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COMPENSATION  
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## INTERNATIONAL CONFERENCE ON THE ESTABLISHMENT OF A SUPPLEMENTARY FUND FOR COMPENSATION FOR OIL POLLUTION DAMAGE

### Note by the Director

**Summary:**

An International Conference, held in May 2003 under the auspices of the International Maritime Organization (IMO), adopted a Protocol to the 1992 Fund Convention which will create a Supplementary Fund providing additional compensation for pollution damage in States Parties to the Protocol if the amount available under the 1992 Civil Liability Convention and the 1992 Fund Convention is insufficient for victims to receive full compensation. The Conference invited the Assembly to instruct the Director to make certain preparations for the entry into force of the Protocol.

**Action to be taken:**

Information to be noted.

### 1 Introduction

- 1.1 In April 2000, the Assembly of the 1992 Fund set up an Intersessional Working Group to consider the adequacy of the international compensation regime created by the 1992 Civil Liability Convention and the 1992 Fund Convention.
- 1.2 The Working Group considered at three meetings (July 2000 and March and June 2001) in particular the issue relating to the maximum amount available for compensation. The Working Group prepared the text of a draft Protocol to the 1992 Fund Convention which would establish a Supplementary Fund that would provide additional compensation in States Parties to the Protocol if the amount of compensation available under the 1992 Civil Liability Convention and the 1992 Fund Convention was insufficient to compensate all victims in full. The draft Protocol was approved by the Assembly at its October 2001 session and submitted to the Secretary-General of IMO with a request that he convene a Diplomatic Conference to consider the draft Protocol at the earliest opportunity.
- 1.3 An International Conference on the Establishment of a Supplementary Fund for Compensation for Oil Pollution Damage was held in London under the auspices of IMO from 12 to 16 May 2003 to consider the draft Protocol. The Conference was attended by 51 States Parties to the 1992 Fund Convention, while 17 other States and one IMO Associate Member attended as observers. Two

inter-governmental organizations and 11 non-governmental organisations also attended as observers.

- 1.4 The 1992 Fund, which had submitted a document to the Conference on contributing oil received in 1992 Fund Member States and former 1971 Fund Members States (LEG/CONF.14/5), participated as an observer at the Conference and made interventions on a number of points.
- 1.5 The Conference adopted the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 2002, which is reproduced at Annex I.

## **2 Main elements of the Protocol**

2.1 The main elements of the Protocol are as follows:

- The Protocol will establish a new intergovernmental organisation, the International Oil Pollution Compensation Supplementary Fund, 2003.
- Any State which is Party to the 1992 Fund Convention may become Party to the Protocol and thereby become a Member of the Supplementary Fund.
- The Protocol will apply to damage in the territory, including the territorial sea, of a State which is a Party to the Protocol and in the exclusive economic zone (EEZ) of such a State.
- The total amount of compensation payable for any one incident will be 750 million Special Drawing Rights (SDR), including the amount payable under the 1992 Civil Liability and Fund Conventions.
- Annual contributions to the Supplementary Fund will be made in respect of each Member State by any person who, in any calendar year, has received total quantities of oil exceeding 150 000 tons after sea transport in ports and terminal installations in that State. However, for the purposes of the Protocol, there shall be deemed to be a minimum receipt of one million tons of contributing oil in each Member State.
- The Protocol contains a provision for so-called 'capping', ie that the aggregate amount of contributions payable in respect of contributing oil received in a particular State during a calendar year should not exceed 20% of the total amount of contributions levied. The capping provisions apply until the total amount of contributing oil received in the States Members of the Supplementary Fund has reached 1 000 million tonnes or for a period of 10 years from the date of the entry into force of the Protocol, whichever is the earlier.
- The Protocol will enter into force three months after it has been ratified by at least eight States which have received a combined total of 450 million tons of contributing oil in a calendar year.
- The Supplementary Fund will only pay compensation for incidents which occur after the Protocol has entered into force.

## **3 Resolutions adopted by the Conference**

The Conference adopted three Resolutions which are reproduced at Annexes II to IV. Their main elements are as follows.

*Resolution on Financing of the International Conference to adopt a draft Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992*

This Resolution acknowledges that the funding of the International Conference was made available by the 1992 Fund on the understanding that the amount paid to IMO for convening and holding the Conference would be reimbursed, with interest, by the Supplementary Fund to the 1992 Fund. The Conference urges the Contracting States to the Protocol, when it has entered into force, to ensure that the amount paid to IMO will be reimbursed by the Supplementary Fund, with interest, to the 1992 Fund.

