



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND 1992

ASSEMBLY  
6th session  
Agenda item 6

92FUND/A.6/4/1  
14 September 2001  
Original: ENGLISH

## REPORT OF THE THIRD INTERSESSIONAL WORKING GROUP

### DRAFT PROTOCOL ESTABLISHING A SUPPLEMENTARY COMPENSATION FUND

#### Note by the Director

<b>Summary:</b>	As invited by the third Intersessional Working Group, the Director has reconsidered the text of the draft Protocol on the Establishment of a Supplementary Compensation Fund which resulted from the Working Group's third meeting in June 2001. A revised text of the Protocol prepared by the Director is at the Annex. This document sets out the Director's comments thereon.
<b>Action to be taken:</b>	To consider the revised draft Protocol.

#### 1 **Introduction**

- 1.1 At its third meeting, held in June 2001, the third Intersessional Working Group prepared a draft Protocol on the Establishment of a Supplementary Compensation Fund for consideration by the Assembly at its 6th session. The text of the draft Protocol is reproduced at Annex II of document 92FUND/A.6/4.
- 1.2 The Working Group invited the Director to consider the draft text further and to prepare a revised text for consideration by the Assembly at its October 2001 session. The Working Group invited delegations to assist the Director by communicating their observations in writing to him (document 92FUND/A.6/4, paragraph 7.2.47 and 7.2.48).
- 1.3 A number of delegations have responded to the Working Group's invitation and made observations on the issues involved.

- 1.4 The Director has re-examined the text of the draft Protocol referred to in paragraph 1.1 above and revised the text, taking into account the observations received. The revised text is reproduced at the Annex to this document.

## **2 General considerations by the Director**

- 2.1 During the Working Group's discussions at its June 2001 meeting it was generally considered that the relevant provisions in the 1992 Fund Convention should be incorporated in the Supplementary Fund Protocol by reference (document 92FUND/A.6/4, paragraph 7.2.16).
- 2.2 The Director has to the extent possible followed the structure of the draft Protocol emerging from the Working Group's June 2001 meeting. In general he has tried to reduce the number of references to Articles in the 1992 Fund Convention. On reflexion he considers, however, that on several points it would be preferable to reproduce the relevant Articles in the 1992 Fund Convention rather than incorporate them by reference. This relates in particular to the provisions relating to the geographical scope of application, contributions, jurisdiction, enforcement of judgements and subrogation. Where references have been made to Articles in the 1992 Fund Convention, attempts have been made to make the references more specific and group them subject by subject.
- 2.3 Where amendments or additions have been made to the previous draft, these have been indicated by using italics (except in respect of references to Articles). As regards texts reproducing Articles in the 1992 Fund Convention which have been included by the Director in the revised draft, the modifications made have also been set out in italics.
- 2.4 It will be recalled that one delegation suggested that the Supplementary Fund should be constituted by means of a new Convention rather than by a Protocol, since the establishment of the Supplementary Fund would result in a fundamental change in the system which had not been contemplated when the 1971 and 1992 Funds were created (document 92FUND/A.6/4, paragraph 7.2.18). That delegation has drawn attention to the fact that amendments to the 1929 Convention for the unification of certain rules relating to international carriage by air (Warsaw Convention) were made in 1961 by means of a Supplementary Convention (the Guadalajara Convention). The Guadalajara Convention introduced in the Warsaw Convention rules relating to international carriage by air performed by a person other than the contracting carrier.
- 2.5 An important issue which was discussed only very briefly during the Working Group's June 2001 meeting is in what circumstances the Supplementary Fund should start making payments, and the draft Protocol which the Working Group has submitted to the Assembly does not contain any provisions in this regard. In the Director's view there are two main options. One option would be that the Supplementary Fund would only make payments when it is established that the total amount available for compensation under the 1992 Conventions is insufficient to meet all established claims in full and perhaps also the deficit can be assessed with some accuracy. This option would however in many cases result in claimants having to wait for many years for payments from the Supplementary Fund, although in the end the 1992 Fund would be able to compensate all claims in full. Another option would be that the Supplementary Fund should start its payments when the 1992 Fund has considered that there is a risk that the total amount of the established claims will exceed the maximum amount available under the 1992 Fund Convention and therefore has decided to pro rate its payments. The Supplementary Fund would then pay the balance of the established claims and acquire by subrogation the claimants' rights against the 1992 Fund which would later reimburse the Supplementary Fund to the extent funds would be available under the 1992 Conventions when all claims have been settled and paid. This latter option appears to be more favourable to victims of oil pollution. Although provisions governing this issue could be inserted in the Protocol, it might be preferable to leave it to the Supplementary Fund Assembly to take the necessary decisions in this regard.

