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OIL POLLUTION
COMPENSATION
FUND

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Agenda item 3

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INCIDENTS INVOLVING THE IOPC FUND

HAVEN

Note by the Director

1 Introduction

1.1 In April 1991 the Cypriot tanker *Haven* (109 977 GRT) caught fire and suffered a series of explosions and subsequently sank off Genoa (Italy). This incident caused serious oil pollution in Italy and also affected France and Monaco. Some 1 350 claims for compensation have been submitted to the Court of first instance in Genoa.

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. Most of the claims have been given preliminary consideration. A number of claims are not supported by any documents. It is expected that the judge will not establish the list of admissible claims ("stato passivo") until late 1995 at the earliest.

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 Executive Committee has taken decisions at its 34th, 35th and 36th sessions on a number of questions of principle as regards the admissibility of claims. In this regard reference is made to the documents presented by the Director to these sessions and the respective Records of Decisions. No new questions of principle have arisen which require decisions by the Committee at its 42nd session.

1.5 The present document refers to the discussions at the Executive Committee's 40th session and sets out the situation in respect of the claims for compensation.

2 Question of time-bar considered by the Executive Committee at its 40th session

2.1 At the 40th session of the Executive Committee, the Director introduced section 7 of document FUND/EXC.40/4 which addressed the question of whether the majority of the claims arising out of the *Haven* incident were time-barred vis-à-vis the IOPC Fund. The relevant part of this document is reproduced at Annex I. The Committee's consideration of this issue are reflected in paragraphs 3.3.4 and 3.3.7-3.3.16 of document FUND/EXC.40/10, which are reproduced below.

2.2 The Executive Committee took note of the fact that only a few claimants, namely the French State, the French communes, the Principality of Monaco and a few Italian claimants, the shipowner and the UK Club had fulfilled the requirements of Article 6.1 by making a notification under Article 7.6 of the Fund Convention. The Committee noted also that, on the basis of legal advice, the Director was of the opinion that all other claims submitted in the limitation proceedings had become time-barred in respect of the IOPC Fund on or shortly after 11 April 1994.

2.3 The Executive Committee recognised that the Director had been obliged to raise the issue of time-bar both in the legal proceedings in Italy and in the Executive Committee.

2.4 The Executive Committee agreed with the Director's analysis of the legal situation and took the view that these claims met the requirements for time-bar, in the light of the provisions in Article VIII of the Civil Liability Convention and Article 6.1 of the Fund Convention.

2.5 A number of delegations expressed their concern that this situation had arisen, since the IOPC Fund had as its purpose to pay compensation to victims of pollution damage. Nevertheless, these delegations drew attention to the fact that this situation was due to the complex legal proceedings in Italy resulting from certain claimants maintaining that the IOPC Fund's maximum cover should be assessed on the basis of the free market value of gold instead of on the basis of the Special Drawing Right (SDR), the latter conversion method being in accordance with the internationally accepted interpretation of the Fund Convention. It was also pointed out that claims had been submitted by the Italian Government and other public bodies relating to damage to the environment which, according to Resolution N°3 adopted by the IOPC Fund Assembly, were not admissible under the Civil Liability Convention and the Fund Convention.

2.6 The Japanese delegation, speaking in its capacity as observer, stated that in its view it was clear that the claims in question were time-barred under Article 6.1 of the Fund Convention, which left no room for interpretation. For this reason, this delegation took the view that the IOPC Fund should not enter into negotiations concerning these claims and that no payments could be made for such claims. The Japanese delegation also stated that in its view contributors were under no obligation to pay contributions in respect of such payments.

2.7 The Italian delegation stated that it was not going to address the legal question, ie whether or not the claims were time-barred. In the view of this delegation, it was against the object and spirit of the Fund Convention that the IOPC Fund invoked the provisions on time-bar. This delegation declared that it was inequitable that the Fund invoked the time-bar issue after over three years of discussions with claimants and an active participation in the court proceedings. This delegation also stated that the position taken by the IOPC Fund deeply worried the Italian Government and that, if this position were maintained, it would demonstrate that the system of compensation established by the Fund Convention did not work.