*Resolution on the Establishment of the International Supplementary Fund for Compensation for Oil Pollution Damage.*

In this Resolution, the 1992 Fund Assembly is requested to instruct the Director of the 1992 Fund to perform administrative and other functions relating to the setting up of the Supplementary Fund. It is recommended that the two Funds should share a single Secretariat to be headed, if appropriate, by the same Director.

The preparations for the entry into force of the Protocol are dealt with in document 92FUND/A.8/4/1.

*Resolution on a review of the international compensation regime for oil pollution damage for possible improvement*

In this Resolution the 1992 Fund Assembly is requested to consider enhancements that could be made to the 1992 Civil Liability and Fund Conventions. In addition, all Contracting States to these Conventions are urged to place a high priority on ongoing work towards a comprehensive review of the Conventions. IMO is requested to consider the outcome of the deliberations within the 1992 Fund Assembly and to take appropriate action as necessary.

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

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

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## ANNEX I

### **PROTOCOL OF 2003 TO THE INTERNATIONAL CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL FUND FOR COMPENSATION FOR OIL POLLUTION DAMAGE, 1992**

#### **THE CONTRACTING STATES TO THE PRESENT PROTOCOL,**

BEARING IN MIND the International Convention on Civil Liability for Oil Pollution Damage, 1992 (hereinafter “the 1992 Liability Convention”),

HAVING CONSIDERED the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (hereinafter “the 1992 Fund Convention”),

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

NOTING that the maximum compensation afforded by the 1992 Fund Convention might be insufficient to meet compensation needs in certain circumstances in some Contracting States to that Convention,

RECOGNIZING that a number of Contracting States to the 1992 Liability and 1992 Fund 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,

BELIEVING that the supplementary scheme should seek to ensure that victims of oil pollution damage are compensated in full for their loss or damage and should also alleviate the difficulties faced by victims in cases where there is a risk that the amount of compensation available under the 1992 Liability and 1992 Fund Conventions will be insufficient to pay established claims in full and that as a consequence the International Oil Pollution Compensation Fund, 1992, has decided provisionally that it will pay only a proportion of any established claim,

CONSIDERING that accession to the supplementary scheme will be open only to Contracting States 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 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;
- 6 "Ship", "Person", "Owner", "Oil", "Pollution Damage", "Preventive Measures" and "Incident" 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 1 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;
- 9 “Assembly” means the Assembly of the International Oil Pollution Compensation Supplementary Fund, 2003, unless otherwise indicated;
- 10 “Organization” means the International Maritime Organization;
- 11 “Secretary-General” means the Secretary-General of the Organization.

## **Article 2**

- 1 An International Supplementary Fund for compensation for pollution damage, to be named “The International Oil Pollution Compensation Supplementary Fund, 2003” (hereinafter “the Supplementary Fund”), is hereby established.
- 2 The Supplementary Fund shall in each Contracting State be recognized 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 recognize the Director of the Supplementary Fund 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 total damage exceeds, or there is a risk that it will exceed, 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 together with 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 750 million units of account.
- (b) The amount of 750 million units of account mentioned in paragraph 2(a) 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 determined by the Assembly of the 1992 Fund for conversion of the maximum amount payable under the 1992 Liability and 1992 Fund Conventions.
- 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 The Supplementary Fund shall pay compensation in respect of established claims as defined in article 1, paragraph 8, and only in respect of such claims.

#### **Article 5**

The Supplementary Fund shall pay compensation when the Assembly of the 1992 Fund has considered that the total amount of the established claims exceeds, or there is a risk that the total amount of established claims will exceed the aggregate amount of compensation available under article 4, paragraph 4, of the 1992 Fund Convention and that as a consequence the Assembly of the 1992 Fund has decided provisionally or finally that payments will only be made for a proportion of any established claim. The Assembly of the Supplementary Fund shall then decide whether and to what extent the Supplementary Fund shall pay the proportion of any established claim not paid under the 1992 Liability Convention and the 1992 Fund Convention.

## **Article 6**

- 1 Subject to article 15, paragraphs 2 and 3, rights to 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.
- 2 A claim made against the 1992 Fund shall be regarded as a claim made by the same claimant against the Supplementary Fund.

