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COMPENSATION  
FUND

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Agenda item 3

FUND/EXC.20/3  
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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. Details of the incident were given in document FUND/EXC.16/4, paragraphs 1.1 and 1.2.

1.2 As a result of the incident, large claims were lodged in the Court of Messina against the owner of the PATMOS and the IOPC Fund. The shipowner 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. The Court fixed the limitation amount at Lit13 263 703 650 (£5.8 million). The IOPC Fund was notified of the limitation proceedings in accordance with Article 7.6 of the Fund Convention.

1.3 This document gives a summary of the facts as reported to the Executive Committee at its 16th and 18th sessions, ie the claims, the negotiations with the claimants and the decisions by the Court of first instance. For details of these matters, reference is made to documents FUND/EXC.16/4, paragraphs 2.4 - 2.41 and 3.1 - 3.7, and FUND/EXC.18/3, paragraphs 2.1 - 2.10 and 3.1 - 3.10. The present document also sets out the developments since the 18th session, in particular in the appeals proceedings and other court proceedings in Italy.

2 Claims and Negotiations with Claimants

The Claims

2.1 Claims were lodged against the limitation fund totalling Lit76 112 040 216 (£33 million). A list of the 42 claims as submitted is at the Annex.

Clean-up Operations and Preventive Measures

2.2 There were 29 claims that clearly related to costs of clean-up operations or to preventive measures as defined in the Civil Liability Convention,

totalling approximately Lit14 000 million (£6.1 million); part of the claim submitted by the Italian Government also belonged to this category. In many cases, the amounts claimed were unreasonable. In February 1986, all but two 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 (cf document FUND/EXC.16/4, paragraphs 2.26 - 2.41).

2.3 In view of the high amounts involved, the Director did not have the authority to make binding settlements on behalf of the IOPC Fund without prior approval of the Executive Committee. He declared, however, that he considered as reasonable the reduced amounts of the claims referred to in paragraph 2.2 above and would, if necessary, submit the claims in these amounts to the Executive Committee with his recommendation that they be approved. On the basis of the Director's declaration, the UK Club agreed, in February 1986, to settle the claims at the amounts as reduced. These claims as settled (including part of the claim submitted by the Italian Government) totalled Lit4 140 189 659 (£1.8 million). The settlements were reported to the Executive Committee at its 16th session.

#### Salvage Operations

2.4 Twelve claims totalling about Lit40 000 million (£17.4 million) related to costs of operations which, in the Director's view, would normally be considered as salvage operations and related measures. The Director took the position that these 12 claims did not relate to operations which had the prevention of pollution as their primary purpose. For this reason, he rejected these claims (cf document FUND/EXC.16/4, paragraph 2.9 - 2.18). As a result of the discussions with the claimants, two of the claims belonging to this category were withdrawn.

2.5 At its 16th session, the Executive Committee endorsed the position taken by the Director in respect of these claims (document FUND/EXC.16/8, paragraph 3.3.2).

#### Damage to the Environment

2.6 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 Italian Government has not provided any documents indicating the kind of damage that had allegedly been caused or the basis on which the amount claimed had been calculated.

2.7 In 1980 the IOPC Fund Assembly took the position that claims for non-economic environmental damage should not be accepted, and unanimously adopted a Resolution (IOPC Fund Resolution N°3) stating 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).

2.8 In view of the position taken by the IOPC Fund Assembly, the Director rejected the claim submitted by the Italian Government relating to damage to the environment (cf document FUND/EXC.16/4, paragraphs 2.19 - 2.25). The Director's position was endorsed by the Executive Committee at its 16th session (document FUND/EXC.16/8, paragraph 3.3.3).

### 3 Decisions Taken by the Court of First Instance

#### First Decision of the Court

3.1 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 claims in respect of which agreement had been reached between the claimants and the UK Club (ie 27 claims and part of the claim submitted by the Italian Government), in the amounts thus agreed. With regard to the two claims relating to clean-up operations in respect of which no agreement had been reached on the quantum, the Court admitted them in amounts very much lower than those claimed. The total amount accepted by the Court was Lit4 267 312 659 (£1.9 million). The Court rejected ten claims as well as the parts of the claim submitted by the Italian Government which had been opposed by the IOPC Fund and the UK Club.

