



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND

ASSEMBLY
15th session
Agenda item 18

FUND/A.15/15
29 July 1992

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INTERNATIONAL CONFERENCE ON THE REVISION OF THE 1969 CIVIL LIABILITY CONVENTION AND THE 1971 FUND CONVENTION

Note by the Director

Work Within the IOPC Fund

1 At its 13th session the Assembly of the IOPC Fund decided to set up an Intersessional Working Group with the following mandate:

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

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

2 The report of this Working Group contained in document FUND/A.14/14 was considered by the IOPC Fund Assembly at its 14th session. The discussions at that session are summarised in paragraphs 17.4 – 17.15 of document FUND/A.14/23.

3 The IOPC Fund Assembly adopted a Resolution, in which it requested the Secretary-General of the International Maritime Organization (IMO) to convene an International Conference, to be held if possible before the end of 1992, to consider:

- (a) the draft protocols modifying the 1969 Civil Liability Convention and the 1971 Fund Convention set out in Annexes I and II to the Assembly's report;
- (b) the draft resolutions set out in Annexes III and IV to that report; and
- (c) whether there should be introduced in the Fund Convention a system setting a cap on contributions payable by oil receivers in any given State, along the lines set out in Annex V to the report.

4 The IOPC Fund Assembly stressed the necessity of limiting any revision of the Civil Liability Convention and the Fund Convention to the issues set out above, in order to ensure the early entry into force of any new instruments.

5 The delegations of Greece and Italy reserved their position with respect to this Resolution.

6 The Director transmitted the IOPC Fund Assembly's request to the Secretary-General of IMO.

Work Within IMO

7 The Secretary-General of IMO submitted the IOPC Fund Assembly's request to the Assembly of IMO for consideration at its 17th session, held in October/November 1991.

8 By Resolution A.729(17), adopted on 7 November 1991, the Assembly of IMO requested the Legal Committee of IMO to consider draft Protocols modifying the 1969 Civil Liability Convention and the 1971 Fund Convention, draft conference Resolutions attached to the Assembly Resolution and whether there should be introduced in the Fund Convention a system of setting a cap on contributions payable by oil receivers in any given State for a transitional period. This Resolution is set out in Annex I to this document.

9 By the same Resolution, the IMO Assembly decided to include in the work programme of IMO a provision for an international conference at no cost to IMO, to be convened no later than December 1992, to adopt the Protocols and Resolutions mentioned in paragraph 8 above.

10 The Legal Committee of IMO considered this matter at its 66th session, held from 16 to 20 March 1992. The discussions at that session are set out in paragraphs 125 to 141 of IMO document LEG 66/9. These paragraphs are reproduced in Annex II to the present document. The documents examined by the Legal Committee contained the texts elaborated within the IOPC Fund, subject to some minor amendments to bring them in line with IMO practice.

11 In conclusion, the Legal Committee decided to approve the draft Protocols to the 1969 Civil Liability Convention and the 1971 Fund Convention for submission to the Diplomatic Conference. The Committee also approved the text of the two draft Conference Resolutions and decided to submit them to the Diplomatic Conference for further consideration. Furthermore, the Committee approved the submission to the Conference of draft provisions on a capping system in respect of contributions payable by oil receivers in any given State.

12 One delegation submitted for consideration by the Legal Committee a draft provision for insertion in the final clauses of both Protocols under which a State which was already party to one or

both of the 1984 Protocols should be allowed to declare at the time of becoming Party to the new Protocols that it considered its previous ratification obsolete (IMO document LEG 66/WP.1). This draft provision, which was also approved by the IMO Legal Committee for submission to the Diplomatic Conference, is reproduced in Annex III to the present document.

13 The Secretary-General of IMO has convened an International Conference to be held from 23 to 27 November 1992 at the IMO Headquarters in London to consider the draft documents referred to in paragraphs 11 and 12 above.

14 The proposals to be considered by the Conference have been distributed to Governments in IMO documents LEG/CONF.9/3-9/5.

IOPC Fund's Participation at the International Conference

15 The Director intends to represent the IOPC Fund at the International Conference to be held in November 1992 and to make such interventions as may be appropriate in order to explain the system of compensation administered by the IOPC Fund, and in particular to give information to the Conference on the likelihood of the entry into force of the proposed new Protocols under various assumptions as to the ratifications of these Protocols.

Action to be Taken by the Assembly

16 The Assembly is invited to take note of the information contained in this document and to give the Director such instructions as it deems appropriate in respect of the IOPC Fund's participation at the International Conference.

