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HAVEN INCIDENT

INVESTIGATIONS INTO THE CAUSE OF THE INCIDENT

Note by the Director

1 Introduction

1.1 After partial discharge of her cargo of Iranian heavy crude oil at 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 became separated from the main structure as a result of an explosion and sank 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 90 metres. As a result of the incident, the Italian Government on 14 April declared a state of national emergency.

1.2 The HAVEN was severely damaged by bombs during the Iran/Iraq war and was at the time of the incident on her first voyage after having been subject to extensive repairs at a shipyard in Singapore.

1.3 At its 27th session, the Executive Committee instructed the Director to 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 (document FUND/EXC.27/6, paragraph 3.7(b)).

1.4 This document deals with the investigations carried out by the Italian authorities into the cause of the incident.

2 Summary Enquiry

A Summary Enquiry into the cause of the incident was carried out by the Genoa Port Authority pursuant to the Code of Navigation. The Commission heard 38 persons (28 crew members, two technicians who were on board the HAVEN at the time of the explosion, three discharging buoy masters, four cargo inspectors and one Genoa port pilot). Although the report on the Summary Enquiry has not been published, it was read out during the formal enquiry referred to below. The conclusion in the report was that there had been negligence both on the part of the crew and on the part of the owner, but that the negligence of the owner had no link of causation with the incident. It should be noted that the report on the Summary Enquiry has no legal value.

3 Formal Enquiry

3.1 In each maritime area in Italy there is a permanent Panel of Enquiry which is competent to investigate any maritime casualty occurring in the area. The Chairman of the Panel is by law the Maritime Director of the area. The panel is composed of three other members appointed for three years by the Ministry of Merchant Marine.

3.2 The mandate of the Panel of Enquiry is to ascertain the cause of the incident and, if possible, identify the person or persons liable. The Panel may investigate any aspect it considers relevant. It can hear witnesses (although not under oath) and require the production of documents. When the Panel has completed its work, it transmits its report to the Ministry of Merchant Marine which, in its turn, transmits them to the competent court. A copy of the report is also sent to the Public Prosecutor. Under Italian law, only the conclusions drawn by the Panel are made public, whereas the report itself is not.

3.3 The facts established by the Panel in its report are prima facie evidence, subject to evidence to the contrary in civil proceedings. However, the conclusions of the panel do not have any value as evidence.

3.4 The Panel of Enquiry for the Ligurian area carried out a formal enquiry into the cause of the HAVEN incident. The Chairman of the Panel was the Maritime Director of the area, Rear Admiral Alati. The three members of the Panel appointed by the Ministry of Merchant Marine were naval officers. The Chairman, as he is entitled to do, appointed three other members with expertise in special fields, viz one officer from the Genoa fire brigade, one expert from the Italian classification society (Register Italiano Navale, RINA) and a chemical expert.

3.5 The Panel of Enquiry held public hearings from 14 November 1991 to 13 February 1992. Six crew members and 22 other persons were heard by the Panel and extensive documentation concerning the vessel and the repairs carried out in Singapore was examined.

3.6 The IOPC Fund followed the hearings of the Panel of Enquiry through its Italian lawyers and through a technical expert especially engaged for this purpose.

3.7 At the hearings, representatives of the shipowner expressed the opinion that the incident was caused by human error in over-filling n°1 centre tank, which in its turn resulted in overpressure and the collapse of the transversal bulkhead dividing n°1 centre cargo tank from n°2 centre permanent ballast tank. The shipowner relied on evidence from Keppel Shipyard, the American Bureau of Shipping and the Salvage Association to show that the vessel had just completed successfully a major refit and life extension survey. He also relied on expert evidence from a British fire expert and a retired Salvage Association staff surveyor to show that the known defects on the vessel neither affected her safety nor had any bearing upon the incident.

