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COMPENSATION  
FUND 1971

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## INCIDENTS INVOLVING THE 1971 FUND

### NISSOS AMORGOS

#### Note by the Director

**Summary:**

Legal proceedings relating to claims for compensation have been brought in five Venezuelan courts, including the Supreme Court. A number of smaller claims have been settled and paid. Further claims are time-barred. Discussions are being held with groups of major claimants. An analysis is made of the admissibility of a claim presented by six shrimp processors and 2 000 fishermen, who maintain that a downturn in catches of shrimps in 1998 was caused by the oil spill. The Director has taken the view that negligence by the Republic of Venezuela was a substantial cause of the incident. A criminal court held, however, that the master of the *Nissos Amorgos* was liable for the damage arising as a result of the incident. The master appealed against the judgement. A recent decision by the Court of Appeal appears to have made the judgement null and void.

**Action to be taken:**

(a) consider the admissibility of the claim presented by six shrimp processors and 2000 fishermen, and (b) review the level of the 1971 Fund's payments.

### 1 The incident

- 1.1 The Greek tanker *Nissos Amorgos* (50 563 GRT), carrying approximately 75 000 tonnes of Venezuelan crude oil, ran aground whilst passing through the Maracaibo Channel in the Gulf of Venezuela on 28 February 1997. The Venezuelan authorities have maintained that the actual grounding occurred outside the Channel itself. An estimated 3600 tonnes of crude oil was spilled.
- 1.2 With respect to the incident, the clean-up operations and the establishment of a Claims Agency in Maracaibo by the shipowner's insurer, Assuranceöböreningen Gard (Gard Club), and the 1971 Fund, reference is made to documents 71FUND/EXC.55/9, 71FUND/EXC.57/8, 71FUND/EXC.58/8, 71FUND/EXC.59/10, 71FUND/EXC.60/10 and 71FUND/EXC.61/9.

- 1.3 This document contains information on the claims situation, on the developments in the legal proceedings before the courts and on the cause of the incident.

## **2 Claims presented to the Claims Agency**

### **2.1 General situation**

- 2.1.1 As at 25 September 2000, 214 claims for compensation totalling Bs 26 982 million (£28million)<sup><1></sup> had been presented to the Claims Agency. These claims relate to the cost of clean-up operations, damage to property (nets, boats and outboard motors) and losses suffered by fishermen, fish transporters, fish processors and businesses within the tourism sector.

- 2.1.2 Claims have been approved for a total of Bs 3741 million (£3.9 million) plus US\$ 35 850 (£22 400). The Gard Club has paid 118 of these claims in full and made interim payments in respect of two claims relating to clean-up operations. The 1971 Fund has made two interim payments of Bs 15.3 million (£15 000) and Bs 1.39 million (£1 340) in respect of claims submitted by the Instituto para el Control y la Conservación de la Cuenca del Lago de Maracaibo (ICLAM), part of the Venezuelan Ministry of Environment and Renewable Resources (cf document 71FUND/EXC.62/9), and by the Instituto Autonomo Corpozulia, a state organisation operating a beach resort affected by the oil spill.

- 2.1.3 Claims arising out of the *Nissos Amorgos* incident became time-barred on or shortly after 28 February 2000. Since the Claims Agency in Maracaibo is closed, the remaining claims which are not time-barred are being dealt with either by the 1971 Fund from London and the Gard Club from Norway or by occasional visits to Maracaibo by staff of the former Claims Agency.

### **2.2 Claim by six shrimp processors and 2 000 fishermen**

- 2.2.1 A meeting was held in April 1999 with an association of fishermen's unions (FETRAPESCA), which had filed a claim in court for some US\$130 million (£81 million) but had not presented any evidence in support of the claim. At that meeting FETRAPESCA expressed its intention to present its claim together with supporting documentation to the Claims Agency.

- 2.2.2 In October 1999, lawyers representing 2 000 fishermen belonging to FETRAPESCA and six shrimp processing companies presented a claim for US\$25 million (£15.6 million) to the Claims Agency. The claimants maintained that the oil spill in the Gulf of Venezuela in February 1997 had caused a reduction in shrimp catches in Lake Maracaibo in 1998.

