



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND

EXECUTIVE COMMITTEE  
44th session  
Agenda item 3

FUND/EXC.44/3  
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## INCIDENTS INVOLVING THE IOPC FUND

### HAVEN

Note by the Director

#### **1 Introduction**

1.1 At its 43rd session, the Executive Committee instructed the Director to continue the negotiations with the claimants and authorised him to agree, on behalf of the IOPC Fund, to a global settlement within the framework of Lit 137 000 million on certain terms and conditions.

1.2 The present document gives a summary of the claims presented in this case. It also recapitulates the discussions at the Executive Committee's 40th, 42nd and 43rd sessions and reports on the developments of the negotiations in respect of the claims for compensation.

#### **2 Claims presented**

##### Italian claims other than those relating to environmental damage

2.1 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)<sup><1></sup>.

2.2 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

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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 29 September 1995 (£ = Lit 2 607, £ = FFr 7.7768).

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.

2.3 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.

2.4 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 (bagni) have claimed Lit 3 900 million (£1.5 million) for reduced income. Some 236 shopkeepers and restaurateurs have also claimed compensation for Lit 16 500 million (£6.3 million).

#### Italian claims relating to environmental damage

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

2.6 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 (£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.

2.7 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 has 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 has also taken the view that compensation could only be granted if a claimant has suffered quantifiable economic loss.

2.8 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 (£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; Lit 20 000 million (£7.7 million);
- ▶ damage restored by the natural biologic recovery of the resources; Lit 591 364 million (£227 million) for the sea and Lit 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

2.9 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).

2.10 Claims totalling FFfr79 million (£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 and loss of touristic image.

2.11 Two companies each owning a villa in Saint Tropez have presented claims for FFfr410 070 (£52 000) and FFfr1million (£128 500), respectively. These claims are for clean-up costs and loss of rental income.

### Principality of Monaco

2.12 The Principality of Monaco presented a claim in the Court of Genoa for FFfr321 736 (£41 400) for the cost of clean-up operations.

## **3 Executive Committee's consideration of the time-bar question**

3.1 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).

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

3.3 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.

#### **4 Relevant compensation limits**

4.1 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 Special Drawing Rights (SDR) of the International Monetary Fund, the maximum amount under the Civil Liability Convention. The limitation fund was established by the shipowner's P & I insurer, the United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Ltd (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).

4.2 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 SDR, 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 Lit 771 397 947 400 (£296 million). The IOPC Fund has appealed against this decision.

4.3 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.

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

4.5 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.

#### **5 Considerations at the Executive Committee's 42nd session**

5.1 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.

5.2 The Executive Committee instructed 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 (document FUND/EXC.42/11, paragraph 3.2.13).

5.3 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.

5.4 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.

## **6 Considerations at the Executive Committee's 43rd session**

6.1 At the Executive Committee's 43rd session, the Director reported the developments in the negotiations with the claimants, as set out in documents FUND/EXC.43/2 and FUND/EXC.43/2/Add.1. The Committee noted that agreements had been reached between the shipowner, the UK Club and 403 Italian claimants in the categories of individuals or small businesses on the admissible quantum of their claims, for a total amount of Lit 10 809 million (£4.1 million), and that offers had been made to a further 202 claimants in these categories for a total amount of Lit 1 319 million (£506 000). 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 (from August 1995). The Committee also took note of the fact that agreements on the quantum had been reached with most of the Italian contractors who operated outside the so-called ATI consortium. Finally, it was noted that agreements on the quantum had been reached with the French Government which had accepted a reduction of its claim from FFr 16 284 592 (£2.1 million) to FFr 12 580 724 (£1.6 million), and with 20 municipalities in France whose claims, totalling FFr 68 372 981 (£8.8 million), had been agreed at FFr 4 315 801 (£555 000).

6.2 The Executive Committee took note of the fact that the IOPC Fund's lawyers had followed the negotiations with the Italian claimants, and that the Director had been consulted by the shipowner and the UK Club before any agreements or offers on the 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.

