



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND

EXECUTIVE COMMITTEE
48th session
Agenda item 4

FUND/EXC.48/3
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INFORMATION ON OTHER INCIDENTS

HAVEN

CONVERSION OF UNIT OF ACCOUNT

Note by the Director

1 Introduction

On 30 March 1996, the Court of Appeal in Genoa rendered its judgement concerning the method to be used for the conversion of the unit of account laid down in the 1969 Civil Liability Convention and the 1971 Fund Convention into national currency.

2 The relevant provisions of the Conventions

The amounts in the 1969 Civil Liability Convention and the 1971 Fund Convention were expressed in (gold) francs (Poincaré francs). Under the Civil Liability Convention, the amounts expressed in (gold) francs should be converted into the national currency of the State in which the shipowner established the limitation fund 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. In 1976 Protocols were adopted to both Conventions. Under these Protocols, the (gold) franc was replaced as the monetary unit by the Special Drawing Right (SDR) of the International Monetary Fund (IMF). The 1976 Protocol to the Civil Liability Convention entered into force in 1981, whereas the 1976 Protocol to the Fund Convention came into force in 1994, ie after the *Haven* incident.

3 The Issue

3.1 An important legal question has arisen in the limitation proceedings in the Court of first instance in Genoa, namely the method to be applied for converting the maximum amount payable by

the IOPC Fund (900 million (gold) francs) into Italian Lire. The IOPC Fund had taken it for granted that the conversion should be made on the basis of the SDR. It was maintained by some claimants, however, that the conversion should be made by using the free market value of gold, since there was no longer any official value of gold and the 1976 Protocol to the Fund Convention which replaced the (gold) franc with the SDR was not in force.

3.2 The IOPC Fund's main argument in support of its position is that 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 value of gold. The unit of account in the Fund Convention is defined by a reference to the Civil Liability Convention. In the IOPC Fund's view this reference must be considered to refer to the Civil Liability Convention as amended by the 1976 Protocol thereto. The IOPC Fund has maintained that for this reason the conversion must be made on the basis of the SDR not only in respect of the Civil Liability Convention but also in respect of the Fund Convention. The Fund has pointed out that 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 that to be borne by the IOPC Fund on the basis of Article 5.1 of the Fund Convention.

3.3 A detailed presentation of the issues involved and the arguments of the parties is set out in document FUND/EXC.36/3.

4 Decisions In the Court of first Instance

4.1 A judge of the Court of first instance in Genoa, who is in charge of the limitation proceedings, rendered his decision on this issue in March 1992. He held that the maximum amount payable by the IOPC Fund should be calculated by the application of the free market value of gold, which gives an amount of Lit 771 397 947 400 (£313 million) (including the amount paid by the shipowner under the Civil Liability Convention), instead of Lit 102 643 800 000 (£42 million), as maintained by the IOPC Fund, calculated on the basis of the SDR.

4.2 The reasons given by the judge are summarised in document FUND/EXC.36/3.

4.3 An opposition to this decision lodged by the IOPC Fund was considered by the Court of first instance (which was composed of three judges, including the judge who had rendered the decision in 1992). In July 1993 the Court upheld the decision of March 1992 and fixed the maximum amount payable by the IOPC Fund at Lit 771 397 947 400 (£313 million).

4.4 In its judgement the Court noted that the adjective "official" was inserted in the text of the Convention at the last session of the 1969 Diplomatic Conference which adopted the Civil Liability Convention. The Court stated that since gold no longer had an official value, the reference to gold could not mean anything other than the free market value of gold. The Court rejected the IOPC Fund's argument that Article 1.4 of the Fund Convention, which relates to the unit of account, should be considered as referring to the Civil Liability Convention as amended by the 1976 Protocol. The Court maintained that the calculation of indemnification of the shipowner under Article 5 of the Fund Convention should be made using a percentage calculation, which would result in the Fund's indemnification being determined in SDR. The Court admitted that the general opinion of States was that the (gold) franc should be substituted by the SDR, but stated that the opinion of States did not change the law.

4.5 A summary of the judgement is contained in document FUND/EXC.36/3. A translation into English of the judgement is reproduced in document FUND/EXC.36/3/Add.1.

4.6 The IOPC Fund appealed against this judgement to the Court of Appeal in Genoa.

5 Statement by the Executive Committee

At its 36th session the Executive Committee expressed its concern about the consequences of the judgement for the future of the international regime of liability and compensation established by the Civil Liability Convention and the Fund Convention. It emphasised that the universally accepted interpretation of the Fund Convention was that the limit of the IOPC Fund's cover should be determined by using the SDR (document FUND/EXC.36/10, paragraph 3.2.2).

6 Court of Appeal's decision

6.1 The judgement of the Court of Appeal of 30 March 1996 contains 238 pages. A detailed analysis of the judgement and, if possible, an English translation of the judgement will be submitted to the Executive Committee at its 49th session.

6.2 The main points of the Court of Appeal's judgement are as follows:

The IOPC Fund had maintained that, since most of the claims were time-barred vis-à-vis the IOPC Fund, the total amount of the claims against the Fund did not exceed 60 million SDR and that for this reason it was not necessary for the Court to take any position as to the method of conversion. The defence of time-bar was rejected by the Court which held that the intervention of the IOPC Fund under Article 7.4 of the Fund Convention had the same effect as a notification under Article 7.6.

The Court of Appeal confirmed the position of the Court of first instance that the demise of the official value of gold did not allow national courts, when calculating the maximum amount payable under the Fund Convention, to substitute the SDR for the (gold) franc before the entry into force of the 1976 Protocol to that Convention. The Court also held that the entry into force of that Protocol did not apply retroactively. For this reason the Court of Appeal stated that the gold unit could be converted only at its market value.

6.3 The Court of Appeal confirmed therefore that the maximum amount payable by the IOPC Fund should be calculated by the application of the free market value of gold, giving an amount of Lit 771 397 947 400 (£313 million), including the amount payable by the shipowner under the Civil Liability Convention.

6.4 The IOPC Fund is entitled to appeal against the judgement to the Supreme Court of Cassation within 60 days of having been notified formally of the judgement by a party to the proceedings, which has not yet been done.

7 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 on this issue as the Committee may deem appropriate.
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