- 2.2.3 In January, February, April and September 2000, representatives of the Gard Club and of the 1971 Fund visited the processing plants operated by the six companies to discuss the basis of the claim and to examine the accounts and records of each claimant. The claimants explained that the shrimp processing industry in Maracaibo operated in the following manner:

- The processing plant provides fishing boats, fishing gear and insulated trucks to intermediaries or provides funding for the purchase and maintenance of such resources.
- The intermediaries supply the fishing boats and gear to individual fishermen who then become the registered owners of the boats without having to make any payments. In exchange, the fishermen undertake to sell all the shrimp they catch to the intermediaries, who in turn undertake to deliver them to the processing plant.

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<1> In this document the conversion of amounts in Venezuelan Bolivars into Pounds Sterling is made on the basis of the rate of exchange at 15 September 2000 (£1 = Bs 969.14), except in respect of the amounts paid by the Gard Club and the 1971 Fund where conversion has been made at the rate of the date of payment.

- When delivering the shrimps the intermediaries are paid an agreed price by the processor. In practice, part of the money due to the intermediaries is set off against the debt in their accounts to the shrimp processing company.

- 2.2.4 At the meeting in Maracaibo in January 2000 between the Club and 1971 Fund experts and the experts engaged by the claimants the available technical information was reviewed. The claimants have since then provided additional information on the cause of the alleged losses, and the Fund and Club experts have completed their examination of the accounts and records of the six processing companies. Further meetings to discuss the claim have been held in Maracaibo and in London.
- 2.2.5 The claimants have stated that species other than shrimp had been affected by the *Nissos Amorgos* incident, but that they had been unable to obtain the documentary evidence to prove their loss. They stated that any compensation paid in respect of losses suffered by the 2 000 shrimp fishermen would be divided between the 16 000 fishermen working in Lake Maracaibo.

#### *Reduction in shrimp catches*

- 2.2.6 The basis of the claim is that oil spilled from the *Nissos Amorgos* in the Gulf of Venezuela on 28 February 1997 caused a reduction in shrimp catches in Lake Maracaibo in 1998. The table below summarises the data obtained by representatives of the Gard Club and the 1971 Fund on the quantities of shrimp supplied to each of the plants in the period 1995 – 1999.

<i>Company</i>	<i>1995</i>	<i>1996</i>	<i>1997</i>	<i>1998</i>	<i>1999</i>
	<i>Kg</i>	<i>Kg</i>	<i>Kg</i>	<i>Kg</i>	<i>Kg</i>
Procesadora del Mar	445 054	654 648	784 439	367 696	834 031
Industrias del Mar	No data	2 279 478	2 936 508	865 457	4 628 307
Alpromar/Inpromar	454 119	1 179 705	2 004 686	1 035 525	2 671 126
Inproca	1 237 708	1 699 064	1 933 505	711 268	2 085 157
Pescanueva	294 280	804 417	1 323 924	495 545	552 672
Fiavesa	161 201	228 574	375 085	133 633	678 908
<i>Totals</i>	<i>2 592 362</i>	<i>6 845 886</i>	<i>9 358 147</i>	<i>3 609 124</i>	<i>11 450 201</i>

- 2.2.7 On the basis of the data set out in paragraph 2.2.6, the Director has accepted that there was a statistically significant reduction in shrimp supplies to the plants, and hence catches, in 1998 relative to 1997 and 1999. The Gard Club has agreed with the Director in this regard. The extent of this reduction varies within a range of 48% to 71% amongst the different companies with an average of 61%. However, the data above, as well as long term national catch statistics, show that there is considerable variation from year to year in shrimp supplies to individual companies.

