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The *Haven* Incident - Major Oil Disaster

Italy, 11 April 1991

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Appendix 1

THE *HAVEN* INCIDENT
(Italy, 11 April 1991)

The Incident

After partial discharge of her cargo of Iranian heavy crude oil at Genoa (Italy), the Cypriot tanker *Haven* (109,977 GRT) caught fire and sustained a series of explosions on 11 April 1991 whilst at anchor seven miles off Genoa. The tanker, which carried approximately 144,000 tonnes of crude oil at the time, broke into three parts. A large section of deck became separated from the main structure as a result of an explosion and sank to a depth of about 80 metres. The vessel began to drift to the south west. In a position about seven miles south of Arenzano, the bow section became detached and sank to a depth of about 500 metres. The remaining main part of the ship was towed into shallower water where, after a further series of explosions. It sank on 14 April, some 1.5 miles off the coast at Arenzano to a depth of 90 metres.

As a result of the incident, the Italian Government on 14 April declared a state of national emergency, which is still in force.

Clean-up Operations and Related Issues

Operations in Italy

The quantity of oil consumed by the fire has not been established, but it is estimated that over 10,000 tonnes of fresh and partially burnt oil were spilled into the sea prior to the sinking. After the sinking, oil continued to seep from the wreck at a slow rate and small quantities of oil appeared on the surface. Divers were able to reduce and finally stop the main leakage within about ten days of the incident. Since then, there has been minor seepage from the wreck.

Comprehensive underwater surveys of the main section of the wreck were conducted using a remotely operated vehicle, including survey of the interior of those tanks that were readily accessible. The surveys showed the wreck to be in a severely damaged condition with quantities of burnt oil residue lying on deck. The cargo tanks which had contained oil were found to be virtually free of liquid cargo. Only small quantities of burnt residue remained, clinging to the structure. The deck area was cleared of burnt residue using a vacuum lift. The residue was brought to the surface and placed in barges for eventual disposal.

Since most of the oil spilt initially consisted of burnt residue, which was highly viscous at ambient temperatures, collection of this oil at sea proved very difficult. The authorities concentrated on deploying booms to protect sensitive areas along the coast, primarily amenity beaches. These measures were quite successful when weather conditions were favourable, but gale force winds soon carried both oil and booms ashore.

On 17 April, a significant quantity of floating oil came ashore between Genoa and Savona, and emulsified oil was left stranded on the beaches at Arenzano, Cogoleto and Varazze, especially around the many artificial headlands. West of Varazze pollution was very light and consisted mainly of tar balls and patches of burnt residue. The clean-up on shore was initially conducted by local authorities, using the Army as well as local volunteers in

some areas. The work mainly consisted of manual and mechanical removal of stranded oil and contaminated beach sediment.

Around 40 tonnes of oil entered a marina in Arenzano, resulting in the oiling of moorings, harbour walls and about 130 yachts and fishing boats. Smaller quantities of oil entered a marina at Varazze and approximately 200 boats became polluted. The contaminated yachts and fishing boats in Arenzano and Varazze marinas have been cleaned.

On 24 May 1991, a contract on pollution monitoring and clean-up was concluded between the Italian Government and a consortium of contractors known as ATI. The beach clean-up activities as outlined in the contract were completed by the end of August. However, increased water temperatures and wave action resulted in droplets of sunken oil floating to the surface causing limited but regular re-contamination of some beaches. Attempts were made by divers to chart the extent of the problem and to recover sunken oil in shallow water off the coast from Arenzano to Varazze by using a hydraulic lift. A survey was conducted of the sea bed under the presumed track of the tanker during the three days prior to the sinking, and some oiled areas were identified and mapped. Attempts have also been made to trace oil on the sea bed by using trawling nets.

Approximately 25 000m^3 of collected oily waste is awaiting disposal. In addition, some 20 000 metres of contaminated booms have been collected, awaiting cleaning or disposal.

The Italian authorities are continuing to monitor the water surface and water column. Investigations into alleged environmental damage are also being carried out.

