



FONDS INTERNATIONAL
D'INDEMNISATION POUR
LES DOMMAGES DUS
A LA POLLUTION PAR
LES HYDROCARBURES

COMITE EXECUTIF
30ème session
Point 3 de l'ordre du jour

FUND/EXC.30/2/1
28 novembre 1991

Original: ANGLAIS

SINISTRE DU HAVEN

CONVERSION DES FRANCS-OR

Note de l'Administrateur

1 Introduction

1.1 A sa 28ème session, le Comité exécutif a examiné la méthode de conversion des francs-or en monnaie nationale sur la base d'un document soumis par l'Administrateur (document FUND/EXC.28/6/Add.1, paragraphe 5) qui rappelait qu'en vertu de la résolution n°1 du FIPOL, le montant exprimé en francs devait être converti en DTS, étant entendu qu'un montant de 15 francs-or était égal à 1 DTS; le nombre de DTS ainsi obtenu devait être converti en monnaie nationale conformément à la méthode d'évaluation appliquée par le Fonds monétaire international.

1.2 Le Comité exécutif a entériné l'analyse que l'Administrateur avait faite du problème exposé dans le document susmentionné. Le Comité l'a chargé de se fonder sur la résolution n°1 du FIPOL pour présenter la position du FIPOL lors de la procédure en justice (document FUND/EXC.28/9, paragraphe 3.5.8).

1.3 Comme cela est mentionné dans le document FUND/EXC.28/6/Add.1, l'Administrateur a demandé à un consultant, M. T Mensah, ancien Sous-secrétaire général et Directeur de la Division des affaires juridiques et des relations extérieures de l'Organisation maritime internationale, de faire une étude sur les problèmes en cause. Cette étude qui est maintenant terminée est reproduite dans l'annexe ci-jointe (en anglais seulement).

2 Mesures que le Comité exécutif est invité à prendre

Le Comité exécutif est invité à prendre note des renseignements donnés dans le présent document.

ANNEX

THE HAVEN INCIDENT

THE QUESTION OF THE UNIT OF ACCOUNT FOR THE LIMITATION
AMOUNTS UNDER THE 1971 FUND CONVENTION AND THE
METHOD OF CONVERSION INTO NATIONAL CURRENCYOPINION OF DR THOMAS A MENSAH*The Problem

1 The 1971 Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (hereinafter referred to as the "1971 Fund Convention") was adopted and designated as "supplementary to the International Convention on Civil Liability for Oil Pollution Damage, 1969" (hereinafter referred to as "the 1969 CLC"). For this reason, it was considered desirable, and indeed necessary, that the major concepts and basic principles in the two Conventions should as far as possible be identical, or at least fully compatible with each other.

2 One of the major concepts in respect of which uniformity was considered essential was the "monetary unit", ie the unit by reference to which the liability of shipowners and the obligation of the International Oil Pollution Compensation Fund (IOPC Fund) would be quantified for the purpose of paying compensation to victims of pollution damage under one or other of the Conventions. Since compensation might be payable to claimants in different States and damage might be assessed by different courts, it was necessary that all sums be denominated in a common monetary unit. In line with the long-standing practice in international treaties establishing uniform international rules on liability, the 1969 CLC adopted the "gold franc" (the Poincaré franc) as the monetary unit for calculating the liability of the shipowner for pollution damage under the Convention. For the conversion of the "gold monetary unit" into the national currencies of States Parties, the Convention provides that such conversion shall be on the basis of the "official value" of the national currency in question by reference to the gold monetary unit as defined in the Convention. Article V, paragraph 9, reads **"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"**^{<1>}. To ensure the necessary uniformity on this point between the 1969 CLC and the 1971 Fund Convention, the 1971 Fund Convention also adopted the "gold franc" of the 1969 CLC. This was done by direct reference. Article 1, paragraph 4 of the 1971 Fund Convention states, **"Franc means the unit referred to in Article V, paragraph 9 of the (1969 Civil Liability Convention)"**^{<2>}.

-
- A professional biography of Dr Thomas A Mensah is attached in Annex 6 to this Opinion.
 - <1> The addition of the word "official" was the result of a deliberate decision of the 1969 Conference. The proposer of the change noted that "there was usually a difference between the official conversion rate for gold and the free market rate." He therefore considered it advisable to refer to the "official value" in the article of the Convention. Summary Record of the Fifth Plenary Meeting, 27 November 1969.
 - <2> The method for converting the "gold franc" into national currencies is specified in the second sentence of Article V, paragraph 9 of the 1969 CLC.

3 Following the disruptions in the international monetary system during the 1960s and the consequential establishment by the International Monetary Fund (IMF) of the Special Drawing Right (SDR)³, it was decided to change the unit of account in both the 1969 CLC and the 1971 Fund Convention from the "gold franc" to the SDR of the IMF. This change was effected by means of protocols adopted to the CLC and the Fund Convention in 1976. In both protocols the new monetary unit was "the Special Drawing Right as defined by the International Monetary Fund". For the conversion of the new unit into national currencies it was provided that "the amounts shall be converted into national currency of the State in which the limitation fund is being constituted **on the basis of the value of that currency by reference to the Special Drawing Right**"; and the value of the national currency in terms of the Special Drawing right is to be "calculated in accordance with the method of valuation applied by the IMF in effect at the date in question for its operations and transactions" (1976 Protocol to the 1969 CLC, Article 11(2)). The same provision was inserted into the 1976 Protocol to the 1971 Fund Convention, to replace Article I, paragraph 4, which merely referred to Article V, paragraph 9 of the 1969 CLC.

4 It was necessary to adopt two amending Protocols in 1976 because although they are inter-related, the 1969 CLC and the 1971 Fund Convention are separate treaty instruments and there was no guarantee that the Parties to them would in all cases be identical. Since some States Parties to the 1969 CLC were not Parties to the 1971 Fund Convention, it would not have been possible to elaborate an entry into force provision which would have brought a "common protocol" into force for the different sets of Parties.

5 The 1976 Protocol to the 1969 CLC entered into force in April 1981, but the corresponding Protocol to the 1971 Fund Convention has not yet entered into force. The result of this is that the monetary unit used for determining the liability of the shipowner under the 1969 CLC is the SDR or "monetary units" in the case of States not Members of the IMF whose laws do not permit the use of SDRs. However, compensation and indemnification limits under the 1971 Fund Convention continue to be designated in the 'gold franc' as defined in Article V, paragraph 9 of the 1969 CLC.