#### *Link of causation*

- 2.2.8 The shrimp processing companies and fishermen have appointed six biologists, five Venezuelan and one American, to consider the possible causes of the reduction in catches/supplies they have experienced. These biologists are reported to have an intimate knowledge of shrimp biology and of the breeding grounds from which shrimps are migrating to the fishery in Lake Maracaibo. They are said to have studied over many years the migratory behaviour of shrimp both in the Gulf of Venezuela and in Lake Maracaibo. Several of these biologists have published scientific papers relating to these studies and on the effects of the spill from the *Nissos Amorgos* on the shrimp fishery.
- 2.2.9 The biologists engaged by the claimants have examined the circumstances surrounding the incident and in particular the fact that the oil spilled from the *Nissos Amorgos* had been carried by the prevailing wind and current to the coast and northwards, probably affecting the Bay of Calabozo. They have pointed out that this bay is a main breeding ground for white shrimp (*Litopenaeus schmitti*) in the Gulf of Venezuela and that the incident occurred shortly before the spring breeding period.

- 2.2.10 The claimants' biologists have considered other possible causes of the downturn, including changes in the water temperature and salinity, the effects of oil spills into Lake Maracaibo from pipelines in Colombia, operational spills in the lake itself and over-fishing. In their examination the claimants' biologists have relied on their own research data as well as statistical and other information obtained by the Venezuelan environmental and fishery authorities.
- 2.2.11 The claimants' biologists have concluded that there were no other factors which could have affected the shrimp catches and that the only reasonable explanation for the downturn in catches of white shrimp, which had been increasing steadily in previous years, was the oil spilled from the *Nissos Amorgos*. They have maintained that the oil had affected the spawning and/or the larval development of the shrimp, and they have also suggested that the oil had killed a significant proportion of the organisms upon which the shrimp larvae feed.
- 2.2.12 The Gard Club and the 1971 Fund have engaged three eminent marine biologists with worldwide experience of the effects of oil on shrimp fisheries. They have examined the information provided by the claimants and consulted data available from various other sources, such as the Food and Agriculture Organisation (FAO). The Club and Fund biologists have confirmed that white shrimp spawn in the Bay of Calabozo in the Gulf of Venezuela and that the hatched larvae undergo various stages of growth before migrating into Lake Maracaibo where they become part of the commercial stock. The biologists have accepted that white shrimp (*Litopenaens schmitti*) form the bulk of shrimp catches in Lake Maracaibo.
- 2.2.13 The Club and the Fund biologists have also confirmed that the oil spill coincided with the spawning of white shrimp and that oil affected beaches and was reported in offshore sediments in the vicinity of the known shrimp spawning areas in the Bay of Calabozo. They have further pointed out that laboratory experiments have demonstrated that low concentrations of oil can affect reproduction and feeding, manifested in reduced hatching and reduced larval survival of fish and shellfish<sup><2></sup>. They have mentioned that toxic effects of petroleum fractions on post-larval penaeid shrimps have also been demonstrated in laboratory experiments<sup><3></sup>. The biologists have therefore concluded that the oil spill provides one possible explanation for the decline in shrimp catches in Lake Maracaibo in 1998. They have pointed out that the claimants' biologists have not provided any evidence showing that the oil spilled from the *Nissos Amorgos* had this effect and that the oil caused the downturn in catches. They have also stated that there appear to be other equally plausible factors unrelated to the oil spill that could have contributed to the observed decline in shrimp catches, such as sea water temperature, El-Niño events, salinity, fishing effort and pollution from other sources.
- 2.2.14 The Club and the Fund biologists have drawn attention to the fact that natural systems such as fisheries are highly complex, influenced by both natural processes and human activities, and that assigning one specific cause to the decline can be an over-simplification. They have referred to studies on shrimp fisheries following the oil spill arising from the 1991 Gulf War, which demonstrated that fishing mortality and other factors represented a far greater threat to Kuwait's shrimp resource than factors resulting directly from the Gulf War<sup><4></sup>. Furthermore, the experts have pointed out that it is well known that shrimp catches worldwide vary considerably from year to year. They have noted in particular that the Gulf of Venezuela/Lake Maracaibo shrimp stocks have fluctuated greatly since records began in 1956, and they have considered that it is not credible to suppose that oil spills were the sole cause for the changing pattern of shrimp yields during 40 years.
- 2.2.15 The Club and the Fund biologists have attempted to establish whether shrimp catches in neighbouring areas and countries beyond the reach of all possible effects of the *Nissos Amorgos*