2.8 Being convinced of the legal validity of the IOPC Fund's position in respect of the time-bar issue, the Executive Committee, nevertheless, recognised that the on-going legal proceedings in Italy gave rise to some uncertainty as regards the final outcome of this issue. For this reason, and

conscious of the desirability of victims of pollution damage being compensated, the Executive Committee instructed the Director to enter into negotiations with all the parties concerned for the purpose of arriving at a global solution of all outstanding claims and issues. The Committee emphasised that any such solution must respect the following conditions:

- (i) the maximum payable under the Civil Liability Convention and the Fund Convention was 60 million SDR;
- (ii) claims could only be admissible if a claimant had suffered a quantifiable economic loss and claims for damage to the marine environment per se were not admissible;
- (iii) the negotiations should be without prejudice to the IOPC Fund's position in respect of the time-bar;
- (iv) the negotiations should, to the extent possible, take into account the economic interests of those claimants who had respected the requirements laid down in Article 6.1 of the Fund Convention.

2.9 In respect of the condition set out under item (iv) of paragraph 2.8 above, the French delegation expressed the wish that the Director, together with the claimants whose claims appeared to have become time-barred vis-à-vis the IOPC Fund, should seek a solution which would make it possible to compensate in full the claimants who had fulfilled the requirements laid down in Article 6, on the basis of the agreements reached or to be reached between those latter claimants and the IOPC Fund. In the view of this delegation, preserving the legitimate rights of the French victims who had complied with the procedures was indeed an important factor in its position that negotiations should continue.

2.10 The Executive Committee decided that there should be a time limit for these negotiations, perhaps by the 42nd session of the Executive Committee.

2.11 The Executive Committee emphasised that the decision to enter into negotiations in the *Haven* case did not constitute a precedent but should be seen in the context of the very special circumstances of this case.

2.12 The Director was instructed to report on the developments of these negotiations to the Executive Committee at its 42nd session. The Committee stated that any agreement relating to a global settlement would have to be approved by the Committee.

3 Claims presented

Italian claims other than those relating to environmental damage

3.1 Some 1 350 Italian claimants have presented claims relating to damage other than damage to the environment. These claims total approximately Lt 765 000 million (£286 million).

3.2 A number of these claims are, however, duplications. The duplications are mainly due to the fact that the State of Italy and a number of contractors and sub-contractors have presented claims in respect of the same operations. It appears that the duplications total approximately Lt 455 000 million (£170 million). After deducting this amount from the total figure, a balance of some Lt 310 000 million (£116 million) remains for claims other than those relating to damage to the marine environment. The figures given above do not in any way represent the position of the IOPC Fund as to the admissibility of the respective claims, or as to the reasonableness of the amounts claimed.

3.3 The Italian Government has presented the largest claim. This claim, excluding the items relating to environmental damage, totals Lt 261 000 million (£97 million). The claim includes items relating to initial clean-up costs incurred by contractors instructed by several government authorities,

reimbursement of the value of oil booms lost or destroyed, expenses incurred by various ministries and public bodies, and costs associated with the execution of a contract relating to clean-up operations and monitoring concluded between the Italian Government and a consortium of contractors known as ATI.

3.4 The owners of 43 yachts have claimed Lit 126 million (£47 200) for contamination of their boats. Thirty-eight fishermen have claimed Lit 439 million (£164 400) for contamination of their boats and nets. Nearly 700 hotel owners have claimed Lit 76 000 million (£28 million) and 150 fishermen Lit 22 600 million (£8.5 million) for loss of income. Ninety-three operators of beach facilities have claimed Lit 3 900 million (£1.5 million) for reduced income. Some 236 shops and restaurants have also claimed compensation for Lit 16 500 million (£6.2 million).

Italian claims relating to environmental damage

3.5 The Italian Government has presented a claim relating to damage to the marine environment. The claim documents did not originally indicate the kind of "environmental damage" which was allegedly sustained, nor did it originally set out the method used to calculate the amount claimed, Lit 100 000 million (£37 million). The Italian Government informed the IOPC Fund that it had not been possible to describe the environmental damage because the study of the effects of the incident on the marine environment had not yet been completed. The Government also stated that the figure given in the claim was only provisional.

