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Agenda item 4

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INFORMATION ON OTHER INCIDENTS

HAVEN

LIST OF ESTABLISHED CLAIMS

Note by the Director

1 Introduction

1.1 In a decision dated 5 April 1996, the judge in the Court of first instance in Genoa, who is in charge of the limitation proceedings in the *Haven* case, determined the admissible claims for compensation ("stato passivo").

1.2 The IOPC Fund has recently paid the claims presented by a number of French public bodies (other than the State).

2 List of established claims (stato passivo)

2.1 The claims

2.1.1 It should be recalled that the Executive Committee has taken the position that the majority of the claims arising out of the *Haven* incident are time-barred vis-à-vis the IOPC Fund. The Committee has noted that only a few claimants, namely the French State, the French municipalities, 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. The Committee has taken the view that all other claims submitted in the limitation proceedings had become time-barred in respect of the IOPC Fund on or shortly after 11 April 1994, in the light of the provisions of Article VIII of the Civil Liability Convention and Article 6.1 of the Fund Convention (document FUND/EXC.40/10, paragraphs 3.3.4 and 3.3.8).

2.1.2 Some 1 350 Italian claimants presented claims relating to damage other than damage to the environment. These claims totalled approximately Lit 765 000 million (£321 million)^{<1>}, including a claim by the Italian Government for Lit 261 000 million (£110 million).

2.1.3 The Italian Government also presented a claim relating to damage to the marine environment. The items of this claim which have been quantified by the claimant total Lit 883 435 million (£371 million). The claim contains in addition several important items where the quantification has been left to the Court to decide on the basis of equity, namely the consequences of beach erosion caused by damage to phanerogams, and irreparable damage to the sea and the atmosphere. Some other public bodies also included items relating to environmental damage in their claims.

2.1.4 Agreements on the quantum of the claims were reached between the shipowner/the UK Club and most Italian claimants, for a total of Lit 21 500 million (£9 million). It was not possible to reach agreements with the Italian Government, some of the local authorities and four clean-up contractors. In addition, there are a large number of claims which have not been supported by any documentation or only by insufficient documentation.

2.1.5 The French Government, 31 French municipalities and two other public bodies in France presented claims for compensation, totalling FFr79 550 576 (£10.3 million). These claims were settled at FFr23 240 193 (£3.0 million).

2.1.6 The Principality of Monaco presented a claim for FFr321 735 (£41 800) which was settled at FFr270 035 (£35 100).

2.2 Decision by the judge in charge of the limitation proceedings

2.2.1 In the list of the admissible claims (stato passivo), the judge in charge of the limitation proceedings included claims as follows:

			Lit
Italian Government's claim (including ATI contract)			
not relating to environmental damage			105 296 722 046
Other Italian contractors (for clean-up operations)			16 410 209 300
Region, provinces, municipalities			1 457 371 604
Fishermen			8 934 440 715
Hotels, restaurants, bagni, other			
small businesses			4 597 323 435
Yacht owners			72 130 000
Shipowner			1 354 768 078
Shipowner	US\$224 900	Lit 350 844 000	
UK Club	£237 679	Lit 566 365 289	
French claimants	FFr23 240 193	Lit 7 188 350 973	
Principality of Monaco	FFr270 035	Lit 83 525 676	
Small businesses	FFr237 458	Lit 73 447 387	
Small businesses	US\$34 368	<u>Lit 53 614 080</u>	
		Lit 8 316 147 405	<u>8 316 147 405</u>
			146 439 112 583
Italian Government's claim			
relating to environmental damage			<u>40 000 000 000</u>
		TOTAL	186 439 112 583
			<u>(£78 240 400)</u>

^{<1>} The conversion of currencies in this document has been made on the basis of the rates of exchange applicable on 4 April 1996.

2.2.2 The judge held that the amounts determined by him should be increased by interest at the legal rate (10% per annum) from the date when the respective damage was sustained to the date of payment. Many of these amounts should also be increased to compensate for devaluation, on the basis of an official index relating to the cost of living.

2.2.3 It should be noted that the *stato passivo* has been established in the context of the limitation proceedings initiated by the shipowner and the UK Club. The IOPC Fund has intervened in these proceedings, pursuant to Article 7.6 of the Fund Convention.

2.2.4 In his decision the judge made an observation to the effect that the IOPC Fund's position in respect of the time-bar issue was clearly groundless, since in his view 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.

2.2.5 The claims in respect of which agreement on quantum had been reached between the claimants and the shipowner/UK Club were admitted for the agreed amounts, since these amounts had not been challenged.

