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FUND

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Agenda item 2

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**FACILITATING THE ENTRY INTO FORCE OF THE CONTENT OF THE  
1984 PROTOCOLS TO THE CIVIL LIABILITY CONVENTION  
AND THE FUND CONVENTION BY AMENDING  
THEIR ENTRY INTO FORCE PROVISIONS**

Note by the Director

**Introduction**

1 At its 13th session, the IOPC Fund Assembly decided to set up an Intersessional Working Group with the following mandate (document FUND/A.13/21, paragraph 15.2):

"To consider the future development of the intergovernmental oil pollution liability and compensation system by:

- (a) examining the prospects for the entry into force of the 1984 Protocols to the Civil Liability Convention and the Fund Convention;
- (b) considering whether it would be possible to facilitate the entry into force of the content of the 1984 Protocols possibly by amending their entry into force provisions;
- (c) considering which substantive provisions in the existing Conventions and the 1984 Protocols appear to form the main obstacles to their continued relevance, including an examination of the present contribution scheme."

2 At its first meeting, the Working Group examined, inter alia, the prospects for the entry into force of the 1984 Protocols to the Civil Liability Convention and the Fund Convention. The discussions, which were based on a document prepared by the Director (document FUND/WGR.6/3), are reflected in paragraphs 6.5 – 6.11 of the Working Group's report (document FUND/WGR.6/5).

3 The Working Group instructed the Director to prepare documentation, in consultation with the Secretary-General of the International Maritime Organization (IMO), in respect, inter alia, of the following issues, as a basis for the second meeting of the Group (document FUND/WGR.6/5, paragraph 8):

- "(a) Although the majority of delegations were of the opinion that the 1984 Protocol to the Civil Liability Convention would come into force without any amendment to its entry into force provisions, the Director should examine whether there was a risk that the required number of States representing each not less than one million units of gross tanker tonnage might not be reached, in the light of the tonnage figures given in paragraph 1.3 of document FUND/WGR.6/3 and the information available as to the position of individual Member States regarding ratification of the Protocol.
- (b) The Director should examine in detail the prospects for the entry into force of the 1984 Protocol to the Fund Convention if the quantity of contributing oil required for its entry into force were to be reduced to 500, 450 and 400 million tonnes, respectively. His analysis should be based on the figures set out in paragraphs 2.3, 2.5 and 2.6 of document FUND/WGR.6/3. If he considered it appropriate in order to give a clearer picture of the likelihood of the entry into force at these three levels of contributing oil, he should give specific examples with reference to individual countries, on the basis of the information available as to their respective positions regarding ratification of the Protocol.
- .....
- (e) The Director should, if possible, prepare a draft text for amending the entry into force provisions in the 1984 Protocols to the Civil Liability Convention and the Fund Convention along the lines discussed by the Working Group, in the form of appropriate instrument(s)."

#### 1984 Protocol to the Civil Liability Convention

4 The conditions for the entry into force of the 1984 Protocol to the Civil Liability Convention are laid down in Article 13.1 of that Protocol which reads:

"This Protocol shall enter into force twelve months following the date on which ten States including six States each with not less than one million units of gross tanker tonnage have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General of the Organization."

5 The discussion at the Working Group's first meeting as to the likelihood of the entry into force conditions of the 1984 Protocol to the Civil Liability Convention being met is reflected in the Report on that meeting (document FUND/WGR.6/5, paragraphs 6.6 and 6.7).

6 As at 30 June 1990, the following States had gross tanker tonnage exceeding one million units, in accordance with Lloyds Register of Shipping, Statistical Tables, November 1990:

Bahamas	Kuwait
Brazil	Liberia
China	Malta
Cyprus	Norway
Denmark	Panama
France	Singapore
Greece	Spain
India	Union of Soviet Socialist Republics
Islamic Republic of Iran	United Kingdom
Italy	United States of America
Japan	

Only three of these 21 States (namely, United States of America, Islamic Republic of Iran and Malta) are not Parties to the 1969 Civil Liability Convention. It should be noted that it is expected that Malta will soon ratify the 1969 Civil Liability Convention and the 1971 Fund Convention.

7 So far the following six States have become Parties to the 1984 Protocol to the Civil Liability Convention:

Australia  
France  
Germany

Peru  
Saint Vincent and the Grenadines  
South Africa

A bill which would enable the United Kingdom to ratify the Protocol has been passed by Parliament.

8 On the basis of the information available as to the position of individual States regarding ratification of the 1984 Protocol to the Civil Liability Convention, the Director considers that it would be relatively easy to reach a level of four States fulfilling the requirement of not less than one million units of gross tanker tonnage, namely Denmark, France, Norway and the United Kingdom. Some other States which fulfil this requirement, eg Spain and the Union of Soviet Socialist Republics, have indicated their support for the 1984 Protocol to the Civil Liability Convention.

9 In view of the foregoing, the Director considers it not unlikely that six States fulfilling this requirement would ratify the 1984 Protocol to the Civil Liability Convention within a reasonable period of time. However, in order to ensure that the content of this Protocol enters into force as soon as possible, it might be appropriate to consider reducing the number of States each with not less than one million units of gross tanker tonnage required for the entry into force from six to five or four.

