INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND

EXECUTIVE COMMITTEE
34th session
Agenda item 3

FUND/EXC.34/2
1 March 1993

Original: ENGLISH

INCIDENTS INVOLVING THE IOPC FUND

HAVEN

Court Proceedings in Italy

Note by the Director

1 Introduction

1.1 The judge in charge of the limitation proceedings in the court of first instance in Genoa started hearings in September 1991 to examine the individual claims. The hearings for this purpose were suspended in December 1991 in order to allow the judge to concentrate on issues relating to the amount of compensation available under the Civil Liability Convention and the Fund Convention. The hearings concerning the claims were resumed in October 1992. So far, over 600 claims have been given preliminary consideration. In respect of many claims, the judge invited the claimants to present further supporting documentation. The claims submitted by the Italian Government and other public bodies have not yet been considered. It is expected that the judge will not be able to establish the list of admissible claims ("stato passivo") until late in 1993.

1.2 At its 32nd session the Executive Committee authorised the Director to state in the court proceedings, when appropriate, the IOPC Fund's position as to the admissibility of individual claims and the amounts which, in the view of the Fund, were acceptable. The Director was instructed to submit any questions of principle to the Executive Committee for consideration, if time allowed him to do so (document FUND/EXC.32/8, paragraph 3.3.8).

1.3 During the examination of the claims carried out by the Director, certain questions of principle have arisen, which in the Director's view should be submitted to the Executive Committee for consideration, in particular concerning the extent to which so called "pure economic loss" should be compensated. These questions concern claims relating to loss of income suffered by public bodies due to reduced tourist activity, loss of income sustained by hotels, restaurants, beach facilities,

shopkeepers and fishermen, loss of commission sustained by a tourist agency as result of cancelled bookings for hotels and the cost of mooring fees and insurance for pleasure boats. The Director's analysis of these problems is set out below.

1.4 The system of compensation established by the Civil Liability Convention and the Fund Convention relates to "pollution damage" and "preventive measures" as defined in Articles I.6 and 1.7 of the Civil Liability Convention which read:

> I.6 "'Pollution damage' means loss or damage caused outside the ship carrying oil by contamination resulting from the escape or discharge of oil from the ship, wherever such escape or discharge may occur, and includes the costs of preventive measures and further loss or damage caused by preventive measures."
>
> I.7 "'Preventive measures' means any reasonable measures taken by any person after an incident has occurred to prevent or minimize pollution damage."

The same definitions are by reference included in the Fund Convention.

1.5 The Civil Liability Convention and the Fund Convention are implemented into Italian law by the Act of 27 May 1978 (N°506). The definitions of "pollution damage" and "preventive measures" are, therefore, directly applicable in Italy.

1.6 The admissibility of the claims will, if no out-of-court settlement can be reached, be decided by the Italian courts. The courts should base their decisions on an interpretation of the definition of "pollution damage" laid down in the Civil Liability Convention. They might then take into account the decisions taken by the Assembly and Executive Committee concerning the interpretation of this definition. It should be noted that, under the Vienna Convention on the Law of Treaties, account should be taken in the interpretation of treaties of any subsequent agreement between the parties regarding the interpretation or application of the treaty or any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation (Article 31.3(b) and (c)). Decisions taken by the Assembly and Executive Committee concerning the interpretation of this definition could be considered as such agreements on the application and interpretation of the Civil Liability Convention and the Fund Convention. It is likely that the courts will also take into consideration the general principles of Italian law which apply to claims of this kind.

1.7 Many of the issues dealt within this document in relation to the HAVEN incident will also be relevant to claims arising out of the BRAER incident (document FUND/EXC.34/5/Add.1). They may also be relevant to claims in respect of the AEGEAN SEA incident (document FUND/EXC.34/4).

1.8 It should be noted that the Assembly has expressed the opinion that a uniform interpretation of the definition of "pollution damage" is essential for the functioning of the regime of compensation established by the Civil Liability Convention and the Fund Convention (document FUND/A.11/20, paragraph 5.5).