6 The problem is further compounded by the fact that there is now no "official value" of gold. It is, therefore, not possible to determine the value of the sums referred to in the 1971 Fund Convention *by reference to the official value of gold, as provided in the Convention*. The question then is what monetary unit should be used and how is that unit to be converted into the national currencies of the States in which payments are to be made by the IOPC Fund, in accordance with the 1971 Fund Convention.

Historical Background

7 In choosing the 'gold franc' as the monetary unit of the 1969 CLC, the 1969 Conference followed the practice in previous treaties establishing uniform international regimes on maritime transport and in other international trade transactions. The main objective in these regimes was to maintain the value of a monetary obligation between the time it is incurred and the time it is to be discharged". In the case of the 1969 CLC and the 1971 Fund Convention, there was a second and equally important purpose: to ensure uniformity of treatment of victims of pollution damage and shipowners in all States Parties to the Conventions. This was especially relevant since pollution damage arising from one incident could be caused in the territories of more than one State, and the shipowner and/or the IOPC Fund might be required to make payments in different States.

8 The essence of the "gold unit" clause in international conventions was to link the value of the monetary obligation (such as the compensation to be paid by the shipowner or the IOPC Fund) "to a specified value in gold (expressed in terms of weight, fineness and/or quantity) in such a way that the quantum of the obligation at any time (and more specifically at the time of repayment) is the

<3> Further details in paragraphs 10 to 14 below.

amount in the currency of payment required to "buy" gold of the specified value; in other words an amount in the currency of payment regarded as the monetary equivalent of gold of the specified value at the time of such payment"⁴. This arrangement had been made possible by the **Bretton Woods Agreement** of 1944 which established the **International Monetary Fund (IMF)**⁵. A major feature of the system, as established in the Articles of the IMF, was the adoption of the **par value** system for the currencies of the Member States. Under the Agreement, every Member State was required to establish, in agreement with the IMF, the par value of its national currency in terms of gold. The United States dollar, which was the key currency in the system, was defined in terms of gold at 35 dollars per troy ounce of gold (1 dollar = 1/35oz of gold). Thus every currency in the system had a defined 'gold value' and all the currencies were linked in a system of fixed exchange rates. Member States were required to ensure that exchange transactions between their currencies would take place only at their respective exchange rates or within previously agreed narrow margins around those parity rates⁶. To maintain the fixed par values within the specified margins, States had to 'intervene' in the exchange markets, if necessary, by buying or selling US dollars or other currencies which were convertible into dollars. For this purpose the United States had made a commitment to buy and sell gold freely for US dollars in transactions with the monetary authorities (central banks and official treasuries) of IMF Member States.

9 The whole system came to be known as the "gold exchange system" since the key currency, the US dollar, was always convertible into gold. Thus under the Bretton Woods system gold was not only the ultimate reference of the value of national currencies, but there was also established an "official price" of gold in terms of every currency operating in the IMF system.

10 Beginning in the middle 1960s and culminating in the early part of the 1970s, fundamental changes in the international monetary system led to the demise of "the gold exchange standard" as established in the Bretton Woods Agreement. This was caused partly by the increased demand for gold in the private market which led to an increase in the market price of gold as compared to the fixed official value and partly by the loss of confidence in the US dollar which resulted from the increasing deficits in the United States' balance of payments which in turn led to the "dollar glut", ie the situation in which the dollar liabilities of the United States were much larger than the United States' gold stocks. Faced with the widespread loss of confidence in the US dollar as the main reserve asset of the international monetary system, the IMF decided to create a new and more dependable international reserve asset to replace the dollar. The new asset was the Special Drawing Right (SDR) which was established by the first amendment to the Articles of Agreement of the IMF adopted in 1968⁷. This was still linked to gold. Indeed, in a real sense, the 1969 SDR was no more than a convenient redesignation of the US dollar: its unit value was in fact defined in terms of the same gold value as had been given to the US dollar in 1944⁸. For this reason the 1969 SDR was described by some as "paper gold". Furthermore the SDR was not really intended to replace gold altogether; but rather to supplement gold and other assets. As the Managing Director of the IMF put it, the SDR

<4> Report of the Secretary General: Clauses protecting parties against the effects of currency fluctuations. Document A/CN.9/164 of 20 March 1979, paragraph 39. Text reproduced in Yearbook of the United Nations Commission on International Trade Law (UNCITRAL), Volume X, 1979, page 48 (paragraph 39 on page 53).

<5> Adopted by the International Monetary and Financial Conference of the United and Associated Nations, July 1944. The instrument adopted by this Conference is officially known as the Articles of Agreement of the International Monetary Fund. The Articles of Agreement were formally adopted on 22 July 1944 and entered into force on 27 December 1945.

<6> Article IV, Sections 1 to 4. The texts of these provisions are reproduced in Annex 1 to this Opinion.

<7> The amendments were adopted on 31 May 1968 and they entered into force on 28 July 1969.

<8> The Article in the amended Articles of Agreement of the IMF relating to the value of the SDR stated that "the unit of value of special drawing rights shall be equivalent to 0.888671 gram of fine gold" (Article XXI, Section 2). On this basis one SDR was calculated to be equivalent to 15 Poincaré (gold) francs.

was "a unique type of reserve asset to be used by Governments, along with gold and foreign exchange, to settle international accounts"^{<9>}.

11 But even the decrease in the role of the US dollar as a reserve asset, which resulted from the 1969 amendment of the IMF Articles of Agreement, did not remove the pressures on the dollar. By 1971 the pressures had reached the point where the US Government was forced to declare that it would no longer convert foreign exchange holdings in dollars into gold. This declaration, made on 15 August 1971, meant that one of the main pillars of the "gold exchange standard" system - the convertibility of the dollar - had collapsed^{<10>}. Soon after that agreement was reached between the major currency States to reduce the gold value of the US dollar (ie to devalue the dollar); and the value was changed from the original 35 dollars per ounce of gold to 38.2 dollars for one ounce of gold^{<11>}. A further devaluation of the dollar was effected in February 1973 with the value now at 42.22 dollars per ounce of gold. When even these moves failed to stabilise the US dollar and exchange rates in general, most of the major currency States decided to allow their currencies to fluctuate in value against gold and each other (to "float") according to market conditions. With this decision the other mainstay of the Bretton Woods system - the par value system of currencies by reference to gold - had also collapsed. And although the system of fixed gold values for currencies remained in the Articles of Agreement of the IMF, it was in fact no longer possible to determine the actual gold value of national currencies with any degree of certainty^{<12>}.

