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COMPENSATION  
FUND

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## INCIDENTS INVOLVING THE IOPC FUND

### HAVEN

Note by the Director

#### **1 Introduction**

1.1 In April 1991 a major oil pollution incident occurred when the Cypriot tanker HAVEN (109 977 GRT) exploded and sank off Genoa (Italy). This incident caused serious oil pollution in Italy, France and Monaco. More than 1 300 claims for compensation have been submitted to the Court of first instance in Genoa. The claims total approximately Lit 1 550 000 million (£705 million) plus FF97.5 million (£10.0 million).

1.2 The Executive Committee considered various aspects of the HAVEN incident at its 27th, 29th, 30th and 31st sessions. There have been few important developments since the 31st session. There has thus not been any real progress in the limitation proceedings. The Court of first instance in Genoa has not yet rendered its judgement, expected for July 1992, in respect of the method of conversion of gold francs into Italian lire. The Report of the Panel of Enquiry concerning the cause of the incident has not been made available to the IOPC Fund. There has not been any progress in respect of the judges' examination of the individual claims for compensation.

1.3 The present document deals with the main issues involving the IOPC Fund, summarises the developments and sets out the present situation.

#### **2 Proceedings Concerning the Shipowner's Right of Limitation**

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 (£10.9 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 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.

2.3 In a decision rendered on 14 March 1992, the judge of the Court of first instance in Genoa who is in charge of the limitation proceedings dealt with an issue relating to the limitation fund which is of interest to the IOPC Fund, namely whether the bank guarantee constituting the shipowner's limitation fund should also cover interest on the limitation amount. The judge answered this question in the affirmative. The judge further held that the interest should accrue to the benefit of the victims and not to the benefit of the IOPC Fund, as the Fund had argued.

2.4 The shipowner and the UK Club have lodged oppositions to that decision. Their main argument is that under Article V.1 of the Civil Liability Convention, the aggregate amount of the shipowner's liability shall in no event exceed 14 million SDR. They maintain that for this reason this limit cannot be exceeded by the addition of interest. If the judge's decision that the guarantee should also cover interest is correct, however, then they agree with the IOPC Fund that the interest should be to the benefit of the IOPC Fund and not to the benefit of the victims. The IOPC Fund has also lodged opposition, maintaining that the interest should accrue to the Fund.

2.5 By a judgement dated 2 July 1992, the Court held that in order to deprive the owner of his right of limitation, it was for the claimant to prove the existence of the actual fault or privity of the owner. The Court confirmed the judgement against the UK Club as regards its right of limitation whereas it referred the case back to the judge in charge of the limitation proceedings for further investigation as to the shipowner's right of limitation. The Court did not make any decision concerning the question of interest but left that question to be addressed in connection with the oppositions regarding the maximum amount payable by the IOPC Fund.

### **3 Maximum Amount Payable by the IOPC Fund**

3.1 Under Article 4.4 of the Fund Convention, the maximum amount of compensation payable pursuant to the Civil Liability Convention and the Fund Convention in respect of any one incident is 450 million (gold) francs, including the sum actually paid by the shipowner or his insurer. This amount was increased by the IOPC Fund Assembly in stages to 900 million (gold) francs, pursuant to Article 4.6 of the Fund Convention. Under certain conditions the shipowner is indemnified by the IOPC Fund for a part of the total amount of his liability under the Civil Liability Convention, in accordance with Article 5.1 of the Fund Convention.

3.2 The amounts in the Civil Liability Convention and the Fund Convention in their original versions are expressed in (gold) francs (Poincaré francs). Under the Civil Liability Convention, the amount expressed in (gold) francs should be converted into the national currency of the State in which the shipowner's limitation fund is constituted on the basis of the official value of that currency by reference to the franc on the date of the establishment of the limitation fund.

3.3 The relevant provisions are Article V.9 of the Civil Liability Convention and Article 1.4 of the Fund Convention which read as follows:

*Article V.9 of the Civil Liability Convention:*

The franc mentioned in this Article shall be a unit consisting of sixty-five and a half milligrams of gold of millesimal fineness nine hundred. The amount mentioned in paragraph 1 of this Article shall be converted into the national currency of the State in which the fund is being constituted on the basis of the official value of that currency by reference to the unit defined above on the date of the constitution of the fund.

*Article 1.4 of the Fund Convention:*

"Franc" means the unit referred to in Article V, paragraph 9 of the Liability Convention.

