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INCIDENTS INVOLVING THE IOPC FUND

AEGEAN SEA

Note by the Director

1 Introduction

This document reports the developments which have taken place in respect of the *Aegean Sea* incident since the 46th session of the Executive Committee.

2 Claims situation

2.1 As at 1 February 1996, 1 275 claims had been received by the Joint Claims Office, totalling Pts 24 730 million (£132 million). Compensation had been paid in respect of 815 claims for a total amount of Pts 1 548 million (£8.3 million). Out of this amount, the UK Club had paid Pts 782 million (£4.2 million) and the IOPC Fund Pts 765 million (£4.1 million). It should be noted that many of the claims presented to the Joint Claims Office which have not been settled have in the IOPC Fund's view become time-barred, as set out in paragraph 5 below.

2.2 Detailed information on the various groups of claims was given in document FUND/EXC.44/4.

2.3 Claims have also been submitted to the Criminal Court in La Coruña, totalling some Pts 20 246 million (£105 million). These claims correspond to a large extent to those presented to the Joint Claims Office.

2.4 Many claimants who have presented claims to the Joint Claims Office have not submitted any claims in the criminal proceedings. Some of these claimants have indicated that they will present their claims in civil proceedings at a later stage against the shipowner, his insurer and the IOPC Fund. These claims total Pts 26 855 million (£140 million). It should be noted that, when criminal proceedings have been brought against a given defendant, no action for compensation may be pursued in separate civil proceedings against the same defendant until the criminal proceedings have been brought to an end.

3 Court proceedings in La Coruña

3.1 Criminal Proceedings

Criminal proceedings were initiated in the Court in La Coruña against the master of the *Aegean Sea* and the pilot in charge of the ship's entry into the Port of La Coruña.

3.2 Deposit of security by the UK Club

On 30 December 1992, the instructing judge handling the criminal proceedings ordered the shipowner to deposit security for an amount of Pts 1 121 219 450 (£5.5 million). This amount corresponds to the estimated limit of liability applicable to the *Aegean Sea*, but the Court has not taken any decision about the shipowner's right to limitation. The security was constituted on 20 January 1993 by means of a bank guarantee provided by the shipowner's P & I insurer (the United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Ltd, the UK Club) on behalf of the shipowner for the amount set by the Court.

3.3 Court's decision in August 1993

3.3.1 On 31 August 1993, the instructing judge rendered a decision containing the following elements.

- The master of the *Aegean Sea* and the pilot were ordered to provide guarantees within three days of the order, the master for Pts 8 000 million (£42 million) and the pilot for Pts 4 000 million (£21 million).

- The UK Club and the IOPC Fund were liable, jointly and severally with the master and the pilot, within their respective legal limits. The Club and the Fund were ordered to provide security for Pts 12 000 million (£63 million) within three days. If this security was not provided, the Court would arrest their property in accordance with the applicable provisions of the Code of Criminal Procedure.

- If the UK Club and IOPC Fund did not provide sufficient security, such security should be provided by the owner of the cargo (Repsol Petroleo SA), the owner of the *Aegean Sea* (Aegean Sea Traders Corporation) and the Spanish State.

3.3.2 The IOPC Fund appealed against this decision. The IOPC Fund maintained that it did not have a direct liability under the Fund Convention, since the Fund was liable only when the amounts actually paid under the Civil Liability Convention were insufficient to meet all claims in full. The Fund also argued that criminal proceedings were actions against individuals and that there was no link between the Fund and the accused master and pilot. This appeal was rejected, since under Spanish law decisions of this type are not subject to appeal but are reviewed in connection with the final judgement.

3.3.3 At its 36th session, the Executive Committee expressed its concern that the Court's request for security from the IOPC Fund was at variance with the Fund Convention, which forms part of Spanish law. The Committee instructed the Director not to put up any security in the Court (document FUND/EXC.36/10, paragraph 3.3.20).

3.4 Hearing in March 1995

The Criminal Court had scheduled a hearing in the criminal proceedings to commence on 13 March 1995. The master of the *Aegean Sea* did not appear at the hearing. The public prosecutor had requested that the master and the pilot be given only a fine, whereas other accusing parties requested that the master and the pilot should be given a prison sentence of several years. In view of this situation, the Court did not consider it possible to continue the hearing in the master's absence and decided to postpone the hearing to a later date.