#### Opposition Proceedings

3.2 In Italy, oppositions to the decision of a court on the admissibility of claims in limitation proceedings may be lodged with the same court.

3.3 Oppositions to the decision of the Court of Messina were lodged by seven of the ten claimants whose claims had been rejected on the grounds that the measures had not been taken for the purpose of preventing pollution. The Italian Government also lodged an opposition in respect of the parts of its claim which had been rejected. The positions of the parties in the opposition proceedings were summarised in paragraph 3.4 of document FUND/EXC.16/4.

3.4 The Court (composed of three judges) rendered its judgement in respect of the oppositions on 30 July 1986. The position of the Court in respect of the oppositions is set out in paragraph 3.5 of document FUND/EXC.16/4 (cf also the Annex to the present document).

3.5 As for the claims relating to salvage operations, the Court rejected some of these claims and accepted some of them in reduced amounts (cf paragraph 4.6.3 below).

3.6 The Court rejected the claim by the Italian Government relating to damage to the marine environment, for the reasons set out in paragraph 4.10.2 below. The Court also rejected the other part of the claim submitted by the Italian Government which had been opposed by the IOPC Fund and the UK Club.

3.7 The aggregate amount of the claims as accepted by the Court of first instance was Lit5 797 263 479 (£2.5 million). This amount fell well below the limitation amount applicable to the owner of the PATMOS, viz Lit13 263 703 650 (£5.8 million).

### 4 Appeal Proceedings

4.1 Appeals against the judgement of the Court of Messina were lodged by six claimants whose claims had been wholly or partly rejected in opposition, namely: Esso (claim n°6), SMEB (claim n°9), the Pilot Corporation (claim n°20), Dr Ciotto (claim n°26), the Italian Government (claim n°28 A) and Neptunia (claim n°28 B9).

4.2 The IOPC Fund and the UK Club lodged appeals against the judgement concerning the claims submitted by SMEB (claim n°9) and the General National Maritime Transport Co (claim n°31).

4.3 As mentioned in paragraph 4.3 of document FUND/EXC.16/4, the IOPC Fund and the UK Club decided not to appeal against the judgement with regard to the claim submitted by Mr Mellina (claim n°5), in view of the low amount admitted by the Court.

4.4 The position of the IOPC Fund and the UK Club in the appeal proceedings in respect of the various claims is basically the same as that taken in the opposition proceedings, as set out in paragraph 3.4 of document FUND/EXC.16/4.

4.5 The present situation in respect of the claims in the appeal proceedings can be summarised as follows.

4.6 Esso Italiana SpA (claim n°6)

4.6.1 In its appeal, Esso - whose claim was totally rejected by the Court of first instance - claimed a total of Lit22 628 039 202 (£9.9 million) under the following items:

- (i) Lit1 870 733 591 (£815 000) for the costs of anti-pollution operations;
- (ii) Lit13 280 million (£5.8 million) as salvage reward due by Esso to the salvors in subrogation of the latter;
- (iii) Lit5 712 835 847 (£2.5 million) - equal to 90% of the sum paid by Esso to SMEB - in subrogation of SMEB, of which an amount of Lit1 485 000 000 had already been paid by Esso to SMEB; this item related to the mooring of the PATMOS at SMEB's pier at Messina; and
- (iv) Lit1 764 469 764 (£770 000), 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 another port.

4.6.2 With respect to item (ii) of Esso's claim relating to the salvage reward, it will be recalled that the Director and the Executive Committee had examined the question of whether and to what extent salvage operations fell within the definition of "pollution damage" laid down in the Civil Liability Convention, ie whether these operations could be considered as "preventive measures" as defined in that Convention. An analysis of this question was given in document FUND/EXC.16/4, paragraphs 2.9 - 2.18. After consideration of this issue, 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 damage; if the operations primarily had another purpose, such as salvaging hull or cargo, the operations would not be covered by this definition. For this reason, he rejected a number of claims, among them item (ii) of Esso's claim. At its 16th session, the Executive Committee endorsed the position taken by the Director on this issue (document FUND/EXC.16/8, paragraph 3.3.2).

