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INFORMATION ON AND APPROVAL OF SETTLEMENT OF CLAIMS (PATMOS INCIDENT)

Note by the Director

1 Introduction

1.1 On 21 March 1985, the Greek tanker PATMOS (51 627 GRT), carrying 83 689 tonnes of crude oil, collided with the Spanish tanker CASTILLO DE MONTEARAGON (92 289 GRT), which was in ballast, off the coast of Calabria in the Straits of Messina, Italy. Fire broke out on the main deck of the PATMOS and spread to the accommodation and wheelhouse. Three crew members died, and the crew had to abandon ship. The ship was damaged in the hull. Due to strong winds and currents, the PATMOS drifted onto a beach by a village on the Sicilian coast. The ship was refloated and tugs were used to control it in the Straits of Messina. Tugs were also used to combat the fire which was extinguished within two days of the collision. The PATMOS was then towed to the Port of Messina and moored at the SMEB shipyard, where the oil was discharged.

1.2 Approximately 700 tonnes of oil escaped from the PATMOS. Most of the spilt oil drifted on the surface of the sea and dispersed naturally. Only a few tonnes of oil came ashore on the Sicilian coast. The Italian authorities undertook extensive measures, with the assistance of private contractors employed by the owner of the PATMOS, in order to contain the spilt oil and to prevent it polluting the Sicilian and Calabrian coasts. Dispersants were also used in large quantities. The owner of the PATMOS participated in the operations.

1.3 This document gives information concerning the claims submitted and the examination of the claims by the IOPC Fund. During this examination two important questions of principle arose: the relationship between salvage operations and preventive measures, and the admissibility of claims relating to damage to the marine environment. The considerations of the Director on these points are set out in the document. Information is given on the negotiations with claimants, as well as on the court proceedings and the decisions rendered by the Court of Messina concerning the claims.

2 Limitation Proceedings

Establishment of limitation fund and submission of claims

2.1 The owner of the PATMOS and the owner's insurer, the United Kingdom Mutual Steamship Assurance Association (Bermuda) Ltd (UK Club), established a limitation fund with the Court of Messina (Civil Court of first instance). The limitation proceedings were opened on 24 June 1986. The Court fixed the limitation amount at LIt13 263 703 650 (£5.7 million). The IOPC Fund was notified of the limitation proceedings in accordance with Article 7.6 of the Fund Convention.

2.2 The IOPC Fund lodged an appeal against the Court of Messina's decision of 24 June 1985 to open limitation proceedings, in order to reserve its right to break the limitation of the PATMOS if the investigation into the cause of the incident were to show that the incident occurred as a result of the actual fault or privity of the shipowner (cf paragraph 5.5 below).

2.3 The limitation fund was established by the deposit of a bank guarantee issued by an Italian bank for the amount of LIt13 280 million, not by the payment of the limitation amount to the Court. If that amount had been paid in cash, it would have been invested by the Court and would have earned interest to the benefit of third parties and the IOPC Fund, whereas no interest accrues on a bank guarantee. The IOPC Fund has maintained that the bank guarantee should also cover interest for a period of time, say five years, before the end of which no final judgement could be expected; thus the guarantee should be increased so as to cover interest at a rate of 15% pa over that period. For this reason, the IOPC Fund has appealed against the acceptance of the guarantee by the Court and has asked the Court either to declare that the guarantee was insufficient and that no limitation fund had been validly established, or to order that the amount covered by the guarantee be increased to LIt20 000 million. It should be noted that in some IOPC Fund Member States security is required for interest and costs over and above the limitation amount. The position of Italian law is not clear on this point.

2.4 On the expiry of the time period fixed by the Court of Messina for this purpose (24 August 1985), 42 claimants had lodged claims against the limitation fund. The total of these claims amounted to LIt76 112 040 216 (£33 million). A list of the claims as submitted is at the Annex.

2.5 Under the Memorandum of Understanding signed in 1980 by the IOPC Fund and the International Group of P & I Clubs, the Clubs and the IOPC Fund should, wherever possible and practicable, co-operate in the use of lawyers, surveyors and other experts necessary to determine the liability of the shipowner to third party claimants. However, in view of the complexity of this case, the large amounts involved and the risk of conflicting interests arising, the Director and the UK Club agreed that it would not be appropriate to use the same lawyers. On the other hand, it was agreed that there was no reason why the same surveyors and other experts should not be used by the UK Club and the IOPC Fund.

Examination of claims

2.6 The claims were examined by the IOPC Fund and the UK Club in close co-operation. A surveyor in Palermo in Sicilly, who had been following the incident from the very early stages, was employed by the IOPC Fund and the UK Club with the task of examining the claims. In addition, a surveyor in the United Kingdom with extensive international experience was instructed to carry out a detailed examination of all claims and all supporting documents. The reports submitted by this latter surveyor formed the basis of the negotiations with the claimants, and were also of great importance to the position taken by the IOPC Fund and the UK Club in the court proceedings.

2.7 The claims can be divided into three groups:

(a) claims for costs that clearly relate to clean-up operations or to preventive measures as defined in the Civil Liability Convention;

(b) claims for operations of a salvage nature and related activities; and

(c) a claim for damage to the marine environment as such.

The Director's approach in the examination of the claims in these groups is set out below.