10 If such an amendment of the entry into force conditions were agreed, Article 13.1 of the 1984 Protocol to the Civil Liability Convention should be replaced by the following text (amendment underlined):

"This Protocol shall enter into force twelve months following the date on which ten States including [four] ~~[five]~~ States each with not less than one million units of gross tanker tonnage have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General of the Organization."

11 At the first meeting of the Working Group, it was recognised that amendments to the entry into force conditions of the 1984 Protocol to the Civil Liability Convention might result in two Protocols to that Convention (that of 1984 and an amended one) coming into force, and it was considered important to avoid such a situation arising. This question is dealt with in a study of certain treaty law problems contained in document FUND/WGR.6/10.

#### 1984 Protocol to the Fund Convention

12 The entry into force of the 1984 Protocol to the Fund Convention is governed by Article 30.1 of that Protocol which reads:

"This Protocol shall enter into force twelve months following the date on which the following requirements are fulfilled:

- (a) At least eight States have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General of the Organization; and
- (b) The Secretary-General of the Organization has received information in accordance with Article 29 that those persons who would be liable to contribute pursuant to Article 10 of the 1971 Fund Convention as amended by this Protocol have received during the preceding calendar year a total quantity of at least 600 million tons of contributing oil."

13 Having examined the information presented by the Director in the Annex to document FUND/WGR.6/3 (paragraphs 2.3, 2.5 and 2.6), the Working Group concluded that the second condition for the entry into force of the 1984 Protocol to the Fund Convention, ie that relating to a total quantity of 600 million tonnes of contributing oil, would not be fulfilled within the foreseeable future. A number of delegations stated that for this reason it was necessary to consider a reduction of the quantity of contributing oil required for entry into force from 600 million tonnes to 500, 450 or 400 million tonnes. These delegations declared that their Governments were prepared to consider accepting the increased financial burden on contributors in their country which such a reduction might entail. Several delegations emphasised that the quantity of contributing oil in the entry into force provisions should be fixed at such a level so as to ensure a rapid entry into force of the Protocol (document FUND/WGR.6/5, paragraph 6.9). As mentioned above, the Working Group instructed the Director to examine in detail the prospects for the entry into force of the 1984 Protocol to the Fund Convention if the quantity of contributing oil required for its entry into force were to be reduced to 500, 450 and 400 million tonnes, respectively (document FUND/WGR.6/5, paragraph 8(b)).

14 The quantities of contributing oil received in IOPC Fund Member States are set out in the following table. The figures are based on the reports submitted by Governments of Member States in respect of 1990 or, if the 1990 report had not been submitted at the time of drafting this document, in respect of 1989, as indicated:

<u>Member State</u>	<u>Contributing Oil</u> (tonnes)
Japan (1990)	258 092 934
Italy (1989)	133 830 783
Netherlands (1990)	90 202 605
France (1990)	85 595 016
United Kingdom (1990)	76 618 600
Spain (1990)	54 425 927
Canada (1990)	48 629 675
Germany (1990)	22 325 785
Norway (1990)	20 018 986
Sweden (1990)	18 460 909
Greece (1989)	17 893 714
Portugal (1990)	15 027 918
Bahamas (1989)	11 587 630
Finland (1989)	10 868 482
Denmark (1989)	9 721 976
Indonesia (1990)	9 713 606
Union of Soviet Socialist Republics (1990)	9 168 500
Yugoslavia (1990)	9 025 469
Côte d'Ivoire (1989)	3 114 038
Tunisia (1989)	2 611 875
Poland (1990)	2 258 000
Sri Lanka (1989)	1 283 468
Cameroon (1989)	1 226 762
Cyprus (1990)	1 184 020
Ghana (1990)	818 813
Syrian Arab Republic (1989)	421 078
	<u>914 126 569</u>

The remaining Member States have either reported that no contributing oil was received (Fiji, Iceland, Kuwait, Liberia, Maldives, Monaco, Oman, Papua New Guinea, Qatar, Seychelles and Tuvalu) or have not submitted any report in respect of these years (Algeria, Benin, Djibouti, Gabon, India, Nigeria, United Arab Emirates and Vanuatu).

15 In addition to the present IOPC Fund Member States, contributing oil is received in significant quantities in the following non-Member States which are considering becoming Parties to the 1971 Fund Convention; the figures given below are estimates made by the Director on the basis of available information:

<u>State</u>	<u>Contributing Oil</u> (tonnes)
Brazil (estimate)	60 000 000
Singapore (estimate)	50 000 000
Republic of Korea (estimate)	37 000 000
Australia (estimate)	20 000 000
Malaysia (estimate)	20 000 000
	<u>187 000 000</u>

16 It should be noted that, because the United States Congress in August 1990 adopted legislation which would not enable the United States of America to ratify the 1984 Protocols, the oil receipts in the United States (approximately 460 million tonnes) have not been taken into account for the purpose of this document.

17 So far only France and Germany have become Parties to the 1984 Protocol to the Fund Convention. Consequently, six more States would have to ratify the Protocol in order for the requirement as to the number of States Parties necessary for bringing the Protocol into force to be fulfilled. In this case, also, it should be noted that in the United Kingdom Parliament has passed a bill which would enable the Government to ratify the Protocol.

