INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS

Agenda item: 3	IOPC/OCT12/**3/4**	
Original: ENGLISH	16 August 2012	
1992 Fund Assembly	**92A17**	
1992 Fund Executive Committee	**92EC56**	
Supplementary Fund Assembly	**SA8**	
1971 Fund Administrative Council	**71AC29**	●

INCIDENTS INVOLVING THE IOPC FUNDS – 1971 FUND

PLATE PRINCESS

Note by the Secretariat

Objective of document:	To inform the 1971 Fund Administrative Council of the latest developments regarding this incident.
Summary of the incident so far:	
27 May 1997:	The *Plate Princess* spilled some 3.2 tonnes of crude oil in Puerto Miranda (Bolivarian Republic of Venezuela).
June 1997:	Two fishermen's trade unions, FETRAPESCA and Puerto Miranda Union, presented claims in the Civil Court of Caracas against the shipowner and the master for US$10 million and US$20 million respectively.
1997-2005:	No developments in respect of the claims.
October 2005:	The 1971 Fund was formally notified of the claims as an interested third party (first notification).
May 2006:	The 1971 Fund Administrative Council decided that both claims were time-barred.
December 2006:	Both claims were transferred to the Maritime Court of First Instance in Caracas.
March 2007:	The 1971 Fund was formally notified of both claims as an interested third party for a second time (second notification).
April 2008:	The Maritime Court of First Instance accepted the amended claim by the Puerto Miranda Union for BsF 53.5 million (£7.9 million[<1><2>]).
November 2008:	The 1971 Fund argued that the documentation provided by the claimants did not demonstrate the damage and was in many instances falsified.

<1> The exchange rate used in this document (as at 1 August 2012) is £1 = BsF 6.81. The exchange rate used in the Annex, however, is the exchange rate as at 31 October 2011 (ie £1 = BsF 6.93).

<2> In January 2008 the Bolivar Fuerte (BsF) replaced the Bolivar (Bs) at the rate of 1 BsF = 1000 Bs. Until December 2011 the Bolivarian Republic of Venezuela used the term Bolivar Fuerte (BsF) to distinguish the new currency from the old currency or Bolivar (Bs). However, since the old currency was taken out of circulation in January 2012, the Venezuelan Central Bank decided that the use of the word 'Fuerte' was no longer necessary. Therefore, the name of the actual Venezuelan currency is now Bolivar (Bs). To avoid any confusion, we will continue to use the term Bolivar Fuerte (BsF) to distinguish the actual Venezuelan currency (from 2008) from the previous currency (pre 2008).

February 2009:	The Maritime Court of First Instance accepted the claim by the Puerto Miranda Union and ordered payment of damages in an amount to be quantified by court experts. The master, the shipowner and the 1971 Fund appealed against the judgement. The same Court also accepted the claim by FETRAPESCA and also ordered payment of damages in an amount to be quantified by court experts. The 1971 Fund was not formally notified of this judgement.
September 2009:	The Maritime Court of Appeal of Caracas dismissed the appeal in respect of the claim by the Puerto Miranda Union.
December 2009/January 2010:	The master, shipowner and the 1971 Fund appealed the judgement on liability to the Supreme Court of Venezuela.
October 2010:	The Supreme Court dismissed the appeal on liability by the master, shipowner and the 1971 Fund and the file was returned to the Maritime Court of First Instance for quantification of the loss.
November 2010:	The Maritime Court of First Instance appointed experts to calculate the quantum of compensation to be paid.
January 2011:	The experts appointed by the Maritime Court of First Instance issued their report quantifying the compensation, concluding that the losses suffered by the claimants amounted to BsF 769 892 085 (£113 million); that the total amount available for compensation under the 1969 Civil Liability Convention (1969 CLC) and the 1971 Fund Convention (60 million SDR) was equivalent to BsF 403 473 005 (£59.2 million); and that the limit of liability of the shipowner was BsF 2 844 983 (£424 000) and the compensation payable by the 1971 Fund should be BsF 400 628 022 (£58.8 million). The master, shipowner and the 1971 Fund requested the Maritime Court of First Instance to reconsider the experts' report. The Maritime Court of First Instance appointed two new experts to review the report of the original experts.
February 2011:	The 1971 Fund appealed against the judgement of the Supreme Court on liability to the Constitutional Section of the Supreme Court of Venezuela.
March 2011:	The new experts appointed by the Maritime Court of First Instance issued their report, confirming the conclusions of the original experts. The Maritime Court of First Instance accepted the experts' report and ordered the shipowner to pay BsF 2 844 983 (£424 000) and the 1971 Fund, although not a defendant, to pay BsF 400 628 022 (£58.8 million) plus costs. The master, shipowner and the 1971 Fund appealed the judgement on quantum to the Maritime Court of Appeal.
June 2011:	The Constitutional Section of the Supreme Court dismissed the 1971 Fund's appeal against the judgement of the Supreme Court on liability.
July 2011:	The Maritime Court of Appeal dismissed the appeal on the quantum of compensation by the master, shipowner and 1971 Fund against the decision of the Maritime Court of First Instance. The 1971 Fund requested leave from the Maritime Court of Appeal to appeal to the Supreme Court. Leave to appeal was refused. The 1971 Fund appealed the decision.

October 2011:	FETRAPESCA requested the withdrawal of its claim from the Maritime Court of First Instance. The Maritime Court of First Instance rejected FETRAPESCA's request to withdraw the claim.
November 2011:	The Supreme Court rejected the 1971 Fund's request for leave to appeal the July 2011 judgement of the Maritime Court of Appeal in connection with the quantum of the loss.
March 2012:	The Puerto Miranda Union submitted requests to the Maritime Court of First Instance to order the shipowner and the 1971 Fund to pay in accordance with the judgement of the Court of Appeal, and to order the Banco Venezolano de Credito to transfer to the Court the amount of the bank guarantee establishing the shipowner's limitation fund. The 1971 Fund appealed to the Constitutional Section of the Supreme Court against the judgement of the Supreme Court regarding the quantum of the loss.
Recent developments:	
March 2012:	The Maritime Court of First Instance accepted the request of Puerto Miranda Union concerning the enforcement of the judgement and fixed a date for the shipowner and 1971 Fund to pay the amounts awarded by the Court of Appeal.
April 2012:	The 1971 Fund submitted pleadings requesting the Court to stay the enforcement proceedings on the basis of the principle of the equal treatment of claimants, until the claim by FETRAPESCA has reached a final stage in the proceedings.
August 2012:	The master submitted a similar request to the Court to stay the enforcement proceedings for the same reasons as those used by the 1971 Fund. The Constitutional Section of the Supreme Court rejected the 1971 Fund's appeal against the judgement of the Supreme Court regarding the quantum of the loss.
Action to be taken:	1971 Fund Administrative Council Information to be noted.

