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OIL POLLUTION  
COMPENSATION  
FUND

EXECUTIVE COMMITTEE  
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Agenda item 3

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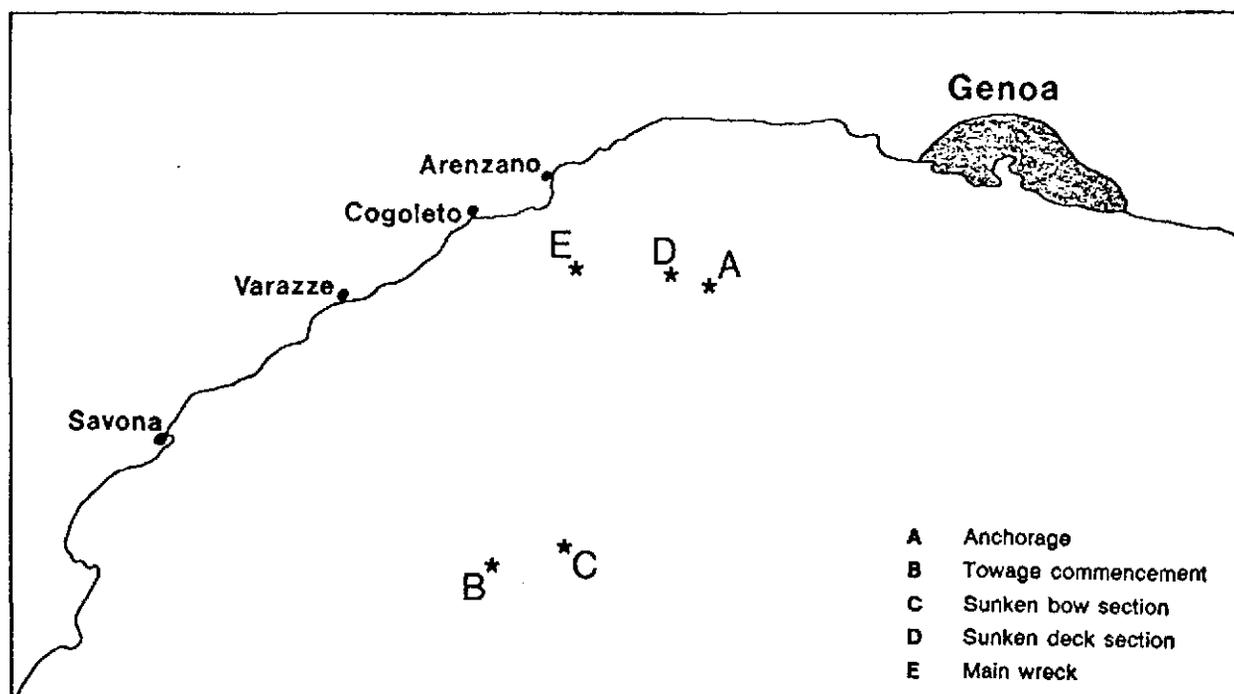
## INCIDENTS INVOLVING THE IOPC FUND

### HAVEN

Note by the Director

#### 1 The Incident

1.1 After partial discharge of her cargo of Iranian heavy crude oil in Genoa (Italy), the Cypriot tanker HAVEN (109 977 GRT) caught fire and sustained a series of explosions on 11 April 1991 whilst at anchor seven miles off Genoa. The tanker, which carried approximately 144 000 tonnes of crude oil at the time, broke into three parts. A large section of deck was detached from the main structure as a result of an explosion and sank at the anchorage to a depth of about 80 metres. The vessel began to drift to the south west. In a position about seven miles south of Arenzano, the bow section became detached and sank to a depth of about 500 metres. The remaining main part of the ship was towed into shallower water where, after a further series of explosions, it sank on 14 April, some 1.5 miles off the coast at Arenzano to a depth of 60 metres.



1.2 As a result of the incident, the Italian Government on 14 April declared a state of national emergency, which is still in force.

## **2 Clean-up Operations and Related Issues**

### Operations in Italy

2.1 The quantity of oil consumed by the fire has not been established, but it is estimated that over 10 000 tonnes of fresh and partially burnt oil were spilled into the sea prior to the sinking. After the sinking, oil continued to seep from the wreck at a slow rate and small quantities of oil appeared on the surface. Divers were able to reduce and finally stop the main leakage within about ten days of the incident. Since then, there has been minor seepage from the wreck, and it is expected that this will continue for some time. The authorities are at present arranging diving surveys inside the engine room to identify and deal with any source of leakage.

