



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1971

ASSEMBLY
21st session
Agenda item 18

71FUND/A.21/16
14 October 1998

Original: ENGLISH

HAVEN INCIDENT

SEARCH FOR A GLOBAL SETTLEMENT

Note by the Director

Summary:	Information is given on the developments in respect of the search for a global settlement of all outstanding issues.
-----------------	--

Action to be taken:	Information to be noted.
----------------------------	--------------------------

1 Consideration of this issue prior to the Assembly's 20th session

1.1 In 1995 an offer of a global settlement of all issues arising out of the *Haven* incident was made by the shipowner, the United Kingdom Mutual Steamship Assurance Association (Bermuda) Ltd (UK Club) and the 1971 Fund. The Italian Government was not able to accept that offer. At the Assembly's 18th session held in October 1995, Professor H Tanikawa of the Japanese delegation stated that any future initiative towards a global settlement must be taken by the claimants, including the Italian Government, and that the terms and conditions of the previous offer of a global settlement were well known. The Assembly endorsed that statement (document 71FUND/A.18/26, paragraphs 11.8 and 11.9).

1.2 At its 19th session in October 1996, the Assembly instructed the Director to explore, with the Italian Government and the UK Club, the possibility of arriving at a global settlement in the *Haven* case which, as regards the 1971 Fund, fell within the maximum amount of compensation that would be available under the 1971 Fund Convention, ie the difference between 60 million SDR and 14 million SDR, minus the amounts which the 1971 Fund had paid or might have to pay to other claimants. The Assembly emphasised that such discussions were without prejudice to the 1971 Fund's

position in respect of the time bar issue. The Assembly authorised the Executive Committee to approve any global settlement within certain parameters (documents 71FUND/A.19/30, paragraph 17.11 and 71FUND/EXC.52/2, paragraph 2.3).

1.3 At its 3rd extraordinary session, held in April 1997, the Assembly noted that the Italian Government had not given a reply to the offer for a global settlement made by the shipowner, the UK Club and the 1971 Fund. In view of this situation, it was decided that it was for the Assembly to take the decision as to whether to agree to a global settlement. The Assembly instructed the Director to continue the discussions with the Italian Government and the shipowner/UK Club concerning the possibility of arriving at a global settlement in the *Haven* case within the parameters laid down by the Assembly and the Executive Committee (document 71FUND/A/ES.3/7, paragraphs 3.1.10 and 3.1.11).

2 Consideration by the Assembly at its 20th session

2.1 At its 20th session, the Assembly took note of a statement by the representative of the UK Club concerning an offer made by the Club to the Italian Government for a contribution to a global settlement. The Assembly noted a statement by the Italian delegation to the effect that the proposal presented by the UK Club, in conjunction with the offer made by the Fund, satisfied the minimum requisites requested by the Italian Government in order to examine the possibility of accepting a global settlement for the *Haven* incident. The delegation also stated that the Italian Government would therefore be in a position to evaluate positively the matter. The Chairman confirmed, on behalf of the Assembly, a statement by Professor H Tanikawa of the Japanese delegation that the 1971 Fund's proposal of a global settlement was still available. The Assembly authorised the Executive Committee to determine, at its 57th session, whether the conditions for the global settlement laid down by the Assembly had been fulfilled, and if so, to approve it. It was agreed that if this issue could not be decided at that session, the matter would be referred to the Assembly at its 4th extraordinary session, to be held in April 1998 (document 71FUND/A.20/30, paragraph 17.13).

2.2 It was noted that, under the proposed global settlement, all legal actions in the Italian Courts would be withdrawn.

3 Consideration at the Executive Committee's 57th session

At its 57th session, the Executive Committee noted a statement by the Italian delegation that the Italian Cabinet had approved a Bill for submission to Parliament authorising the Prime Minister to sign a transaction with the UK Club and the 1971 Fund. The Committee noted with satisfaction the considerable progress towards a global settlement that the Italian Government's decision represented.