1 Summary of the incident

Ship	*Plate Princess*
Date of incident	27.05.1997
Place of incident	Puerto Miranda, Lake Maracaibo, Bolivarian Republic of Venezuela
Cause of incident	Leakage of crude oil cargo into ballast during loading operation
Quantity of oil spilled	3.2 tonnes of crude oil
Area affected	Unknown
Flag State of ship	Malta
Gross register tonnage	30 423 GRT
P&I insurer	The Standard Steamship Owner's Protection & Indemnity Association (Bermuda) Ltd (the Standard Club)
CLC limit	3.6 million SDR (BsF 2 844 983 or £424 000)
CLC + Fund limit	60 million SDR (BsF 403 473 005 or £59.2 million)
Compensation	No compensation paid
Standing last in the queue	N/A

<table>
<tr><td>Legal proceedings</td><td>Two claims as follows:

Claim by the Puerto Miranda Union

Plaintiffs: Fishermen's Union.
Defendants: Shipowner and master of the Plate Princess.
The 1971 Fund, though not a defendant in the proceedings, participated as an interested third party.
Judgement by the Maritime Court of First Instance condemned defendants and the 1971 Fund to pay compensation to be quantified by court experts. Appeals on liability to the Court of Appeal, the Supreme Court and the Constitutional Section of the Supreme Court were rejected.
Experts appointed by the Maritime Court of First Instance quantified compensation, inclusive of indexation and interest, and payment liabilities as follows:
<table>
<tr><td>Quantified compensation, excluding costs</td><td>BsF 769 892 085</td><td>£113 million</td></tr>
<tr><td>Shipowner's liability (3.6 million SDR)</td><td>BsF 2 844 983</td><td>£0.42 million</td></tr>
<tr><td>Compensation limit under the Conventions (60 million SDR)</td><td>BsF 403 473 005</td><td>£59.2 million</td></tr>
<tr><td>Payable by 1971 Fund (Compensation limit under the Conventions minus shipowner's liability)</td><td>BsF 400 628 022</td><td>£58.8 million</td></tr>
</table>
The Maritime Court of First Instance confirmed the experts' findings on quantum and ordered the 1971 Fund to pay the amount calculated by the experts, plus costs. The 1971 Fund appealed to the Maritime Court of Appeal. The appeal was dismissed. The 1971 Fund requested leave from the Maritime Court of Appeal to appeal to the Supreme Court. Leave was denied. The decision to deny leave to appeal was appealed by the 1971 Fund to the Supreme Court. The appeal was rejected. The 1971 Fund appealed to the Supreme Court (Constitutional Section) against the decision of the Supreme Court on the quantum of the loss. The appeal was rejected. No further forms of appeal are available to the 1971 Fund.

Claim by FETRAPESCA

Plaintiffs: Fishermen's Union.
Defendants: Shipowner and master of the Plate Princess.
The 1971 Fund is not a defendant in the proceedings.
Judgement by the Maritime Court of First Instance condemns the shipowner, master and the 1971 Fund to pay compensation to be quantified by a court expert. The 1971 Fund has not yet been notified of the judgement. The claimant requested the Maritime Court of First Instance to withdraw the claim against the 1971 Fund but the Maritime Court of First Instance refused the request.</td></tr>
</table>

2 Background information

The background information to this incident is summarised above and provided in more detail in the Annex to this document.

3 Decisions taken by the 1971 Fund Administrative Council at its March, October 2011 and April 2012 sessions

3.1 At its March 2011 session, the 1971 Fund Administrative Council gave instructions to the Acting Director not to make any payments in respect of this incident and that the Acting Director should continue to monitor the outcome of the legal actions in Venezuela.

3.2 At its October 2011 session, the 1971 Fund Administrative Council decided to reconfirm the instructions given to the Acting Director in March 2011.

3.3 The 1971 Fund Administrative Council also instructed the Acting Director to prepare a report on the points raised in the intervention by the Venezuelan delegation at its October 2011 session and on the legal basis for the 1971 Fund to refuse payment under Article X of the 1969 CLC, and to report back to the 1971 Fund Administrative Council at its next session.

3.4 At its April 2012 session, the 1971 Fund Administrative Council decided to reconfirm its instructions given in March 2011 and October 2011 to the Director not to make any payment in respect of this incident and to oppose any enforcement of the judgement on the basis of Article X of the 1969 CLC and Article 4.5 of the 1971 Fund Convention on equal treatment of claimants.

3.5 The 1971 Fund Administrative Council instructed the Director to conduct a further analysis on the legal basis for the 1971 Fund to refuse payment under Article X of the 1969 CLC. The 1971 Fund Administrative Council also instructed the Director to examine the points raised by the delegation of Venezuela in their third intervention at the April 2011 meeting in consultation with the Legal Affairs and External Relations Division of the International Maritime Organization (IMO).

3.6 The 1971 Fund Administrative Council instructed the Director to continue to monitor the legal proceedings in Venezuela and to report back to the 1971 Fund Administrative Council at its next session.

4 Legal proceedings

4.1 In 1997, two fishermen's trade unions, FETRAPESCA and Puerto Miranda Union, presented claims in the Civil Court of Caracas against the shipowner and the master.

4.2 1971 Fund Administrative Council decision on time bar

4.2.1 In October 2005, ie eight years after the incident took place, the 1971 Fund was formally notified, as an interested third party, of both claims.

4.2.2 In view of the notifications received, the 1971 Fund Administrative Council reviewed the details of the incident at its May 2006 session. The Administrative Council decided that both claims were time-barred in respect of the 1971 Fund (document 71FUND/AC.19/5, paragraph 4.2.25).

4.3 Claim by FETRAPESCA

In February 2009, the Maritime Court of First Instance accepted the claim by FETRAPESCA against the shipowner and the master of the *Plate Princess*. The Court ordered the payment of the damages suffered by the claimant, to be quantified by court experts. The 1971 Fund has not been notified of the judgement.

4.4 Claim by Puerto Miranda Union

Legal proceedings on liability

4.4.1 In February 2009, the Maritime Court of First Instance issued a judgement in which it accepted the claim by Puerto Miranda Union and ordered the master, shipowner and 1971 Fund, although not a defendant[3], to pay the damages suffered by the claimant, to be quantified by court experts. This judgement was confirmed by the Maritime Court of Appeal of Caracas and the Supreme Court.

4.4.2 In February 2011, the 1971 Fund submitted an appeal to the Constitutional Section of the Supreme Court.

4.4.3 In June 2011, the Constitutional Section of the Supreme Court dismissed the 1971 Fund's appeal against the judgement of the Supreme Court on liability.

