



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND

EXECUTIVE COMMITTEE
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Agenda item 3

FUND/EXC.31/4
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HAVEN INCIDENT

SITUATION IN RESPECT OF CLAIMS

Note by the Director

1 The Incident

1.1 The HAVEN incident which occurred off Genoa on 11 April 1992 resulted in pollution damage in Italy, France and Monaco. It has been alleged that some pollution damage may have been caused in Spain. A detailed description of the incident is given in documents FUND/EXC.28/6 and FUND/EXC.28/6/Add.1.

1.2 The present document deals with the situation in respect of the claims.

2 Legal Proceedings

2.1 After legal action had been taken against the shipowner, the *Court of first instance in Genoa* opened limitation proceedings in May 1991 and fixed the limitation amount at Lit 23 950 220 000 (£10.8 million), which corresponds to 14 million SDR, ie the maximum amount under the Civil Liability Convention. The limitation fund was established by the P & I insurer, the United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Ltd (the "UK Club"), by means of a letter of guarantee. The IOPC Fund has intervened in the limitation proceedings, pursuant to Article 7.4 of the Fund Convention.

2.2 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. Corresponding oppositions have also been lodged by the Italian Government and some other claimants.

2.3 In September 1991, the judge in charge of the limitation proceedings started to hold hearings to consider the claims arising out of this incident. Hearings have taken place regularly and will continue to be held until all the claims have been dealt with. So far, some 200 claims have been considered during the hearings. In respect of many claims the judge has requested further supporting documents. When such documents have been received, these claims will be re-examined. It is estimated that the judge will not be able to establish the list of accepted claims ("stato passivo") until the summer of 1993.

2.4 The owner of the HAVEN, the UK Club and the IOPC Fund have set up a database system in order to facilitate the examination of the claims. Their experts are examining the documentation presented by the claimants.

3 Claims for Compensation

Italian Claims

3.1 Some 1 300 Italian claimants have presented claims to the Court within the prescribed time limit. However, many claims do not indicate any figures, and a number of claims state that the amount indicated is provisional. The total amount of those claims which indicate figures is Lit 1 541 488 793 305 (£696 million). A number of claims are duplications.

3.2 The largest claim has been presented by the Italian Government, whose claim totals Lit 242 899 669 151 (£110 million). This claim includes items relating to initial clean-up costs incurred by contractors instructed by several government authorities, reimbursement of the value of oil booms lost or destroyed, expenses incurred by various ministries and public bodies, and costs associated with the execution of a contract relating to clean-up operations and monitoring concluded between the Italian Government and a consortium of contractors known as ATI.

3.3 The Italian Government's claim also includes an item relating to presumed damage to the marine environment in the amount of Lit 100 000 million (£45 million). The claim documents do not indicate the kind of "environmental damage" which was allegedly sustained, nor do they give any indication as to the method used to calculate the amount claimed. The Italian Government has informed the Director that it has not been possible to describe the environmental damage because the study of the effects of the incident on the marine environment has not yet been completed. It is expected that the results of this study will be available in the autumn of 1992. The Government has also stated that the figure given in the claim is only provisional.

3.4 The Region of Liguria has requested that the figure in the Italian Government's claim relating to environmental damage, Lit 100 000 million, be increased to Lit 200 000 million (£90 million). The Region has maintained that the amount should be apportioned between the various territorial entities which have directly suffered or are suffering ecological damage. Two provinces and 14 communes have included items relating to environmental damage in their respective claims. None of these claims contain any description of the alleged damage and the claims setting out an amount do not explain how these amounts have been calculated.

3.5 The owners of 33 yachts and 150 fishing boats have claimed compensation for contamination of their boats in the amounts of Lit 168 143 771 (£76 000) and Lit 1 264 303 328 (£571 000), respectively. Claims for loss of income have been presented by some 700 hotel owners for Lit 80 284 601 128 (£36 million) and by 150 fishermen for Lit 3 549 496 500 (£1.6 million).

3.6 The table set out opposite contains a preliminary breakdown of the Italian claims into 15 categories.

	No of Claims ^{<1>}	Amount Claimed Lit
Boom cleaning/disposal	1	5 000 000 000
Boom deployment/recovery	4	14 471 501 388
Clean-up on shore	23	9 597 328 671
Damage to tourism	15	7 447 000 000
Disposal	1	650 880 096
Environmental damage	18	452 878 318 121
Fishing boats	150	4 813 799 828
Future liabilities	2	2 206 604 070
Monitoring	3	1 366 138 208
Office services	1	19 579 800
Other clean-up	77	912 415 266 703
Restaurant/hotels	118	80 284 601 128
Retailers/beaches	292	21 248 485 937
Tugs/supply boats	7	28 921 145 584
Yachts	33	168 143 771
TOTAL	745	1 541 488 793 305

3.7 As mentioned above, a number of the claims presented by Italian claimants are duplications. In its evaluation of the claims, the IOPC Fund has tried to establish the aggregate amount of the claims after elimination of duplications and leaving aside claims relating to damage to the marine environment. The table overleaf sets out the results of this assessment.