2.2 Comprehensive underwater surveys of the main section of the wreck were conducted using a remotely operated vehicle, including a survey of the interior of those tanks that were readily accessible. The surveys showed the wreck to be in a severely damaged condition with quantities of burnt residue lying on deck. The cargo tanks which had contained oil were found to be virtually free from liquid cargo. Only small quantities of burnt oil residue remained, clinging to the structure. The deck area was cleared of burnt residue using a vacuum lift. The residue was brought to the surface and placed in barges for eventual disposal. Operations at the wreck site of the HAVEN are still being carried out.

2.3 The ship structure (mainly the funnel) has been cut to allow for a 30 metre clearance over the wreck so as not to present any hazard to navigation.

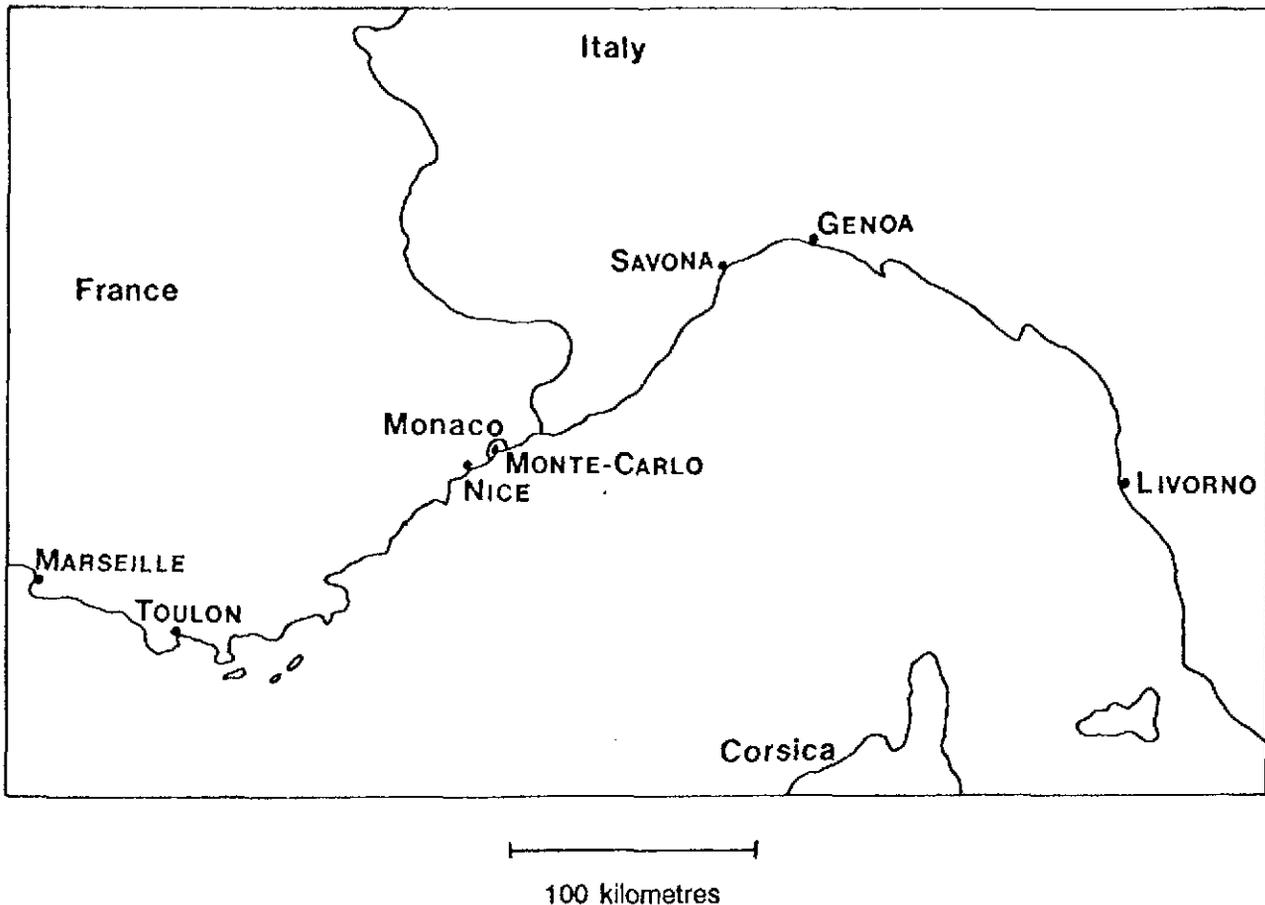
2.4 So far, no inspections have been made of the other two sunken parts of the HAVEN. It is expected that a detailed survey of these two sections will be undertaken when operations on the main part of the wreck have been completed.