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<2> GESAMP (IMO/FAO/UNESCO/WMO/WHO/IAEA/UN/UNEP Joint Group of Experts on Scientific Aspects of Marine Pollution (1993)

<3> Anderson, J M et al., 1974. Characteristics of dispersions and water-soluble extracts of crude and refined oils and their toxicity to estuarine crustaceans and fish. *Marine Biology*. 27, 75-88

<4> Mohammed et al., 1998. Kuwait's post Gulf War shrimp fishery and stock status from 1991/2 through 1995/6. *Review in Fishery Science* 6(3), 253 – 280.

incident showed any consistent trends. However, the analysis of available catch records published by FAO is inconclusive and provides no clear pattern either supporting or refuting the claimants' allegation.

*Director's considerations*

- 2.2.16 For any claim to be admissible under the 1969 Civil Liability Convention and the 1971 Fund Convention it must be shown that the alleged loss or damage was caused by the contamination resulting from the oil spill. The Director notes that there is no contemporaneous evidence, such as comparable data on petroleum hydrocarbon concentrations in biota, sediments or water in the oiled area and adjacent un-oiled areas before and after the *Nissos Amorgos* incident. However, the Director takes the view that in the case of fishery claims relating to losses arising some time after a pollution incident, it would be unreasonable to expect such data to be available. The Director takes into account that laboratory experiments have demonstrated that low concentrations of oil can affect the reproduction and feeding of shellfish and the survival of shrimps. Oil was reported in the vicinity of the shrimp spawning areas in the Bay of Calabozo. Although the biologists engaged by the 1971 Fund and the Gard Club have stated that there appeared to be equally plausible factors other than the oil spill which could have contributed to the downturn in catches, they have not been able to identify any such factor which did actually contribute to this downturn. In spite of the lack of conclusive evidence establishing or refuting a direct link between the oil spill and the downturn in shrimp catches, and after having examined the opinions of the various biologists, the Director considers that the oil from the *Nissos Amorgos* was most probably a significant contributory factor to this downturn.
- 2.2.17 The Director therefore proposes that the claim should be considered admissible in principle, but that in quantifying any losses attributable to the *Nissos Amorgos* incident, account should be taken of other factors as reflected in normal variations from year to year in shrimp catches.

2.3 Claims relating to clean-up operations

*Claim by Lagoven and Maraven*

- 2.3.1 The claims relating to clean-up operations undertaken by Lagoven and Maraven (wholly owned subsidiaries of the national oil company, Petroleos de Venezuela – PDVSA) have been resolved. The total admissible amount of both claims was agreed at Bs 3 462 million (£3.7 million) plus US\$35 850 (£22 400). The Gard Club has made interim payments to PDVSA totalling Bs1 046 million (£1.2 million).

*Disposal of the oily sand*

- 2.3.2 During the clean-up operations an estimated 48 000 m<sup>3</sup> of contaminated sand was collected. The oily sand has been provisionally stored immediately inland of the affected beach. Following an investigation into various options for disposing of the oily sand, the Gard Club and the 1971 Fund agreed that land farming in the dunes adjacent to the beach was the most appropriate method. The estimated cost is Bs1 500 million (£1.4 million). The Gard Club and the 1971 Fund have informed PDVSA that they considered this estimate to be reasonable.
- 2.3.3 The disposal of the oily sand was delayed by local flooding. It is not known whether it has yet been carried out.

**3 Court proceedings**

- 3.1 The incident has given rise to legal proceedings in a Criminal Court in Cabimas, Civil Courts in Caracas and Maracaibo, the Criminal Court of Appeal in Maracaibo and the Supreme Court.

