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OIL POLLUTION
COMPENSATION
FUND

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Agenda item 3

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

Note by the Director

1 The Incident

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). 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 in order to contain the spilt oil and prevent it from polluting the Sicilian and Calabrian coasts.

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 (£6.0 million).

1.3 This document gives a summary of the facts as reported to the Executive Committee at its 16th, 18th, 20th and 22nd sessions, *ie the claims, the negotiations with the claimants and the decisions by the Courts*. For details of these matters, reference is made to documents FUND/EXC.16/4, FUND/EXC.18/3, FUND/EXC.20/3 and FUND/EXC.22/2. The present document also sets out the development in the appeal proceedings since the 22nd session of the Executive Committee (paragraphs 4.13 - 4.16).

2 Claims and Negotiations with Claimants

The Claims

2.1 Claims were lodged against the limitation fund totalling Lit76 112 040 216 (£35.4 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 which clearly related to costs of clean-up operations or to preventive measures as defined in the Civil Liability Convention, totalling approximately Lit14 000 million (£6.5 million); part of the claim submitted by the Italian Government also belonged to this category.

In February 1986, all but two claims in this category were settled at a total of Lit4 140 189 659 (£1.9 million). The settlements were reported to the Executive Committee at its 16th session.

Salvage Operations

2.3 Twelve claims totalling about Lit40 000 million (£18.6 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, paragraphs 2.9 - 2.18). 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 Marine Environment

2.4 A claim of Lit20 000 million (£9.3 million), later reduced to Lit5 000 million (2.3 million), was submitted by the Italian Government for damage to the marine environment. The Italian Government did not provide any documentation indicating the kind of damage that had allegedly been caused or the basis on which the amount claimed had been calculated. In view of the position taken by the IOPC Fund Assembly in 1980 in respect of damage to the marine environment (cf. paragraph 4.5 below), the Director rejected this claim (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 by the Court

3.1 By decision of 18 February 1986, the Court of first instance in Messina included in the list of admissible claims ("stato passivo") the claims in respect of which settlements had been reached, 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 Court rejected the claims which had been opposed by the IOPC Fund and the UK Club. The total amount accepted by the Court was Lit4 267 312 659 (£2.0 million).

Opposition Proceedings

3.2 Oppositions to the decision of 18 February 1986 were lodged by eight claimants. The Court of first instance rendered its judgement in respect of the oppositions on 30 July 1986. With regard to the claims relating to salvage operations, the Court rejected some of these claims and accepted some in reduced amounts. The Court rejected the claim by the Italian Government relating to damage to the marine environment.

3.3 The aggregate amount of the claims as accepted by the Court of first instance was Lit5 797 263 479 (£2.7 million).

4 Appeal Proceedings

4.1 Appeals against the judgement of 30 July 1986 were lodged with the Court of Appeal in Messina by six claimants, including the Italian Government, whose claims had been wholly or partly rejected in opposition.

Out-of-Court Settlements During Appeal Proceedings

4.2 Esso (the owner of the cargo on board the PATMOS), whose claim had been totally rejected by the Court of first instance, claimed in appeal a total of Lit22 628 039 202 (£10.5 million). One item of this claim, amounting to Lit13 280 million (£6.2 million), related to a salvage reward due by Esso to the salvors in subrogation of the latter. In its judgement 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. On the basis of this position of principle, the Court of first instance rejected some of these claims (including that of Esso) and accepted some in reduced amounts. In January 1988, an out-of-court settlement was reached in respect of Esso's claim for a total amount of Lit4 939 742 171 (£2.3 million), inclusive of interest, devaluation and costs. Under the settlement, no payment was made in respect of the salvage reward. In the record of the court hearing at which the settlement was approved, it was stated that Esso waived its claim in respect of remuneration for salvage.

4.3 In November 1988, a further out-of-court settlement was reached in respect of a claim submitted by the owner of a Libyan vessel who had claimed compensation for loss resulting from that vessel having to be moved from a shipyard in order to leave room for the PATMOS.

Outstanding Claims in Appeal Proceedings

Italian Government's Claim

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

- (i) Lit46 980 000 (£21 800) for services rendered by firemen which had not been accepted as preventive measures; and
- (ii) Lit5 000 million (£2.3 million) for ecological damage.

4.5 The question of admissibility of claims for damage to the marine environment was dealt with by the IOPC Fund for the first time in 1980. The IOPC Fund Assembly then 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).

4.6 As regards the item relating to damage to the marine environment, the Italian Government 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 adopted by the IOPC Fund Assembly. For these reasons the Court rejected this claim.

4.7 In the appeal proceedings the Italian Government has taken the position that 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 has maintained that the claim is not in contravention of the interpretation of the definition of pollution damage adopted by the Assembly in that Resolution.

