



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND

EXECUTIVE COMMITTEE
43rd session
Agenda item 3

FUND/EXC.43/2
19 May 1995

Original: ENGLISH

INCIDENTS INVOLVING THE IOPC FUND

HAVEN

Note by the Director

1 Introduction

1.1 At its 42nd session, the Director was instructed to continue the negotiations with all the parties concerned for the purpose of arriving at a global solution of all outstanding claims and issues arising out of the *Haven* incident. He was also instructed to report on the developments in these negotiations to the Executive Committee at its 43rd session.

1.2 The present document recapitulates the discussions at the Executive Committee's 42nd session and reports on the developments of the negotiations in respect of the claims for compensation. Any developments after the issue of the present document will be reported to the Committee in an addendum thereto.

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

2.1 At its 40th session, the Executive Committee 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 Committee's considerations were based on a document presented by the Director (document FUND/EXC.40/4). The 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, had fulfilled the requirements of Article 6.1 of the Fund Convention by making a notification under Article 7.6 of the Fund Convention. The Committee took the view that all other claims submitted in the limitation proceedings were time-barred in respect of the IOPC Fund on or shortly after 11 April 1994, in the light of the provisions of Article VIII of the Civil Liability Convention and Article 6.1 of the Fund Convention (document FUND/EXC.40/10, paragraphs 3.3.4 and 3.3.8).

2.2 The discussions at the Committee's 40th session are summarised in document FUND/EXC.42/3, paragraphs 2.1-2.12, setting out in particular the positions taken by the Japanese and Italian delegations.

2.3 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 amount 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.

3 Considerations at the Executive Committee's 42nd session

3.1 At its 42nd session, the Executive Committee considered a report by the Director on the developments of the negotiations with the claimants (documents FUND/EXC.42/3 and FUND/EXC.42/3/Add.1). The discussions at that session are summarised in document FUND/EXC.42/11, paragraphs 3.2.1-3.2.18.

3.2 The Executive Committee noted that agreements had been reached between the shipowner and the P & I insurer (the United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Ltd, the UK Club) and 168 claimants on the admissible quantum of their claims, for a total amount of Lit 8 860 million (£3.3 million), and that offers had been made to a further 286 claimants for a total amount of Lit 1 940 million (£720 000). It was further noted that these agreements contained a provision to the effect that the agreements 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).

3.3 The Executive Committee took note of the fact that the IOPC Fund's lawyers had followed the negotiations, and that the Director had been consulted by the shipowner and the UK Club before any agreements or offers on quantum were made. The Committee noted that, in the Director's view, all claims in respect of which agreements had been reached or offers had been made fulfilled the criteria for admissibility laid down by the Committee, in particular at its 35th session (document FUND/EXC.35/10, paragraphs 3.2.3-3.2.9). It was also noted that, in the Director's view, the amounts agreed or offered were reasonable and that, 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.

3.4 The Committee expressed its satisfaction with the progress made in the negotiations.

3.5 The Executive Committee decided to instruct the Director to continue the negotiations with all the parties concerned for the purpose of arriving at a global solution of all outstanding claims and issues, in accordance with the mandate laid down by the Committee at its 40th session. The Committee reiterated its position that the negotiations should be without prejudice to the IOPC Fund's position in respect of the time-bar. The Committee emphasised that any global solution must respect the position taken by the IOPC Fund that the maximum amount available under the Civil Liability Convention and the Fund Convention was 60 million SDR, that claims could only be admissible if a claimant had suffered a quantifiable economic loss and that claims for damage to the marine environment per se were not admissible.

3.6 The Executive Committee decided to set up a Consultation Group to assist the Chairman in his monitoring of the Director's search for a global solution. The Committee appointed the delegations of Algeria, Japan, Norway and the United Kingdom as members of the Consultation Group.

3.7 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.

3.8 The Director was instructed to report on the developments of these negotiations to the Executive Committee at its 43rd session. The Committee emphasised the importance that substantial progress should be made by that session so as to give the Committee the possibility of assessing whether a global solution was possible.

