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INCIDENTS INVOLVING THE IOPC FUND

HAVEN

ITALIAN GOVERNMENT DOCUMENT ON THE ISSUE OF THE PRESCRIPTION OF CREDITS
CLAIMED IN COMPENSATION FOR THE DAMAGES ARISING FROM THE "HAVEN" INCIDENT

Submitted by the Government of Italy

The Italian Government deems necessary to ask the Executive Committee to examine its own considerations regarding the exception of prescription of the credits claimed by almost all claimants raised by the IOPC Fund in the trial of the "Haven" case pending before the Genoa Courts.

- 1 Article 6, paragraph 1, of the Fund Convention (FC) reads "*Rights to compensation under Article 4*" (i.e. those to which victims who have been unable to receive an equitable compensation in accordance to the terms of the Civil Liability Convention - CLC - are entitled) "*...shall be extinguished unless an action is brought thereunder*" (as a matter of fact Article 4 does not mention an action directed against the Fund, but, implicitly, admits the possibility of taking such an action) "*or a notification has been made pursuant to Article 7, paragraph 6, within three years from the date when the damage occurred. However, in no case shall an action be brought after six years from the date of the incident which caused the damage*" Article 7, paragraph 6, foresees that if legal action under the Liability Convention for compensation for pollution damage has been brought against the owner of the vessel or its insurer before a competent court in a contracting State, the national legislation of the state in which the court action is initiated must allow notification of such action to the Fund at every stage of the proceedings. If such notification has been made allowing the Fund sufficient time to usefully intervene as a party in the proceedings, any sentence passed in the course of such proceedings is valid vis-à-vis faculty to intervene.

To summarize: whoever has suffered damages eligible for compensation, in accordance to the terms of the FC, in order not to forfeit his rights, must act directly against the Fund, unless the existence of an action against the owner of the vessel or his guarantor has been notified.

- 2 Paying closer attention to the latter eventuality, which is the one of more direct interest in the case in question: "*each party to the proceedings*" therefore, must be able to notify (we will return "*ex professo*" on the meaning of this sentence) in order not only to make the Fund aware of the existence of the proceedings - which in our case deals with limitation of liability - but also to enable it to adequately defend itself. So much so that, after notification, it is necessary to allow the Fund sufficient time to intervene in good time as a party in the proceedings. If this happens, all the sentences passed in the course of the proceedings stand vis-à-vis the Fund.

At this point the second part of paragraph 1, Article 6, applies, according to which, in all cases, i.e. even in cases in which notification as per Article 7, paragraph 6, has taken place, no court action can be taken against the Fund after six years from the relevant event. In other words this last provision refers only to the hypothesis of notification to the Fund of proceedings regarding limitation of liability. It could not be interpreted any other way, otherwise it would be meaningless.

- 3 About the "Haven".

Soon after the event, a number on victims brought legal action against the owners of the "Haven" - and its insurers - before the Genoa Courts; from which the immediate request for limitation of responsibility, the concession of the limitation on the part of the Court of Genoa and the pending, since June 1991 (less than two months after the event), of the proceedings in question. And also the immediate intervention of the IOPC Fund in the proceedings, which has even preceded the presentation of some of the claims.

The Fund's participation has been extremely vigilant, with an unusual over-abundance of people and means, no expense spared, which resulted in a systematic rejection of the various interventions by private or public concerns, in the "if" and or the "quantum", with the lodging of innumerable pleadings and expert evidence.

In short, the Fund, having had knowledge of the proceedings for limitation of liability from the outset, was able to carry out a continuous, intense and effective legal activity in defence of its interests.

According to the spirit of the Convention, it is clearly obvious that no notification was necessary to inform the Fund of the existence of the proceedings for limitation of liability in order to enable it "*to intervene as a party to the proceedings*", for the simple reason that the Fund was already a party to them.

- 4 Also to be considered in a subordinated way, is Article 7, paragraph 6, which states: "*each party to the proceedings shall be entitled under the national law of the State to notify the Fund of the proceedings*" (for the purpose illustrated before).

The law does not say that **all parties** must necessarily notify, but that **each one** must be put in a position to... And this is perfectly explained by the "ratio legis" before. It is necessary that the existence of the proceedings be brought to the knowledge of the Fund in order to comply with the last part of Article 7, paragraph 6. In order to acquire such knowledge it is not at all necessary that each and every party to the proceedings notifies the existence of the same to the Fund, since it is sufficient that "any" party, in the proceedings notifies..: the legislator's aim to ensure the legal knowledge of the existence of the proceedings is achieved by the notification being made even by one party only.

No need exists for each participant to notify the existence of the proceedings of limitation of responsibility: it would be superfluous and would not comply with the requirements of the law. This is confirmed by Article 6, paragraph 1, which mentions "*unless... a notification (i.e. any notification) has been made pursuant to Article 7, paragraph 6*" but does not prescribe that notification must be made by each and every claimant. In the case in question we know (and the Fund itself admits this) that notification was made by a number of claimants (all the French and a few Italians), thus preceding even some claims, apart from the fact that the Fund has already intervened in the proceedings, secondarily the time bar of Article 6, paragraph 1, has not been exceeded, since a number of notifications had been received, in accordance to Article 7, paragraph 6.