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ANNEX I

IMO Resolution A.729(17)

adopted on 7 November 1991

**FUTURE DEVELOPMENT OF THE INTERGOVERNMENTAL OIL POLLUTION LIABILITY
AND COMPENSATION SYSTEM BASED ON THE INTERNATIONAL CONVENTION ON
CIVIL LIABILITY FOR OIL POLLUTION DAMAGE, 1969, AND THE
INTERNATIONAL CONVENTION ON THE ESTABLISHMENT OF AN
INTERNATIONAL FUND FOR COMPENSATION FOR OIL
POLLUTION DAMAGE, 1971**

THE ASSEMBLY,

CONSIDERING that it is desirable to amend the International Convention on Civil Liability for Oil Pollution Damage, done at Brussels on 29 November 1969 (CLC), and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, done at Brussels on 19 December 1971 (FUND), to provide for improved scope and enhanced compensation,

RECOGNIZING that the Protocols of 1984 to amend the CLC and FUND Conventions are unlikely to enter into force in their present form,

BEARING IN MIND that in adopting the International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990, the Conference on International Co-operation on Oil Pollution Preparedness and Response recognised the importance of the international instruments on liability and compensation for oil pollution damage and the compelling need for early entry into force of the 1984 Protocols thereto,

TAKING INTO ACCOUNT resolution No.8 adopted by the Assembly of the International Oil Pollution Compensation Fund (IOPC Fund) at its fourteenth session and forwarded to the Secretary-General of the Organization, concerning the future development of the intergovernmental oil pollution liability and compensation system based on the CLC and FUND Conventions,

1. REQUESTS the Legal Committee to consider:
 - (a) the draft Protocols modifying the 1969 Civil Liability Convention and the 1971 Fund Convention which are attached to this resolution in annexes 1 and 2, respectively;
 - (b) the draft Conference resolutions which are attached to this resolution in annexes 3 and 4; and
 - (c) whether there should be introduced in the Fund Convention a system of setting a cap on contributions payable by oil receivers in any given State for a transitional period;
2. DECIDES to include in the work programme of the Organization a provision for an international conference at no cost to the Organization, to be convened not later than December 1992, to adopt the Protocols and resolutions referred to in paragraph 1 above.

Annex 1

**DRAFT PROTOCOL TO THE INTERNATIONAL CONVENTION ON CIVIL LIABILITY
FOR OIL POLLUTION DAMAGE, 1969**

THE PARTIES TO THE PRESENT PROTOCOL,

HAVING CONSIDERED the International Convention on Civil Liability for Oil Pollution Damage, 1969, and the 1984 Protocol thereto,

HAVING NOTED that the 1984 Protocol to that Convention, which provides for improved scope and enhanced compensation, has not entered into force,

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

AWARE OF the need to ensure the entry into force of the content of the 1984 Protocol as soon as possible,

RECOGNIZING that special provisions are necessary in connection with the introduction of corresponding amendments to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971,

HAVE AGREED as follows:

Article 1 to Article 11

Identical to the text of Article 1 to Article 11 of the 1984 Protocol to the Civil Liability Convention.*

Article 12

Signature, ratification, etc.

1 This Protocol shall be open for signature at London from to by all States.

2-6 Identical to the text of Article 12, paragraphs 2 to 6, of the 1984 Protocol to the Civil Liability Convention.*

Article 13

Entry into Force

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

* The references to "1984" in the 1984 Protocol to the Civil Liability Convention are replaced by references to "19XX" in Article XII ter, Article 11, paragraph 2, Article 12, paragraph 4, Article 13, paragraph 2, Article 14, paragraphs 1 and 2, Article 15, paragraph 5, Article 16, paragraph 5 and Article 17, paragraph 2(a)(ii) and in the certificate annexed to that Protocol.

2-4 Identical to the text of Article 13, paragraphs 2 to 4, of the 1984 Protocol to the Civil Liability Convention.**

Article 14 to Article 18

Identical to the text of Article 14 to Article 18 of the 1984 Protocol to the Civil Liability Convention.**

DONE AT LONDON, this day of

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

****** See footnote on previous page.

Annex 2

**DRAFT PROTOCOL TO THE INTERNATIONAL CONVENTION ON THE ESTABLISHMENT OF AN
INTERNATIONAL FUND FOR COMPENSATION FOR OIL POLLUTION DAMAGE, 1971**

THE PARTIES TO THE PRESENT PROTOCOL,

HAVING CONSIDERED the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, and the 1984 Protocol thereto,

HAVING NOTED that the 1984 Protocol to that Convention, which provides for improved scope and enhanced compensation, has not entered into force,

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

AWARE OF the need to ensure the entry into force of the content of the 1984 Protocol as soon as possible,

RECOGNIZING the advantage for the States Parties of arranging for the amended Convention to coexist with and be supplementary to the original Convention for a transitional period,

CONVINCED that the economic consequences of pollution damage resulting from the carriage of oil in bulk at sea by ships should continue to be shared by the shipping industry and by the oil cargo interests,

BEARING IN MIND the adoption of the Protocol of 19XX to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969,

HAVE AGREED as follows:

Article 1 to Article 27

Identical to the text of Article 1 to Article 27 of the 1984 Protocol to the Fund Convention.*

Article 28

Signature, ratification, etc

1 This Protocol shall be open for signature at London from to by any State which has signed the 19XX Liability Convention.