Clean-up operations and preventive measures

2.8 There were 29 claims in the group of claims that clearly related to costs of clean-up operations or to preventive measures as defined in the Civil Liability Convention; part of the claim submitted by the Italian Government also belonged to this category. The total amount claimed was approximately LIt14 000 million (£6 million). The examination by the IOPC Fund and the UK Club in respect of these claims had the purpose of establishing whether the measures alleged by claimants had actually been carried out, whether the measures as such were reasonable, and whether the amounts claimed were reasonable. This examination showed, in particular, that in many cases the amounts claimed were manifestly unreasonable.

Salvage costs

2.9 The second group of claims comprised those that related to costs of operations which, in the Director's view, would normally be considered as salvage operations and related measures; 12 claims belonged to this group, totalling about LIt40 000 million (£17 million). The Director studied very carefully the question of whether and to what extent the costs for such operations fell within the definition of "pollution damage" laid down in the Civil Liability Convention, that is, whether these operations could be considered as preventive measures as defined in that Convention (Articles I.6 and I.7).

2.10 In this context the Director took into account the discussions at the 14th session of the Executive Committee based on a document submitted by him (FUND/EXC.14/4/Add.1, paragraphs

3.7 - 3.21). The Executive Committee was of the opinion that it would not be possible, at that stage, to take any firm position regarding the interpretation of the definition of "preventive measures" in relation to salvage operations, nor to give the Director any instructions concerning the criteria to be applied in respect of the admissibility of claims of this kind (FUND/EXC.14/7, paragraph 3.3.9). Nevertheless, the Director felt that delegations were generally of the opinion that the IOPC Fund should take a restrictive approach in accepting claims of this kind.

2.11 The question of the relationship between salvage operations and preventive measures was not dealt with in the preparatory work that led up to the adoption of the Civil Liability Convention, nor was the problem discussed in any great detail during the revision of the Civil Liability Convention and the Fund Convention.

2.12 The notion of "preventive measures" is defined in the Civil Liability Convention as "any reasonable measures taken ... to prevent or minimise pollution damage". The definition does not contain any words qualifying the kinds of measures envisaged.

2.13 The Director considers that, in interpreting the definition, the purpose of the regime of compensation established by the Civil Liability Convention must be taken into account. Under Article 31 of the Vienna Convention on the Law of Treaties, a treaty shall be interpreted in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. In the Director's view, the consequences of any interpretation must also be taken into account.

2.14 It should be noted that the regime established by the Civil Liability Convention and the Fund Convention was created for the purpose of providing compensation to victims who would otherwise be without adequate compensation. If costs of salvage operations were generally considered as falling within the definition, it could mean that in many cases a large part of the amount available for compensation would be used for paying such costs. Should the amount available under the Civil Liability Convention (or, if the Fund Convention applies also, under both Conventions) be insufficient to compensate all claimants in full, third parties who have suffered damage as a result of the incident would compete with the salvors for compensation from the amount available.

2.15 The Director considers that it is necessary to take into account the commercial practice which has developed over the years concerning the relationship between salvage claims and claims for costs of measures for the prevention of pollution. In the case of successful salvage operations, the salvors will be able to get remuneration by means of salvage rewards. It should be pointed out that in the present case, the cargo on board the PATMOS represented a value of approximately £12.6 million, whereas the value of the ship at the end of the salvage operations was about £750 000. Salvage rewards have, except in rare cases, been paid by hull and cargo underwriters in respect of operations of the

kind referred to above, except that the P & I Clubs have undertaken to pay remuneration in the case of the unsucessful salvage of laden tankers under the "safety-net" provisions of Lloyd's Open Form 80. In the PATMOS case, court proceedings concerning the granting of salvage awards were initiated at a very early stage.

2.16 After very careful consideration of this issue and the various elements mentioned above, the Director took the position that operations could be considered as falling within the definition of preventive measures only if the primary purpose was to prevent pollution; if operations primarily had another purpose, eg to salvage hull or cargo, the operations would not be covered by the definition. He examined whether the individual operations were carried out during a time when there was a real risk of pollution damage. The Director came to the conclusion that the risk of further pollution had ceased on 23 March 1986, when the PATMOS was taken to the jetty at the SMEB shipyard. If there had still been a risk of pollution at that time, the authorities would certainly not have allowed the mooring of the PATMOS near the city of Messina. The Director then applied the test of "primary purpose" to the various operations covered by the claims and held extensive discussions with the above-mentioned surveyors.

2.17 The Director came to the conclusion that claims n°5, 6, 9, 12, 14-16, 20, 26, 27, 28B9 and 31 did not relate to operations which had the prevention of pollution as their primary purpose. For this reason, the Director rejected these claims.

2.18 It should be added that, if operations which had a salvage character were to be admitted because their primary purpose was that of preventing pollution, the question would arise as to which criteria should be applied for the assessment of the compensation for these operations. In the Director's view, the assessment for compensation under the Civil Liability Convention should then be made not on the basis of the criteria applied for the assessment of salvage awards, but should be limited to compensation of costs incurred (including a reasonable element of profit); the definition of preventive measures only covers costs of measures to prevent or minimise pollution damage.

Damage to the environment

2.19 A claim of LIt20 000 million (£8.7 million), later reduced to LIt5 000 million (£2.2 million), was submitted by the Italian Government for damage to the marine environment. The claim document did not set out the kind of damage that had allegedly been caused, nor did it give any explanation of the basis on which the amount claimed had been calculated. The Italian Government admitted during the proceedings that "proof of the extent of the ecological damage could not be given by documents or by witnesses". It requested the Court to set up a technical committee to establish that damage had been suffered.