### 3.2 Criminal Court of Cabimas

#### *Criminal action against the master – cause of the incident*<sup><5></sup>

- 3.2.1 The Criminal Court in Cabimas carried out an investigation into the cause of the incident to determine whether anyone has incurred criminal liability as a result of the incident.
- 3.2.2 As a result of this investigation criminal action was brought against the master.
- 3.2.3 In his pleadings to the Criminal Court of Cabimas the master has maintained that the damage was substantially caused by negligence imputable to the Republic of Venezuela. In the pleadings it is stated that the shipowner and the Gard Club agree with the master's defence.
- 3.2.4 The master has maintained that the incident and resulting pollution were due to the fact that the Maracaibo Channel was in a dangerous condition due to poor maintenance, that this was known by the Venezuelan authorities, but that its full extent was concealed. He has also maintained that the depth of the channel was less than that stated in official information given to the ship and that within that depth there were one or more hard (probably metallic) objects which could cause damage to shipping. The master has argued that the escape of oil from the *Nissos Amorgos* was the result of holes punctured in the vessel's bottom plating sustained by contact with a sharp metal object. He has referred to other vessels which encountered difficulties in the same part of the channel and, in particular, to the vessel *Olympic Sponsor*, which grounded ten days later at almost the same place as the *Nissos Amorgos*, and which suffered similar bottom damage, with a metal object later retrieved from its bottom plating.
- 3.2.5 The shipowner and the Gard Club have notified the 1971 Fund that in their view they are entitled to seek exoneration from liability for pollution damage arising from the incident, under Article III.2(c) of the 1969 Civil Liability Convention, on the ground that the damage was caused wholly by the negligence or other wrongful act of a Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function. They have informed the Fund that they intend to resist any claims for pollution damage by the Republic of Venezuela, on the basis of Article III.3 of the 1969 Civil Liability Convention, on the ground that the damage was substantially caused by negligence imputable to the claimant, namely negligence on the part of Instituto Nacional de Canalizaciones (INC).
- 3.2.6 After having reviewed all the information available to the 1971 Fund, the Director considers that the evidence indicates that negligence attributable to the Republic of Venezuela, though not the sole cause, was nevertheless a substantial cause of the incident and the ensuing pollution damage, with the result that the shipowner/Gard Club would be partly exonerated from liability to the Venezuelan Government and to other government bodies. In that event, in the Director's view the 1971 Fund would also be exonerated to the same extent in respect of claims by the Venezuelan Government, except to the extent that the claim related to the cost of preventive measures.
- 3.2.7 If contributory negligence on the part of INC were to be established, the issue of whether the 1971 Fund should take recourse action against the Republic of Venezuela for the purpose of recovering any amount paid by the Fund in compensation would need to be considered.
- 3.2.8 The 1971 Fund submitted pleadings to the Criminal Court of Cabimas maintaining that the damage had been principally caused by negligence imputable to the Republic of Venezuela.

#### *Claims for compensation*

- 3.2.9 The Republic of Venezuela presented a claim for pollution damage for US\$60 million (£37 million) against the master, the shipowner and the Gard Club in the Criminal Court. The

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<5> The position of the shipowner and the Gard Club as well as the position of the 1971 Fund on the cause of the incident have been considered by the Executive Committee at several previous sessions and by the Administrative Council at its session in April 2000 (cf document 71FUND/EXC.63/6, section 5).

claim is based on a letter to the Attorney General from the Venezuelan Ministry of Environment and Renewable Natural Resources, which gave details of the amount of compensation allegedly payable to the Republic of Venezuela in respect of oil pollution. Compensation is claimed for damage to the communities of clams living in the inter tidal zone affected by the spill, for the cost of restoring the quality of the water in the vicinity of the affected coasts, for the cost of replacing sand removed from the beach during the clean-up operations and for damage to the beach as a tourist resort.

