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INCIDENTS INVOLVING THE 1971 FUND

HAVEN

Note by the Director

1 Introduction

1.1 At its 48th session, the Director informed the Executive Committee of two court decisions in respect of the *Haven* incident which occurred on 11 April 1991 off Genoa (Italy). The first of these decisions, a judgement rendered on 30 March 1996 by the Court of Appeal in Genoa, related to the method to be used for the determination of the maximum amount payable by the 1971 Fund in national currency (document FUND/EXC.48/3). In the second decision, rendered on 5 April 1996, the judge in the court of first instance in Genoa in charge of the limitation proceedings relating to this incident determined the admissible claims for compensation ("stato passivo") (document FUND/EXC.48/4). Further information on these two decisions was given to the Committee at its 49th session (document 71FUND/EXC.49/2). The present document sets out the developments in respect of the court proceedings since the 49th session.

1.2 Information is also given on certain settlements of claims concluded by the shipowner and his P & I insurer.

2 Conversion of the unit of account

2.1 The amounts in the 1969 Civil Liability Convention and the 1971 Fund Convention were expressed in (gold) francs (Poincaré francs). Under the 1969 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.

2.2 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 1971 Fund (900 million (gold) francs) into Italian Lire. The 1971 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 at the time of the incident.

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

2.4 It will be recalled that the judge of the Court of first instance in Genoa, who is in charge of the limitation proceedings, held in March 1992 that the maximum amount payable by the 1971 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 1969 Civil Liability Convention), instead of LIt 102 643 800 000 (£42 million), as maintained by the 1971 Fund, calculated on the basis of the SDR.

2.5 After the 1971 Fund had lodged an opposition to this decision in July 1993, the Court of first instance (which was composed of three judges, including the judge who had rendered the decision in 1992) upheld the decision of March 1992.

2.6 The 1971 Fund appealed against the decision of July 1993. In its judgement, rendered on 30 March 1996, the Court of Appeal confirmed that the maximum amount payable by the 1971 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 1969 Civil Liability Convention (cf document 71FUND/EXC.49/2, paragraph 2.8).

2.7 The 1971 Fund is entitled to appeal to the Supreme Court of Cassation against the judgement by the Court of Appeal relating to the conversion of the unit of account laid down in the 1971 Fund Convention, within 60 days of having been formally notified of the judgement by a party to the proceedings or within one year from the date of the judgement. So far no such notification has been received.

2.8 At its 48th session, the Executive Committee instructed the Director to take the necessary steps to appeal to the Supreme Court of Cassation (document FUND/EXC.48/6, paragraph 4.1.6). The 1971 Fund's Italian lawyers are making the necessary preparations to this effect, and an appeal will be lodged as soon as the 1971 Fund has been notified of the judgement.

3 List of established claims ("stato passivo")

Background

3.1 It will 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 1971 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 1971 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 became time-barred in respect of the 1971 Fund on or shortly after 11 April 1994, in the light of the provisions of Article VIII of the 1969 Civil Liability Convention and Article 6.1 of the 1971 Fund Convention (document FUND/EXC.40/10, paragraphs 3.3.4 and 3.3.8).

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

3.3 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 Llt 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.

3.4 During 1995, agreements on the quantum of the claims were reached between the shipowner/UK Club and most Italian claimants, for a total of Llt 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 where no agreements could be reached since the claims were not supported by any documentation or were supported by only insufficient documentation.

3.5 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 out of court at FFr23 240 193 (£3.0 million).

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

Stato passivo

3.7 The judge in charge of the limitation proceedings determined the admissible claims for compensation (stato passivo) in a decision rendered on 5 April 1996. The admissible claims established by the judge are summarised in tabular form in the Annex to this document.

3.8 It should be noted that the list of admissible claims has been established in the context of the limitation proceedings initiated by the shipowner and the UK Club. The 1971 Fund has intervened in these proceedings, pursuant to Article 7.4 of the 1971 Fund Convention.

