



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

ASSEMBLY
4th extraordinary session
Agenda item 4

92FUND/A/ES.4/3
16 March 2000
Original: ENGLISH

REVISION OF MAXIMUM AMOUNT OF COMPENSATION AVAILABLE UNDER THE 1992 CONVENTIONS

Note by the Director

Summary:	The procedure for increasing the limits contained in the 1992 Civil Liability Convention and 1992 Fund Convention is examined.
Action to be taken:	Information to be noted.

1 Introduction

- 1.1 At the 6th session of the Executive Committee, the United Kingdom delegation drew attention to the fact that in some recent cases the compensation regime established by the international conventions had worked as a result of States, P& I insurers and (in the *Erika* case) private companies having made funds available to make provisional payments to claimants in financial difficulties. That delegation made the point that the *Nakhodka* and *Erika* incidents had shown that even with the higher amount of compensation available under the 1992 Conventions, there were still difficulties in providing rapid compensation to victims. That delegation drew attention to the fact that the limits in the 1992 Conventions were the same as those set out in the 1984 Protocols to the 1969 and 1971 Conventions. For this reason, the United Kingdom delegation formally requested that the 1992 Fund Assembly should include in the agenda for its extraordinary session, to be held in April 2000, the question of an increase of the limits of compensation laid down in the 1992 Conventions by means of the special procedure for amending these limits (document 92FUND/EXC.6/5, paragraph 4.3.1).
- 1.2 Several delegations supported the request made by the United Kingdom delegation.
- 1.3 Some delegations drew attention to the fact that the decision on the amendment of the limits would be taken by the Legal Committee of the International Maritime Organization (IMO) but

agreed that a preliminary discussion in the 1992 Fund Assembly would be necessary in order to assess the experience gained by the 1992 Fund from recent incidents.

2 Provisions of the 1992 Conventions

- 2.1 The provisions regarding amendment of the limitation amounts in the 1992 Civil Liability Convention are contained in Article 15 of the Final Clauses of the 1992 Protocol to amend the 1969 Civil Liability Convention. The provisions regarding amendment of the compensation limits in the 1992 Fund Convention are contained in Article 33 of the Final Clauses of the 1992 Protocol to amend the 1971 Fund Convention. These Articles are reproduced as Annexes I and II.
- 2.2 Although either Convention could be amended separately, it is suggested that it would be more appropriate to consider together any proposed amendments, in order to ensure that a balance between the respective limits can be obtained. Furthermore, the Final Clauses of the two Conventions provide that the relationship between the limits contained in the two instruments should be taken into account when considering any proposed amendments.

3 Procedure for amendment

- 3.1 The provisions in the 1992 Civil Liability Convention and 1992 Fund Convention on the procedure for amending the respective limits are identical (cf Annexes I and II, paragraphs 1-4 and 7-10).
- 3.2 At the request of at least a quarter of the Contracting States to the relevant Convention, the Secretary-General of IMO will circulate a proposed amendment to all IMO Member States and all Contracting States to the Convention in question. As at 18 March 2000, the 1992 Civil Liability Convention will be in force for 45 States and the 1992 Fund Convention will be in force for 43 States (see table reproduced in Annex III). In order for the Secretary-General to circulate a proposed amendment, a request will therefore have to be made by 12 States in respect of the 1992 Civil Liability Convention and 11 States in respect of the 1992 Fund Convention. These figures would increase on 16 September 2000 to 13 States for the Civil Liability Convention and on 23 July 2000 to 12 States for the Fund Convention. It is suggested that for a proposal covering both Conventions the higher number of States applicable to a 1992 Civil Liability Convention amendment would be required.
- 3.3 Once the proposed amendment has been circulated by the Secretary-General of IMO, at least six months must elapse before the proposed amendment can be considered by the IMO Legal Committee. Invitations to participate at such a session of the Legal Committee will be issued to all Contracting States to the relevant Convention, whether or not Members of IMO. A two-thirds majority of the Contracting States to the relevant Convention present and voting in the Legal Committee will be required for the adoption of an amendment of the limits, on condition that at least half of the Contracting States to the relevant Convention are present at the time of voting.
- 3.4 Any amendments adopted by the Legal Committee will be subject to a 'tacit acceptance procedure'. The Secretary-General will notify all Contracting States of any amendment adopted. States have 18 months to notify the Secretary-General if they do not accept the amendment adopted by the Committee. If at least a quarter of the Contracting States at the time of the Legal Committee's decision notify IMO of their objection within that period, the amendment is rejected. Otherwise, the amendment is deemed to have been accepted at the end of the 18 month period and it will enter into force 18 months later. An amendment adopted by the Legal Committee would therefore come into force three years after its adoption by the Committee.
- 3.5 An increase of the limits in the Conventions adopted by the tacit acceptance procedure is binding on all Contracting States. However, a State will not be bound by the amendment if it denounces the relevant Convention at least six months before the amendment enters into force; such a denunciation would take effect when the amendment enters into force. A State which becomes a