1.9 Since the claims in the HAVEN case are being dealt with by the Italian courts, any decision of the IOPC Fund as to the acceptability of a claim will not be binding on the courts. Any other claimant may also challenge the acceptance by the IOPC Fund of a particular claim, in view of the fact that the total amount of the accepted claims is likely to exceed the maximum amount of compensation available under the Civil Liability Convention and the Fund Convention which, in the IOPC Fund's view, is 60 million Special Drawing Rights (£55 million).

1.10 The Court of Genoa is also dealing with another issue of great importance to the IOPC Fund, viz the method of conversion of (gold) francs into national currency. This document contains information on the development in respect of this and related issues.

2 Compensation for Pure Economic Loss

2.1 Owners or users of property which has been contaminated as a result of an oil spill may suffer loss of earnings. For instance, a fisherman whose fishing gear has been polluted may lose earnings during the period when he is prevented from fishing, pending the cleaning of the polluted gear or the purchase of new equipment. Most legal systems recognise in principle claims for compensation of this kind, since the claimant has at the same time suffered damage to property. The IOPC Fund has in previous cases accepted claims for loss of earnings in such cases.

2.2 Persons whose property has not been polluted may nevertheless suffer economic loss as a result of oil pollution incidents (so called "pure economic loss"). If a certain area of the sea is heavily polluted, fishing may be altogether impossible in that area for a certain period of time, which may cause economic loss to fishermen for whom there is no possibility of fishing elsewhere. Hoteliers and restaurateurs whose establishments are located close to a public beach may lose income if tourists do not come to the area because the beach has become polluted. In most jurisdictions there has been a great reluctance to recognise claims in such cases, for fear of the far-reaching consequences that the acceptance of such claims would have. In most legal systems, a claim for compensation is generally accepted only if it relates to damage to a defined and recognised right (eg a right of property or a right of possession). Damage suffered by someone as a result of loss of use of the environment due to pollution is normally not considered as damage to an individual's recognised right in this sense.

2.3 Various criteria are applied by national courts to restrict the right to compensation. In some countries the courts apply the tests of foreseeability, remoteness and causation.

2.4 Claims relating to pure economic loss have often been submitted to the IOPC Fund. The Executive Committee has agreed to compensate economic loss suffered by persons who depend directly on earnings from coastal or sea-related activities, even if the person concerned has not suffered any damage to property. In previous cases, the IOPC Fund has accepted claims relating to loss of earnings suffered by fishermen or by hoteliers and restaurateurs at seaside resorts.

2.5 In the HAVEN case, some claims for compensation for pure economic loss relate to activities which are less directly linked with the pollution than for example fishermen suffering damage of the kind referred to above. The question is what parameters should be applied in deciding which claims for economic loss should be admitted or, in other words, where to draw the line between those who should be entitled to compensation for pure economic loss and those who should not be granted such compensation. It is important to note that the definition of "pollution damage" only covers damage by contamination.

2.6 The Director is not aware of any court cases in States Parties to the Civil Liability Convention in which the definition of "pollution damage" laid down in the Convention has been interpreted in respect of claims for pure economic loss.

2.7 As regards Italian law, there are a few precedents dealing with the admissibility of claims relating to pure economic loss in connection with pollution. In one case, the Supreme Court of Cassation rejected a claim for compensation submitted by the owner of a property located close to a public beach who allegedly had suffered economic loss because the sea had become polluted (Cass civ, 27.5.1982, N°3214). The court stated that the pollution of the sea did not constitute any infringement of this person's ownership nor of the exercise of that ownership but only of the special advantages resulting from the location of the property. In another case, compensation was granted to the operator of bathing facilities located on a public beach who suffered loss of income because the sea off this beach had become polluted, but this operator had a special licence to use the beach and this right of use had the nature of a property right (Cass civ, 7.3.1975, N°848).