2-7 Identical to the text of Article 28, paragraphs 2 to 7, of the 1984 Protocol to the Fund Convention.*

Article 29

Identical to the text of Article 29 of the 1984 Protocol to the Fund Convention.

* The references to "1984" in the 1984 Protocol to the Fund Convention are replaced by references to "19XX" in Article 2, paragraphs 1 to 6, Article 3, Article 6, paragraphs 1 to 3 and 5, Article 9, paragraph 1, Article 10, Article 11, paragraph 1, Article 36 bis, Article 36 quater, Article 27, Article 28, paragraph 4, Article 30, paragraphs 2 and 6, Article 33, paragraph 5 and Article 34, paragraph 4.

Article 30

Entry into force

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

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

2-6 Identical to the text of Article 30, paragraphs 2 to 6, of the 1984 Protocol to the Fund Convention.**

Article 31 to Article 39

Identical to the text of Article 31 to Article 39 of the 1984 Protocol to the Fund Convention.**

DONE AT LONDON, this day of

IN WITNESS WHEREOF the undersigned being duly authorized for that purpose have signed this Protocol.

** See footnote on previous page.

Annex 3

DRAFT RESOLUTION 1

relating to the need to avoid a situation in which
two conflicting treaty regimes are operational

THE CONFERENCE,

HAVING ADOPTED the Protocol of 19.. to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969 (the 1969 Civil Liability Convention) and the Protocol of 19.. to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (the 1971 Fund Convention) (hereinafter referred to as the "19.. Protocols").

RECALLING the Protocols which were adopted in 1984 to amend the 1969 Civil Liability Convention and 1971 Fund Convention (hereinafter referred to as the "1984 Protocols"),

NOTING that the 19.. Protocols incorporate all the provisions of the 1984 Protocols with the exception of the provisions on entry into force,

HAVING AGREED that the 19.. Protocols should constitute the amending instruments to the 1969 Civil Liability Convention and the 1971 Fund Convention, in place of the 1984 Protocols which should no longer be viable,

CONSIDERING that the entry into force of the 19.. Protocols as well as the 1984 Protocols would create an undesirable situation in which two conflicting regimes would become operational,

CONVINCED that the 1969 Civil Liability Convention and the 1971 Fund Convention, as modified by the 19.. Protocols, constitute an adequate international treaty regime on liability and compensation for oil pollution damage,

SATISFIED that States which decide to participate in a modernized regime on compensation for oil pollution damage need only express their consent to be bound by the 19.. Protocols without also taking any action in respect of the 1984 Protocols,

DESIROUS of bringing the 19.. Protocols into force with minimum delay in order to bring the modernized regime of compensation into operation as soon as possible,

1. INVITES all States to give early and urgent consideration to the 19.. Protocols with a view to their acceptance thereof at an early date;
2. URGES all States which decide to participate in the modernized regime of compensation to deposit the appropriate instruments with the Secretary-General of the International Maritime Organization (IMO) as soon as possible;
3. APPEALS to all States which decide to participate in the modernized regime to ensure that they deposit instruments only in respect of the 19.. Protocols and without any references to the 1984 Protocols;
4. REQUESTS the Secretary-General of IMO to bring the terms of this resolution, and in particular the appeal in paragraph 3 above, to the attention of all States entitled to become Parties to the 19.. Protocols;
5. FURTHER REQUESTS the Secretary-General of IMO, in co-operation as necessary with the Director of the International Oil Pollution Compensation Fund (IOPC Fund), to provide all possible advice and assistance to States considering becoming Party to the 19.. Protocols, in order to ensure that the action taken by such States shall be in accordance with the terms of this resolution;

6. AUTHORIZES AND REQUESTS the Secretary-General, in his capacity as depositary of the Protocols, to take all appropriate steps, in conformity with the law of treaties and the depositary practice of IMO and the United Nations, to ensure that all instruments deposited by States after the adoption of the 19.. Protocols will facilitate the entry into force of only the 19.. Protocols, and will not also contribute to fulfil the conditions for the entry into force of the 1984 Protocols;

7. INVITES the Secretary-General of IMO to seek the views and guidance of the Legal Committee or the Council of IMO, as may be appropriate, in dealing with problems which may arise in connection with the implementation of this resolution;

8. REQUESTS the Secretary-General of IMO to seek the views and co-operation of the Director of the IOPC Fund in connection with the implementation of this resolution.

