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COMPENSATION
FUND 1971

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WINDING UP OF THE 1971 FUND

INTERNATIONAL CONFERENCE ON THE REVISION OF THE 1971 FUND CONVENTION

Note by the Director

Summary:

A Diplomatic Conference held from 25 to 27 September 2000 adopted a Protocol amending Article 43.1 of the 1971 Fund Convention which sets out when the Convention will cease to be in force. The Protocol will enter into force under a tacit amendment procedure. Unless one third or more of the remaining 1971 Fund Member States object prior to 27 March 2001 to its entry into force, the Protocol will come into force on 27 June 2001. Under the revised text of Article 43.1 the 1971 Fund Convention will cease to be in force when the number of Member States falls below 25 or one year after the total quantity of contributing oil received in the remaining Member States falls below 100 million tonnes.

Action to be taken:

Information to be noted.

1 Introduction

- 1.1 Under Article 43.1 of the 1971 Fund Convention that Convention ceases to be in force when the number of States Parties falls below three. It is unlikely that this will happen in the near future.
- 1.2 At its October 1999 session the Executive Committee, acting on behalf of the Assembly, decided that IMO should be requested to convene urgently a Diplomatic Conference for the purpose of adopting a Protocol amending Article 43.1 of the 1971 Fund Convention to the effect that the Convention would be terminated well before the number of States fell below three.

- 1.3 Normally such an amendment would be binding only on the States which had expressed their acceptance. In the light of the difficulties which would result if explicit acceptance of the amendments were required, the Director had suggested that it would be appropriate to consider whether the envisaged amendment to Article 43.1 could be brought into force by means of a simplified procedure under which the consent of a State to be bound would be given not by express indication but by tacit or implied consent, ie by States failing to object within a certain period of time. Some delegations considered that since the 1971 Fund Convention did not provide for a tacit amendment procedure, it was not possible to follow such an approach.
- 1.4 The Committee elaborated a draft Protocol containing two options, one based on a tacit acceptance procedure and the other requiring explicit acceptance by States. In November 1999 the IMO Assembly approved the 1971 Fund's request for a Diplomatic Conference. The Conference was held from 25 to 27 September 2000.

2 The Diplomatic Conference

- 2.1 The Diplomatic Conference was attended by the following 24 of the 40 remaining 1971 Fund Member States:

Albania	Malta
Antigua and Barbuda	Mauritius
Brunei Darussalam	Morocco
Colombia	Mozambique
Côte d'Ivoire	Poland
Estonia	Portugal
Fiji	Russian Federation
Gabon	Slovenia
India	Syrian Arab Republic
Italy	Tonga
Kenya	United Arab Emirates
Malaysia	Yugoslavia

- 2.2 Nineteen former 1971 Fund Member States and four other States participated as observers.
- 2.3 The IOPC Funds also attended the Conference as an observer. The Director had submitted documents to the Conference explaining the importance of the 1971 Fund Convention being terminated as soon as possible and giving information on the oil receipts in the remaining 1971 Fund Member States (documents LEG/CONF.11/5 and LEG/CONF.11/5/Add.1).
- 2.4 Ambassador Oliviero Rossi (Italy) was elected President of the Conference and Captain Raja Malik Saripulazan Kamaruzaman (Malaysia) was elected Chairman of the Committee of the Whole.
- 2.5 The Conference based its considerations on the draft Protocol to the 1971 Fund Convention prepared by the Executive Committee.
- 2.6 The Diplomatic Conference adopted a Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (hereinafter referred to as the '2000 Protocol'). The Protocol is reproduced at Annex I.
- 2.7 Under Article 43.1 as amended by the 2000 Protocol, the 1971 Fund Convention will cease to be in force:
- (a) on the date when the number of 1971 Fund Member States falls below 25; or
 - (b) twelve months following the date on which the 1971 Fund Assembly or any other body acting on its behalf notes that, according to information provided by the Director on the

basis of the latest available oil reports submitted by Member States, the total quantity of contributing oil received in the remaining Member States falls below 100 million tonnes,

whichever is the earlier.

- 2.8 As regards the entry into force of the 2000 Protocol, the Conference chose the tacit acceptance procedure. The 2000 Protocol shall be deemed to be accepted six months after its adoption (ie on 27 March 2001), unless prior to that date objections to its acceptance have been communicated to the Secretary-General of IMO by not less than one third of the States which are Member States at that date. The Protocol will enter into force three months after the date on which it is deemed to have been accepted (ie on 27 June 2001).
- 2.9 The Conference adopted a Resolution urging the 1971 Fund Member States which have not already done so to denounce the 1971 Fund Convention at the earliest possible date and inviting States which have not already done so to accede to the 1992 Civil Liability Convention and the 1992 Fund Convention at the earliest opportunity. The Resolution is at Annex II.

3 Action to be taken by the Assembly

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

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ANNEX I

PROTOCOL OF 2000 TO THE INTERNATIONAL CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL FUND FOR COMPENSATION FOR OIL POLLUTION DAMAGE, 1971

THE CONTRACTING STATES to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (hereinafter the “1971 Fund Convention”),

RECALLING article 43, paragraph 1, of the 1971 Fund Convention which provides that the Convention shall cease to be in force on the date when the number of Contracting States falls below three,

RECALLING ALSO article 42 of the 1971 Fund Convention which provides for measures to be taken in the event of a denunciation the result of which will significantly increase the level of contributions from contributors in remaining Contracting States,

NOTING that denunciations of the 1971 Fund Convention will result in a significant increase in the level of contributions from contributors in remaining Contracting States,