2.20 It should be noted that the IOPC Fund's Assembly has taken the position that claims for non-economic environmental damage should not be accepted. In 1980 the Assembly unanimously adopted an important Resolution on the admissibility of claims of this kind (IOPC Fund Resolution N°5). The Resolution was elaborated in view of certain claims of an abstract nature for damage to the marine environment (damage to resources and costs and expenses in restoring the polluted water to a clean condition) which were submitted to a Soviet court under the USSR legislation implementing the Civil Liability Convention. It is stated in the Resolution that "the assessment of compensation to be paid by the IOPC Fund is not to be made on the basis of an abstract quantification of damage calculated in accordance with theoretical models" (document FUND/A/ES.1/13, paragraph 11(a) and Annex I). In other words, compensation can be paid by the IOPC Fund only if a claimant has suffered quantifiable economic loss.

2.21 Following the adoption of this resolution, a Working Group, with 12 Member States (including Italy) participating, was set up by the Assembly to consider the issue of the admissibility of claims. The Working Group examined the question as to whether and, if so, to what extent a claim for environmental damage was admissible under the Civil Liability Convention and the Fund Convention. The Working Group agreed that compensation could be granted only if a claimant having a legal right to claim under national law had suffered quantifiable economic loss (document FUND/A.4/10, Annex, paragraphs 18 and 19). The position taken by the Working Group was endorsed by the IOPC Fund's Assembly in 1981 (document FUND/A.4/16, paragraph 13).

2.22 In the opinion of the Director, the Governments of the IOPC Fund's Member States have taken a very clear position on this point in the IOPC Fund bodies, ie that claims for non-economic damage to the marine environment are not admissible under the Civil Liability Convention and the Fund Convention.

2.23 In this context the Director also noted that this matter had been dealt with in great detail by the 1984 Diplomatic Conference which adopted Protocols amending the Civil Liability Convention and the Fund Convention. In the 1984 Protocol to the Civil Liability Convention, the Conference inserted a proviso in the definition of "pollution damage" to the effect that compensation for impairment of the environment, other than loss of profit from such impairment, shall be limited to costs of reasonable measures of reinstatement actually taken or to be undertaken. The settlement policy of the IOPC Fund was taken by the Conference as the basis of the interpretation of the definition of pollution damage. It should be noted that during the Conference no delegation raised any objection to or criticism of the IOPC Fund's Resolution of 1980.

2.24 The Director had lengthy discussions with representatives of the Italian Government on this issue. During these discussions he made it clear that, in his view, claims of the kind submitted by the Italian Government in respect of damage to the environment

were not admissible under the Civil Liability Convention and the Fund Convention. He also emphasised that Italy had supported the position taken by the IOPC Fund's organs on this matter, in particular the 1980 Resolution.

2.25 In view of the position taken by the IOPC Fund's Assembly, the Director rejected the part of the claim submitted by the Italian Government which related to damage to the environment.

Negotiations with claimants

2.26 As soon as the examination of the claims was completed, the IOPC Fund and the UK Club started negotiations with the various claimants. These negotiations were carried out parallel to the court proceedings. As the Court fixed very short time periods for the parties for the exchange of pleadings, the negotiations had to be carried out at great speed. The Court held oral hearings in October 1985 and in January and February 1986.

2.27 The IOPC Fund and the UK Club concentrated the negotiations on the 29 claims which, in their view, related to costs of preventive measures or clean-up operations. In February 1986, 27 of the claims in this category had, after very difficult negotiations, been reduced by the plaintiffs to amounts which were considered by both the UK Club and the Director as reasonable. In respect of many claims the reduced amounts corresponded to only a minor part of the amount originally claimed.

2.28 As for two of the claims belonging to this group (claims n°11 and 23) no agreement was reached, since the claimants were not willing to reduce the amounts claimed to a level which could be considered reasonable by the IOPC Fund and the UK Club.

2.29 In respect of the part of the claim submitted by the Italian Government which, in the view of the IOPC Fund and the UK Club, related to clean-up operations or to preventive measures as defined in the Civil Liability Convention, the IOPC Fund and the UK Club considered that the amount claimed, LIt302 529 343 (£131 000), was reasonable.

2.30 Under Internal Regulation 8.4.1, the Director is authorised to make final settlement of any claim if he estimates that the total costs to the IOPC Fund of satisfying all claims arising out of the relevant incident is not likely to exceed 25 million francs (1.67 million SDR, corresponding to LIt3 400 million or £1.4 million at the rate of exchange on the date of the incident). As it was possible that the total payments to be made by the IOPC Fund in respect of the PATMOS incident would exceed 25 million francs, the Director informed the UK Club that he did not have the authority to make binding settlements on behalf of the IOPC Fund. He declared, however, that he considered as reasonable the amounts of the 27 claims referred to in paragraph 2.27 as reduced and the amount of the part of the claim submitted by the Italian Government mentioned in paragraph 2.29, and would, if necessary, submit the claims in these amounts to the Executive Committee with his recommendation that they be approved.