From the day of the incident, the Director and the experts employed by the IOPC Fund, the shipowner and his P & I Insurer have continually held discussions with the Italian authorities responsible for the operations. The Director attended meetings with the interministerial committee in Rome which has overall responsibility for the operations. The technical experts engaged by the IOPC Fund, the shipowner and the P & I Insurer have worked closely with the Genoa Port authority which was charged with monitoring and controlling the clean-up activities.

Operations in France

Some oil spread as far west as Hyeres near Toulon in France, affecting also the coast of Monaco. The French Government decided on 15 April to activate the national contingency plan with regard to operations at sea (PLAN POLMAR-MER). The application of this plan was suspended on 29 April. The plan relating to on-shore operations (PLAN POLMAR-TERRE) was not activated since the pollution on-shore in France was comparatively limited.

Four French departments were affected, of which Bouches-du-Rhone and Corsica only lightly. Sixteen communes were involved in Alpes Maritimes and 21 in Var. The clean-up operations involved mechanical and manual collection of tar balls on amenity beaches. Most of this activity was completed by the end of June. However, small quantities of tar balls continued to arrive on beaches, necessitating some clean-up activity during the summer months.

On 27 September 1991, the IOPC Fund was informed by the French Government that French territorial waters and the French coastline had been affected by oil which was suspected to have originated from the *Haven*. PLAN

POLMAR-MER was reactivated on 26 September and suspended on 3 October. Some oil was reported to have affected communes in the Department of Var, west of Nice.

Operations in Monaco

The authorities in Monaco carried out operations to collect oil at sea and to clean some beaches which had become polluted. The operations were limited in scope.

Legal Proceedings

After legal action had been taken against the shipowner, the court of first instance in Genoa opened limitation proceedings in May 1991 and fixed the limitation amount at Llt 23,950,220,000 (£11.1 million), which corresponds to 14 million SDR, ie the maximum amount under the Civil Liability Convention. The limitation fund was established by the P & I Insurer, the United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Ltd (the "UK Club"), by means of a letter of guarantee. The IOPC Fund has intervened in the limitation proceedings, pursuant to Article 7.4 of the Fund Convention.

The IOPC Fund has lodged an opposition against the court's decision to open the limitation proceedings, reserving its right to challenge the shipowner's right of limitation. Corresponding oppositions have been lodged by the Italian Government and some other claimants.

The IOPC Fund is following the investigation into the cause of the incident which is being carried out by the Italian authorities, and has appointed technical experts for this purpose.

In addition, the IOPC Fund has lodged an opposition against the acceptance by the court of a bank guarantee to constitute the limitation fund. The reason for the opposition is that no interest accrues on a bank guarantee, whereas if the limitation amount had been paid in cash, it would have been invested by the court and would have earned interest to the benefit of third parties and the IOPC Fund. For this reason the IOPC Fund has asked the court either to declare that the guarantee was insufficient and that no limitation fund had been validly established, or to order that the guarantee should be increased to Llt 4,203,500,000, so as to cover interest for a period of five years before the end of which no final judgement could be expected.

In September 1991, the court of first instance in Genoa started to hold hearings to consider the claims arising out of this incident. Hearings have taken place regularly and will continue to be held until all the claims have been dealt with. It is estimated that the court will not be able to establish the list of accepted claims ("stato passivo") until the summer of 1992.

Claims for Compensation

Some 1300 Italian claimants have presented claims to the court within the prescribed time limit. However, many claims do not indicate any figures, and a number of claims state that the amount indicated is provisional. The total amount of those claims which indicate figures is Llt 1,541,488,793,305 (£717 million). A number of claims are duplications.

The largest claim has been presented by the Italian Government, whose claim totals Llt 242,899,669,000 (£113 million). This claim includes items relating to initial clean-up costs incurred by contractors instructed by several government authorities; reimbursement of the value of oil booms lost or destroyed; expenses incurred by various ministries and public bodies; and costs associated with the execution of the ATI contract on clean-up monitoring.

The Italian Government's claim also includes an item relating to presumed damage to the marine environment in the amount of Llt 100,000 million (£47 million). The claim documents do not indicate the kind of "environmental damage" which has allegedly been sustained, nor do they give any indication as to the method used to calculate the amount claimed. The Italian Government has informed the Director that it has not been possible to describe the environmental damage because the study of the effects of the incident on the marine environment has not yet been completed. It is expected that the results of this study will be available in the autumn of 1992. The Government has also stated that the figure given in the claim is only provisional.

