



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1971

EXECUTIVE COMMITTEE
57th session
Agenda item 3

71FUND/EXC.57/2
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INCIDENTS INVOLVING THE 1971 FUND

HAVEN

Note by the Director

1 Introduction

This document deals with the situation in respect of the attempts to reach a global settlement of all claims arising out of the *Haven* incident.

2 Consideration of this issue prior to the Assembly's 20th session

2.1 In 1995 an offer of a global settlement of all issues arising out of the *Haven* incident was made by the shipowner, the United Kingdom Mutual Steamship Assurance Association (Bermuda) Ltd (UK Club) and the 1971 Fund. The Italian Government was not able to accept this offer. At the Assembly's 18th session Professor H Tanikawa of the Japanese delegation stated that any future initiative towards a global settlement must be taken by the claimants, including the Italian Government, and that the terms and conditions of the previous offer of a global settlement were well known. The Assembly endorsed this statement.

2.2 At its 19th session in October 1996, the Assembly instructed the Director to explore, with the Italian Government and the UK Club, the possibility of arriving at a global settlement in the *Haven* case which, as regards the 1971 Fund, fell within the maximum amount of compensation that would be available under the 1971 Fund Convention, ie the difference between 60 million SDR and 14 million SDR, minus the amounts which the 1971 Fund had paid or might have to pay to other claimants. The Assembly emphasised that such discussions were without prejudice to the 1971 Fund's position in respect of the time bar issue. The Assembly authorised the Executive Committee to approve any global settlement within certain parameters (documents 71FUND/A.19/30, paragraph 17.11 and 71FUND/EXC.52/2, paragraph 2.3).

2.3 The issue of a global settlement was again considered by the Assembly at its 3rd extraordinary session, held in April 1997, on the basis of a document prepared by the Director (document 71FUND/A/ES.3/2). The Assembly noted that the Italian Government had not given a reply to the offer for a global settlement made by the shipowner, the UK Club and the 1971 Fund. In view of this situation, it was decided that it was for the Assembly to take the decision as to whether to agree to a global settlement. The Assembly instructed the Director to continue the discussions with the Italian Government and the shipowner/UK Club concerning the possibility of arriving at a global settlement in the *Haven* case within the parameters laid down by the Assembly and the Executive Committee (document 71FUND/A/ES.3/7, paragraphs 3.1.10 and 3.1.11).

3 Consideration by the Assembly at its 20th session

3.1 At its 20th session in October 1997, the Assembly noted the developments in respect of the *Haven* incident as contained in document 71FUND/A.20/28.

3.2 The Director recalled that the 1971 Fund had become involved in extensive legal proceedings in Italy, *inter alia* concerning the maximum amount available under the 1971 Fund Convention and the method to be applied for the conversion of gold francs into Italian lire, the defence by the 1971 Fund that the majority of the claims arising out of the *Haven* incident had become time-barred and the admissibility of claims for damage to the environment *per se*. He also mentioned that another legal problem had arisen, ie that the Fund had maintained, in the Italian courts, that the right of limitation under the 1969 Civil Liability Convention had been lost. The Director stated that to pursue this issue and the other issues referred to would lead to continued lengthy, complex and costly litigation. He mentioned that representatives of a number of Member States had indicated that it would be in the interests of all parties involved if further litigation could be avoided through a global settlement of all outstanding issues.

3.3 The representative of the UK Club made the following statement:

We are able to advise the Assembly that the shipowner and the UK Club have proposed to the Italian Government an offer to contribute to a global settlement on a basis which would enable the Italian Government to consider positively a global solution within the terms that the 1971 Fund has previously laid down as conditions for a global settlement. We understand that the terms of this offer, if accompanied by a contribution from the 1971 Fund within the terms of the 1971 Fund's previous offer, can form the basis of a global settlement acceptable to the Italian Government subject to ratification by the Italian Parliament.

The offer, which has been made by the shipowner and the UK Club, is made without any admission as to liability in excess of the shipowner's limitation amount under the 1969 Civil Liability Convention and consists of the offer of an *ex gratia* amount in consideration of the termination of all outstanding litigation between the parties to a global settlement in connection with the *Haven* incident. The offer which has been made is entirely consistent with the position of the 1971 Fund in respect of its prior conditions for a global settlement.

There remains one claim which was admitted to the "stato passivo", submitted by the clean-up contractor Oromare, which has not been agreed for settlement and in respect of which no amount has been paid. In order to conclude all litigation between the Italian State, the shipowner/Club and the 1971 Fund, the UK Club, as part of its contribution to a global settlement, will undertake to resolve the claim of Oromare without recourse to the 1971 Fund and to indemnify the 1971 Fund in the event of any judgement of the Court against the 1971 Fund in connection with this claim.

Further claims have recently been submitted in the "stato passivo" from fishing interests in the Province of Imperia, which claims will be vigorously resisted. The UK Club will undertake to continue to defend these claims and to resolve them at its own expense with the appropriate indemnity to the 1971 Fund.

We understand that a global settlement on this basis, and within the conditions previously set down by the 1971 Fund, can now be positively considered by the Italian State, thus bringing an end to all litigation in connection with the *Haven*.