3.5 Hearing in January/February 1996

3.5.1 The postponed hearing took place from 9 January to 1 February 1996. At this hearing the Court considered not only the criminal aspects but also the claims for compensation which had been presented in the criminal proceedings against the shipowner, the master, the UK Club, the IOPC Fund, the owner of the cargo on board the *Aegean Sea* and the pilot.

3.5.2 A number of claimants had in the criminal proceedings reserved their right to claim compensation at a later stage in civil proceedings.

3.5.3 It should be noted that under Spanish law the persons directly liable to pay compensation are in principle the accused individuals. If such a person acted under a contract of employment, his employer becomes subsidiarily liable for the consequences of his conduct. In the event that the employer has an insurance covering these consequences, under Spanish jurisprudence, the insurer has joint and several liability with the accused individuals and therefore the insurer has a direct liability. The instructing judge assimilated the IOPC Fund to an insurance company. The IOPC Fund objected to the instructing judge's decision on this point, maintaining that the Fund was not an insurance company and could therefore not be liable for the acts of individuals.

3.5.4 The public prosecutor and most of the accusing parties had requested that only a fine be imposed on the master and the pilot, and the hearing continued in spite of the master not being present. However, during the last week of the hearing, after the evidence had been presented, one of the lawyers representing a number of individual claimants requested again that a prison sentence of over four years be imposed on the master and the pilot. After a 48 hours adjournment, the Court decided nevertheless to continue the hearing, on procedural grounds.

3.5.5 A large part of the hearing was devoted to the criminal liability of the master and the pilot. A number of witnesses were heard concerning the cause of the incident. The IOPC Fund did not take any active part in the hearing in respect of the criminal liability, since the Fund is not involved in the criminal liability of individuals.

3.5.6 In the proceedings it was argued by some parties that the shipowner was not entitled to limit his liability if the master had been guilty of a criminal act. They referred to two decisions of the Spanish Supreme Court to this effect in respect of the 1957 Convention relating to the limitation of the liability of owners of sea-going ships and a statement in a decision by the Supreme Court to the same effect regarding the 1976 Convention on limitation of liability for maritime claims. Although the IOPC Fund was not directly involved in this matter, the Fund drew attention to the fact that under the Civil Liability Convention the shipowner could be deprived of the right to limit his liability only if the incident occurred as a result of the actual fault or privity of the owner (Article V.2), and that the Civil Liability Convention formed part of Spanish Law. The Fund also pointed out that no claims for compensation could be made against the shipowner otherwise than in accordance with the Convention (Article III.4).

3.5.7 The IOPC Fund maintained that the pilot was liable for the incident because he ordered the master to enter the port of La Coruña at 2 am, despite the heavy weather and being aware that the weather would deteriorate further. In addition, the IOPC Fund argued that the pilot was liable because he did not meet the ship at the designated pilot boarding station, thus contravening the applicable pilot regulations.

3.5.8 The question of whether the pilot was liable is of great importance for the IOPC Fund since under Spanish law the Spanish State should be liable for the acts of pilots. If the pilot were to be held liable, the State would also be liable to pay compensation for pollution damage. The distribution of liability between the shipowner/master and the pilot/State would be decided by the Court, probably in accordance with their respective degrees of fault.

3.5.9 In the proceedings, claims for compensation had also been made against the master. The IOPC Fund drew attention to the fact that under Article III.4 of the Civil Liability Convention, no claims for compensation for pollution damage may be made against the servants or agents of the owner under the

Convention or otherwise. In the Fund's view, the master clearly fell within the concept of "servants of the owner".

3.5.10 The Court also considered the claims for compensation which had been submitted in the criminal proceedings. At the beginning of the hearing, some of the parties presented extensive documentation relating to their claims. Most of the documentation submitted on behalf of the claimants had not been previously available to the IOPC Fund, and the experts engaged by the Fund, the shipowner and the UK Club (hereinafter referred to as "the IOPC Fund's experts") had to examine them during the hearing. The IOPC Fund, the shipowner and the UK Club submitted to the Court two documents signed by their experts setting out their views on the method to be used for the assessment of the claims, together with an analysis of each individual claim in the form of four binders containing some 1 200 pages.

