



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND

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Agenda item 3

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## INCIDENTS INVOLVING THE IOPC FUND

### PATMOS

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 first instance in Messina against the owner of the PATMOS and the IOPC Fund. The shipowner and his insurer, the United Kingdom Mutual Steamship Assurance Association (Bermuda) Ltd (UK Club), established a limitation fund with the Court of first instance in Messina. The Court fixed the limitation amount at Lit13 263 703 650 (£6.1 million).

1.3 This document gives a summary of the situation in respect of the claims. Concerning the developments over the years, reference is made to documents FUND/EXC.16/4, FUND/EXC.18/3, FUND/EXC.20/3, FUND/EXC.22/2 and FUND/EXC.24/2. The present document deals in particular with one of the outstanding claims, viz the claim submitted by the Italian Government relating to damage to the marine environment.

#### **2 The Claims**

2.1 Claims were lodged against the limitation fund totalling Lit76 112 040 216 (£34.8 million). A list of the 42 claims as submitted is at the Annex.

2.2 The aggregate amount of the claims accepted by the courts during the limitation proceedings and in the appeal proceedings is Lit9 418 318 650 (£4.3 million). These claims have been paid by the UK Club.

2.3 Claims totalling Lit5 735 268 884 (£2.6 million) which were rejected by the Court of first instance are still subject to appeals proceedings.

### **3 Outstanding Claims In Appeal Proceedings**

#### **Italian Government's Claim**

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

- (i) Lit46 980 000 (£21 500) for services rendered by firemen which had not been accepted as preventive measures; and
- (ii) Lit5 000 million (£2.3 million) for ecological damage.

3.2 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).

3.3 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.

3.4 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.

3.5 The claim submitted by the Italian Government was 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).

3.6 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.

3.7 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 1.6 of that Convention is wide enough to include damage to the environment of the kind described above.

3.8 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.

3.9 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.

3.10 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.

3.11 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 tourist industry, 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.

3.12 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 the tourist industry 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.

3.13 After the publication of the report of the Court experts, the parties have exchanged further pleadings. The Italian Government's pleadings do not contain any important arguments which had not been made in earlier pleadings. The IOPC Fund, the owner of the PATMOS and the UK Club emphasized the following points in their final pleadings:

The Court had instructed the surveyors to deal with damage which cannot be assessed in monetary terms. The damage which the Court surveyors allege have been suffered by the fishermen is not damage to the marine resources but economic loss. For this reason, the surveyors have exceeded the mandate given by the Court. The same observations can be made as regards the court surveyors' statement in respect of the damage allegedly suffered by the tourist industry. In any event, the surveyors admit that the damage to the tourist industry cannot be quantified.

As regards the damage to the environment properly speaking, the surveyors use expressions such as "nonexistent", "disregardable", "modest", "of short duration" and "reversible". That there was no permanent damage to the marine environment is evidenced by the fact that the court surveyor did not consider it useful to take any samples of the water in the straits of Messina for analysis.

### Other Remaining Claims in Appeal Proceedings

3.17 The Pilot Corporation in the Straits of Messina, whose claim was totally rejected by the Court of first instance, claims Lit157 533 284 (£72 000) (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.

3.18 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 (£239 000) for his assistance as a chemist in advising the port authorities in Messina in respect of the unloading of the PATMOS.

3.19 Neptunia srl requests the acceptance of its rejected claim of Lit8 055 600 (£3 680) for the services of private firemen after 1 June 1985.

### Timetable of Appeal Proceedings

3.20 The Court of Appeal held its final hearing on 18 June 1991, and its judgement is expected during October of this year.

## **4 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.

## **5 Possible Appeal to the Supreme Court**

5.1 As set out above, the aggregate amount of claims accepted by the Courts so far is Lit9 418 318 650. The Italian Government's claim for damage to the marine environment amounts to Lit5 000 million. There are also some other claims maintained in the appeals proceedings for approximately Lit700 million. It is likely that the Court will award compensation for devaluation and interest in respect of any accepted claims.

5.2 In view of this situation, it is possible that, if the Italian Government's claim were to be accepted for the amount claimed or a major part of it, the total amount of the accepted claims would exceed the limitation amount, Lit13 263 703 650. Although the IOPC Fund has lodged an appeal concerning the limitation amount as set out in paragraph 4 above, no judgement has yet been rendered on that appeal. It is therefore possible that an acceptance by the Court of Appeal of the Italian Government's claim would result in the IOPC Fund being called upon to pay compensation in respect of this incident.

5.3 For this reason, the Director submits for consideration by the Executive Committee the question as to whether the IOPC Fund should lodge an appeal to the Supreme Court against a judgement accepting the Italian Government's claim in respect of damage to the marine environment.

5.4 It should be noted that a corresponding claim relating to damage to the marine environment has been submitted by the Italian Government in respect of the HAVEN incident (document FUND/EXC.28/6).

**6 Action to be Taken by the Executive Committee**

The Executive Committee is invited to:

- (a) take note of the information contained in this document; and
- (b) give the Director such instructions regarding a possible appeal against the judgement of the Court of Appeal as it considers appropriate.

\* \* \*

ANNEX

**SUMMARY OF CLAIMS**

(figures in Lt)

| N° | Claimant                        | Main Subject of Claim                                     | Amount Claimed | Court Admission (stato passivo)<br>18.2.86 <1> | Court Decision after Opposition<br>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<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)<br>18.2.86 <1> | Court Decision after Opposition<br>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                                  | NoI 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             |
| @ 2187.00 - rate as at 1.7.91       |  |   | £34 802 030          | £1 951 217                                     | £699 566                                   | £2 334 130                |
| <u>Total amount accepted (Lit):</u> |  |   | 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.