



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1971

ASSEMBLY
7th extraordinary session
Agenda item 3

71FUND/A/ES.7/4
8 March 2001
Original: ENGLISH

INCIDENTS INVOLVING THE 1971 FUND

NISSOS AMORGOS

Note by the Director

Summary:

Legal proceedings relating to claims for compensation for very high amounts have been brought in five Venezuelan courts, including the Supreme Court. A number of smaller claims have been settled and paid. A claim was presented by six shrimp processors and 2 000 fishermen, who maintained that a downturn in catches of shrimps in 1998 was caused by the oil spill. The Administrative Council decided at its October 2000 session that this claim was admissible in principle. The claim was settled in December 2000 at US\$16 million (£10.8 million), and 25% of the settlement amount has been paid. As a result of this settlement a number of court actions have been withdrawn.

In view of the substantial reduction in the total amount of the claims arising out of this incident, the Director recommends the Assembly to increase the level of payments from 25% to 40% of the loss or damage suffered by each claimant.

Action to be taken: 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, Assurance-föreningen 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 and the developments in the legal proceedings before the courts.

2 Claims presented to the Claims Agency

- 2.1 As at 1 March 2001, 214 claims for compensation totalling Bs 26 982 million (£26 million)^{<1>} 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 and shrimp processors and businesses within the tourism sector.
- 2.2 Claims have been approved for a total of Bs3 751 million (£3.6 million) plus US\$16 million (£10.7 million). The Gard Club has paid Bs1 261 million (£1.8 million). The 1971 Fund has made two payments totalling Bs16.7 million (£16 340). In addition the Gard Club and the 1971 Fund have paid US\$4 million (£2.7 million) to fishermen and fish processors.
- 2.3 Claims arising out of the *Nissos Amorgos* incident became time-barred on or shortly after 28 February 2000.

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 proceedings

- 3.2.1 The Criminal Court of 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. As a result of this investigation criminal proceedings were brought against the master. As regards these proceedings, reference is made to document 71FUND/A/ES.6/3, paragraph 3.2.

3.3 Civil proceedings

- 3.3.1 As reported to the Administrative Council at its 3rd session, held on 29 and 30 January 2001, claims by the six shrimp processors and the 2000 fishermen were settled in December 2000 and as a result a number of claims for compensation were withdrawn from the court proceedings. The current situation in respect of the civil proceedings brought before various courts in Venezuela is as follows.

Republic of Venezuela

- 3.3.2 The Republic of Venezuela presented a claim for pollution damage for US\$60 million (£40 million) against the master, the shipowner and the Gard Club in the Criminal Court of Cabimas. The 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.
- 3.3.3 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.

<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 29 December 2000 (£1 = Bs 1045.29), 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.

- 3.3.4 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 in July 1999, the panel unanimously agreed with the findings of the 1971 Fund's experts that the claim had no merit.
- 3.3.5 The Republic of Venezuela has also presented a claim against the shipowner, the master of the *Nissos Amorgos* and the Gard Club before the Civil Court of Caracas for an estimated amount of US\$20 million (£13 million), later increased to US\$60 million (£40 million). It appears that this claim relates to the same four items of damage as the claim in the Criminal Court of Cabimas.

ICLAM

- 3.3.6 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) in the Criminal Court of Cabimas 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 Bs61.1 million (£65 000) was admissible. In September 1999, the 1971 Fund paid ICLAM Bs15 268 867 (£16 000), ie 25% of the assessed amount. ICLAM has also presented this claim before the Civil Court of Maracaibo.

Group of fish and shellfish processors

- 3.3.7 Eight fish and shellfish processors presented a claim for compensation for an estimated amount of US\$100 million (£67 million) plus legal costs in the Criminal Court of Cabimas. Eleven fish and shellfish processors also presented a similar claim for the same amount in the Civil Court of Caracas. This latter claim corresponds to the one filed in the Criminal Court, except that there is a difference in respect of the number of claimants.
- 3.3.8 As a result of the settlement referred to in paragraph 3.3.1 above, four of the eight fish and shellfish processors withdrew their actions from the Criminal Court in Cabimas on 30 November 2000. On the same date seven of the eleven fish processors withdrew their claims from the Civil Court in Caracas. On 6 March 2001 the four remaining processors withdrew these actions from both courts.
- 3.3.9 Two fish and shellfish 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. This action has not been withdrawn.