MINDFUL of the need to ensure that at all times the International Oil Pollution Compensation Fund 1971 (hereinafter the “1971 Fund”) is able to meet in full its obligations to pay compensation to victims of pollution damage arising from incidents covered by the 1971 Fund Convention,

CONCERNED that further reductions in the contribution base of the 1971 Fund will impair the ability of the 1971 Fund to discharge its obligations,

RECOGNIZING that failure of the 1971 Fund to meet its obligations could adversely affect the credibility of the international regime for liability and compensation for oil pollution damage,

DESIRING to facilitate the orderly termination of the 1971 Fund Convention without undue complication for Contracting States or for victims of oil pollution damage,

REAFFIRMING the provisions of article 43, paragraph 2 and article 44 of the 1971 Fund Convention regarding the obligation of Contracting States and the 1971 Fund with respect to incidents occurring before the 1971 Fund Convention ceases to be in force,

HAVE AGREED AS FOLLOWS:

Article 1

For the purpose of the present Protocol:

- 1 “Convention” means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971.
- 2 “Director” means the Director of the International Oil Pollution Compensation Fund, 1971.
- 3 “Organization” means the International Maritime Organization.
- 4 “Secretary-General” means the Secretary-General of the Organization.

Article 2

Article 43, paragraph 1 of the Convention is replaced by the following text:

“This Convention shall cease to be in force:

- (a) on the date when the number of Contracting States falls below twenty-five; or
- (b) twelve months following the date on which the Assembly or any other body acting on its behalf notes that, according to the information provided by the Director on the basis of the latest available oil reports submitted by Contracting States in accordance with article 15, the total quantity of contributing oil received in the remaining Contracting States by those persons who would be liable to contribute pursuant to article 10 of the Convention falls below 100 million tonnes,

whichever is the earlier.”

Article 3

- 1 This Protocol shall be subject to acceptance by Contracting States in accordance with this article.
- 2 This Protocol shall be deemed to have been accepted six months from the date of its adoption unless, prior to that date, objections to acceptance have been communicated to the Secretary-General by not less than one-third of the States which are Contracting States on that date.
- 3 An objection to acceptance under paragraph 2 may be withdrawn at any time prior to the date of deemed acceptance in accordance with that paragraph.
- 4 Contracting States may also indicate their consent to be bound by this Protocol by signing it without reservation as to ratification, acceptance or approval, or by depositing the appropriate instrument with the Secretary-General at any time prior to the expiry of the six-month period specified in paragraph 2.

Article 4

- 1 This Protocol shall enter into force three months after the date on which it is deemed to have been accepted in accordance with paragraph 2 of article 3.
- 2 Upon its entry into force this Protocol shall apply to all Contracting States with the exception of those Contracting States which, at least three months before the date of entry into force, have declared that they do not wish to be bound by it.
- 3 A declaration made under paragraph 2 may be withdrawn at any time prior to the entry into force of this Protocol.
- 4 A Contracting State which has made a declaration under paragraph 2 and which does not withdraw the declaration prior to the date of entry into force of this Protocol shall be deemed to have denounced the Convention. Such denunciation shall take effect on the date of entry into force of this Protocol, or such earlier date as may be specified by the Contracting State in a communication to the Secretary-General.

Article 5

- 1 The text of this Protocol shall be communicated by the Secretary-General to all Contracting States immediately after its adoption.
- 2 A declaration or communication referred to in articles 3 and 4 shall be notified in writing to the Secretary-General. The Secretary-General shall bring each such notification and the date of its receipt to the notice of the Contracting States and the Director.

Article 6

As soon as this Protocol enters into force, a certified true copy thereof shall be transmitted by the Secretary-General to the Secretariat of the United Nations for registration and publication in accordance with article 102 of the Charter of the United Nations.

Article 7

This Protocol is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

DONE AT LONDON this twenty-seventh day of September 2000.

IN WITNESS WHEREOF the undersigned being duly authorised for that purpose have signed the present Protocol.

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ANNEX II

RESOLUTION ON THE TERMINATION OF THE 1971 FUND CONVENTION AND ACCESSION TO THE 1992 PROTOCOLS

THE CONFERENCE,

HAVING ADOPTED the Protocol of 2000 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (the 2000 Protocol),

CONSIDERING that the purpose of adopting this Protocol is to facilitate the orderly and early termination of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (the 1971 Fund Convention) while ensuring that the International Oil Pollution Compensation Fund 1971 is able to meet in full its obligations to pay compensation to victims of oil pollution damage covered by the Convention,

NOTING that, pursuant to article 2 of the 2000 Protocol, the 1971 Fund Convention shall cease to be in force on the date when the number of Contracting States falls below twenty-five, or twelve months following the date on which the total quantity of contributing oil received in the remaining Contracting States falls below 100 million tonnes, whichever is the earlier,

RECOGNISING the benefits for States of becoming parties to the Protocol of 1992 to Amend the International Convention on Civil Liability for Oil Pollution Damage, 1969 and the Protocol of 1992 to Amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (the 1992 Protocols),

1. REQUESTS the Secretary-General of the International Maritime Organization, as a matter of urgency, to bring the 2000 Protocol and the terms of this resolution to the attention of the remaining Contracting States to the 1971 Fund Convention and, in particular, those Contracting States which did not participate in the Conference,
2. URGES Contracting States which have not already done so, to denounce at the earliest possible date the International Convention on Civil Liability for Oil Pollution Damage, 1969 and the 1971 Fund Convention, so as to ensure that the conditions for termination of the 1971 Fund Convention contained in article 2 of the 2000 Protocol are met as soon as possible,
3. INVITES States which have not already done so to accede to the 1992 Protocols at the earliest opportunity.