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INTERNATIONAL CONFERENCE ON SALVAGE

Note by the Director

Introduction

1 The attention of the Assembly was drawn, at its 11th session, to the fact that an International Conference would be convened in 1989 by the International Maritime Organization (IMO) for the purpose of considering and adopting a new Convention on Salvage. The Director informed the Assembly of his intention to represent the IOPC Fund at the Conference and to make such interventions as might be appropriate for the purpose of explaining the position taken by the IOPC Fund's organs in respect of the notions of "pollution damage" and "preventive measures", as defined in the Civil Liability Convention, as well as in respect of other matters of interest to the IOPC Fund that might be dealt with by the Conference (document FUND/A.11/14).

2 The Assembly, at its 11th session, noted that the Director would represent the IOPC Fund at the International Conference on Salvage.

The International Conference

3 The International Conference on Salvage was held from 17 to 28 April 1989 in London. The Director and the Legal Officer attended the Conference, on behalf of the IOPC Fund, as observers.

4 The Conference based its deliberations on draft articles on salvage, prepared by the Legal Committee of IMO, intended to replace the 1910 Brussels Convention for the unification of certain rules of law relating to assistance and salvage at sea (IMO document LEG/CONF.7/3). In that draft, Chapter III (Articles 9-12) was of particular importance to the IOPC Fund, since that Chapter dealt with questions relating to salvage rewards.

5 As for the substantive provisions of the draft articles considered by the Conference, the only controversial issues related to the question of salvage rewards. In particular, there were strong divergencies of opinion in respect of the level of special compensation to be granted to a salvor who had prevented or minimised damage to the environment.

6 The Director intervened in the discussions of the Committee of the Whole set up by the Conference in order to clarify the position of the IOPC Fund in respect of the relationship between salvage costs and oil pollution damage. His intervention was mainly made in view of the fact that the observer delegation of the Oil Companies International Marine Forum (OCIMF) had submitted a document dealing with this problem. In this document, OCIMF proposed the inclusion in the new Convention of an article in which it was stated that, if a salvor were granted an enhanced reward for his efforts in preventing or minimising damage to the environment, a certain portion of the reward should be deemed to be compensation for pollution damage (IMO document LEG/CONF/7.17). The Conference did not include any provision of this kind in the Convention.

7 It will be recalled that the IOPC Fund has considered the question of whether and to what extent salvage operations fall within the definition of "pollution damage" laid down in the Civil Liability Convention, ie whether these operations can be considered as preventive measures as defined in that Convention. An analysis of this question was given in document FUND/EXC.16/4, paragraphs 2.9-2.18. At its 16th session, the Executive Committee took the position that operations can be considered as "preventive measures", as defined in the Civil Liability Convention, only if the primary purpose is to prevent pollution damage; if the operations primarily have another purpose, such as salvaging hull or cargo, the operations would not be covered by that definition. In respect of operations whose primary purpose was to prevent pollution damage, the Executive Committee stated that compensation under the Civil Liability Convention and the Fund Convention should be limited to costs (including a reasonable element of profit); the assessment should not be made on the basis of the criteria applied for the assessment of salvage awards (document FUND/EXC.16/8, paragraph 3.3.2).

8 As a result of its deliberations, the Conference adopted the International Convention on Salvage, 1989 (IMO document LEG/CONF.7/27).

9 The Convention will enter into force one year after the date on which 15 States have expressed their consent to be bound by it.

10 The questions that are of particular interest to the IOPC Fund, ie those relating to salvage rewards, are dealt with in Chapter III of the Convention, which governs the rights of salvors. This Chapter contains eight Articles (Articles 12-19). The most important provisions from the IOPC Fund's point of view are contained in Articles 12-15 and relate to the conditions for reward, the criteria for fixing the reward, the special compensation for a salvor who has prevented or minimised damage to the environment and the apportionment of rewards between salvors. The text of Articles 12-15 is at Annex I to this document.

11 The Conference also adopted a Common Understanding concerning Articles 13 and 14 of the Convention (IMO document LEG/CONF.7/26, Attachment I), which is at Annex II to this document.

