



**INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND 1971**

EXECUTIVE COMMITTEE  
57th session  
Agenda item 3

71FUND/EXC.57/8  
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## **INCIDENTS INVOLVING THE 1971 FUND**

### **NISSOS AMORGOS**

Note by the Director

#### **1 Introduction**

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. An estimated 3 600 tonnes of crude oil was spilled.

1.2 With respect to the incident and the clean-up operations, the establishment of a Claims Agency in Maracaibo by the shipowner's insurer, Assurance-föreningen Gard (Gard Club), and the 1971 Fund and the court proceedings, reference is made to document 71FUND/EXC.55/9.

1.3 This document contains information on recent clean-up operations and related issues, on the claims situation and on the situation in the court proceedings in Venezuela.

#### **2 Clean-up operations and disposal of oily sand**

2.1 On 14 January 1998 the Claims Agency received a report that oil was reappearing on beaches in the area. Staff from the Agency inspected some 35-40 kilometres of beaches. There were some oil traces on the beach and a light sheen on the water in one particular area. A few lumps of solidified oil which had been washed ashore were also observed. Reports were received that the local authorities had begun to recruit personnel to resume manual clean-up operations.

2.2 During the clean-up operations, some 40 000 m<sup>3</sup> of contaminated oil have been collected. Lagoven (a formerly wholly-owned subsidiary of the national oil company, Petroleos de Venezuela SA - PDVSA), which carried out the on-shore clean-up operations, considered various options for treating the oily sand. The main options were landfilling, landfarming, sand sieving and road paving. Lagoven provided a technical

report on these four options to the Gard Club and the 1971 Fund, and sought their opinion on them. After a thorough examination of the various methods had been carried out by the experts engaged by the 1971 Fund and the Gard Club, the Fund and the Club expressed the view that the option of using the material for road repairs appears to be the most viable one. The cost of this method has been indicated by Lagoven at some Bolivar (Bs) 3 313 million (£4 million).

### **3 Claims presented to the Claims Agency**

#### **3.1 General situation**

As at 25 January 1998, 160 claims for compensation totalling Bs6 009 million (£7.2 million) had been presented to the Claims Agency. So far 87 claims have been approved for a total of Bs1 133 million (£1.4 million) and the Gard Club has paid the settlement amounts in full.

#### **3.2 Claims for clean-up operations**

3.2.1 Lagoven has presented several claims to the Claims Agency totalling Bs3 744 million (£4.5 million) relating to the cost of the beach clean-up. Maraven (another wholly-owned subsidiary of PDVSA) has presented a series of claims totalling Bs1 044 million (£1.3 million) for the costs incurred for clean-up operations. Additional claims for costs incurred by Maraven are expected.

3.2.2 On the basis of provisional assessments made by the International Tanker Owners Pollution Federation Ltd (ITOPF), and after consultation with the Director, the Gard Club has made interim payments to Lagoven and Maraven of Bs775 million (£900 000) and Bs271 million (£300 000), respectively.

3.2.3 With a view to speeding up the assessment of Lagoven's and Maraven's claims, the Gard Club and the 1971 Fund proposed that Lagoven and Maraven should each provide a team dedicated to the detailed presentation of the claims and with the knowledge, or immediate access to the knowledge, required to answer queries. A team of experts engaged by the Gard Club and the 1971 Fund would be available to work in close contact with Lagoven's and Maraven's teams.

3.2.4 Since the Gard Club and the 1971 Fund made this proposal, Lagoven and Maraven have been merged into the holding company, PDVSA.

3.2.5 PDVSA has agreed to the proposed procedure, and it is hoped that meetings will be held in mid-March 1998.

#### **3.3 Property claims**

3.3.1 The Claims Agency has received claims totalling Bs29 million (£35 000) from 15 individuals for damage to nets, boats and outboard motors. The local surveyor engaged by the Gard Club and the 1971 Fund has inspected the damaged items.

3.3.2 Twelve claims in this category have been approved for a total of Bs11.8 million (£15 000), and these claims have been paid in full by the Gard Club.

#### **3.4 Fishery claims**

3.4.1 A number of claims by fishermen and some fish transporters for loss of income, totalling Bs1 135 million (£1.4 million), have been presented to the Claims Agency.

3.4.2 At its 54th session the Executive Committee decided that compensation should not be payable in the *Nissos Amorgos* case to fishermen who, although required under Venezuelan law to hold a valid licence, did not do so. It was further decided that compensation should be payable to fishermen who were not subject to licence requirements under Venezuelan law, provided that the claimant showed that he had suffered an economic loss as a result of the incident (document 71FUND/EXC.54/10, paragraph 3.1.32).

3.4.3 The Director and the Gard Club have approved 98 claims by owners of fishing boats for amounts totalling Bs43.5 million (£50 000). The claims have been paid by the Gard Club.

3.4.4 Forty-two claims totalling Bs170.2 million (£200 000) submitted by other fishermen are being examined by the experts appointed by the Gard Club and the 1971 Fund. Many of the fishermen involved have not provided evidence that they were licenced at the time of the incident.

