1 October 2009 concerning the *'PLATE PRINCESS'* matter and headed "*Note by the Director*". Mr Patterson highlighted the fact that, at the top of the page, a number of entities were identified, including "*1992 Fund Assembly*", "*1992 Fund Executive Committee*", "*Supplementary Fund Assembly*" and "*1971 Fund Administrative Council*". The suggestion which he made to me was that this document indicates that, as at 1 October 2009, both the IOPC Fund 1971 and the IOPC Fund 1992 were involved in the matter of the *'PLATE PRINCESS'*, and specifically the Venezuelan proceedings. It was pointed out by Mr Hirst QC, however, that the boxes which contain the various references to the entities I have just identified has a dot in just one of the boxes, against the entity described

as "*1971 Fund Administrative Council*". It is a fair inference, and indeed it is what Mr Hirst QC submits to me, that, therefore, this is a note that was actually directed to and concerned only with the "*1971 Fund Administrative Council*", and not the various other entities involving the IOPC Fund 1992. In short, this is, in a sense, a circulation list, and the relevant entity being circulated was not an entity concerned with the IOPC Fund 1992.

61. The truth is that the documentation which might have supported a contention by Mr Patterson that the IOPC Fund 1992 was involved in the Venezuelan proceedings is scarce, to say the least. Frankly, it is non-existent. In these circumstances, particularly bearing in mind what I read also in the third witness statement of Mr Taylor, dated 21 July 2015, I am quite clear that the argument that the IOPC Fund 1992 was, in fact, involved in the Venezuelan proceedings is an argument which is not sustainable.

62. Mr Taylor explained in his most recent witness statement how, between 24 May 2002 and the dissolution of the IOPC Fund 1971 on 31 December 2014, the IOPC Fund 1971 and its constituent decision-making bodies continued to operate separately from the IOPC Fund 1992 and its constituent decision-making bodies. He also explained that the finances and accounts of each of the IOPC Fund 1971 and the IOPC Fund 1992 were handled and administered separately. He did so by pointing, for example, to a Note of the Director of the IOPC Fund 1971 dated 27 September 2002 showing that, after the 1971 Fund Convention ceased to be in force, it was still necessary for the Administrative Council on behalf of the 1971 Fund Assembly and the 1971 Fund Executive Committee to determine how to deal with extant claims against the IOPC Fund 1971 and how to dissolve the IOPC Fund 1971. This is demonstrated by various resolutions which were regularly passed by the Administrative Council of the IOPC Fund 1971 relating solely to the activities of the IOPC Fund 1971 including significantly the resolution passed on 24 October 2014 concerning the dissolution of the IOPC Fund 1971, as referred to in the announcement made on 17 November 2014 to which I have previously referred. Mr Hirst QC also drew my attention to Article 36 *quater*, specifically sub-paragraph (e), which I have previously quoted, making the point that at no stage was a decision made by the IOPC Fund 1971 in effect to merge with the IOPC Fund 1992. I agree that, in the circumstances, the argument that in effect the IOPC Fund 1971 and the IOPC Fund 1992 are to be treated as one and the same is misconceived.

63. It follows from all this that Mr Patterson's submission that the Venezuelan Judgment should be regarded as applying to the 1971 Fund Convention as amended by the 1992 Fund Protocol is not a submission which I can accept. It follows also that nor can I accept the submission that the Venezuelan Judgment should be regarded as applying to the IOPC Fund 1992, despite the fact that there is no reference at all to the IOPC Fund 1992 anywhere in the Venezuelan Judgment. I do not consider, in the circumstances, that the references in several places to "*the IOPC Funds*" are sufficient to change matters. Even if this might arguably suggest that more than just the IOPC Fund 1971 was being referred to, given that the IOPC Fund 1992 can have had no relevant liability, as I see it, I do not feel able to conclude that these are references which were actually intended to include the IOPC Fund 1992, and significantly, when I asked Mr Patterson why it should be that nowhere in the Venezuelan proceedings does there seem to have been a mention of the 1992 Fund or the 1992 Fund Protocol or the 1992 Fund Convention, no particularly enlightening answer was forthcoming. I say that, of course, with no criticism of Mr Patterson personally. It would have been very easy indeed, however, I observe, to have made it clear within the context of the Venezuelan proceedings that the true target was not the IOPC Fund 1971 but

the IOPC Fund 1992, and that the claim was brought not under the 1971 Fund Convention as amended by the 1992 Fund Protocol, but was brought under the 1992 Fund Convention. The fact that there is no such reference in the Venezuelan Judgment is very telling.