18 In the following paragraph, the Director has made an assessment as to the possibility of reaching certain quantities of contributing oil. As instructed by the Working Group, he has given examples with regard to individual countries on the basis of information available on their respective positions regarding ratification of the 1984 Protocol to the Fund Convention.

19 On the basis of these considerations, the following table may be of interest to the Working Group:

<u>State</u>	<u>Contributing Oil</u> (tonnes)	
<b>I Ratification Made or Approved by Parliament</b>		
France	85 595 016	
United Kingdom	76 618 600	
Germany	22 325 785	
	<u>184 539 401</u>	184 539 401
<b>II Ratification under Preparation</b>		
Netherlands	90 202 605	
Norway	20 018 986	
Sweden	18 460 909	
Finland	10 868 482	
Denmark	9 721 976	
	<u>149 272 958</u>	149 272 958
<b>III Indicated Support of 1984 Protocol</b>		
Spain	54 425 927	
Canada	48 629 675	
	<u>103 055 602</u>	103 055 602
		<u>436 867 961</u>

<b>IV</b>	<b>Indicated Interest in 1984 Protocol</b>		
	India (estimate)	20 000 000	
	Greece	17 893 714	
	Portugal	15 027 918	
	Bahamas	11 587 630	
	Union of Soviet Socialist Republics	9 168 500	
	Australia (estimate)	20 000 000	
		<u>93 677 762</u>	<u>93 677 762</u>
			<u>530 545 723</u>

20 The Director has not included Japan and Italy in this table, in view of the problems concerning the 1984 Protocols indicated by the delegations of these States at the first meeting of the Working Group (document FUND/WGR.6/5, paragraphs 6.4, 6.16 and 6.23).

21 The Working Group may wish to take account of the figures given above for the purpose of its further examination of whether to recommend a reduction in the quantity of contributing oil required for the entry into force of the 1984 Protocol to the Fund Convention and, if so, which quantity should be required.

22 If it were decided to reduce the quantity of contributing oil required for the entry into force of the 1984 Protocol to the Fund Convention, Article 30.1 of the Protocol should be replaced by the following text (amendment underlined):

"This Protocol shall enter into force twelve months following the date on which the following requirements are fulfilled:

- (a) At least eight States have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General of the Organization; and
- (b) *The Secretary-General of the Organization has received information in accordance with Article 29 that those persons who would be liable to contribute pursuant to Article 10 of the 1971 Fund Convention as amended by this Protocol have received during the preceding calendar year a total quantity of at least [500] [450] [400] million tons of contributing oil.*

23 At its first meeting, the Working Group noted that under the 1984 Protocol to the Fund Convention, the maximum amount of compensation payable by the IOPC Fund in respect of any one incident is 135 million SDR. However, that amount would be increased to 200 million SDR during any period when there were three States Parties to the Protocol in respect of which the combined quantity of contributing oil received by persons in those States during the previous calendar year exceeded 600 million tonnes. Although the Working Group was prepared to consider a reduction of the quantity of contributing oil required for the entry into force of the Protocol, the Group was of the opinion that it would not be appropriate to amend the conditions laid down in the Protocol for the increase from 135 million SDR to 200 million SDR of the total amount of compensation payable by the IOPC Fund in respect of any one incident (document FUND/WGR.6/5, paragraph 6.21).

#### Denunciation of the 1969 Civil Liability Convention and the 1971 Fund Convention

24 At its first meeting, the Working Group noted the provisions in the 1984 Protocol to the Fund Convention (Article 31) governing denunciation of the 1969 Civil Liability Convention and the 1971 Fund Convention. In order to avoid the co-existence of two versions of the Fund Convention during a long period of time, the States Parties to the 1984 Protocol to the Fund Convention undertake, pursuant to

that Article, to denounce the 1969 Civil Liability Convention and the 1971 Fund Convention when (a) at least eight States have become Parties to the 1984 Protocol to the Fund Convention and (b) a total quantity of at least 750 million tonnes of contributing oil has been received during the previous calendar year in the States which have become Parties to that Protocol (document FUND/WGR.6/5, paragraph 6.12).

25 Some delegations were of the opinion that, even if the quantity of contributing oil required for the entry into force were to be reduced, the quantity of contributing oil laid down in Article 31 of the 1984 Protocol to the Fund Convention should not be changed. Some other delegations, however, were of the opinion that the quantity provided in Article 31 should be reconsidered in the light of any reduction of the quantity required for the entry into force (document FUND/WGR.6/5, paragraph 6.13).

26 The Working Group may wish to consider this matter further.

#### **Treaty Law Problems**

27 As noted by the Working Group at its first meeting, treaty law problems would arise if the entry into force provisions of the 1984 Protocols to the Civil Liability Convention and the Fund Convention were to be amended along the lines discussed by the Working Group. These problems are examined in document FUND/WGR.6/10.

#### **Action to be Taken by the Intersessional Working Group**

28 The Intersessional Working Group is invited to consider the information contained in this document.

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