3.6 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 (£74 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.

3.7 The IOPC Fund has 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 Assembly had also taken the view that compensation could only be granted if a claimant had suffered quantifiable economic loss.

3.8 In June 1994, the Italian Government quantified the alleged damage to the environment as follows:

- ▶ restoration of 43 hectares of phanerogams; Lit 266 042 million (£99 million);
- ▶ consequences of the beach erosion caused by damage to the phanerogams; not quantified but left to the assessment of the Court on the basis of equity;
- ▶ wreck removal; Lit 20 000 million (£7.5 million);
- ▶ damage restored by the natural biologic recovery of the resources; Lit 591 364 million (£221 million) for the sea and Lit 6 029 million (£2.3 million) for the atmosphere, or a total of some £223 million;
- ▶ irreparable damages to the sea and atmosphere; not quantified but left to assessment by the Court on the basis of equity; and
- ▶ compensation for inflation and interest.

French claims

3.9 The French Government presented a claim to the Court in Genoa for the cost of operations at sea and beach clean-up in France for a total amount of FF16 284 592 (£2.0 million).

3.10 In September 1994, the French Government and the IOPC Fund, with the approval of the shipowner and the UK Club, reached agreement on the admissible amount of the Government's claim, viz FF12 580 724 (£1 578 100). The agreement is subject to the approval of the judge in charge of the limitation proceedings. The reduction in the amount claimed related mainly to certain reconnaissance flights, which the IOPC Fund considered were not justified, and to the rates for two French Navy vessels which in the Fund's view were disproportionate to the operations carried out. In addition, a reduction was made in the amount claimed for certain operations at sea which were carried out after the date when, in the Fund's view, they were no longer required.

3.11 Claims totalling FF78 410 591 (£9.8 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. One of the public bodies (Parc National de Port Cros) has claimed compensation for damage to the marine environment.

3.12 Correspondence has been exchanged between the communes (including Parc National de Port Cros) and the IOPC Fund, with the approval of the shipowner and the UK Club. As a result, agreements have been reached with 17 communes on the quantum of their claims, for a total amount of FF4 580 292 (£574 600). These agreements are subject to the approval of the judge in charge of the limitation proceedings. Discussions are continuing with the remaining communes.

Claim by the Principality of Monaco

3.13 The Principality of Monaco has presented a claim in the Court in Genoa for FF329 091 (£41 300) for the cost of clean-up operations.

4 Recent court hearings

4.1 On 28 October 1994, at a hearing in the Court of first instance, the judge in charge of the limitation proceedings was informed of the IOPC Fund's position in respect of the issue of time-bar. The judge requested a statement by the IOPC Fund that the Fund was available to participate in negotiations. The IOPC Fund's lawyer stated, inter alia, that the Fund preserved its right to the defence of time-bar under Article 6.1 of the Fund Convention. He noted that, although no action had been started and pursued against the IOPC Fund in a correct way, the defence of time-bar had been challenged by other parties. He pointed out that the fact that the IOPC Fund was available for negotiations could not in any way be interpreted as acknowledgement of debt or as a waiver of the defence of time-bar. The IOPC Fund's lawyer informed the judge of the conditions for any solution laid down by the Executive Committee as set out in paragraph 2.8 above.

4.2 At a court hearing held on 6 February 1995, the lawyer representing the shipowner and the UK Club informed the judge in charge of the limitations proceedings that agreements had been concluded between his clients and certain groups of fishermen as to the quantum of their claims and that these agreements were subject to the condition that they would be null and void unless the amounts agreed were paid within six months of the date of the respective agreements. The lawyers representing those fishermen confirmed that such agreements had been reached. The shipowner's and Club's lawyer also stated that negotiations were being held with other groups of claimants. The IOPC Fund's lawyer noted the agreements reached between the shipowner and the UK Club, on the one side, and the groups of fishermen, on the others side. He stated that, had it not been for the fact that the time-limit for bringing actions against the IOPC Fund had expired, the amounts agreed would have been acceptable to the IOPC Fund.

4.3 At the request of all the parties represented at the hearing referred to in paragraph 4.2, the judge decided to postpone further consideration of the claims until 19 June 1995.