12 With the disappearance of the convertible (gold) dollar and the demise of the par value system, the "official price" of gold had become a legal fiction, and gold had lost its role in the international monetary system as a common measure of value of national currencies.

13 In response to these developments the IMF decided to create yet a new reserve asset which, for the first time, would not be based on, or defined in terms of, gold. After extensive consideration in a specially constituted Committee of Twenty, the Members of the IMF agreed to create a new SDR which abandoned gold as the ultimate reference of value of national currencies. The second amendment to the Articles of Agreement of the IMF which was adopted on 30 April 1976 and entered into force on 1 April 1978^{<13>}, established a new Special Drawing Right (SDR) which was no longer defined in terms of gold but in terms of a combination of specified amounts of selected national currencies - a weighted basket of currencies. There was now to be no official price of gold and Member States of the IMF were free to deal in gold in the market or among themselves. The IMF itself was obliged not to attempt to manage the force of gold or to establish a fixed price in the market^{<14>}.

<9> Statement by the Managing Director to the Board of Governors at the 1969 Annual Meeting. Quoted in "The International Monetary Fund, 1966-1974" by Margaret Garritsen de Vries. Volume 1: The System Under Stress, page 177.

<10> "The US decision on 15 August 1971 removed one of the foundation stones of the international monetary system as it had operated since the Second World War under the Bretton Woods Agreement" Annual Report of the IMF (1972) pages 1-2.

<11> This was agreed in the Smithsonian Agreement on the Re-alignment of Exchange Rates of 18 December 1971: Annual Report of the IMF (1973) page 47.

<12> This was because currencies were allowed to float above and below the gold values which had been agreed under the IMF system. Those values were formally abolished when the second amendment of the Articles of Agreement entered into force in April 1978.

<13> The date on which the IMF was informed that the amendment had been accepted by 97 members of the IMF exercising 83.97 per cent of the total voting power. The requirements for the entry into force of the amendments were: acceptances by two-thirds of members having four-fifths of the total voting power. The amendments became applicable to all 133 States which were Members of the IMF with effect from the date of entry into force.

<14> Conclusions of the Committee of Twenty on the proposed amendments to the Articles of Agreement: Annual Report of the IMF, 1975: Chapter 3, page 44.

The text of the amended Article (Article XV) on the value of the SDR, as in force from 1 April 1978, is reproduced in Annex 2 to this Opinion.

This meant that the link between national currencies and gold through the medium of the US dollar had finally been cut and with it the *de facto* and the *de jure* disappearance of an internationally recognised official price of gold. The 1974 SDR which had no formal or factual connection with gold had now succeeded gold as the international measure of value in international monetary transactions.

14 Furthermore, the Group of Ten States (which included the holders of the largest stocks of gold among IMF Member States) reached an agreement for a limited number of years that they would take no action "to peg" the price of gold^{<15>}. This was to ensure that the decline of gold in the international monetary system would not be reversed. Although the Agreement was allowed to lapse after two years, there was an understanding that action along the same lines would be taken if and when the need arose.

15 Following the demise of gold as an international standard of value for money and the disappearance of the official price of gold, it became necessary to look for a substitute for gold as a unit of account in international treaties. This was because, whilst the gold unit worked very well when gold was recognised as the common denominator of national currencies, it ceased to be useful in the new situation. A study undertaken by the Secretariat of the United Nations Commission on International Trade Law (UNCITRAL) concluded that, with the disappearance of the "par value system" of currencies linked to gold, gold "had lost one of its chief virtues as a value-maintenance device, namely its ability to confer stability of value and certainty to monetary transactions"^{<16>}. The study noted that this particular function was being performed in the IMF by a new unit, which was expressed in terms of a combination of specified amounts of the currencies of selected 16 Member States of the IMF (a "weighted basket of currencies")^{<17>}. The peculiar merit of this basket of currencies method of value protection is that it provides a relatively stable reference of value since its composite nature ensures that the weakness of one currency is balanced by the strength of another, thus counteracting the fluctuation tendency. The composite nature of the unit also allows for flexibility and adaptability. It is, of course, true that the new unit (SDR) does not necessarily provide a hedge against the depreciation in the purchasing value due to inflation. Thus, the impact of inflation on the currencies on which the SDR is based may be such that even though their relative values *inter se* is maintained, the purchasing power of their sum total will be reduced. However, this particular defect can be remedied relatively easily by mechanisms which enable the number of units in the respective Conventions to be revised and up-dated when necessary to take account of inflation and other factors^{<18>}.

16 UNCITRAL first considered the matter in the context of its work on the Convention on the Carriage of Goods by Sea (the Hamburg Rules). After considering all the aspects of the question, a Committee of UNCITRAL (Committee of the Whole I) concluded that gold was no longer "an acceptable basis for a unit of account in international treaties because of the current fluctuations in the price of gold and because the rates of conversion of gold values into national currencies were often not

<15> Annual Report of the IMF, 1976, page 54. The Group of Ten was composed of the States which had undertaken, under specified conditions, to lend a total of US\$6 billion to the IMF. They are Belgium, Canada, France, Germany, Italy, Japan, Netherlands, Sweden, United Kingdom and the United States of America.

<16> Report of the UN Secretary-General on Clauses Protecting Parties against the effects of Currency Fluctuations: UNCITRAL Document A/CN.9/164 (30 March 1979), paragraph 51.

<17> The number of currencies for weighting was later reduced to five viz the US dollar, the German mark, the Japanese yen, the Pound sterling and the French franc.