2.5 A survey has been conducted of the seabed under the presumed track of the tanker during the three days prior to the sinking. Some oiled areas have been identified and mapped using a combination of side-scanning sonar, sub-bottom profiling and a remotely operated vehicle.

2.6 Since most of the oil spilt initially consisted of burnt residue, which was highly viscous at ambient temperatures, collection of this oil at sea proved very difficult. The authorities concentrated on deploying booms to protect sensitive areas along the coast, primarily amenity beaches. These measures were quite successful when weather conditions were favourable, but gale force winds soon carried both oil and booms ashore.

2.7 On 17 April, a significant quantity of floating oil impacted the coastline between Genoa and Savona, in particular the beaches in Arenzano, Cogoleto and Varazze. Emulsified oil was left stranded on all three beaches, especially around the many artificial headlands. Oil was subsequently buried in many places during strong winds, typically to a depth of 2-5 centimetres in fine beach sediment, and up to 30 centimetres in coarser material. West of Varazze, coastal impact was very light and consisted mainly of tar balls and patches of burnt residue.

2.8 Around 40 tonnes of oil entered Arenzano marina, resulting in moderate to heavy oiling of moorings, harbour walls and about 130 yachts and fishing boats. Smaller quantities of oil entered the marina at Varazze, and the impact there was less severe; however, approximately 200 boats became polluted. Cleaning of yachts and fishing boats in Arenzano and Varazze marinas continues. So far around one third of the contaminated boats have been cleaned. Some of these, however, have become re-contaminated by oil remaining in the marinas. The IOPC Fund experts have surveyed some 500 yachts and fishing boats, for the purpose of facilitating the examination of the claims submitted by the owners.



2.9 The clean-up on shore in Italy was originally conducted by municipal authorities, using the army as well as local volunteers in some areas. The work mainly consisted of manual and mechanical removal of stranded oil and contaminated beach sediment. Vacuum trucks were used to remove heavy concentrations of floating oil. Tar balls and patches of burnt residue were relatively inert and easy to collect.

2.10 On 22 May 1991, a contract on pollution monitoring and clean-up was concluded between the Italian Government and a consortium of contractors known as ATI. The beach clean-up activities as outlined in the contract have now been completed. However, increased water temperatures and wave action have resulted in droplets of sunken oil floating to the surface causing limited but regular re-contamination of some beaches. Attempts have been made by divers to chart the extent of the problem and to recover sunken oil in shallow water off the coast from Arenzano to Varazze by using a hydraulic lift.

2.11 Approximately 20 000m<sup>3</sup> of collected oily waste is awaiting disposal. In addition, around 10 000-15 000 metres of contaminated booms have been collected at three locations for either cleaning or disposal.

2.12 The Italian authorities are continuing to monitor the water surface and water column. Investigations into alleged environmental damage are also being carried out.

#### Operations in France

2.13 Some oil spread as far as Hyères near Toulon in France, affecting also the coast of Monaco. The French Government decided on 15 April to activate the national contingency plan with regard to operations at sea (Plan POLMAR-MER). The application of this plan was suspended on 29 April. The plan relating to on-shore operations (Plan POLMAR-TERRE) was not activated since the pollution on shore in France was comparatively limited in scope.

2.14 In total, four French departments were affected, of which Bouches-du-Rhone and Corsica only received light impact. A total of 16 communes were involved in Alpes Maritimes and 21 in Var. Most clean-up activity was completed by the end of June. The work involved mechanical and manual collection of tar balls on amenity beaches. Small quantities of tar balls have continued to arrive on beaches but clean-up activity has gradually decreased during the summer months. Disposal of oily waste is still to be completed in some of the affected communes.

#### Operations in Monaco

2.15 The authorities in Monaco carried out operations to collect oil at sea and to clean some beaches which had become polluted. The operations were limited in scope.

### **3 Involvement of the IOPC Fund In the Operations**

3.1 The IOPC Fund was informed of the incident within a few hours. After consultations between the Director, the shipowner and the shipowner's P & I insurer (the United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Limited, the "UK Club"), it was decided that experts from the International Tanker Owners Pollution Federation Limited (ITOPF) should proceed immediately to Genoa. The first ITOPF expert arrived there on the evening of the incident.