3.5.11 A number of expert witnesses were called by the parties. Some claimants called experts (economists and biologists) working with, inter alia, the Government of the Region of Galicia (the "Xunta"), the University of Barcelona and the University of Santiago de Compostela. The IOPC Fund, the shipowner and the UK Club called as expert witnesses Captain John Maxwell and Captain Malcolm Dann of the Joint Claims Office, Captain Juan Carlos Garcia Cuesta (a local marine surveyor), Dr T Moller of ITOPF, Dr Michel Girin, Director of the Centre de documentation, de recherche et d'expérimentations sur les pollutions accidentelles des eaux (CEDRE), and Dr Alicia Sanmamed (a Galician marine biologist).

3.5.12 The most important group of claims presented in the criminal proceedings were those submitted on behalf of some 3 680 fishermen and shellfish harvesters through their unions (Cofradías), totalling Pts 11 497 million (£59.8 million). Partial payments totalling Pts 709 million (£3.7 million) had been made to these claimants. Claims had also been presented by two mussel farmers, totalling Pts 400 million (£2.1 million). The Spanish Government, the Xunta and some local authorities had submitted claims for clean-up costs, preventive measures and other alleged damages.

3.5.13 The IOPC Fund maintained during the hearing that a number of claims were not admissible as a matter of principle and therefore should be rejected. Some of these claims had been previously rejected by the Executive Committee. The IOPC Fund also argued that a number of claims might be admissible as a matter of principle but that the claimants had not proved that they had suffered any damage as a result of the incident. In addition, the Fund maintained that a large number of the claimants whose claims would be admissible in principle had not presented sufficient evidence to make it possible to assess the losses actually suffered by them. For this reason, the Fund argued that these claims could not be admitted by the Court for any amount.

3.5.14 Examples of claims that the IOPC Fund rejected as non-admissible are set out in paragraphs 3.5.15-3.5.20 below.

3.5.15 The Spanish Government had presented a claim for Pts 740 million (£3.9 million), the greater part of which related to the costs of replacing some 286 000 m^3 of sand on certain recreational beaches. The IOPC Fund pointed out that a programme for replacement of sand on these beaches had been established by the Government before the *Aegean Sea* incident and that the replacement had started before the incident. The IOPC Fund drew attention to the fact that erosion caused significant quantities of sand to disappear from these beaches every year. The Fund mentioned that only some 1 230 m^3 of oily sand had been removed from these beaches after the *Aegean Sea* incident. For these reasons, the IOPC Fund took the view that the part of this claim concerning replacement of sand was not admissible, except as regards the replacement of 1 230 m^3 of sand.

3.5.16 The Xunta had claimed compensation for Pts 45 million (£235 000) for scientific studies of the contamination in mussels and barnacles. In the IOPC Fund's view this claim was not admissible, since these scientific studies were not connected to clean-up operations or preventive measures.

3.5.17 The Xunta had claimed compensation for Pts 30 million (£156 000) relating to the cost of a campaign for the promotion of Galician fish products. The Executive Committee had rejected this claim at its 42nd session, since the promotional activities were considered of too general a nature (document FUND/EXC.42/11, paragraph 3.3.12).

3.5.18 The City of La Coruña had claimed Pts 416 million (£2.2 million) for costs of cleaning certain beaches, although these operations were in fact carried out by the Central Government.

3.5.19 A claim was presented by the Town of Oleiros for about Pts 1 300 million (£6.7 million) in respect of loss of natural resources. The IOPC Fund maintained that this claim was inadmissible, since the town did not carry out any activities which could have been prejudiced by the alleged damage. It should be noted that also the Cofradías claimed compensation for damage to these resources.

3.5.20 The owner of the cargo on board the *Aegean Sea* had claimed compensation for the value of the lost cargo, Pts 1 500 million (£7.8 million). The IOPC Fund maintained that this claim did not fall within the definition of pollution damage and should therefore be rejected.

