



INTERNATIONAL  
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COMPENSATION  
FUND

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Agenda item 3

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## INCIDENTS INVOLVING THE IOPC FUND

### HAVEN

#### CLAIMS FOR COMPENSATION

#### 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. Some 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 (£670 million) plus FF97.5 million (£11.4 million).

1.2 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. These hearings 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, but were resumed in October 1992. Most of the claims have been given a preliminary consideration. As a number of claims are not supported by any documentation, the judge has invited many claimants to present 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 1994.

1.3 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).

1.4 The present document deals with some claims relating to questions of principle pending from the 34th session of the Executive Committee. It also contains a summary of the pleadings presented by the IOPC Fund to the Court in respect of the claims relating to the clean-up operations.

## **2 Consideration of Claims by the Executive Committee at Previous Sessions**

2.1 At its 34th session, the Executive Committee examined a document presented by the Director dealing with certain questions of principle as to the admissibility of claims (document FUND/EXC.34/2). The Committee took some decisions in respect of the admissibility of claims, whereas it postponed to its 35th session decisions concerning certain claims - viz losses suffered by public bodies, hotels, restaurants, beach facilities and tourist agents - since the decisions on these claims would have far reaching consequences (document FUND/EXC.34/9, paragraphs 3.1.6 and 3.1.7). The Committee agreed with the Director that it was essential to study in more detail the factual situation in respect of each claimant so as to establish the extent to which his loss could be considered as damage caused by contamination.

2.2 With regard to claims for loss of income suffered by fishermen, the Executive Committee noted, at its 34th session, that the loss suffered by these fishermen resulted from contamination of the area of the sea where they normally carried out their fishing. As the IOPC Fund had in a number of previous cases in Japan accepted claims from fishermen relating to loss of income resulting from their being prevented from fishing, the Committee decided that claims from fishermen in the HAVEN case for such losses should in principle be accepted, although each claimant would have to show that he was actually prevented from fishing as a result of the HAVEN incident and prove the quantum of the loss resulting from his inability to fish. The Executive Committee instructed the Director to state in the court proceedings in Italy the IOPC Fund's position on the claims presented by fishermen as set out by the Committee (document FUND/EXC.34/9, paragraphs 3.1.8 and 3.1.9). In accordance with this instruction, in the court proceedings the IOPC Fund has not raised any objections as to the admissibility in principle of these claims. The IOPC Fund has not been able to admit the claims, however, since the claimants have not submitted sufficient documentation to substantiate the loss allegedly suffered.

2.3 At its 35th session, the Committee held a general discussion concerning the admissibility of claims, on the basis of document FUND/EXC.35/2 which dealt with certain general questions, in particular to what extent so-called "pure economic loss" would fall within the definition of "pollution damage" laid down in the Civil Liability Convention.

2.4 In the context of the general discussion, the Executive Committee recalled that the system of compensation established by the Civil Liability Convention and the Fund Convention applied to "loss or damage caused by contamination". It was emphasised by the Committee that compensation could therefore be paid to a claimant only if and to the extent that his loss or damage could be considered as caused by contamination. The Committee stated that in order to qualify for compensation the first requirement was that there must be a link of causation between the damage or loss covered by the claim and the contamination caused by the oil spill in question. The Committee reiterated the position taken by the Assembly that a claimant was entitled to compensation only if he had suffered a quantifiable economic loss (documents FUND/A.4/10, Annex, paragraph 19 and FUND/A.4/16, paragraph 13). It was underlined that each claimant would have to prove the quantum of his loss or damage in order to obtain compensation.

2.5 The Italian observer delegation stated that, in its view, the criterion for admissibility should be whether the damage covered by a claim was certain, and that the quantum of the damage should be established by a reasonable assessment or be decided by an equitable judgement.

2.6 The Executive Committee recognised that although the IOPC Fund was established to pay compensation to victims of oil pollution, it was important that the Fund should exercise a certain caution in accepting claims beyond those admissible under the general principles of law in Member States.