5 Situation of the negotiations

5.1 In December 1994, after consultation with the IOPC Fund, the shipowner and the UK Club sent letters to all claimants whose addresses were known, inviting them to negotiations for the purpose of exploring the possibilities of reaching agreements on the quantum of their claims. Those claimants who had not submitted sufficient supporting documents were asked to do so before a certain date.

5.2 During the period January-March 1995, negotiations have been held between the shipowner/UK Club and a number of individual claimants or groups of claimants. The IOPC Fund has been consulted closely by the Club during these negotiations.

5.3 As a result of these negotiations, agreements have been reached between the shipowner/UK Club and a number of claimants on the admissible quantum of their claims, as set out in paragraphs 5.5-5.16 below. These agreements were made on the express condition that they would become null and void unless the amounts agreed were paid within six months of the signing of the respective agreements (ie in August or September 1995).

5.4 A summary of the situation as at 17 March 1995 is set out in Annex II to the present document.

Fishermen

5.5 These claims relate to losses suffered as a result of reduced catches caused by the oil spill, contamination of nets and clearing of contaminated boats. For one group of fishermen the claims have been assessed on the basis of a comparison between the catches from 1991 to-date and catch figures for 1989 and 1990, as evidenced by the register of income kept by each fisherman for tax purposes and by sales receipts issued to their co-operatives and other buyers. As regards another group of fishermen, the assessment was made for the period of about one month during which they were prevented from fishing because of oil on the surface of the sea, using the daily rate of compensation applied by the Italian Government in connection with biological stoppage of fishing imposed by the Government for conservation purposes.

5.6 After difficult negotiations, agreements were reached between 129 fishermen and the shipowner/UK Club on the quantum of their claims at a total amount of Lit 8 600 million (£3.2 million), compared to the claimed amount of Lit 21 300 billion (£8.0 million).

5.7 Negotiations are being held with two claimants. The three remaining claimants cannot be contacted.

Yacht owners

5.8 These claims relate to costs of cleaning or repainting yachts which had been contaminated. Offers for settlements, totalling Lit 53 901 000 (£20 100), have been made to claimants in this category; their claims total Lit 157 436 000 (£58 900). The remaining fifteen claims in this category are being investigated.

Beach installations ("bagni")

5.9 These claims relate to damage to property which had been contaminated and loss of income due to reduction in the number of visitors. All these "bagni" are located on beaches in areas affected by the oil. The claims have been assessed on the basis of a comparison between the turnover of the businesses in 1991 and the corresponding figure in 1990. Account has been taken of the rate of inflation between 1990 and 1991 and of the general development in tourism in the region between these two years compared with the development for Italy as a whole. The profit element has been calculated by applying a given percentage to the lost turnover. This percentage has been arrived at through an examination of tax returns provided by a number of claimants in this category.

5.10 Agreements on the quantum have been reached with one bagni operator for an amount of Lit 4 300 000 (£1 600), whose claim was for Lit 14 650 000 (£5 500). Offers for settlements have been made to 33 bagni operators, for a total amount of Lit 468 436 000 (£175 300), which should be compared with the amounts claimed (Lit 1 407 million) (£526 600).

5.11 The 59 remaining claims in this category are not supported by any documentation. The claimants have been advised that their claims will not be considered without adequate documentation.

Hotel, restaurants, bars, shops and other businesses

5.12 The claims in these categories relate to loss of income due to reduction in guests or customers during 1991. The assessments have been made on the basis of a comparison between the number of guest nights in the hotels respectively to the volume of business for restaurants, bars, shops and other businesses in 1991, and the corresponding figures in 1990. Account has been taken of the rate of inflation between 1990 and 1991 and of the general development in tourism in the region between these two years compared with the corresponding development for Italy as a whole. The profit element has been calculated by applying a given percentage to the lost turnover. This percentage, which varies from one type of business to another, has been arrived at through an examination of tax returns provided by a number of claimants.

5.13 In these categories, agreements have been reached with three hotel operators for Lit 15 081 000 (£5 600), and with six shopkeepers for a total amount of Lit 37 100 000 (£13 900). Offers totalling Lit 1 195 million (£447 300) have been made to 95 hotel operators, 13 bars and restaurant owners and 67 shop-keepers, whose claims total Lit 14 219 million (£5.3 million). These claimants' businesses are all located in municipalities which were affected by the spill.