3 Claims Giving Rise to Questions of Principle

Loss Suffered by Public Bodies as a Result of Reduced Tourist Activity

3.1 The City of Cannes (France) has submitted a claim which, inter alia, relates to loss of income resulting from a reduction of tourism during 1991. The claim lists various kinds of losses, as follows:

(a)	Loss of professional tax; FFr35 million	(£4.2 million)
(b)	Loss of tax on casinos; FFr11 million	(£1.3 million)
(c)	Loss of tax on individual tourists; FFr1.8 million	(£0.2 million)
(d)	Loss of additional tax on registration; FFr4.2 million	(£0.5 million)
(e)	Loss of tax on various entertainments; FFr3.9 million	(£0.5 million)

3.2 The City of Cannes has also claimed compensation in the amount of FFr6.8 million (£820 000) for extra costs incurred for publicity to counteract the negative effects of the pollution on the reputation of the City as a tourist resort.

3.3 A claim relating to alleged loss of tourist tax resulting from reduction of tourist activity in the amount of FFr350 000 (£42 000) has been submitted by the Commune of Lavandou in France.

3.4 In the TANIO case, the Executive Committee rejected a claim from a commune for loss of tax revenue due to reduction of income of businessmen as a result of the incident. The Committee stated that it might be very difficult for a public authority to prove that a loss of tax revenue had actually occurred as a direct result of a pollution incident. The Committee considered that the documentation submitted in support of this claim was insufficient (documents FUND/EXC.10/5, paragraph 3.3.5, and FUND/EXC.10/WP.1, paragraph 2.3).

Losses Suffered by Hotels, Restaurants and Beach Facilities

3.5 Claims have been presented by owners of some 700 hotels, 55 restaurants and 93 beach facilities located in the towns and villages along the Italian coast between Genoa and the French border. These claims, which total approximately Llt 85 000 million (£38 million), relate to alleged loss of income caused by reduced tourist activity resulting from the HAVEN incident.

3.6 In the TANIO case, the IOPC Fund accepted claims for loss of income suffered by hotels and restaurants at seaside resorts (document FUND/EXC.10/5, paragraph 3.3.4 and FUND/EXC.10/WP.1, paragraph 2.3).

Losses Suffered by Shopkeepers

3.7 Some 180 shopkeepers in Italy selling clothes, food, ice cream and other goods have claimed compensation for loss of income for a total amount of Llt 15 300 million (£6.9 million). These shops are all located in towns and villages along the coast.

3.8 Although these claims so far have not been substantiated by supporting documents, they nevertheless raise a question of principle as to whether claims for loss of profit suffered by shopkeepers are admissible. In the TANIO case, the IOPC Fund accepted certain claims for loss of income suffered by shopkeepers at seaside resorts.

Losses Suffered by Tourist Agent

3.9 A claim for Llt 920 million (£422 000) has been submitted by an Italian travel agent/accommodation bureau which arranges hotel bookings of villa type accommodation at the request of foreign travel agents. The claim relates to:

(a) economic loss consisting of loss of commission resulting from a reduction in the number of holiday flats and hotel rooms booked through his agency;

(b) economic loss due to the fact that tourists cancelled reservations of hotel rooms and holiday flats which the claimant himself had rented from the flat or hotel owner;

(c) economic loss suffered in his capacity of operator of inclusive tours for tourists due to a decrease in the reduction of participants in these tours; and

(d) cost for an extra advertisement campaign to counteract the negative impact of the HAVEN incident on his business.

3.10 It should be noted that the claimant has not submitted so far sufficient documentation to prove the extent of the loss allegedly suffered.

Director's Considerations in respect of the above-mentioned Claims

3.11 As mentioned in paragraph 2.2, in many jurisdictions claims for pure economic loss suffered by hotels, restaurants, beach facilities, shopkeepers and tourist agents of the kind presented in the HAVEN case would not be accepted. It appears that the position of Italian law is not clear in this regard. The IOPC Fund has previously accepted, however, certain claims of this kind without accompanying damage to property.

3.12 In the Director's view, the Executive Committee's decisions in respect of the claims set out above - viz losses suffered by public bodies, hotels, restaurants, beach facilities, shopkeepers and tourist agents -will have far reaching consequences. All these claims relate to pure economic loss. The Director considers that it is essential to study in more detail the factual situation of each claimant so as to establish the extent to which his loss can be considered as caused by contamination. For this reason, he proposes that the Executive Committee postpones its decision on the IOPC Fund's position to these claims to its 35th session, so as to enable the Director to make such a study.