3.5.21 In support of the claims presented on behalf of the fishermen, shellfish harvesters and mussel farmers, the Xunta presented a document containing a series of studies prepared by the University of Santiago de Compostela, in the form of an economic analysis of losses suffered in the fisheries and aquaculture sector as a result of the *Aegean Sea* incident. In broad terms, the scope of the studies related to the losses allegedly suffered by shellfish harvesters, boat fishermen and mussel farmers in the whole affected area, whether they had presented claims in the criminal proceedings or not. For boat fishermen, losses were calculated as the difference between the sales after the incident (December 1992 and the years 1993 and 1994) and the yearly average sales during the period 1988-1992, in the "coastal fishing" selling halls (lonjas de bajura) of La Coruña, Malpica, Caión, Miño-Pontedeume, Ares, Sada and Cedeira. For shellfish harvesters, losses were calculated as the sum of an alleged "immediate loss" (value of the market size bivalves present on the sea bed at the time of the incident, based on a stock assessment by biologists of the Fisheries Council) plus further losses called "bivalve beds recuperation loss" (immediate loss multiplied by factors ranging between 1,8 and 5, depending on the species). For mussel farmers, losses were calculated as the sum of the market value of the whole stock present at the time of the incident (based on a stock assessment by biologists of the Fisheries Council), plus the value of the "maximum theoretical" crop that could have been produced by the farms from the time of the spill until normal production was regained, including twice the value of the stock at the time of the spill. Neither saved expenses nor payments received from the Commission of the European Communities, Directorate General XIV (fisheries) (where appropriate) were deducted. The numbers obtained were adjusted to account for inflation to December 1995.

3.5.22 On those assumptions, in the Santiago University study boat fishermen losses were estimated at Pts 7 453 million, shellfish harvester losses at Pts 4 045 million and mussel farming losses Pts 3 690 million, ie a total of Pts 15 188 million (£79 million). The claims presented in the criminal proceedings covered most of the alleged losses in the affected area suffered by fishermen and shellfish harvesters, whereas only a small proportion of the losses suffered by mussel farmers were claimed in these proceedings.

3.5.23 A comparison was made with an estimate of the losses suffered made by the IOPC Fund's experts for the purpose of enabling the IOPC Fund to make provisional payments. In this estimate the experts included a substantial allowance for sales not included in the official catch statistics compiled by Centro Informacion Pesquera e Marisquera (CIPEM). On the basis of the information available to them the experts' highest estimate amounted to Pts 869 million for boat fishermen, Pts 1 020 million for shellfish harvesters and Pts 855 million for mussel farming, ie a total of Pts 2 744 million (£14 million). In this estimate, no deduction had been made for payments to the claimants by the Commission of the European Communities through Directorate General XIV (fisheries). This estimate covered all claims for losses suffered in the affected area, whether the persons concerned had presented claims in the criminal proceedings or only in the Joint Claims Office.

3.5.24 The IOPC Fund maintained that the studies by the Santiago University could not be used as a basis for assessment of damage since it was a theoretical study which did not assess the economic losses actually suffered by the individual claimants. In the IOPC Fund's view, it was not correct to calculate damage on the basis of a theoretical assessment of the biomass of fish products, which was the approach used in the University studies. The Fund argued that the only correct method to assess the losses actually suffered was a comparison between the actual income of the claimants in the years before the incident and the income during the period when the fishing activities had been affected, on

the basis of documents, for example accounts or tax reports. Such documents - although they exist in many cases - have not been presented, in spite of repeated requests by the IOPC Fund to this effect.

3.5.25 In the opinion of the IOPC Fund's experts, the Santiago University studies were seriously flawed in assuming that the oil spill caused a total loss in economic terms of market size shellfish stocks and in quantifying further economic loss by employing a theoretical formula proposed by French researchers in ecological studies of the effects of the *Amoco Cadiz* oil spill. In fact there was, in the IOPC Fund's experts' view, no evidence of such severe impact. They pointed out that the Fisheries Council of the Region of Galicia had considered it appropriate to lift all restrictions on shellfish harvesting nine months after the incident when experts from the Seafood Products Quality Laboratory of the University of Santiago had declared seafood products from the affected area to be free of taint and suitable for marketing. Furthermore, they drew attention to the fact that official catch statistics compiled by the Fisheries Council and catch receipts submitted to the Joint Claims Office pointed to catches being as good as, or higher than normal, once the shellfish harvest bans were lifted some nine months after the spill.

3.5.26 In the opinion of the IOPC Fund's experts, the Santiago University studies also over-estimated the losses calculated for inshore fishing in the area affected by the oil spill. They pointed out that the official catch statistics for sales through the La Coruña selling hall clearly differentiated between inshore catches delivered by boats and other catches delivered by trucks. It was emphasised by the experts that the Santiago University studies assumed that all truck deliveries originated from the area affected by the *Aegean Sea* oil spill, whereas research carried out by the IOPC Fund's experts showed that in fact a significant proportion of truck deliveries represented fish and shellfish caught outside the affected area, outside Galician and Spanish waters and even outside European waters.