Legal proceedings on quantum

4.4.4 In March 2011 the Maritime Court of First Instance issued a judgement in which it ordered the 1971 Fund to pay BsF 400 628 022[4], plus costs. This judgement was confirmed in July 2011 by the Maritime Court of Appeal.

4.4.5 The master, shipowner and the 1971 Fund applied to the Maritime Court of Appeal for leave to appeal to the Supreme Court. This was denied. The 1971 Fund appealed this decision.

4.4.6 In November 2011 the Supreme Court rejected the 1971 Fund application for leave to appeal the July 2011 judgement of the Court of Appeal.

4.4.7 In March 2012 the 1971 Fund appealed to the Constitutional Section of the Supreme Court against the decision of the Supreme Court denying leave to appeal.

4.4.8 In August 2012 the Constitutional Section of the Supreme Court rejected the 1971 Fund's appeal against the judgement of the Supreme Court regarding the quantum of the loss.

Enforcement of the judgement

4.4.9 In March 2012 the Puerto Miranda Union submitted a request to the Maritime Court of First Instance to order the Banco Venezolano de Credito to transfer to the Court the amount of the bank guarantee constituting the shipowner's limitation fund.

4.4.10 Later in March 2012 the Puerto Miranda Union submitted a request to the Maritime Court of First Instance to request the shipowner and the 1971 Fund to voluntarily comply with the provisions of the judgement by the Court of Appeal.

4.4.11 The Maritime Court of First Instance accepted the request of Puerto Miranda Union concerning the enforcement of the judgement and ordered the shipowner and Fund to pay the amounts awarded by the Maritime Court of Appeal.

---

[3] The Venezuelan Court, in its interpretation of the Conventions, concludes that the 1971 Fund, having been notified, is obliged automatically to pay compensation.

[4] The court experts calculated that the total amount available for compensation under the 1969 CLC and the 1971 Fund Convention (60 million SDR) was equivalent to BsF 403 473 005 and that the compensation payable by the 1971 Fund should be BsF 400 628 022 (BsF 403 473 005 minus BsF 2 844 983).

4.4.12 In April 2012 the 1971 Fund submitted pleadings to the Maritime Court of First Instance requesting the Court to stay the enforcement of the judgement. In the pleadings the Fund argued that, according to Article 4.5 of the 1971 Fund Convention, the amount of compensation corresponding to the 1971 Fund should be distributed to all recognised victims of the incident in accordance with the accepted amounts of the damage. Therefore, on the basis of the principle of equal treatments for all claimants contained in the 1969 CLC, no payments can be made until the claim by FETRAPESCA has reached a final stage in the proceedings.

4.4.13 In August 2012 the master submitted pleadings also requesting the Court to stay the enforcement of the judgement on the basis of the equal treatment of claimants under Article V.4 of 1969 CLC.

4.4.14 No decision has been reached by the Maritime Court of First Instance regarding the enforcement of the judgement.

5 Meeting at the Venezuelan Embassy

5.1 In June 2012, in response to a Note Verbale from the Ambassador of Bolivarian Republic of Venezuela, the Director and the Deputy Director attended a meeting at the Venezuelan Embassy in London to discuss the *Plate Princess* incident. The meeting was attended by the Vice Minister of Transport of Venezuela, a member of the Venezuelan Parliament, members of the Venezuelan delegation and the lawyer representing the claimants.

5.2 At the meeting, the Vice Minister of Transport expressed concern about the fact that the claimants in this incident had not yet been compensated. He stated that the refusal to compensate the fishermen was an infringement of the Conventions, since the Venezuelan courts had already reached a decision.

5.3 The Director explained that the difficulty the Secretariat faced in this case was that the claims were time-barred as decided by the 1971 Fund Administrative Council in May 2006. He added that the Administrative Council had instructed the Secretariat not to make any payment in respect of this incident and to oppose any enforcement of the judgement on the basis of Article X of the 1969 CLC and Article 4.5 of the 1971 Fund Convention on equal treatment of claimants.

5.4 Members of the Venezuelan delegation stated, *inter alia*, that the claims were not time-barred since the Venezuelan Courts had decided on the matter; that the 1971 Fund had the obligation to fulfil the provisions in the 1971 Fund Convention; that the Administrative Council had, in 1997, authorised the payment of compensation to the victims of the spill; that the 1971 Fund had followed the legal proceedings in Venezuela and could not now argue that the claims were time-barred; and that the decisions by the Venezuelan courts were being ignored by the 1971 Fund.

6 Further analysis on the legal basis for the 1971 Fund to refuse payment under Article X of the 1969 CLC

6.1 As instructed by the 1971 Fund Administrative Council at its April 2012 meeting, the Director is conducting a further analysis on the legal basis for the 1971 Fund to refuse payment under Article X of the 1969 CLC and examining the points raised by the delegation of Venezuela in their third intervention at the April 2012 meeting. For that purpose the Director has requested a legal opinion from Dr Thomas A. Mensah, former President of the International Tribunal for the Law of the Sea, and former Assistant Secretary-General and Director of the Legal Affairs and External Relations Division of the IMO.

6.2 The legal opinion from Dr Mensah will be provided in an Addendum to this document.

7 Director's considerations

7.1 With the decision of the Constitutional Section of the Supreme Court in August 2012 on quantum (see paragraph 4.4.8), the legal proceedings in respect of the claim by Puerto Miranda Union both on liability and quantum of compensation, have arrived at an end before the Venezuelan courts.

7.2 The claim by FETRAPESCA is still before the Maritime Court of First Instance of Caracas which, in February 2009, rendered a judgement accepting the claim. The 1971 Fund has not been formally notified of this judgement which will be subject to appeal to the Maritime Court of Appeal in Caracas.

7.3 Since the claim by FETRAPESCA is still pending before the Venezuelan courts, as instructed by the 1971 Fund Administrative Council in April 2012, the 1971 Fund has submitted pleadings to the Maritime Court of First Instance requesting the stay of the enforcement of the Puerto Miranda Union judgment on the basis of Article 4.5 of the 1971 Fund Convention on equal treatment of claimants.

8 Action to be taken

1971 Fund Administrative Council

The 1971 Fund Administrative Council is invited:

(a) to take note of the information contained in this document; and

(b) to give the Director such instructions in respect of the handling of this incident as it may deem appropriate.

* * *

ANNEX

BACKGROUND INFORMATION – PLATE PRINCESS

1 The incident

1.1 On 27 May 1997, the *Plate Princess* spilled some 3.2 tonnes of crude oil whilst loading cargo at an oil terminal in Puerto Miranda (Venezuela). A report from a Maraven/Lagoven helicopter over-flight on the morning of the spill, less than three hours after the spill had been detected on the vessel, stated that no oil was seen at or near the terminal.