2.31 On the basis of the Director's declaration, the UK Club agreed early in February 1986 with the above-mentioned 27 claimants to settle the claims at the amounts as reduced. These claims as settled totalled LIt3 837 660 316 (£1.7 million), whereas the claims as submitted had totalled LIt13 595 664 456 (£5.9 million). All these settlements were inclusive of interest and costs, whereas the amounts claimed in most cases were exclusive of these items. Agreement at an amount of LIt302 529 343 (£131 000) was also reached with the Italian Government on the above-mentioned part of its claim. In the settlement agreements, the UK Club undertook to pay the amounts agreed as soon as it became clear that no opposition was raised by other parties against the settlements.

2.32 With regard to the claim by the Italian Government, part of the claim concerned damage to the marine environment as such. Both the IOPC Fund and the UK Club rejected this part of the claim. Another part of the claim submitted by the Italian Government, amounting to LIt83 243 820 (£36 000), was rejected as it related, in the opinion of both the UK Club and the Director, to operations which did not have the prevention of pollution as their primary purpose.

2.33 Both the IOPC Fund and the UK Club rejected the claims referred to in paragraph 2.17 above that related to operations which, in their view, did not have the prevention of pollution as their primary purpose.

2.34 Two claims (claims n°12 and n°27) which, in the opinion of the Director, did not fall within the definition of "pollution damage" were withdrawn during the limitation proceedings as a result of discussions between the claimants, the IOPC Fund and the UK Club, since the claimants accepted that their claims did not fall within that definition.

First Decision by the Court of Messina on the Admissibility of Claims

2.35 The IOPC Fund and the UK Club, like most of the claimants whose claims were contested, filed extensive pleadings with the Court. The pleadings of the IOPC Fund and the UK Club were mostly very similar, though on some points the arguments differed. As regards the controversial claims, the line of argument of the IOPC Fund was basically the same as that taken later in the opposition proceedings, as set out in paragraph 3.4 below.

2.36 By decision of 18 February 1986, the Court of Messina (composed of a single judge) included in the list of admissible claims ("stato passivo") the 27 claims in respect of which agreement had been reached between the claimants and the UK Club, in the amounts thus agreed. In addition, the part of the claim submitted by the Italian Government which had been accepted by the UK Club was included in the list.

2.37 With regard to the two claims in respect of which no agreement had been reached on the quantum (claims n°11 and 23; cf paragraph 2.28), the Court admitted the claims in amounts

very much lower than those claimed. The amounts claimed were LIt1 350 million and LIt737 150 000, whilst the Court accepted LIt320 million and LIt120 million, respectively.

2.38 The total amount accepted by the Court was LIt4 267 312 659 (£1.8 million).

2.39 The Court rejected ten claims (claims n°5, 6, 9, 14-16, 20, 26, 28B9 and 31) as well as the parts of the claim submitted by the Italian Government (claim n°28A) which had been opposed by the IOPC Fund and the UK Club. The reasons for the rejection of these claims were mainly those advanced by the IOPC Fund and the UK Club, ie that they did not fall within the definition of "preventive measures", since the measures had not been taken for the purpose of preventing or minimising pollution damage. As for the claim by the Italian Government in respect of damage to the marine environment, the Court stated that no evidence had been given that ecological damage had been caused to the coast nor that there was any damage to the marine fauna.

2.40 The decision by the Court in respect of the various claims is reflected in the Annex.

2.41 In Italy, oppositions to the decision of a court on the admissibility of claims in limitation proceedings may be lodged with the same court. No oppositions were lodged against the decision by the Court as regards the claims which had been wholly or partly accepted. In April and May 1986, after the time limit for the lodging of oppositions had expired, the UK Club paid the claims which had been accepted by the Court (cf paragraph 2.38).

3 Opposition Proceedings

3.1 Oppositions to the decision of the Court of Messina were lodged by eight claimants (claims n°5, 6, 9, 20, 26, 28 A, 28 B9 and 31). Three of the claimants whose claims had been rejected (claims n°14, 15 and 16), on the grounds that the measures had not been taken for the purpose of preventing pollution, did not lodge oppositions.

3.2 After an exchange of extensive written pleadings, the Court held oral hearings in May and July 1986. The Court (composed of three judges and presided over by the judge who had made the decision in February 1986) rendered its judgement in respect of the oppositions on 30 July 1986.

3.3 The following paragraphs contain a short presentation of the reasons invoked by the IOPC Fund and the UK Club for their rejection of the claims in respect of which oppositions were

lodged. Finally, the position taken by the Court and the reasons therefor are indicated; the decision of the Court in respect of the various claims is reflected in the Annex, the extreme right hand column.

Positions of the Parties

3.4 The oppositions can be summarised as follows:

(a) Esso Italiana SpA (claim n°6)

Esso claimed originally a total amount of LIt22 381 235 847 (£9.7 million). In the opposition proceedings Esso claimed a total of LIt22 628 039 202 (£9.8 million) under the following items:

(i) LIt1 870 733 591 (£800 000) for the costs of antipollution operations; this item had not been admitted in the stato passivo for lack of evidence;

(ii) LIt13 280 million (£5.7 million) as salvage reward due by Esso to the salvors in subrogation of the latter; it should be noted that the salvors had not lodged oppositions to the decision by which their claims were rejected;

(iii) LIt5 712 835 847 (£2.5 million) in subrogation of SMEB, of which amount LIt1 485 000 000 had already been paid by Esso to SEMB; this item related to the mooring of the PATMOS at SMEB's pier at Messina; and

(iv) LIt1 764 469 764 (£760 000), being the freight of the charter of two vessels for the trans-shipment of the cargo of the PATMOS and carriage thereof from Messina to Augusta.

