



FONDS INTERNATIONAL
D'INDEMNISATION DE
1971 POUR LES DOMMAGES
DUS À LA POLLUTION PAR
LES HYDROCARBURES

ASSEMBLÉE
4ème session extraordinaire
Point 8 de l'ordre du jour

71FUND/A/ES.4/7/Add.1
27 avril 1998

Original: ANGLAIS

SINISTRE DU HAVEN

RECHERCHE D'UN RÈGLEMENT GLOBAL

Note de l'Administrateur

Résumé:	Le Sénat italien a approuvé le projet de loi relatif au règlement global proposé.
Mesures à prendre:	Noter les renseignements fournis.

- 1 Le 7 avril 1998, la Commission du Sénat a adopté, au nom du Sénat, le projet de loi visé au paragraphe 4.1 du document 71FUND/A/ES.4/7, assorti de certains amendements.
- 2 Le texte du projet de loi (traduit en anglais) tel qu'approuvé par le Sénat figure ci-joint. Les amendements ont été soulignés.
- 3 Le projet de loi, tel qu'amendé, a été soumis à la Chambre des députés le 7 avril 1998.

Mesures que l'Assemblée est invitée à prendre

- 4 L'Assemblée est invitée à prendre note des renseignements donnés dans le présent document.

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No. 4763

CHAMBER OF DEPUTIES

BILL

APPROVED BY THE XIIIITH PERMANENT COMMISSION
(TERRITORY, ENVIRONMENT, ENVIRONMENTAL ASSETS)
OF THE SENATE OF THE REPUBLIC
on the 2nd April 1998 (see Senate document no. 3048)

Presented by the President of the Council of Ministers

(PRODI)

jointly with the Minister of the Environment

(RONCHI)

with the Minister of the Treasury, Budget and Economic Planning

(CIAMPI)

and with the Minister of Transport and Navigation

(BURLANDO)

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 moneys for environmental purposes

Delivered by the President of the Senate of the Republic
on the 7th April 1998

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Honourable Senators. On the 11th April 1991, a few miles off Arenzano (Western Riviera of Liguria), the *M/T HAVEN* of Cypriot flag and owned by *Venha Maritime Ltd* of Monrovia (Liberia) exploded, setting itself on fire and sinking in three separate sections. The vessel was carrying a cargo of crude oil estimated as being in excess of 140,000 tonnes. Part of the cargo was destroyed by the flames, while the remaining part spilled into the sea. In consideration of the gravity of the disaster, a national emergency was declared in accordance with Article 11 of Law no. 979 of the 31st December 1982, so that the operations to contain and to clean up the pollution were co-ordinated and directed by the Department of Civil Protection, through the Ministry of the Environment's central inspectorate for the protection of the sea. In spite of the abundance of men and equipment, it was not possible to prevent the black tide from causing serious damage, fouling the seashore between Genoa and Savona and to some extent all the western Ligurian coasts and even those of France and Monaco.

Compensation for damages arising out of the spillage of oil in the sea is governed by two international conventions: the *International Convention on Civil Liability for Oil Pollution Damage* (known as the *Civil Liability Convention* or *CLC - Brussels 1969*) and by the *International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage* (known as the *Fund Convention* or *FC - Brussels 1971*). In Italy the two Conventions were ratified and made enforceable under Law no. 185 of the 6th April 1977 and came into effect in 1978.

The compensation system set out therein provides for the limitation of liability of the owner of the vessel to a given sum above which the *International Oil Pollution Compensation Fund (IOPC Fund)* accepts liability up to a certain maximum, above which there is no compensation for damages.

The victims of the *Haven* incident (some 1,350 including private individuals, public bodies of the territory and the State - for costs incurred to contain and clean up the pollution) applied for compensation to *Venha Maritime Limited* - owner of the motor tanker - and to the *IOPC Fund*.