**3 Comments on individual provisions**

*Article 1*

- 3.1 A reference to the 1992 Civil Liability Convention has been added. The references to the definitions in the 1992 Fund Convention have been made more specific.
- 3.2 It has not been considered necessary to make a reference to Article I, paragraph 9 of the 1992 Fund Convention.

*Article 3*

- 3.3 In view of its fundamental importance, the Director considers that in the interest of clarity the text of Article 3 on the geographical scope of application should be reproduced in its entirety.

*Article 4*

- 3.4 One observer delegation has made the point that, since the maximum amount of compensation available under the proposed Protocol should be set at a level that is sufficient to pay compensation in the worst possible scenario and would be maintained at that level by means of the operation of the amendment procedure set out in Article 23, Article 4, paragraph 2 (b) would be superfluous and should therefore be deleted. The Assembly may wish to consider this issue.
- 3.5 The previous draft contained in Article 4, paragraph 4, a provision to the effect that the Supplementary Fund shall apply the same principles and procedures for the payment of compensation as the 1992 Fund. However, since the Supplementary Fund would follow the decisions taken by the 1992 Fund as regards the admissibility of claims, the Director considers that a provision of this kind would not be necessary and he has therefore not included such a provision.
- 3.6 As regards paragraph 4 in the Director's revised draft an alternative text is presented for the Assembly's consideration.

*Article 6 - 8*

- 3.7 The Director has revised the provisions on jurisdiction, enforcement of judgements and subrogation, partly by reproducing the provisions in the 1992 Fund Convention.

*Articles 9 - 14*

- 3.8 It is crucial for the operation of the Supplementary Fund that the provisions relating to contributions are clear and enforceable. The Director has considered it advisable therefore to reproduce Article 10, paragraph 1 and Article 12 of the 1992 Fund Convention and to make specific references to Articles 10, paragraphs 2, 13, 14 and 15 of that Convention.
- 3.9 The proposed Article 10 deals with the assessment of contributions. The text is except on one point identical to Article 12 of the 1992 Fund Convention. The Director believes that it would not be necessary to distinguish between a general fund and major claims funds for the payments of claims and other incident related expenses. It would nevertheless in his view be appropriate to levy contributions specially for the administrative expenses of the Supplementary Fund. The text of Article 12, paragraph 1(i)(b) of the 1992 Fund Convention has therefore not been retained in the draft Protocol.
- 3.10 As regards Article 14, paragraph 2 two alternative texts have been included in the light of discussions at the Working Group's June 2001 meeting. It should be noted that the applicability of the 1992 Conventions is in general determined on the basis of a geographical criterion, namely the place where the pollution damage occurred, and not on the basis of nationality or residence.

The second alternative is based on that criterion. The Director also considers that the second alternative would be easier to apply in practice.

*Articles 15 - 17*

- 3.11 The part of the Protocol dealing with Organisation and Administration has been expanded slightly.
- 3.12 During the discussions in the Working Group it was suggested that the Director should be given the authority to postpone the regular session of the Assembly if he considers it unnecessary to hold such a session (cf Article 16, paragraph 1). The Director considers, however, that the Director should not be given such authority.

*Articles 18 - 30*

- 3.13 It has been considered preferable to reproduce the Final Clauses in full rather than using references to the corresponding provisions of the 1992 Fund Convention.
- 3.14 With respect to the period required for an instrument of ratification to take effect as laid down in Article 20, the Assembly may wish to consider the following elements. The 1992 Protocol to the 1971 Fund Convention lays down a period of one year for this purpose. This was due to the fact that the period for a denunciation of the 1971 Fund Convention to take effect is one year. It appears that there would not be any corresponding link in respect of the Supplementary Fund Protocol. In the Director's view there would be no obstacle for the period for the entry into force laid down in Article 20, paragraphs 1 and 2 to be considerably shorter.
- 3.15 The question has been raised whether the second sentence in Article 24, paragraph 5 is appropriate.
- 3.16 It will be recalled that during the discussions which resulted in the IMO Legal Committee's decisions in October 2000 to increase the limits laid down in the 1992 Civil Liability Convention and the 1992 Fund Convention, different views were expressed as to the interpretation of Article 23, paragraph 6 (b). The question was whether the interest should be calculated for the period up to the Legal Committee's decision or for the period up to the entry into force of that decision.
- 3.17 The Assembly may wish to consider whether Article 26 dealing with extraordinary sessions of the Assembly in a particular situation is necessary.
- 3.18 The words "including the quantities referred to in Article 13, paragraph 1" have been added in Article 26, paragraph 1 in order to obtain consistency with Article 20, paragraph 1(b).