3.9 In his decision the judge made an observation to the effect that the 1971 Fund's position in respect of the time-bar issue was clearly groundless, since in his view the intervention of the 1971 Fund under Article 7.4 of the 1971 Fund Convention had the same effect as a notification under Article 7.6.

3.10 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.

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

3.12 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 that the expenses were incurred after the incident to promote the touristic image.

<1> The conversion of currencies has been made on the basis of the rates of exchange applicable on 4 April 1996.

3.13 As regards the claims for environmental damage, the judge held that the 1969 Civil Liability Convention and the 1971 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.

3.14 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.

3.15 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.

Opposition procedure

3.16 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.

Consideration by the Executive Committee at its 48th and 49th sessions

3.17 At its 48th session the Executive Committee instructed the Director to lodge opposition in respect of those claims admitted by the judge which, in view of the criteria for admissibility laid down by the Assembly and the Committee, were not admissible in principle, in particular the Italian Government's claim for environmental damage, as well as in respect of any other admitted claims if the Director considered this appropriate. The Committee stated that the time-bar issue should also be addressed in the opposition (document FUND/EXC.48/6, paragraph 4.1.7).

3.18 At its 49th session, the Executive Committee endorsed the Director's intention to lodge opposition mainly in respect of the Italian Government's claim for environmental damage, the claim for amounts paid in VAT, the claims in respect of the ATI contract, the claim presented by Castalia (clean-up contractor), the claims by the shipowner/UK Club and the decision to add amounts for interest and devaluation. It was noted that the question of time-bar would also be addressed in the 1971 Fund's opposition, as set out in paragraph 3.19 of document 71FUND/EXC.49/2. The Committee noted that some claimants also intended to lodge oppositions. The Director was instructed to study further the question of the admissibility of claims relating to VAT, in the light of the position of Italian law on this point. It was noted that the question of the admissibility of claims for the reimbursement of amounts paid in VAT varied according to national tax law and jurisprudence (document 71FUND/EXC.49/12, paragraphs 3.1.14 and 3.1.15).

Opposition lodged by the 1971 Fund

3.19 In its opposition the 1971 Fund has referred to the question of time-bar. The 1971 Fund has maintained that the judge was wrong in rejecting the defence of time-bar. The Fund has pointed out that no defence of time-bar was raised by the Fund in the limitation proceedings because no action against the Fund was started or could be started in these proceedings. The Fund has stated that the action against it must be brought separately from the actions against the owner and the Club, as

can be seen clearly from Article 8 of the 1971 Fund Convention, which refers only to Articles 7.1 and 7.3 and not to Articles 7.4 and 7.6. For these reasons the 1971 Fund, which intervened in the limitation proceedings under Article 7.4, has reiterated in the opposition that the Fund's intervention in the limitation proceedings was without prejudice to the defence of time-bar that the Fund had intended to raise at the appropriate time, ie when an action was brought against the Fund. The Fund has again emphasised in its opposition that the intervention of the Fund did not interrupt the three-year time limit, since Article 6.1 of the 1971 Fund Convention attributed the interruptive effect only to an action against the Fund or to the Fund being notified of the action against the owner.

3.20 The 1971 Fund has lodged opposition in respect of the following claims.

(a) The Italian Government's claim for environmental damage

The 1971 Fund has requested that this claim should be rejected. The Fund's position in respect of claims of this type has been set out in the opposition in accordance with the position taken by the Assembly and the Executive Committee.

The judge has based his decision on Article 18 of the Act N°349 of 1986 creating the Ministry of the Environment. The 1971 Fund has maintained that the liability for environmental damage laid down in that Article is not applicable in relation to the Fund, because that liability is based on negligence and the compensation, according to Article 18.6, must be assessed by the judge on the basis of the degree of the fault of the wrongdoer, the profit achieved by him and the cost necessary for the restoration of the environment. The Fund has stated that according to Italian case law and legal doctrine, the compensation awarded under this Act has the nature of a sanction and the damage thus assessed is punitive. In the Fund's view, these criteria for assessment were inconsistent with the strict liability of the owner and the Club under the 1969 Civil Liability Convention as well as with the position of the Fund under the 1971 Fund Convention. It is pointed out that the judge arbitrarily deviated from Article 18.6 of the 1986 Act and did not apply the criteria relating to the fault and the profit of the wrongdoer, taking into account only the cost of the actual clean-up operations and determining the damage at one third of that cost. The Fund has maintained that a judge is not allowed to cut the norm in question by using only two of the three criteria. The Fund has stated that the judge has in this way reached the absurd conclusion that compensation for environmental damage increases with the increase of the cost of the clean-up operations; the more a defendant cleans, the greater his liability.