6.3 The Committee considered the presentation made by the Director on the content of a possible global solution, as set out in document FUND/EXC.43/2/1. The Director stated that, in his discussions with the UK Club and the claimants, he had emphasised that any discussions concerning a global settlement were without prejudice to the IOPC Fund's position in respect of the time-bar issue. He also mentioned that he had made it clear during the discussions that he was not authorised to enter into any agreement with claimants and that the discussions were held only for the purpose of exploring the possibilities of reaching a global settlement.

6.4 It was recalled that the IOPC Fund had argued that the bank guarantee constituting the shipowner's limitation fund should also cover interest and that the interest should accrue to the benefit of the IOPC Fund. It was noted that the shipowner/UK Club had maintained that no interest was payable. It was also noted that the Court of first instance had held that the bank guarantee should cover interest but that the interest should accrue to the benefit of claimants. The Committee recalled that both the IOPC Fund and the shipowner/UK Club had appealed against this decision. It was noted that the shipowner/UK Club had offered, without prejudice to their position, to pay interest at the legal rate on the limitation fund, if this amount could be made available to the claimants as part of a global settlement.

6.5 It was also recalled that the 1984 and 1992 Protocols to the Fund Convention expressly stated that interest should be to the benefit of victims (Article 4.4(d)). It was noted that the States participating in the 1984 Diplomatic Conference had wished to amend the Fund Convention on this point, since it appeared unfair that interest should be to the benefit of the IOPC Fund and not to the victims.

6.6 The Executive Committee recalled that the IOPC Fund did not agree with the Court's interpretation of the 1971 Fund Convention on this point. However, in the light of the deliberations of the 1984 Diplomatic Conference, the Executive Committee decided to accept, in this case, that interest on the shipowner's limitation amount should go to the benefit of the victims. It was emphasised that this position was taken only in the context of a possible global settlement without prejudice to the IOPC Fund's position under the 1971 Fund Convention in future cases.

6.7 The Executive Committee noted that the shipowner/UK Club had offered to make available an additional amount of Lit 25 000 million (£9.6 million) as an ex-gratia payment in an effort to assist in arriving at a global settlement.

6.8 The Committee took note of the fact that the offer of an additional amount of Lit 25 000 million (£9.6 million), in the form of an ex-gratia payment to be made by the shipowner/UK Club, and their offer to pay interest on the shipowner's limitation fund together with a waiver by the IOPC Fund of its right to that interest, would result in a total amount of some Lit 137 000 million (£53 million) being made available to victims in the context of a global settlement, calculated as follows:

|  | Lit                        |
|--|----------------------------|
| 60 million SDR   | 102 643 800 000            |
| Interest on the shipowner's limitation fund,<br>calculated at the legal rate of 10% per annum,<br>would give approximately | <u>10 000 000 000</u>      |
| Sub-total  | 112 643 800 000            |
| <br>Additional amount offered by the shipowner/UK Club as an<br>ex-gratia payment  | <br><u>25 000 000 000</u>  |
| <br>Total  | <br><u>137 643 800 000</u> |

6.9 The representative of the UK Club stated that the Club was in agreement with the proposal set out in document FUND/EXC.43/2/1, subject to the conditions set out therein. He emphasised that the offer by the shipowner/UK Club to make an ex-gratia payment of Lit 25 000 million was entirely without prejudice and without any admission of liability of any parties in any proceedings, and subject to the conditions set out in paragraphs 4.8-4.10 of that document being satisfied, thereby bringing an end to all litigation in this case.

6.10 The Executive Committee noted that, in the Director's view, the proposed global settlement should also include a waiver by the shipowner/UK Club of any right to indemnification under Article 5 of the Fund Convention. The representative of the UK Club, speaking also on behalf of the shipowner, stated that the owner and the Club maintained that there were no grounds on which the IOPC Fund could decline to pay indemnification under Article 5. He also stated that, nevertheless, the shipowner/UK Club would waive the right to indemnification provided that all conditions of the proposed settlement were fulfilled.

6.11 Without prejudice to the IOPC Fund's position in respect of the payment of indemnification in this case, the Executive Committee noted the waiver by the shipowner/UK Club of the right to indemnification under Article 5.