**4 Action to be taken by the Assembly**

The Assembly is invited to:

- a) to take note of the information contained in this document; and
- b) to consider the revised text of the draft Protocol establishing a Supplementary Compensation Fund reproduced at the Annex.

ANNEX

DRAFT PROTOCOL

OF 200\_ TO SUPPLEMENT THE INTERNATIONAL CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL FUND FOR COMPENSATION FOR OIL POLLUTION DAMAGE, 1992

Revised text prepared by the Director as instructed by the Intersessional Working Group (document 92FUND/A.6/4, paragraph 7.2.47)

THE PARTIES TO THE PRESENT PROTOCOL,

BEARING IN MIND the International Convention on Civil Liability for Oil Pollution Damage, 1992,

HAVING CONSIDERED the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992,

AFFIRMING the importance of maintaining the viability of the international oil pollution liability and compensation system,

NOTING that the maximum compensation afforded by the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 might be insufficient to meet compensation needs in certain circumstances in some Contracting States to that Convention;

RECOGNISING that a number of States Parties to the 1992 Conventions consider it necessary as a matter of urgency to make available additional funds for compensation through the creation of a supplementary scheme to which States may accede if they so wish;

CONSIDERING that accession to the supplementary scheme should be open only to States Parties to the 1992 Fund Convention,

Have agreed as follows:

**General provisions**

*Article 1*

For the purposes of this Protocol:

- 1     *“1992 Liability Convention” means the International Convention on Civil Liability for Oil Pollution Damage, 1992;*
- 2     *“1992 Fund Convention” means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992;*
- 3     *“1992 Fund” means the International Oil Pollution Compensation Fund 1992 established under the 1992 Fund Convention;*
- 4     *“Contracting State” means a contracting state to <sup><1></sup> this Protocol, unless stated otherwise;*
- 5     *When provisions of the 1992 Fund Convention are incorporated by reference into this Protocol, “Fund” in that Convention means “Supplementary Fund”, unless stated otherwise;*

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<sup><1></sup> The words “in the 1992 Fund Convention and in this Protocol” have been omitted.

- 6     *"Ship", "Person", "Owner", "Oil", "Pollution Damage", "Preventive Measures", "Incident" and "Organization" have the same meaning as in Article I of the 1992 Liability Convention;*
- 7     *"Contributing Oil", "Unit of Account", "Ton", "Guarantor" and "Terminal installation" have the same meaning as in Article I of the 1992 Fund Convention, unless stated otherwise;*
- 8     "Established claim" means a claim which has been recognised by the 1992 Fund or been accepted as admissible by decision of a competent court binding upon the 1992 Fund *not subject to ordinary forms of review* and *which* would have been fully compensated if the limit set out in Article 4, paragraph 4 of the 1992 Fund Convention had not been applied to that incident.

#### *Article 2*

- 1     An International Supplementary Fund for compensation for pollution damage, to be named "The International Supplementary Fund for compensation for pollution damage [200.]" and hereinafter referred to as "the Supplementary Fund", is hereby established.
- 2     The Supplementary Fund shall in each Contracting State be recognised as a legal person capable under the laws of *that* State of assuming rights and obligations and of being a party in legal proceedings before the courts of that State. Each Contracting State shall recognise the Director of the Supplementary Fund (hereinafter referred to as "The Director") as the legal representative of the Supplementary Fund.

#### *Article 3*

This *Protocol* shall apply exclusively:

- (a)    to pollution damage caused:
- (i)     in the territory, including the territorial sea, of a Contracting State, and
- (ii)    in the exclusive economic zone of a Contracting State, established in accordance with international law, or, if a Contracting State has not established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured;
- (b)    to preventive measures, wherever taken, to prevent or minimize such damage.