4.6.3 With regard to the claims relating to salvage operations, the Court of first instance made a general statement to the effect that salvage operations could not be considered as preventive measures, since the primary purpose of such operations was that of rescuing ship and cargo; this applied even if the operations had the further effect of preventing pollution. The Court also stated that, to the extent that operations were considered as preventive measures, only costs and losses could be compensated under the Civil Liability Convention. The Court held that on 22 March 1985, when a state of emergency was declared by the Harbour Master of Messina, there was a serious danger of explosion and consequent pollution since the structure of the PATMOS had been severely damaged. The Court noted that on 1 April 1985, the state of emergency was declared to have ceased. The Court then applied these findings to the claims in this category and, inter alia, rejected the claim submitted by Esso.

4.6.4 During the autumn of 1987 negotiations for an out-of-court settlement took place between Esso, on one side, and the owner of the PATMOS and the UK Club, on the other side, in respect of Esso's claim. The Director was kept informed of these negotiations. In January 1988 a settlement was reached between these parties, under which Esso's claim was accepted by the shipowner and the UK Club for a total amount of Lit4 939 742 171 (£2.2 million), inclusive of interest, devaluation and costs. The settlement covered the four items of the claim listed in paragraph 4.6.1. The settlement was approved by the Court of Appeal on 2 February 1988.

4.6.5 The settlement in respect of Esso's claim covered also SMEB'S claim, which had previously been settled between Esso and SMEB. Under the latter settlement, Esso subrogated SMEB's rights against the limitation fund (cf paragraph 4.7 below).

4.6.6 It should be noted that under the settlement agreement concerning Esso's claim, no payment was made in respect of item (ii), ie the claim was rejected as regards the salvage reward. In the record of the Court hearing at which the settlement was approved, it is stated that Esso waived its claim in respect of remuneration for salvage of the PATMOS and her cargo.

4.6.7 As already mentioned, the Director was kept informed of the negotiations that led to the settlement, and the terms of the proposed settlement were submitted to him for examination. The Director employed the surveyor who had originally examined all the claims in this case, for the purpose of advising him on the reasonableness of the proposed settlement. After having considered all elements of the proposed settlement, in particular the fact that the item relating to salvage was not accepted, and the risk that is always involved in any court proceedings, the Director came to the conclusion that the settlement was reasonable.

4.6.8 Under Internal Regulation 8.4.1, the Director may make final settlement of any claim, if he estimates that the total cost to the IOPC Fund of satisfying all claims for compensation arising out of the relevant incident is not likely to exceed 25 million (gold) francs. The limit of 25 million (gold) francs corresponds to 1.67 million SDR, which equals Lit3 350 333 333 (at the rate of exchange on 21 March 1985, the date of the incident). The Director analysed the risk of the IOPC Fund being called to pay compensation in this case. On the basis of this analysis, the Director considered it unlikely that the total amount payable by the IOPC Fund in compensation in respect of this

incident will exceed the limit of 25 million (gold) francs. For this reason, the Director considered that he had the authority to approve the proposed settlement.

4.6.9 In view of his evaluation of the proposed settlement, the Director was prepared to approve in principle the settlement on behalf of the IOPC Fund. However, he did not consider that an amount included in the settlement which was attributable to devaluation and interest, LIt1 065 489 171 (£460 000), would qualify for inclusion in the list of accepted claims. The owner of the PATMOS and the UK Club should, therefore, in his view not be entitled to subrogation against the limitation fund in respect of that part of the claim.

4.6.10 In view of the Director's position on this point, the shipowner and the UK Club undertook to waive - on certain conditions - their subrogated claim against the limitation fund in respect of amounts paid or payable in excess of the limitation amount, to the extent that such excess would be created by the inclusion of devaluation and interest in the amount of the settlement with Esso. Having received this undertaking, the Director refrained from lodging opposition to that part of the proposed settlement which related to devaluation and interest. In the absence of opposition the Court approved the settlement.

4.6.11 On 2 February 1988, the Court of Appeal in Messina admitted in the list of accepted claims (stato passivo) Esso's claim for the amount agreed, ie LIt4 939 742 171 (£2.2 million). This amount should be compared with the amount claimed, LIt22 628 039 202 (£9.9 million).

4.6.12 In view of this settlement, the IOPC Fund, the UK Club, the owner of the PATMOS and Esso withdrew their appeals and counter-appeals against the judgement of the Court of first instance in respect of Esso's claim.

#### 4.7 SMEB (claim n°9)

4.7.1 SMEB originally claimed LIt1 406 872 000 (£610 000) 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 (£2.2 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.