6.12 The Italian delegation stated that, since the proposed global solution had been discussed with the representatives of the Italian Government only on 2 June 1995, the Government was not yet in a position to express any definite opinion on the proposal. The delegation expressed the view, nevertheless, that great progress had been made, that there were good prospects for a global solution and that the Italian Government would examine the proposal in depth with the highest priority and in an effort to reach a global settlement. This delegation added that it was important that the IOPC Fund would have a certain flexibility in respect of the details of the envisaged global settlement. He indicated, nevertheless, that even the proposed settlement would give rise to certain problems, both economic and of principle, for the Italian Government, in particular as regards environmental damage.

6.13 The Committee recalled that there were disputes concerning the issue of time-bar, the method of conversion of the maximum amount payable under the Fund Convention and the admissibility of claims for environmental damage. It was also noted that there was a dispute in respect of the question of who should benefit from the interest accruing on the shipowner's limitation fund. While remaining

convinced of the legal validity of the IOPC Fund's position on these issues, the Executive Committee nevertheless recognised that the legal proceedings in Italy gave rise to some uncertainty. The Committee reiterated the desirability of victims of pollution damage being compensated.

6.14 Having considered all the issues involved, the Executive Committee decided to instruct the Director to continue the negotiations with the claimants and to authorise the Director to agree, on behalf of the IOPC Fund, to a global settlement within the framework of the amount of Lit 137 000 million referred to in paragraph 6.8 above, on the following terms and conditions:

- (a) Except as regards the shipowner's/UK Club's ex-gratia payment of Lit 25 000 million, payments would be made only to the extent that a claimant had suffered a quantifiable economic loss and no payment would be made in respect of claims for damage to the marine environment per se.
- (b) All parties to the on-going legal proceedings in Italy would withdraw their actions for compensation, irrespective of the grounds upon which the claims might be based, and irrespective of the identity of the defendant, including the claims submitted in the limitation proceedings and the claims for compensation presented in the criminal proceedings.
- (c) The IOPC Fund, the State of Italy and other claimants would terminate all proceedings in respect of the decision of the Court of first instance opening the limitation proceedings, in which they challenged the right of the shipowner (Venha Maritime Ltd) to limit his liability. All parties would also terminate their cases of opposition to the "stato attivo", ie relating to interest accrued on the shipowner's limitation fund and the method for the determination of the maximum amount available under the Fund Convention.
- (d) The IOPC Fund would withdraw its legal actions against all other parties for the purpose of recovering any amount that the IOPC Fund might have to pay as a result of the incident.
- (e) The State of Italy would give an undertaking to hold harmless the shipowner, the UK Club and the IOPC Fund against any claims by the enterprises forming ATI and their sub-contractors, Castalia and LOGECO, and the Italian territorial public entities to the extent that any of these parties did not formally withdraw their actions in accordance with sub-paragraphs (b) and (c) above.

6.15 The Executive Committee decided that the offer of a settlement on the conditions set out in paragraph 6.14 above would be open until 31 July 1995 and that this time-period could be extended by the Chairman if he considered such extension justified in view of the progress being made in the negotiations.

6.16 The Executive Committee decided to authorise the Director to:

- (a) sign binding agreements on behalf of the IOPC Fund with claimants in the context of a global settlement fulfilling the conditions set out in paragraph 6.14; and
- (b) make payments to the following claimants if a global settlement were reached:

Individuals and small businesses in Italy  
Region of Liguria and Municipalities in Italy (claims for clean-up and admissible expenses)  
Clean-up contractors, excluding the ATI consortium, Castalia and LOGECO  
Claimants in France and Monaco

6.17 The Executive Committee also decided to submit to the Assembly for consideration at its 18th session a draft Resolution, the text of which is reproduced at Annex I to the present document.

6.18 The Executive Committee reiterated its position that the negotiations with the claimants should be without prejudice to the IOPC Fund's position in respect of the question of time-bar, pending a global solution of all outstanding issues.

6.19 The Executive Committee emphasised that neither the decision to enter into negotiations nor the decision to agree to a global solution in the *Haven* case constituted a precedent but should be seen in the context of the very special circumstances of this case.