## **Article 7**

- 1 The provisions of article 7, paragraphs 1, 2, 4, 5 and 6, of the 1992 Fund Convention shall apply to actions for compensation brought 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 Contracting State 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 Contracting State 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 Supplementary Fund has its headquarters or before any court of a Contracting State competent under paragraph 1.

## **Article 8**

- 1 Subject to any decision concerning the distribution referred to in article 4, paragraph 3 of this Protocol, any judgment given against the Supplementary Fund by a court having jurisdiction in accordance with article 7 of this Protocol, 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.
- 2 A Contracting State may apply other rules for the recognition and enforcement of judgments, provided that their effect is to ensure that judgments are recognised and enforced at least to the same extent as under paragraph 1.

## **Article 9**

- 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 Protocol shall prejudice any right of recourse or subrogation of the Supplementary Fund against persons other than those referred to in the preceding paragraphs. 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 10**

- 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 11, 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 shall apply in respect of the obligation to pay contributions to the Supplementary Fund.

### **Article 11**

- 1 With a view to assessing the amount of annual 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;
    - (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, including repayments on loans previously taken by the Supplementary Fund for the satisfaction of such claims;



- (ii) Income
    - (a) surplus funds from operations in preceding years, including any interest;
    - (b) annual 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 of the Supplementary Fund shall, in respect of each Contracting State, calculate for each person referred to in article 10, the amount of that person's annual contribution:
    - (a) in so far as the contribution is for the satisfaction of payments referred to in paragraph 1(i)(a) on the basis of a fixed sum for each ton of contributing oil received in the relevant State by such person 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) 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 Contracting State to this Protocol at the date of the incident.
  3. The sums referred to in paragraph 2 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 paragraph 2(a) and funds received in accordance with paragraph 2(b)

## **Article 12**

- 1 The provisions of article 13 of the 1992 Fund Convention shall apply to contributions to the Supplementary Fund.
- 2 A Contracting State itself may assume 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 13**

- 1 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 2, of the 1992 Fund Convention shall be deemed to have been made also under this Protocol.

- 2 Where a Contracting State does not fulfil its obligations to submit the communication referred to in paragraph 1 and this results in a financial loss for the Supplementary Fund, that Contracting State shall be liable to compensate the Supplementary Fund for such loss. The Assembly shall, on the recommendation of the Director of the Supplementary Fund, decide whether such compensation shall be payable by that Contracting State.

#### **Article 14**

- 1 Notwithstanding article 10, for the purposes of this Protocol there shall be deemed to be a minimum receipt of 1 million 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 million tons, the Contracting State shall assume 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 15**

- 1 If in a Contracting State there is no person meeting the conditions of article 10, that Contracting State shall for the purposes of this Protocol inform the Director of the Supplementary Fund thereof.
- 2 No compensation shall be paid by the Supplementary Fund for pollution damage in the territory, territorial sea or exclusive economic zone or area determined in accordance with article 3(a)(ii), of this Protocol, of a Contracting State in respect of a given incident or for preventive measures, wherever taken, to prevent or minimize such damage, until the obligations to communicate to the Director of the Supplementary Fund according to article 13, paragraph 1 and paragraph 1 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 circumstances under which a Contracting State shall be considered as having failed to comply with its obligations.
- 3 Where compensation has been denied temporarily in accordance with paragraph 2, compensation shall be denied permanently in respect of that incident if the obligations to communicate to the Director of the Supplementary Fund under article 13, paragraph 1 and paragraph 1 of this article, have not been complied with within one year after the Director of the Supplementary Fund has notified the Contracting State of its failure to report.
- 4 Any payments of contributions due to the Supplementary Fund shall be set off against compensation due to the debtor, or the debtor's agents.

### **Organization and administration**

#### **Article 16**

- 1 The Supplementary Fund shall have an Assembly and a Secretariat headed by a Director.
- 2 Articles 17 to 20 and 28 to 33 of the 1992 Fund Convention shall apply to the Assembly, Secretariat and Director of the Supplementary Fund.

3 Article 34 of the 1992 Fund Convention shall apply to the Supplementary Fund.

### **Article 17**

1 The Secretariat of the 1992 Fund, headed by the Director of the 1992 Fund, may also function as the Secretariat and the Director of the Supplementary Fund.