5.14 The remaining 728 claims in these categories are not supported by any documentation. The claimants have been advised that their claims will not be considered without adequate documentation. It should be noted that most of these claimants are represented by the same lawyers who also represent the claimants who have submitted documents and with whom negotiations are being conducted.

Municipalities

5.15 Twenty-nine municipalities have claimed a total of approximately Lit 1 300 million (£486 700) for costs of clean-up operations. Eighteen of these claims are duplications, wholly or partly, in relation to the claim presented by the Italian Government. Fourteen of them include items relating to environmental damage with no indication of the amounts claimed, and twelve include items relating to loss of "tourist image", also without any indication of the amounts claimed.

5.16 Preliminary discussions concerning the claims for cost of clean-up operations have been held with representatives of seven of the municipalities.

The IOPC Fund's involvement in the negotiations

5.17 The IOPC Fund's lawyers have followed the negotiations, and the Director has been consulted by the shipowner and the Club before any agreements or offers on quantum were made. In the Director's view, all claims in respect of which agreements have been reached or offers have been made fulfill the criteria for admissibility laid down by the Executive Committee, in particular at its 35th session (document FUND/EXC.35/10, paragraphs 3.2.3-3.2.9). The amounts involved are, in the Director's view, reasonable. If the IOPC Fund had not raised the defence of time-bar, the Director would have recommended that these claims be accepted by the Executive Committee in the amounts agreed or offered by the shipowner/Club.

Further negotiations

5.18 Negotiations are continuing concerning the remaining documented claims in the above-mentioned categories.

5.19 Discussions have started with a number of contractors who operated outside the contract concluded between the Italian Government and the consortium of companies known as ATI. These claims total Lit 55 000 million (£20 million).

5.20 It is also envisaged that discussions will be held in the near future with the Italian Government and the companies forming part of the ATI consortium concerning the claim for operations under the ATI contract.

6 Action to be taken by the Executive Committee

The Executive Committee is invited to:

- (a) take note of the information contained in the present document; and
- (b) give the Director such instructions as it may deem appropriate in respect of the claims arising out of this incident.

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ANNEX I

EXTRACT OF DOCUMENT FUND/EXC.40/4

7 Question of time-bar

7.1 Claims for compensation against the IOPC Fund are time-barred when three years have elapsed from the date when the damage occurred, unless the claimants take certain legal steps. In the *Haven* case, the three-year period expired on or shortly after 11 April 1994. The question has arisen of whether or not the majority of the claims arising out of the *Haven* incident are time-barred vis-à-vis the IOPC Fund.

Relevant provisions in the Conventions

7.2 The question of time-bar is governed by Article VIII of the Civil Liability Convention as regards the shipowner and his insurer and by Article 6.1 of the Fund Convention with respect to the IOPC Fund. Articles 7.4 and 7.6 of the Fund Convention are also of interest in this context. These provisions read:

Article VIII of the Civil Liability Convention

"Rights of compensation under this Convention shall be extinguished unless an action is brought thereunder 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. Where this incident consists of a series of occurrences, the six years' period shall run from the date of the first such occurrence."

Article 6.1 of the Fund Convention

"Rights to compensation under Article 4 or indemnification under Article 5 shall be extinguished unless an action is brought thereunder 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 7.4 of the Fund Convention

"Each Contracting State shall ensure that the Fund shall have the right to intervene as a party to any legal proceedings instituted in accordance with Article IX of the Liability Convention before a competent court of that State against the owner of a ship or his guarantor."

Article 7.6 of the Fund Convention

"Without prejudice to the provisions of paragraph 4, where an action under the Liability Convention for compensation for pollution damage has been brought against an owner or his guarantor before a competent court in a Contracting State, each party to the proceedings shall be entitled under the national law of that State to notify the Fund of the proceedings. Where such notification has been made in accordance with the formalities required by the law of the court seized and in such time and in such a manner that the Fund has in fact been in a position effectively to intervene as a party to the proceedings, any judgement rendered by the court in such proceedings shall, after it has become final and enforceable in the State where the judgement was given, become binding upon the Fund in the sense that the facts and findings in that judgement may not be disputed by the Fund even if the Fund has not actually intervened in the proceedings."