4.7.2 The Court of first instance accepted the claim of SMEB in respect of the services rendered until 1 April 1985, amounting to LIt1 406 872 000, subject only to the deduction of an amount of LIt123 185 000 relating to services which in fact were rendered after that date; the amount accepted was thus LIt1 283 687 000. The claim in respect of services rendered after 1 April 1985 was not admitted since there was then no state of emergency and the vessel was no longer in danger. The general position of the Court as regards salvage operations set out in paragraph 4.6.3 above was relevant in respect of this claim.

4.7.3 The IOPC Fund and the UK Club lodged appeals against the partial acceptance of this claim. SMEB appealed in its turn and requested acceptance also of the rejected parts of its claim. In addition, SMEB requested that the balance of its claim should be acknowledged in favour of Esso in subrogation. SMEB also claimed damages for losses suffered due to inflation and for interest.

4.7.4 On 29 October 1986, Esso paid Lit4 050 000 000 (£1.8 million) to SMEB as indemnification in a compromise settlement, including damages for losses suffered due to inflation and for interest up to the date of payment. At the hearing in the Court of Appeal held on 2 February 1988, SMEB withdrew its appeal against the judgement of the Court of first instance in respect of its claim. SMEB also declared that it had been fully satisfied in respect of its claim by the payments already made to it by the owner of the PATMOS and Esso and that it waived any claim for further compensation. As a result of this declaration all appeals and counter-appeals relating to this claim were withdrawn. SMEB's waiver resulted in this claim being deleted from the list of accepted claims (stato passivo), and the amount accepted by the Court of first instance was thus reduced by Lit1 283 687 000 (£560 000).

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

The Pilot Corporation, whose claim was totally rejected by the Court of first instance, claims Lit157 533 284 (£69 000) (plus 15% interest and devaluation) for alleged antipollution 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. There has been no development in respect of this claim since the 18th session of the Executive Committee.

4.9 Salvatore Ciotto (claim n°26)

Mr Ciotto, a port chemist, allegedly qualified in anti-pollution services, whose claim was also totally rejected by the Court of first instance, has maintained his claim for Lit522 700 000 (£230 000) for his assistance as a chemist in advising the port authorities in Messina in respect of the unloading of the PATMOS. Also in respect of this claim the situation has not changed since the 18th session of the Executive Committee.

4.10 Italian Government (claim n°28A)

4.10.1 The Italian Government has maintained the rejected parts of its claim, viz:

- (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.

4.10.2 As regards item (ii) relating to damage to the marine environment, the Italian Government had maintained that the damage was a violation of the right of sovereignty over the territorial sea of the State of Italy. The Court of first instance 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 nor 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 above-mentioned Resolution N°3 of the IOPC Fund Assembly. For these reasons the Court rejected this claim.

4.10.3 The claim presented by the Italian Government concerning damage to the marine environment was discussed by the IOPC Fund's Executive Committee at its 16th session in October 1986 (document FUND/EXC.16/8 paragraph 3.3.3). The

Committee noted that the claimant had not specified the kind of damage which had allegedly been caused, nor had the claimant given any explanation of the basis on which the amount claimed had been calculated. The Executive Committee endorsed the Director's opinion that this claim had to be rejected in accordance with the Resolution adopted by the IOPC Fund Assembly. The Committee noted that the claim had been rejected by the Court of first instance. The Executive Committee stressed that it was important that the notion of pollution damage was interpreted and applied in a uniform manner in Member States. It was pointed out that the above-mentioned Resolution had already had a certain effect in this regard. The Italian delegation informed the Committee that it would report the discussions at that session to the various authorities in Italy dealing with matters pertaining to this case.

4.10.4 The Italian Government's claim was dealt with briefly at the Executive Committee's 18th session in October 1987, but no real discussions took place as there had not been any development since the previous session (document FUND/EXC.18/5, paragraph 3.2; cf document FUND/EXC.19/2, paragraph 4).

