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COMPENSATION
FUND 1971

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Agenda item 3

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INCIDENTS INVOLVING THE 1971 FUND

NISSOS AMORGOS

Note by the Director

Summary:	Developments have taken place in the civil court proceedings in respect of the claim submitted by the Republic of Venezuela relating mainly to the environmental effects of the incident. On the basis of a report prepared by experts engaged by the shipowner, the P & I insurer and the 1971 Fund, the Fund has taken the view that the claim in not admissible. The Court appointed a panel of three experts to advise the Court on the technical merits of the claim. In its report, the panel confirms the findings of the 1971 Funds experts. The shipowner intends to resist claims by the Republic of Venezuela under Article III.3, and also reserves the right to seek exoneration from liability under Article III.2 (c) of the 1969 Civil Liability Convention. The documents available to the 1971 Fund indicate that negligence on the part of the Instituto Nacional de Canalizaciones may have contributed to the incident. The Director is not convinced, on the basis of the evidence available, that the shipowner would be wholly exonerated from liability pursuant to Article III.2 (c).
Action to be taken:	Review the level of the 1971 Funds payments and consider the Funds position on the cause of the incident and related issues.

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. The Venezuelan authorities have maintained that the actual grounding occurred outside the Channel itself. An estimated 3 600 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 (Assuranceföreningen 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 Court in Cabimas and on the cause of the incident.

2 Claims presented to the Claims Agency

2.1 General situation

2.1.1 As at 30 September 1999, 190 claims for compensation totalling Bs 7 726 million (7.4 million)[<1>] had been presented to the Claims Agency. So far 107 claims have been approved for a total of Bs3 697 million (3.6 million) plus US$ 35 850 (22 400). The Gard Club has paid 99 of these claims in full and made interim payments in respect of two claims relating to clean-up operations. The 1971 Fund has made an interim payment of Bs 15 268 867 (16 000) in respect of a claim 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.

2.1.2 In respect of those claims which have been presented to the Claims Agency which are outstanding, only relatively few claimants have provided evidence indicating that the claims are admissible for compensation under the 1969 Civil Liability Convention and the 1971 Fund Convention. Since the Claims Agency in Maracaibo closed on 30 April 1998, the remaining claims 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 Claims in the fishery sector

2.2.1 A fishermen's union (FETRAPESCA) which had filed a claim in court for some US$130 million (81 million) has not presented any evidence in support of the claim. A meeting was held with FETRAPESCA in April 1999, at which it expressed its intention to present its claim together with supporting documentation to the Claims Agency. The Claims Agency staff have subsequently held two further meetings with FETRAPESCA at which the nature of the documentation required in support of its claim was discussed. It is expected that a formal claim together with supporting documentation will be submitted to the Claims Agency in the near future.

2.2.2 The Claims Agency has been informed that a number of fish processing plants in the Maracaibo area intend to submit claims for losses arising from a long term reduction in catches as a result of the effects of the pollution on fish stocks. No such claims have been submitted so far.

2.3 Claims relating to clean up operations

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 and the admissible total 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) (cf documents 71FUND/EXC.61/9 and 71FUND/EXC.61/9/Add.1).

<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 1 October 1999 (1 = Bs 1 038.87), 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.

2.3.2 At its 60th session the Executive Committee considered the claim submitted by ICLAM (cf paragraph 2.1.1 above) for Bs 69.3 million (74 000) for the costs incurred in monitoring the clean-up operations, which included the sampling and analysis of water, sediment and marine life. At its 61st session the Committee decided that, except for scientific studies of shellfish, mangroves and migratory birds which did not contribute to the clean-up operation, 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 (cf document 71FUND/EXC.61/14, paragraph 4.8.2). On 16 September 1999 the 1971 Fund paid ICLAM Bs 15 268 867 (16 000), ie 25% of the assessed amount.

2.4 Disposal of the oily sand

2.4.1 During the clean-up operations, which were carried out by Lagoven, an estimated 48 000 m^3 of contaminated sand was collected. The oily sand has been provisionally stored immediately inland of the affected beach. PDVSA has considered various options for treating the oily sand. The main options were landfill, land farming, sand sieving and road paving.

2.4.2 In order to determine the best option for treating the oily sand, PDVSA appointed a team of experts which, together with three experts appointed by the 1971 Fund and the Gard Club, reviewed all the options available. The team and the experts agreed that the best option available is land farming in the dunes adjacent to the beach after admixture with organic material.