3.4 In 1976, Protocols were adopted to amend both Conventions. Under the Protocols, the (gold) franc was replaced as the monetary unit by the Special Drawing Right (SDR) of the International Monetary Fund (IMF). One SDR was then considered equal to 15 (gold) francs. Pursuant to the 1976 Protocol to the Fund Convention the amounts of 450 million (gold) francs and 900 million (gold) francs laid down in Articles 4.4 and 4.6 of the Fund Convention were thus replaced by 30 million SDR and 60 million SDR, respectively. The (gold) franc was replaced by the SDR also in Article 5.1, which governs the indemnification of the shipowner. The SDR is to be converted into the national currency of the State in which the shipowner's limitation fund is constituted on the basis of the value of that currency by reference to the SDR on the date of the constitution of the limitation fund. The 1976 Protocol to the Civil Liability Convention entered into force in 1981, whereas the 1976 Protocol to the Fund Convention has not yet come into force.

3.5 In the limitation proceedings, an important legal question has arisen, viz the method to be applied for converting the maximum amount payable by the IOPC Fund (900 million (gold) francs) into Italian Lire. The IOPC Fund had taken it for granted that the conversion should be made on the basis of the SDR. It was maintained by some claimants, however, that the conversion should be made by using the free market price of gold, since the 1976 Protocol to the Fund Convention which replaced the (gold) franc with the SDR was not in force.

3.6 The IOPC Fund submitted extensive pleadings to the judge in November 1991 and January 1992. These pleadings were supported by legal opinions given by four eminent lawyers. The IOPC Funds' lawyer pleaded the case before the judge on 24 February 1992.

3.7 The IOPC Fund's main argument in support of its position is that the inclusion of the word "official" in the definition of the unit of account laid down in the original text of the 1969 Civil Liability Convention was made deliberately in order to ensure stability in the system and that it was clearly meant to rule out the application of the free market price of gold; this definition was by reference included in the Fund Convention. The IOPC Fund has stressed that the application of different units of account in the Civil Liability Convention and the Fund Convention would lead to unacceptable results, in particular as regards the relationship between the portion of liability to be borne by the shipowner and the IOPC Fund, respectively, on the basis of Article 5.1 of the Fund Convention.

3.8 The judge in charge of the limitation proceedings rendered his decision on this issue on 14 March 1992. He held that the maximum amount payable by the IOPC Fund should be calculated by the application of the free market value of gold which gives an amount of Lit 771 397 947 400 (£350 million) (including the amount paid by the shipowner under the Civil Liability Convention), instead of Lit 102 864 000 000 (£47 million), as maintained by the IOPC Fund, calculated on the basis of the SDR. The IOPC Fund lodged opposition to this decision.

3.9 At its 31st session, the Executive Committee took note of the decision rendered by the Court on this issue on 14 March 1992. Thus, the Committee considered information contained in documents FUND/EXC.31/2 and FUND/EXC.31/2/Add.1 which set out in some detail the relevant provisions of the applicable international conventions, the positions taken by the parties, the pleadings presented by the IOPC Fund, the legal opinions submitted by the Fund in support of its position, the reasons given by the judge and the main points made in the IOPC Fund's opposition. The Committee noted that in the court proceedings the French Government had supported the IOPC Fund's position as to the method of conversion whereas the Italian Government had not taken any position on this issue (document FUND/EXC.31/7, paragraphs 3.1.3-3.1.4).

3.10 An English translation of the judge's decision is reproduced at Annex I to document FUND/EXC.31/2.

3.11 As a result of the discussions at its 31st session, the Executive Committee expressed grave concern as regards the consequences of the judge's decision for the future of the international regime of liability and compensation established by the Civil Liability Convention and the Fund Convention. The Committee shared the view expressed in the pleadings presented by the IOPC Fund that the universally accepted interpretation of the Fund Convention was that the limit of the IOPC Fund's cover should be determined by using the SDR. The Italian delegation stated that it did not take any position on this point. The Committee agreed with the legal analyses made in the various pleadings submitted by the IOPC Fund in the court proceedings, in particular with the line of argument contained in the IOPC Fund's opposition documents. The Committee instructed the Director to pursue the IOPC Fund's opposition to the decision rendered on 14 March 1992 and to inform the Committee at its 32nd session of any developments (document FUND/EXC.31/7, paragraphs 3.1.5-3.1.7).

3.12 Under Italian law the oppositions to decisions taken by a judge in charge of limitation proceedings are to be considered by the Court of first instance composed of three judges (including the judge who rendered the decision to which opposition is lodged).

