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OIL POLLUTION
COMPENSATION
FUND 1971

EXECUTIVE COMMITTEE
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Agenda item 3

71FUND/EXC.62/3
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INCIDENTS INVOLVING THE 1971 FUND

HAVEN

Note by the Director

Summary:	On 4 March 1999 the Italian State, the shipowner, the UK Club and the 1971 Fund signed an agreement on a global settlement of all outstanding issues. The agreement was approved by the Corte dei Conti on 22 April 1999. When all legal actions in the Italian courts had been withdrawn in accordance with the agreement, payments were made to the Italian State, the French State and the Principality of Monaco.
Action to be taken:	Information to be noted.

1 Introduction

1.1 For several years efforts were made to reach a global settlement of all issues arising out of the *Haven* incident. In June 1995 an offer for a global settlement was made by the shipowner, the shipowner's insurer (the United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Ltd (UK Club)) and the 1971 Fund.

1.2 At its 4th extraordinary session held in April 1998, the Assembly authorised the Director to sign a tripartite agreement on a global settlement between the Italian State, the shipowner/UK Club and the 1971 Fund once the necessary Bill had been approved by the Italian Parliament, provided that the agreement fulfilled the conditions for a global settlement previously laid down by the Assembly. The Assembly further authorised the Director to pay to the Italian State, the French State and the Principality of Monaco the settlement amounts referred to in the table in paragraph 8.6 of document 71FUND/A/ES.4/16. The Assembly also approved, as part of a global settlement, payment of £2.5 million to the UK Club in indemnification under Article 5.1 of the 1971 Fund Convention (document 71FUND/A/ES.4/16, paragraph 8.9).

1.3 A Bill authorising the Italian Government to conclude an agreement on a global settlement was approved by the Italian Parliament and the Act in question was promulgated on 16 July 1998 (N°239). An English translation of the Act was reproduced in the Annex to document 71FUND/A.21/16.

1.4 Representatives of the Italian State, the shipowner/UK Club and the 1971 Fund met in July and September 1998 and elaborated the text of the agreement for a global settlement. The agreement was not immediately signed by the parties, since the Italian Government considered it appropriate to obtain an opinion of the Consiglio di Stato confirming the conformity of the proposed agreement with the terms of the Act.

1.5 The Consiglio di Stato issued its opinion dated 25 November 1998 in which it concluded that the proposed agreement conformed with the Act. The Consiglio di Stato nevertheless considered that certain amendments should be made to the agreement.

1.6 Representatives of the Italian State, the shipowner/UK Club and the 1971 Fund met in Rome on 21 December 1998 and revised the draft agreement in the light of the opinion of the Consiglio di Stato. The draft agreement was also amended in certain other respects.

2 The agreements

2.1 The agreement between the Italian State, the shipowner/UK Club and the 1971 Fund was signed in Rome on 4 March 1999. The English version of the agreement was reproduced in Annex I to document 71FUND/EXC.61/2.

2.2 Under the tripartite agreement, the parties had to withdraw all legal actions in the Italian courts. The Italian State would first withdraw as a civil party to the criminal proceedings against three individuals connected with the ownership and operation of the *Haven*. All the parties to the agreement would then withdraw all actions relating to the determination of the list of established claims ("stato passivo"). The Italian State would thereafter withdraw its action against the 1971 Fund, and the Italian State and the 1971 Fund would withdraw the actions relating to the shipowner's right to limit his liability. Finally, the 1971 Fund would withdraw its appeal to the Court of Cassation in respect of the Court of Appeal's judgement on the issue of the method of converting the maximum amount available under the 1971 Fund Convention. In order to become effective, the agreement had to be approved by the Corte dei Conti.

2.3 As regards the 1971 Fund the agreement was based on a maximum amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention of 60 million Special Drawing Rights (SDR). The amount to be paid by the 1971 Fund did not relate to environmental damage. The agreement provided for a payment by the shipowner/UK Club to the Italian State on an *ex gratia* basis and without admission as to the liability of any party, to the extent that the payment exceeded the balance of the limitation amount under the 1969 Civil Liability Convention. In addition the shipowner/UK Club undertook to defend further claims which were submitted during 1997 in the limitation proceedings from fishery interests in the Province of Imperia, and to resolve these claims at their own expense holding the 1971 Fund harmless in the event of an unfavourable outcome in these proceedings.