Regarding item (i), the IOPC Fund and the UK Club maintained that there was no evidence that the anti-pollution team sent by Esso had actually been used.

With respect to item (ii), the IOPC Fund and the UK Club argued that the primary purpose of the operations covered by this item was that of rescuing ship and cargo, and not of preventing pollution damage; consequently, these operations could not be considered as "preventive measures". In addition, they maintained that Esso was not entitled to make a claim in subrogation of the salvors, since the salvors had not lodged any opposition against the Court's decision of 18 February 1986; for this reason, the salvors had lost their rights, if any, against the limitation fund. In their view, Esso could not be entitled to subrogation in respect of claims that had been practically waived.

As for item (iii), the IOPC Fund and the UK Club maintained that the mooring of the PATMOS at SMEB's pier, to which this item related, could not be considered as "preventive measures", since at the time of the mooring there was no longer any risk of pollution. Even if one were to assume that such a risk existed, it would then have been totally unreasonable, in the opinion of the IOPC Fund and the UK Club, to berth the PATMOS at SMEB's pier close to the city of Messina; the costs of this operation could not be accepted, therefore, under the Civil Liability Convention. Esso's claim in respect of services rendered after 1 April 1985 should not be admitted, since, as set out under (b) below, SMEB's claim for that period was not admissible from a substantive point of view. The IOPC Fund and the UK Club argued that Esso could not claim in subrogation in respect of a claim which was inadmissible in itself.

In respect of item (iv), the IOPC Fund and the UK Club also argued that the operations covered by this item were not carried out primarily for the prevention of pollution, but in order to enable the PATMOS to unload its cargo and Esso to dispose of it.

(b) SMEB (claim n°9)

SMEB claimed LIt1 406 872 000 (£600 000) for the services rendered during the period 22 March to 1 April 1985. In respect of the balance of its claim of LIt4 940 723 386 (£2.1 million) for services rendered after 1 April, SMEB stated that this amount should be paid directly to Esso and the Patmos Shipping Corporation, as the payment of this amount to SMEB had been guaranteed by them.

The IOPC Fund and the UK Club maintained that this claim should be rejected for the reasons indicated under (a) above in relation to item (iii) of Esso's claim.

(c) Italian Government (claim n°28A)

During the opposition proceedings, further information was given concerning the operations relating to an amount of LIt36 263 820 (£16 000). In the light of this information, the IOPC Fund and the UK Club accepted that these operations should be considered as "preventive measures". The UK Club paid this sum to the Italian Government in May 1986, as well as costs amounting to LIt18 million (£7 789), bringing the total amount paid by the UK Club to all claimants to LIt4 321 576 479 (£1.9 million).

In its opposition the Italian Government claimed:

(i) LIt46 980 000 (£20 000) for services rendered by firemen which had not been accepted as "preventive measures"; and

(ii) LIt5 000 million (£2.2 million) for ecological damage.

In respect of item (i), the IOPC Fund and the UK Club argued that it must be rejected, as the services were carried out after 1 April 1985, when there was no longer any risk of pollution damage.

As for item (ii), the IOPC Fund and the UK Club maintained that the State was not entitled to claim compensation for ecological damage to the sea, since the sea, including the territorial waters, is not the subject of any real right of the State. In addition, they argued that, both under the Civil Liability Convention and under general Italian law, compensation may only be claimed in respect of costs or loss of profit; under Italian law, claims for so-called "moral damages" are admissible only in the case of a criminal offence, and no criminal charge had been brought against the master of the PATMOS. Finally, the IOPC Fund and the UK Club stated that if any economic loss had resulted from pollution of the sea, such loss would have been suffered by individuals or private enterprises exploiting the sea (eg fishermen, hoteliers and restaurateurs) and not by the State.

(d) Francesco Mellina (claim n°5)

The claim of LIt200 million (£87 000) related to alleged anti-pollution measures consisting of the closing of two holes in the hull of the PATMOS on 24 March 1986.

The IOPC Fund and the UK Club maintained that the operations carried out by Mellina were taken for the purpose of salvaging the cargo and could therefore not be considered as "preventive measures". In the view of the IOPC Fund and the UK Club, there was no longer any risk that oil would escape through the holes, as the levels of the surrounding seawater and the oil in the tanks had been equalised. On the other hand, if the holes had not been plugged, the cargo would have been contaminated by sea water once the discharge of the oil had started. The plugging had the purpose, therefore, of salvaging the cargo.

(e) Corporazione dei Piloti dello Stretto di Messina (claim n°20)

The Pilot Corporation claimed LIt157 533 284 (£68 000) (plus 15% interest and devaluation) for alleged anti-

pollution measures, consisting of constant checking of the mooring of the PATMOS during the discharge of the cargo and of identifying the areas of the sea where oil existed.

The IOPC Fund and the UK Club maintained that the discharge of the cargo and any activity related thereto could not be considered as "preventive measures". They also argued that there was no evidence that the claimant had carried out any activities to locate the spilt oil.

(f) Salvatore Ciotto (claim n°26)

Mr Ciotto, a port chemist, allegedly qualified in anti-pollution services, claimed LIt522 700 000 (£226 000) for his assistance as a chemist in advising the port authorities in Messina in respect of the unloading of the PATMOS.