2.4.3 At a meeting held in mid April 1999 the Gard Club, the 1971 Fund and PDVSA agreed that, subject to a feasibility study, this was the most reasonable disposal option. PDVSA agreed to consult the Club and the Fund on the tendering procedure, before contractors were formally appointed and on the costs involved.

2.4.4 In June 1999 PDVSA presented an Environmental Impact Assessment (EIA) undertaken in accordance with the 1996 Environmental Decree N□1257. The purpose of the EIA was to evaluate the potential effects of the proposed disposal of oily sand in the dune area behind the beach affected by the spill. The EIA comprised detailed studies of the physical, biological and socio-economic implications of a large-scale oily sand disposal operation, as well as identification of appropriate environmental monitoring requirements. Also included in the EIA is a report of an investigation of soil and groundwater quality at the temporary oily sand storage site, in which it is concluded that no evidence of groundwater contamination has been found. In September 1999 PDVSA informed the 1971 Fund that the estimated cost of the disposal option was Bs 1 500 million (1.4 million). The Gard Club and the 1971 Fund are considering this estimate and will respond to PDVSA in the near future.

3 Court proceedings

3.1 Criminal Court of Cabimas

3.1.1 A criminal first instance court in Cabimas is carrying out an investigation into the cause of the incident. The Cabimas Court will then make a finding as to who, if anyone, can be held criminally liable for the incident.

3.1.2 The shipowner has presented a guarantee to the Cabimas Court for Bs3 473 million (3.7 million), being the limitation amount applicable under the 1969 Civil Liability Convention.

3.2 Claim presented by the Republic of Venezuela

The claim

3.2.1 In October 1997, the Republic of Venezuela presented a claim for pollution damage against the master, the shipowner and the Gard Club in the Criminal Court of Cabimas Court for US$60 250 396 (37.6 million). The 1971 Fund has been notified of this claim. The claim is based on a letter to the Attorney General of Venezuela, 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 indicated as follows:

(a) damage to the communities of clams living in the intertidal zone affected by the spill, quantified at US$37 301 942 (23.3 million);
(b) cost of restoring the quality of the water in the vicinity of the affected coasts, quantified at US$5 million (3.1 million);

(c) cost of replacing sand removed from the beach during the clean-up operation, quantified at US$1 million (625 000);

(d) damage to the beach as a tourist resort, quantified at US$16 948 454 (10.6 million).

The 1971 Funds position

3.2.2 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. 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.

Court hearing on 12 March 1999

3.2.3 At a court hearing held in Cabimas on 12 March 1998 the master, the shipowner and the Gard Club opposed the claim by the Republic of Venezuela, presenting the following defences:

(a) The defendants were not liable on the grounds that the incident had been caused by the poor condition of the channel.

(b) The claim failed to identify any respect in which those on board the ship had been at fault.

(c) 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. Since the master fell within this category, no claim could be made against him.

(d) The claim was inadmissible since it was based on an abstract quantification of the damage using a theoretical model.

(e) The claim was technically defective because the rate to be used to calculate interest on the claimed amount had not been specified.

3.2.4 The 1971 Fund, which had previously intervened in the proceedings as an interested party, supported the position taken by the shipowner and the Gard Club in respect of items (c) and (d).

The 1971 Funds experts report

3.2.5 In March 1999, the 1971 Fund, together with the master, the shipowner and the Gard Club, presented to the Court a report prepared on the various items of claim by the Republic of Venezuela by experts appointed by them of Venezuelan, American and Swedish nationality. The main points of this report are summarised in document 71FUND/EXC.61/9, paragraph 3.2.9.

Panel of experts appointed by the Court

3.2.6 At the request of the shipowner, the Gard Club and the 1971 Fund the Court appointed a panel of experts to advise the Court on the technical merits of the claim presented by the Republic of Venezuela. The panel consisted of environmental experts, one nominated by the shipowner, the Gard Club and the 1971 Fund, one nominated by the Republic of Venezuela and a third selected by the Court. The panel, which met from 30 June to 6 July 1999, considered the various documents which had been presented to the Court and made two visits to the area affected by the spill.