3.5.27 In contrast, the evaluations of the claims made by the IOPC Fund's experts considered the losses suffered to be caused by business interruption during the period of the inactivity due to the fishing bans imposed by the authorities. The losses suffered by shellfish harvesters and inshore fisheries during the period of inactivity had been assessed by these experts by reference to official catch statistics compiled by CIPEM. For the purpose of a provisional assessment to enable the IOPC Fund to make provisional payments, substantial allowances had been made by the experts for sales not included in the CIPEM statistics. In their assessment the experts had made deductions for the costs saved by the claimants during the period of inactivity. The IOPC Fund's experts also pointed out that deductions should be made for payments made to the claimants by the Commission of the European Committees through Directorate-General XIV (fisheries). The payments related to "tie-up allowances" in favour of the owners of fishing boats who were prevented from fishing. It is recalled that the Executive Committee had decided, at its 39th session, that these payments should be deducted since they related to losses which in principle, if proven, would qualify for compensation under the Civil Liability Convention and the Fund Convention (document FUND/EXC.39/8, paragraph 3.2.17). The University of Santiago studies had not made any such deductions.

3.5.28 The claimants argued that the CIPEM statistics grossly under-estimated the actual income of fishermen and shellfish harvesters. The Fisheries Council of the Region of Galicia agreed with suggestions to the effect that the official record keeping by CIPEM was substantially wrong, yet the official Galician statistical reviews published by the Xunta did not contain any reservations as to the accuracy of the figures. The IOPC Fund's experts accepted that the CIPEM data might be incomplete, but their careful review of catch trends from 1988 to 1993 within the area affected by the oil spill gave no justification for disqualifying the CIPEM data as invalid or unrepresentative when viewed as a whole. These experts took the view that the CIPEM data must be considered a valid and indispensable part of the assessment, particularly for those claims which were poorly documented. It was pointed out that the CIPEM statistics are submitted to the European Commission.

3.5.29 In the absence of any records of past production, the IOPC Fund's experts assessed the claims presented by the mussel farmers by reference to prices and size of mussels applicable at the time of the incident. They calculated the weights of harvest-size mussels from the known number of cultivation ropes per raft. The Fisheries Council imposes rules on the maximum number of ropers per raft and their length. The loss was calculated by the experts by multiplying the weights by the price and subtracting certain running costs considered to have been saved by the claimants. In contrast, the University of Santiago

applied a unit price of mussels which referred to the highest quality and largest size category. In fact, these mussels form only a minute proportion of the total production in Galicia. No evidence was provided that these mussels formed a significant, or any, part of the production of the affected area. In addition, the Santiago University study based its calculations only on the number of rafts and ropes assessed by the biologists of the Fisheries Council, without taking into account known differences between that assessment and declarations by mussel farmers in their claims. No deduction was made for saved costs. For these reasons the assessment of losses suffered by the mussel farmers made in the University studies was more than four times higher than that of the IOPC Fund's experts.

3.5.30 During the hearing, one of the lawyers representing a number of claimants raised the issue of the method to be applied to convert into Spanish Pesetas the maximum amount payable under the Civil Liability Convention and the Fund Convention which was expressed in (gold) francs (Poincaré francs). This lawyer maintained that the amount should be converted using the free market value of gold, instead of on the basis of the Special Drawing Rights (SDR), since the 1976 Protocol to the Fund Convention which replaced the franc as unit of account by the Special Drawing Right of the International Monetary Fund had not entered into force by the time of the *Aegean Sea* incident. In support of his request, the lawyer presented an opinion prepared by a Spanish law professor.

3.5.31 In the hearing the IOPC Fund maintained that the conversion should be made on the basis of the SDR, and invoked mainly the same reasons as it had done in the court proceedings in the *Haven* case (cf document FUND/EXC.36/3). The Fund was not allowed, at that stage, to present any document on this issue.