<18> For example the 1971 Fund Convention has a built-in arrangement which has made it possible for the maximum amount of compensation payable by the IOPC Fund to be increased from the initial ceiling of 450 million gold francs to 675 million gold francs in 1979, then to 785,500,000 gold francs in 1986 and, finally, to 900 million gold francs as from 1 December 1987. A similar system has been incorporated into the 1984 Protocol to amend the 1971 Fund Convention and also into the 1984 Protocol to amend the 1969 CLC.

established"^{<19>}. Accordingly the Committee proposed, and the full Commission agreed, to delete the gold franc as the unit of account from the draft text of the United Nations Convention on the Carriage of Goods by Sea. This proposal was adopted by the Diplomatic Conference which adopted the final text of the Convention in 1978. The Conference agreed to adopt the SDR as the unit of account in the 1978 Convention^{<20>}.

17 Subsequently, UNCITRAL considered the matter on a general basis with a view to the formulation of treaty clauses which would "protect a party to whom monetary obligations are owed against fluctuations in the value of currency"^{<21>}. After extensive discussions, the Commission adopted a new text also based on the SDR as a unit of account for inclusion in future conventions. UNCITRAL also adopted two alternative model provisions for the adjustment of liability amounts in international conventions in order to ensure that the amounts were up-to-date and able to provide adequate compensation to those who suffer damage. UNCITRAL submitted these texts to the General Assembly of the United Nations which in turn endorsed them and recommended them to Governments. In its resolution on the subject, the General Assembly recommended that, in preparing future conventions and in revising existing conventions, "the unit of account provisions adopted by UNCITRAL should be adopted"^{<22>}. The resolution also recommended that one of the two alternative provisions for adjustments of limitation of liability amounts as adopted by UNCITRAL should be adopted in international Conventions. The text of the provision on "unit of account", as recommended by UNCITRAL and endorsed by the General Assembly are reproduced in Annex 3 to this Opinion.

18 As a result of the changes in the international monetary system, and in response to the work undertaken in UNCITRAL and the recommendation of the General Assembly, almost all the international conventions and other treaty instruments dealing with the limitation of liability have done away with the gold as a unit of account and use the SDR as their monetary unit. A representative list (not exhaustive) of treaties which use the SDR – either in their original provisions or as a result of amendments adopted thereto – is attached in Annex 4 to this Opinion.

19 In line with the purposes duly endorsed by the General Assembly and the international community as a whole, the 1976 Protocols to the 1969 CLC and the 1971 Fund Convention were adopted with the sole aim of replacing the poincaré franc by the SDR as the unit of liability limitation into the two Conventions. The SDR which was adopted in the 1976 Protocols was the SDR which was created by the first amendments to the Articles of Agreement of the IMF (the 1969 SDR). As explained earlier, this SDR was also based on gold and its unit value was declared to be equivalent to 0.888671 gram of gold^{<23>}. From this it was calculated that one SDR was equivalent to 15 poincaré (gold) francs, and the unit of account figures in the 1976 Protocols were converted on that basis.

20 It was obviously the wish and expectation of the Parties that the two Protocols would enter into force at the same time. Unfortunately, that hope did not materialise and the 1976 Protocol to the 1969 CLC has entered into force before the 1971 Fund Convention entered into force. Hence while the SDR is now used in the 1969 CLC, as amended, the unit of account in the 1971 Fund Convention continues to be the gold franc.

<19> Report of Committee of the Whole I relating to the draft Convention on the Carriage of Goods by Sea: Annex I to the Report of UNCITRAL on the work of its 9th session (May 1976 (A/31/17)).

<20> United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg Rules): Article 26. The same provision, using the SDR of the International Monetary Fund (IMF) was incorporated into the 1924 Convention on Bills of Lading (the Hague-Visby Rules) by means of the 1979 Protocol, Article 4, paragraph 5, sub-paragraph (d).

<21> UNCITRAL Document A/CN.9/149, Chapter IV, paragraph 19: Proposal by Hungary and Poland. A similar proposal had been made by France in 1978. The French proposal had suggested that UNCITRAL examine "ways of establishing a system for determining a universal unit of constant value which would serve as a point of reference in international conventions for expressing amounts in monetary terms" (Document A/CN.9/156).

<22> General Assembly resolution 37/107, adopted at the 107th Plenary Session in 1982.

<23> See Note 8 above.

General Considerations

21 Like the 1969 CLC to which it is a supplementary instrument, the 1971 Fund Convention states that one of its main objectives is the adoption of "uniform international rules and procedures for determining questions of liability and providing adequate compensation in such cases" (Preamble). Although not adopted at the same time, the two Conventions were intended to be implemented as one package. The 1971 Fund Convention was elaborated to provide a compensation and indemnification system "supplementary" to the 1969 CLC; and the IOPC Fund, which was established by the 1971 Fund Convention, had two main purposes:

- (a) to provide compensation for pollution damage to the extent that the protection afforded by the (1969 CLC) is inadequate; and
- (b) to give relief to shipowners in respect of the additional financial burden imposed on them by the (1969 CLC)^{<24>}.

22 With regard to compensation to victims of pollution damage, the 1971 Fund Convention imposes on the IOPC Fund the obligation to pay compensation up to the limit specified therein when, inter alia:

- the victim has been unable to obtain full satisfaction of the amount of compensation due under the 1969 CLC from either the shipowner liable for the damage under the 1969 CLC, or from the financial security provided by the owner as required by the 1969 CLC;
- the damage suffered by the victim exceeds the liability of the shipowner under the 1969 CLC^{<25>}.

23 In addition, the IOPC Fund is obliged to indemnify the shipowner or his insurer for a portion of the shipowner's aggregate amount of liability to the victim under the 1969 CLC. The amount of indemnity, as specified in Article 5, paragraph 1 of the 1971 Fund Convention, is stated in terms of portions of the limitation amounts in the 1969 CLC from one quarter of the per ton limitation amount of the shipowner to just over forty per cent of the aggregate amount of the shipowner's liability^{<26>}.

24 This arrangement means that the quantum of the sums to be paid by the IOPC Fund can, in the majority of cases, be determined by reference to the sums paid or payable under the 1969 CLC. In the case of the victim the Fund's obligation arises, for the most part, after the obligations under the 1969 CLC have been fully or partially satisfied. To the shipowner the Fund's obligation is to pay an indemnity which represents a certain portion of the shipowner's liability under the 1969 CLC. For this reason it was not merely sensible and desirable, but also essential, that the obligations of the shipowner and those of the Fund should be expressed in the same monetary unit, with an identical method of conversion into national currencies. Any other arrangement would result in situations in which victims and shipowners receiving from the IOPC Fund compensation and indemnification payments which could be different from the levels provided for in the 1969 CLC and the 1971 Fund Convention. This could undermine the clearly stated objective of the two Conventions which is to establish a uniform international system to provide compensation to victims of oil pollution damage and to relieve the shipowners of some of their obligations under the 1969 CLC. For example, if the units of account used in the 1969 CLC and the 1971 Fund Convention were different or if they yielded different sums in a national currency, one or more of the following situations could arise.