There followed a particularly weighty and complex dispute. Very briefly the questions arising may be summarised as follows:

The victims claimed compensation amounting to several hundred milliards; the Italian Government asked for reimbursement of around 145 milliards of Lire for costs incurred, plus compensation for damage to the environment (impossible to quantify, but which by way of guideline was indicated at around 900/1,000 milliards of Lire);

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The *IOPC Fund*, *Venha Maritime Limited* and its insurer (*United Kingdom P & I Club*), on the one hand disputed radically the quantification of the damages suffered by private individuals, and on the other hand maintained that the costs to be reimbursed to the Italian Government could not exceed 15 milliards of Lire; they also disputed whether damage to the environment was recoverable under the terms of the *CLC* and *FC*;

The Italian victims maintained that the maximum exposure of the Fund was more than 750 milliards of Lire; the Fund, on the other hand, maintained that it should be calculated at 102.6 milliards of Lire;

The Italian victims maintained that interest accrued and to accrue on the amounts deposited in favour of the victims by the shipowner under the terms of the *CLC* should go to increase such deposit; the Fund and *Venha Maritime Limited* (and the *United Kingdom P & I Club*) maintained that it should, on the contrary, be accounted for by way of partial reduction of the maximum amounts owed by them (subject to it being ascertained whether it was the Fund or the shipowner which could avail itself of the said interest);

The Italian Government and the Fund (the latter with the intention of exempting itself from any obligation for compensation) maintained that the shipowner should be liable without limit for the damage because it had forfeited its right to the limitation of liability contemplated in the *CLC*, having caused the disaster through gross negligence.

In addition, in the course of the various interlinked actions, various objections of a procedural and substantial nature were raised reciprocally, aimed either at excluding any compensation whatsoever or at extending without limit the obligation to compensate, as for example the time bar on the claims put forward by almost all the victims (including the Italian Government) and the forfeiture by *Venha Maritime Limited* of the right to limit its liability, because it had not integrated the deposit of the sum corresponding to its limit of liability in accordance with the final judgment of the Genoa Court of Appeal.

In the judgments handed down so far by the competent courts it has been decided (although not finally) that:

the time bar objection is unfounded; there is an appeal before the Supreme Court pending on this;

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the assets of the *Haven* fund ("stato attivo") are about 750 milliards of Lire; there is an appeal before the Supreme Court pending on the matter; a panel of experts, appointed for the purpose by the Ministry of Foreign Affairs, has expressed an opinion according to which it may be calculated at between 200 and 300 milliards of Lire;

the liabilities of the *Haven* fund ("stato passivo") amount to little more than 184 milliards of Lire, including the environmental damage estimated at 40 milliards of Lire (interim decision); first instance proceedings are pending to ascertain and quantify the damage (after almost seven years the proceedings - which are extremely complex and long drawn out - are at an early stage).

During the intervals of the various actions the insurers (*United Kingdom P & I Club*), acting also in the interests of *Venha Maritime Limited*, with the intention of facilitating a settlement of the pending disputes, contacted all the victims of the incident, including the territorial bodies involved, and, having reached an agreement on the amount of compensation, proceeded to payment of the sums agreed (in 1996 and the first months of 1997). The IOPC Fund, on its part, proceeded to payment of the French and Monegasque victims and two Italian companies.

To date, consequently, of the compensation claims connected with the *Haven* incident only the position of the Italian Government remains unresolved (although it is said that others have applied or have in mind to apply for various compensation payments). Given the extreme complexity of the pending actions, on the one hand because of the delicate and intricate questions of law involved, on the other because of the particular difficulty - from the judicial investigation point of view - of ascertaining the damage, it may reasonably be foreseen that the proceedings will not be judicially resolved for at least another ten years.

In consideration of this, and of the debatability of the defence arguments put forward *hinc et inde* in the proceedings, the Government, on the advice of its Law Officers, some time ago started negotiations to seek an amicable settlement of the position of the Italian State, the last to remain undecided.

Recently an outline agreement was reached which seems to be particularly expedient, on the following terms:

The *IOPC Fund* will pay to the State an amount corresponding to the maximum of 102.6 milliards of Lire, after deduction of the payments already made, and therefore equivalent to about 70.6 milliards of Lire.

Insurers will make this amount up to the global sum of 117.6 milliards of Lire.

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Insurers also undertake to pay the cost of the official survey carried out in the criminal proceedings pending before the Tribunal of Genoa (which is in the region of 2.5 milliards of Lire);

Insurers, finally, will take over the risk of remaining claims for compensation pending or to be put forward by third parties in connection with the *Haven* incident.

To evaluate the expediency of the offer, it should be noted that, as already said, the Tribunal of Genoa has made an interim estimate of 184 milliards of Lire (not including monetary revaluation and interest) for the total damage caused by the *Haven* incident; the damage suffered by the State has been quantified approximately at 145 milliards of Lire (including 40 milliards for environmental damage).