The IOPC Fund and the UK Club maintained that the services rendered by the claimant, if any, were only a fulfilment of his ordinary duties as port chemist; for this reason, these services should not be compensated under the Civil Liability Convention.

(g) Neptunia srl (claim n°28 B9)

This company claimed LIt8 055 600 (£3 500) for the services of private firemen after 1 June 1985.

The IOPC Fund and the UK Club stated that there was no danger of pollution after 23 March 1985; for this reason, these services could not be considered as "preventive measures".

(h) General National Maritime Transport Co (claim n°31)

The Libyan owners of the vessel INTISAR claimed $84 074.88 (£55 000) plus LIt68 233 563 (£30 000) for costs and damages resulting from the vessel having to be moved from SMEB's shipyard to a yard in Palermo, in compliance with an order that the INTISAR should leave room for the PATMOS at SMEB's jetty.

The IOPC Fund and the UK Club maintained, for the reasons given under (a) and (b) above in relation to the claims of Esso and SMEB, that the mooring of the PATMOS at SMEB's pier could not be regarded as "preventive measures". Consequently, in the opinion of the IOPC Fund and the UK Club, the moving of the INTISAR could not be considered as falling within the notion of "preventive measures".

The Judgement

3.5 In its judgement, the Court took the following position in respect of the oppositions:

Claim n°	Claimant		Amount Claimed	Court Decision
			LIt	LIt
5	Francesco Mellina		200 000 000	10 000 000
6	Esso Italiana SpA		22 628 039 202	rejected
9	SMEB Cantieri Navali SpA		6 347 595 386	1 283 687 000
20	Corpo dei Piloti dello Stretto di Messina		157 533 284	rejected
26	Dr Salvatore Ciotto		522 700 000	rejected
28 A	Italian Government	(i)	46 980 000	rejected
		(ii)	5 000 000 000	rejected
28 B9	Nettunia srl		8 055 600	rejected
31	General National Maritime Transport Co		227 964 163	200 000 000

The Court decided that the judgement should be immediately enforceable. The Court also ordered that each party to the proceedings should bear its own costs.

3.6 The reasons given by the Court can be summarised as follows.

(a) In a general part of the judgement the Court held that salvage operations could not be considered as preventive measures, since the primary purpose of such operations was that of rescuing ship and cargo, and this even if the operations had the further effect of preventing pollution. The Court stated that on 22 March 1985, when the state of emergency was declared by the Harbour Master of Messina, there was a serious danger of explosion and consequent pollution since the structures of the PATMOS had been severely damaged. The Court then noted that on 1 April, the state of emergency was declared to have ceased.

(b) SMEB (claim n°9)

In view of the considerations referred to above, the Court accepted the claim of SMEB in respect of the services rendered until 1 April 1985, whereas the claim in respect of services rendered after that date was not admitted as there was then no state of emergency and the vessel was no longer in danger. The Court, therefore, accepted SMEB's claim in respect of the period up to 1 April, amounting to LIt1 406 872 000, subject only to the deduction of an amount of 123 185 000 relating to services which in fact were rendered after the point in time when the state of emergency had ceased.

(c) Esso Italiana SpA (claim n°6)

As to item (i) in paragraph 3.4 (a), the Court held that there was no evidence that this anti-pollution team sent by Esso had been used or of the usefulness of this team.

With respect to item (ii), the Court, as stated above, took the position that salvage operations could not be considered as preventive measures because the primary purpose of the operations was not that of avoiding pollution damage. The Court declared that Esso could not claim compensation in subrogation of the salvors, as the salvors had lost their rights against the limitation fund by not lodging any opposition to the Court's decision of 18 February 1986. The Court also pointed out that subrogation could not take place before payment had been made, and Esso had not yet paid the salvors.

As for item (iii) concerning Esso's claim for subrogation in SMEB's rights, the Court held that subrogation could not take place in respect of services rendered after 1 April 1985, since the opposition lodged by SMEB in respect of services after that date had been rejected. In addition, services rendered after the point in time when the state of emergency had ceased could not be considered as preventive measures. As regards the claim of SMEB for the period before 1 April 1985, Esso had claimed to be subrogated in SMEB's rights as a consequence of the payment of LIt 1 485 000 000 to SMEB. The Court considered that this payment did not give rise to subrogation, since under Italian law subrogation was not automatic but must be declared at the time of the payment. It had not been shown that Esso, when making this payment, indicated to the interested parties its intention of subrogating itself in SMEB's rights.

Concerning item (iv) relating to the freight of the two vessels, this item was not dealt with explicitly in the judgement, but was rejected implicitly.

(d) Italian Government (claim n°28A)

The claim by the Italian Government for LIT46 980 000 for services rendered by firemen was rejected by the Court, as these services were carried out after 1 April 1985. In addition, the Court stated that these services only constituted an ordinary and statutory activity imposed by law; for this reason compensation for these services were not to be paid out of the limitation fund but by the persons for whose benefit these services were rendered (ie the shipowner and the cargo owner).

As regards the item relating to damage to the environment, the Italian Government had maintained that the damage was a violation of the right of sovereignty over the territorial sea belonging to the State of Italy. The Court stated that this right was not one of ownership and could not be violated by acts committed by private subjects. In addition, the Court declared that the State had not suffered any loss of profit and not incurred any costs as a result of the alleged damage to

the territorial waters, or the fauna or flora. The State had therefore not suffered any economic loss. The Court also drew attention to the Resolution adopted by the IOPC Fund Assembly in 1980 in which it was stated that compensation was only payable if there was actual damage suffered and that compensation should not be based on theoretical models.