2 If, in accordance with paragraph 1, the Secretariat and the Director of the 1992 Fund also perform the function of Secretariat and Director of the Supplementary Fund, the Supplementary Fund shall be represented, in cases of conflict of interests between the 1992 Fund and the Supplementary Fund, by the Chairman of the Assembly.

3 The Director of the Supplementary Fund, and the staff and experts appointed by the Director of the Supplementary Fund, performing their duties under this Protocol and the 1992 Fund Convention, shall not be regarded as contravening the provisions of article 30 of the 1992 Fund Convention as applied by article 16, paragraph 2, of this Protocol in so far as they discharge their duties in accordance with this article.

4 The Assembly shall endeavour not to take decisions which are incompatible with decisions taken by the Assembly of the 1992 Fund. If differences of opinion with respect to common administrative issues arise, the Assembly shall try to reach a consensus with the Assembly of the 1992 Fund, in a spirit of mutual co-operation and with the common aims of both organizations in mind.

5 The Supplementary Fund shall reimburse the 1992 Fund all costs and expenses arising from administrative services performed by the 1992 Fund on behalf of the Supplementary Fund.

### **Article 18**

#### **Transitional provisions**

1 Subject to paragraph 4, the aggregate amount of the annual contributions payable in respect of contributing oil received in a single Contracting State during a calendar year shall not exceed 20% of the total amount of annual contributions pursuant to this Protocol in respect of that calendar year.

2 If the application of the provisions in article 11, paragraphs 2 and 3, would result in the aggregate amount of the contributions payable by contributors in a single Contracting State in respect of a given calendar year exceeding 20% of the total annual contributions, the contributions payable by all contributors in that State shall be reduced pro rata so that their aggregate contributions equal 20% of the total annual contributions to the Supplementary Fund in respect of that year.

3 If the contributions payable by persons in a given Contracting State shall be reduced pursuant to paragraph 2, the contributions payable by persons in all other Contracting States shall be increased pro rata so as to ensure that the total amount of contributions payable by all persons liable to contribute to the Supplementary Fund in respect of the calendar year in question will reach the total amount of contributions decided by the Assembly.

4 The provisions in paragraphs 1 to 3 shall operate until the total quantity of contributing oil received in all Contracting States in a calendar year, including the quantities referred

to in article 14, paragraph 1, has reached 1,000 million tons or until a period of 10 years after the date of entry into force of this Protocol has elapsed, whichever occurs earlier.

## **Final clauses**

### **Article 19**

#### **Signature, ratification, acceptance, approval and accession**

- 1 This Protocol shall be open for signature at London from 31 July 2003 to 30 July 2004.
- 2 States may express their consent to be bound by this Protocol by:
  - (a) signature without reservation as to ratification, acceptance or approval; or
  - (b) signature subject to ratification, acceptance or approval followed by ratification, acceptance or approval; or
  - (c) accession.
- 3 Only Contracting States to the 1992 Fund Convention may become Contracting States to this Protocol.
- 4 Ratification, acceptance, approval or accession shall be effected by the deposit of a formal instrument to that effect with the Secretary-General.

### **Article 20**

#### **Information on contributing oil**

Before this Protocol comes into force for a State, that State shall, when signing this Protocol in accordance with article 19, paragraph 2(a), or when depositing an instrument referred to in article 19, paragraph 4 of this Protocol, and annually thereafter at a date to be determined by the Secretary-General, communicate to the Secretary-General 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 10 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 21**

#### **Entry into force**

- 1 This Protocol shall enter into force three months following the date on which the following requirements are fulfilled:
  - (a) at least eight States have signed the Protocol without reservation as to ratification, acceptance or approval, or have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General; and
  - (b) the Secretary-General has received information from the Director of the 1992 Fund that those persons who would be liable to contribute pursuant to article 10 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 14, paragraph 1.

- 2 For each State which signs this Protocol without reservation as to ratification, acceptance or approval, or 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 three months following the date of the deposit by such State of the appropriate instrument.
- 3 Notwithstanding paragraphs 1 and 2, this Protocol shall not enter into force in respect of any State until the 1992 Fund Convention enters into force for that State.

## **Article 22**

### **First session of the Assembly**

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

## **Article 23**

### **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 this Protocol at the request of not less than one third of all Contracting States.