<24> Article 2, paragraph 1, sub-paragraphs (a) and (b).

<25> Article 4, paragraph 1.

<26> Article 5. The per ton indemnity is 500 units per ton (ie the difference between the ceiling of 2 000 in the 1969 CLC and 1500 in the 1971 Fund Convention). The aggregate indemnity from the Fund is 85 million units, compared with the aggregate limit of 210 million units set under the 1969 CLC.

- (i) If the value of the unit of account in the 1969 CLC were higher than the value of the unit in the 1971 Fund Convention, the maximum amount payable by the Fund to the victims of an incident would be less than it would be if the unit base in the two Conventions was the same. However, in the same situation the indemnity payable by the Fund to a shipowner who has paid compensation to the victim up to the full limit of his liability under the 1969 CLC would be reduced, since the aggregate amount payable by the Fund to the shipowner would be a multiple of a unit which is smaller than the unit used for calculating the liability of the owner. This means that the indemnity received by the shipowner from the Fund would represent a smaller proportion of the shipowner's liability under the 1969 CLC than is actually provided for in that Convention.
- (ii) On the other hand, if the unit of account in the 1971 Fund Convention were higher in value than the unit of account in the 1969 CLC, the maximum amount payable to victims by the IOPC Fund would be increased while the indemnity payable to the shipowner would be reduced below the level specified in the 1969 CLC.

25 These examples show clearly that adopting different values for the units of account in the 1969 CLC and the 1971 Fund Convention would produce results which are clearly at variance with the second main objective of the 1971 Fund Convention viz to indemnify the shipowner of a specified proportion of his total liability under the 1969 CLC.

26 In the present situation, when the 1976 CLC Protocol, replacing the gold franc with the SDR, is already in force and the official value of gold has ceased to exist, the only acceptable solution is to use the SDR, as defined in the 1976 Protocols to both the 1969 CLC and the 1971 Fund Convention, as the unit of account for computing compensation and indemnification payments to be made by the IOPC Fund. This is because using any other method of conversion would not only be subject to serious legal objections but would also lead to absurd results. Furthermore, any other method would undermine a major essential objective of the carefully balanced liability and compensation regime established by the 1969 and 1971 Conventions – the uniform treatment of victims of oil pollution damage in all Contracting States.

27 This means that neither of the two other methods of conversion which might have been considered for this purpose (ie the "official value" of gold or the "market price" of gold) is now valid. As far as the official value of gold is concerned, it is impossible to use it since there is now no such "official value". And the use of the "market price" of gold would be patently wrong in law because it would be contrary to the relevant provisions of both the 1969 CLC and the 1971 Fund Convention. As indicated above (in footnote 1 at page 1) the 1969 Conference took a conscious decision against using the "market rate" of gold as the unit of account in Article V, paragraph 9 of the 1969 CLC; and the 1971 Fund Convention deliberately chose to adopt the same unit of account as had been included in the 1969 CLC. Consequently it would be illegal to use the method of conversion which has been rejected by the Conferences which adopted the two Conventions. Moreover the use of the market price of gold would lead to absurd results and also undermine one of the cardinal objectives of the scheme established by the 1969 CLC and the 1971 Fund Convention. For a system of compensation based on the market price of gold would be unable to guarantee uniformity in the value of the unit of account in the States Parties to the Conventions, since it is possible that the market price of gold may be different in two States on the same date. When this happens the value of compensation payable in the States concerned, although based on the "same" unit of account, would in fact decrease or increase depending on the market price of gold applicable in the different States. Such variations in the value of compensation would create absurd and unjust results, particularly where there are claimants from different States in respect of the same incident. Similar complications would arise where the Fund is obliged to pay indemnification to a shipowner in relation to an incident, and within the aggregate limits specified for the Fund for any single incident. Thus the use of the "market price" of gold – or any other unit other than the SDR provided for in the 1976 Protocols – would deprive the compensation and indemnification system of the 1969 CLC and the 1971 Fund Convention of the relative uniformity, certainty and stability which are the essential attributes of the scheme which was established with such great care and after much negotiation and compromise by the Governments which participated in the diplomatic conferences of 1969 and 1971.

28 In this connection it is worth recalling that when it was decided to use the SDR as the unit of account in place of the "gold franc" it was recognised that this change could not be made mandatory on those States which were not Members of the IMF. For such States it was agreed that they could continue to use the gold unit, and that the conversion of the gold unit into their national currencies should be made "according to the law of the State concerned". However, it was also emphasised that the conversion of the gold unit into national currency shall be made in such a manner as to express in the national currency as far as possible the same real value for the (limitation amounts in the 1969 CLC) as is expressed there in units of account", ie SDRs^{<27>}. This shows clearly that the intention of States has always been that there should not be significant differences between the actual values of the amounts of compensation obtained by converting the same numbers of units of account into the national currencies in the different States Parties. It should also be recalled that the "market price of gold" was not at any time suggested or accepted even for consideration during the long history of discussions concerning the appropriate unit to replace the gold unit.

29 My attention has been drawn in this connection to a decision of the Italian court of Cassation of 27 April 1984 (N° 2643) concerning the calculation of the limitation of 100 gold pounds liability of the carrier under the 1924 Brussels Convention for the Unification of Certain Rules of Law relating to Bills of Lading. The question related to the method and timing of the conversion of the limitation amount of 100 gold pounds sterling provided in article 4, paragraph 5 of the Convention and in article 9 thereof. The Court in that case decided that the conversion into the national currency (Lire) of the 100 gold pounds per package or unit as provided in the Convention "shall be effected basing on the market price of gold at the moment of the damage". The judgement also decreed that the amount of national currency (Lire) obtained by the method determined "would be ... subject to revaluation with reference to the lira devaluation incurred between the damage and the moment of liquidation". However, this particular judgement does not appear to me to be pertinent to the question as to what unit of account is appropriate in relation to the 1971 Fund Convention. In the first place, the provision which was the subject of the judgement is very different from the equivalent provision in the 1971 Fund Convention. Article 9 of the 1924 Bills of Lading Convention reads as follows:

"The monetary units mentioned in this Convention are to be taken to be the gold value. Those Contracting States in which the pound sterling is not a monetary unit reserve to themselves the right of translating the sums indicated in this Convention in terms of pounds sterling into terms of their own monetary system in round figures. The national laws may reserve to the debtor the right of discharging his debt in national currency according to the rate of exchange prevailing on the day of the arrival of the ship at the port of discharge of the goods concerned".