2.7 It was emphasised by the Executive Committee that each claim, and each item of a claim, would have to be considered on its own merits. Claims which were admissible in principle in accordance with the Committee's decisions should, in the Committee's view, be examined on the basis of the general criteria referred to in paragraphs 3.1.4 and 3.1.6 of document FUND/EXC.35/10. The Committee also underlined that when the quantum of the alleged losses was assessed in respect of a particular claim, it had to be examined whether and to what extent the loss resulted from the oil pollution incident or was due to other factors.

2.8 At its 35th session, the Executive Committee took a number of important decisions concerning the admissibility of claims in respect of loss of income suffered by beach facilities ("bagni"), hotels, restaurants and shops at seaside resorts, mooring fees and insurance costs incurred by a yacht owner and losses suffered by public bodies as a result of reduced tourist activity. As regards the discussions on this point, reference is made to document FUND/EXC.35/10, paragraphs 3.2.3, 3.2.4-3.2.9, 3.2.13-3.2.15 and 3.2.16-3.2.20 respectively. The Committee postponed its decisions on certain other claims, namely those relating to losses suffered by a travel agent and cost of promotion of tourism.

### 3 Claims Submitted to the Executive Committee for Consideration

#### 3.1 Introductory Remarks

The claims in the HAVEN case are being dealt with by the Italian courts. Any decision of the IOPC Fund as to the admissibility of a claim is not binding on the courts. The acceptance by the IOPC Fund of a particular claim may be challenged by any other claimant, 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 (£57 million).

#### 3.2 Losses Suffered by Tourist Agent

3.2.1 A claim for Lit 920 million (£400 000), later reduced to Lit 278 million (£120 000), has been submitted by an Italian travel agent/accommodation bureau/tour operator in Finale Liguria which arranges bookings of holiday flats and hotel rooms at the request of foreign travel agents. The claim contains the following items:

	<u>Lit</u>
(a) lost commission on contracts with hotels	17 947 691
(b) lost commission on contracts in respect of flats	23 446 811
(c) loss on "guaranteed" contracts in respect of flats	72 180 136
(d) loss of profit resulting from decrease in prices	146 823 287
(e) cost of advertising campaign	17 797 760
	<u>278 195 685</u>

3.2.2 In a document presented to the Executive Committee at its 35th session, the Director pointed out that the losses referred to under (a)-(d) above were not a direct result of the HAVEN incident but an indirect result of the contamination of certain parts of the coast. In the view of the Director, however, these losses were not different in character from the losses suffered by owners of hotels or shops in the same area. For this reason, the Director considered that these items of the claim should be accepted in principle. He pointed out that in the TANIO case the IOPC Fund accepted two claims from estate agents for loss of income resulting from a reduction in rental from holiday lettings.

3.2.3 During the discussions concerning this claim at the 35th session of the Executive Committee, some delegations took the view that the alleged losses covered by this claim were a more indirect result of the contamination than the losses suffered by owners of hotels, restaurants and shops dealt with in paragraphs 3.2.4-3.2.9 of document FUND/EXC.35/10 and that this claim should therefore be rejected. It was also questioned whether the losses allegedly resulting from cancellations had actually

been suffered or whether the claim was based on expectations. The Italian observer delegation argued that this claim should be accepted in principle, since there was a link of causation between the incident and the loss. After discussion of the various items of this claim, the Committee decided to postpone its final consideration of the claim to its 36th session (document FUND/EXC.35/10, paragraphs 3.2.10 and 3.2.11).

3.2.4 The Director has examined this claim further and would like to make the following additional observations.

3.2.5 The major part of the activity of this tourist operator, at least as far as this claim is concerned, relates to foreign tourists visiting the region of Liguria. He works closely with a number of major tour operators and travel agents in northern Europe. He organises the letting of hotel rooms and holiday flats through these operators and agents, who have received requests from people who intend to spend their holiday on the Ligurian Riviera.