3.2.7 The panel of experts presented its report to the Court on 15 July 1999. The report confirmed the findings of the 1971 Fund's experts and can be summarised as follows:

(a) *Clam mortality*

Regarding the alleged damage to the communities of clams living in the intertidal zone, the panel expressed the view that field studies were the most accurate method of determining clam mortality and that such studies would be the only way of validating theoretical models such as that used by the Republic of Venezuela which was based on *estimated* population sizes, growth and mortality rates.

The panel considered that the Shoreline Clean-up Assessment Technique (SCAT) also used in the claim by the Republic of Venezuela might be effective for measuring the progress of the clean-up operations but would not be appropriate for the evaluation or quantification of clam mortality unless a relationship between clam mortality and the covering of crude oil on the beaches had been established beforehand. The panel had seen no evidence that any such relationship had been established. Having examined the estimated figures in the claim, the panel concluded that had the figures used been correct, the 47 kilometres of beach in question would have a clam population covering an average width of 268 metres. The panel stated that during their visits to the beach they had observed that the area of the intertidal surf zone inhabited by clams was approximately 20 metres wide.

The panel also considered the potential of the clam population for recovery after the incident. Although the panel had seen little data relating to that particular species of clam, it noted that from the experience of the panel members of oil spills worldwide, the effect of large quantities of oil in areas of large populations of clams might cause large scale mortality but that the recovery of the mussel populations was usually quite fast. It was stated that the panel members knew of no instances of long-term detrimental effects, such as those alleged by the Republic of Venezuela, on clam populations caused by oil spills.

(b) *Restoration of water quality*

The panel noted that a report prepared by ICLAM in 1998 showed that the level of hydrocarbons in the water area affected by the spill was within accepted national environmental standards for levels of hydrocarbons in liquid effluents released in coastal marine waters.

(c) *Replacement of sand removed from the beach during clean-up operations*

The panel expressed the view that as the affected beaches are accretion beaches (ie gain more sediment each year than they lose), there was no need to add sand to the beaches.

(d) *Damage to the beach as a tourist resort*

The panel observed that whilst the incident did have an effect on the numbers of tourists visiting the beaches immediately after the incident, there was no evidence that one million visitors could be expected annually as alleged by the Republic of Venezuela. During the panel's visits to the beach very few tourists were observed on 1 July 1999 (a weekday), whereas approximately 2 000 visitors could be seen on 5 July (a national holiday).

The panel further observed that it had seen no evidence of spending by tourists of Bs20 000 per capita per day as alleged in the claim. The panel expressed the view that a figure of Bs3 710 per capita per day which had been arrived at by the Claims Agency on the basis of field research was more realistic.

The 1971 Funds pleadings

3.2.8 The 1971 Fund Venezuelan lawyers are preparing pleadings which will be submitted to the Cabimas Court at a later stage. These pleadings deal with the criteria adopted by the 1971 Fund with regard to the admissibility of claims for compensation, present the conclusions set out in the report by the experts appointed by the shipowner, the Gard Club and the 1971 Fund and discuss the conclusions reached by the panel of experts appointed by the Court.

3.3 Other claims

3.3.1 At the Court hearing on 12 March 1998, a further claim was presented by the Republic of Venezuela, on behalf of ICLAM, for pollution damage in the amount of Bs 57.7 million (62 000). This claim corresponds to the claim presented earlier to the Claims Agency in Maracaibo (paragraph 2.3 above).

3.3.2 Also on 12 March 1998 FETRAPESCA and eight fish and shellfish processors presented claims for compensation for pollution damage for an estimated amount of US$130 million (81 million) and US$100

million (62.5 million) respectively, plus legal costs. These claims were declared inadmissible by the Court, since they were not filed within the period laid down in the Venezuelan Civil Procedural Code.

3.3.3 FETRAPESCAs claim and two new claims by fish and shellfish processors were submitted to the Court on 24 February 1999. In the view of the 1971 Funds Venezuelan lawyers these claims should be declared inadmissible by the Court, since they were not filed within the period laid down in the Venezuelan Civil Procedural Code. It is expected that the Court will make a decision on the admissibility of these claims in the near future.

3.4 Civil Court of Caracas

There have been no developments in the court proceedings since the Executive Committees 59th session (cf document 71FUND/EXC.59/10, section 5).

3.5 Conflict of jurisdiction

The master, the shipowner and the Gard Club have requested that the Civil Court of Caracas 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 filed by the Republic of Venezuela 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 request.