1.2 An expert from the International Tanker Owners Pollution Federation Ltd (ITOPF) attended the site on 7 June 1997, 11 days after the spill, on behalf of the 1971 Fund and the Standard Steamship Owner's Protection & Indemnity Association (Bermuda) Ltd (Standard Club). The expert informed the 1971 Fund that there were no signs of oil pollution in the immediate vicinity of where the *Plate Princess* had been berthed at the time of the incident.

2 Impact

The expert was informed that oil had been observed to drift towards the northwest, in the direction of a small stand of mangroves approximately one kilometre away. Oil was observed coming ashore in an area that was uninhabited.

3 Response operations

3.1 No clean-up work was carried out and it is understood that no fishery or other economic resources were known to have been contaminated.

3.2 At the time of the incident, and for several years afterwards, the 1971 Fund had a claims handling office open in Maracaibo, not far from the allegedly affected area, dealing with claims arising out of the *Nissos Amorgos* incident. Throughout that time, the staff of the office had extensive contact with the local fishermen and their union representatives. At no time were the staff of the claims handling office or the 1971 Fund informed that extensive, or indeed any, losses had been suffered by the fishermen as a result of the spill from the *Plate Princess*.

4 Applicability of the Conventions

At the time of the incident Venezuela was Party to the 1969 Civil Liability Convention (1969 CLC) and the 1971 Fund Convention. In June 1997, the 1971 Fund Executive Committee considered that, if it were confirmed that the spilled oil was the same Lagotreco crude oil as was being loaded on to the *Plate Princess*, then it would appear that the oil, which apparently escaped into the ballast tanks via a defective coupling in the ballast line, had first been loaded into the cargo tanks. The Executive Committee took the view that the incident would in principle, therefore fall within the scope of the Conventions, as the oil was carried on board as cargo.

5 Claims for compensation

5.1 In June 1997, two fishermen's trade unions namely, FETRAPESCA and the Sindicato Unico de Pescadores de Puerto Miranda (Puerto Miranda Union), presented claims in the Civil Court of Caracas against the shipowner and the master of the *Plate Princess* for nominal amounts of US$10 million and US$20 million respectively. Neither claim provided details of the losses covered. The claimed amounts were described in both claims as being included for procedural purposes, solely to comply with the requirements of Venezuelan legislation.

5.2 In their claims, both FETRAPESCA and Puerto Miranda Union requested the Court to officially notify the Director of the 1971 Fund of the action in court. No such notification was made at that time and there were no developments in respect of these claims between 1997 and 2005. In view of the passage of time and the lack of developments, the 1971 Fund instructed its Caracas lawyers to close their file.

6 Legal issues

6.1 Limitation proceedings

6.1.1 The limitation amount applicable to the *Plate Princess* under the 1969 CLC was estimated in 1998 to be 3.6 million SDR or Bs 2 845 million.

6.1.2 In 1997, a bank guarantee for this amount was provided by Banco Venezolano de Credito to the Criminal Court of Cabimas. In a judgement delivered in February 2009, the Maritime Court of First Instance in Caracas decided that the shipowner was entitled to limit its liability under the 1969 CLC to the amount of BsF 2.8 million, being the amount of the bank guarantee provided. This judgement was upheld by the Maritime Court of Appeal in September 2009 and the Venezuelan Supreme Court in 2010.

6.2 Claim by FETRAPESCA

6.2.1 In June 1997, FETRAPESCA presented a claim in the Criminal Court of Cabimas on behalf of 1 692 fishing boat owners, claiming a nominal amount of US$10 060 per boat, ie a total of US$17 million. The claim was for alleged damage to fishing boats and nets and for loss of earnings. As of October 2011, there had been no developments on this claim.

6.2.2 In June 1997, FETRAPESCA also presented a claim against the shipowner and the master of the *Plate Princess* before the Civil Court of Caracas for a nominal amount of US$10 million. The claim was for the fishermen's loss of income as a result of the spill.

6.2.3 There were no developments in respect of this claim between 1997 and October 2005, when the 1971 Fund was formally notified through diplomatic channels of the claim presented in the Civil Court in Caracas.

6.2.4 In view of the notifications received, the 1971 Fund Administrative Council reviewed the details of the incident at its May 2006 session, ie nine years after the incident took place. Whilst expressing sympathy to the victims of the incident and regretting that the time bar provisions had worked to their detriment, the Administrative Council stated that it was necessary to adhere to the text of the Conventions and decided that the claim was time-barred in respect of the 1971 Fund.

6.2.5 In December 2006, the claim was transferred to the Maritime Court in Caracas.

6.2.6 In July 2008, the shipowner and the master of the *Plate Princess* requested the Maritime Court of Caracas to declare the claim by FETRAPESCA time-barred (*perención de instancia*) since the plaintiffs had not taken steps to duly pursue their claim in court. In a decision published later that month, the Court decided that the claim was not time-barred. The shipowner and the master appealed against this decision but, in October 2008, the Maritime Court of Appeal upheld the judgement of the Maritime Court of Caracas.

6.3 First Instance judgement in respect of claim by FETRAPESCA

In February 2009, the Maritime Court of First Instance accepted the claim by FETRAPESCA against the shipowner and the master of the *Plate Princess* even though no documentation had been provided in support of the claim and the losses had not been quantified. The Court ordered the payment of the damages suffered by the claimant, to be quantified by court experts. In a subsequent clarification, the Maritime Court of First Instance stated that, if the established losses were greater than the shipowner's limitation amount, the 1971 Fund would be liable to compensate the claimant. As of April 2012, the 1971 Fund had not been notified of the judgement.

6.4 Claim by the Puerto Miranda Union

6.4.1 In October 2005, the 1971 Fund was formally notified as an interested third party, through diplomatic channels, of the claim presented by the Puerto Miranda Union in the Civil Court in Caracas (see paragraphs 5.1 and 5.2). No information was provided with the notifications as to the nature or extent of the losses alleged.

6.4.2 In May 2006 the 1971 Fund Administrative Council decided that this claim was also time-barred.

6.5 Maritime Court of First Instance in Caracas

6.5.1 In December 2006, the claims by FETRAPESCA and Puerto Miranda Union were transferred to the Maritime Court of First Instance, also in Caracas.

6.5.2 In March 2007, nearly ten years after the incident, and following a request by the Maritime Court of First Instance, the 1971 Fund was formally notified as an interested third party of both claims for a second time. The notifications did not provide any details of the alleged losses.

6.6 Amended Puerto Miranda Union claim

6.6.1 There were no further developments until April 2008 when the Puerto Miranda Union submitted an amended claim against the master and the shipowner. The 1971 Fund was not named as a defendant. The lawyers representing the claimants in connection with the amended claim were not those who had been involved in the formulation of the original claim. At that time there were a number of submissions by the lawyers acting for the Puerto Miranda Union, attempting to notify the shipowner and master.