3.2.6 The losses referred to under (a)–(c) above relate to two different kinds of activities. As for items (a) and (b), the claimant has access to a number of hotel rooms and flats for a certain period of the year which he tries to "let" to tourists mainly through foreign tour operators or travel agents. If he succeeds in doing so, he will receive a commission, namely the difference between the price he pays to the hotel or flat owner and the price paid by the travel agent. On the other hand, if he does not succeed in letting the hotel room or flat, he will not receive any commission but has no obligation towards the hotel or flat owner.

3.2.7 As regards the losses referred to under item (c) above, the claimant has access to a certain number of flats for a certain period of the year, and he is obliged to make payments to the flat owners irrespective of whether or not he succeeds in letting these flats.

3.2.8 The claimant has based his claim on the number of bookings of hotel rooms or flats made before the HAVEN incident which were cancelled after the incident took place. The cancellations were normally made by telefax or telex from the foreign tour operator or travel agent, without any reason being given as to why a certain tourist had decided to cancel his holiday on the Ligurian Coast. Some cancellations relate to holiday periods in September 1991. One foreign travel agent who had cancelled some bookings actually made some new bookings after the incident. The claimant has submitted some letters and telefaxes from foreign travel agents stating that the reason for the cancellations made by some tourists was mainly the HAVEN incident.

3.2.9 The amount of the loss of profit referred to in item (d) has been calculated by the claimant on the basis of a comparison between the 1991 prices for hotel rooms and flats, allegedly reduced as a result of the HAVEN incident, and the prices actually obtained in 1989 and 1990.

3.2.10 As regards the cost of the advertisement campaign (item (e)), the claimant has stated that, due to the HAVEN incident, he felt it necessary to undertake a promotion campaign, through radio, magazines and newspapers, in order to restore the "image" of the part of his activity directly connected with the area affected by the incident.

3.2.11 In view of the foregoing, the Director submits that the alleged losses covered by items (a) – (d) of this claim are not different in character from those suffered by owners of hotels or shops in the same area, and that the IOPC Fund should therefore accept these items in principle. It goes without saying that the claimant will have to substantiate the amount of his loss.

3.2.12 In respect of item (e), it has been indicated that the annual turnover of the business in question is around Lit 50 000 million (£22 million). It appears therefore that an advertising campaign for the amount claimed would not have any effect on the alleged negative impact of the HAVEN incident on the claimant's business. Leaving aside the question whether the costs of an advertising campaign of this kind are in principle admissible, the Director considers that this claim should be rejected.

### 3.3 Cost of Promotion of Tourism

#### *Previous Discussions*

3.3.1 At its 35th session, the Executive Committee considered the claim submitted by the Region of Liguria concerning the cost of tourism promotion in relation to the HAVEN incident, including an item relating to damage to "touristic image" which was not quantified, and the claims relating to costs for the same purpose presented by the Municipality of Diano Marina and the Province of Savona. In this context, the Committee considered the question of principle raised by these claims, namely whether costs for activities carried out for the purpose of counteracting the negative consequences for tourism of media reports on oil spills would fall within the definitions of "pollution damage" or "preventive measures".

3.3.2 During the general discussion at its 35th session as regards claims for costs of preventive measures, the Executive Committee took note of the fact that in previous cases claims for preventive measures had related to physical operations, such as the placing of booms or the spraying of dispersants, whereas in respect of the HAVEN and BRAER incidents claims had been presented which related to measures of an abstract nature taken to prevent or minimise pure economic loss, such as tourism promotion or the marketing of fish products. It was suggested by some delegations that such costs should be admissible if they related to measures taken to prevent or minimise damage which in itself would fall within the definition of "pollution damage". Other delegations expressed hesitation as regards the admissibility of claims of this kind and stated that the drafters of the Civil Liability Convention did not foresee that such activities should fall within the definition of "preventive measures".

3.3.3 As regards the claims relating to costs of promotion of tourism, some delegations expressed their opposition to the acceptance of these claims, since in their view activities of the kind covered by the claims could not be considered as falling within the definition of "preventive measures". Other delegations stated that they were very hesitant to accept such claims. Some delegations took the view that in any event the item of the claim presented by the Region of Liguria which related to damage to "touristic image" should be rejected, since this item did not relate to a quantifiable economic loss.