(b) VAT

The State paid certain clean-up operators. The invoices of the contractors included VAT, and the amounts charged in VAT were paid by the State to these contractors, who paid the amounts received for VAT to the State. The judge held that the State was entitled to compensation for the amounts it had paid in VAT to those contractors.

As instructed, the Director has studied further the question of the admissibility of claims relating to VAT in the light of the position of Italian law. To this end, the Director has obtained an opinion of Professor L Acquarone, an eminent expert in this field of law. This opinion can be summarised as follows:

> The judge has held that the VAT paid by the State on the invoices of the clean-up contractors and the VAT paid by the same contractors to the State cannot be set off, because the former is an expense of a private nature whilst the latter is an income of a public nature, being a tax. The expenses claimed by the State relate to the cost of restoration of the environment and, since the environment is property of a public nature, such a cost is also of a public nature. Even if one were to admit that the cost of the VAT was of a private

nature, whilst the income of the VAT as a tax was of public nature, the position taken by the judge is incorrect. The case law of administrative tribunals on the relationship between the State and civil servants acknowledges that the obligation of civil servants to repay overpaid salaries should be set off against what was paid to the State by the civil servant in taxes on the overpaid amount. This means that the payment of taxes, even though of a public nature, can be set off against debts of a private nature.

The 1971 Fund has included the analysis made by Professor Acquarone in its opposition, and requested that the claim for compensation of the amounts for VAT should be rejected.

(c) ATI contract

The major part of the clean-up operations was carried out by a consortium of companies (ATI) under contract with the Italian Government. The State's obligations under the contract were subject to arbitration proceedings between the State and ATI. The judge awarded the full amount determined in the arbitration award. Neither the contract nor the award is binding for the 1971 Fund. Without prejudice to the defence of time bar, the 1971 Fund has contested the claim of the State in respect of the payments under the ATI contract on the ground that this contract is null and void, since the companies of the ATI Group had violated the mandatory provisions of the Act of 19/3/1990 n°55 dealing with contracts of the State, under which the amounts payable to sub-contractors may not exceed 40% of the total sum of the main contract and that any sub-contract must be authorised by the competent Ministry. The Fund has argued that the Italian State therefore cannot be subrogated in the rights of the ATI companies. In any case, still without prejudice to the defence of time-bar, the Fund considers that the tariffs which were laid down in the ATI contract and accepted in the arbitration award are too high and that, in addition, some of the measures undertaken were unreasonable.

For these reasons, the 1971 Fund has requested that, since the ATI contract is null and void, the court should not include in the stato passivo any amount for the ATI contract. In addition, the Fund has stated that, in any event, the stato passivo should not include an amount exceeding Llt 10 030 003 912 (£4.2 million) (whereas the judge has awarded Llt 78 181 470 883 (£32.8 million)).

(d) Castalia (clean-up contractor)

Certain clean-up operations were carried out by an Italian company, Castalia, under contract with the Italian Government. The State's obligation to pay for these operations was the subject of arbitration proceedings. The judge granted Castalia the amount determined in the arbitration award.

The 1971 Fund has maintained that the claim of Castalia was wrongly lodged, because Castalia acted only as a representative of the private enterprises which carried out the clean-up operations until 30 April 1991 and that the State therefore cannot be subrogated in the rights of Castalia. In addition the 1971 Fund has made the same objections as in respect of the ATI contract. Therefore, without prejudice to its defence of time bar, the 1971 Fund has requested that the Court should not admit the claim of the State in subrogation of Castalia.