Party to one of the Conventions during the three-year period after an amendment has been adopted will be bound by the amended limits if and when they become effective. A State which becomes a Party after an amendment has entered into force will also be bound by the amended limits.

4 Factors to be taken into consideration

- 4.1 There are two restrictions as to the maximum increase by means of the tacit acceptance procedure. Firstly, the amended limits cannot be more than the original limits increased by 6% per annum calculated on a compound basis from 15 January 1993. Secondly, the amended limits cannot be higher than three times the original limits. Tables illustrating the maximum admissible limits are set out in Annexes IV and V.
- 4.2 Article 15 of the Final Clauses of the 1992 Protocol amending the 1969 Civil Liability Convention stipulates three factors which the Legal Committee should take into account when considering an amendment proposal: the experience of incidents and in particular the amount of damage resulting therefrom, changes in the monetary values and the effect of the proposed amendment on the cost of insurance. For a proposed amendment of the 1992 Fund Convention, Article 33 of the Final Clauses of the 1971 Protocol amending the 1971 Fund Convention provides that the first and second of these three aspects should be taken into account. In addition, both Conventions provide that the relationship between the limits contained in the two instruments should also be taken into account.
- 4.3 Certain inflation indicators are set out in Annex VI.
- 4.4 As for experience of incidents, detailed analysis of admissible claims (ie the amount of damage) will assist the Legal Committee's consideration of any amendment proposal which may be made. Such an analysis would need to take account of the various currencies and time periods involved, and the fact that a number of major cases have not yet been finalised. In the meantime, however, it is believed that the information provided in paragraphs 4.5-4.7 gives a broad picture of the Funds' experience of incidents.
- 4.5 The 1992 Fund has been notified of nine incidents since the 1992 Fund Convention entered into force in May 1996. It is certain that the 1992 Fund will not become involved in two of these cases, in one case the compensation being covered by the 1971 Fund and in the other the claimants having stated that they will not pursue their claims. Of the other seven cases, claims in respect of one incident have exceeded the compensation limits in the 1992 Fund Convention, and payments of compensation by the Fund have had to be restricted to 60% of approved amounts. Only provisional payments on the part of the 1992 Fund have been authorised in respect of another incident where it is possible that the claims will also reach the Convention limits.
- 4.6 The 1971 Fund has paid compensation with regard to some 30 incidents which occurred between 1984 and 1992. In only one case has the total amount of admissible claims reached the 1971 Fund's limit of 60 million SDR. This is so even when the total amount of the admissible claims has been index-linked to 1999 values. In that one case, because a global settlement was reached covering all pending issues, it is uncertain whether the total amount of admissible claims would have reached the maximum amount payable under the 1992 Fund Convention, although this is unlikely.
- 4.7 The 1971 Fund has been notified of some further 30 cases which occurred during the period 1992-1999. For nearly half of these cases all claims have been settled, and the total amount of admissible claims, even if index-linked to 1999 values, would have reached neither the 1971 Fund's limit nor the 1992 Fund's limit. Of the pending incidents, compensation payments by the 1971 Fund have had to be pro-rated in some dozen cases because the amounts actually claimed or anticipated reached or might reach the 1971 Fund's limit. In half of these dozen cases it has later become apparent that the total admissible claims would not exceed the 1971 Fund's limits and

100% payments have been authorised; even if index-linked to 1999 values, the admissible claims in these cases would not have exceeded the 1992 Fund's limits. As a result of the uncertainty surrounding anticipated claims, pro-rating has sometimes been maintained for several years after an incident occurred. In four cases no compensation payments by the 1971 Fund have been authorised for several months, and when payments have been permitted they have nevertheless been restricted to only 25% of agreed amounts. As for the pending cases where pro-rating is still applied, it is not possible at present to state whether the admissible claims will ultimately exceed either the 1971 Fund's limits or the 1992 Fund's limits.