The region of Liguria has requested that the figure in the Italian Government's claim relating to environmental damage, Llt 100,000 million, be increased to Llt 200,000 million (£93 million). The Region has maintained that the amount should be apportioned between the various territorial entities which have directly suffered or are suffering ecological damage. Two provinces and 14 communes have included items relating to environmental damage in their respective claims. None of these claims contains any description of the alleged damage and the claims setting out an amount do not explain how the amounts have been calculated.

The owners of 33 yachts and 150 fishing boats have claimed compensation for contamination of their boats in the amounts of Llt 168,143,771 (£78 200) and Llt 1,264,303,328 (£588,000), respectively. Claims for loss of income have been presented by some 700 hotel owners for Llt 70,284,601,128 (£37.3 million) and by 150 fishermen for Llt 3,549,496,500 (£1.7 million).

The French Government has brought legal action in the Court of Genoa claiming compensation for the cost of operations at sea and beach clean-up in France for a total amount of FFr16,284,592 (£1.7 million). The French Government has reserved its right to claim compensation in respect of costs incurred for restoration of the marine environment, referring to the Resolution concerning damage to the environment adopted by the IOPC Fund Assembly in 1980.

Claims totalling about FFr12 million (£1.2 million) have been presented to the court in Genoa by 22 French communes and two other public bodies. These claims relate almost exclusively to shoreline clean-up activity. The claimants have reserved the right to submit evidence of additional expenditure. One of the public bodies (Parc Nationale Port-Cros) has claimed compensation for damage to the marine environment.

The IOPC Fund has been notified of some claims from private individuals in France.

No claim has so far been presented by the Government of Monaco. The costs incurred for the operations in the Principality have been indicated at FFr324,000, (£33 400).

The owner of the *Haven*, the UK Club and the IOPC Fund are setting up a database system in order to facilitate the examination of the claims. Their

experts have commenced examining the documentation presented by the claimants.

Notification by the Spanish Government

The notification which the IOPC Fund received from the Spanish Government concerning oil pollution in Spain, which is referred to above in respect of the *AGIP Abruzzo* incident, covered also the *Haven* incident. So far no claims have been presented in respect of pollution damage in Spain.

Method of Conversion of (gold) francs

The amounts in the Civil Liability Convention, as well as those in the Fund Convention, are expressed in (gold) francs (Poincare francs). Under the Fund Convention, the maximum amount payable pursuant to the Civil Liability Convention and the Fund Convention is 450 million (gold) francs. This amount was increased by the IOPC Fund Assembly in stages to 900 million (gold) francs. At the first court hearing the question was raised as to the method of conversion to be applied for calculating the maximum amount payable under the Fund Convention in Italian Lira.

The relevant provisions are Article V.9 of the Civil Liability Convention and Article 1.4 of the Fund Convention which read as follows:

> *Article V.9 of the Civil Liability Convention*:
> The franc mentioned in this Article shall be a unit consisting of sixty-five and a half milligrams of gold of millesimal fineness nine hundred. The amount mentioned in paragraph 1 of this Article shall be converted into the national currency of the State in which the fund is being constituted on the basis of the official value of that currency by reference to the unit defined above on the date of the constitution of the fund.
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> *Article 1.4 of the Fund Convention*:
> Franc means the unit referred to in Article V paragraph 9 of the Liability Convention.

In 1976 Protocols were adopted to amend the Conventions. Under the Protocols, the (gold) francs was replaced as the monetary unit by the Special Drawing Right (SDR) of the International Monetary Fund. One SDR was then considered equal to 15 (gold) francs. The value in SDR is to be converted into national currency by referring to its market exchange value. The 1976 Protocol to the Civil Liability Convention entered into force in 1981, whereas the 1976 Protocol to the Fund Convention has not yet come into force.

In 1978, the IOPC Fund Assembly adopted an interpretation of the provisions in the Fund Convention dealing with (gold) francs under which the amount expressed in francs shall be converted into SDRs on the basis that 15 francs are equal to one SDR. The number of SDRs thus found shall be converted into national currency in accordance with the method of evaluation applied by the International Monetary Fund (IOPC Fund Resolution No 1).