4 Consideration by the Assembly at its 4th extraordinary session

4.1 At its 4th extraordinary session, the Assembly took note of the statement by the Italian delegation to the effect that the Bill referred to in paragraph 3 had been approved by the Senate of the Italian Parliament and that the Bill was being considered by the Chamber of Deputies.

4.2 The Assembly recalled that there was one outstanding issue, ie that relating to the indemnification of the shipowner under Article 5.1 of the 1971 Fund Convention. It was recalled that the sum in question amounted to 5 666 667 SDR, corresponding to Lit 9 694 137 236, which, converted at the rate applicable on 29 April 1998 was equivalent to £3 272 945.

4.3 The Director informed the Assembly that, after discussion within the Consultation Group set up by the Executive Committee at its 42nd session, he had made an offer to the shipowner's insurer, the UK Club, that the 1971 Fund should pay an amount of £2.5 million in indemnification, provided that the UK Club, as part of a global settlement, would give the 1971 Fund a guarantee against the Fund having to pay any further claims.

4.4 The representative of the UK Club made the following statement:

We are pleased to learn of the progress of the Bill in Italy. It was, of course, the intention that a global settlement should resolve all disputed issues between the parties and that all litigation in Italy should be terminated as a result. To this end, the UK Club is prepared to accept the sum of £2.5 million in respect of the indemnification of the shipowner, notwithstanding our strongly held view that there is no basis of fact in this case which would entitle the 1971 Fund to decline to pay the full indemnification under Article 5.1.

Unfortunately, even though the resolution of the roll-back issue will put into place the final part of a global settlement, it will not be possible immediately to conclude the *stato passivo* proceedings in Genoa because of the "new" claims in relation to fishing interests in Imperia, which were submitted in April 1997. As previously indicated, the UK Club shall continue to resist these claims which, in its view, have no merit. The UK Club will also bear the cost of this defence and any judgement which may be given by the court in relation to these claims. Until such time as these claims are resolved by the courts of Italy, the proceedings cannot be finally concluded. It is part of our offer in the global settlement that the UK Club will indemnify the 1971 Fund against any judgement of the court which may be given against the Fund in relation to these claims. We are also prepared to indemnify the 1971 Fund against any new claims which any third party may seek to introduce in the *stato passivo* proceedings or under the Conventions in respect of the *Haven* incident.

In this way, the 1971 Fund can be confident that, if the global settlement is concluded, the settlement funds can be paid without further risk even though the *stato passivo* proceedings in Genoa cannot technically be terminated concurrently with the global settlement.

4.5 The Assembly approved the payment to the UK Club of an amount of £2.5 million in respect of indemnification of the shipowner under Article 5.1 of the 1971 Fund as part of a global settlement, provided that the Bill referred to in paragraphs 3 and 4.1 was approved by the Chamber of Deputies, and on condition that the UK Club gave the 1971 Fund a guarantee protecting the Fund against further claims as set out in paragraphs 4.3 and 4.4.

4.6 The Director informed the Assembly that the intention was to conclude a tripartite agreement between the Italian State, the shipowner/UK Club and the 1971 Fund, and a separate agreement between the shipowner/UK Club and the 1971 Fund concerning the indemnification.

4.7 The Assembly authorised the Director to sign the two settlement agreements once the Bill had been approved by the Italian Parliament, provided that these agreements fulfilled the conditions for a global settlement laid down by the Assembly. The Assembly further authorised the Director to pay to the State of Italy, the French State and the Principality of Monaco the settlement amounts referred to in the table in paragraph 8.6 of document 71FUND/A/ES.4/16, and to pay to the UK Club £2.5 million in indemnification under Article 5.1 of the 1971 Fund Convention (document 71FUND/A/ES.4/16, paragraph 8.9).

5 Developments since the Assembly's 4th extraordinary session

5.1 The Bill authorising the Italian Government to conclude an Agreement on a global settlement was approved by the Chamber of Deputies with certain amendments. The amended Bill was referred back to the Senate, which approved the amended Bill. The Act was promulgated on 16 July 1998 (N°239), and an English translation of the Act is at the Annex.