## **Article 24**

### **Amendment of compensation limit**

- 1 Upon the request of at least one quarter of the Contracting States, any proposal to amend the limit of the amount of compensation laid down in article 4, paragraph 2 (a), 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 limit, 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.
- 6 (a) No amendments of the limit under this article may be considered before the date of entry into force of this Protocol nor less than three years from the date of entry into force of a previous amendment under this article.
- (b) The limit may not 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 Legal Committee's decision comes into force.
- (c) The limit may not 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 twelve 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 twelve months after its acceptance.
- 9 All Contracting States shall be bound by the amendment, unless they denounce this Protocol in accordance with article 26, 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 twelve-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 25**

### **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(a), may be increased by the same amount by means of the procedure set out in article 24. The provisions of article 24, paragraph 6, shall not apply in such cases.
- 2 If the procedure referred to in paragraph 1 has been applied, any subsequent amendment of the limit laid down in article 4, paragraph 2, by application of the procedure in

article 24 shall, for the purpose of article 24, paragraphs 6(b) and (c), be calculated on the basis of the new limit as increased in accordance with paragraph 1.

## **Article 26**

### **Denunciation**

- 1 This Protocol may be denounced by any Contracting State at any time after the date on which it enters into force for that Contracting State.
- 2 Denunciation shall be effected by the deposit of an instrument with the Secretary-General.
- 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.
- 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 Protocol of 1992 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 Contracting State 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 11, paragraph 2(b), and occurring before the denunciation takes effect, shall continue to apply.

## **Article 27**

### **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 of the Supplementary Fund to convene an extraordinary session of the Assembly. The Director of the Supplementary Fund shall convene the Assembly to meet not later than sixty days after receipt of the request.
- 2 The Director of the Supplementary Fund may take the initiative to convene an extraordinary session of the Assembly to meet within sixty days after the deposit of any instrument of denunciation, if the Director of the Supplementary Fund 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 28**

### **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 14, paragraph 1, falls below 350 million tons, whichever occurs earlier.
- 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 29 and shall, for that purpose only, remain bound by this Protocol.

## **Article 29**

### **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 paragraph 1(a), including expenses for the administration of the Supplementary 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 30**

### **Depositary**

- 1 This Protocol and any amendments accepted under article 24 shall be deposited with the Secretary-General.
- 2 The Secretary-General shall:
  - (a) inform all States which have signed or acceded to this Protocol of:
    - (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 the limit of the amount of compensation which has been made in accordance with article 24, paragraph 1;



- (iv) any amendment which has been adopted in accordance with article 24, paragraph 4;
  - (v) any amendment deemed to have been accepted under article 24, 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 to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

### **Article 31**

#### **Languages**

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

DONE AT LONDON this sixteenth day of May, two thousand and three.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments for that purpose, have signed this Protocol.

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## ANNEX II

### **RESOLUTION ON FINANCING OF THE INTERNATIONAL CONFERENCE TO ADOPT A DRAFT PROTOCOL TO THE INTERNATIONAL CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL FUND FOR COMPENSATION FOR OIL POLLUTION DAMAGE, 1992**

THE CONFERENCE,

HAVING ADOPTED the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (hereinafter referred to as “the Protocol”),

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

RECOGNIZING that a number of Contracting States to the International Convention on Civil Liability for Oil Pollution Damage, 1992 and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 have considered it necessary as a matter of urgency to make available additional funds for compensation through the creation of a supplementary scheme,

RECALLING that the Assembly of the International Oil Pollution Compensation Fund, 1992 (hereinafter referred to as “the 1992 Fund”), has approved the draft protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992,

TAKING INTO CONSIDERATION that the Council and Assembly of the International Maritime Organization (hereinafter referred to as “IMO”) have approved the holding of this International Conference to adopt the draft protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992, provided that the Conference should not result in any costs and expenses to IMO,

ALSO RECALLING that the Assembly of the International Oil Pollution Compensation Fund, 1992, has decided to make available to IMO the financial means necessary to finance this International Conference,

AWARE that the Supplementary Fund established by the Protocol will exist as a separate legal entity only when the Protocol has entered into force,

ACKNOWLEDGING that the funding of this International Conference is made available on the understanding that the amount paid to IMO for convening and holding this Conference will be reimbursed, with interest, by the Supplementary Fund to the 1992 Fund,

URGES the Contracting States to the Protocol, when it has entered into force, to ensure that the amount paid to IMO will be reimbursed by the Supplementary Fund, with interest, to the 1992 Fund.