(e) Francesco Mellina (claim n°5)

The Court held that the services rendered by Mellina should be considered as preventive measures, as Mellina was ordered by the Harbour Master to plug the holes in the PATMOS for the purpose of avoiding leakage of oil. However, the Court stated that compensation for preventive measures should not be calculated as a reward but only as compensation of costs. The Court quantified these costs at LIt10 million (£4 300). This should be compared with the amount claimed of LIt200 million (£86 000).

(f) Corporazione dei Piloti dello Stretto di Messina (claim n°20)

This Claim was rejected by the Court, as the checking of the mooring of the PATMOS was carried out after 1 April 1985 when there was no longer any risk of pollution. In addition, the Court pointed out that the order to carry out this checking had been given by the Harbour Master to SMEB and not to the Pilot Corporation. The Court also stated that there was no evidence that the claimant had carried out any activities to locate the spilt oil.

(g) Salvatore Ciotto (claim n°26)

The Court rejected this claim since the services rendered by Mr Ciotto consisted only of the issue of gas-free certificates, which in the opinion of the Court could not be considered as preventive measures.

(h) Neptunia (claim n°28 B9)

This claim was rejected by the Court for procedural reasons. In addition, the Court stated that the claim was unfounded, because the services rendered by Neptunia were safety services and did not have the purpose of preventing pollution. The Court also pointed out that a major part of the activities of Neptunia were carried out after 1 April 1985 when there was no longer any danger of pollution.

(i) General National Maritime Transport Co (claim n°31)

The Court upheld the claim submitted by this company, owner of the vessel INTISAR. In the opinion of the Court, the costs incurred and the damage sustained as a result of the INTISAR being moved from SMEB's shipyard were a direct effect of the preventive measures consisting of the mooring of the PATMOS at SMEB's jetty.

3.7 The total amount of the claims as accepted by the Court is LIt5 797 263 479 (£2.5 million). This amount falls well below the limitation amount applicable to the owner of the PATMOS, viz LIt13 263 703 650 (£5.7 million).

4 Appeal Proceedings

4.1 Appeals against the judgement of 30 July 1986 may be lodged with the Court of Appeal in Messina. The time limit for lodging appeals has not yet expired.

4.2 At the time of drafting this document, appeals against the judgement had been lodged by Esso (claim n°6), the Pilot Corporation (claim n°20), Dr Ciotto (claim n°26) and the Italian Government (claim n°28 A) .

4.3 The UK Club and the IOPC Fund have decided to lodge an appeal against the judgement in respect of the claims submitted by SMEB (claim n°9) and by the General National Maritime Transport Co (claim n°31). They have decided, on the other hand, not to appeal against the judgement as regards the claim submitted by Francesco Mellina (claim n°5), in view of the low amount admitted by the Court.

4.4 The Court of Appeal will probably not render its judgement until late in 1987.

4.5 An appeal to the Supreme Court of Cassation may be made against any judgement by the Court of Appeal.

5 Other Court Proceedings in Italy

5.1 The Court procedings concerning the granting of salvage awards in connection with the PATMOS incident will also take place at the Court of Messina, but will be dealt with by a Chamber other than that dealing with the limitation proceedings. A request by one of the claimants for the the limitation proceedings and the proceedings concerning salvage awards to be joined was rejected by the Court.

5.2 Legal proceedings concerning liability and compensation for damage arising out of the collision between the PATMOS and the CASTILLO DE MONTEARAGON were initiated at the Court of Genoa. However, negotiations between the owner of the PATMOS and the owner of the CASTILLO DE MONTEARAGON were carried out with a view to arriving at an out-of-court settlement between them in respect of all liability claims arising out of the incident. In July 1986, the Director was informed that a settlement had been reached between the two shipowners and related interests. The IOPC Fund had not been involved in these negotiations, and the Director had informed the parties that a settlement would have no effect with regard to the IOPC Fund's rights in a recourse action. As a consequence of the settlement, the legal actions referred to above are being withdrawn.

5.3 The Director is examining whether the IOPC Fund should institute recourse proceedings in the Court of Genoa against the owner of the CASTILLO DE MONTEARAGON in order to safeguard its right to recover from him the amounts that the IOPC Fund may have to pay under the Fund Convention.

5.4 The right of limitation of the owner of the CASTILLO DE MONTEARAGON will, under Italian private international law, be decided in accordance with Spanish law. The limitation amount applicable to that ship will be approximately £3.2 million. Substantive issues concerning the collision will be governed by the 1910 Convention for the Unification of Certain Rules of Law with respect to Collision between Vessels, which is part of Italian law.

5.5 A summary administrative enquiry into the cause of the collision was carried out by the Messina port authorities. The result of this enquiry is secret but has been transmitted to the port authorities in Catania which will conduct a formal enquiry into the cause of the incident.

5.6 It should be noted that the IOPC Fund has already incurred considerable costs as a result of the various court proceedings. The IOPC Fund has paid legal fees amounting to £107 913. It will also have to pay considerable amounts for the examination carried out by the surveyors referred to in paragraph 2.6.

6 Action to be Taken by the Executive Committee

The Executive Committee is invited to take note of the information contained in this document and to give such instructions concerning the IOPC Fund's position in the court proceedings as it considers appropriate.