(e) The shipowner and the UK Club

The judge has admitted claims by the shipowner and the UK Club which have not been sufficiently substantiated by documentation. The 1971 Fund has requested that such documents should be submitted.

These claims have been discussed with the shipowner and the UK Club, and it is hoped that, on production of further supporting documents, an agreement can be reached as to the admissible quantum of these claims.

(f) Interest and devaluation

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. He also held that these amounts should be increased to compensate for devaluation, on the basis of an official index relating to the cost of living, which for the period April 1991 – February 1996 (the latest date for which figures are available) would correspond to an increase of some 25% or, on average, 5% per annum.

The 1971 Fund has argued that a total increase of 15% per annum is too high. The Fund has drawn attention to the fact that under a recent Italian statute, any interest exceeding at present 12% per annum is usurious. In the Fund's view, an appropriate increase for interest and devaluation would be approximately the rate of interest on Italian treasury bonds, at present 8% per annum.

(f) Cost of tourism promotion

The 1971 Fund has lodged opposition in respect of claims presented by the Region of Liguria, the provinces of Genoa and Savona and 20 municipalities relating to costs of tourism promotion.

It will be recalled that the admissibility of some claims of this type was considered by the Executive Committee at its 36th session, in particular a claim submitted by the Region of Liguria concerning the cost of the promotion of tourism following the *Haven* incident, including an item relating to damage to the "touristic image" which was not quantified, and claims relating to costs for the same purpose presented by the Municipality of Diano Marina and the Province of Savona (document FUND/EXC.36/10, paragraphs 3.2.13–3.2.17).

The Committee decided that the claim presented by the Region of Liguria should be rejected, since the Region had not allocated any extra funds but only used funds already allocated in the budget for tourism promotion, and had therefore not suffered any actual economic loss or incurred any additional expense. The Committee recalled that the Assembly had, at its 4th session, decided that only a claimant who had suffered a quantifiable economic loss was entitled to compensation.

The claim submitted by the Municipality of Diano Marina related to a payment to a body formed by businesses involved in tourism, as a contribution to the financing of a media campaign to promote the image of the town which had been carried out before the payment was granted. The Committee considered that this claimant had not shown that the expenses covered by the claim were linked to the *Haven* incident.

The claim submitted by the Province of Savona related to a payment to the tourist office in the province for a tourism promotion campaign on television. The Committee decided that this claim also should be rejected since, in its view, it had not been shown that the activities

covered by the claim had contributed to counteracting the negative effects on tourism of the publicity resulting from the *Haven* incident.

In its opposition, the 1971 Fund has requested that these claims should be rejected, since the costs covered by these claims were not costs of preventive measures as defined in Article I.7 of the 1969 Civil Liability Convention.

3.21 Three claimants have served oppositions on the 1971 Fund. The State of Italy has made opposition in respect of a number of claims which were not accepted in full. In particular, the State has requested that compensation for environmental damage should be increased from the amount awarded by the judge, LIt 40 000 million (£16.8 million), to LIt 883 435 million (£370 million). The operator of a marina (Porto di Arenzano SpA) and one contractor (Oromare Spa), whose claims were reduced considerably by the judge, have requested to be granted the full amounts claimed.

4 Search for a global settlement

4.1 At the 40th session of the Executive Committee, a number of delegations expressed their concern at the situation which had arisen in the *Haven* case, since the 1971 Fund had as its purpose to pay compensation to victims of pollution damage. The Committee drew attention to the fact that the situation was due to the complex legal proceedings in Italy resulting from certain claimants maintaining that the 1971 Fund's maximum cover should be calculated on the basis of the free market value of gold instead of on the basis of the SDR, the latter conversion method being in accordance with the internationally accepted interpretation of the 1971 Fund Convention. It was noted at that session that claims had been submitted by the Italian Government and other public bodies relating to damage to the environment which, according to Resolution N°3 adopted by the 1971 Fund Assembly, were not admissible under the 1969 Civil Liability Convention and the 1971 Fund Convention (document FUND/EXC.44/17, paragraph 3.2.2).