PDVSA

- 3.3.10 PDVSA presented a claim for Bs3 814 million (£3.6 million) in the Civil Court in Maracaibo to recover the costs incurred during the clean-up operations and the disposal of the oily sand. The part of the claim relating to the clean-up costs has been settled. It is expected that the part of the claim in respect of the cost of the disposal of the oily sand will be settled in the near future.

Shipowner and Gard Club

- 3.3.11 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 Bs1 219 million (£1.2 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 Bs3 473 million (£3.6 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 Bs862 million (£825 000) for indemnification under Article 5.1 of the 1971 Fund Convention.

4 Summary of pending claims

After the withdrawal of a number of court actions the following claims for compensation are pending in the courts:

- (a) Republic of Venezuela
 - (i) in the Criminal Court of Cabimas for US\$60 million (£40 million);
 - (ii) in the Civil Court of Caracas for the same amount;
- (b) two fish and shellfish processors in the Supreme Court for US\$20 million (£13 million);
- (c) PDVSA in the Civil Court of Maracaibo for Bs3 314 million (£3.6 million);
- (d) ICLAM
 - (i) in the Criminal Court of Cabimas for Bs57.7 million (£54 000);
 - (ii) in the Civil Court of Maracaibo for the same amount;
- (e) the shipowner and the Gard Club.

5 Level of payments

- 5.1 In view of the uncertainty as to the total amount of the claims arising out of the incident, the Administrative Council decided, at its 2nd 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.2/A.23/22, paragraph 17.9.17).
- 5.2 The Assembly will have to consider how to strike a balance between the importance of the 1971 Fund's paying compensation as promptly as possible to victims of oil pollution damage and the need to avoid an over-payment situation. In the Assembly's consideration of how to strike this balance the following elements may be of assistance.
- 5.3 Several pending actions were duplicated, since claims relating to what appears to be the same damage had been presented before two or three courts. As a result of the agreement reached with the six shrimp processors and the 2 000 fishermen a substantial number of claims for compensation have been withdrawn before the courts. There remain however some significant actions before the courts. The Republic of Venezuela has submitted claims for US\$60 million (£40 million) in two courts. Two fish and shellfish processors maintain a claim for US\$20 million (£13 million) in the Supreme Court. The claims covered by the actions brought by PDVSA and ICLAM have already been settled but have not yet been withdrawn from the courts.
- 5.4 The claims for compensation pending before the courts now total US\$140 million (£95 million). Other claims have been settled out of court at US\$21.5 million (£14.4 million). The 1971 Fund's total exposure stands therefore at some US\$160 million (£107 million). The total amount available for compensation under the 1969 Civil Liability Convention and the 1971 Fund Convention is 60 million SDR (US\$77.6 million or £52.9 million).^{<2>} The Director believes, therefore, that the level of the 1971 Fund's payments could be increased to 40% of the proven loss or damage suffered by the claimants, and proposes that the Assembly takes a decision to this effect.
- 5.5 The Director expects that further developments in the pending court actions will take place in the near future. In the light of the foregoing the Director believes that an increase of the 1971 Fund's payments from 40% to 70% would be appropriate when further claims have been settled or withdrawn so as to reduce the Fund's total exposure below US\$100 million (£67 million).

<2> The conversion of SDR into Pounds Sterling has been made at the rate of exchange at 6 March 2001, £1 = 1.133600 SDR.

Applying 70% to this amount would give US\$70 million (£47 million), which would give the 1971 Fund a certain margin against overpayment. The Director proposes therefore that the Assembly should authorise him to increase the level of payments to 70% when the 1971 Fund's total exposure has fallen below US\$100 million.

6 Action to be taken by the Assembly

The Assembly is invited:

- (a) to take note of the information contained in this document;
 - (b) to review the level of the 1971 Fund's payments of claims arising from this incident (section 5); and
 - (c) 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.
-