2.2.6 The judge stated that the numerous claims which were not documented could not be admitted.

2.2.7 The judge held that the municipalities were not entitled to compensation for "damage to touristic image". In his view, only individual tourism operators could claim compensation for such loss of image to the extent that this resulted in a loss in the claimant's economic activity. He stated that the municipalities could be entitled to compensation for the cost of promoting tourism to the extent that it was proved that, as a consequence of the incident, such expenses were not effective or expenses were incurred after the incident to promote the touristic image.

2.2.8 As regards the claims for environmental damage, the judge held that the Civil Liability Convention and the Fund Convention did not exclude such damage. He stated that only the State of Italy was entitled to compensation for environmental damage and that consequently the local authorities had no right to such compensation. He took the view that the environmental damage could not be quantified according to a commercial or economic evaluation. He assessed this damage as a proportion (approximately 1/3) of the cost of the clean-up operations. The amount arrived at by this assessment would, in his view, represent the damage which was not repaired by these operations.

2.2.9 The judge's decision was rendered after proceedings of a summary nature. The judge remarked that the amounts included in the *stato passivo* which had not been agreed by the parties should be considered as an indication to the parties of a balanced solution which could form the basis of an agreement to avoid lengthy and costly proceedings.

2.2.10 Any oppositions to the *stato passivo* will be considered by the Court of first instance, composed of three judges (including the judge in charge of the limitation proceedings). A first hearing will be held on 28 November 1996.

2.2.11 Subject to any instruction which the Executive Committee may wish to give him, the Director intends to lodge opposition in respect of some claims, in particular as regards the admissibility of the Italian Government's claim for environmental damage. The time bar issue will also be addressed in the opposition.

2.2.12 It should be recalled that an offer for a global settlement of all claims arising out of the *Haven* incident had been made by the shipowner/UK Club and the IOPC Fund. It should further be recalled that this offer had not been accepted by the Italian Government. At its 18th session the Assembly endorsed the following statement made by Professor H Tanikawa of the Japanese delegation as the position of the IOPC Fund (document FUND/A.18/26, paragraph 11.8):

We have heard the report of the Chairman of the Executive Committee. We regret that there has been no further reaction by the Italian Government on the offer of a global settlement made by the shipowner/UK Club and the IOPC Fund. For this reason we

interpret this to mean that the offer has not been accepted by the Italian Government. We therefore believe that any future initiative towards a global settlement must be taken by the claimants, including the Italian Government. As already decided by the Assembly, the *Haven* Major Claims Fund remains, but no further contributions have been levied. The terms and conditions of the previous offer of a global settlement are well known. Should the claimants, including the Italian Government, wish to revert to a settlement on the terms of that offer, then the matter would have to be referred to the Assembly for decision.

3 Payments to certain claimants

3.1 It will be recalled that the French Government had requested, at the Executive Committee's 47th session, that the French claimants other than the French State should be paid in full. The French Government gave an undertaking that the amount payable by the IOPC Fund to the French State for the State's accepted claim would form a security against overpayment by the IOPC Fund to these French claimants. This undertaking reads:

"Should the full and immediate payment of compensation due to the 31 municipalities of the Var and Alpes Maritimes, to the Department of the Var (Direction départementale d'incendie et de secours) and to the Parc national de Port-Cros eventually result in an overpayment by the IOPC Fund, then the State would agree to a reduction of the compensation to which the State would be entitled up to the amounts overpaid to the other French victims."

3.2 In view of the very special situation which had arisen in the *Haven* case and the protection against overpayment which the undertaking made by the French Government would give the IOPC Fund, the Executive Committee decided, at its 47th session, to instruct the Director to pay in full the claims presented by the Direction départementale des Services d'incendie et de secours du Var, the 31 municipalités and Parc national de Port-Cros for the amounts agreed as set out in the table reproduced in paragraph 4.1 of document FUND/EXC.47/2, totalling FFfr10 659 469 (£1 375 200).

3.3 All the 33 French public claimants concerned (other than the French State) except one were paid on 1 April 1996. It is expected that the remaining claimant, a municipality, will be paid on 16 April 1996.

3.4 It should be recalled that two Italian claimants whose claims are not time-barred (Ecolfriuli and Ecolmare) had offered to provide a bank guarantee to protect the IOPC Fund against overpayment, if their claims were paid. The Executive Committee authorised the Director to pay in full these two claims on condition that the claimants provided a bank guarantee which would give the IOPC Fund adequate protection against overpayment if claims were later reduced pro rata (document FUND/EXC.47/14, paragraph 3.1.18). The wording of the required bank guarantee is under consideration.

4 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 future legal proceedings concerning the list of established claims as the Committee may deem appropriate.
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