The Assembly will recall that, as part of the previous consideration of a global settlement, the Club had volunteered to waive its claim for indemnification from the 1971 Fund under Article 5.1 of the Convention. Since the original terms of the proposal for a global settlement have not been met, the Club is no longer prepared to waive its claim in this respect and will continue to maintain its claim for indemnification under Article 5.1.

We would therefore seek an early opportunity of presenting to the Director the legal and factual basis on which the claim for indemnification is made.

3.4 The Italian delegation made the following statement:

The Italian delegation wishes to state that the proposal presented by the P & I Club satisfies, in conjunction with the offer made by the Fund, the minimum requisites requested by the Italian Government in order to examine the possibility of accepting a global settlement for the Haven incident. The Italian Government will therefore be now in the position to evaluate positively the matter.

For this purpose the Fund should possibly reconfirm its offer, clearly indicating the financial details on the basis of the amounts it has already disbursed.

The decision of the Government will then have to be submitted to the Italian Parliament.

3.5 Professor H Tanikawa of the Japanese delegation stated that, in his view, the 1971 Fund's proposal of a so-called global settlement was still available.

3.6 The Chairman confirmed, on behalf of the Assembly, the statement made by Professor Tanikawa that the 1971 Fund's offer was still available.

3.7 The Assembly emphasised that the offer was subject to certain conditions as laid down in paragraphs 3.20 and 3.24 of document FUND/EXC.43/7, in particular that the offer was without prejudice to the 1971 Fund's position in respect of the issue of time bar.

3.8 It was noted that, under the proposed global settlement, all legal actions in the Italian Courts would be withdrawn.

3.9 The Director stated that if a global settlement of all outstanding issues were to be reached along the lines set out by the Assembly and the Executive Committee (cf document FUND/EXC.43/7, paragraph 3.14), the 1971 Fund's involvement would be as follows:

Italian Lire

Total amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention, ie 60 million SDR, converted on the basis of the rate of exchange on the day of the constitution of the shipowner's limitation fund		102 643 800 000
<u>less</u> shipowner's limitation amount, ie 14 million SDR		<u>23 950 220 000</u>
		78 693 580 000
<u>less</u> Ecolfriuli/Ecolmare (already paid by the 1971 Fund)		<u>1 582 341 690</u>
		77 111 238 310
<u>less</u> payments already made by the 1971 Fund to French public bodies other than the State, FFr10 659 469, converted on the basis of the cross rate FFr:Lire on the date of purchase of French Francs (28.3.1996) according to the Financial Times, ie Lit 311.60:FFr		3 321 490 540
<u>less</u> payments to be made by the 1971 Fund		
to the French Government	FFr12 580 724	
to the Principality of Monaco	<u>270 035</u>	
	<1> FFr12 850 759	<u>3 742 141 021</u>
Balance to be paid by the 1971 Fund to the Italian Government in the context of a possible global settlement		<u>70 047 606 749</u>

3.10 The Assembly authorised the Executive Committee to determine, at its 57th session, whether the conditions for the global settlement laid down by the Assembly had been fulfilled, and if so, to approve it. It was agreed that if this issue could not be decided at that session, the matter would be referred to the Assembly at its 4th extraordinary session, to be held in April 1998 (document 71FUND/A.20/30, paragraph 17.13).

3.11 The Assembly decided to extend the mandate of the Consultation Group established by the Executive Committee at its 42nd session to the next session of the Assembly.

4 Developments since the Assembly's 20th session

4.1 The Assembly noted at its 20th session that the shipowner/UK Club had continued to settle and pay claims in the "stato passivo" and that the only claims in respect of which agreement had not been reached were those of Oromare (an Italian contractor) and the Italian State. In December 1997 agreement was reached between the shipowner/UK Club and Oromare to settle Oromare's claim. The settlement amount for inclusion in the "stato passivo" is Lit 1 500 million (£515 600). It is thought that the UK Club paid this claim on 31 December 1997. As a result of this settlement, the only unresolved claim included in the "stato passivo" is that of the Italian State.

<1> This figure represents an estimate of the cost in Italian Lire to purchase FFr12 850 759, based on the cross rate of 17 October 1997, ie 291.20. Consequently the final figure may differ from the estimated figure.

4.2 There have been no developments in respect of the claims recently submitted from fishing interests in the Province of Imperia. As mentioned above (paragraph 3.3), the UK Club has undertaken to resolve these claims at its own expense with the appropriate indemnity to the 1971 Fund, if the conditions of a global settlement are satisfied.

4.3 It is expected that the UK Club will make a presentation to the 1971 Fund in respect of the legal and factual basis on which its claim for indemnification under Article 5.1 of the 1971 Fund Convention is based.

4.4 There has been no information from the Italian Government since the Assembly's 20th session as to any progress towards a global settlement.

5 Criminal proceedings

It will be recalled that criminal action was brought in the Court of Genoa against Messrs L and S Haji Ioannou and Mr C Doules, three individuals connected with the ownership and operations of the *Haven* and against the shipowner's superintendent. The accused were acquitted by a verdict delivered on 21 November 1997. The reasoned judgement is not yet available. The prosecutor has not yet indicated whether he will appeal against the judgement.

6 Action to be taken by the Executive Committee

The Executive Committee is invited:

- (a) to take note of the information contained in this document; and
 - (b) to give the Director such instructions as it may deem appropriate in respect of the *Haven* case.
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