4.2 While convinced of the legal validity of the 1971 Fund's position in respect of the time-bar issue, the Executive Committee nevertheless recognised at its 40th session 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 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 should respect certain conditions which were set out in paragraph 3.3.12 of document FUND/EXC.40/10.

4.3 Having considered all the issues involved, the Committee, at its 43rd session, instructed the Director to continue negotiations with the claimants and authorised the Director to agree, on behalf of the 1971 Fund, to a global settlement within the framework of an amount of some LIt 137 000 million (£53 million) being made available to victims in the context of a global settlement. The amount of LIt 137 000 million would be made up as follows: the shipowner and the UK Club would contribute the shipowner's limitation fund under the 1969 Civil Liability Convention (LIt 23 950 million) plus a without prejudice offer of interest on this amount (LIt 10 000 million) and an additional ex-gratia payment (LIt 25 000 million); the 1971 Fund would contribute the difference between the shipowner's limitation fund and the maximum 60 million SDRs payable under the 1971 Fund Convention (LIt 78 694 million). The Executive Committee laid down certain conditions for a global settlement, which were set out in paragraph 3.20 of document FUND/EXC.43/7.

4.4 The Executive Committee took the position that the negotiations with the claimants were without prejudice to the 1971 Fund's position in respect of the question of time-bar, pending a global solution of all outstanding issues.

4.5 At its 43rd session, 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.

4.6 At its 44th session, the Executive Committee noted that agreements on the quantum had been reached with the French Government, the Direction Départementale des Services d'incendie et de secours du Var, 31 municipalities in France and Parc National de Port Cros for a total amount of FFr23.2 million (£3.0 million). The Committee took note of the agreement in the amount of FFr270 035 (£35 300) which had been reached on the quantum of the claim submitted by the Principality of Monaco. The Committee also noted that agreement had been reached between the shipowner and the UK Club and the great majority of the Italian claimants on the quantum of their claims.

4.7 The Executive Committee was informed at its 44th session that no agreement had been reached on the proposed global settlement, since the Italian Government had not accepted the offer nor had given an indication that it was looking favourably at the offer. The Committee noted that the Italian authorities wished to continue the study of the offer of a global settlement. Since the conditions set by the Executive Committee for a global solution had not been met, the Committee referred the matter to the Assembly (document FUND/EXC.44/17, paragraph 3.2.26).

4.8 The Assembly, at its 18th session held in October 1995, expressed its regret that there had been no further reaction by the Italian Government on the offer of a global settlement made by the shipowner/UK Club and the 1971 Fund. The Assembly interpreted this to mean that the offer had not been accepted by the Italian Government, and decided that any future initiative towards a global settlement had to be taken by the claimants, including the Italian Government. As already decided by the Assembly, the *Haven* Major Claims Fund remained, but no further contributions were levied. The Assembly noted that the terms and conditions of the previous offer of a global settlement were well known. The Assembly stated that, 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 (document FUND/A.18/26, paragraph 11.8).

4.9 Neither the Italian Government nor any other claimant has approached the 1971 Fund on the issue of a global settlement.

Settlements made by the shipowner/UK Club

4.10 In a letter dated 19 September 1996, the UK Club has informed the Director of the intentions of the shipowner and the Club regarding settlements with a number of claimants. The position taken by the shipowner and the Club can be summarised as follows.

4.10.1 The UK Club has agreed to pay directly to the Region of Liguria, the Provinces of Genoa and Savona and the 20 municipalities, the whole of its previous offer of an ex-gratia payment of Llt 25 000 million (£10.5 million). Agreements have been reached with all local public bodies except for two municipalities as to the share of the ex-gratia payment attributable to each. As a consequence, the UK Club has advised the State of Italy that it is withdrawing its previous offer of an ex-gratia payment to the Italian State.

4.10.2 It is a term of these agreements that the local public bodies should take no further action in the proceedings in Genoa, whether by filing opositions to the stato passivo or otherwise, and that the UK Club will be subrogated to the claims of the local bodies for clean-up costs and expenses as admitted to the stato passivo by

payment of the amounts awarded by the judge (Llt 1 457 million or £610 000) in addition to the ex-gratia payment.