3.6 Supreme Court of Venezuela

3.6.1 On 4 May 1999, two independent requests of 'avocamiento' were filed by FETRAPESCA and two fish processors (cf paragraph 2.2 above) before the Venezuelan 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.

3.6.2 The shipowner and the Gard Club opposed this request.

3.6.3 The 1971 Fund also opposed the request on the grounds that the circumstances upon which the request was based were not exceptional and that the reason for the request was not the reinstatement of the environment but a 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 be to deprive the parties of the right of appeal.

3.6.4 In a judgement dated 29 July 1999 the Venezuelan Supreme Court rejected the request of 'avocamiento' filed by two fish processors. The Supreme Court stated that, in accordance with the jurisprudence of the Venezuelan Supreme Court, the court could assume jurisdiction only in cases where there was a manifest collective interest affected by exceptional circumstances, a situation of disorder of such a magnitude which required it, a situation of flagrant injustice or in order to avoid a denial of justice. The Supreme Court concluded that none of the requirements for the □avocamiento□ was fulfilled in this case. It is expected that the Venezuelan Supreme Court will also reject the request of □avocamiento□ filed by FETRAPESCA.

4 Level of payments

4.1 In view of the uncertainty as to the total amount of the claims arising out of the *Nissos Amorgos* incident, the Executive Committee decided, at its 61st session, to maintain the limit of the 1971 Funds payments at 25% of the loss or damage actually suffered by each claimant (document 71FUND/EXC.61/14, paragraph 4.8.4).

4.2 Due to the continuing uncertainty as to the total amount of the claims arising out of the *Nissos Amorgos* incident, the Director is not able to recommend an increase in the level of the 1971 Funds payments at this stage.

5 Cause of the incident

5.1 The shipowner and the Gard Club have provided the 1971 Fund with a substantial quantity of documentary evidence concerning the cause of the incident, together with a detailed analysis of this evidence.

5.2 The conclusion drawn by the shipowner and the Gard Club from the documents made available to the 1971 Fund is 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 and that the arrangements for alerting mariners to the dangers which existed were unreliable. They have 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. They have maintained 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. They have 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 after, and at almost the same place as the *Nissos Amorgos*, and suffered similar bottom damage, with a metal object later retrieved from her bottom plating.

5.3 The Director, with the assistance of the 1971 Fund's lawyers, has examined the documentation supplied by the shipowner and the Gard Club. In the Director's view, the documentation appears to support the shipowner's/Gard Club's position that the channel had deteriorated as a result of poor maintenance on the part of Instituto Nacional de Canalizaciones (INC), a national body responsible for the maintenance of the channel, and/or of the harbour master (an employee of the Ministry of Transport). There is also evidence to suggest that the poor condition of the channel was known to a number of parties, particularly to the Venezuelan government and INC, and that the extent of the deficiency of the channel specification had not been made public.

5.4 The shipowner and the Gard Club have notified the 1971 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 INC.

5.5 The shipowner and the Gard Club have notified the 1971 Fund that they reserve 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 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. In their view, in principle, the question of exoneration under Article III.2 (c) should not affect non-government claimants in Venezuela in that, if the shipowner is exonerated, the claims will be paid by the 1971 Fund. The shipowner and the Gard Club have stated that they have therefore made compensation payments without invoking against the claimants the ground of exoneration contained in Article III.2 (c), whilst reserving the right to pursue this issue with the 1971 Fund at a later date by way of subrogation.

5.6 As regards the defence by the shipowner under Article III.2 (c) there is obviously a conflict of interest between the shipowner/Gard Club and the 1971 Fund, since if that defence were to be successful, the shipowner would be exonerated from liability in respect of all claims arising out of the incident and the 1971 Fund would have to pay all these claims. On the other hand the shipowner/Gard Club and the 1971 Fund would have the same interest to establish whether there was contributory negligence on the part of INC.

5.7 The shipowner/Gard Club have pointed out that substantial claims have been made in the Venezuelan court proceedings which raise important issues of common interest between the 1971 Fund and the Club in the proceedings, and they have suggested that it would be unfortunate if a common approach were to be undermined by any conflict of interest. For these reasons, they are not pressing the 1971 Fund to take any position at this stage on the validity or otherwise of their potential subrogation claim. When supplying to the 1971 Fund the material referred to in paragraph 5.1 above, the shipowner/Gard Club stated that they did so in order that this material may be considered by the 1971 Fund and its lawyers in connection with the legal proceedings which have been brought in Venezuela, and to assist the Fund in deciding whether it wishes to rely on a defence of contributory negligence under Article 4.3 of the 1971 Fund Convention, similar to that relied upon by the shipowner under Article III.3 of the 1969 Convention.