## **7 Developments since the Executive Committee's 43rd session**

7.1 Since the Executive Committee's 43rd session, significant progress has been made in the negotiations concerning the claims presented by individuals and small businesses in Italy, viz fishermen, yacht owners, operators of beach facilities, hotel owners, restaurateurs, bar owners and shopkeepers. The situation in respect of these claims as at 6 October 1995 can be summarised as follows:

- (a) Agreements as to the quantum of the claims have been reached in respect of 468 claims, for a total of Lit 11 537 million (£4.4 million).
- (b) Offers totalling Lit 1 919 million (£736 000) have been made to 205 claimants in these categories. The lawyer representing 132 of these claimants has informed the shipowner/UK Club that he has recommended his clients to accept the offers for settlement, totalling Lit 1 500 million (£576 000).
- (c) There are 545 claims in these categories, totalling Lit 52 482 million (£20.2 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.
- (d) 46 claims in these categories have been formally withdrawn.

7.2 A summary of the situation in respect of these categories of claims as at 6 October 1995 is set out in Annex II to the present document.

7.3 Negotiations have been held between the shipowner/UK Club and 16 contractors who operated outside the contract between the Italian Government and a consortium of companies known as ATI. These claims total Lit 36 592 million (£14 million). Agreement on the quantum has been reached with twelve of these claimants for a total of Lit 8 450 million (£3.2 million), compared with the claimed amounts totalling Lit 13 892 million (£5.3 million). Negotiations are not completed with three claimants whose claims total Lit 7 000 million (£2.7 million). The negotiations concerning one claim (that presented by LOGECO) for Lit 15 700 million (£6 million) are not yet concluded, pending the position to be taken by the Italian Government on the offer for a global settlement.

7.4 Seven contractors have presented their claims through the State of Italy for a total amount of Lit 110 million (£42 200). The shipowner/UK Club have considered these claims to be admissible for Lit 106 million (£40 600), and the payments would be included in the compensation payable to the State of Italy under the offer for a global settlement.

7.5 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 arbitrators 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. No negotiations have been conducted concerning this claim, which would be included in the compensation payable to the State of Italy under the offer for a global settlement.

7.6 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, Lit 84 538 million (£32 million), 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. No negotiations have been held concerning this claim, which would be included in the compensation payable to the State of Italy under the offer for a global settlement.

#### Municipalities

7.7 The Region of Liguria, the Provinces of Savona and Genoa and 20 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.

7.8 The shipowner/UK Club have agreed with the Region of Liguria, the Province of Savona and seven municipalities on the amount of their claims for clean-up costs and promotional expenses at a total of Lit 780 million (£299 200), compared with the claimed amount of Lit 953 million. The new offer for a global settlement which has been made by the shipowner/UK Club to which reference is made in paragraph 9.4 has been expressed as an ex gratia payment to the Region and all other local public bodies, inclusive of the amounts of these costs and expenses. This offer will include also the claims for the cost of clean-up operations of thirteen further municipalities which have claimed a total of Lit 791 million (£303 400) but with which no agreement as to the admissibility of their claims has yet been made.

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

7.9 The IOPC Fund's lawyers have followed the negotiations with the Italian claimants, and the Director has been consulted by the shipowner and the UK Club before any agreements or offers on quantum have been made. He has made it clear, however, that the items relating to promotional expenses referred to in paragraph 7.8 have been considered by the Executive Committee as inadmissible (document FUND/EXC.36/10, paragraphs 3.2.13-3.2.17) and would have to be met from the ex gratia payment. In the Director's view, all other 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/UK Club.

#### French Claims

7.10 Agreement has been reached with the French Government on the admissible quantum of the Government's claim, viz FFr12 580 724 (£1.6 million).

7.11 Agreement has also been reached with Direction Départementale des Services d'incendie et de secours du Var on the quantum of its claim in the amount of FFr711 071 (£91 400).

7.12 Agreements have been reached with all 31 French communes on the quantum of their claims, for a total amount of FFr 9 630 031 (£1.2 million). Agreement on the quantum has also been reached with Parc National de Port Cros for FFr 318 367 (£40 900).

7.13 The situation as regards the claims presented by the French public entities is summarised in Annex III to the present document.

7.14 Offers for agreements on the quantum have been made to the companies referred to in paragraph 2.11 above totalling FFr 81 192 (£10 400).

### Claim by the Principality of Monaco

7.15 As mentioned above, the Principality of Monaco has claimed compensation for the cost of clean-up operations for FF321 735 (£41 400). Agreement has been reached on the quantum for an amount of FF270 035 (£34 700).