4.10.3 The UK Club has further offered to settle the claims of the fishermen, yacht owners and small businesses in the tourist industry in the amounts awarded in the stato passivo, totalling some Llt 13 652 million (£5.7 million). The Club has offered to add interest to the respective amounts awarded in the stato passivo at the legal rate of 10% per annum from the date of deposit of the stato passivo, in April 1996 or, where relevant, from the date of expiry of an earlier settlement agreement (the earliest of which was in August 1995). Upon acceptance by claimants of this offer, the UK Club has indicated its intention of paying the agreed amounts and acquiring by subrogation the rights of those claimants.

4.10.4 In respect of the clean-up contractors, other than the ATI consortium, claims admitted in the stato passivo amount to a total of approximately Llt 16 405 million (£6.9 million). Although not all these amounts have been accepted by the UK Club, it is anticipated that settlement would be possible at approximately the stato passivo level. The Club has indicated that with the co-operation of the 1971 Fund in respect of the claims made by the clean-up contractors which in the Fund's view are not time-barred, the Club would be prepared to pay all these claims within the stato passivo figures, thus leaving the only outstanding claim in the litigation that of the State of Italy itself. On the basis of the above figures, the total cost of paying those claims (other than the claim of the State of Italy and the claims in respect of France and Monaco) would amount to approxaimtely Llt 31 514 million (£13.2 million), plus interest calculated in accordance with the principles indicated in paragraph 4.10.3 above.

4.10.5 The UK Club has advised the Italian Government and of its intentions in this respect. The UK Club has pointed out that if the 1971 Fund were to pay all claims outstanding from France and Italy to the extent not included in the Club's settlement proposals, the remaining balance of the amount of Llt 113 000 million, which was the original proposal for a global settlement, would be some Llt 73 846 million (£31 million). The extent to which this amount could be made available to the Italian State would depend on a decision of the Fund Assembly, but it would be available if the Fund Assembly were to agree that the 1971 Fund should pay the amount normally due from the Fund under the 1971 Fund Convention in full and final resolution of all outstanding claims, as envisaged at the time of the original proposal for a global settlement.

4.11 The UK Club has also advised the Director that if final settlement of all claims cannot be achieved within the terms of the original global settlement proposal, the owners and the UK Club reserve the right to withdraw the offer, made as part of the original global settlement proposal, to waive their claim for indemnification under Article 5.1 of the 1971 Fund Convention. In the event that the intended settlements referred to above are concluded, a claim for indemnification may therefore be anticipated from the shipowner/UK Club.

4.12 It is understood that the Italian Government is now considering the position of the Italian State in the light of the information provided by the UK Club as to its intentions for settlement of all Italian claims other than those of the Italian State.

4.13 When the Director was informed by the UK Club in the summer of 1996 of the on-going discussions between the Club and the public bodies, he made it clear in a letter to the Club that he did not have the authority to express any opinion as to the 1971 Fund's position concerning out-of-court settlements made by the Club which differed from the terms of the global settlement proposed jointly by the shipowner/Club and the Fund in 1995. He stated that if the shipowner/Club

were to succeed in reaching agreements with public bodies, he would have to report the developments to the Assembly, which would then have to decide on the Fund's position.

Payments to certain claimants

4.14 At its 47th session, the Committee noted that the French Government had offered to provide as security the amount payable by the 1971 Fund to the French State for the State's accepted claim. It was noted that this security was not a State guarantee. 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 1971 Fund, the Executive Committee instructed 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 set out in the table reproduced in paragraph 4.1 of document FUND/EXC.47/2, totalling FFr10 659 469 (£1 375 200).

4.15 All the 33 French public claimants concerned (other than the French State) were paid in March and April 1996.

4.16 At its 47th session, the Director informed the Executive Committee that two Italian claimants, whose claims were not time-barred against the 1971 Fund, namely the contractors Ecolfriuli and Ecolmare, had contacted the Fund's Italian lawyer to discuss the possibility of being paid. It was noted that these claimants had indicated that, if the 1971 Fund were to pay their claims, they would be prepared to submit to the Fund a bank guarantee ensuring repayment of any amounts paid by the Fund which resulted in these claimants receiving more than their share, should the claims later be reduced pro rata (document FUND/EXC.47/2/Add.1, paragraph 1.1).