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### ANNEX III

#### **RESOLUTION ON ESTABLISHMENT OF THE INTERNATIONAL OIL POLLUTION COMPENSATION SUPPLEMENTARY FUND**

THE CONFERENCE,

HAVING ADOPTED the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (hereinafter referred to as “the Protocol”),

CONSIDERING that there is a need, before the Protocol enters into force and for some time thereafter, to prepare certain administrative and organizational measures in order to ensure that the International Oil Pollution Compensation Supplementary Fund (hereinafter referred to as “the Supplementary Fund”) established under the Protocol can operate properly as from the date of its entry into force,

1. REQUESTS the Assembly of the International Oil Pollution Compensation Fund, 1992 (hereinafter referred to as “the 1992 Fund”), established under the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (hereinafter referred to as “the 1992 Fund Convention”), to authorise and instruct the Director of the 1992 Fund, on the basis that all costs and expenses that may be incurred will be reimbursed, with interest in due course, by the Supplementary Fund:

- (a) to perform, in addition to the Director’s functions under the 1992 Fund Convention, the administrative tasks necessary for setting up the Supplementary Fund in accordance with the provisions of the Protocol, provided that the interests of Contracting States to the 1992 Fund Convention are not unduly affected;
- (b) to provide all necessary assistance for the setting up of the Supplementary Fund;
- (c) to make the necessary preparations for the first session of the Assembly of the Supplementary Fund, which is to be convened by the Secretary-General of the International Maritime Organization (hereinafter referred to as “IMO”), in accordance with Article 21 of the Protocol;
- (d) to enter into negotiations with IMO with a view to enabling the Supplementary Fund to reach agreements, as soon as possible, regarding appropriate administrative arrangements;
- (e) to enter into negotiations with the Supplementary Fund at the appropriate time with a view to reaching a mutually advantageous arrangement enabling the 1992 Fund and the Supplementary Fund to share a single Secretariat, headed, if appropriate, by the same Director;

2. RECOMMENDS that regular sessions of the Assemblies of the 1992 Fund under Article 19, paragraph 1 of the 1992 Fund Convention and of the Supplementary Fund under Article 16, paragraph 2 of the Protocol be held, as far as practicable, during the same period and at the same place;

3. FURTHER RECOMMENDS that the Director of the 1992 Fund should enter into negotiations with the host Government so that the question of the privileges, immunities and facilities to be accorded to the Supplementary Fund can be considered with a view to its being settled in a mutually satisfactory manner.

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## ANNEX IV

### **RESOLUTION ON REVIEW OF THE INTERNATIONAL COMPENSATION REGIME FOR OIL POLLUTION DAMAGE FOR POSSIBLE IMPROVEMENT**

THE CONFERENCE,

HAVING ADOPTED the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (hereinafter referred to as “the Protocol”) for the purpose of establishing an International Oil Pollution Compensation Supplementary Fund, 2003 (hereinafter referred to as “the Supplementary Fund”),

RECALLING the mandate given by the Assembly of the International Oil Pollution Compensation Fund, 1992 (hereinafter referred to as “the 1992 Fund Assembly”) concerning the need for and the possibilities of further improving the compensation regime established by the International Convention on Civil Liability for Oil Pollution Damage, 1992 (hereinafter referred to as “the 1992 Liability Convention”) and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (hereinafter referred to as “the 1992 Fund Convention”),

NOTING that Contracting States to the 1992 Fund Convention are also Contracting States to the 1992 Liability Convention (hereinafter together referred to as “the 1992 Conventions”),

RECOGNIZING that the 1992 Conventions were adopted in order to create uniform international rules and procedures for determining questions of liability and providing adequate compensation in such cases,

BEING AWARE of the need to ensure that adequate and effective compensation is promptly available to persons who suffer damage arising from incidents in connection with the carriage of persistent oil as cargo in ships at sea,

MINDFUL of the ongoing investigations by the 1992 Fund Assembly into the costs of oil spills and the relationship between shipowner liability and oil receiver contributions,

1. REQUESTS the 1992 Fund Assembly to continue to consider enhancements that can be made to the 1992 Liability Convention and the 1992 Fund Convention;
2. URGES all Contracting States to the 1992 Liability Convention and the 1992 Fund Convention to place a high priority on the ongoing work towards a comprehensive review of the 1992 Conventions; and
3. REQUESTS the International Maritime Organization to consider the outcome of the deliberations within the 1992 Fund Assembly and to take appropriate actions as necessary.