## **8 Meetings of the Consultation Group**

The Consultation Group referred to in paragraph 5.3 above met on 12 May and 21 July 1995. At these meetings, the Director informed the members of the Group of the development in respect of the negotiations with claimants.

## **9 Present position as regards the offer for a global settlement**

9.1 In July 1995, the Director was informed that the Italian Government had, at least so far, not been prepared to accept the offer for a global settlement, due to the objections raised by the Ministry of the Environment, that the matter was still being discussed within the Government, but that it would not be possible for the Government to make a final decision before the holiday period.

9.2 After discussions within the Consultation Group, the Chairman of the Executive Committee decided to extend the time period within which the offer for a global settlement would be open from 31 July to 2 October 1995. The Italian Government was informed of that decision in a letter dated 21 July 1995, in which the Chairman also drew attention to the consequences for all claimants, in particular for individuals and small business, if the Italian Government did not accept the offer.

9.3 As mentioned above, the agreements between the shipowner/UK Club and a number of the claimants on the admissible quantum of their claims contained a clause to the effect that the agreements would be null and void unless the amounts agreed were paid within six months of signing the respective agreements. In view of the fact that the Italian Government had not accepted the offer for a global settlement by the end of July 1995, the shipowner/UK Club decided that they were unable to pay the agreed amounts to these claimants, and the Italian Government was informed of this position in a letter dated 24 July 1995. In this letter the shipowner/UK Club also set out the serious consequences for the private claimants of a non-acceptance by the Italian Government of the offer for a global settlement.

9.4 Following further discussion with the Italian Government and the lawyer representing the Region of Liguria, the shipowner/UK Club on 27 September made a revised offer, within the terms of the proposed global settlement, under which the shipowner/UK Club offered to pay directly to the Region, for and on behalf of itself and the other local public bodies, part of the ex gratia payment which had been offered to the State of Italy. This revised offer to the Region of Liguria was accompanied by the equivalent reduction in the offer of the amount available to the State of Italy. The terms of the offer to the Region of Liguria included all the amounts referred to in paragraph 7.8. It is understood that this offer is being actively considered by the Region of Liguria and that further consideration by the Italian Government of the proposal for a global settlement has been deferred, pending the reaction from the Region of Liguria to this proposal.

9.5 On 29 September the Director received a request from the Italian Government for a further extension of the time period until the 44th session of the Executive Committee. In view of the fact that the offer for a global settlement was under consideration by the Italian authorities at the highest level, the Chairman decided on 2 October to grant a further extension to 11 October 1995, and the Italian Government was informed of this decision.

## **10 Court proceedings regarding the claims**

10.1 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.

10.2 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 3.3 above.

10.3 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 limitation 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 the UK 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, the UK Club and the groups of fishermen. 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.

10.4 At the request of all the parties represented at the hearing referred to in paragraph 10.3, the judge decided to postpone further consideration of the claims until 19 June 1995. The hearing was further postponed until 6 October 1995.

10.5 At the hearing on 6 October 1995, the judge in charge of the limitation proceedings was informed of the developments concerning the possibilities of agreement in respect of the outstanding claims. The shipowner/UK Club presented pleadings containing (1) a list of claims where agreements had been reached between them and the claimants and the amounts had been confirmed by the claimants as acceptable for inclusion in the *stato passivo*, (2) a list of claims where agreements had been reached between them and the claimants but where the claimant was not yet in a position to confirm that the amounts were acceptable for inclusion in the *stato passivo*, (3) a list of claims where the claimant had agreed to withdraw his claim, and (4) a list of claims where no agreement had been reached with the claimant but an offer had been made by the shipowner/UK Club in accordance with the assessment. A number of the lawyers present indicated that they were still awaiting instructions from their clients before agreeing to amounts in respect of claims included in the lists referred to under (2) and (4).

10.6 The judge decided to hold a further hearing on 13 October 1995 in the hope that further progress towards agreement on the quantum of the outstanding claims would be achieved by that date.

10.7 It is expected that the judge will not establish the list of admissible claims ("*stato passivo*") until late 1995 at the earliest.