3.3.4 The Italian observer delegation maintained that costs for activities of this kind fell within the scope of the Civil Liability Convention since they should be considered as costs of "preventive measures", and that these items should therefore be admissible in principle. In the view of that delegation also the item relating to damage to "touristic image" was admissible. That delegation reiterated that the Italian Government did not agree with the interpretation given by the Executive Committee to Resolution N°3 relating to the definition of "pollution damage" adopted by the IOPC Fund Assembly in 1980.

3.3.5 Following this discussion, the Committee decided to postpone further consideration of these claims to its 36th session.

3.3.6 It should be recalled that at its 35th session, the Executive Committee considered a claim by three organisations representing Shetland fishing industry interests for costs relating to activities undertaken or to be undertaken in order to counteract the negative effect of the BRAER incident on the reputation of Shetland fish products.

3.3.7 During the discussions of this latter claim, several delegations expressed their concern as to the consequences of accepting claims of this kind. Other delegations maintained, however, that since the IOPC Fund accepted that pure economic loss under certain conditions fell within the definition of "pollution damage", it should also accept costs of measures to prevent or minimise pure economic loss. These delegations emphasised that "preventive measures" were defined as "any reasonable measures taken by any person to prevent or minimise pollution damage" and that this definition did not distinguish between various types of pollution damage. It was stated that in order to qualify for compensation, the measures must have the purpose of preventing or minimising a quantifiable economic loss.

3.3.8 After discussing the problem, the Executive Committee agreed with the latter approach referred to in paragraph 3.7.7 and decided that measures to prevent or minimise pure economic loss should be considered as preventive measures, provided that they fulfilled the following requirements:

- (a) the costs of the proposed measures were reasonable;
- (b) the costs of the measures were not disproportionate to the further damage or loss which they were intended to mitigate;
- (c) the measures were appropriate and offered a reasonable prospect of being successful; and
- (d) in the case of a marketing campaign, the measures related to actual targeted markets.

3.3.9 If the Executive Committee were to decide that some of the activities covered by the claims in respect of the cost of promotion of tourism arising out of the HAVEN incident were admissible in principle as costs of preventive measures, the Director considers that the criteria set out in paragraph 3.3.8 above should be applied to the individual claims and to the various items of these claims.

#### *Region of Liguria*

3.3.10 The Region of Liguria has, inter alia, claimed compensation of Lit 792 million (£355 000) for the cost of tourism promotion necessitated by the HAVEN incident. The claim also includes an item relating to damage to "touristic image" which is not quantified.

3.3.11 The Region of Liguria has maintained in its submission to the Court in Genoa that the HAVEN incident had a very strong impact on national and international opinion in respect of the region as a tourist area and that it was therefore necessary to take immediate action to reduce the negative consequences for tourism of the incident. Although according to the Region the negative effect on tourism was caused by the media, this did not in the Region's view interrupt the link of causation between the incident and the damage to tourism. The Region has maintained that an interruption of the link of causation would only take place if a certain fact had been created artificially by the media for the purpose of diverting customers, which was not the case in respect of the HAVEN incident. According to the Region the pictures of the burning ship, the smoke and the oil reaching the French coast were facts which the media had a duty to report to the public. The Region has argued that the negative effect on tourism in the area caused by media reports had to be counteracted not only by physical clean-up of the beaches and the water but also by an active promotion in order to persuade Italian and foreign tourists to come to the area. The cost for such promotion must, in the view of the Region, be considered as a cost to reduce damage which otherwise would constitute the basis of valid claims for compensation.

3.3.12 The position taken by the Region of Liguria is based on the assumption that the activities covered by the claim reduced the losses which otherwise would have been incurred by the operators within the tourist industry in the Region. Damage to tourism is a foreseeable consequence of a major oil spill. It could be argued, however, that the HAVEN incident would in any case have had only a short term negative effect on tourism and that for this reason these activities did not contribute to any significant reduction of these losses.