3.5.32 The IOPC Fund's main arguments in support of its position can be summarised as follows:

> The amounts in the Civil Liability Convention and the Fund Convention in their original versions are expressed in (gold) francs (Poincaré francs). Under the Civil Liability Convention, the amount expressed in francs should be converted into the national currency of the State in which the shipowner's limitation fund is constituted on the basis of the official value of that currency by reference to the franc on the date of the establishment of the limitation fund. The inclusion of the word "official" in the definition of the unit of account laid down in the original text of the 1969 Civil Liability Convention was made deliberately to ensure stability in the system, and that it was clearly meant to rule out the application of the free market price of gold. The unit of account in the Fund Convention is defined by a reference to the Civil Liability Convention, and this reference must be considered to refer to the Civil Liability Convention as amended by the 1976 Protocol thereto, which had entered into force before the *Aegean Sea* incident. The application of different units of account in the Civil Liability Convention and the Fund Convention would lead to unacceptable results, particularly as regards the relationship between the portion of liability to be borne by the shipowner and the IOPC Fund, respectively, on the basis of Article 5.1 of the Fund Convention. In 1978 Spain ratified the second amendments adopted in 1976 to the Convention establishing the International Monetary Fund (IMF). As a result of these amendments, States are obliged to use the SDR instead of the gold. For this reason, gold cannot be used in Spain as unit of account.

3.5.33 The IOPC Fund drew the Court's attention to the fact that in connection with the discussion of the *Haven* incident at the Executive Committee's 32nd session, the Spanish delegation informed the Committee that the Spanish Government had notified the Court in Genoa that it supported the Fund's position as to the method of conversion (document FUND/EXC.32/8, paragraph 3.3.3).

3.5.34 It should be noted that the lawyer representing the Xunta stated that the IOPC Fund's experts had not made any attempt to prove that damage had been suffered. He also indicated that the IOPC Fund had an interest in delaying payments.

3.5.35 It is expected that the Court will render its judgement in the spring of 1996. It is possible that the Court will decide in respect of certain claims that they are admissible in principle but that the amount of

the damage should be determined in the enforcement of judgement procedure, which is normally a written procedure.

4 Request for the IOPC Fund to pay 60 million SDR into Court

4.1 A lawyer representing a large number of claimants filed a request in November 1995 that the Criminal Court should order the IOPC Fund to constitute a fund with the Court of 60 million SDR. In his petition to the Court, the lawyer maintained that such a payment would be in conformity with the IOPC Fund's obligation under the Civil Liability Convention and the Fund Convention to constitute a fund, and referred to the fact that the total amount of the claims pursued in the Criminal Court exceeded the amount available under the Civil Liability Convention and the Fund Convention.

4.2 This issue was considered by the Executive Committee at its 46th session. The Committee took the view that there was no basis in the Fund Convention for this request. The Committee stated that unlike under the Civil Liability Convention, where the shipowner's entitlement to limit his liability was conditional on the establishment of a limitation fund, the maximum amount of 60 million SDR in the Fund Convention applied without the establishment of any "fund" with the Court. For these reasons, the Committee decided that the IOPC Fund should oppose the request made by this lawyer as having no basis in the Fund Convention, which formed part of Spanish law (document FUND/EXC.46/12, paragraph 4.2.4).

4.3 This issue was not raised during the hearing in the Criminal Court.

5 Question of time-bar

5.1 Claims for compensation against the IOPC Fund become time-barred three years after the date when the damage occurred unless the claimant has taken certain legal steps. In order to prevent his claim from becoming time-barred, the claimant must either take legal action against the IOPC Fund before the expiry of the three-year period, or notify the IOPC Fund before that date of a legal action for compensation against the shipowner or his insurer (Article 6.1 of the Fund Convention).

5.2 The three-year time period specified in Article 6.1 of the Fund Convention expired in the *Aegean Sea* case for most claimants on or shortly after 3 December 1995. At its December 1995 session the Executive Committee examined whether some claims had become time-barred vis-à-vis the IOPC Fund (document FUND/EXC.46/12, paragraphs 4.2.6 - 4.2.21).

5.3 A number of claimants in the *Aegean Sea* case had exercised their right to claim compensation from the shipowner and the insurer in the criminal proceedings, as permitted under Spanish procedural law. The IOPC Fund had been notified of these actions. Actions for compensation had also been taken by these claimants, through the public prosecutor and in some cases directly, against the IOPC Fund in these proceedings. The Committee took the view that these claims were not time-barred vis-à-vis the IOPC Fund (document FUND/EXC.46/12, paragraph 4.2.13).

5.4 A number of claimants in the fishery and aquaculture sectors had filed criminal accusations against four individuals, inter alia the master (but not against the shipowner), in the criminal proceedings. These claimants had not submitted claims for compensation in these proceedings, but only reserved their right to claim compensation in future proceedings (ie in civil proceedings to be brought at a later date after the completion of the criminal proceedings) without any indication of the amounts involved. These claimants had neither brought legal action against the IOPC Fund within the prescribed time period, nor notified the IOPC Fund of an action for compensation against the shipowner or the UK Club. Recalling that it had previously decided that the strict provisions on time-bar in the Civil Liability Convention and the Fund Convention should be applied in every case, the Committee took the view that these claims should be considered time-barred vis-à-vis the IOPC Fund (document FUND/EXC.46/12, paragraphs 4.2.14-4.2.16).