### ***Supplementary Compensation***

#### *Article 4*

- 1     The Supplementary Fund shall pay compensation to any person suffering pollution damage if such person has been unable to obtain full and adequate compensation for an established claim for such damage under the terms of the 1992 Fund Convention, because the damage exceeds the applicable limit of compensation laid down in Article 4, paragraph 4 of the 1992 Fund Convention in respect of any one incident.
- 2     (a)    The aggregate amount of compensation payable by the Supplementary Fund under this Article shall in respect of any one incident be limited, so that the total sum of that amount and the amount of compensation actually paid under the 1992 Liability Convention and the 1992 Fund Convention within the scope of application of this Protocol shall not exceed [    ] million units of account.
- (b)    The maximum amount of compensation referred to in sub-paragraph (a) shall be [    ] million units of account with respect to any one incident occurring during any period

when there are [ ] Parties to this Protocol in respect of which the combined relevant quantity of contributing oil received by persons in the territories of such Parties, during the preceding calendar year, equalled or exceeded [ ] million tons.

- (c) The amounts mentioned in subparagraphs (a) and (b) shall be converted into national currency on the basis of the value of that currency by reference to the Special Drawing Right on the date of the decision of the Assembly of the 1992 Fund as to the first date of payment of compensation.
- 3 Where the amount of established claims against the Supplementary Fund exceeds the aggregate amount of compensation payable under paragraph 2, the amount available shall be distributed in such a manner that the proportion between any established claim and the amount of compensation actually recovered by the claimant under this Protocol shall be the same for all claimants.
- 4 No claim may be made against the *Supplementary Fund* unless it is admissible in respect of the 1992 Fund.

Alternative text

*The Supplementary Fund shall pay compensation in respect of established claims as defined in Article 1.8 and only in respect of such claims.*

*Article 5*

Rights of compensation against the Supplementary Fund shall be extinguished only if they are extinguished against the 1992 Fund under Article 6 of the 1992 Fund Convention.

*Article 6*

- 1 *The provisions of Article 7, paragraphs 1, 2, 4, 5 and 6 of the 1992 Fund Convention shall apply to actions for compensation against the Supplementary Fund in accordance with Article 4, paragraph 1 of this Protocol.*
- 2 Where an action for compensation for pollution damage has been brought before a court competent under Article IX of the 1992 Liability Convention against the owner of a ship or his guarantor, such court shall have exclusive jurisdictional competence over any action against the *Supplementary Fund* for compensation under the provisions of Article 4 of this *Protocol* in respect of the same damage. However, where an action for compensation for pollution damage under the 1992 Liability Convention has been brought before a court in a State Party to the 1992 Liability Convention but not to this *Protocol*, any action against the *Supplementary Fund* under Article 4 of this *Protocol* shall at the option of the claimant be brought either before a court of the State where the *Supplementary Fund* has its headquarters or before any court of a State Party to this *Protocol* competent under Article IX of the 1992 Liability Convention.
- 3 Notwithstanding paragraph 1, where an action for compensation for pollution damage against the 1992 Fund has been brought before a court in a *Contracting State to the 1992 Fund Convention* but not to this *Protocol*, any *related* action against the *Supplementary Fund* shall, at the option of the claimant, be brought either before a court of the State where the Fund has its headquarters or before any court of a Contracting State competent under *paragraph 1*.

*Article 7*

Subject to any decision concerning the distribution referred to in Article 4, paragraph 5, any judgement given against the *Supplementary Fund* by a court having jurisdiction in accordance with *Article 6, paragraphs 1 and 2*, shall, when it has become enforceable in the State of origin and is in that State no longer subject to ordinary forms of review, be recognized and enforceable in each Contracting State on the same conditions as are prescribed in Article X of the 1992 Liability Convention.

## Article 8

- 1 The *Supplementary Fund* shall, in respect of any amount of compensation for pollution damage paid by the *Supplementary Fund* in accordance with Article 4, paragraph 1, of this *Protocol*, acquire by subrogation the rights that the person so compensated may enjoy under the 1992 Liability Convention against the owner or his guarantor.
- 2 *The Supplementary Fund shall acquire by subrogation the rights that the person compensated by it may enjoy under the 1992 Fund Convention against the 1992 Fund.*
- 3 Nothing in this Convention shall prejudice any right of recourse or subrogation of the *Supplementary Fund* against persons other than those referred to in the preceding paragraph. In any event the right of the *Supplementary Fund* to subrogation against such person shall not be less favourable than that of an insurer of the person to whom compensation has been paid.
- 4 Without prejudice to any other rights of subrogation or recourse against the *Supplementary Fund* which may exist, a Contracting State or agency thereof which has paid compensation for pollution damage in accordance with provisions of national law shall acquire by subrogation the rights which the person so compensated would have enjoyed under this *Protocol*.