30 As opposed to this, the provision in Article V, paragraph 9 of the 1969 CLC (which is still the provision in force for the purposes of the 1971 Fund Convention) states that:

"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".

31 An examination of the two provisions shows clearly that the 1924 Bills of Lading Convention gave to Contracting States the discretion not only to convert the gold unit (pound) into their national currency but also to determine the basis on which the conversion is to be made. This is the very opposite of the provision in the 1969 CLC which was clearly intended to provide for a uniform and binding basis for converting the gold unit into the national currencies of the Contracting States. The objective of the provision was, of course, to ensure that the method of conversion would be such that the amounts obtained in each national currency would as far as possible have the same value in all

<27> As in Article V, paragraph 9(c) of the 1969 CLC (as amended by Article II of the 1976 Protocol to the 1969 CLC).

Contracting States. For this purpose the provisions in the 1969 CLC expressly states that the conversion of the gold franc into a national currency shall be on the basis of the official value of the currency by reference to gold. Since this provision was adopted at the time when there was still a "uniform value" of gold in terms of all national currencies, the objective of maintaining uniform limitation amount values could be achieved by the provisions as worded. Indeed, as explained earlier (in footnote 1 at page 1), the reference to the "official value" of the currency by reference to gold was the result of a deliberate decision of the 1969 Conference. For in 1969 there was an "official value" as well as a "free market" price of gold; and the Conference accepted the proposal to base the conversion on the official as opposed to the free market rate. This "official value" did not cease to exist legally until after the entry into force of the second amendment to the Articles of Agreement of the IMF in April 1978, when the "official value" of gold, in terms of national currencies, was formally abolished. The difficulty in applying Article V, paragraph 9 of the 1969 CLC only arose as a result of the disappearance of the "official value" of gold in 1978.

32 I believe, therefore, that the Italian Court of Cassation would not have come to the conclusion it did if it were dealing with Article V, paragraph 9, of the 1969 CLC. A decision to convert the gold franc of the 1969 CLC on the basis of the market price of gold would have been patently contrary to the actual wording of the provisions and also incompatible with the clear intention of the drafters and the objective of the scheme established by the 1969 CLC and the 1971 Fund Convention.

33 It is also pertinent to refer to the special position of Italy in relation to the 1969 Civil Liability Convention and the 1971 Fund Convention. Italy is a Party to the 1969 CLC, as amended by the Protocol of 1976. This Protocol, which is in force and binding on all States Parties, uses the SDR as the unit of account for computing the limits of liability of the shipowner under the 1969 CLC. The 1969 CLC, as amended, also specifies that Contracting States which are Members of the IMF shall convert their currencies into SDRs "in accordance with the method applied by the IMF in effect at the date in question for its operations and transactions". In addition, Italy has ratified the 1976 Protocol to the 1971 Fund Convention, which also adopts the SDR as the unit of account and an identical provision regarding the value of national currencies in terms of the SDR. Although the 1976 Protocol to the 1971 Fund Convention is not yet in force, the State of Italy, as a Contracting State to that Protocol, is under an international obligation to refrain from any act which would "defeat the object and purpose" of the Protocol, in accordance with the provisions of the 1969 Convention on the Law of Treaties^{<28>}. The object and purpose of the 1976 Fund Protocol is none other than to ensure that the compensation paid by the Fund in all Contracting States will have the same value by reference to the unit of account, and that the method of computing should no longer be based on gold. Any choice of unit or any method of conversion into national currencies which is so obviously likely to lead to widely different values of compensation amounts in different States would be clearly contrary to the object and purpose of the 1976 Fund Protocol. The State of Italy is, therefore, under an obligation to ensure that this does not happen.

34 Furthermore the Assembly of the IOPC Fund, of which Italy is a Member, has taken a clear stand on the issue. In 1978, the Assembly concluded that the use of the gold franc as the monetary unit in the 1971 Fund Convention "caused problems" and it accordingly decided to adopt a "method of interpretation of the franc provisions in the Convention" which is based on the use of the SDR of the IMF^{<29>}. This decision was taken by the Assembly while "awaiting the entry into force" of the 1976

<28> Article 18 of the Vienna Convention on the Law of Treaties 1969 states that: "A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when:

- (a) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty; or
- (b) it has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed".

<29> Resolution N°1 - Unit of Account, adopted by the Assembly of the IOPC Fund in November 1978. The resolution noted "the problems caused by the use of (gold) francs as the monetary unit in the (1971 Fund Convention)", and decided, while awaiting the entry into force of the Protocol of 19 November 1976 to the (1971 Fund Convention)" to adopt a "method of interpretation of the franc provision in the (1971 Fund) CONVENTION". (capitals supplied). The text of the resolution is reproduced in Annex 5 to this Opinion.

Protocol to the 1971 Fund Convention. The decision was adopted before Italy became a Party to the 1971 Fund Convention; and the State of Italy must be deemed to have acquiesced in it and accepted that when it decided to become a Member of the Fund. Again in the TANIO case (France, 1980) the Assembly decided, without objection from any Member State, that the SDR method should be used to determine the monetary value of the limit of the Fund's obligations.