Action to be Taken by the Assembly

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

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ANNEX I

EXTRACT FROM THE INTERNATIONAL CONVENTION ON SALVAGE, 1989

Chapter III - Rights of Salvors

Article 12

Conditions for Reward

- 1 Salvage operations which have had a useful result give right to a reward.
- 2 Except as otherwise provided, no payment is due under this Convention if the salvage operations have had no useful result.
- 3 This chapter shall apply, notwithstanding that the salvaged vessel and the vessel undertaking the salvage operations belong to the same owner.

Article 13

Criteria for Fixing the Reward

- 1 The reward shall be fixed with a view to encouraging salvage operations, taking into account the following criteria without regard to the order in which they are presented below:
 - (a) the salvaged value of the vessel and other property;
 - (b) the skill and efforts of the salvors in preventing or minimizing damage to the environment;
 - (c) the measure of success obtained by the salvor;
 - (d) the nature and degree of the danger;
 - (e) the skill and efforts of the salvors in salvaging the vessel, other property and life;
 - (f) the time used and expenses and losses incurred by the salvors;
 - (g) the risk of liability and other risks run by the salvors or their equipment;
 - (h) the promptness of the services rendered;
 - (i) the availability and use of vessels or other equipment intended for salvage operations;
 - (j) the state of readiness and efficiency of the salvor's equipment and the value thereof.
- 2 Payment of a reward fixed according to paragraph 1 shall be made by all of the vessel and other property interests in proportion to their respective salvaged values. However, a State Party may in its national law provide that the payment of a reward has to be made by one of these interests, subject to a right of recourse of this interest against the other interests for their respective shares. Nothing in this article shall prevent any right of defence.
- 3 The rewards, exclusive of any interest and recoverable legal costs that may be payable thereon, shall not exceed the salvaged value of the vessel and other property.

Article 14

Special Compensation

- 1 If the salvor has carried out salvage operations in respect of a vessel which by itself or its cargo threatened damage to the environment and has failed to earn a reward under article 13 at least equivalent to the special compensation assessable in accordance with this article, he shall be entitled to special compensation from the owner of that vessel equivalent to his expenses as herein defined.
- 2 If, in the circumstances set out in paragraph 1, the salvor by his salvage operations has prevented or minimized damage to the environment, the special compensation payable by the owner to the salvor under paragraph 1 may be increased up to a maximum of 30% of the expenses incurred by the salvor. However, the tribunal, if it deems it fair and just to do so and bearing in mind the relevant criteria set out in article 13, paragraph 1, may increase such special compensation further, but in no event shall the total increase be more than 100% of the expenses incurred by the salvor.
- 3 Salvor's expenses for the purpose of paragraphs 1 and 2 means the out-of-pocket expenses reasonably incurred by the salvor in the salvage operation and a fair rate for equipment and personnel actually and reasonably used in the salvage operation, taking into consideration the criteria set out in article 13, paragraph 1(h), (i) and (j).
- 4 The total special compensation under this article shall be paid only if and to the extent that such compensation is greater than any reward recoverable by the salvor under article 13.
- 5 If the salvor has been negligent and has thereby failed to prevent or minimize damage to the environment, he may be deprived of the whole or part of any special compensation due under this article.
- 6 Nothing in this article shall affect any right of recourse on the part of the owner of the vessel.

Article 15

Apportionment between Salvors

- 1 The apportionment of a reward under article 13 between salvors shall be made on the basis of the criteria contained in that article.
- 2 The apportionment between the owner, master and other persons in the service of each salving vessel shall be determined by the law of the flag of that vessel. If the salvage has not been carried out from a vessel, the apportionment shall be determined by the law governing the contract between the salvor and his servants.

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ANNEX II

COMMON UNDERSTANDING CONCERNING ARTICLES 13 AND 14 OF THE
INTERNATIONAL CONVENTION ON SALVAGE, 1989

It is the common understanding of the Conference that, in fixing a reward under article 13 and assessing special compensation under article 14 of the International Convention on Salvage, 1989 the tribunal is under no duty to fix a reward under article 13 up to the maximum salved value of the vessel and other property before assessing the special compensation to be paid under article 14.