6.6.2 The amended claim set out in detail the nature, extent and quantification of the losses alleged. The claim was for the cost of cleaning 849 boats and replacing some 7 814 packs of nets and two outboard motors. The nets were alleged to have been contaminated by oil to the extent that they were no longer usable. The claimant also alleged that the owners of the 849 boats and 304 foot-fishermen had suffered a total loss of income for a period of 187 calendar days (six months) as a result of being unable to fish because of a lack of equipment. The amended claim was for BsF 53.5 million. The Maritime Court of First Instance of Caracas accepted the amended claim on 10 April 2008.

6.6.3 The amended claim made reference to a large number of documents submitted as evidence of the alleged loss and damage. Without access to these documents it was not possible for the 1971 Fund to review the claim. Through its Caracas lawyers, the 1971 Fund requested that the Court provide copies of the documents submitted by the claimants. However, the number of documents involved was such that it was beyond the capacity of the Court to copy them and the Court put the work in the hands of an outside contractor.

6.6.4 Venezuelan legislation provides time limits for the submission of a defence and, to comply with these requirements, the 1971 Fund was forced to submit defence pleadings on 12 June 2008, despite not having received the copies of the documents submitted by the claimants. The defence submitted by the 1971 Fund stated, *inter alia*, that the claim was time-barred *vis-a-vis* the 1971 Fund.

6.6.5 On 4 August 2008, copies of the documents (16 bundles in total) were received by the 1971 Fund. The 1971 Fund appointed experts to examine the claim and the supporting documents. On the basis of the report issued by its experts, the 1971 Fund submitted further pleadings in November 2008. In these pleadings the 1971 Fund argued that the documentation provided by the claimants did not demonstrate that damage allegedly suffered by the fishermen had been caused by the spill from the *Plate Princess* and that the documentation provided in support of the claim was of doubtful accuracy and had in many instances been falsified. The 1971 Fund also requested that the report by its experts be accepted as evidence. The Court rejected the request on the grounds that the report had not been submitted within the time limit provided by Venezuelan law. The 1971 Fund appealed against this decision on the grounds that the time limit was not sufficient for the Court to provide copies of the documentation and for the Fund's experts to review them. The appeal was rejected.

6.7 Hearing in respect of the claim by the Puerto Miranda Union

In January 2009 the hearing in connection with the revised claim took place. At the hearing, oral evidence was provided by a number of witnesses who were called by the plaintiffs to verify documents submitted as evidence with the amended claim and, in particular, receipts provided to support quantities of fish caught and prices of fish sold. During the hearing, the witnesses accepted that the receipts, which were dated February 1997, were not genuine and had in fact been created after the spill. The majority of witnesses nominated by the plaintiffs in their pleadings to support documents submitted in evidence, did not appear at the hearing. This prevented the master, shipowner and 1971 Fund from either challenging or obtaining confirmation of that evidence.

Court decisions on liability

6.8 First Instance judgement in respect of claim by the Puerto Miranda Union

In February 2009, the Maritime Court of First Instance issued its judgement in which it accepted the claim and ordered the master, shipowner and 1971 Fund, although not a defendant[<15>], to pay the damages suffered by the claimant, to be quantified by court experts. The master, the shipowner and the 1971 Fund appealed against the judgement to the Maritime Court of Appeal.

6.9 Judgement by the Maritime Court of Appeal in respect of the claim by the Puerto Miranda Union

In September 2009, the Maritime Court of Appeal of Caracas dismissed the appeal by the master, shipowner and 1971 Fund and ordered the defendants to pay compensation to the fishermen affected by the oil spill, to be quantified by three court experts to be appointed. The method to be followed by the experts was set out in detail in the judgement. The method was based on data obtained from the receipts presented by the claimants to support their losses. The judgement also ordered the defendants to pay interest and costs. The master, the shipowner and the 1971 Fund appealed against the judgement to the Supreme Court[<6>].

6.10 Judgement by the Supreme Court

In October 2010, the Supreme Court rendered its judgement, rejecting the 1971 Fund's appeal and confirming the judgement of the Maritime Court of Appeal. Of the five judges comprising the Supreme Court, four voted to reject the appeal and one abstained. The Supreme Court judgement confirmed the decision that the losses should be determined by three court experts to be appointed.

6.11 Appeal to the Constitutional Section of the Supreme Court

In February 2011, the 1971 Fund submitted an appeal to the Constitutional Section of the Supreme Court. In its appeal the 1971 Fund requested that the decisions of the Supreme Court and the Maritime Court of Appeal be overturned on the grounds that they contravened the applicable Venezuelan Law, principles and constitutional doctrine with regards to, *inter alia*, the time bar of the action against the 1971 Fund, the time bar due to the claim lapsing for lack of prosecution and the evaluation of the evidence.

6.12 Judgement of the Constitutional Section of the Supreme Court

6.12.1 In June 2011, the Constitutional Section of the Supreme Court dismissed the 1971 Fund's appeal against the judgement of the Supreme Court on liability.

<5> The Venezuelan Court, in its interpretation of the Conventions, concludes that the 1971 Fund, having been notified, is obliged automatically to pay compensation.

<6> For an analysis of the considerations of the decision of the Maritime Court of Appeal at the 1971 Fund Administrative Council's October 2010 session, reference is made to the publication, Incidents Involving the IOPC Funds 2010, pages 66-67.

6.12.2 The issues dealt with in the judgement of the Constitutional Section of the Supreme Court can be subdivided as follows:

- Time bar
- The requirement for the Courts to use logic and judgement (*sana critica*)
- Other issues

6.13 Time bar

6.13.1 The Constitutional Section of the Supreme Court upheld the interpretation by the Supreme Court of the time bar provisions of the 1971 Fund Convention. The Constitutional Section of the Supreme Court argued as follows:

> *"...analysing the content of Article 6.1 of the 1971 Fund Convention as well as the reasoning of the Supreme Court, this Constitutional Court notes that the Article referred to allows three different possibilities to be presented for the time bar of the claim and, at least as far as the first of these is concerned, its content is not so clear as to proceed with its automatic application - as the appellant suggests in its appeal - since there is an inconsistency as to against whom the time bar operates.*
>
> *In effect, the Article referred to indicates in its first part that the right to obtain indemnification or compensation will expire '...unless an action is brought thereunder or a notification has been made pursuant to such Articles within three years from the date when the damage occurred ...', but does not state against whom this is referring, if it is the owner of the ship, its guarantor or the Fund, so that to consider that it refers to the latter is not correct, since, had it been the intention of the States Party at the time of drafting the Article referred to, this would have been expressly established.*
>
> *In view of this lack of precision, and since there is no other provision in the 1971 Fund Convention that defines the time bar point, it was reasonable to proceed - as the Supreme Court rightly considered - to interpret the Article concerned considering, in the first instance, the content of Articles 2, 4 and 7 of the Convention, due to the mention that these make to that provision, as well as the contents of Articles III and VII (1) of the CLC, since the payment of compensation anticipated in the Fund Convention originates from the situation that the victims of an oil spill at sea have not obtained full compensation from those obliged to pay under the CLC, in this case the shipowner, its insurer or any person that provided a financial guarantee.*
>
> *This being the case, and seeing that the right of compensation provided in Article 4 of the Fund Convention relates to the right of the victim to obtain from the Fund full compensation when this has not been provided by those who caused the damage (the shipowner or the insurer), and taking into consideration that Article 6.1 eiusdem indicates that the time bar on the right to compensation occurs if the legal action in the application of those Articles has not been taken within three (3) years of the damage occurring; it is logical to conclude - as the Supreme Court and lower courts rightly indicated - that the time bar referred to in the Article concerned operates only if the victim had not taken any action against the shipowner or his insurer within three (3) years of the damage occurring in which case the Fund would not be responsible for the complementary compensation required by the lack of financial capacity or reduced compensation obtained from the party that directly caused the damage.*
>
> *Consequently, if the victim takes its action within the three (3) years counting from the occurrence of the incident (oil spill) against the shipowner or his insurer, the Fund will not be able to use the time bar as a defence against the action taken for full payment of compensation for the damage suffered.*

In view of the reasoning set out, this Constitutional Court concludes that the Supreme Court's interpretation of Article 6.1 of the 1971 Fund Convention, was correct in law. For that reason, the allegation of supposed violation of the rights to the defence, to due process and the principle of safe law used by the appellant, lacks foundation."

6.13.2 In its appeal to the Constitutional Section of the Supreme Court, the 1971 Fund had also argued that, in addition to being time-barred under the provisions of the 1971 Fund Convention, the claim by the Puerto Miranda Union was in any event time-barred under Venezuelan law as a result of lack of action by the claimant for a period of twelve months (*perención de instancia*).

6.13.3 The Constitutional Section of the Supreme Court stated that the analysis of this argument was unnecessary since the use of time bar was inadmissible in the type of legal process concerned on the grounds that the action concerned environmental matters. In this connection, the Constitutional Section of the Supreme Court stated:

"… taking into consideration that spillage of oil in the sea is an undoubted factor in upsetting the ecological balance which totally changes the biodiversity of the various species which inhabit that environment, in the majority of cases causing irreparable damage to the ecosystem concerned, this Constitutional Section considers that legal proceedings instituted for the purpose of obtaining compensation or indemnification for the damage suffered on the occasion of such incidents, in essence involve judgements which concern aspects relating to the environment, which touches on a human right recognized in the Constitution.

In this respect, Article 95 (ex Article 19, paragraph 16 of the Act of 2004) of the Organic Law of the Supreme Court of Justice states, as one of the grounds for inadmissibility of the time bar, proceedings that involve environmental matters. In this respect, the provision in question states:

> *'Article 95. <u>Proceedings shall not be declared time-barred in cases involving environmental matters</u>; or in the cases of claims which are intended to punish offences against human rights, public assets or trafficking in narcotic drugs and psychotropic substances.'*

This being the case, and taking into consideration that the subject of the claim in these proceedings derives from an incident in which environmental matters are involved (spillage of oil in the sea), this Constitutional Section considers it unnecessary to analyse the claim for time bar argued by the requesting party, since in this type of proceedings, this form of time bar of the proceedings, as an anomalous mechanism for terminating the proceedings, is inadmissible."

6.14 <u>The requirement for the Courts to use 'logic and judgement' (*sana critica*)</u>

6.14.1 The 1971 Fund also appealed to the Constitutional Section of the Supreme Court on the grounds that its right to the protection of the courts had been violated since the Court had ignored the requirement under Venezuelan maritime procedural law for the Court to exercise logic and judgement (*sana critica*) when evaluating the evidence, since documents had been accepted as valid when clearly they were not, while other documents had been rejected on technicalities when clearly they were valid.

6.14.2 The Constitutional Section of the Supreme Court dismissed this argument on the grounds that the system of evaluating the evidence using logic and judgement (*sana critica*) was not the only system that should be used. The Court stated that the Judge, at the time of examining a particular item of evidence, should abide by any special regulations concerning the evaluation of the particular form of evidence or, in the absence of a special regulation, follow the requirements set out in the Civil Procedure Code. Only in the absence of an express rule for its evaluation is the system of logic and judgement (*sana critica*) applicable.

6.14.3 The Court went on to say that the Supreme Court acted correctly when rejecting the appeal in this connection since the public documents, the private administrative documents and the documents emanating from third parties accepted during the process did not have to be evaluated by the rules of the logic and judgement (*sana critica*) alluded to in maritime procedural law, but by the specific rules established in the Civil Procedure Code which were applicable in preference to maritime procedural law.

6.15 Other issues

6.15.1 The 1971 Fund had also appealed on the grounds that the lower instance courts had accepted information contained in certain documents presented by the claimants as evidence without question, had failed to take into account the oral evidence given by witnesses who had appeared at the hearing of the Maritime Court of First Instance in February 2009 and had evaluated the losses in an amount exceeding the amount claimed.

6.15.2 The Constitutional Section of the Supreme Court dismissed these arguments on the grounds that it considered that there had not been any 'grotesque infractions' of interpretation of the Constitution. It stated further that it considered that the requested revision of the judgement of the Supreme Court would not contribute to the uniformity of the interpretation of the rules and principles of the Constitution.

Court decisions on quantum

6.16 Appointment of court experts

At a hearing in November 2010, the Maritime Court of First Instance appointed three experts to carry out the quantification of compensation to be paid to the claimant using the method established by the Maritime Court of Appeal. At the hearing, the master and shipowner nominated one expert and the claimant a second expert. The Court nominated the third expert. Since it was not a defendant, the 1971 Fund could not nominate an expert. The nomination by the master and shipowner was rejected by the Maritime Court of First Instance. The master and shipowner nominated an alternative expert; this nomination was also rejected. The master and shipowner appealed against this decision. The appeal was rejected. The Court then nominated the expert who should have been nominated by the master and shipowner.

6.17 Report by the court experts

6.17.1 In January 2011, the court experts presented their report in which they concluded that the compensation to be paid to the claimants was BsF 769 892 085, including interest. This is summarised in the table below.