3.8 It may be worth noting that when appearing before the Panel of Enquiry for the second time, the Chief Officer of the HAVEN at the time of the incident alleged that another crew member had been given a substantial sum of money to withdraw a declaration previously made to the Panel which had

been unfavourable to the shipowner. The Chief Officer also alleged that he himself had been offered considerable sums of money not to make a new statement to the Panel.

3.9 The shipowner has refuted these allegations, maintaining that the conclusion in the report on the Summary Enquiry was that the negligence of the Chief Officer was causative of the incident, and that the evidence of the Chief Officer was "self-serving".

3.10 As stated above, the conclusions of a Panel of Enquiry should be made public, whereas the report itself should not. In the HAVEN case, however, the Panel has so far not rendered the conclusions public, since they have been transmitted to the Public Prosecutor.

3.11 Since the IOPC Fund does not have access to the report of the Panel of Enquiry, it is not possible at this stage for the Director to draw any conclusions as to the cause of the incident.

3.12 The Director has submitted a request to the Italian Government, through the Italian Ambassador in London, that the report of the Panel of Enquiry should be made available to the IOPC Fund; similar requests have been made by the Director to the Ministry of Merchant Marine and to the Italian State Lawyer (Avocatura Generale dello Stato).

4 Criminal Investigation

4.1 The Public Prosecutor is at present examining the report of the Panel of Enquiry. He has notified four persons of their being suspected of criminal offences, viz two persons involved in the ownership of the HAVEN, a superintendent of the shipyard in Singapore which repaired the HAVEN and a superintendent of the owner.

4.2 The IOPC Fund will be following the criminal investigation through an Italian criminal lawyer especially engaged for this purpose.

4.3 Article 91 of the Italian Code of Criminal Procedure deals with intervention in proceedings by non profit-making institutions. If, before the act which is the subject of the criminal proceedings has been committed, the law has acknowledged such an institution as a protector of the interests which have been violated by the crime, then this institution may exercise the rights afforded to the person affected by the crime at all the stages of the proceedings. Under Article 92, such intervention is subject to an agreement of the person affected by the crime which in the HAVEN case, in accordance with the Act of the Defence of the Sea, is the State of Italy. Consequently, the authorization of the State is a prerequisite for the IOPC Fund being given the right to intervene in the criminal proceedings relating to the HAVEN incident.

4.4 The IOPC Fund was set up to provide compensation for pollution damage and for measures to prevent or minimise such damage. For this reason, in the view of the Director, the IOPC Fund has also the purpose of supporting the prevention of oil pollution and is therefore the protector of the interests violated by the alleged crime in the HAVEN case. The IOPC Fund is not a profit-making organisation.

4.5 For these reasons, and on the basis of the above-mentioned provisions of the Code of Criminal Procedure, the Director requested that the IOPC Fund should be entitled to exercise the rights afforded to the persons affected by the alleged crime. The required approval has been given by the Italian Government through the Ministries concerned.

5 Investigations to be Carried Out by the IOPC Fund

5.1 The shipowner's insurer, the United Kingdom Steam Ship Assurance Association (Bermuda) Ltd (the UK Club), has constituted a limitation fund in the Court of Genoa by means of a letter of guarantee. The IOPC Fund has lodged opposition to the Court's decision to open the limitation

proceedings, reserving its right to challenge the shipowner's right of limitation. Corresponding oppositions have been lodged by the Italian Government and some other claimants.

5.2 The Director intends to pursue investigations into the cause of the incident, on the basis of the results of the Panel of Enquiry and the outcome of the criminal investigation, in order to enable him to submit to the Executive Committee at a later session proposals as to whether the IOPC Fund should pursue legal action to break the shipowner's right of limitation or take legal action against any person (other than the owner) for the purpose of recovering any amount which the IOPC Fund may have to pay in compensation or indemnification.

6 Action to be Taken by the Executive Committee

The Executive Committee is invited to take note of the information contained in this document and to give the Director such instructions as it considers appropriate in respect of the investigations into the cause of the HAVEN incident.