As against this decision (which it must be emphasised is entirely provisional in that, as a result of the pending proceedings, the quantification of the State's damages may increase, but may also be drastically reduced), it is highly significant that the settlement offer referred to above places at the disposal of all the victims (private individuals, public bodies and Italian State) an amount approximately equivalent to the quantification of the damages made by the Tribunal of Genoa (only interest and monetary devaluation remain unsatisfied). To the 117.6 milliards of Lire offered to the Italian State there must be added the sums already paid to the other victims, i.e. 55 milliards of Lire by the *United Kingdom P & I Club* and around 9 milliards of Lire by the IOPC Fund, making a total therefore of around 182 milliards of Lire (plus, lastly, the amount paid by the insurers to Oromare).

As regards the specific position of the Italian State, the Tribunal had awarded 105 milliards of Lire for expenses and 40 milliards of Lire for environmental damage. Deducting from the 117.6 milliards of Lire - aggregate compensation which will be received - the 105 milliards of Lire for expenses, 12.6 milliards of Lire remain for environmental damage. The fact that the Italian State will also receive reimbursement in any event for the enormous cost of the official survey carried out in the criminal proceedings should not be under-estimated. Furthermore, for a fuller evaluation of the matter, it should be noted that the insurers have paid *ex gratia* directly to the local territorial bodies the sum of 25 milliards of Lire for indirect economic damage connected with the degradation of the environmental image suffered at the time. In strict terms, therefore, the compensation for environmental damage to be accepted will (if the original claim put forward by the Italian Government under this head is borne in mind) be nominal or at least very reduced, given that the relevant amount would be less than one third of the amount awarded by the Tribunal of Genoa.

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This outcome, however, appears to be the best available given the special rules which regulate compensation in this matter, rules which make the hope of obtaining a higher level of compensation practically non-existent and given the requirements of international policy, which prompt a settlement of the complex *Haven* matter before or concurrently with the ratification, which cannot be longer delayed, of the 1992 London Protocols and therefore, finally, of adherence to the new Fund.

* * *

In consideration of the great political importance, both foreign and domestic, of the matter, of the difficulty in agreeing, drawing up and concluding a global settlement agreement because of the numerous State administrations involved, of the problems of an accounting and tax nature to be resolved, in allocating the funds recovered, as has been established in the course of repeated ministerial meetings, it is thought advisable to authorise and govern the desired settlement by means of legislation.

This will among other things allow Parliament to take cognizance of the matter in its extreme complexity and to make up its mind on the finalisation of it as proposed.

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In paragraph 1 of Article 1 the drawing up of the settlement is authorised; in paragraph 2, notwithstanding the rules in force relating to state accounting, the Presidency of the Council is appointed as the administration charged with the drawing up of the same, in lieu of the various State administrations involved.

In Article 2, paragraphs 1 and 2, the sums which the State is to receive under the settlement and the relevant heads are indicated; in paragraph 3 the possibility is considered of fixing a time for the payments, taking into account the actual time needed by the Fund and the *United Kingdom P & I Club* to muster the enormous sums required; paragraph 4 provides that the shipowner and insurer shall take on the risk of the outcome of pending actions for compensation and of those which may be commenced in future, guaranteeing the Italian State against any loss which might derive therefrom. Article 3, paragraph 1, in accordance with the logic and nature of the settlement, provides for the parties' reciprocal renunciation of pending and future actions and proceedings; paragraph 2 provides that the parties bear their own costs. Article 4 provides that the settlement will be subject to a fixed lump sum registration fee. Article 5 governs the allocation of the funds which will be paid to the State, in accordance with agreements reached at meetings between the Ministries involved and taking into account the issue by the Ministry of the Treasury, in accordance with Article 14 of decree law no. 669 of the 31st December 1996, converted, with amendments, by law no. 30 of 28th February 1997, of a suspense account payment

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order in the amount of Lire 22,579,029,020 relating to the settlement of the dispute between the Ministry of the Environment and *Associazione temporanea dell'impresa (ATI) Consorzio IRI-ENI*, regarding the assistance rendered by the Consorzio following the *M/T Haven* incident. Articles 6 and 7 provide for the use by the Ministry of the Environment of the resources allocated by financial law (as determined annually paragraph 2 of Article 7 of law no. 979 of 1982) to carry out anti-pollution measures and the use on the basis of specific agreements, of Harbour Offices for the supervision of protected marine areas.

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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.

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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.

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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.