- 3.2.10 In March 1999 the 1971 Fund, the shipowner and the Gard Club presented to the Court a report on the various items of the claim by the Republic of Venezuela prepared by experts appointed by them. The experts had found that this claim had no merit.
- 3.2.11 At the request of the shipowner, the Gard Club and the 1971 Fund, the Criminal Court appointed a panel of three experts to advise the Court on the technical merits of the claim presented by the Republic of Venezuela. In its report presented on 15 July 1999, the panel unanimously agreed with the findings of the 1971 Fund's experts that the claim had no merit.
- 3.2.12 In March 1998, the Republic of Venezuela presented a claim on behalf of the Instituto para el Control y la Conservación de la Cuenca del Lago de Maracaibo (ICLAM) relating to the cost of monitoring the clean-up operations, which included the sampling and analysis of water, sediment and marine life. The Executive Committee, at its 60th session, considered that the work undertaken by ICLAM formed an important part of prudent and reasonable preventive measures and that therefore the claim for costs as assessed by the experts engaged by the Gard Club and the 1971 Fund at Bs 61.1 million (£65 000) was admissible. On 16 September 1999, the 1971 Fund paid ICLAM Bs 15 268 867 (£16 000), ie 25% of the assessed amount.
- 3.2.13 The proceedings in respect of the claims by the Republic of Venezuela have been suspended pending a decision by the Supreme Court on a request of 'avocamiento' (cf paragraphs 3.6.2 to 3.6.9).
- 3.2.14 FETRAPESCA presented a claim for compensation for pollution damage for an estimated amount of US\$130 million (£81 million) plus legal costs. In addition, eight fish and shellfish processors presented a claim for compensation for an estimated amount of US\$100 million (£62 million) plus legal costs. However, in September 1998 the Criminal Court declared these claims inadmissible because they had not been filed within the period laid down in the Venezuelan Criminal Procedural Code.
- 3.2.15 On 28 February 2000 the shipowner and the Gard Club took legal action against the 1971 Fund before the Criminal Court in respect of two claims. The first claim for an amount of Bs 1 219 million (£1.3 million) is in subrogation of the rights of the claimants to whom the shipowner and the Club have paid compensation. The second claim is for an amount of Bs 3 473 million (£3.5 million) to recover the amounts paid as a result of the incident if the shipowner is wholly exonerated from liability under Article III.2(c) of the 1969 Civil Liability Convention or, alternatively, for an amount of Bs 862 million (£890 000) for indemnification under Article 5.1 of the 1971 Fund Convention. These two claims were filed within the third year limitation period but were declared inadmissible by the Criminal Court because they had not been filed within the period laid down in the Venezuelan Criminal Procedural Code. The shipowner and the Gard Club have appealed against this decision.
- 3.2.16 The proceedings in respect of these claims are suspended as a result of the avocamiento proceedings referred to in paragraphs 3.6.2 to 3.6.9.

#### *Judgement*

- 3.2.17 In a judgement rendered on 3 May 2000, the Criminal Court of Cabimas dismissed the arguments made by the master and held him liable for the damage arising as a result of the incident. The Court considered that no metallic object was found in the channel by the court surveyor, that the Maracaibo Channel was in perfect condition, that the depth in its central area was 12 metres, that

the maximum depth mentioned in the bulletin, namely 12.8 feet, was in accordance with the depth in the channel on the date of the incident and that the channel was perfectly marked.

- 3.2.18 The Court held that the master was liable for the crime of pollution under the Venezuelan Criminal Law of the Environment since, in the view of the Court, he left the loading port knowing that the Maracaibo Channel was difficult to navigate and that the weather was bad. The Court also found that the master was negligent in that following the grounding he ordered the transfer of oil from ruptured tanks numbers one and two to number four, and in the Court's view this put both the crew and the environment at risk and caused a further spill. For these reasons, the Court of Cabimas sentenced the master to one year and four months in prison.

### 3.3 Criminal Court of Appeal of Maracaibo

- 3.3.1 The master appealed against the judgement before the Criminal Court of Appeal in Maracaibo. In the appeal the master has argued that the judgement by the Criminal Court of Cabimas should be declared null and void since the Court had made a number of procedural errors and had failed to consider the extensive evidence he had presented. The shipowner and Gard Club have agreed with the arguments made in the master's appeal.