## **11 Court proceedings on the method for conversion of (gold) francs into Italian Lira**

11.1 As mentioned above, the IOPC Fund has appealed against the decision by the Court of first instance of Genoa that the maximum amount available under the Fund Convention should be converted from (gold) francs into Italian Lire using the free market value of gold.

11.2 The Court of Appeal will hold its hearing on this issue on 24 November 1995. It is expected that the judgement will be rendered in early 1996.

## **12 Legal action taken by the IOPC Fund in Italy**

12.1 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 which manages 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.

12.2 As regards the discussions 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.

12.3 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, all legal actions referred to paragraph 12.1 above would be terminated.

## **13 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.

\* \* \*

**ANNEX I****DRAFT RESOLUTION  
TO BE SUBMITTED TO THE  
ASSEMBLY AT ITS 18TH SESSION**

Elaborated by the Executive Committee

THE ASSEMBLY OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND (IOPC FUND)

RECOGNIZING the position taken by the IOPC Fund that many of the claims for compensation following the *Haven* incident had not fulfilled the requirements to avoid the time-bar under Article 6.1 of the Fund Convention;

FURTHER RECOGNIZING, however, that individuals and small businesses suffered oil pollution damage following the *Haven* incident and that, in the exceptional circumstances of this case, it is necessary that their established losses should be covered and that this can only be achieved through a global settlement;

TAKING INTO ACCOUNT that all claimants have accepted the global solution offered by the shipowner, his insurer and the IOPC Fund, and that no claims, or legal actions relating to compensation, are outstanding;

HAS DECIDED:

- (1) to provide appropriate payments to those claimants to whom the time-bar would have applied by means of:
  - (a) monies released from the *Haven* Major Claims Fund, and
  - (b) an additional levy on those who contributed to that Fund;
- (2) that this decision does not constitute a precedent.

\* \* \*

**Summary of claims situation as at 6 October 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               | 147                            | 22 746         | 8 912         | 0                              | 0              | 0              | 0                        | 0              | 3 (not contactable)                      | 54.58          |
| Yachts               | 46                     | 188                  | 31                             | 138            | 61            | 4                              | 35             | 6              | 0                        | 0              | 11                                       | 15             |
| Bagni                | 93                     | 4 641                | 37                             | 2 483          | 480           | 38                             | 1 853          | 618            | 0                        | 0              | 18                                       | 305            |
| Hotels               | 695                    | 76 133               | 198                            | 21 871         | 1 621         | 60                             | 7 246          | 415            | 0                        | 0              | 437                                      | 47 016         |
| Restaurants/<br>bars | 56                     | 3 350                | 7                              | 239            | 19            | 26                             | 1 653          | 247            | 0                        | 0              | 23                                       | 1 458          |
| Shops                | 178                    | 13 248               | 48                             | 2 178          | 444           | 77                             | 7 436          | 633            | 0                        | 0              | 53                                       | 3 634          |
| <b>TOTAL</b>         | <b>1 218</b>           | <b>120 360</b>       | <b>468<sup>&lt;1&gt;</sup></b> | <b>49 655</b>  | <b>11 537</b> | <b>205<sup>&lt;2&gt;</sup></b> | <b>18 223</b>  | <b>1 919</b>   | <b>0</b>                 | <b>0</b>       | <b>545</b>                               | <b>52 482</b>  |

<sup><1></sup> Forty-six of these claims have been formally withdrawn: 32 hotels, 9 retailers, 2 bagni, 2 bars, 1 yacht. These claims are included in the agreed claims.

<sup><2></sup> The lawyer representing 132 claimants has indicated that he has recommended his clients to accept the offered amounts, totalling Lit 1 500 million.

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ANNEX IIISummary of claims situation as at 6 October 1995  
- Claims by French public bodies -

| <b>Claimant</b>   | <b>Claimed<br/>FFr</b> | <b>Agreed<br/>FFr</b> |
|---|------------------------|-----------------------|
| French Government   | 16 284 592.00          | 12 580 724.00         |
| Direction départementale des<br>Services d'incendie<br>et de secours du Var | 711 070.89             | 711 070.89            |
| 31 Communes   | 77 994 121.35          | 9 630 031.22          |
| Parc National de Port Cros  | 845 367.28             | 318 367.27            |
| <b>Total</b>  | <b>79 550 575.52</b>   | <b>23 240 193.38</b>  |

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