3.13 The opposition documents should normally be notified by court bailiff to all the parties. In the present case, it would have been practically impossible to notify some 1 300 parties by such a procedure. At the IOPC Fund's request, the President of the Court of Genoa authorized that the notifications be made by "public proclamation" (pubblici proclami), ie by notice in the Official Gazette, in a national and some local newspapers, and in some local Gazettes; personal notification would be necessary only in respect of the Italian Government and Government authorities and in respect of the non-Italian claimants. This procedure was carried out during the latter half of April 1992.

3.14 In the opposition proceedings the IOPC Fund presented extensive pleadings in April and May 1992 (document FUND/EXC.31/2, paragraph 8.1 and document FUND/EXC.31/2/Add.1, paragraph 2). Additional pleadings were presented by the IOPC Fund in June 1992, in which the Fund made observations on the pleadings submitted by the claimants.

3.15 The oppositions were dealt with at a hearing held by the Court of first instance on 12 June 1992, at which the IOPC Fund's lawyer pleaded the case. It was expected that the Court would render its judgement in July 1992. In a decision rendered on 2 July 1992, however, the Court stated that it was unable to deal with the substantive issue. The Court held that the shipowner and the UK Club had failed to observe certain procedural formalities and that the owner, the UK Club and the IOPC Fund had not properly notified two claimants who were to be notified by bailiff. As a result of the Court's decision, the notifications of these two claimants will have to be repeated.

3.16 A new hearing on this issue is scheduled for 3 December 1992, and it is expected that the judgement will be rendered early in 1993.

3.17 If the IOPC Fund's opposition were to be unsuccessful, an appeal against the judgement of the Court of first instance may be made to the Court of Appeal. From there, an appeal may be lodged with the Supreme Court of Cassation.

3.18 In the context of the determination of the maximum amount payable by the IOPC Fund, the judge also considered the question of whether that amount should be increased by the addition of interest, as requested by some claimants. The judge answered this question in the negative, as maintained by the IOPC Fund. No objections were lodged to the judge's decision on this point.

#### **4 Lawyers Representing the IOPC Fund in Italy**

4.1 The IOPC Fund has from the day of the HAVEN incident been represented by Professor Nicola Balestra of Genoa. In view of the complexity of the issues relating to the question of the method to be applied for converting (gold) francs into national currency, and the importance to the IOPC Fund of this issue, the Director and Professor Balestra agreed that it was advisable that the Fund made use of additional legal expertise. The Director has thus appointed two eminent Italian lawyers in Milan, Professor Riccardo Luzzatto and Professor Pietro Trimarchi, to work together with Professor Balestra

on this issue. Professor Luzzatto is a specialist in private law, whereas Professor Trimarchi is a specialist in public international law. Both are professors at the University of Milan as well as very experienced practising lawyers.

4.2 The Director held a meeting with the three lawyers in July 1992 to discuss all aspects of the case.

## **5 Investigations Into the Cause of the Incident by the Italian Authorities**

5.1 At its 27th session, the Executive Committee instructed the Director to follow the various investigations into the cause of this 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). This instruction was reiterated by the Committee at its 31st session, at which the Committee also instructed the Director to consider whether the IOPC Fund should 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 (document FUND/EXC.31/7, paragraph 3.2.3).

5.2 Three separate enquiries into the cause of the incident have been conducted by different Italian authorities, and the Executive Committee was informed of the developments of these enquiries at its 31st session (document FUND/EXC.31/3).

### Summary Enquiry

5.3 A Summary Enquiry into the cause of the incident was conducted by the Genoa Port Authority pursuant to the Code of Navigation. Many persons were heard during this enquiry. The report of the Summary Enquiry has not been published, although it was read out during the Formal Enquiry referred to below.

5.4 The conclusion of the Summary Enquiry was that there had been negligence both on the part of the shipowner and on the part of the crew, but that the negligence of the owner had no link of causation with the incident.

5.5 The report of the Summary Enquiry has no legal value.

### Formal Enquiry

5.6 In each maritime area of Italy there is a permanent Panel of Enquiry which is competent to investigate any maritime casualty occurring in the area. When the Panel has completed its work, it transmits its report to the Ministry of Merchant Marine which, in its turn, passes it to the competent court. A copy of the report is also sent to the Public Prosecutor.

5.7 The mandate of the Panel of Enquiry is by law 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.

5.8 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.

5.9 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. Three members of the Panel were naval officers and three other members had 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.

5.10 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.

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

5.12 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 transverse bulkhead dividing n°1 centre cargo tank from n°2 centre permanent ballast tank.