At the first court hearing in Genoa, it was maintained by some claimants that the conversion should be made by using the free market price of gold, since the 1976 Protocol to the Fund Convention was not in force.

The method of conversion was discussed by the Executive Committee in October 1991. The Committee took the position that the conversion should be

made in accordance with the method set out in the abovementioned Resolution and opposed the use of the free market price of gold. The reasons for this position can be summarised as follows:

> The IOPC Fund has two inter-related purposes: firstly, to pay compensation to victims of pollution damage who are unable to obtain full compensation under the Civil Liability Convention and, secondly, to indemnify the shipowner for a specified portion of his liability to victims under that Convention. To achieve these objectives it is necessary to use the same unit of account and the same method of converting the unit into national currencies in the application of both the Civil Liability Convention and the Fund Convention.
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> The original unit of account (the (gold) franc) in the Civil Liability Convention, which was also adopted for the Fund Convention, was to be converted into national currencies on the basis of the "official value" of gold by reference to the national currencies in question. Since the adoption of that unit, the official value of gold has disappeared from the international monetary system, and it is therefore no longer possible to convert the (gold) franc on the basis laid down in the text of the Civil Liability Convention.
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> The inclusion of the word "official" in the text of 1969 Civil Liability Convention was made deliberately by the Diplomatic Conference which adopted the Convention in order to ensure stability in the system and was clearly meant to rule out the application of the free market price of gold.
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> The "market price" of gold is particularly inappropriate as a basis for converting the IOPC Fund's limits into national currencies. In the first place, the market price is very volatile and continuously changes in value. Using such a changeable unit as a basis cannot produce the uniformity which was one of the main reasons for the adoption of a common unit of account for use in all contracting states. In the second place, using the market price of gold would create absurd results in practice. For example, it would mean that the amount of indemnification to be paid to the shipowner by the IOPC Fund would be calculated on a basis different from that used for calculating the shipowner's liability to the victims under the Civil Liability Convention. The indemnification to be paid by the Fund to the shipowner constitutes a portion of the shipowner's liability under the Civil Liability Convention. Using different units and different methods of conversion for the two Conventions would create complications and could result in the shipowner receiving more or less than the portion which the 1971 Fund Convention provides.
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> These considerations demonstrate that the only appropriate method for converting the unit of account in the 1971 Fund Convention is to use the SDR method, as provided for in the 1976 Protocol to the Fund Convention and in IOPC Fund Resolution No 1.
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> The State of Italy, as a Member of the IOPC Fund, is bound by the decisions taken by the Assembly of the Fund in which it is stated that the SDR method should be used for converting the limits of the Fund's obligations, pending the entry into force of the 1976 Protocol to the Fund Convention. Furthermore, Italy has ratified the Protocol to the Fund Convention which provides for the SDR method. Although that Protocol is not yet in force, Italy as a Contracting State to the Protocol is under an obligation not to take any action which would defeat the object and purpose of the Protocol, which is to use the SDR method for determining the limits of the Fund's obligations (Article 18.1 of the Vienna Convention on the Law of Treaties).

In its pleadings to the court, the French Government has supported the IOPC Fund's position. The Italian Government has not yet taken any position as to the method of conversion.

Damage to the Marine Environment

In October and December 1991, the Executive Committee discussed the admissibility of claims relating to damage to the marine environment. In particular, the Committee addressed a question which had been raised at the first hearing in the court in Genoa in respect of claims relating to damage to the marine environment which in the view of the IOPC Fund were not admissible under the Civil Liability Convention and the Fund Convention. The query was whether such claims could be pursued against the shipowner outside the Conventions, on the basis of national law.

At the request of the Executive Committee, the Director had prepared a study of this issue. The results of this study can be summarised as follows:

The Civil Liability Convention and the Fund Convention have been implemented into Italian legislation by the Act of 27 May 1978 (No 506) and thus form part of Italian law. If a conflict arises between the Conventions and any other Italian statute, the Conventions would prevail since they are "special laws". The Italian legislation relating to protection of the marine environment is mainly contained in the Act of 31 December 1982 (No 979) which contains provisions for the protection of the sea (the "1982 Act") and the Act of 8 July 1986 (No 349) which established the Ministry of the Environment (the "1986 Act").