Relevant provisions in Italian legislation

7.3 The Civil Liability Convention and the Fund Convention were implemented into Italian Law by the Act of 6 April 1977, N°185. In Article 3 of that Act, the Government was given the authority to issue decrees having the effect of laws adopted by Parliament for the purpose of laying down provisions necessary for the fulfilment of the obligations arising out of these Conventions (so-called "delegated legislation").

7.4 Such delegated legislation is contained in a Decree of 27 May 1978, N°504. Article 11 of this Decree reads:

"Cases relative to the liability of the owner of the ship for oil pollution damage, pursuant to the Civil Liability Convention, fall within the competence of the Tribunal in the district of which the pollution occurred. In case of pollution of territorial waters and areas within the district of more than one Tribunal, the competence rests with the Tribunal first sought.

For the procedure of limitation of the owner's liability according to Article V of the Civil Liability Convention, the provisions of Book IV, Title IV of the Code of Navigation apply if they are not inconsistent with the provisions of that Convention. The procedure of limitation is initiated before the Tribunal competent according to paragraph 1 of this Article.

The establishment of the fund, according to the formalities referred to in Article V of the Civil Liability Convention, is made with the Chancery of the Tribunal competent to decide cases on the liability of the owner.

The same Tribunal as the one referred to in paragraph 1 of this Article is competent to decide all the cases initiated for oil pollution damage according to Article 2 of the Fund Convention."

7.5 As regards Book IV, Title IV of the Code of Navigation, Article 628 is of particular interest and reads:

"Within the period fixed in the judgement opening the procedure, the appointed judge, after having heard the owner and the claimants, determines the "stato attivo" on the basis of the statement of value^{<1>} and of the documents indicated in article 621. He can ex officio order technical ascertainment in view of the revision of the value of the vessel as stated by the owner or on the amount of the freight and other rewards, in which case he fixes a date for the deposit of the report of evaluation and suspends the procedure, if appropriate, up to the date of the deposit".

Analysis of the Italian legislation

7.6 The Director has been advised that only the limitation proceedings against the owner (and his insurer) are governed by Title IV of Book IV of the Code of Navigation. Only the last paragraph of Article 11 of the Decree referred to in paragraph 7.4 above applies to the IOPC Fund, and this provision governs only the competent court.

7.7 The question could be raised whether Title IV of Book IV (Articles 620-642) of the Code of Navigation could not be applied to the IOPC Fund by analogy, in view of the similarity of the situation of the claimants vis-à-vis the shipowner/insurer and that vis-à-vis the IOPC Fund. In both cases there are a large number of claims which compete for a limited amount of compensation.

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Under the Italian Navigational Code, the limitation amount is equal to the value of the ship at the end of the voyage; such value may not be lower than one fifth and not higher than two fifths of the value at the beginning of the voyage.

7.8 According to legal advice given to the IOPC Fund, such an application by analogy is not possible in respect of Article 628, since that Article is an exceptional provision. Article 14 of the Preliminary Provisions of the Civil Code provides, *inter alia*, that laws which constitute exceptions to general rules are not applicable by analogy to cases other than those expressly foreseen therein. Article 628 is an exceptional provision since it gives a single judge the power to determine the "stato attivo" (ie the amount available for distribution) without any request, whereas the Code of Civil Procedure (Article 99) lays down the general principle that a person who wants to exercise a right must submit his request to the competent judge. Furthermore, if no opposition is lodged against the "stato attivo" as determined by the single judge in charge of the limitation proceedings, his decision will become final and binding. The general rule is, however, that all judgements are made by the tribunal (ie by three judges).

7.9 On the basis of this reasoning, the judge in charge of the limitation proceedings made a mistake in rendering a decision on the maximum cover of the IOPC Fund. Such a decision could not be taken in the limitation proceedings, since Article 628 of the Code of Navigation does not apply to claims against the IOPC Fund. The decision of the single judge on the IOPC Fund's maximum cover is, therefore, non-existent and so is the judgement by the Court of first instance confirming that decision. The IOPC Fund has raised this point in the proceedings before the Court of Appeal on the gold issue.