5.13 Under Italian law, the conclusions of a Panel of Enquiry are to be made public, whereas the report itself is not. In the HAVEN case, however, the Panel has so far not rendered the conclusions public.

5.14 In April 1992 the Director made 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 were made by the Director to the Ministry of Merchant Marine and to the Italian State Lawyer (Avocatura Generale dello Stato).

5.15 At its 31st session the Committee stressed the importance of the IOPC Fund obtaining the report of the Panel of Enquiry at the earliest opportunity (document FUND/EXC.31/7, paragraph 3.2.3). After that session, the Director renewed this request to the Italian Ambassador and to the Italian State Lawyer. So far, the report has not been made available to the IOPC Fund.

5.16 In connection with the judgement of 2 July 1992 referred to in paragraph 2.5 above, the Court of first instance ordered the Panel of Enquiry to produce to the Court its report and all documents relating to the enquiry. So far, this order has not been complied with. Once the report has been filed with the Court, it will be available to the parties.

5.17 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.

#### Criminal Investigation

5.18 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.

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

5.20 The Italian Code of Criminal Procedure contains provision governing intervention in proceedings by non profit-making institutions which are acknowledged by law as a protector of the interests which have been violated by the crime subject to the criminal proceedings. Such an institution may exercise the rights afforded to the person affected by the crime at all the stages of the proceedings. Such an intervention is subject to agreement by the person affected by the crime. Pursuant to the Act of the Defence of the Sea, this person is in the HAVEN case 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.

5.21 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.

5.22 The Director made a request to the Italian Government 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 Government through the Ministries concerned.

## **6 Measures to be Taken by the IOPC Fund as Regards the Cause of the Incident**

As mentioned above, 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. 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 view of the results of his investigations, the Director will 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.

## **7 Claims for Compensation**

### Italian Claims

7.1 Some 1 300 Italian claimants have presented claims to the Court of Genoa 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 (£705 million). A number of claims are duplications.

7.2 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.

7.3 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 this study will be ready by the end of 1992. The Government has also stated that the figure given in the claim is only provisional.

7.4 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.

7.5 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 (£77 000) and Lit 1 264 303 328 (£578 000), respectively. Claims for loss of income have been presented by some 700 hotel owners for Lit 80 284 601 128 (£37 million) and by 150 fishermen for Lit 3 549 496 500 (£1.6 million).

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

	No of Claims <sup>&lt;1&gt;</sup>	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
<b>TOTAL</b>	<b>745</b>	<b>1 541 488 793 305</b>

7.7 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 below sets out the results of this assessment.

	Lit	Lit
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		<u>452 878 318 121</u>
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 one item of the State claim	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	<u>28 094 750 113</u>	
Total duplications	871 774 564 257	<u>871 774 564 257</u>
Balance of claimed amounts in respect of claims other than those relating to damage to the marine environment		<u>216 835 910 927</u> (£100 million)

7.8 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

<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.

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.

7.9 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.

#### Judge's Examination of the Italian Claims

7.10 The judge in charge of the limitation proceedings started hearings in September 1991 to discuss the individual claims. During the hearings some 200 claims were given preliminary consideration. In respect of many claims, the judge invited the claimants to present further supporting documentation. The hearings for this purpose were suspended in December 1991, since when the judge has concentrated on issues relating to the amount of compensation available under the Civil Liability Convention and the Fund Convention.

7.11 The judge has decided that the hearings concerning the individual claims will be resumed on 2 October 1992. It can be expected that at the hearings to be held during the autumn of 1992 and during 1993, the judge will invite the shipowner, the UK Club and the IOPC Fund to state, claim by claim, whether in their view the claim is admissible in principle and, if so, for what amount.

7.12 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 have been examining the documentation presented by the claimants and this examination has reached an advanced stage, although the documentation in respect of many claims is insufficient.

7.13 In the Director's view, the analysis made by the experts employed by the shipowner, the UK Club and the IOPC Fund is now sufficiently advanced as regards many of the claims to enable the IOPC Fund to respond to such a request by the judge. The Director considers, therefore, that the IOPC Fund should, to the extent possible, during the court hearings state its views as to the admissibility in principle of the individual claims and the amounts which are acceptable in the Fund's view. For this reason, the Director submits for consideration by the Executive Committee whether the Committee may wish to authorise him to state the IOPC Fund's position on these claims in the court proceedings when they resume. Should questions of principle arise in respect of any claims, the Director would, to the extent possible, submit such questions to the Executive Committee for consideration.

7.14 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.