## Contributions

### Article 9

- 1 Annual contributions to the *Supplementary Fund* shall be made in respect of each Contracting State by any person who, in the calendar year referred to in Article 10, paragraph 2(a) or (b), has received in total quantities exceeding 150,000 tons:
  - (a) in the ports or terminal installations in the territory of that State contributing oil carried by sea to such ports or terminal installations; and
  - (b) in any installations situated in the territory of that Contracting State contributing oil which has been carried by sea and discharged in a port or terminal installation of a non-Contracting State, provided that contributing oil shall only be taken into account by virtue of this sub-paragraph on first receipt in a Contracting State after its discharge in that non-Contracting State.
- 2 *The provisions of Article 10, paragraph 2, of the 1992 Fund Convention apply in respect of the obligation to pay contributions to the Supplementary Fund.*

### Article 10

- 1 With a view to assessing the amount of<sup><2></sup> contributions due, if any, and taking account of the necessity to maintain sufficient liquid funds, the Assembly shall for each calendar year make an estimate in the form of a budget of:
  - (i) *Expenditure*
    - (a) costs and expenses of the administration of the *Supplementary Fund* in the relevant year and any deficit from operations in preceding years;<sup><3></sup>
    - (b) payments to be made by the *Supplementary Fund* in the relevant year for the satisfaction of claims against the *Supplementary Fund* due under Article 4,

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<2> The word "annual" has been omitted.

<3> Paragraph 1 (i) (b) in the 1992 Fund Convention deleted.



including repayments on loans previously taken by the *Supplementary Fund* for the satisfaction of such claims<sup><4></sup>;

- (ii) *Income*
  - (a) surplus funds from operations in preceding years, including any interest;
  - (b) <sup><5></sup>contributions, if required to balance the budget;
  - (c) any other income.

2 The Assembly shall decide the total amount of contributions to be levied. On the basis of that decision, the Director shall, in respect of each Contracting State, calculate for each person referred to in Article 9 the amount of his annual contribution:

- (a) in so far as the contribution is for the satisfaction of payments referred to in paragraph 1(i)(a) <sup><6></sup>on the basis of a fixed sum for each ton of contributing oil received in the relevant State by such persons during the preceding calendar year; and
- (b) in so far as the contribution is for the satisfaction of payments referred to in paragraph 1(i)(b) of this Article on the basis of a fixed sum for each ton of contributing oil received by such person during the calendar year preceding that in which the incident in question occurred, provided that State was a Party to this Convention at the date of the incident.

3 The sums referred to in paragraph 2 above shall be arrived at by dividing the relevant total amount of contributions required by the total amount of contributing oil received in all Contracting States in the relevant year.

4 The annual contribution shall be due on the date to be laid down in the Internal Regulations of the *Supplementary Fund*. The Assembly may decide on a different date of payment.

5 The Assembly may decide, under conditions to be laid down in the Financial Regulations of the *Supplementary Fund*, to make transfers between funds received in accordance with Article 10.2(a) and funds received in accordance with Article 10.2(b).

#### *Article 11*

1 *The provisions of Article 13 of the 1992 Fund Convention apply to contributions to the Supplementary Fund.*

2 *A Contracting State may assume itself the obligation to pay contributions to the Supplementary Fund in accordance with the procedure set out in Article 14 of the 1992 Fund Convention.*

#### *Article 12*

*Contracting States shall communicate to the Director of the Supplementary Fund information on oil receipts in accordance with Article 15 of the 1992 Fund Convention provided, however, that communications made to the Director of the 1992 Fund under Article 15, paragraph 3 of the 1992 Fund Convention shall be deemed to have been made also under this Protocol.*

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<4> The expression "to the extent that the aggregate amount of such claims in respect of any one incident is in excess of four million units of account" has been omitted.

<5> The word "annual" has been omitted.

<6> Reference to paragraph 1, (i) (b) in the 1992 Fund Convention deleted.

### Article 13

- 1 Notwithstanding Article 9, for the purpose of this Protocol there shall be deemed to be a minimum receipt of [1 000 000] tons of contributing oil in each Contracting State.
- 2 When the aggregate quantity of contributing oil received in a Contracting State is less than [1 000 000] tons, the Contracting State assumes the obligations that *would be* incumbent under this Protocol on any person who *would be* liable to contribute to the *Supplementary Fund* in respect of oil received within the territory of that State in so far as no liable person exists for the aggregated quantity of oil received.