- 3.3.2 The Fund has presented pleadings to the Court of Appeal stating that the Instituto Nacional de Canalizaciones (INC) was negligent because it did not maintain the Maracaibo Channel properly, did not provide accurate depth bulletins and did not report either the movement of buoys from their chartered positions or the presence of metallic objects. In its appeal the Fund has argued that the evidence presented had not been sufficiently considered by the Court. The Fund has concluded that the incident was principally caused by the negligence of the Republic of Venezuela.

- 3.3.3 In a decision rendered on 28 September 2000 the Criminal Court of Appeal noted that the Supreme Court has in its decision in respect of the request for avocamiento stated that the Criminal Court of Cabimas should abstain from taking any action on the case and send the entire file to the Supreme Court (cf paragraph 3.6.5 below). For this reason the Criminal Court of Appeal decided not to consider the appeal and to order the Criminal Court of Cabimas to send the file to the Supreme Court. The Court of Appeal's decision appears to imply that the judgement of the Criminal Court of Cabimas is null and void.

### 3.4 Civil Court of Caracas

- 3.4.1 The Republic of Venezuela has presented a claim against the shipowner, the master of the *Nissos Amorgos* and the Gard Club for an estimated amount of US\$20 million (£12 million), later increased to US\$60 million (£37 million), before the Civil Court in Caracas. It appears that this claim relates to the same four items of damage as the claim in the Criminal Court.

- 3.4.2 FETRAPESCA has presented a claim against the shipowner, the Gard Club and the master of the *Nissos Amorgos* for an estimated amount of US\$130 million (£81 million).

- 3.4.3 At the request of FETRAPESCA the Civil Court appointed a committee composed of lawyers and technical experts to assess the value of the damage to the environment caused by the spill. The report of the committee, which was filed before the Court in October 1997, does not attempt to quantify the effects of the spill. However, the committee suggests that about 20 000 fishermen had seen their income reduced by approximately 80% as a consequence of the incident.

- 3.4.4 A branch of FETRAPESCA has also presented a claim against the shipowner, the Gard Club and the master of the *Nissos Amorgos* for an estimated amount of US\$10 million (£6 million).

- 3.4.5 Eleven fish and shellfish processors have presented a claim against the shipowner, the Gard Club and the master of the *Nissos Amorgos* for an estimated amount of US\$100 million (£62 million) plus legal costs. This claim corresponds to the one filed in the Criminal Court, except that there is a difference in respect of the number of claimants.



3.4.6 The proceedings in the Civil Court of Caracas have been suspended pending a decision by the Supreme Court of Venezuela on a request of 'avocamiento' (cf paragraphs 3.6.2 to 3.6.9).

### 3.5 Civil Court of Maracaibo

3.5.1 A legal action was brought before a Civil Court in Maracaibo against the shipowner, the Gard Club and the 1971 Fund by six shrimp processing companies and by the fishermen supplying shrimps to these companies claiming compensation for US\$25 million (£15.6 million) (cf section 2.2).

3.5.2 PDVSA presented a claim to the Civil Court in Maracaibo to recover the costs of the disposal of the oily sand (cf section 2.3).

3.5.3 ICLAM presented a claim to the Civil Court in Maracaibo for BS56 million (£58 000) to recover the costs incurred during clean-up operations (cf paragraph 2.1.2).

3.5.4 The owner of 60 fishing boats brought an action before the Civil Court in Maracaibo claiming compensation in the amount of BS60 million (£62 000).

3.5.5 The owner of a coconut plantation on which he also farms goats brought an action before the Civil Court in Maracaibo claiming compensation for BS6.6 million (£7 000). This claim has been settled at Bs3.6 million (£3 700), and the legal action has been withdrawn.

### 3.6 Supreme Court

#### *Civil action*

3.6.1 In December 1999 two fish processors presented a claim for US\$20 million (£13 million) in the Supreme Court against the 1971 Fund and, subsidiarily, against the Instituto Nacional de Canalizaciones (INC). The claim relates *inter alia* to loss of income from the national and export markets. No evidence has been submitted in support of the claim. The Supreme Court would in this case act as court of first and last instance.