7.15 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). In his study he recapitulated the relevant provisions of the Civil Liability Convention and the Fund Convention and described how the question of the admissibility of claims relating to damage to the marine environment had been dealt with by the IOPC Fund in previous cases. In the study he drew the Committee's attention to the fact that the Civil Liability Convention and the Fund Convention had been implemented into Italian legislation by the Act of 27 May 1978 (N°506) and thus formed part of Italian law. It was emphasised that if a conflict arose between the Conventions and any other Italian statute, the Conventions would prevail, since they were "special laws". The study also contained a short presentation of the Italian legislation relating to protection of the marine environment, in particular the Act of 31 December 1982 (N°979) which contained provisions for the protection of the sea (the "1982 Act") and the Act of 8 July 1986 (N°349) which established the Ministry of the Environment (the "1986 Act"). In the study, reference was also made to Italian jurisprudence and doctrine.

7.16 The Director expressed the view that certain elements of damage to the marine environment were non-quantifiable. It was pointed out in the study that the IOPC Fund had consistently taken the

position that claims relating to non-quantifiable elements of damage to the environment could not be admitted. In its interpretation of the Civil Liability Convention and the Fund Convention, the IOPC Fund Assembly had excluded the assessment of compensation for damage to the marine environment on the basis of an abstract quantification of damage calculated in accordance with theoretical models (Resolution N°3 adopted by the Assembly in 1980). The Intersessional Working Group set up by the Assembly in 1980 to examine whether and, if so, to what extent claims for environmental damage were admissible under the Conventions, had used similar language, viz that compensation could only be granted if a claimant had suffered quantifiable economic loss. It was mentioned that the conclusions of the Working Group had been endorsed by the Assembly.

7.17 Attention was drawn in the study to the fact that the Civil Liability Convention and the Fund Convention were Conventions in the field of civil law adopted for the purpose of providing compensation to victims of pollution damage. For this reason, it was maintained that claims which did not relate to compensation did not fall within the scope of the Conventions, for example, damages awarded under the 1986 Act relating to non-quantifiable elements of damage to the environment which were of a punitive character. Since claims of this kind did not relate to compensation, such claims could be pursued, in the Director's view, outside the Conventions on the basis of national law. In the Director's opinion, it could not have been the intention of the drafters of the Fund Convention that the IOPC Fund should pay damages of a punitive character, calculated on the basis of the seriousness of the fault of the wrong-doer or the profit earned by the wrong-doer. He maintained that if such damages were to fall within the scope of the Conventions, the results would be unacceptable.

7.18 The Italian delegation did not agree with the Director's analysis of the problem nor with his conclusions. The Italian delegation's position is reflected in paragraphs 3.1.5 to 3.1.12 of document FUND/EXC.30/5.

7.19 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 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.

7.20 The Director had intended to present the IOPC Fund's pleadings on this matter to the court in January 1992. Since the judge suspended the hearings on the claims, however, no such pleadings were submitted. The IOPC Fund's pleadings will be presented when the judge resumes his consideration of this issue.

7.21 The Executive Committee decided at its 30th session to re-examine this issue at its next session in the light of the position taken by the claimants in the Court proceedings (document FUND/EXC.30/5, paragraph 3.1.19). In the view of the Director, there has not been sufficient developments since the 31st session to make a re-examination by the Committee meaningful at this stage.

#### French Claims

7.22 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.

7.23 Claims totalling about FF78 million (£8 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.

7.24 In February 1992 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.

7.25 The French claims have been examined by the IOPC Fund Secretariat with the assistance of experts. The Director intends to submit observations in writing to the claimants concerning their claims in October 1992, and he hopes that negotiations with the claimants can start soon thereafter.

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

#### Other Claims

7.27 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 FF324 000 (£33 300).

7.28 In June 1991 the Spanish Government notified the Director of oil pollution in Spain which, according to the Spanish Government, may have been caused by the HAVEN incident. However, no claim has so far 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;
  - (b) give the Director such instructions as it may deem appropriate in respect of the court proceedings relating to the shipowner's right of limitation and the method of conversion of (gold) francs into national currency and related issues (paragraphs 2 and 3);
  - (c) take note of the situation in respect of the investigations into the cause of the incident (paragraph 5 and 6);
  - (d) give the Director such instructions concerning his handling of the claims arising out of this incident as it may deem appropriate (paragraph 7);
  - (e) consider in particular whether to authorise the Director to state the IOPC Fund's position in respect of individual claims during the court proceedings (paragraph 7.13); and
  - (f) give the Director such other instructions with regard to the HAVEN incident as it may deem appropriate.
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