64. It further follows, in the circumstances, that it was not open to the SUP to obtain an order registering the Venezuelan Judgment against the IOPC Fund 1992 for the simple fact that the Venezuelan Judgment is not a judgment against the IOPC Fund 1992. I agree with Mr Hirst QC that, as far as the IOPC Fund 1992 is concerned, Article 8 of the 1992 Fund Convention simply does not apply. I agree also with Mr Hirst QC that, even if the Venezuelan Judgment had been as against the IOPC Fund 1992, which I have determined it was not, since it was not a judgment establishing liability on the part of the IOPC Fund 1992 under the 1992 Fund Convention, there is no relevant exception to the IOPC Fund 1992's immunity under Article 5 of the 1996 Order and Article 5 of the HQ Agreement in that the exception in Article 5(1)(b) is inapplicable. Therefore, I agree with Mr Hirst QC that the IOPC Fund 1992 would be immune in that event. Either way, I am clear that, contrary to Mr Patterson's submission, the Registration Order is not an order which the SUP ought to have been able to have obtained as against the IOPC Fund 1992, and that, as such, it ought not to be permitted to stand if and insofar as it relates to the IOPC Fund 1992, as I am told now, of course, by Mr Patterson, it is intended by the SUP that it should.

65. This is sufficient to mean that the IOPC Fund 1992's applications succeed. It would not necessarily have meant, however, that the Registration Order should be set aside completely if and insofar as it also is to be regarded as relating to the IOPC Fund 1971. In circumstances where the IOPC Fund 1971 is not represented and has made no application, no doubt for the simple reason that it no longer exists, I might have been minded to have left matters on the basis that the Registration Order should be set aside insofar as it concerns the IOPC Fund 1992 only, and to have said nothing further about the Registration Order if and insofar as it relates to the IOPC Fund 1971. However, in circumstances where the SUP's own position is that the Registration Order does not relate to the IOPC Fund 1971, it seems to me that the right course is to set aside the Registration Order in its entirety. I am strengthened in this view by the fact that, as Mr Hirst QC submits, the Venezuelan Judgment does not fall to be recognised under Section 177(4) of the 1995 Act because that section only concerns judgments given in Venezuela under a provision which corresponds to Section 175 of the 1995 Act, and Section 175 concerns only the liability of the IOPC Fund 1992, rather than the liability of the IOPC Fund 1971, these provisions of the Merchant Shipping Act being the provisions relied upon when seeking the Registration Order. In other words, it was not open to the SUP to obtain the Registration Order as against the IOPC Fund 1971 under those provisions, in any event.

66. This leaves Mr Patterson's so-called "*preliminary point*". I am not persuaded that there is any force in this objection. First, it is not clear to me that there is any requirement that a party (a judgment debtor) should file an acknowledgment of service, and it is telling that in the present case it does not appear that the Registration Order was accompanied by any pack which required such a document to be filed. Secondly, it seems to me that it was, in any event, open to the IOPC Fund 1992 to make its application under the liberty to apply provision contained in the Registration Order itself, and that nothing turns on whether there is also an application under CPR 11.

67. In the circumstances, the orders which I make are these:

(1) an order that this court has no jurisdiction to register the Venezuelan Judgment against the IOPC Fund 1992 because the IOPC Fund 1992 is immune pursuant to Article 5 of the 1996 Order and Article 5 of the HQ Agreement: and

(2) an order that the Registration Order is set aside in its entirety.

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