5.5 The Committee considered the position of a third group of claimants who had presented their claims to the Joint Claims Office in La Coruña but not to the Court. The Committee took the view that these claimants had not taken the steps required under the Fund Convention to prevent their claims from becoming time-barred vis-à-vis the IOPC Fund (document FUND/EXC.46/12, paragraph 4.2.17).

5.6 The Executive Committee also examined the position of those claimants with whom agreements had been reached as to the admissible quantum of their claims, many of whom had been paid in full or in part. The Committee was of the view that these claims were not time-barred vis-à-vis the IOPC Fund and that the claimants in this group who had not been paid in full retained the right to further payments on the basis of their respective settlement agreements (document FUND/EXC.46/12, paragraph 4.2.18).

5.7 A claim had been presented to the Civil Court in La Coruña on 30 November 1995 by the shipowner and the UK Club against the IOPC Fund claiming compensation for 17.5 million Guilders (£6.9 million), relating to payments made under Article 14 of Lloyds Open Form 90 Contract. The Committee agreed with the Director that these claimants had apparently taken the necessary steps to prevent their claim from becoming time-barred vis-à-vis the IOPC Fund (document FUND/EXC.46/12, paragraph 4.2.19).

5.8 The Committee was also informed of a further group of claims in respect of which "conciliation acts" had recently been presented to the Civil Court in La Coruña. The Committee took note of the fact that so far the IOPC Fund had not been served with the documents and that the Fund did not have any information concerning the claimants, the defendants or the amounts claimed. The IOPC Fund's Spanish lawyer informed the Committee that conciliation acts, according to the Spanish Supreme Court's jurisprudence, had the effect of interrupting prescription but not of preventing the extinction of rights ("caducidad"). In view of the fact that there was still insufficient information about these claims, the Committee decided to postpone its decision in respect of the time-bar issue to its 47th session. The Committee instructed the Director to present a study on the time-bar issue in respect of these claims. He was also instructed to refrain from taking any action which could prejudice the IOPC Fund's position in respect of the time-bar issue, pending the decision of the Committee (document FUND/EXC.46/12, paragraphs 4.2.20).

5.9 The IOPC Fund has not yet been served with the documents concerning these "conciliation acts" and does not have any further information concerning these claims. It is proposed, therefore, that the Committee should postpone its consideration of this issue to its 48th session.

5.10 Some claimants have maintained that in accordance with Spanish law the three years time-bar period had been suspended by the criminal proceedings and that therefore this time period had not expired.

6 Negotiation with claimants

The Director takes the view that it would be appropriate to continue the negotiations with those claimants whose claims are not time-barred, for the purpose of arriving at out-of-court settlements. Subject to any instruction which the Executive Committee may give him, the Director intends to continue his efforts to reach out-of-court settlements in respect of such claims.

7 Level of provisional payments

7.1 At its 41st session, the Executive Committee endorsed the Director's decision to increase partial payments from 25% to 40% of the damage suffered by the respective claimants as assessed by the IOPC Fund on the basis of the advice of its experts at the time when a partial payment or additional partial payment was to be made, since the uncertainty as to the total amount of the claims had been reduced (document FUND/EXC.41/2, paragraphs 4.1.4 and 4.1.5).

7.2 The Executive Committee considered at its 46th session a request by the Spanish Government for an increase in the level of provisional payments to claimants in the *Aegean Sea* case from 40% to 50% of the amounts accepted by the IOPC Fund, without prejudice to a new assessment of the damage at a later stage in the light of available documentation. The Committee decided that, in view of the remaining high degree of uncertainty as to the total amount of the established claims, it would not be appropriate at this stage to increase the provisional payments beyond 40% of the damage actually suffered by the claimants as assessed by the IOPC Fund's experts (document FUND/EXC.46/12, paragraph 4.2.29).

8 Action to be taken by the Executive Committee

The Executive Committee is invited to;

(a) take note of the information contained in this document; and

(b) give the Director such instructions as it may deem appropriate in respect of the handling of the claims arising out of this incident.