3.3.13 The claim relates to payments made by the Region of Liguria to tourist offices in the region for unspecified promotional costs as follows:

	<u>Lit</u>
Savona	103 000 000
Arenzano	110 000 000
Sassello	10 000 000
Santo Stefano d'Aveto	10 000 000
Torriglia	4 000 000
Rapallo	95 000 000
La Spezia	75 000 000
Imperia	<u>85 000 000</u>
	Lit <u>492 000 000</u> (£213 000)

3.3.14 The tourist office in Spotorno received Lit 70 000 000 (£31 400) to pay for visits by foreign journalists and for advertising in the Italian and foreign press. An amount of Lit 60 000 000 (£26 900) was paid to the tourist office of Lavagna for promotional activities in favour of tour operators, travel agencies, shops and hotels. The Region has made payments totalling Lit 69 546 857 (£31 400) to the Union of the Ligurian Chambers of Commerce to finance a press campaign in Italy, Germany and Switzerland. An amount of Lit 71 400 000 (£32 020) was paid to the newspaper "Il Giornale", a newspaper in Milan, for advertising for Ligurian tourism. Lit 34 572 310 (£15 500) was paid to a publicity company in Genoa for posters promoting tourism in the Ligurian area.

3.3.15 In Resolutions of 21 May and 17 July 1991, the Region stated that it had decided to intervene for the purpose of improving the tourist image of Liguria which was heavily threatened by the press campaign emphasising the danger of environmental damage caused by the HAVEN incident to the Ligurian Sea and the coast of the Western Riviera. The Resolutions only refer to the Western Riviera whereas payments have also been made to tourist offices in the Eastern Riviera.

3.3.16 As for Rapallo, Lavagna and La Spezia, these towns are located east of Genoa and were not affected by oil from the HAVEN. Sassello is located in the hills some 20 kilometres inland from Savona. Torriglia is located some 30 kilometres from the sea. Santo Stefano d'Aveto, which is situated in the mountains one hour's drive from the sea on the Eastern Riviera, is a ski resort.

3.3.17 The only provinces affected by the spill from the HAVEN which received payments from the Region were Savona and Imperia. It should be noted that there was very little contamination in Imperia.

3.3.18 As for the claim presented by the Region of Liguria, the facts have been investigated further by the IOPC Fund's experts. It has been established that two offices of the Regional authorities were involved in payments for tourism promotion. One of these offices paid money directly to television stations, newspapers etc to promote the image of the region. The other office made payments to the various municipalities. However, no extra funds were allocated for this purpose. The payments by the two offices were made by using funds allocated in the budget of the Region of Liguria for tourism promotion.

3.3.19 In view of the facts set out above, the Director considers that the amounts paid to the tourist offices in Rapallo, Lavagna, La Spezia, Sassello, Torriglia and Santo Stefano d'Aveto could not be considered as costs of preventive measures. These claims should therefore, in his view, be rejected. As for the amounts paid to the tourist offices in Arenzano, Savona and Imperia, these places are located in the area affected by the oil from the HAVEN. It would be for the Executive Committee to decide whether these payments could be considered as costs of preventive measures. The Committee is also invited to consider whether the amounts paid to the Union of the Ligurian Chamber of Commerce, the newspaper "Il Giornale" and the publicity company in Genoa should be considered as costs of preventive measures.

3.3.20 As regards the item of the claim relating to damage to "touristic image", the Director would like to refer to the position taken by the Assembly at its 4th session in respect of the admissibility of claims for compensation. The Assembly decided that only a claimant who had suffered quantifiable economic loss was entitled to compensation (document FUND/A.4/16, paragraph 13; cf document FUND/A.4/10, paragraph 19). In the view of the Director, the damage to "touristic image" allegedly suffered by the Region of Liguria cannot be considered as a quantifiable economic loss. For this reason, the Director takes the view that this item of the claim should be rejected.

*Municipality of Diano Marina*

3.3.21 Diano Marina, which is a town some 90 kilometres west of Genoa, has claimed compensation for an amount of Lit 20 000 000 (£8 970) paid to a local body formed by businesses involved in tourism. The amount was paid as a contribution to financing a mass media campaign to promote the image of the town which had already been carried out by the body before the payment was granted. It is not known when the campaign was in fact carried out. The payment was made pursuant to a resolution by the Municipality council dated 19 March 1993, which did not contain any reference to the HAVEN incident.