3.2 In view of the risk of a major release of oil whilst the tanker was ablaze, the shipowner, the UK Club and the IOPC Fund agreed on 11 April to an ITOPF recommendation that equipment and technicians from the Oil Spill Service Centre in Southampton should be sent by air to Italy.

3.3 The operations and inspections relating to the wreck have been followed by technical experts from Murray Fenton & Associates, appointed by the IOPC Fund, the shipowner and the UK Club, and these experts have been assisted by local surveyors. The ITOPF experts have investigated the impact of the oil in Italy, France and Monaco and have regularly monitored the clean-up operations on shore and at sea in Italy and France, assisted by local surveyors in both countries. The experts from Murray Fenton and ITOPF have worked in close co-operation with the competent authorities in Genoa.

3.4 The Director followed the operations from 14 to 17 April and held discussions with the Harbour Master in Genoa, who has the responsibility for the operations both at sea and on shore, as well as with other representatives of the Italian authorities. During his stay in Genoa, the Director also discussed the situation with representatives of the European Economic Community and the Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea (REMPEC). The Legal Officer followed the operations from 22 to 24 April. The Director made a second visit to the area on 26 and 27 July.

3.5 The Director and the Legal Officer, together with representatives of the shipowner and the UK Club, participated in a meeting in Rome with an interministerial committee which has overall responsibility for the operations in Genoa. The meeting resulted in the IOPC Fund, the shipowner and the Club being invited to nominate experts who would, as consultants, be associated with the bodies which would be monitoring the further operations at sea and on shore. To this end, various technical experts engaged by the IOPC Fund, the shipowner and the Club have worked closely with officials from the Genoa Port Authority which is charged with monitoring and controlling clean-up activity in connection with the ATI contract.

### **4 Legal Proceedings**

4.1 The shipowner made a request in the Court of Genoa for the initiation of limitation proceedings and the establishment of a limitation fund. On 20 May 1991 the Court stated that, pursuant to Article V.3 of the Civil Liability Convention, it could not issue a judgement opening the limitation proceedings because no action for compensation had been brought against the shipowner.

4.2 After legal action had been taken by the municipality of Arenzano, the Court opened the limitation proceedings by judgement of 29 May 1991 (published on 15 June 1991) and fixed the limitation amount at Lit23 950 220 000 (£10.9 million), which corresponds to 14 million SDR, ie the maximum amount under the Civil Liability Convention. The limitation fund was established by the UK Club by means of a letter of guarantee.

4.3 The Director is following the investigation into the cause of the incident which is being carried out by the Italian authorities, and has appointed technical experts for this purpose.

4.4 The IOPC Fund has lodged an opposition against the Court's decision to open the limitation proceedings, reserving its right to challenge the shipowner's right of limitation. Such oppositions have also been lodged by the Italian Government and some other claimants.

4.5 In addition, the IOPC Fund has lodged an opposition against the acceptance by the Court of a bank guarantee to constitute the limitation fund. The reason for the opposition 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 at least 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 guarantee should be increased to cover Lit42 003 500 000.

4.6 The IOPC Fund has intervened in the limitation proceedings, pursuant to Article 7.4 of the Fund Convention.

4.7 At the request of the IOPC Fund, the shipowner and the UK Club, the President of the Court appointed court surveyors with the task of establishing the extent of the damage to the coast between Genoa and Savona. The IOPC Fund, the shipowner and the Club have appointed their own surveyors to assist the Court surveyors. The report of the Court surveyors is expected in late 1991.

## **5 Discussions at the 27th session of the Executive Committee**

5.1 At its 27th session, held in June 1991, the Executive Committee was informed of the developments in respect of the HAVEN incident and discussed various aspects of the case (document FUND/EXC.27/6, paragraphs 3.2-3.9).

5.2 The Executive Committee endorsed the action taken by the Director lodging an opposition against the decision by the Court of Genoa to open limitation proceedings, thereby reserving the IOPC Fund's right to challenge the shipowner's right to limit his liability. In addition, the Committee endorsed the action taken by the Director lodging an opposition in respect of the constitution of the limitation fund by means of a letter of guarantee covering only the limitation amount, without any allowance for interest.