4.10.5 Since the 18th session of the Executive Committee, the Director has continued the discussions with the Italian Government with respect to the part of its claim relating to damage to the marine environment. He has again stressed that, in his opinion, this claim was not admissible in view of the interpretation of the notion of pollution damage that had been adopted by the IOPC Fund Assembly. So far no progress has been made. It appears, however, that the Italian Government considers that this claim is not in contravention of the interpretation of the definition of "pollution damage" adopted by the Assembly in the Resolution of 1980. In the view of the Italian Government, this claim relates to actual damage to the marine environment and to actual economic loss suffered by the tourist industry and fishermen. For this reason the Italian Government maintains that the claim is not made on the basis of an abstract quantification of damage calculated in accordance with theoretical models.

#### 4.11 Neptunia srl (claim n°28B9)

This company requests the acceptance of its rejected claim of Lit8 055 600 (£3 500) for the services of private firemen after 1 June 1985. There has been no development in respect of this claim since the 18th session of the Executive Committee.

#### 4.12 General National Maritime Transport Co (claim n°31)

4.12.1 This company, which is the Libyan owner of the vessel INTISAR, originally claimed US \$84 074.88 (£49 000) plus Lit68 233 563 (£30 000) for costs and damage 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 total amount claimed was Lit227 964 163 (£100 000). The Court of first instance upheld this claim in principle, but with a small reduction in amount; the Court thus accepted Lit200 million (£87 000).

4.12.2 After the IOPC Fund and the UK Club had appealed against the decision of the Court which had accepted this claim with a small reduction in amount, the Company lodged a counter-appeal for damages for losses caused by inflation and for interest. Also in respect of this claim the situation has not changed since the 18th session of the Executive Committee.



Timetable of Appeal Proceedings

4.13 The main hearing in the Court of Appeal is scheduled to take place on 28 November 1988, and the judgement would then be expected during the first half of 1989.

Present situation as regards the aggregate amount of the claims

4.14 As mentioned above, the aggregate amount of the claims accepted by the Court of first instance is LIt5 797 263 479 (£2.5 million). A further amount of LIt4 939 742 171 (£2.2 million) was accepted by the Court of Appeal in respect of Esso's claim; of this amount LIt1 065 489 171 related to interest and devaluation. As a result of the withdrawal of SMEB's claim during the appeals proceedings, the amount accepted by the Court of first instance was reduced by LIt1 283 687 000. The total amount accepted so far is thus LIt9 453 318 650 (£4.1 million). The rejected claims maintained in the appeals proceedings amount to a further LIt5 735 268 884 (£2.5 million); there are also some claims for interest and devaluation for which amounts are not specified. The total amount of the claims against the limitation fund thus stands at LIt15 188 587 534 (£6.6 million). It should be recalled that the limitation amount was fixed at LIt13 263 703 650 (£5.8 million).

5. Payments made to Claimants

5.1 In April and May 1986, after the time limit for the lodging of oppositions to the decision rendered by the Court of first instance on 18 February 1986 had expired, the UK Club paid the claims which had been accepted by the Court in that decision (cf paragraph 3.1 above). In May 1986, during the opposition proceedings, the UK Club made a further payment to the Italian Government, after a contested item in the Government's claim had been settled. In October 1986, the UK Club paid the claim submitted by Mr Mellina (claim n°5) which had been accepted by the Court first instance in its judgement of 30 July 1986 with a considerable reduction of the amount claimed. The total amount paid by the UK Club before the appeal proceedings was LIt4 331 576 479 (£1.9 million).

5.2 As a result of the settlement concluded during the appeal proceedings between Esso, on one side, and the owner of the PATMOS and the UK Club, on the other side, in respect of Esso's claim (cf paragraph 4.6.11 above), the UK Club paid LIt4 939 742 171 (£2.2 million) to Esso in February 1988.

5.3 The total amount paid to claimants by the UK Club stands at LIt9 271 318 650 (£4.0 million). This amount falls well below the limitation amount applicable to the shipowner, viz LIt13 263 703 650 (£5.8 million).

6. Provisional Enforcement

6.1 The Court of first instance decided that the judgement of 30 July 1986 was immediately enforceable. On request of SMEB, the President of the Court issued a court order stating that the stato passivo was enforceable and that the accepted claims could therefore be paid.

6.2 In the view of the IOPC Fund and the UK Club, this order was not correct since, under Italian law (bankruptcy law and code of navigation), payments may not be authorised until a final judgement has been issued in respect of the oppositions. In addition, the bank guarantee which had been deposited with the Court when the limitation fund was set up was explicitly limited to a final judgement.