4.17 The Executive Committee instructed the Director to pay in full the agreed amounts to any Italian claimant whose claim was not time-barred against the 1971 Fund and who provided a bank guarantee or other suitable security which would give the Fund adequate protection against overpayment if later the claims were to be reduced pro rata (document FUND/EXC.47/14, paragraph 3.1.18).

4.18 The quantum of the claims presented by Ecolfriuli and Ecolmare had been agreed in the amounts of Llt 262 million (£110 000) and Llt 1 738 million (£728 000), respectively. These claimants have received partial payments from the State of Italy in the amounts of Llt 41 400 085 (£17 300) and Llt 376 257 505 (£157 500).

4.19 Ecolfriuli and Ecolmare have presented a joint bank guarantee for Llt 2 373 512 535 (£994 800) which, in the view of the Fund's Italian lawyer, gives the 1971 Fund adequate protection against overpayment. On 1 October 1996, the 1971 Fund paid Ecolfriuli and Ecolmare Llt 220 599 195 (£92 845) and Llt 1 361 742 495 (£573 124), respectively. The amounts paid related to the balance of the respective agreed amounts and the amounts received from the State of Italy. It should be noted that the amount of the bank guarantee corresponds to 150% of the total amount paid to these claimants.

4.20 Some other Italian claimants whose claims are not time-barred have recently approached the Fund's Italian lawyer concerning the possibility of being paid. On the Director's instructions, the Fund's lawyer has informed these claimants of the conditions for such payments laid down by the Executive Committee.

5 Action to be taken by the Executive Committee

The Executive Committee is invited to:

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

(b) consider whether the 1971 Fund should maintain its opposition in respect of the judge's acceptance to include VAT in the State's claim;

(c) give the Director such instructions on the opposition proceedings concerning the list of established claims as the Committee may deem appropriate; and

(d) consider the consequences of the settlements made by the shipowner and the UK Club.

* * *

ANNEX

LIST OF ADMISSIBLE CLAIMS[2]

A	**Fishermen**	Llt
1	Claims by 148 fishermen agreed by the shipowner/UK Club; admitted by the judge for the amounts agreed	8 913 000 000 *(£3.7 million)*
2	Claims by one fishermen/fishery co-operative; the shipowner/UK Club had not succeeded in contacting this claimant; admitted by the judge for	20 580 000 *(£8 600)*
3	Claim by one fisherman which was not supported by any documentation; rejected by the judge	0
	Sub-total of A	8 933 580 000 *(£3.7 million)*
B	**Yachts**	
1	Claims by 32 owners of yachts agreed by the shipowner/UK Club; admitted by the judge for the amounts agreed	64 000 000 *(£26 900)*
2	Claims by 3 owners of yachts which had been assessed by the shipowner/UK Club at Llt 4 220 000, admitted by the judge for	7 740 000 *(£3 200)*
	Sub-total of B	71 740 000 *(£30 100)*
C	**Tourism and tourism related businesses**	
1	Claims by 239 operators in the tourism sectors (bagni, hotels, restaurants, bars, shops, etc) agreed with the shipowner/UK Club; admitted by the judge for the amounts agreed at Llt 4 329 000 000 and US$34 368[2]	4 382 614 080 *(£1.8 million)*
2	Claims by 4 operators in the tourism sectors. The claims were considered by the shipowner/UK Club as admissible for a total of Llt 30 603 987; admitted by the judge for a total of Llt 216 302 385. The difference relates almost entirely to claims for costs of clean-up in a marina, which the Club accepted for Llt 19 million whereas the judge admitted Llt 200 million.	216 302 835 *(£90 800)*
3	Claims by 12 operators in the tourism sector where no agreement on the quantum had been reached with the shipowner/UK Club, since the documents presented were considered insufficient to substantiate the claims; the judge considered these claims partially substantiated and admitted them for a total of	106 220 000 (£44 600)

[2] The conversion of currencies in this table has been made on the basis of the rates of exchange applicable on 4 April 1996.