3.9 The Committee confirmed the position taken at its 40th session that any agreement relating to a global settlement would have to be approved by the Committee.

4 Claims presented

Italian claims other than those relating to environmental damage

4.1 Some 1 350 Italian claimants have presented claims relating to damage other than damage to the environment. These claims total approximately Lit 765 000 million (£293 million)^{<1>}.

4.2 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 Lit 455 000 million (£175 million). After deducting this amount from the total figure, a balance of some Lit 310 000 million (£119 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.

4.3 The Italian Government has presented the largest claim. This claim, excluding the items relating to environmental damage, totals Lit 261 000 million (£100 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.

4.4 The owners of 43 yachts have claimed Lit 126 million (£48 300) for contamination of their boats. Thirty-eight fishermen have claimed Lit 439 million (£168 400) for contamination of their boats and nets. Nearly 700 hotel owners have claimed Lit 76 000 million (£29 million) and 150 fishermen Lit 22 600 million (£8.7 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 (£6.3 million).

Italian claims relating to environmental damage

4.5 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 (£38 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

<1> In the present document the conversion of amounts given in Italian lire or French francs to pounds sterling has been made on the basis of the rates of exchange applicable on 8 May 1995 (£ = Lit 2 607, £ = FFr 7.7768).

marine environment had not yet been completed. The Government also stated that the figure given in the claim was only provisional.

4.6 The Region of Liguria has requested that the figure in the Italian Government's claim relating to environmental damage, Lt 100 000 million, be increased to Lt 200 000 million (£76 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.

4.7 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.

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

- ▶ restoration of 43 hectares of phanerogams; Lt 266 042 million (£102 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; Lt 20 000 million (£7.7 million);
- ▶ damage restored by the natural biologic recovery of the resources; Lt 591 364 million (£227 million) for the sea and Lt 6 029 million (£2.3 million) for the atmosphere, or a total of some £229 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

4.9 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 FFfr16 284 592 (£2.1 million). 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 FFfr12 580 724 (£1 617 700). The agreement is subject to the approval of the judge in charge of the limitation proceedings.

4.10 Claims totalling FFfr78 410 591 (£10.1 million) were presented to the Court in Genoa by 31 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.

Private claimant

4.11 A claim has been presented by a company operating a beach in Saint Tropez, for the amount of FFfr410 070 (£52 700). The claim is for clean-up costs, loss of use and certain expenses.

Principality of Monaco

4.12 The principality of Monaco presented a claim in the Court of Genoa for FFfr329 091 (£42 320) for the cost of clean-up operations.

5 Recent court hearings

5.1 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. 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.

5.2 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 declaration 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 2.3 above.

5.3 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.

5.4 At the request of all the parties represented at the hearing referred to in paragraph 5.3, the judge decided to postpone further consideration of the claims until 19 June 1995.

6 Situation of the negotiations with claimants

6.1 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.

6.2 At its 42nd session, the Executive Committee was informed that negotiations had been held between the shipowner/UK Club and a number of individual claimants or groups of claimants, ie fishermen, yacht owners, beach installations (so called *bagni*), hotels, restaurants, bars and shops (document FUND/EXC.42/3, paragraphs 5.5-5.20 and Annex II and the Annex to document FUND/EXC.42/3/Add.1).

6.3 The Committee noted, at its 42nd session, that agreements had been reached between the shipowner/UK Club and a number of claimants on the admissible quantum of their claims. These agreements had been 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). It was noted that agreement had been reached on the quantum in respect of 168 claims in the category of individuals and small businesses, that offers had been made to 286 such claimants, that two claims were under consideration and that there was no supporting documents or insufficient supporting documentation in respect of 759 claims in these categories (document FUND/EXC.42/3/Add.1, Annex).