### Article 14

- 1 If in a Contracting State there is no person to be reported under *Article 9 of this Protocol*, that Contracting State shall for the purpose of this Protocol inform the Director thereof.
- 2 No compensation shall be paid by the Supplementary Fund to a Contracting State or any of its citizens or residents *or of bodies corporate incorporated in that State or having their place of business in that State* in respect of a given incident until the obligations to communicate to the Director according to Article 15, paragraph 2 of the 1992 Fund Convention and the preceding paragraph of this Article have been complied with in respect of that Contracting State for all years prior to the occurrence of that incident. However, the rights of citizens or residents of a Contracting State which has fulfilled its obligations in this regard shall not be affected by this provision, even if these citizens or residents are also citizens or residents of a Contracting State which has not fulfilled its obligations.

#### Alternative text

*No compensation shall be paid by the Supplementary Fund for damage in the territory, territorial sea or exclusive economic zone or area determined in accordance with Article 3 (a) (ii) of a State in respect of a given incident until the obligations to communicate to the Director according to Article 15, paragraph 2 of the 1992 Fund Convention and the preceding paragraph of this Article have been complied with in respect of that Contracting State for all years prior to the occurrence of that incident. The Assembly shall determine in the Internal Regulations the conditions under which no compensation is payable.*

- 3 A Contracting State which temporarily has been denied compensation in accordance with paragraph 2, shall be denied any compensation if the conditions have not been met *within* one year after the Director has notified the State of its failure to report.
- 4 Any payments of contributions due to the *Supplementary Fund* shall be set off against compensation to the debtor or his agents.

## **Organisation and administration**

### Article 15

- 1 The Supplementary Fund shall have an Assembly and a Secretariat headed by a Director.
- 2 Articles 17, 18, <sup><7></sup>20 and 28 to 34 of the 1992 Fund Convention shall apply to the Assembly, Secretariat and Director of the Supplementary Fund.

### Article 16

- 1 Regular sessions of the Supplementary Fund Assembly shall take place every [four] years.

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<7> The reference to Article 19 has been deleted.

- 2 *Extraordinary sessions of the Assembly shall be convened by the Director at the request of at least one-third of the members of the Assembly and may be convened on the Director's own initiative after consultation with the Chairman of the Assembly. The Director shall give members at least thirty days' notice of such sessions.*

*Article 17*

The Assembly shall decide the budgetary period, *adopt the budget and fix the contributions.*

**Final clauses**

*Article 18*

Signature, ratification, acceptance, approval and accession

- 1 This Protocol shall be open for signature at London from [ ].
- 2 Subject to paragraph 4, this Protocol shall be ratified, accepted or approved by States which have signed it.
- 3 Subject to paragraph 4, this Protocol is open for accession by States which did not sign it.
- 4 This Protocol may be ratified, accepted, approved or acceded to only by States which have ratified, accepted, approved or acceded to the 1992 Fund Convention.
- 5 Ratification, acceptance, approval or accession shall be effected by the deposit of a formal instrument to that effect with the Secretary-General of the Organization.

*Article 19*

Information on contributing oil

Before this Protocol comes into force for a State, that State shall, when depositing an instrument referred to in Article 20, paragraph 5, and annually thereafter at a date to be determined by the Secretary-General of the Organization, communicate to him the name and address of any person who in respect of that State would be liable to contribute to the Supplementary Fund pursuant to Article 9 *of this Protocol* as well as data on the relevant quantities of contributing oil received by any such person in the territory of that State during the preceding calendar year.

*Article 20*

Entry into force

- 1 This Protocol shall enter into force [twelve] *[six] [three]* 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 by the Director of the 1992 Fund <sup><8></sup> that those persons who would be liable to contribute pursuant to Article 9 *of this Protocol* have received during the preceding calendar year a total quantity of at least [450] million tons of contributing oil, including the quantities referred to in Article 13, paragraph 1.

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<8> The expression “in accordance with Article 10” has been deleted.