3.3.22 In the view of the Director, it has not been shown that the expenses covered by this claim are linked to the HAVEN incident. The Director considers therefore that the claim should be rejected already on that ground, leaving aside the question of whether activities of the kind covered by the claim would in principle fall within the definition of "preventive measures".

*Province of Savona*

3.3.23 The Province of Savona granted Lit 50 000 000 (£22 420) to the tourist office in the Province for a tourist promotion campaign on the television. It appears that also the Municipalities of Loano and Pietra Ligure, the Region of Liguria and other unknown bodies in the Region joined this campaign.

3.3.24 The total cost of the campaign has been indicated at Lit 238 000 000, out of which Lit 50 000 000 was paid by the Province of Savona. It is likely that the balance was paid by the other entities mentioned above.

3.3.25 In the view of the Director, it has not been shown that the activities covered by the claim had contributed to counteracting the negative effects on tourism of the publicity resulting from the HAVEN incident. The Director considers therefore that this claim should be rejected, leaving aside the question of whether activities of the kind covered by the claim would in principle fall within the definition of "preventive measures".

#### **4 IOPC Fund's Pleadings on Claims Relating to Clean-up Operations**

4.1 In accordance with the decision of the judge in charge of the limitation proceedings, the IOPC Fund presented on 31 July 1993 pleadings to the Court in respect of all claims relating to clean-up operations excluding the clean-up operations carried out in France. These pleadings were presented jointly by the IOPC Fund, the shipowner and the UK Club. The pleadings, which are based on the examination of the claims carried out by the lawyers and technical experts employed by the IOPC Fund, the shipowner and the UK Club, comprise some 700 pages with 600 pages of enclosures, and deal with the following claims:

	<u>Number of Claims</u>
State of Italy in respect of the contract with the consortium of contractors known as ATI	1
Private contractors (partly duplicating the Italian State claim)	22
Ministries and public bodies claiming through the State of Italy	9
Regions, provinces, municipalities	32
Beach facilities ("bagni")	29
	<u>93</u>

4.2 The total amount of these claims is approximately Lit 160 000 million (£69 million). As previously reported to the Executive Committee, a number of claims presented by private contractors are duplications. This is due mainly to the fact that the State and a number of contractors and sub-contractors have presented claims in respect of the same operations. It appears that one item of the State claim has been repeated in 44 other claims, and these duplications represent a total amount of Lit 790 000 million (£340 million). There are some further duplications which amount to Lit 82 000 million (£35 million).

4.3 In the first part of the pleadings, the approach taken in the examination is explained. In particular, the method of calculation of unit costs of ships, vehicles, equipment and manpower is described. The unit costs have been assessed by using the following four methods:

- (a) comparison between prices applied by various companies which rendered the same kind of services in the HAVEN case;
- (b) investigation into prices applied in the market for the kind of services covered by a particular claim;
- (c) analysis of the various elements that are covered by the prices (eg for a ship depreciation, crew, insurance, maintenance, fuel);
- (d) in respect of vehicles and personnel used for onshore clean-up, comparison with the official tariffs published by the Genoa Chamber of Commerce, which are based on a quarterly examination of costs in the Ligurian area made by the Chamber.

4.4 For each claim, normally at least two of these four methods have been used.

4.5 The second part of the pleadings relates to the claims presented by the Region of Liguria, the Province of Genoa and the municipalities in respect of beach clean-up. These claims have to a large extent been accepted in full. Some items have been rejected in the pleadings, since they have been considered as not falling within the definition of "pollution damage" or "preventive measures".

4.6 In the third part of the pleadings the claims presented by the beach facilities ("bagni") have been examined. The amounts claimed for beach clean-up carried out by these facilities (all below Lit 5 million (£2 160) per facility) have in general been accepted in full. Claims relating to alleged damage to beach equipment (beach chairs, umbrellas, etc) have been rejected because no documents supporting the claims have been provided and because at the time of the incident (April 1991) the chairs and umbrellas were not on the beaches but stored in sheds.