3.4.5 Claims by 16 fish, clam and shrimp transporters, totalling Bs62.2 million (£75 000), have been received. Eleven of these claims have been approved for a total of Bs119 million (£140 000), and this amount has been paid by the Gard Club.

### 3.5 Claims from fish processing plants

The Claims Agency has been informed by a lawyer representing a large number of fish processing plants in the Maracaibo area that his clients believe they will suffer losses from a long term reduction in catches as a result of the effects of the pollution on fish stocks. In April 1997 it was stated that claims from this sector would be received shortly, but so far no claims have been submitted.

### 3.6 Claims from the tourism industry

3.6.1 A claim totalling Bs12 480 500 (£15 000) were submitted on behalf of 96 owners of beach cabins for loss of income as a result of the closure of the beach during clean-up operations. The claim was agreed for a total of Bs10 827 150 (£13 000) and was paid in full by the Gard Club.

3.6.2 A claim totalling Bs34 999 605 (£42 000) has been submitted by the owner of a restaurant in the affected area. The claimant has been asked to provide further evidence of his alleged losses.

3.6.3 A claim has been received from the owner of a hotel for approximately Bs1.5 million (£1 800). This claimant has been asked to provide further evidence to support his claim.

3.6.4 Two claims totalling Bs10.2 million (£12 000) have been received from CORPOZULIA (the State of Zulia tourism organisation) for loss of income suffered by hotels and restaurants owned by the organisation.

3.6.5 Further claims are expected from tourism businesses in the area.

## 4 Court proceedings

### 4.1 Criminal Court of Cabimas

4.1.1 A criminal first instance court in Cabimas is carrying out an investigation into the cause of the incident. The Cabimas Court will determine whether anyone has incurred criminal liability as a result of the incident. A hearing will take place in February 1998.

4.1.2 The shipowner has presented a guarantee to the Cabimas Court for Bs3 473 million (£4.2 million), being the limitation amount applicable under the 1969 Civil Liability Convention.

4.1.3 In October 1997, the Republic of Venezuela presented a claim for pollution damage against the master, the shipowner and the Gard Club in the Cabimas Court for US\$60 250 369 (£37 million). The 1971 Fund has been notified of this claim. 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 payable to the Republic of Venezuela in respect of oil pollution. The damage for which compensation is claimed is as follows:

- (a) damage to the communities of clams living in the intertidal zone affected by the spill, quantified at US\$37 301 942 (£23 million);
- (b) cost of restoring the quality of the water of the affected coasts, quantified at US\$5 million (£3 million);
- (c) cost of replacing damaged sand, quantified at US\$1 million (£600 000);
- (d) damage to the beach as a tourist resort, quantified at US\$16 948 454 (£10.3 million).

4.1.4 At its 55th session, the Executive Committee considered the claim presented by the Republic of Venezuela. The discussion is summarised in document 71FUND/EXC.55/19, paragraphs 3.12.5 - 3.12.11.

4.1.5 The 1971 Fund's position in respect of the admissibility of claims relating to damage to the marine environment is summarised in document 71FUND/EXC.55/9/Add.1.

4.1.6 At its 55th session, the Executive Committee noted that the Director had not yet been able to make an in depth examination of the various items set out in paragraph 4.1.3 above. It was noted however that, in the Director's view, it appeared that items (a) and (d) had been calculated on the basis of theoretical models and did not correspond to losses actually suffered by the claimant. The Committee noted that in his view these items were therefore not admissible for compensation under the 1969 Civil Liability Convention and the 1971 Fund Convention. It was noted that it was not clear whether item (b) in paragraph 4.1.3 above related to costs for reinstatement of the marine environment or to damage to the environment *per se*. It was also noted that item (c) in paragraph 4.1.3 appeared to relate to measures for reinstating the marine environment. The Committee noted the Director's view that, as for items (b) and (c), it had to be considered whether these measures fulfilled the criteria for admissibility laid down by the Assembly.

4.1.7 The Executive Committee agreed with the Director's preliminary analysis as to the admissibility of the items referred to in paragraph 4.1.6 above. It emphasised the importance of the 1971 Fund's adhering to the principles of admissibility in respect of claims for damage to the environment *per se* and claims relating to measures to reinstate the environment. The Committee stated that the Director should make further efforts to explain these principles to Member States (document 71FUND/EXC.55/19, paragraph 3.12.11).

4.1.8 There have been no developments in respect of the claim by the Republic of Venezuela since the Executive Committee's 55th session.

4.1.9 At the court hearing to be held in February 1998 the master will make the point that under Article III.4 of the 1969 Civil Liability Convention no claim for compensation for pollution damage may be made against the servants or agents of the owner, whether under the Convention or otherwise, and that the master falls within this category. The 1971 Fund will intervene in the proceedings and support the master's position on this point.