Item	**Assessed amount (BsF)**
Cost of replacing 7 540 nets	8 713 150
Cost of replacing one outboard motor	17 000
Loss of income fin-fish boat fishermen	704 664 482
Loss of income shrimp boat fishermen	21 624 680
Loss of income shrimp foot fishermen	6 708 064
Interest on cost of replacing nets and motor	28 164 709
Total	**769 892 085 (£111 million)**

6.17.2 The experts also stated that the total amount available for compensation under the Conventions (60 million SDR) was equivalent to BsF 403 473 005. This was calculated on the basis of the exchange rate applicable on 8 October 2010. The experts further noted that, in its judgement, the Maritime Court of Appeal had fixed the limit of liability of the shipowner at BsF 2 844 983, this being

the amount of the Civil Liability limitation fund established in 1997. On that basis, the experts declared that the compensation payable by the 1971 Fund was BsF 400 628 022.

6.17.3 The 1971 Fund requested the Maritime Court of First Instance to reconsider the court experts' report on the grounds that the assessed compensation was excessive and exceeded the limits set in the judgement of the Maritime Court of Appeal. In January 2011, the Maritime Court of First Instance upheld the request and appointed two new experts to review the first experts' report.

6.17.4 In March 2011, the new experts appointed by the Maritime Court of First Instance issued their report. In that report they confirmed the findings of the three original experts.

6.18 Judgement of Maritime Court of First Instance on quantum

Also in March 2011, the Maritime Court of First Instance issued its judgement on the quantum of the loss. In that judgement the Maritime Court of First Instance dismissed the appeals by the master, shipowner and the 1971 Fund against the reports issued by the three experts originally appointed by the Court and fixed the quantum of the loss at BsF 769 892 085. The Court ordered the master, as agent of the shipowner, to pay BsF 2 844 983 and the 1971 Fund to pay BsF 400 628 022. The Court also ordered the master and the 1971 Fund to pay costs. The master and the 1971 Fund appealed the judgement on the quantum of compensation to be paid to the Maritime Court of Appeal.

6.19 Judgement of Maritime Court of Appeal on quantum

6.19.1 In July 2011, the Maritime Court of Appeal dismissed the appeals submitted by the master and 1971 Fund against the judgement of the Maritime Court of First Instance on the quantum of compensation. The 1971 Fund argued in its appeal, *inter alia*, that the quantum was excessive in relation to the normal income earned by fishermen in 1997 and violated Venezuelan procedural law (time bar arising from lack of prosecution (*perención de instancia*)). The Maritime Court of Appeal rejected the arguments, stating that the experts had followed the parameters specified in its decision of September 2009, and instead confirmed the March 2011 judgement of the Maritime Court of First Instance, which had ordered the 1971 Fund to pay BsF 400 628 022[<7>], plus costs.

6.19.2 The master, shipowner and the 1971 Fund applied to the Maritime Court of Appeal for leave to appeal to the Supreme Court. This was denied. The 1971 Fund appealed this decision.

6.20 Judgement by the Supreme Court on quantum

6.20.1 In November 2011 the Supreme Court rejected the 1971 Fund leave to appeal the July 2011 judgement of the Court of Appeal.

6.20.2 In March 2012 the 1971 Fund appealed to the Constitutional Section of the Supreme Court against the decision of the Supreme Court denying leave to appeal.

7 Considerations by the 1971 Fund Administrative Council

7.1 March 2011

7.1.1 At the March 2011 session of the 1971 Fund Administrative Council, the Director submitted a document reporting on developments in the *Plate Princess* incident and requested the 1971 Fund Administrative Council to give the Director such instructions as it deemed appropriate. Also in March 2011, the Venezuelan delegation submitted two documents requesting the Director to make prompt payments. A decision was, therefore, required from the Administrative Council as to whether the Director should be instructed to make prompt payment of compensation.

[<7>] The court experts calculated that the total amount available for compensation under the 1969 CLC and the 1971 Fund Convention (60 million SDR) was equivalent to BsF 403 473 005 and that the compensation payable by the 1971 Fund should be BsF 400 628 022 (BsF 403 473 005 minus BsF 2 844 983).

7.1.2 A lengthy debate took place in response to the three documents presented to the Administrative Council and a number of clarifications were sought from the Director. Amongst these clarifications was the Director's explanation that, although the 1971 Fund Executive Committee had agreed in 1997 to make payments in respect of this case, the intention of Internal Regulations 7.4 and 7.5, which governed the grant of the Director's authority to make payments, was to give the Director authority to settle claims up to a certain level if a spill occurred between meetings of the governing bodies. The Director stressed that the decision of the 1971 Fund Executive Committee was not related to specific claims.

7.1.3 During the debate it was emphasised that this was a very important case, with implications for the entire compensation regime. Pointing out that the Fund regime represented an act of solidarity amongst Member States to provide compensation payments to victims of oil spill incidents, one delegation recalled that, on the previous day, the Director had drawn attention to the necessity for uniform application of the Conventions by national Courts, and had stressed that it was necessary for the various Conventions to be properly implemented and applied in the Member States which were signatories.

7.1.4 Noting the importance of Article X of the 1969 CLC, that delegation pointed out that, sometimes, national courts did not agree with the deliberations of the governing bodies and that it was accepted that this would occur. However, that delegation continued, in accepting the principle that the decisions of national courts were binding on the Funds, the governing bodies also had to be satisfied that due process had been followed, and that the Court procedures had been fair. In this instance, there was considerable doubt that this had been the case.

7.1.5 Concern was expressed by a large majority of delegations who considered that due process of law had not been followed in arriving at the judgements reached by the Venezuelan courts, and furthermore that the 1971 Fund had not been given reasonable notice and a fair opportunity to present its case in accordance with Article 8 of the 1971 Fund Convention, and Article X of the 1969 CLC.

7.1.6 Other points of view were also expressed, including a statement that the Court procedures for requesting copies of documents provided to support the claim should have been known to the 1971 Fund's lawyers, and that the lawyers should have taken this into account; that the claim could not be time-barred if there had already been an agreement to pay; and that Article 7.6 of the 1971 Fund Convention stated that the Fund could not challenge a final judgement, even if it had not intervened in the proceedings.

7.1.7 The question was raised as to why there was no money available to pay compensation, since Article 44.1(a) of the 1971 Fund Convention required that, if the Convention ceased to be in force, the Fund should meet its obligations in respect of any incident occurring before the Convention ceased to be in force. The request by Venezuela that payment to the claimants should proceed received support from a few delegations.

7.2 Decision by the 1971 Fund Administrative Council in March 2011

The 1971 Fund Administrative Council decided to instruct the Director not to make any payments in respect of the *Plate Princess* incident, and to keep the Administrative Council advised of developments in the legal proceedings in the Venezuelan courts.

7.3 October 2011

At the 1971 Fund Administrative Council's October 2011 session, the Director submitted a document in which he commented upon the most significant issues addressed in the judgement by the Constitutional Section of the Supreme Court which had been given in June 2011, and on the enforceability of that judgement. In the document the Director informed the Administrative Council as set out below.