Fishermen

3.13 Some 150 fishermen have claimed compensation. Some of them have had their boats or nets polluted and allegedly suffered loss of income as a result thereof. The majority of them have only suffered loss of income because they were allegedly prevented from fishing as a result of the HAVEN incident.

3.14 As mentioned above (paragraph 2.1), it is clear that the fishermen who had their property polluted as a result of the incident and who suffered loss of income would be entitled to compensation for that loss. As for the fishermen who did not sustain any damage to property, the situation is not as clear. The loss suffered by these fishermen resulted, however, from contamination of the area of the sea where they normally carry out their fishing. The IOPC Fund has in a number of previous cases in Japan accepted claims from fishermen relating to loss of income resulting from their being prevented from fishing. For this reason, the Director considers that claims from fishermen in the HAVEN case for such losses should in principle be accepted. It goes without saying that each claimant will have to prove that he was actually prevented from fishing as a result of the HAVEN incident and the quantum of the loss resulting from his inability to fish.

3.15 The Director proposes that the Executive Committee instructs him to state in the court proceedings the IOPC Fund's position on the claims presented by fishermen as set out in paragraph 3.14.

Claim for Reimbursement of Mooring Fees and Insurance Costs Presented by Yacht Owner

3.16 A yacht owner, who during the summer of 1991 had his boat moored in Arenzano (Italy), has claimed compensation for an amount of Llt 19 931 656 (£9 130) relating to part of the mooring fees and insurance costs for the year 1991.

3.17 The owner of the boat in question alleges that he was prevented from using his boat during a certain period of time and that this non-use was due to the HAVEN incident. It should be noted, however, that the mooring fees and insurance costs would have been incurred whether or not the HAVEN incident had taken place. The loss suffered by the boat owner is in fact "loss of enjoyment of use of his boat". For this reason, the Director is of the opinion that the claim for reimbursement of part of mooring fees and insurance costs is not admissible under the Civil Liability Convention and the Fund Convention.

4 Conversion of (Gold) Francs into National Currency

4.1 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.

4.2 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. The definition of the unit of account in the Civil Liability Convention is by reference included in the Fund Convention.

4.3 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.

4.4 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.

4.5 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.

4.6 The judge in charge of the limitation proceedings rendered his decision on this issue on 16 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 Llt 771 397 947 400

(£350 million) (including the amount paid by the shipowner under the Civil Liability Convention), instead of Llt 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.

4.7 The Court fixed in May 1991 the limitation amount applicable to the shipowner at Llt 23 950 220 000 (£11.0 million). The shipowner's P & I insurer, the United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Ltd (the UK Club) constituted a limitation fund by means of a letter of guarantee for that amount. The judge in charge of the limitation proceedings held that the bank guarantee should also cover interest on the limitation amount, as requested by the IOPC Fund. The judge held, however, that the interest should accrue to the benefit of victims and not to the benefit of the IOPC Fund. The shipowner and the UK Club have lodged opposition to that decision. The IOPC Fund has also lodged opposition, maintaining that interest should accrue to the benefit of the Fund.

4.8 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).

4.9 The oppositions were dealt with at a hearing held by the Court of first instance on 12 June 1992, and 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 issues. 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 of the opposition pleadings. As a result of the Court's decision, the notifications of these two claimants had to be repeated. A new hearing on this issue was scheduled to take place on 29 January 1993.

4.10 The hearing scheduled for 29 January 1993 was postponed, and it is expected that the hearing on the merits of the issue will not take place until July 1993. The reason for the postponement is of a procedural character. It has thus been alleged that some further notifications of the oppositions made by the shipowner, UK Club and the IOPC Fund did not fulfil the legal requirements.

4.11 Normally, the opposition document should 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 ordered that the notification should 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.

4.12 As regards the shipowner and the UK Club, it has been maintained that they notified two claimants (being husband and wife) with only one copy of the opposition deed, instead of two copies as required. This question does not concern the IOPC Fund.