3.8 It should be emphasised that the IOPC Fund's experts have not yet finalised the examination and analysis of the claims. For this reason, the tables are presented on the understanding that the figures will have to be adjusted. In addition, the information given in the tables should not be taken as in any way representing the position of the IOPC Fund as regards the admissibility of the respective claims, nor as regards the reasonableness of the amounts claimed.

3.9 As mentioned above, many claims do not indicate any figures and a number of claims state that the amounts indicated are provisional. In addition, it cannot be ruled out that further claims will be submitted. Consequently, the total amount of the claims may increase.

3.10 It is the Director's intention to start discussions with the Italian Government concerning its claim as soon as the IOPC Fund's technical experts have completed their examination.

3.11 The claims relating to damage to the marine environment were discussed by the Executive Committee at its 30th session on the basis of a study made by the Director, in accordance with instructions given by the Committee (document FUND/EXC.30/2). This discussion is summarised in paragraphs 3.1.1-3.1.21 of document FUND/EXC.30/5. The Executive Committee agreed in general with the Director's analysis of the problem. The Committee instructed the Director to submit pleadings on behalf of the IOPC Fund to the Court in Genoa along the lines set out in paragraphs 8.1-8.13 of document FUND/EXC.30/2. The Director was also instructed to examine the intervention made by the Italian delegation and to make such modifications to the IOPC Fund's pleadings as would be appropriate in the light of that intervention. The Committee noted that since the claimants had not yet

<1> 700 claims have been filed with the Court. One of these covers 600 individual hotels. No details are yet available in respect of these 600 hotels.

A number of claims contain items which relate to several categories.

	<u>Lit</u>	<u>Lit</u>
Total amount claimed		1 541 488 793 305
<u>Less</u> Claims relating to damage to the marine environment, as indicated in the claims documents		452 878 318 121
Total amount claimed in respect of claims other than those relating to damage to the marine environment		1 088 610 475 184
<u>Less</u> Duplicated claims		
(i) 44 claims duplicating claim n°242 (Castalia)	789 449 121 296	
(ii) Obvious duplications within the claim presented by the State of Italy	54 230 692 848	
(iii) Other claims in respect of which duplications have been established	28 094 750 113	
Total duplications	871 774 564 257	871 774 564 257
Balance of claimed amounts in respect of claims other than those relating to damage to the marine environment		216 835 910 927 (£117 million)

given any details as to the basis of their claims, the content of the IOPC Fund's pleadings could only be decided when the claimants had presented their arguments. The Executive Committee decided to re-examine the issue at its next session in the light of the position taken by the claimants in the court proceedings.

3.12 In January 1992, the IOPC Fund submitted pleadings to the Court in respect of the claims relating to damage to the marine environment in accordance with the Executive Committee's instructions.

3.13 No developments have taken place in the court proceedings since the Executive Committee's 30th session in respect of the claims relating to damage to the marine environment. It is expected that the Court will address this issue in the autumn of 1992.

French Claims

3.14 The French Government has 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 FF16 284 592 (£1.7 million). The French Government has reserved its right to claim compensation in respect of costs incurred for restoration of the marine environment, referring to the Resolution concerning damage to the environment adopted by the IOPC Fund Assembly in 1980.

3.15 Claims totalling about FFr78 410 591 (£7.9 million) have been presented to the Court in Genoa by 32 French communes and one other public body. These claims relate almost exclusively to shoreline clean-up activity and loss of income in the tourist industry. The claimants have reserved the right to submit evidence of additional expenditure. One of the public bodies (*Parc National de Port-Cros*) has claimed compensation for damage to the marine environment.

3.16 The Director held discussions with the French Government and the French local authorities concerned as to the best procedure for handling these claims. It was agreed that negotiations *should* be commenced as soon as possible for the purpose of arriving at an agreement between the claimants, on the one hand, and the shipowner, the UK Club and the IOPC Fund, on the other hand, as to the quantum of the claims. It goes without saying that any such agreement is subject to examination by the Court in Genoa.

3.17 The French claims are at present being examined by the IOPC Fund Secretariat with the assistance of experts. The Director hopes that this examination will be completed in July 1992 and that negotiations with the claimants can start soon thereafter.

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

Other Claims

3.19 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 (£32 800).

3.20 No claim has so far been presented by the Government of Spain.

4 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 the claims arising out of this incident as it may deem appropriate.
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