4.8 The claim submitted by the Italian Government had been discussed by the Executive Committee at its 16th and 18th sessions (document FUND/EXC.16/8, paragraph 3.3.3 and FUND/EXC.18/5, paragraph 3.2). At its 20th session in October 1988, the Executive Committee reiterated the IOPC Fund's position that a claimant was entitled to compensation under the Civil Liability Convention and the Fund Convention only if he had suffered quantifiable economic loss. In view of the position of the

Italian Government that this claim relates to actual damage to the marine environment, the Committee referred to the interpretation of the definition of pollution damage laid down in the Resolution. With regard to the economic loss which had allegedly been suffered by the tourist industry and fishermen, the Committee expressed the opinion that compensation in respect of such damage could only be claimed by the individual person having suffered the damage who, in addition, had to prove the amount of the economic loss sustained (document FUND/EXC.20/6, paragraph 2.3).

4.9 The Italian Government's claim was dealt with by the Court of Appeal in a non-final judgement, rendered on 30 March 1989. In that judgement the Court stated that the owner of the PATMOS, the UK Club and the IOPC Fund were liable for the damage covered by the claim made by the Italian Government. By order of the same date, the Court appointed three experts with the task of ascertaining the existence, if any, of damage to the marine resources off the coasts of Sicily and Calabria consequent on the oil pollution; if such damage existed, they should determine the amount thereof or, in any case, supply any useful element suitable for the equitable assessment of the damage.

4.10 The reasoning given by the Court of Appeal in this non-final judgement can be summarised as follows:

The Civil Liability Convention of 29 November 1969 must be considered linked with the International Convention relating to Intervention on the High Seas in cases of Oil Pollution Casualties (Intervention Convention) of the same date, which entitles the State to take protective measures in favour of "related interests", as defined in the Intervention Convention. This means that the State has title to sue for compensation for damage to the "related interests". In addition, the environment must be considered as a unitary asset, separate from those of which the environment is composed (territory, territorial waters, beaches, fish, etc.), and it includes natural resources, health and landscape. The right to the environment belongs to the State, in its capacity as representative of the collectivities. The damage to the environment prejudices immaterial values, which cannot be assessed in monetary terms according to market prices, and consists of the reduced possibility of using the environment. This damage can be compensated on an equitable basis, which may be established by the Court on the grounds of an opinion of experts. It cannot be maintained that the Civil Liability Convention, being a Convention of private law, may not give to the State more extensive rights than to other persons. The definition of "pollution damage" as laid down in Article I.6 of that Convention is wide enough to include damage to the environment of the kind described above.

4.11 In respect of a non-final judgement of this kind, a party may, under Italian law, *either* make an immediate appeal to the Supreme Court *or* reserve the right to appeal as to the question of principle addressed by the non-final judgement in conjunction with appeal against the final judgement to be rendered by the Court of Appeal. The Director decided to reserve the IOPC Fund's right to appeal before the Supreme Court. As for the reasons for the Director's decision, reference is made to document FUND/EXC.22/2, paragraph 4.9.13. The owner of the PATMOS and the UK Club took the same decision.

4.12 In October 1989, at its 22nd session, the Executive Committee expressed its concern about this non-final judgement (document FUND/EXC.22/5, paragraph 3.1.3). The Committee reiterated the position taken in 1988 in respect of the Italian Government's claim.

4.13 In the proceedings before the Court experts, the Italian Government argued as follows:

The release of oil had lethal effects not only on eggs but also on larvae spawned during the weeks prior to the spill. If one considers that millions of cubic metres have been affected by the pollution, the number of eggs and larvae killed must amount to millions. The release and presence of oil in the water over 10 days caused the death of around 400 million fish eggs and larvae. Considering that 5% of the eggs and larvae reach adulthood, this amounts to a loss of 20 million fish. Applying a hypothetical

value of Lit100 per fish, the result is a loss of Lit2 000 million. In addition to this, there was a loss of plankton.

Due to the oil slick the fishermen were not able to take their boats out fishing for 10 days, with a corresponding loss of Lit2 800 million. The reduction in fishing activity resulted in loss of income for the State with respect to taxes and VAT on the takings of the fishermen in the sum of Lit1 500 million.

In addition, there was unquantifiable damage to the cultural and natural environment, to the well-being of the public, and in the form of the unavailability of the sea to its users.

4.14 The IOPC Fund, the owner of the PATMOS and the UK Club presented the following counter arguments:

According to the judgement of the Court of Appeal, the opinion of the Court experts should deal only with damage to the environment. Therefore, the losses suffered by the fishermen, the shorelines and the tourists, if any, are not within the scope of the mandate of the Court experts. The same must be said of the loss of tax income suffered by the State, if any.