#### *Request of 'avocamiento'*

3.6.2 In May 1999 two independent requests of 'avocamiento' were filed by two fish processors and by FETRAPESCA before the Supreme Court. Under Venezuelan law, in exceptional circumstances, the Supreme Court may assume jurisdiction, 'avocamiento', and decide on the merits of a case. Such exceptional circumstances are defined as those which directly affect the 'public interest and social order' or where it is necessary to re-establish order in the judicial process because of the great importance of the case. If the request of 'avocamiento' is granted, the Supreme Court would act as a court of first instance and its judgement would be final.

3.6.3 The shipowner and the Gard Club opposed these two requests. The 1971 Fund also opposed the requests on the grounds that the circumstances upon which the requests were based were not exceptional and that the reason for the requests was not the reinstatement of the environment but the private interest of the plaintiffs. The 1971 Fund's opposition was also based on the grounds that public interest and social order had not been threatened by the *Nissos Amorgos* incident nor had it become necessary to re-establish order in the legal proceedings. In addition, the 1971 Fund maintained that justice had not been denied to the plaintiffs to whom the normal legal channels were open. The 1971 Fund also argued that to transfer proceedings to the Supreme Court would deprive the parties of the right of appeal.

3.6.4 In a decision dated 29 July 1999 the Supreme Court rejected one of the requests of 'avocamiento', namely that of the two fish processors.

- 3.6.5 In a decision, dated 17 February 2000, on the other request of 'avocamiento' filed by FETRAPESCA, the Supreme Court ordered the Criminal Court of Cabimas and the Civil Court of Caracas to send to the Supreme Court the entire court files.
- 3.6.6 Since the 'avocamiento' proceedings have two phases, namely the delivery of the court files to the Supreme Court and thereafter the decision to grant or to deny the 'avocamiento', the shipowner, the Gard Club and the 1971 Fund requested the Supreme Court to clarify whether the Supreme Court had in fact granted the 'avocamiento' in respect of FETRAPESCA's request.
- 3.6.7 In a decision dated 29 February 2000 the Supreme Court stated that in its previous decision the Court had considered FEDRAPESCA's request admissible only from a procedural point of view and that the decision on the 'avocamiento' itself would be taken once the court files had been considered. The Court has not rendered a decision in this regard.
- 3.6.8 The shipowner and the Gard Club have made a request to the president of the Supreme Court that the section of the Supreme Court dealing with the 'avocamiento' proceedings, which issued the decisions of 17 and 29 February 2000, should be disqualified from hearing the case since the judges in that section had already taken the decision to grant the 'avocamiento'. The 1971 Fund has not joined the shipowner and Club in their request.
- 3.6.9 The President of the Supreme Court has not rendered any decision on the request by the shipowner and the Gard Club referred to in paragraph 3.6.8.

#### **4 Level of payments**

- 4.1 In view of the uncertainty as to the total amount of the claims arising out of the incident, the Administrative Council decided, at its 1st session, to maintain the limit of the 1971 Fund's payments at 25% of the loss or damage actually suffered by each claimant (document 71FUND/AC.1/EXC.63/14, paragraph 3.5.3).
- 4.2 Due to the continuing uncertainty as to the total amount of the claims arising out of the incident, the Director is not able to recommend an increase in the level of the 1971 Fund's payments at this stage.

#### **5 Action to be taken by the Assembly**

The Assembly is invited:

- (a) to take note of the information contained in this document;
  - (b) to consider the admissibility of the claim presented by the six shrimp processors and 2 000 fishermen (section 2.2);
  - (c) to consider the position to be taken by the 1971 Fund in respect of the cause of the incident (section 3.2);
  - (d) to review the level of the 1971 Fund's payments of claims arising from this incident (section 4); and
  - (e) to give the Director such other instructions in respect of the handling of this incident and of claims arising therefrom as it may deem appropriate.
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