6.4 Since the Executive Committee's 42nd session, significant progress has been made in the negotiations concerning the claims presented by individuals and small businesses in Italy, viz fishermen, yacht owners, bagnini, hotels, restaurants, bars and shops. The situation in respect of these claims as at 19 May 1995 can be summarised as follows:

- (a) Agreements as to the quantum of the claims have been reached in respect of 319 claims, for a total of Lit 10 155 million (£3.9 million).
- (b) Offers totalling Lit 1 585 million (£608 000) have been made to 211 claimants in these categories.
- (c) 30 claims in these categories totalling Lit 3 325 million (£1.3 million) are under negotiation.
- (d) There are 658 claims in these categories, totalling Lit 65 736 million (£25 million), where no supporting documents or insufficient documentation have been submitted. It is unlikely that sufficient documentation will be presented for more than a limited number of these claims.
- (e) 25 claims in these categories have been formally withdrawn.

6.5 A summary of the situation in respect of these categories of claims is set out in Annex I to the present document.

6.6 Negotiations have been held between the shipowner/UK Club and all 22 contractors who operated outside the contract between the Italian Government and a consortium of companies known as ATI. These claims total Lit 55 000 million (£21 million). Offers have been made to ten of these contractors for a total of Lit 1 682 million (£645 200). It is expected that agreement on the quantum will be reached in respect of these claims in the near future.

6.7 On 22 March 1995, a meeting was held in Rome with representatives of the Italian Government and representatives of the companies forming part of the ATI consortium concerning the claim for operations under the ATI contract. At the meeting, the Italian Government mentioned that the claim submitted by the ATI consortium on the basis of the contract was being examined by a Government committee and that the examination was expected to be completed by the end of May or in early June 1995.

6.8 One member of the ATI consortium, Castalia, submitted its contractual claim against the Italian Government for activities outside the ATI contract for Lit 14 430 million (£5.5 million) to arbitration. The arbiters rendered an award granting Castalia compensation in the amount of Lit 17 826 million (£6.8 million) plus interest at 10% on Lit 13 321 million from 1 July 1994. The Director has informed the Italian Government that the IOPC Fund is not bound by this award.

Municipalities

6.9 Twenty-nine municipalities have claimed a total of approximately Lit 1 300 million (£498 700) 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.

6.10 Preliminary discussions concerning the claims for cost of clean-up operations have been held with representatives of eleven of the municipalities. It is expected that discussions with the municipalities will continue.

Italian Government

6.11 Discussions will be held before the 43rd session of the Executive Committee with the Italian Government concerning various parts of its claim, including the part relating to the ATI contract

The IOPC Fund's involvement in the negotiations in respect of the Italian claims

6.12 The IOPC Fund's lawyers have followed the negotiations with the Italian claimants, 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.

French Claims

6.13 As set out above, agreement has been reached with the French Government on the admissible quantum of the Government's claim, viz FFr12 580 724 (£1 617 300).

6.14 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 19 communes on the quantum of their claims, for a total amount of FFr3 204 196 (£412 000). These agreements are subject to the approval of the judge in charge of the limitation proceedings. Discussions are continuing with the remaining 12 communes, whose claims total FFr14 120 543 (£1.8 million), and with Parc National de Port Cros, whose claim is for FFr845 368 (£108 700).

6.15 The situation as regards the French claims is summarised in Annex II to the present document.

6.16 The claim presented by the company referred to in paragraph 4.11 above is being examined.

Claim by the Principality of Monaco

6.17 As mentioned above, the Principality of Monaco has claimed compensation for the cost of clean-up operations for FFr329 091 (£42 320). Discussions concerning this claim will be held in the near future.

7 Meeting of the Consultation Group

The Consultation Group referred to in paragraph 3.6 above met on 12 May 1995. At that meeting, the Director informed the members of the Group of the development in respect of negotiations with claimants.

8 Legal action taken by the IOPC Fund in Italy

8.1 The IOPC Fund has lodged opposition to the decision of the Court of first instance in Genoa to open limitation proceedings, challenging the right of the shipowner (Venha Maritime Ltd) to limit his liability, and corresponding oppositions have been lodged by the Italian Government and some other claimants. The IOPC Fund has also taken legal action against three companies within the Troodos Shipping Group managing the *Haven* as well against the individual controlling these companies, for the purpose of recovering any amount that the IOPC Fund might have to pay in compensation and indemnification as a result of the incident.