As for fish and their eggs and larvae, adult fish move away from the contaminated area, and the eggs and larvae are transported elsewhere by the currents. Statistics were produced to show that there has been no decrease in fishing activity in the area of the Straits of Messina since March 1985. Various publications were cited in this context. There was no damage to the cultural and natural environment since the coastline and beaches were not polluted.

There is no evidence that the well-being of the public and the general use of the sea in the area had been adversely affected.

In a statement to Parliament the Minister for the Environment emphasised that there was no danger of pollution of the coastlines in question.

4.15 The Court experts published their report in March 1990. The report can be summarized as follows:

As a result of the incident, the marine environment in the area of the Straits of Messina suffered damage which was significant but reversible. The impact of the incident lasted for a period of no more than a few months.

The loss at sea of 2 000 tonnes of oil is a considerable quantity. The release of oil at sea had an effect on the environment which was increased by the use of dispersants and solvents. The oil slick extended over hundreds of square kilometres. In addition, there was an impact on the shoreline by oily residues. Contact with oil had lethal consequences for the biological resources, particularly among the plankton population, and it is reasonable to believe that, as the oil remained over a wide area for two to three weeks, the damage caused by this element was initially considerable, but only short-term, so that as a whole the damage could be considered to be moderate. There were undoubtedly lethal effects on sea-bed communities, but the original conditions were restored within a year, and the extent of this damage could also be considered moderate. Fishing activities suffered some damage as a result of fishermen being unable to fish for a period of not more than 15 days. This damage can be quantified as not less than Lit1 000 million. It is reasonable to believe that tourism in the area suffered some damage, but it is believed that this damage was not great and it cannot be quantified.

In conclusion, the Court experts held that, except in respect of the fishing activities, there was a lack of data for the purpose of evaluating the economic impact on other activities and that a precise assessment of the damage was impossible. In the view of the experts, the evaluation should be carried out by the Court.

4.16 The IOPC Fund, the owner of the PATMOS and the UK Club are examining the report of the Court experts.

Other Remaining Claims

4.17 The Pilot Corporation in the Straits of Messina, whose claim was totally rejected by the Court of first instance, claims Lit157 533 284 (£73 400) (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.

4.18 Mr Salvatore 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 (£244 000) for his assistance as a chemist in advising the port authorities in Messina in respect of the unloading of the PATMOS.

4.19 Neptunia srl requests the acceptance of its rejected claim of Lit8 055 600 (£3 750) for the services of private firemen after 1 June 1985.

4.20 There has been no development in respect of these three claims since the 22nd session of the Executive Committee.

Timetable of Appeal Proceedings

4.21 The Court of Appeal will hold its hearing on 3 June 1991, and its judgement is not expected until the latter half of 1991.

5 Present Situation Regarding the Claims

5.1 The aggregate amount of the claims accepted by the Courts is Lit9 418 318 650 (£4.4 million). The rejected claims maintained in the appeal proceedings total Lit5 735 268 884 (£2.7 million). The total amount of the claims against the limitation fund is thus Lit15 153 587 534 (£7.1 million). As already mentioned, the limitation amount is Lit13 263 703 650.

5.2 During 1986, the UK Club made payments for the claims in respect of which the decision of the Court of first instance had become final. Further payments were made by the UK Club during 1988, following the out-of-court settlements in respect of the claims submitted by Esso and the Libyan shipowner, respectively. The total amount paid to claimants by the UK Club stands at Lit9 436 318 650 (£4.4 million).

6 Appeal Concerning the Establishment of the Limitation Fund

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 Recourse Action

7.1 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.

7.2 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.

7.3 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.

8 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 Claimed	Court Admission (stato passivo) 18.2.86 <1>	Court Decision after Opposition 31.7.86	Court of Appeal 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 to remove gas from PATMOS	6 347 595 386	rejected	1 283 687 000	withdrawn in Court of 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 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 <1>	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		
28A	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 Barcaioli	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 <1>	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	165 000 000
TOTAL			76 112 040 216	4 267 312 659	1 529 950 820	5 104 742 171
@ 2146.25 - rate as at 2.7.90			£35 462 803	£1 988 264	£712 848	£2 378 447

Total amount accepted (Lit):	4 267 312 659	Court of first instance, first decision
	+ 1 529 950 820	Court of first instance, after opposition
	<u>5 797 263 479</u>	
	- 1 283 687 000	SMEB's claim withdrawn in Court of Appeal
	+ 4 939 742 171	Esso's claim accepted by Court of Appeal
	- 35 000 000	Reduction of claim N°31 by Court of Appeal
	<u>9 418 318 650</u>	

- 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.