- 2 For each State which ratifies, accepts, approves or accedes to this Protocol after the conditions in paragraph 1 for entry into force have been met, the Protocol shall enter into force [twelve] [six] [three] months following the date of the deposit by such State of the appropriate instrument.
- 3 *Notwithstanding paragraphs 1 and 2 of this Article, this Protocol shall not enter into force in respect of any State until the 1992 Fund Convention enters into force for that State.*<sup><9></sup>

#### Article 21

The Secretary-General of the Organization shall convene the first session of the Assembly. This session shall take place as soon as possible after entry into force of this Protocol and, in any case, not more than thirty days after such entry into force.

#### Article 22

##### Revision and amendment

- 1 A conference for the purpose of revising or amending *this Protocol* may be convened by the Organization.
- 2 The Organization shall convene a Conference of Contracting States for the purpose of revising or amending the *this Protocol* at the request of not less than one third of all Contracting States.

#### Article 23

##### Amendment of compensation limits

- 1 Upon the request of at least one quarter of the Contracting States, any proposal to amend the limits of amounts of compensation laid down in Article 4, paragraph 2, subparagraph (a) and (b) shall be circulated by the Secretary-General to all Members of the Organization and to all Contracting States.
- 2 Any amendment proposed and circulated as above shall be submitted to the Legal Committee of the Organization for consideration at a date at least six months after the date of its circulation.
- 3 All Contracting States to this Protocol, whether or not Members of the Organization, shall be entitled to participate in the proceedings of the Legal Committee for the consideration and adoption of amendments.
- 4 Amendments shall be adopted by a two-thirds majority of the Contracting States present and voting in the Legal Committee, expanded as provided for in paragraph 3, on condition that at least one-half of the Contracting States shall be present at the time of voting.
- 5 When acting on a proposal to amend the limits, the Legal Committee shall take into account the experience of incidents and in particular the amount of damage resulting therefrom and changes in the monetary values. [It shall also take into account the relationship between the limits in Article 4, paragraph 4, of the 1992 Fund Convention and those in this Protocol.]
- 6 (a) No amendments of the limits under this Article may be considered before [date of entry into force of this Protocol] nor less than [five years] from the date of entry into force of a previous amendment under this Article. No amendment under this Article shall be considered before this Protocol has entered into force.

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<sup><9></sup> This provision is required if the periods in paragraphs 1 and 2 are shorter than 12 months.

- (b) No limit may be increased so as to exceed an amount which corresponds to the limit laid down in this Protocol increased by [six] per cent per year calculated on a compound basis from [the date when this Protocol is opened for signature] to [the date on which the Committee's decision comes into force].
- (c) No limit may be increased so as to exceed an amount which corresponds to the limit laid down in this Protocol multiplied by three.
- 7 Any amendment adopted in accordance with paragraph 4 shall be notified by the Organization to all Contracting States. The amendment shall be deemed to have been accepted [at the end of a period of [eighteen months]] [after the date of notification] unless within that period not less than one-quarter of the States that were Contracting States at the time of the adoption of the amendment by the Legal Committee have communicated to the Organization that they do not accept the amendment in which case the amendment is rejected and shall have no effect.
- 8 An amendment deemed to have been accepted in accordance with paragraph 7 shall enter into force [eighteen months] after its acceptance.
- 9 All Contracting States shall be bound by the amendment, unless they denounce this Protocol in accordance with Article 25, paragraphs 1 and 2, at least six months before the amendment enters into force. Such denunciation shall take effect when the amendment enters into force.
- 10 When an amendment has been adopted by the Legal Committee but the [eighteen-month] period for its acceptance has not yet expired, a State which becomes a Contracting State during that period shall be bound by the amendment if it enters into force. A State which becomes a Contracting State after that period shall be bound by an amendment which has been accepted in accordance with paragraph 7. In the cases referred to in this paragraph, a State becomes bound by an amendment when that amendment enters into force, or when this Protocol enters into force for that State, if later.

#### *Article 24*

##### Protocols to the 1992 Fund Convention

- 1 If the limits laid down in the 1992 Fund Convention have been increased by a Protocol thereto, the limit laid down in Article 4, paragraph 2, sub-paragraphs (a) and (b), may be increased by the same amount by means of the procedure set out in Article 23. The provisions of Article 23, paragraph 6, shall not apply in such cases.
- 2 *If the procedure referred to in paragraph 1 has been applied*, calculation of the limits laid down in Article 23, paragraph 6, sub-paragraphs (b) and (c), shall be made on the basis of the limits decided in accordance with that procedure<sup><10></sup>.