5.2 Representatives of the Italian State, the shipowner, the UK Club and the 1971 Fund met in Rome in July 1998 and in London in early September 1998 and elaborated the text of the tripartite agreement referred to in paragraph 4.6 above. The Agreement has not been signed by the parties, since the Government considered it appropriate to obtain an opinion of the Consiglio di Stato confirming the conformity of the proposed Agreement with the terms of the Act.

5.3 In order to become effective, the Agreement with the Italian State must be approved by the Court of Accounts (Corte del Conti) after having been signed by the parties.

5.4 Under the tripartite agreement, the parties undertake to withdraw all legal actions in the Italian courts.

5.5 A separate Agreement has been prepared between the shipowner, the UK Club and the 1971 Fund. This Agreement has not been signed, pending the signature of the tripartite Agreement.

5.6 The consequences for the 1971 Fund of the global settlement would be as follows:

	Lit
Total available under 1969/1971 Conventions (60 million SDR), converted using rate applicable on date shipowner's limitation fund established	102 643 800 000
<u>Less</u> Shipowner's limitation fund (14 million SDR)	<u>- 23 950 220 000</u>
	78 693 580 000
<u>Less</u> Payments by 1971 Fund to two Italian contractors	<u>- 1 582 341 690</u>
	77 111 238 310
<u>Less</u> Payments by 1971 Fund to French public bodies other than the French State (FFr10 659 469), converted using rate applicable on date of purchase of French Francs (28.3.96): FFr1 = Lit 311.60	<u>- 3 321 490 540</u>
	73 789 747 770
<u>Less</u> Payments (converted using the rate applicable on the date of purchase of French Francs: 7.9.98) by 1971 Fund	
- To French State	FFr12 580 724
- To Principality of Monaco	<u>270 035</u>
	FFr12 850 759
	<u>3 385 319 571</u>
Balance to be paid by 1971 Fund to Italian State	70 004 428 199
Payment to the UK Club (indemnification of the shipowner)	£2 500 000

5.7 At its 4th extraordinary session, the Assembly was informed of the Director's intention to purchase a substantial amount in Italian Lire in the near future, subject to the advice of the Investment Advisory Body and the 1971 Fund's bankers, with a view to protecting the 1971 Fund against currency fluctuations. After having discussed the matter with the members of the Investment Advisory Body and the 1971 Fund's bankers, Italian Lire were purchased as follows:

Date	Rate	Lit	£
7 May 1998	2 896.25	28 962 500 000	10 000 000
8 May 1998	2 907.00	<u>14 535 000 000</u>	<u>5 000 000</u>
		43 497 500 000	15 000 000

5.8 In addition, FFr12 850 759 was bought on 7 September 1998 at a cost of £1 332 375 (£1=FFr9.645).

5.9 In order to enable the 1971 Fund to pay Lit 70 004 428 199 to the Italian State, the Fund would need to purchase a further Lit 26 506 928 199, which at the rate of exchange on 9 October 1998 (1£=Lit 2 771.41) would cost £9 564 420.

6 Action to be taken by the Assembly

The Assembly is invited:

- (a) to take note of the information contained in this document; and
- (b) to give the Director such instructions as it may deem appropriate in respect of the *Haven* incident.

* * *

ANNEX**TRANSLATION FROM ITALIAN**

**Law No. 239 of 16th July 1998 (in Official Gazette no. 169 of 22nd July). -
Authorisation to settle out of court the disputes relating to compensation for
damages suffered by the Italian State arising out of the Haven incident and
allocation of monies for environmental purposes.**

The Chamber of Deputies and the Senate of the Republic have approved,
The President of the Republic
Promulgates the following law:

Art. 1. 1. The President of the Council of Ministers or one of his deputies, if considered appropriate in the light of developments in the pending legal proceedings and of the conclusion of the current negotiations, is authorised to settle out of court, by one or more settlement deeds, the disputes relating to compensation for damages suffered by the Italian State following the explosion and sinking of the motor tanker *Haven*, hereinafter referred to as the *Haven* incident, which occurred in the waters of the Western Ligurian Riviera on the 11th April 1991. The out of court settlement authorised relates to pending disputes and any future disputes with the *International Oil Pollution Compensation Fund*, the headquarters of which are in London and which was set up by the Brussels Convention of 18th December 1971, ratified and made enforceable in Italy in accordance with law no. 185 of 6th April 1977, and with the owner and insurer of the vessel.