4.13 With regard to the IOPC Fund, it has been alleged that the Fund did not notify one claimant in Rome where his head office is located, but only by public proclamation in the Province of Brescia where he is resident. In the view of the IOPC Fund's lawyer, this notification was made correctly. The claimant is the Director of a company which operates an hotel in Diano Marina (Province of Imperia). The claim was, however, not submitted in the name of this company but in the name of the individual carrying out the activities, and the licence to carry out the activities was given to that individual and not to the company. In addition, the Chancellery of the Court has communicated the order concerning the amount of compensation available under the Fund Convention to that individual and not to the company.

4.14 It has also been argued that another notification made by the IOPC Fund is defective, viz that in respect of a partnership. The point made is that the notification was made not at the main office in Turin but at the residence of the representative of the partnership, also in Turin. The IOPC Fund's lawyer emphasises, however, that - according to the Italian doctrine and jurisprudence - this partnership does not have legal personality and that, therefore, under the Code of Procedure notification should be made where the partnership carries out its activities on a continuous basis. It is clear from the claim and the supporting documentation that this partnership carries out its activities (a bar and a bathing facility) in Alassio, and these activities were the basis of the claim for compensation. The notification by public proclamation thus covers this claimant. It should also be noted that the documents in question had in fact reached the representative of the partnership and that for this reason the notification is in any case valid.

4.15 In the view of the Director, the two notifications by the IOPC Fund discussed above have been made in full accordance with the requirements in Italian law. The Court will deal with these procedural issues at a hearing to be held on 5 March 1993.

4.16 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.

5 Italian Claims Relating to Environmental Damage

5.1 The Italian Government's claim in the HAVEN case includes an item relating to presumed damage to the marine environment in the amount of Llt 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 IOPC Fund 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. The Government has also stated that the figure given in the claim is only provisional. It is expected that this study will be ready in the near future.

5.2 The Region of Liguria has requested that the figure in the Italian Government's claim relating to environmental damage, Llt 100 000 million, be increased to Llt 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.

5.3 The claims relating to damage to the marine environment, which have not yet been dealt with by the judge, were discussed by the Executive Committee at its 30th session, held in December 1991, on the basis of a study made by the Director (document FUND/EXC.30/2). In his study the Director drew 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 and the Act of 8 July 1986 (N°349) which established the Ministry of the Environment. In the study, reference was also made to Italian jurisprudence and doctrine.

5.4 In his study, the Director expressed the view that certain elements of damage to the marine environment were non-quantifiable. It was pointed out 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.

5.5 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 above-mentioned Italian Act of 1986 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.

5.6 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 above-mentioned Italian Act of 1986 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.

5.7 During the discussions in the Executive Committee, the Italian delegation stated that it did not agree with the basis of the Director's analysis of the problem nor with his conclusions. This delegation noted that Italy had ratified the Civil Liability Convention and the Fund Convention and that these Conventions were part of the Italian legal system constituting special laws. However, in the view of this delegation, the Conventions did not contain any provisions excluding or limiting the right of compensation for environmental damage. It was pointed out that pollution damage was defined in the Civil Liability Convention as any "loss or damage ..... caused by contamination resulting from the escape or discharge of oil". The Italian delegation could not agree with the Director's interpretation of the Conventions under which only quantifiable elements of damage to the marine environment were admissible. In the view of the Italian delegation, compensation was mainly governed by the 1982 Act which envisaged the possibility of compensation for damage to the marine environment both for quantifiable and unquantifiable elements; this Act explicitly mentioned compensation for damage to marine resources, and compensation under that Act should be quantified without reference to the seriousness of the fault of the wrong-doer. The Italian delegation did not accept that compensation under the 1986 Act should be considered as a sanction.

5.8 The Executive Committee agreed in general with the Director's analysis of the problem (document FUND/EXC.30/5, paragraph 3.1.18).

5.9 The IOPC Fund will submit further pleadings concerning the claims relating to environmental damage when the judge resumes his consideration of this issue.

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;

(b) give the Director such instructions as it may deem appropriate in respect of the handling of claims arising out of this incident, in particular as regards claims relating to pure economic loss; and

(c) give the Director such instructions as it considers appropriate in respect of;

(i) claims presented by fishermen (paragraphs 3.13–3.15) and

(ii) a claim relating to mooring fees and insurance premiums paid by a yacht owner (paragraphs 3.16–3.17).