#### *Article 25*

##### Denunciation

- 1 This Protocol may be denounced by any Party at any time after the date on which it enters into force for that Party.
- 2 Denunciation shall be effected by the deposit of an instrument with the Secretary-General of the Organization.
- 3 A denunciation shall take effect twelve months, or such longer period as may be specified in the instrument of denunciation, after its deposit with the Secretary-General of the Organization.

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<10> Part of text in previous draft deleted.

4 *Denunciation of the 1992 Fund Convention shall be deemed to be a denunciation of this Protocol. Such denunciation shall take effect on the date on which denunciation of the 1992 Protocol to amend the 1971 Fund Convention takes effect according to Article 34 of that Protocol.*

5 Notwithstanding a denunciation of the present Protocol by a Party pursuant to this Article, any provisions of this Protocol relating to the obligations to make contributions to the Supplementary Fund with respect to an incident referred to in Article 10, paragraph 2(b), *of this Protocol* and occurring before the denunciation takes effect shall continue to apply.

#### *Article 26*

##### Extraordinary sessions of the Assembly

1 Any Contracting State may, within ninety days after the deposit of an instrument of denunciation the result of which it considers will significantly increase the level of contributions for the remaining Contracting States, request the Director to convene an extraordinary session of the Assembly. The Director shall convene the Assembly to meet not later than sixty days after receipt of the request.

2 The Director may convene, on his own initiative, an extraordinary session of the Assembly to meet within sixty days after the deposit of any instrument of denunciation, if he considers that such denunciation will result in a significant increase in the level of contributions of the remaining Contracting States.

3 If the Assembly at an extraordinary session convened in accordance with paragraph 1 or 2 decides that the denunciation will result in a significant increase in the level of contributions for the remaining Contracting States, any such State may, not later than one hundred and twenty days before the date on which the denunciation takes effect, denounce this Protocol with effect from the same date.

#### *Article 27*

##### Termination

1 This Protocol shall cease to be in force on the date when the number of Contracting States falls below [seven] or the total quantity of contributing oil received in the remaining Contracting States, *including the quantities referred to in Article 13, paragraph 1*, falls below [250] million tons, whichever is the earliest.

2 States which are bound by this Protocol on the day before the date it ceases to be in force shall enable the Supplementary Fund to exercise its functions as described in *Article 28 of this Protocol* and shall, for that purpose only, remain bound by this Protocol.

#### *Article 28*

##### Winding up of the Supplementary Fund

1 If this Protocol ceases to be in force, the *Supplementary Fund* shall nevertheless:

- (a) meet its obligations in respect of any incident occurring before the Protocol ceased to be in force;
- (b) be entitled to exercise its rights to contributions to the extent that these contributions are necessary to meet the obligations under sub-paragraph (a), including expenses for the administration of the Fund necessary for this purpose.

- 2 The Assembly shall take all appropriate measures to complete the winding up of the *Supplementary* Fund including the distribution in an equitable manner of any remaining assets among those persons who have contributed to the *Supplementary* Fund.
- 3 For the purposes of this Article the *Supplementary* Fund shall remain a legal person.

#### *Article 29*

##### *Depositary*

- 1 This Protocol and any amendments accepted under Article 23 shall be deposited with the Secretary-General of the Organization.
- 2 The Secretary-General of the Organization shall:
  - (a) inform all States which have signed or acceded to this Protocol of<sup><11></sup>:
    - (i) each new signature or deposit of an instrument together with the date thereof;
    - (ii) the date of entry into force of this Protocol;
    - (iii) any proposal to amend limits of amounts of compensation which has been made in accordance with Article 23, paragraph 1;
    - (iv) any amendment which has been adopted in accordance with Article 23 paragraph 4;
    - (v) any amendment deemed to have been accepted under Article 23, paragraph 7, together with the date on which that amendment shall enter into force in accordance with paragraphs 8 and 9 of that Article;
    - (vi) the deposit of an instrument of denunciation of this Protocol together with the date of the deposit and the date on which it takes effect;
    - (vii) any communication called for by any Article in this Protocol;
  - (b) transmit certified true copies of this Protocol to all Signatory States and to all States which accede to the Protocol.
- 3 As soon as this Protocol enters into force, the text shall be transmitted by the Secretary-General of the Organization to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

#### *Article 30*

##### Languages

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

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<sup><11></sup> Items (ii), (iv) and (ix) of Article 38 of the 1992 Protocol have been omitted since they are not relevant for this Protocol.