4.7 The fourth part of the pleadings deals with the claims submitted by private operators and some Ministries. The pleadings address the question of whether the various operations were reasonably required under the circumstances and whether the operations would fall within the definitions of "pollution damage" or "preventive measures". Those claims which are duplications of the State's claim relating to the ATI contract were not accepted in the pleadings. In many instances the price claimed per unit was considered highly inflated. Items totalling some Lit 4 500 million (£1.9 million) could not be accepted since the expenses were not supported by any documentation. A major part of the activities covered by the claims presented by the various Ministries were considered as not falling with the definitions of "pollution damage" or "preventive measures". There was also lack of documentation in respect of parts of these claims.

4.8 The fifth part of the pleadings relates to the State's claim in respect of the ATI contract. After the incident, the Government instructed a consortium of contractors known as ATI with the task of presenting a project to restore the situation to pre-spill conditions, to put the wreck of the HAVEN into a safe condition and to evaluate the environmental damage caused by the incident. On 22 May 1991, a contract was concluded between the State and ATI for Lit 75 000 million (£32 million) plus VAT in respect of the activities included in this project. The IOPC Fund, the shipowner and the UK Club have

stated that, since this contract is not binding on them, the operations and costs are admissible only if fulfilling the criterion of reasonableness.

4.9 The State has so far not presented to the Court any documents in support of its claim in respect of the ATI contract. It has been impossible, therefore, for the IOPC Fund, the shipowner and the UK Club to examine this claim.

## **5 Environmental Damage**

5.1 The Court of Genoa is dealing with another issue of great importance to the IOPC Fund, viz the admissibility of a claim presented by the Italian Government and some other public bodies relating to damage to the environment. The situation in respect of this issue was reported to the Executive Committee at its 34th session (document FUND/EXC.34/2, paragraph 5).

5.2 There have been no developments since the Committee's 34th session in respect of the claims relating to environmental damage. The parties have been requested to present pleadings on this issue.

## **6 Discussions with the Italian Government**

6.1 At the Executive Committee's 34th session, the Italian delegation drew attention to the fact that although nearly two years had passed since the HAVEN incident, no payments had been made which was causing considerable financial hardship to victims in Italy. The Italian delegation stated that, in view of the complexity of the on-going court proceedings, it might take many years before these proceedings could be brought to an end. This delegation stated that, for this reason, the Italian Government was ready to enter into discussions with the other parties involved in the incident in order to find acceptable compromise solutions to the various issues, thereby making it possible to settle the whole incident out of court (document FUND/EXC.34/9, paragraph 3.1.2).

6.2 Several delegations stated that they shared the concerns of the Italian delegation as regards the delay in payment to victims and the risk of protracted litigation. For this reason, they supported the Italian proposal that discussions should be held for the purpose of exploring the possibilities of out-of-court settlements. These delegations nevertheless drew attention to the fact that this case had given rise to several questions of principle of great importance and that it might be difficult to find acceptable solutions on these points (document FUND/EXC.34/9, paragraph 3.1.3).

6.3 The Executive Committee, recognising the great complexity of the issues involved, instructed the Director to enter into discussions with the Italian and French Governments for the purpose of exploring the possibilities of out-of-court settlements in respect of claims arising out of the HAVEN incident. The Director was also instructed to report the results of these discussions to the Committee in due course (document FUND/EXC.34/9, paragraph 3.1.4).

6.4 In accordance with the instructions given to him by the Executive Committee, the Director has entered into discussions with the Italian Government. So far these discussions have focused on establishing the main problems involved. The intention of the Italian Government and the IOPC Fund is that the discussions will continue in September or October 1993.

## **7 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 consider appropriate in respect of the handling of claims arising out of this incident; and

- (c) give the Director such instructions as it may deem appropriate in respect of claims relating to losses suffered by:
- (i) tourist agent (paragraph 3.2); and
  - (ii) cost of promotion of tourism (paragraph 3.3).
-