8.2 As regards the discussion concerning this legal action at the Executive Committee's 42nd session, reference is made to document FUND/EXC.42/11, paragraphs 3.2.19-3.2.23).

8.3 The Director would like to draw the attention of the Executive Committee to the fact that if a global solution were to be reached in respect of all claims arising out of the *Haven* incident, this solution will also have to address the legal actions referred to paragraph 8.1 above.

9 Relevant compensation limits

9.1 After legal action had been taken against the shipowner, the Court of first instance in Genoa opened limitation proceedings in May 1991. The Court fixed the limitation amount at Lit 23 950 220 000 (£9.2 million), which corresponds to 14 million SDR, the maximum amount under the Civil Liability Convention. The limitation fund was established by the UK Club, by means of a bank guarantee. Indemnification of the shipowner, if payable, would amount to Lit 9 694 137 237 (£3.7 million).

9.2 *The maximum amount available under the Fund Convention is 900 million (gold) francs, including any amount actually paid by the shipowner and his insurer under the Civil Liability Convention. In the IOPC Fund's view, the figure of 900 million (gold) francs should be converted into Italian lire through the Special Drawing Rights (SDR) of the International Monetary Fund, and the limit would then be 60 million SDR; the conversion should be made on the basis of the value of the SDR in Italian lire on the date of the constitution of the shipowner's limitation fund (29 May 1991), giving an amount of Lit 102 643 800 000 (£39 million). The Court of first instance of Genoa has held, however, that the conversion from (gold) francs into Italian lire should be made using the free market value of gold as at 29 May 1991, giving an amount of 771 397 947 400 (£296 million). The IOPC Fund has appealed against this decision.*

9.3 The various issues relating to the conversion of the (gold) franc into Italian lire are dealt with in detail in documents FUND/EXC.36/3 and FUND/EXC.36/3/Add.1. A summary is given on pages 51-53 of the IOPC Fund's 1994 Annual Report.

9.4 The Court decided that the maximum amount payable by the IOPC Fund should not be increased by the addition of interest.

9.5 Finally, the Court decided that the bank guarantee constituting the shipowner's limitation fund should also cover interest on the limitation amount. The judge held, contrary to the position of the IOPC Fund, that the interest should accrue to the benefit of the claimants. The IOPC Fund has appealed against the Court's decision on this point.

10 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 and related issues.

* * *

Summary of claims situation as at 19 May 1995
- individuals and small businesses in Italy -

(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	22 800	146	21 405	8 732	1	1 341	140	0		3 (not contactable)	54.58
Yachts	46	188	2	6.7	1.12	33	162	62.7	0		11	19
Bagni	93	4 641	6	154.9	44.34	38	2 521	565	0		49	1 965
Hotels	695	76 133	121	12 314	1 084	47	5 145	169	30	3 325	497	55 359
Restaurants /bars	56	3 350	4	9	2.3	21	1 513	151	0		31	1 828
Shops	178	13 248	40	1 332	292	71	5 530	497	0		67	6 386
TOTAL	1 218	120 360	319^{<1>}	35 221	10 155	211	16 212	1 585	30	3 325	658	65 611

<1> Twenty-five of these claims have been formally withdrawn: 14 hotels, 7 retailers, 1 bagni, 2 bars, 1 yacht. These claims are included in the agreed claims.

ANNEX I

FUND/EXC.43/2

ANNEX II

Summary of claims situation as at 19 May 1995
 - French claimants -

Agreed claims	Claimed FFr	Agreed FFr
French Government	16 284 592	12 580 724
19 Communes	66 033 985	3 204 196
Total	82 318 577	15 784 920

Outstanding Claims	Claimed FFr	Notes
4 Communes	10 025 138	FFr 4 441 207 offered by IOPC Fund
8 Communes	4 233 845	insufficient documentation
Port National de Port Cros	845 368	part of claim relating to environmental damage
Private claimant	410 070	being examined
Total	15 514 421	