5.3 The Executive Committee instructed the Director to:

- (a) continue monitoring the operations on the wreck, at sea and on shore, and, in particular, the operations carried out under the contract with ATI;
- (b) follow the various investigations being carried out by the Italian authorities into the cause of the incident so as to enable him to submit to the Committee at a later session a proposal as to whether or not the IOPC Fund should take legal action to break the shipowner's right of limitation;

- (c) study the various legal problems arising from an incident of this magnitude having caused pollution damage in several Fund Member States; and
- (d) hold discussions with the various Governments involved concerning the possibility of facilitating a speedy settlement of the claims.

5.4 The Executive Committee emphasised that only reasonable measures are to be compensated under the Civil Liability Convention and the Fund Convention and, in addition, that only reasonable costs are admissible.

5.5 The Italian delegation informed the Executive Committee that all operations undertaken so far had been reasonable; measures being undertaken or to be undertaken in the future would also be reasonable. This delegation informed the Committee that the Italian Government reserved its position as to its right to submit claims for compensation for any damage and expenses arising out of the incident.

## **6 Claims for Compensation**

6.1 Under the provisions of Italian law on bankruptcy, which are applied also in limitation proceedings, claimants must submit their claims to the Court within 30 days of the publication of the Court decision to open the proceedings, in respect of Italian claimants, and within 60 days in respect of non-Italian claimants, provided, however, that all procedural time limits are suspended during the period 1 August - 15 September. Pursuant to these provisions, Italian claimants should submit their claims by 15 July 1991 and non-Italian claimants by 29 September 1991.

6.2 Approximately 1 200 Italian claimants presented their claims to the Court within the prescribed time limit. Among these was the Italian Government, whose claim totals Lit242 899 669 151 (£110 million), of which Lit100 000 million (£45 million) was included to cover presumed damage to the marine environment. This claim includes items relating to initial clean-up costs of Lit54 404 341 848 (£25 million) incurred by contractors instructed by several government authorities, reimbursement of Lit5 000 million (£2.3 million) for oil booms either lost or destroyed, expenses of Lit1 356 835 373 (£620 000) incurred by the Genoa Port Authority, expenses of Lit4 050 736 000 (£1.9 million) incurred by the Military Centre for Civil Defence of the Ministry of Defence and expenses of Lit181 151 860 (£83 000) incurred by the Department of Civil Protection. The balance of Lit75 700 million (£35 million) is intended to cover the costs associated with the execution of the ATI contract on clean-up and monitoring activity. The region of Liguria has submitted a claim for Lit200 000 million (£90 million), a major part of which relates to environmental damage. It appears that this claim is at least partly a duplication of the Italian Government's claim. Some 350 owners of yachts and fishing boats have claimed compensation for contamination of their boats. It has not yet been possible to calculate the total amount of the Italian claims. It is believed that a number of claims other than those of the region of Liguria also contain duplications.

6.3 The French Government brought legal action in the Court of Genoa claiming compensation for the cost of operations at sea and beach clean-up in France for a total amount of FFfr16 284 592 (£1 640 000). The French Government reserved its right to claim compensation in respect of costs incurred for restoration of the marine environment, referring to Resolution N°3 adopted by the IOPC Fund Assembly concerning damage to the environment.

6.4 Claims totalling about FFfr12 million (£1.2 million) have also been presented to the Court of Genoa by 22 French municipalities and two other public bodies. These claims relate almost exclusively to shoreline clean-up activity. The claimants have reserved the right to submit evidence of additional expenditure incurred subsequent to the submission of the original claims. One of the public bodies (Parc National de Port-Cros) has claimed compensation for damage to the marine environment.

6.5 The IOPC Fund has been notified of some claims from private individuals in France for small amounts.

6.6 No claim has so far been presented by the Government of Monaco. The costs incurred for the operations in the principality have been indicated at FFr324 000 (£32 500).

6.7 The owner of the HAVEN, the UK Club and the IOPC Fund, in co-operation with their technical experts and their lawyers, are setting up a database system in order to facilitate the examination of the claims.

## **7 Notification by the Spanish Government**

In June 1991, the Spanish Government informed the IOPC Fund that small quantities of tar balls and oil patches had been discovered on the coasts of the Balearic Islands and Catalonia in Spain. The Government stated that these substances might originate from the HAVEN or AGIP ABRUZZO incidents and that it could not be ruled out that considerable quantities would reach the Spanish coasts. The Spanish authorities took samples of the tar balls for analysis, but the result of the analysis is not yet known. So far no claims have been presented in respect of pollution damage in Spain.

## **8 Action to be Taken by the Executive Committee**

The Executive Committee is invited to:

- (a) consider the information contained in this document; and
  - (b) give the Director such instructions concerning his handling of this incident as it may deem appropriate.
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