#### 4.2 Civil Court of Caracas

##### *Republic of Venezuela*

4.2.1 On 2 April 1997, the Republic of Venezuela presented a claim against the shipowner, the master of the *Nissos Amorgos* and the Gard Club for an estimated amount of US\$20 million (£12.2 million), later increased to US\$60 248 701 (£37 million) before a first instance civil court in Caracas. It appears that this claim relates to the same items of damage as the claim in the Cabimas court referred to in paragraph 4.1.3. The 1971 Fund has not been notified of this action.

4.2.2 In its pleadings the Republic of Venezuela maintained that it was a very significant incident which seriously affected the environment and the ecosystem in general, and which resulted in considerable expenditure being incurred in respect of "pollution damage" and "preventive measures".

### *FETRAPESCA*

4.2.3 A fishermen's trade union (FETRAPESCA) has presented a claim against the shipowner, the Gard Club and the master of the *Nissos Amorgos* before the same first instance civil court in Caracas for an estimated amount of US\$130 million (£79 million) plus legal costs. The 1971 Fund's Venezuelan lawyer has been notified of this action.

4.2.4 FETRAPESCA obtained an order by the Court in Caracas for the arrest of the shipowner's property, of vessels which are not his property but which are under associated management, and of assets belonging to the Gard Club, up to a total of US\$292.5 million (£178 million). This order is still in force.

4.2.5 At the request of FETRAPESCA the Court appointed a committee composed of lawyers and technical experts to assess the value of the damage to the environment caused by the spill.

4.2.6 FETRAPESCA has also presented a claim in the Caracas civil court against the bank which provided a guarantee to the criminal court of Cabimas for the amount of Bs 3 473 million (£4.2 million) relating to the losses suffered by the trade union members.

### *Fish and shellfish processors*

4.2.7 Eleven fish and shellfish processors have presented a claim in the Caracas civil court against the shipowner, the Gard Club and the master of the *Nissos Amorgos* for an estimated amount of US\$100 million (£61 million) plus legal costs. The 1971 Fund's Venezuelan lawyer has been notified of this action.

### *Local fishermen's union*

4.2.8 A local fishermen's union has presented a claim in the Caracas civil court against the shipowner and the Gard Club for an estimated US\$10 million (£6.1 million) plus legal costs. The 1971 Fund has not been notified of this action.

## 4.3 Conflict of jurisdiction

The master, the shipowner and the Gard Club have filed a motion before the Civil Court of Caracas requesting that the Court should declare that it does not have jurisdiction over actions brought as a result of the *Nissos Amorgos* incident and that the Criminal Court of Cabimas has exclusive jurisdiction over all such actions. They have also maintained that the action in the Caracas Court should in any case be dismissed, since a corresponding action had been brought before the Cabimas Court. So far, no decision has been taken on the motion.

## 5 Level of payments

5.1 At its 55th session, the Executive Committee noted that there was great uncertainty as to the total amount of the claims arising out of the *Nissos Amorgos* incident. The Committee endorsed the Director's view that it was necessary to strike a balance between the need to exercise caution in the payment of claims and the importance of the 1971 Fund being able to pay claims at an early stage. The Committee therefore decided that the 1971 Fund's payment should at this stage be limited to 25% of the loss or damage actually suffered by each claimant, as assessed by the experts of the Gard Club and the Fund at the time the payment was made (document 71FUND/EXC.55/19, paragraph 3.12.12).

5.2 As set out above, claims have been presented in court by the Republic of Venezuela for US\$60 million (£37 million), by FETRAPESCA for US\$130 million (£79 million), by fish and shellfish processors for US\$100 million (£61 million) and by a local fishermen's union for US\$10 million (£6.1 million). The figures have been indicated as provisional. There is thus still great uncertainty as to the total amount

of the claims arising out of the *Nissos Amorgos* incident. For this reason, the Director is not able to recommend an increase of the level in the 1971 Fund's payments at this stage.

## **6 Cause of the incident**

6.1 Through the 1971 Fund's Venezuelan lawyer, the Director is following the investigation into the cause of the incident which is being carried out by the Venezuelan authorities. As instructed by the Executive Committee at its 54th session, the Director has engaged a technical expert to investigate the cause of the incident on behalf of the 1971 Fund, so as to enable the 1971 Fund to intervene in future legal proceedings, if appropriate.

6.2 The shipowner has notified the Director that he reserved the right 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 had been 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. Due to lack of information as to the cause of the incident, it has not been possible for the 1971 Fund to take any position as to whether the shipowner would be exonerated from liability.

6.3 The shipowner and the Gard Club have informed the 1971 Fund that they intend to submit a detailed statement of their position with respect to the cause of the incident, together with supporting evidence, for consideration by the 1971 Fund and its experts, and that they have stated that it is their intention to continue for the time being to pay claims. The shipowner and the Club have requested that in the meantime the 1971 Fund should refrain from taking any position as to whether the shipowner should be exonerated from liability.

6.4 The 1971 Fund has not yet received the statement referred to in paragraph 6.3.

## **7 Action to be taken by the Executive Committee**

The Executive Committee is invited:

- (a) to take note of the information contained in this document;
  - (b) to consider whether to increase the level of the 1971 Fund's payments of claims arising from this incident; 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.
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