4	Claims by 159 operators in the tourism sector which were not supported by any documentation; these claims had not been considered by the shipowner/UK Club; they were rejected by the judge		0
	Sub-total of C		4 705 136 915 *(£2.0 million)*
D	**Contractors (other than ATI)**		
1	Claims by 13 contractors which had been agreed by the shipowner/UK Club; admitted by the judge for the amounts agreed representing the part payable directly to the contractors in addition to the part payable to the State which is included in the States's claim.		5 652 000 000 *(£2.4 million)*
2	Claims by 6 contractors which had not been agreed by the shipowner/UK Club admitted by the judge for Llt 10 757 580 000 payable directly to the contractor; an amount of Llt 14 511 030 823 should be paid to the State as reimbursement of advance payment to these contractors, and this amount is included in the State's claims.		10 757 580 800 *(£4.5 million)*
	Sub-total of D		16 409 580 800 *(£6.9 million)*
E	**State of Italy**		
1	Ministry of Merchant Marine		5 334 475 490 *(£2.2 million)*
2	Ministry of Defence		2 995 835 675 *(£1.3 million)*
3	Ministry of Civil Protection		181 151 860 *(£76 000)*
4	Ministry of Interior		648 561 388 *(£272 200)*
5	Ministry of Environment	Environmental damage	40 000 000 000 *(£16.8 million)*
		Expenses	500 000 000 *(£209 800)*
6	ATI contract		78 181 470 883 *(£32.8 million)*
7	22 other contractors (advance payments made by the State)		17 419 226 750 *(£7.3 million)*
	Sub-total of E		145 260 722 046 *(£61 million)*
F	**Regions, provinces and municipalities**		
1	6 claims (one region and 5 municipalities) which had been agreed by the shipowner/UK Club were admitted by the judge for the amounts agreed		858 000 000 *(£360 100)*

2	17 claims had not been agreed; they were admitted by the judge for Lit 599 371 604; further amounts totalling Lit 457 535 014 were admitted by the judge as reimbursement to the State for advance payments, and this amount is included in the claim for the State.		599 371 664 *(£251 500)*
	Sub-total of F		1 457 371 664 *(£611 600)*
G	**Claimants in France and Monaco**[2]	FFr	Lit
1	French State	12 580 724	3 891 304 156 *(£1 633 000)*
2	31 Municipalities, one other public body (Parc National de Port Cros) and Service départementale d'incendie et de secours; agreed by the 1971 Fund and shipowner/UK Club and admitted by the judge for the amounts agreed	10 659 469	3 297 046 817 *(£1 383 600)*
3	Principality of Monaco; agreed by the 1971 Fund and shipowner/UK Club and admitted by the judge for the amount agreed	270 035	83 525 676 *(£35 050)*
4	Small businesses in France, not agreed by Shipowner/UK Club, admitted by the judge for	237 458	73 447 387 *(£30 800)*
	Sub-total of G	23 747 686	7 345 324 036 *(£3.1 million)*
H	**Shipowner/UK Club**		
1	Shipowner		1 354 768 078 *(£568 500)*
2	Shipowner US$224 900		350 844 000 (£147 200)
3	UK Club £237 679		566 365 289 (£237 669)
	Sub-total of H		2 271 977 367 (£953 400)

	Summary	Lit	£(rounded figures)
A	Fishermen	8 933 580 000	3 700 000
B	Yachts	71 740 000	30 100
C	Tourism and tourism related businesses	4 705 136 915	2 000 000
D	Contractors (other than ATI)	16 409 580 800	6 900 000
E	State of Italy	145 260 722 046	61 000 000
F	Regions, provinces and municipalities	1 457 371 664	611 600
G	Claimants in France and Morocco	7 345 324 036	3 100 000
H	Shipowner/UK Club	2 271 977 367	953 400
	Total	186 455 432 828	78 295 100