4.8 With regard to the effects on the cost of insurance of any amendment of the limitation amounts, it would be appropriate to consult the shipping and insurance industries once a proposal for an amendment has been presented.

5 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

Final Clauses of the 1992 Protocol to the 1969 Civil Liability Convention

Article 15

Amendments of limitation amounts

1. Upon the request of at least one quarter of the Contracting States any proposal to amend the limits of liability laid down in Article V, paragraph 1, of the 1969 Liability Convention as amended by this Protocol 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 the 1969 Liability Convention as amended by 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, changes in the monetary values and the effect of the proposed amendment on the cost of insurance. It shall also take into account the relationship between the limits in Article V, paragraph 1, of the 1969 Liability Convention as amended by this Protocol and those in Article 4, paragraph 4, of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992.
6. (a) No amendment of the limits of liability under this Article may be considered before 15 January 1998 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.

(b) No limit may be increased so as to exceed an amount which corresponds to the limit laid down in the 1969 Liability Convention as amended by this Protocol increased by 6 per cent per year calculated on a compound basis from 15 January 1993.

(c) No limit may be increased so as to exceed an amount which corresponds to the limit laid down in the 1969 Liability Convention as amended by this Protocol multiplied by 3.
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 16, 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.

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ANNEX II

Final Clauses of the 1992 Protocol to the 1971 Fund Convention

Article 33

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 4, of the 1971 Fund Convention as amended by this Protocol 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 the 1971 Fund Convention as amended by 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 1971 Fund Convention as amended by this Protocol and those in Article V, paragraph 1 of the International Convention on Civil Liability for Oil Pollution Damage, 1992.
6. (a) No amendment of the limits under this Article may be considered before 15 January 1998 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.

(b) No limit may be increased so as to exceed an amount which corresponds to the limit laid down in the 1971 Fund Convention as amended by this Protocol increased by six per cent per year calculated on a compound basis from 15 January 1993.

(c) No limit may be increased so as to exceed an amount which corresponds to the limit laid down in the 1971 Fund Convention as amended by 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 34, 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.

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ANNEX III

Contracting States as at 16 March 2000

Contracting States to the 1992 Fund Convention

<i>42 States for which Fund Protocol is in force</i>		
Algeria	Germany	Oman
Australia	Greece	Philippines
Bahamas	Grenada	Republic of Korea
Bahrain	Iceland	Singapore
Barbados	Ireland	Spain
Belgium	Jamaica	Sri Lanka
Belize	Japan	Sweden
Canada	Latvia	Tunisia
China (Hong Kong Special Administrative Region)	Liberia	United Arab Emirates
Croatia	Marshall Islands	United Kingdom
Cyprus	Mexico	Uruguay
Denmark	Monaco	Vanuatu
Finland	Netherlands	Venezuela
France	New Zealand	
	Norway	
<i>12 States which have deposited instruments of accession</i>		
Panama		18 March 2000
Dominican Republic		24 June 2000
Seychelles		23 July 2000
Italy		16 September 2000
Fiji		30 November 2000
Mauritius		6 December 2000
Tonga		10 December 2000
Poland		21 December 2000
Comoros		5 January 2001
Malta		6 January 2001
Kenya		2 February 2001
Trinidad & Tobago		6 March 2001

Contracting States to 1992 Civil Liability Convention only

<i>2 States for which Protocol to Civil Liability Convention is in force</i>	
Egypt	Switzerland
<i>2 States which have deposited instruments of accession</i>	
Indonesia	6 July 2000
India	15 November 2000