Analysis of Article 6.1 of the Fund Convention

7.10 According to Article 6.1 of the Fund Convention, there are two ways for a claimant to avoid or interrupt the time-bar as regards the IOPC Fund, namely by bringing legal action against the IOPC Fund or by making a notification under Article 7.6 of the Fund Convention.

7.11 Only a few claimants have fulfilled the requirements of Article 6.1 by making a notification under Article 7.6 to the IOPC Fund, namely the French State, the French communes, the Principality of Monaco and a few Italian claimants^{<2>}.

7.12 The IOPC Fund intervened in the limitation proceedings on 14 June 1991, pursuant to Article 7.4 of the Fund Convention. The Director has been advised that such intervention cannot result in the time-bar against the IOPC Fund being interrupted.

7.13 According to the consistent jurisprudence of the Italian Supreme Court of Cassation, acts referred to in a statute as having the effect of interrupting time limits fixed by law are exclusive and not only examples. For this reason, acts which are not expressly mentioned in the relevant legislation do not have the effect of interrupting the time limit. It appears that this principle of Italian domestic law should apply also to Article 6.1 of the Fund Convention which forms part of Italian law.

7.14 The jurisprudence of the Supreme Court of Cassation holds that formal notification cannot be substituted for by knowledge of a fact acquired by the party concerned in any other way.

7.15 The Director has been advised that the various written pleadings presented by the claimants in the limitation proceedings also vis-à-vis the IOPC Fund cannot be considered as actions against the IOPC Fund. These pleadings only contain legal arguments but not a specific request for money. The powers of attorney given to the various lawyers by the claimants cover only the limitation proceedings against the shipowner and his insurer. In order to enable the lawyers to act against any other party, such as the IOPC Fund, the lawyers would need additional powers of attorney.

^{<2>} One Italian claimant notified the IOPC Fund only of the judgement opening the limitation proceedings but not of his claim, and this notification could not, therefore, be considered as notification of the action against the owner. Most fishermen started legal action against the IOPC Fund, but this action was dismissed by the judge, and since the fishermen did not appeal against the judge's decision, the claims are time-barred.

7.16 The question could be raised whether the time limit could be considered as having been interrupted in respect of the IOPC Fund by "the Fund's acknowledgement of debt". In the limitation proceedings against the owner, the IOPC Fund has accepted that some claims are partially founded, but these acknowledgements total only an amount far below the shipowner's limitation amount. The IOPC Fund has thus acknowledged only the debts of the shipowner and his insurer.

7.17 An important question is the point of departure for the three-year period limit. According to Italian jurisprudence, in case of a non-contractual situation the time-bar period starts to run from the moment when the damage started. Consequently, in the *Haven* case the three year period started to run when the escape of oil from the *Haven* occurred or shortly thereafter.

Conclusions

7.18 In view of the legal advice received, the Director is of the opinion that the claims submitted in the limitation proceedings became time-barred in respect of the IOPC Fund on or shortly after 11 April 1991, except for the claims referred to in paragraph 7.11 above.

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Summary of claims situation as at 17 March 1995
- individuals and small businesses -

(amounts in millions)
(in Lit)

Category of claims	Total number of claims	Total claimed amount	Claims agreed			Claims under offer			Claims under negotiation		Claims with no or insufficient documents	
			Number of claims	Amount claimed	Amount agreed	Number of claims	Amount claimed	Amount offered	Number of claims	Amount claimed	Number of claims	Amount claimed
Fishermen	150	22 600	145	21 300	8 634	0	-	-	2	1 300	0	-
Yachts	46	194	0	-	-	31	157	54	0	-	15	36.6
Bagni	93	4 082	1	14.65	4.3	33	1 407	468	0	-	59	2 661
Hotels	693	76 500	3	155	15	95	682	15	2	45	593	65 891
Restaurants /bars	55	3 225	0	-	-	13	855	96	5	512	37	1 858
Shops	181	13 248	6	340	37.1	67	3 360	417	10	132	98	9 416