Certain elements of damage to the marine environment are non-quantifiable. The IOPC Fund has consistently taken the position that claims relating to non-quantifiable elements of damage to the environment cannot be admitted. In its interpretation of the Civil Liability Convention and the Fund Convention, the IOPC Fund Assembly has excluded the assessment of compensation for damage to the marine environment on the basis of an abstract quantification of damage calculated in accordance with theoretical models (Resolution No 3 by the Assembly in 1980). The Intersessional Working Group set up by the Assembly in 1980 to examine whether and, if so, to what extent claims for environmental damage were admissible under the Conventions, used similar language, viz that compensation could only be granted if a claimant had suffered quantifiable economic loss. The conclusions of the Working Group were endorsed by the Assembly.

The Civil Liability Convention and the Fund Convention are Conventions in the field of civil law adopted for the purpose of providing compensation to victims of pollution damage. For this reason, claims which do not relate to compensation do not fall within the scope of the Conventions, for example, damages awarded under the 1986 Act relating to non-quantifiable elements of damage to the environment which are of a punitive character. Since claims of this kind do not relate to compensation such claims can be pursued outside the Conventions on the basis of national law. It could not have been the intention of the drafters of the Fund Convention that the IOPC Fund should pay damages of a punitive character, calculated on the basis of the seriousness of the fault of the wrong-doer or the profit earned by the wrong-doer. If such damages were to fall within the scope of the Conventions, the results would be unacceptable.

During the discussions in the Executive Committee, the Italian delegation stated that it did not agree with the basis of the Director's analysis of the problem nor with his conclusions. This delegation noted that Italy had ratified the Civil Liability Convention and the Fund Convention and that these

Conventions were part of the Italian legal system constituting special laws. However, in the view of this delegation, the Conventions did not contain any provisions excluding or limiting the right of compensation for environmental damage. It was pointed out that pollution damage was defined in the Civil Liability Convention as any "loss and damage caused by contamination resulting from the escape or discharge of oil". The Italian delegation agreed with the Director that the Conventions did not exclude the admissibility of claims for damage to the marine environment but it could not agree with the Director's interpretation of the Conventions under which only quantifiable elements of such damage were admissible. In the view of the Italian delegation, compensation was mainly governed by the 1982 Act which envisaged the possibility of compensation for damage to the marine environment both for quantifiable and unquantifiable elements; this Act explicitly mentioned compensation for damage to marine resources, and compensation under that Act should be quantified without reference to the seriousness of the fault of the wrong-doer. The Italian delegation did not accept that compensation under the 1986 Act should be considered as a sanction.

The International Group of P & I Clubs was of the view that it could not be correct that some claims for damage to the environment fell outside the scope of the Conventions or the definition of "pollution damage". In the view of the Group the question of admissibility should be linked to the issues of compensation payable under the Conventions and quantification of damage to the marine environment. The Group maintained that some methods of assessing compensation were not acceptable, such as an abstract quantification of damage based on theoretical methods. It agreed with the Director that another unacceptable method would be the assessment of compensation based on "equitable" quantification of damage or by reference to the seriousness of the fault of the wrong-doer. It was accepted by the Group that penalties or fines could be imposed on shipowners by individual States based on the seriousness of the fault of the shipowner and the degree of the resulting damage, but in the Group's view this issue was independent of the issue of compensation. The International Group pointed out the serious implications for shipowners if claims for compensation for environmental damage were not admissible under the Civil Liability Convention because the method of quantification included the concept of punishment, whilst the same claims could be brought against the shipowner under national law because that national law provided for the concept of punishment being included in the method of quantification of the damage.

The Executive Committee agreed in general with the Director's analysis of the problem and instructed the Director to submit pleadings on behalf of the IOPC Fund to the court in Genoa along the lines set out in the abovementioned study. The Committee noted that since the claimants had not yet given any details as to the basis of their claims, the content of the IOPC Fund's pleadings could only be decided when the claimants had presented their arguments.

Source: IOPC Fund Annual Report 1991.
(Section 5.4.1 of the text refers).