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ANNEX IV

Maximum increases of the 1992 Convention limits

Year	Maximum increase permitted (6% pa compound basis from January 1993)	Minimum limit of shipowner's liability (ship <= 5000 units of tonnage)	Additional shipowner's liability per unit of tonnage > 5000 and <= 140000	Maximum limit of shipowner's liability (ship > 140 000 units of tonnage)	Compensation available from shipowner and Fund together	Compensation available from shipowner and Fund together (3 States with > 600 million tonnes contributing oil receipts pa together)
		<i>92 CLC: Art V.1(a)</i>	<i>92 CLC: Art V.1(b)</i>	<i>92 CLC: Art V.1</i>	<i>92 FC: Art 4.4(a)</i>	<i>92 FC: Art 4.4(b)</i>
	Factor	(million SDR)	(SDR)	(million SDR)	(million SDR)	(million SDR)
1992		3.00	420	59.70	135.00	200.00
1993	100.00	3.00	420	59.70	135.00	200.00
1994	106.00	3.18	445	63.28	143.10	212.00
1995	112.36	3.37	472	67.08	151.69	224.72
1996	119.10	3.57	500	71.10	160.79	238.20
1997	126.25	3.79	530	75.37	170.43	252.50
1998	133.82	4.01	562	79.89	180.66	267.65
1999	141.85	4.26	596	84.69	191.50	283.70
2000	150.36	4.51	632	89.77	202.99	300.73
2001	159.38	4.78	669	95.15	215.17	318.77
2002	168.95	5.07	710	100.86	228.08	337.90
2003	179.08	5.37	752	106.91	241.76	358.17
2004	189.83	5.69	797	113.33	256.27	379.66
2005	201.22	6.04	845	120.13	271.65	402.44
2006	213.29	6.40	896	127.34	287.95	426.59
2007	226.09	6.78	950	134.98	305.22	452.18
2008	239.66	7.19	1 007	143.07	323.54	479.31
2009	254.04	7.62	1 067	151.66	342.95	508.07
2010	269.28	8.08	1 131	160.76	363.52	538.55
2011	285.43	8.56	1 199	170.40	385.34	570.87
<i>Maximum*</i>	<i>300.00</i>	<i>9.00</i>	<i>1 271</i>	<i>179.10</i>	<i>405.00</i>	<i>600.00</i>
2012	302.56	9.08	1 347	180.63	408.46	605.12

* 92 CLC Protocol: Article 15.6(c) of the Final clauses and 92 FC Protocol: Article 33.6(c) of the Final clauses

ANNEX V

Present and maximum 1992 Convention limits

	Basis	Factor to be applied	Minimum limit of shipowner's liability (ship <= 5000 units of tonnage)	Additional shipowner's liability per unit of tonnage > 5000 and <= 140000	Maximum limit of shipowner's liability (ship > 140 000 units of tonnage)	Compensation available from shipowner and Fund together	Compensation available from shipowner and Fund together (3 States with > 600 million tonnes contributing oil receipts pa together)
			<i>92 CLC: Art V.1(a)</i>	<i>92 CLC: Art V.1(b)</i>	<i>92 CLC: Art V.1</i>	<i>92 FC: Art 4.4(a)</i>	<i>92 FC: Art 4.4(b)</i>
			(SDR)	(SDR)	(SDR)	(SDR)	(SDR)
Present limits set in 1984 and adopted in 1992			3 000 000	420	59 700 000	135 000 000	200 000 000
Maximum allowed in 2000	92 CLC Protocol Art 15.6(b) Final Clauses and 92 FC Protocol Art 33.6(b) Final Clauses: 6% pa compound 1993-2000	150.36	4 510 800	632	89 764 920	202 986 000	300 720 000
Absolute maximum	93 CLC Protocol Art 15.6(c) Final Clauses and 92 FC Protocol Art 33.6(c) Final Clauses: Limits adopted in 1994 x 3	300.00	9 000 000	1 260	179 100 000	405 000 000	600 000 000

ANNEX VI

Certain indicators of changes in monetary values

	Source	Basis	Factor applicable
World Wholesale Price Index	International Financial Statistics Yearbook	1984-1998	580.40
		1992-1998	188.73
World Consumer Price Index	International Financial Statistics Yearbook	1984-1998	703.47
		1992-1998	208.03
UK Retail Price Index	Butterworth Whillans' Tax Tables	Jan 1984 - Jan 1999	188.16
		Jan 1992 - Jan 1999	120.50