7.4 Time bar issue

7.4.1 In its judgement, the Constitutional Section of the Supreme Court had rejected the appeal by the 1971 Fund concerning the time bar on the same grounds as those employed by the Supreme Court and the Maritime Court of Appeal, namely that, to avoid the time bar, it was necessary only to take a legal action against the shipowner or his insurer within three years from the date of the damage.

7.4.2 The Director maintained his view that the action to which Article 6, paragraph 1 of the 1971 Fund Convention referred, could be taken either against the 1971 Fund or against the shipowner. If the action was against the shipowner then the claimant, to prevent the claim becoming time-barred must formally notify the 1971 Fund of that action within three years.

7.4.3 In the Director's opinion, the interpretation of Article 6 of the 1971 Fund Convention established by the Venezuelan courts could not be correct since, if all a claimant had to do to avoid the time bar was take an action against the shipowner within three years of the damage occurring, there would have been no need to include a clause requiring him to formally notify the 1971 Fund of that action within the same time period.

7.4.4 The Director accepted that Article 6, paragraph 1 of the 1971 Fund Convention did not stipulate against whom the action referred to must be taken within three years. However, since the 1969 CLC set out the relationship between the victim of pollution damage and the shipowner and his insurer, it was logical that any legal action required under that Convention would be actions against the shipowner and/or his insurer. Similarly, since the 1971 Fund Convention set out the relationship between the victim of pollution damage and the 1971 Fund, it was logical that any legal action required under that Convention would be against the 1971 Fund.

7.4.5 The Director agreed with the view of the Administrative Council that the correct interpretation of Article 6, paragraph 1 of the 1971 Fund Convention was that the action to be brought within three years was an action against the 1971 Fund and that the notification to be made was of the action against the shipowner or its insurer referred to in Article 7, paragraph 6.

7.5 The application by the Courts of 'logic and judgement' (*sana critica*)

In his document, the Director noted with concern that the Constitutional Section of the Supreme Court considered that logic and judgement (*sana critica*) should only be employed by the Court when determining the quantum of the loss in the absence of any special regulations concerning the evaluation of evidence or, in the absence of any special regulations, those set out in the Civil Procedure Code.

7.6 The quantum of the assessment

The court experts appointed by the Maritime Court of First Instance assessed the compensation to be paid to the fishermen represented by the Puerto Miranda Union as BsF 769 892 085 (£111.6 million). Of this amount, BsF 726.3 million (£105.3 million) concerned six months' loss of catch income from 849 boats. The Director noted that this was equivalent to an income for each boat of BsF 1 669 756 (£243 000) per year. Assessment of the claims in the *Nissos Amorgos* incident indicated that, in 1997, the average annual catch sale income per shrimp boat was US$17 400 (£11 000). The amount calculated by the Court experts in the *Plate Princess* was therefore 22 times higher than in the *Nissos Amorgos*. Since the fishing concerned was an artisanal activity (the boats are small (in the majority less than 10m in length) and are normally crewed by two persons), the Director considered that the assessed loss far exceeded any real loss that could have occurred, even if activity had been suspended.

7.7 Calculation of the amount to be paid by the 1971 Fund

The Maritime Court calculated the limit of liability of the shipowner and the total amount available for compensation under the Conventions by using SDR/Bolivar exchange rates applicable on dates differing by 14 years. Since the Bolivar had depreciated relative to the SDR by some 750% in the intervening period, the amounts ordered by the Court to be paid by the shipowner or his insurer and

the 1971 Fund differed substantially from the amounts that would have applied had the shipowners' limitation amount and the amount of compensation available under the Conventions been converted from SDR to the national currency using exchange rates applicable on the same date.

7.8 The provision of reasonable notice and a fair opportunity for the 1971 Fund to present its case

The Director recalled that at the 1971 Fund Administrative Council's March 2011 session, a number of delegations expressed doubt that the 1971 Fund had been given reasonable notice and a fair opportunity to present its case, as required under Article X of the 1969 CLC. The Director agreed with those delegations, not only because the documents provided as evidence by the claimants in support of their claim were not available to the 1971 Fund prior to the time limit for submission of defence pleadings but because it would have been impossible to adequately investigate and defend a claim submitted in detail some 11 years after the damage occurred even if sufficient time had been allowed by the Court for the documentary evidence to be analysed prior to submission of defence pleadings. The Director considered this to be particularly the case since, in the view of the expert who had examined the documentation, it was clear that many of those documents submitted in evidence had been falsified.

7.9 Director's considerations

7.9.1 Having reviewed the judgement of the Constitutional Section of the Supreme Court, the Director agreed with the 1971 Fund Administrative Council that the claim by the Puerto Miranda Union was time-barred, that the 1971 Fund was not given reasonable notice and a fair opportunity to present its case and that sub-paragraph (b) of Article X, paragraph 1 of the 1969 CLC applied, as a result of which, a final judgement would not be enforceable against the 1971 Fund.

7.9.2 The Director, therefore, concluded that there were no grounds for the Administrative Council to change their previous instructions to the Director not to make any payments in respect of the *Plate Princess* incident.

7.9.3 The Director also highlighted that the 1971 Fund had appealed to the Maritime Court of Appeal against its decision to refuse leave of appeal to the Supreme Court in connection with the quantification of loss, and was awaiting its decision.

7.9.4 In this regard, the Director noted that, in any event, no payment of compensation to the Puerto Miranda Union would be possible until the losses suffered by FETRAPESCA had been established by a final judgement from a competent court. Since the 1971 Fund had not yet been notified of the judgement of the Maritime Court of First Instance in respect of that claim and since it was likely that this judgement would be appealed by the 1971 Fund, the Director considered that it was not likely that any compensation payments would be made in respect of this incident for some time.

7.10 Statement by the Venezuelan delegation

Following the submission of the Director's document, the delegation of Venezuela made a statement that was annexed to the Record of Decisions of the October 2011 sessions of the 1971 Fund Administrative Council, where a number of points of detail were raised (see document IOPC/OCT11/11/1, Annex II).

7.11 Decision by the 1971 Fund Administrative Council in October 2011

7.11.1 The 1971 Fund Administrative Council decided to confirm its instructions given in March 2011 not to make any payments in respect of the *Plate Princess* incident and instructed the Director to continue to monitor the outcome of the legal actions in Venezuela.

7.11.2 The 1971 Fund Administrative Council also instructed the Director to prepare a report on the points raised in the intervention by the Venezuelan delegation and a report on the legal basis for the 1971 Fund to refuse payment under Article X of the 1969 CLC and to report back to the 1971 Fund Administrative Council at its next session.