* * *

ANNEX

S U M M A R Y O F C L A I M S
(figures in LIt)

N°	Claimant	Main Subject of Claim	Amount Claimed	Court Admission (stato passivo) 18.2.86 <1>	Court Decision after Opposition 31.7.86
1	Ciane Anapo	Clean-up operations at sea	74 877 000	72 000 000	
2	Rimorchiatori Napoletani srl	Clean-up operations at sea	130 121 575	131 810 000	
3	Maresud srl	Clean-up operations at sea	228 085 000	122 000 000	
4	Somat srl	Clean-up operations at sea	105 839 000	83 000 000	
5	Francesco Mellina	Diving services	200 000 000	rejected	10 000 000
6	Esso Italiana SpA	Various	22 381 235 847	rejected	rejected
7	Ditta A Previti	Transport services	30 841 719	21 000 000	
8	Mare Pulito srl	Clean-up operations at sea	198 793 324	147 000 000	
9	SMEB Cantieri Navali SpA	Salvage operations & measures to remove gas from PATMOS	6 347 595 386	rejected	1 283 687 000
10	Lorefice & Ponzio sdf	Clean-up operations at sea	150 172 500	62 000 000	
11	SNAD	Clean-up operations at sea	1 350 000 000	320 000 000	
12	Ditta Carmelo Picciotto fu Gius	Towage	4 493 129 500	withdrawn	
13	Augustea SpA	Clean-up operations at sea	395 348 000	260 000 000	
14	Carmelo Picciotto fu Gius	Fire fighting operations	2 857 132 980	rejected	
15	Augustea SpA	Salvage of PATMOS	1 447 969 770	rejected	
16	Capieci SpA	Salvage of PATMOS	1 785 910 230	rejected	
17	Medit SpA	Clean-up operations at sea	292 438 800	200 000 000	
18	Silmar snc	Clean-up operations at sea	88 150 000	45 000 000	

N°	Claimant	Main Subject of Claim	Amount Claimed	Court Admission (stato passivo) 18.2.86	Court Decision after Opposition 31.7.86
19	Compagnia Portuale "Italia"	Supply of labour	22 651 109	28 000 000	
20	Corporazione dei Piloti dello Stretto Messina	Pilot Services	157 533 284	rejected	rejected
21	IMCO Services Italian SpA	Supply of dispersants	24 297 600	25 000 000	
22	ANIC Stabilimento di Gela	Supply of dispersants	33 069 736	33 069 736	
23	Ternullo Cristoforo & C	Clean-up operations at sea	737 150 000	120 000 000	
24	Giuseppe Patania	Clean-up operations at sea	750 000 000	110 000 000	
25	Ecolmare SpA	Clean-up operations at sea	3 800 000 000	560 000 000	
26	Dr Salvatore Ciotto	Adviser for operations to remove gas from PATMOS	522 700 000	rejected	rejected
27	LaReSub sas	Fire fighting operations	482 000 000	withdrawn	
28 A	Italian Government (i)	Clean-up operations and stand-by of fire brigade	385 773 163	302 529 343	36 263 820 accepted <2> 46 980 000 rejected
	(ii)	Damage to the marine environment <3>	20 000 000 000	rejected	rejected (5 000 000 000)
28 B1	Gruppo Ormeggiatori	Salvage and preventive measures	301 222 000	100 000 000	
28 B2	Chemimar	Hire of booms	287 730 000	225 000 000	
28 B3	Girone Cristoforo	Transport services	35 960 000	34 640 000	
28 B4	ISAB Priolo	Dispersants	6 720 000	6 720 000	
28 B5	Enichem Prodeco	Dispersants	13 734 400	13 734 400	
28 B6	Montedipe Priolo	Dispersants	19 302 400	19 302 400	
28 B7	Giorgio Barcaiouli	Clean-up operations in harbour	262 243 500	110 000 000	

N°	Claimant	Main Subject of Claim	Amount Claimed	Court Admission (stato passivo) 18.2.86	Court Decision after Opposition 31.7.86
28 B8	SELM	Dispersants	231 000 000	115 000 000	
28 B9	Neptunia srl	Salvage	8 055 600	rejected	rejected
28 B11	LaReSub	Clean-up operations	182 434 000	135 000 000	
28 B13	ENEL	Clean-up operations	5 461 200	5 461 200	
29	Nol Italia SpA	Pollution prevention	556 000 000	200 000 000	
30	Patmos Shipping Corporation	Clean-up operations and preventive measures	4 501 397 430	660 045 580	
31	General National Maritime Transport Co	Costs consequential to salvage of PATMOS	227 964 163	rejected	200 000 000
TOTAL			76 112 040 216	4 267 312 659	1 529 950 820
		(@ 2 311 - rate as at 30.6.86:	£32 934 678	£1 846 522	£662 030)

Total amount accepted: LIt4 267 312 659
+ LIt1 529 950 820
LIt5 797 263 479 (£2 508 552)

Note <1> The amounts admitted by the Court were inclusive of interest and costs, whereas the amounts claimed in most cases were exclusive of these items.

<2> This amount was accepted by the IOPC Fund and the UK Club during opposition proceedings. In this connection, the UK Club paid LIt18 million in respect of costs.

<3> In February 1986 the claim for damage to the environment was reduced to LIt5 000 million.