0.1 At the Executive Committees 61st session, the representative of the Gard Club made the following points:

> The Gard Club and the shipowner had been investigating the cause of the incident from the earliest stages. A large amount of evidence had been gathered and further evidence might yet be obtained.
>
> It was recognised that if the 1971 Fund were to join the shipowner and the Gard Club in maintaining a defence of contributory negligence, it would naturally wish to avoid any prejudice to its position in relation to exoneration of the shipowner under Article III.2(c) of the 1969 Civil Liability Convention. The shipowner and the Club therefore appreciated why the Director had made some preliminary comments to the effect that he was not convinced that such exoneration was established by the evidence so far presented.
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> The material which the owner and the Club had presented so far to the 1971 Fund, though substantial, was by no means exhaustive. At the present stage the owner and the Club believed that it was premature for the Fund to reach a decision on the question of whether the owner should be exonerated from liability under Article III.2(c). To assist the Fund in deciding whether a common approach should be adopted to the issue of contributory negligence, the shipowner and the Club had supplied preliminary material, which was intended to acquaint the Fund with the main features of the evidence at their disposal, and they would shortly supply further information to the Fund.
>
> In the meantime the shipowner and the Club understood that the 1971 Fund was keeping an open mind with respect to the issue of exoneration of the shipowner and that its present assessment did not involve any suggestion that evidence existed to indicate fault by the owner or by those on board the ship. The proceedings brought against the master, the shipowner and the Gard Club in Venezuela still failed to identify any such fault or to provide any credible explanation for the incident other than the condition of the channel.

5.8 The Venezuelan delegation emphasised that it was natural that the legal proceedings in the Venezuelan courts would take time. That delegation made the point that the incident occurred mainly because the ship had left the dredged part of the buoyed channel as shown on the chart.

5.9 The Executive Committee noted that in the Director's view the documents made available to the 1971 Fund indicated that negligence on the part of INC might have been a factor which contributed to the incident and the ensuing pollution damage and that therefore the shipowner/Gard Club might be partially exonerated from liability to the Venezuelan Government and to other government bodies. It was also noted that, if there was such contributory negligence, in the Director's view the 1971 Fund would also be partially exonerated in respect of claims by the Venezuelan Government, except to the extent that the claims related to the cost of preventive measures. It was further noted that the Director was not convinced that, on the basis of the evidence made available to the 1971 Fund so far, the damage was caused wholly by the negligence or other wrongful act of INC and that therefore the shipowner might not be wholly exonerated from liability in respect of this incident pursuant to Article III.2 (c) of the 1969 Civil Liability Convention.

5.10 The Executive Committee decided that, since not all the evidence on the cause of the incident had been made available to the 1971 Fund, it was premature for the Committee to take a decision on the issues relating to the cause of the incident and contributory negligence. The Committee instructed the Director to investigate further these issues and took the view that this investigation should be carried out in co-operation with the shipowner/Gard Club to the extent that there was no conflict of interest between them and the Fund (document 71FUND/EXC.61/14, paragraph 4.8.10).

5.11 The Executive Committee also instructed the Director to raise the defence of contributory negligence against the claim submitted by the Venezuelan Government, if this became necessary to protect the interests of the 1971 Fund (document 71FUND/EXC.61/14, paragraph 4.8.11).

5.12 The Director is continuing his investigation of the cause of the incident in consultation with the shipowner/Gard Club.

5.13 Since the 61st session of the Executive Committee the shipowner and the Gard Club have provided the Director with further documentation. They have also supplied the 1971 Fund with a draft of pleadings to be submitted in the near future to the Cabimas Court.

5.14 The Director is considering this further documentation. The 1971 Funds Venezuelan lawyers are drafting pleadings to be filed on behalf of the Fund.

5.15 If the evidence were to establish contributory negligence on the part of INC, the Executive Committee would in the Directors view have to consider 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.

6 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 review the level of the 1971 Funds payments of claims arising from this incident (section 3);

(c) to consider the position to be taken by the 1971 Fund in respect of the cause of the incident (section 5); and

(d) 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.