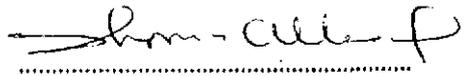
Conclusions

35 In the light of all these considerations it is my firm and considered opinion that the correct and also the most appropriate unit of account to be adopted in determining the limits of liability under the 1971 Fund Convention should be the SDR, with the method of conversion into the national currencies as provided in the 1976 Protocol to the 1969 CLC, and in the decision of the IOPC Fund Assembly, both of which are binding on the State of Italy. This is the only method of application which:

- (a) does not lead to the State of Italy being in breach of its international obligations as a Member of the IOPC Fund organisation and a Party to the 1971 Fund Convention and its 1976 Protocol;
- (b) does not lead to a result which is clearly contrary to the intentions of the 1969 and 1971 Liability and compensation scheme as amended by the Protocols of 1976;
- (c) does not lead to unworkable and absurd results in the practical application of the inter-related liability and compensation scheme under the 1969 CLC and the 1971 Fund, especially when the Fund is obliged to "top-up" the compensation paid by the shipowner under the 1969 CLC or to indemnify a shipowner in respect of the compensation paid by the shipowner under the 1969 CLC. In such cases the use of different units of account in the 1969 CLC and the 1971 Fund Convention (and different bases for converting the units into national currencies) could produce complications which cannot be in the interests of victims, shipowners or the States Parties to the 1969 CLC and the 1971 Fund Convention;
- (d) enables the 1969 CLC and the 1971 Fund Convention to be applied in practice in the co-ordinated way which was clearly intended by the drafters of the two Conventions and also in a manner which ensures that the conversion of the limitation amounts in the two Conventions results in amounts in the national currencies of Contracting States, which are, as far as possible, of the same real value by reference to the limits specified in the Conventions.

Any other unit of account and any other method of converting the units into national currency would be unjustifiable in law and would also lead to absurd results in practice.

Date: 15 November 1991

Signed: 
.....

THOMAS A. MENSAH

LIST OF ANNEXES

- ANNEX 1: Text of the original (1944) provision of the Articles of Agreement of the IMF relating to "par values".
- ANNEX 2: Text of the provision in the Articles of Agreement of the IMF on the SDR, as amended in 1978.
- ANNEX 3: Text of the "unit of account" provision adopted by UNCITRAL and recommended by the General Assembly of the United Nations.
- ANNEX 4: List of some international conventions using the SDR as the unit of account.
- ANNEX 5: Text of the IOPC Fund Assembly's resolution adopting the SDR as the unit of account for the Fund and text of IOPC Fund Internal Regulation 2.
- ANNEX 6: Professional biography of Dr Thomas A Mensah.

* * *

ANNEX 1

Articles of Agreement of the International Monetary Fund, July 1944

ARTICLE IV

PAR VALUES OF CURRENCIES

Section 1. *Expression of par values*

(a) The par value of the currency of each member shall be expressed in terms of gold as a common denominator or in terms of the United States dollar of the weight and fineness in effect on July 1, 1944.

(b) All computations relating to currencies of members for the purpose of applying the provisions of this Agreement shall be on the basis of their par values.

Section 2. *Gold purchases based on par values*

The Fund shall prescribe a margin above and below par value for transactions in gold by members, and no member shall buy gold at a price above par value plus the prescribed margin, or sell gold at a price below par value minus the prescribed margin.

Section 3. *Foreign exchange dealings based on parity*

The maximum and the minimum rates for exchange transactions between the currencies of members taking place within their territories shall not differ from parity.

(i) in the case of spot exchange transactions, by more than one percent; and

(ii) in the case of other exchange transactions, by a margin which exceeds the margin for spot exchange transactions by more than the Fund considers reasonable.

Section 4. *Obligations regarding exchange stability*

(a) Each member undertakes to collaborate with the Fund to promote exchange stability, to maintain orderly exchange arrangements with other members, and to avoid competitive exchange alterations.

(b) Each member undertakes, through appropriate measures consistent with this Agreement, to permit within its territories exchange transactions between its currency and the currencies of other members only within the limits prescribed under Section 3 of this Article. A member whose monetary authorities, for the settlement of international transactions, in fact freely buy and sell gold within the limits prescribed by the Fund under Section 2 of this Article shall be deemed to be fulfilling this undertaking.

* * *

ANNEX 2

Text of the Amended Article XV (Special Drawing Rights) of the Articles of Agreement of the IMF which Entered into Force on 1 April 1978

ARTICLES OF AGREEMENT

The Articles of Agreement of the International Monetary Fund were adopted at the United Nations Monetary and Financial Conference in Bretton Woods, New Hampshire, on July 22, 1944 and entered into force on December 27, 1945. They were amended effective July 28, 1969 by the modifications approved by the Board of Governors in Resolution No. 23-5, adopted May 31, 1968. On April 30, 1976, the Board of Governors approved the Proposed Second Amendment by adopting Resolution No. 31-4, and, after acceptance by the required number of members having the required voting power, the Articles as amended entered into force on April 1, 1978.

Articles of Agreement of the International Monetary Fund (April 1, 1978)

[Articles I - XIV]

Article XV Special Drawing Rights

Section 1. *Authority to allocate special drawing rights*

To meet the need, as and when it arises, for a supplement to existing reserve assets, the Fund is authorized to allocate special drawing rights to members that are participants in the Special Drawing Rights Department.

Section 2. *Valuation of the special drawing right*

The method of valuation of the special drawing right shall be determined by the Fund by a seventy percent majority of the total voting power, provided, however, that an eighty-five percent majority of the total voting power shall be required for a change in the principle of valuation or a fundamental change in the application of the principle in effect.

* * *

ANNEX 3

**Text of the Unit of Account Provision Adopted by the
United Nations Commission on International Trade Law (UNCITRAL) and
Recommended by the General Assembly of the United Nations for
Use in the Preparation of Future International Conventions containing
Limitation of Liability Provisions**

Universal unit of account

1 The unit of account referred to in article [] of this Convention is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in article [] are to be expressed in the national currency of a State according to the value of such currency at the date of judgement or the date agreed upon by the parties. The equivalence between the national currency of a Contracting State which is a member of the International Monetary Fund and the Special Drawing Right is to be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transactions. The equivalence between the national currency of a Contracting State which is not a member of the International Monetary Fund and the Special Drawing Right is to be calculated in a manner determined by that State.

2 The calculation mentioned in the last sentence of paragraph 1 is to be made in such a manner as to express in the national currency of the Contracting State as far as possible the same real value for amounts in article [] as is expressed there in units of account. Contracting States must communicate to the Depositary the manner of calculation at the time of signature or when depositing their instrument of ratification, acceptance, approval or accession and whenever there is a change in the manner of such calculation.