2. Notwithstanding the provisions in force relating to State accounting, the settlement will be drawn up and signed by the President of the Council of Ministers or by one of his deputies.

Art. 2. 1. The settlement shall ensure that the State receives aggregate compensation for all damages suffered of not less than 117.6 milliards of Lire, and shall waive any further claim.

2. The settlement must also provide that there shall be paid to the State by the shipowner and its insurer a sum equivalent to the amount of the total cost of the official surveys carried out in the criminal proceedings relating to the *Haven* incident. The provision shall take effect in the event of acquittal of the accused.

3. The settlement may provide for a time for payment of the agreed sums not later than sixty days from the date on which the drawing up of the settlement is communicated to the *International Oil Pollution Compensation Fund* and to the shipowner and its insurer. The settlement is drawn up excluding the extension of its validity in favour of any additional jointly liable parties.

4. The settlement shall provide that the shipowner and its insurer take over the risk of actions for compensation which are pending, even if put forward by way of substitution in accordance with 511 of the Code of Civil Procedure, and of those which may be instituted by third parties in connection with the *Haven* incident, guaranteeing the Italian State against any loss which might arise therefrom.

Art. 3. 1. The settlement shall provide that the State, the *International Oil Pollution Compensation Fund*, the shipowner and its insurer, severally or otherwise, in the civil

proceedings having as their object compensation for damages suffered by the State because of the *Haven* incident, including the limitation of liability proceedings insofar as they relate to the finalisation of the assets and liabilities of the Haven fund ["stato attivo" and "stato passivo"], shall abandon these actions and any claim put forward in them.

2. The parties shall bear their own legal costs and Article 68 of royal decree no. 1578 of 27th November 1933, converted into law, with amendments, by law no. 36 of 22nd January 1934, shall not apply.

Art. 4. 1. The settlement deed or deeds provided for in Article 1 shall be subject to a fixed lump sum registration fee.

Art. 5. 1. The fund derived from the out of court settlement of the disputes referred to in Articles 1, 2, 3 and 4 shall be paid as revenue to the State and shall be reassigned, net of the amount of Lire 22,579 million, by decree of the Minister of the Treasury, Budget and Economic Planning, to the special base units of the budget of the Ministry of the Environment to meet, as a priority, the remaining expenses relating to the operations carried out on the occasion of the sinking of the *M/T Haven*, which occurred on the 11th April 1991, as well as associated costs in respect of interest and monetary revaluation, and operations to clean up the sea, and to the base units of the budgets of the Presidency of the Council of Ministers and of the Ministry of the Interior, on the basis of the shares determined in the decree issued by the Minister of the Environment.

2. The sum remaining is allocated also to environmental rehabilitation of the stretch of sea and stretch of coast most affected by the damaging consequences of the incident. The works to be financed out of such sum will be specified in an agreed plan to be put forward for the purpose by the Ministry of the Environment, in which the Ligurian Region and the coastal provinces and municipalities from Arenzano to Albisola Marina will participate.

Art. 6. 1. For the performance of anti-pollution services, established by letter a) of the first paragraph of Article 2 of law no. 979 of 31st December 1982, the Ministry of the Environment shall use the resources allocated for this purposes in table C of the financial law, as decided annually in accordance with Article 7 of law no. 979 of 31st December 1982.

Art. 7. 1. For the supervision of protected marine areas referred to in paragraph 7 of Article 19 of law no. 394 of the 6th December 1991, and for the activities referred to in Articles 11 and 12 of law no. 979 of 31st December 1982, the local harbour offices operate on the basis of binding general and specific directives of the Ministry of the Environment. For other intervention and activities relating to the protection and defence of the sea the Ministry of the Environment may also make use of harbour offices on the basis of specific agreements.

Art. 8. 1. This law shall come into force on the day following the date of its publication in the *Official Gazette* of the Italian Republic.