6.3 The IOPC Fund and the UK Club lodged appeals and brought actions in various Italian Courts in order to prevent any provisional enforcement. The matter was thus brought before the Court of Appeal in Messina, the Supreme Court of Cassation and the City Court of Genoa. The IOPC Fund and the UK Club succeeded in obtaining suspension of any provisional enforcement. As for details in this regard, reference is made to paragraphs 5.1 to 5.9 of document FUND/EXC.18/3.

6.4 As a result of the out-of-court settlement in respect of Esso's claim and the withdrawal of SMEB's claim, the IOPC Fund and the UK Club withdrew all appeals and actions relating to the provisional enforcement.

## 7 Appeal Concerning the Establishment of the Limitation Fund

7.1 As reported in paragraph 2.3 of document FUND/EXC.16/4, the IOPC Fund has lodged an appeal against the acceptance by the Court of first instance of a bank guarantee covering the limitation amount which was submitted for the constitution of the limitation fund. The reason for the appeal is that no interest accrues on a bank guarantee, whereas if the limitation 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. 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 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. No developments have taken place with regard to this appeal, since the court proceedings concerning the claims are still in progress.

7.2 Esso had intervened in these proceedings supporting the position of the IOPC Fund. The IOPC Fund and the UK Club maintained that Esso had no legitimate interest in these proceedings, since the amount available under the Fund Convention would, in any case, be sufficient to cover any claims accepted by the Court in the limitation proceedings. They therefore argued that Esso's intervention should be rejected on procedural grounds. As a result of the out-of-court settlement in respect of Esso's claim, Esso withdrew its intervention.

## 8 Recourse Action

8.1 Legal proceedings concerning liability and compensation for damage arising out of the collision between the PATMOS and the CASTILLO DE MONTEARAGON were initiated in the Court of Genoa. After a settlement had been reached

between the two shipowners and related interests, the legal actions were withdrawn.

8.2 The question as to whether the IOPC Fund should institute recourse proceedings against the owner of the CASTILLO DE MONTEARAGON will be examined when it is established whether the IOPC Fund will be called upon to pay any compensation under the Fund Convention as a result of this incident. The Director has taken the necessary measures to prevent any claim against the owner of that ship being time-barred.

8.3 A formal enquiry into the cause of the collision has been carried out by the port authorities in Catania, but the results of this enquiry are not yet known.

9 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 appeal proceedings as it considers appropriate.

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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<br>Claimed | Court<br>Admission<br>(stato<br>passivo)<br>18.2.86 <1> | Court<br>Decision<br>after<br>Opposition<br>31.7.86 | Court<br>of Appeal<br>Admission    |
|----|------------------------------------|--------------------------------------------------------------|-------------------|---------------------------------------------------------|-----------------------------------------------------|------------------------------------|
| 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                                            | 4 939 742 171                      |
| 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 and measures<br>to remove gas from PATMOS | 6 347 595 386     | rejected                                                | 1 283 687 000                                       | withdrawn in<br>Court of<br>Appeal |
| 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<br>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              | Court of Appeal Admission |
|-------|-----------------------------------------------|------------------------------------------------------|----------------|-----------------------------------------|------------------------------------------------------|---------------------------|
| 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<br>accepted <2><br>46 980 000<br>rejected |                           |
|       |                                               | (ii) Damage to the marine environment <3>            | 20 000 000 000 | rejected                                | rejected<br>(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 | Court of Appeal Admission |
|--------------------------------|----------------------------------------|---------------------------------------------|-----------------------|-----------------------------------------|-----------------------------------------|---------------------------|
| 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                             |                           |
| <b>TOTAL</b>                   |                                        |                                             | <b>76 112 040 216</b> | <b>4 267 312 659</b>                    | <b>1 529 950 820</b>                    | <b>4 939 742 171</b>      |
| (@ 2 297 - rate as at 27.6.88: |                                        |                                             | £33 135 412           | £1 857 777                              | £666 065                                | £2 150 519)               |

Total amount accepted:    LIt4 267 312 659    Court of first instance, first decision  
+ LIt1 529 950 820    Court of first instance, after opposition  
                                 LIt5 797 263 479  
- LIt1 283 687 000    SMEB's claim withdrawn in Court of Appeal  
+ LIt4 939 742 171    Esso's claim accepted by Court of Appeal  
                                 LIt9 453 318 650

- Notes <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.