* * *

ANNEX 4

List of Some International Conventions which use the SDR as the Unit of Account

- 1 Protocol N°4 to Amend the Convention for the Unification of Certain Rules Relating to Internal Carriage by Air, Warsaw 12 October 1929 – Adopted on 25 September 1975
- 2 Convention on Limitation of Liability for Maritime Claims, 1976
- 3 Protocol of 1976 to the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974
- 4 European Convention on Products Liability in regard to Personal Injury and Death, 1977
- 5 Convention on Civil Liability for Oil Pollution Damage Resulting from Exploration for and Exploitation of Seabed Mineral Resources, 1977
- 6 United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg Rules)
- 7 Protocol of 1978 to the Convention on the Contract for the International Carriage of Passengers and Luggage by Inland Waterway (CVN)
- 8 Protocol of 1978 to the Convention relating to the Limitation of the Liability of Owners of Inland Navigation Vessels (CLN)
- 9 Protocol of 1978 to the Convention on the Contract for the International Carriage of Passengers and Luggage by Road (CVR)
- 10 1978 Montreal Protocol to Amend the 1952 Convention on Damage caused by Foreign Aircraft to third Parties on the Surface
- 11 1979 Protocol to Amend the 1957 International Convention relating to the Limitation of Liability of Owners of Sea-going Ships
- 12 Protocol to amend the International Convention for the Unification of certain rules relating to Bills of Lading, 1924 (Adopted on 21 December 1979)
- 13 United Nations Convention on International Intermodal Transport of Goods, 1980
- 14 Convention Relative aux Transports Internationaux Ferroviaires (COTIF), 1980
- 15 Protocol of 1984 to amend the 1969 Convention on Civil Liability for Oil Pollution Damage
- 16 Protocol of 1984 to amend the 1971 Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage
- 17 International Convention on Salvage, 1989

* * *

ANNEX 5

A Text of the Resolution on "Unit of Account" Adopted by the Assembly of the IOPC Fund in November 1978

Resolution N°1 - Unit of Account (November 1978)

THE ASSEMBLY,

AWARE of the problems caused by the use of (gold) francs as the monetary unit in the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, and awaiting the entry into force of the Protocol of 19 November 1976 to that Convention,

ADOPTS the following method of interpretation of the franc provisions in the Convention:

Where an amount is expressed in francs in the Convention such amount shall be converted into the relevant national currency in accordance with the following rules:

- (a) the amount determined in francs shall be converted into Special Drawing Rights as defined by the International Monetary Fund on the basis that 15 francs are equal to one Special Drawing Right;
- (b) the number of Special Drawing Rights found pursuant to (a) shall be converted into the relevant national currency in accordance with the method of evaluation applied by the International Monetary Fund in effect for its operations and transactions at the date applicable under the Convention,

RESOLVES that the references to francs in the Internal Regulations be replaced by references to equivalent amounts expressed in Special Drawing Rights as soon as the Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 enters into force,

AND RECOMMENDS that Contracting States should become Parties to that Protocol as soon as possible.

B Text of Internal Regulation 2 of the IOPC Fund regarding "Conversion of francs"

Regulation 2

Conversion of Francs

Where an amount is expressed in francs in these Internal Regulations such amount shall be converted into the currency of the Headquarters State in accordance with the following rules:

- (a) the amount determined in francs shall be converted into Special Drawing Rights as defined by the International Monetary Fund on the basis that 15 francs are equal to one Special Drawing Right;
- (b) the number of Special Drawing Rights found pursuant to (a) shall be converted into the currency of the Headquarters State in accordance with the method of evaluation applied by the International Monetary Fund in effect for its operations and transactions at the date applicable under these Regulations.

ANNEX 6

Professional Biography of Dr Thomas A Mensah, BA; LLB (London) LLM; JSD (Yale)

Dr Thomas A Mensah is a graduate of the University of London and Yale University in the United States. He graduated with a **First Class Bachelor's Degree** in Philosophy and an **Honours Degree** in Law at the University of London. He then undertook graduate studies at the Yale Law School and was awarded the **Masters and Doctor's Degrees** in Law.

He taught law at the University of Ghana and became Dean of the Faculty of Law there before leaving to join the service of the United Nations. His career with the United Nations began at the International Atomic Energy Agency in Vienna as Associate Legal Officer. Subsequently he joined the Intergovernmental Maritime Consultative Organization (IMCO) which later became the International Maritime Organization (IMO). As the first Head of the Legal Division of IMO, Dr Mensah was responsible for the professional and secretarial services for the Legal Committee of IMO in preparing all the maritime law conventions of the organization. He also served as the Executive Secretary for the diplomatic conferences which adopted the IMO maritime conventions between 1969 and 1990. These included the conferences which adopted:

- 1 The 1969 Civil Liability Convention and its Protocols of 1976 and 1984.
- 2 The 1971 Fund Convention and its Protocols of 1976 and 1984.
- 3 The 1974 Athens Convention on the Carriage of Passengers and their Luggage by Sea.
- 4 The 1976 Convention on Limitation of Liability for Maritime Claims.
- 5 The 1990 Convention on Salvage.

Dr Mensah was actively involved in the negotiations leading to the adoption of the 1969 United Nations Convention on the Law of Treaties, the 1982 United Nations Convention on the Law of the Sea, the 1978 United Nations Convention on the Carriage of Goods by Sea (the Hamburg Rules) and the 1986 United Nations Convention on Conditions for the Registration of Ships.

He has undertaken studies in the Law of Treaties and other subjects of general international law. He co-directed the Dag Hammarskjöld Seminars on the Law of Treaties at the University of Uppsala in Sweden during 1966 and 1967 and he has delivered lectures and papers on maritime and environmental law to many seminars and conferences. He has served as Visiting Professor at the World Maritime University in Malmö, Sweden; and the IMO International Maritime Law Institute in Malta.

Dr Mensah retired from the service of IMO at the end of September 1990; and has since set up as an International Consultant in maritime law and environmental law and institutions.

Dr Mensah is a Member of the American Society of International Law. He has for a number of years been an Associate Member of both the United States Maritime Law Association and the British Maritime Law Association since 1980. In 1991 Dr Mensah was designated a Temporary (Individual) Member of the Comité Maritime International (CMI). He is also an Associate Member of the Institut de Droit International.