2.4 The tripartite agreement was submitted to the Corte dei Conti on 19 March 1999. The Court approved and registered the agreement on 22 April 1999.

2.5 A separate agreement between the shipowner/UK Club and the 1971 Fund on the issue of indemnification was also signed in Rome on 4 March 1999. This agreement was reproduced in Annex II to document 71FUND/EXC.61/2.

3 Payments under the agreements

3.1 The payments by the shipowner/UK Club and the 1971 Fund to the Italian State were effected by means of an irrevocable letter of credit for the benefit of the State issued by the Banca Commerciale Italiana in Genoa. The shipowner/UK Club and the 1971 Fund provided the letter of credit to the Italian State once the Corte dei Conti had approved the settlement agreement. The bank was authorised to release the funds to the Italian State when documents had been presented to the bank evidencing the withdrawal of the relevant legal actions.

3.2 The withdrawal of the legal actions referred to in paragraph 2.2 took place on 19 May 1999, except for the 1971 Fund's withdrawal of its appeal before the Supreme Court, which took place on 28 May 1999. The latter was accepted by the Italian Government on 10 June 1999 and by the UK Club on 16 June 1999. The Supreme Court is expected to issue the order of extinction of the appeal in the near future.

3.3 The funds under the letter of credit were released to the Italian State on 27 May 1999.

3.4 The 1971 Fund made payments of FFfr12 580 724 to the French State on 17 June 1999 and of FFfr270 035 to the Principality of Monaco on 22 June 1999.

3.5 The 1971 Fund paid indemnification of £2.5 million to the UK Club on 7 May 1999.

4 Further claims

4.1 Further claims were submitted in 1997 in the limitation proceedings from fishery interests in the Province of Imperia. Under the tripartite agreement, the shipowner/UK Club undertook to defend these claims and resolve them at their own expense.

4.2 In a decision dated 16 April 1999, the judge in charge of the limitation proceedings rejected these claims for procedural reasons. One group of these claimants undertook not to lodge opposition to this decision. Another group of claimants has lodged an appeal, whereas the remaining claimants have not yet taken a decision in this regard.

5 Financial consequences of the global settlement

5.1 The financial consequences for the 1971 Fund of the global settlement are set out below:

		Lit
Total amount available under 1969/1971 Conventions (60 million SDR), converted using rate applicable on date when shipowner's limitation fund was established		102 643 800 000
<u>Less</u>	Shipowner's limitation amount (14 million SDR)	<u>- 23 950 220 000</u>
		78 693 580 000
<u>Less</u>	Payments made by 1971 Fund to two Italian contractors	<u>- 1 582 341 690</u>
		77 111 238 310
<u>Less</u>	Payments made by 1971 Fund to French public bodies other than the French State (FFfr10 659 469), converted using rate applicable on date of purchase of French Francs (28.3.96)	<u>- 3 321 490 540</u>
		73 789 747 770
<u>Less</u>	Other payments by the 1971 Fund in French Francs converted using the rate applicable on the date of purchase of French Francs (7.9.98) - To French State - To Principality of Monaco	FFfr12 580 724 <u>270 035</u> FFfr12 850 759 <u>3 787 118 677</u>
Balance paid by 1971 Fund to Italian State		70 002 629 093
Payment to UK Club (indemnification of the shipowner)		£2 500 000

5.2 Under the agreement the UK Club paid to the Italian State a total of Lit 47 597 370 907. This amount includes an *ex gratia* payment made without admission as to the liability of any party, to the extent that the amount exceeds the balance of the shipowner's limitation pursuant to Article V.1 of the 1969 Civil Liability Convention.

5.3 The total amount received by the Italian State was therefore Lit 117 600 million (£42.8 million).

6 Action to be taken by the Executive Committee

The Executive Committee is invited to take note of the information contained in this document.