Annex 4

DRAFT RESOLUTION 2

in respect of certain treaty-law issues relating to States which have already expressed their consent to be bound by the 1984 Protocols

THE CONFERENCE,

HAVING ADOPTED the Protocol of 19.. to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969 (the 1969 Civil Liability Convention), and the Protocol of 19.. to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (the 1971 Fund Convention) (hereinafter referred to as the "19.. Protocols").

RECALLING the Protocols which were adopted in 1984 to amend the 1969 Civil Liability Convention and the 1971 Fund Convention (hereinafter referred to as the "1984 Protocols"),

NOTING that a number of States have already deposited instruments of ratification, acceptance, approval or accession in respect of the 1984 Protocols prior to the adoption of the 19.. Protocols,

NOTING ALSO that the 1984 Protocols have not entered into force, and that it is unlikely that their conditions for entry into force will be satisfied following the adoption of the 19.. Protocols to replace them,

RECOGNIZING, however, that there is the possibility in theory that the 1984 Protocols might enter into force even after the entry into force of the 19.. Protocols,

APPRECIATING that the States which have consented to be bound by the 1984 Protocols might face difficulties if they were to become Parties to the 19.. Protocols without being allowed to withdraw their consent to be bound by the 1984 Protocols,

CONSIDERING that it is advisable for the States which have consented to be bound by the 1984 Protocols and which also wish to become Parties to the 19.. Protocols to take measures to avoid the situation in which they might be obliged to apply two conflicting regimes on compensation,

CONSIDERING ALSO that the most effective way for the States concerned to avoid bringing two conflicting treaty regimes into force is for such States to withdraw their consent to be bound by the 1984 Protocols before or when expressing their consent to be bound by the 19.. Protocols,

BEING OF THE VIEW that withdrawal of a consent to be bound by a treaty in such a situation would not contravene any rule of international treaty law,

CONVINCED that action by the States to bring the 19.. Protocols into force will help to promote the object and purpose for which the 1984 Protocols were originally adopted,

1. INVITES the States which have already expressed their consent to be bound by the 1984 Protocols and which wish to become Parties to the 19.. Protocols to consider formally withdrawing their consent in respect of the 1984 Protocols prior to or at the time of expressing their consent to be bound by the 19.. Protocols;

2. REQUESTS the Secretary-General of the International Maritime Organization (IMO), as the depositary of the 1984 Protocols and the 19.. Protocols, to bring the contents of this resolution to the attention of all States entitled to become Parties to the 1984 Protocols and the 19.. Protocols;

3. **FURTHER REQUESTS** the Secretary-General of IMO to take all necessary and appropriate steps to advise and assist the States concerned which wish to take action in accordance with the terms of this resolution;
4. **ALSO REQUESTS** the Director of the International Oil Pollution Compensation Fund to extend appropriate co-operation and assistance to the Secretary-General of IMO in the implementation of this resolution;
5. **INVITES** the Secretary-General of IMO to consult with and seek the views and guidance of the Legal Committee or the Council of IMO, as may be appropriate, in dealing with problems which may arise in connection with the implementation of this resolution.

* * *

ANNEX II

Extract from the Report of the Legal Committee on the Work of Its Sixty-Sixth Session

(IMO document LEG 66/9, paragraphs 125-141)

E CONSIDERATION OF DRAFT PROTOCOLS WITH AMENDMENTS TO THE INTERGOVERNMENTAL OIL POLLUTION LIABILITY AND COMPENSATION SYSTEM BASED ON THE 1969 CIVIL LIABILITY CONVENTION AND THE 1971 FUND CONVENTION AND RELATED ISSUES (agenda item 5)

125 At the invitation of the Chairman, the Director of the IOPC Fund introduced the background to the IMO Assembly resolution by briefly outlining the discussions on this issue within the framework of the IOPC Fund. The mandate given to the Intersessional Working Group established by the IOPC Fund Assembly had been to consider the future development of the intergovernmental oil pollution liability and compensation system by examining the prospects for the entry into force of the 1984 Protocols to the Civil Liability Convention and the Fund Convention, to consider whether it would be possible to facilitate the entry into force of the content of the 1984 Protocols possibly by amending their entry into force provisions and to consider which substantive provisions in the existing Conventions and the 1984 Protocols appeared to form the main obstacles to their continued relevance, including an examination of the present contribution scheme. Following the decision by the United States Congress not to ratify the 1984 Protocols it had become clear that there were no prospects for the entry into force of these protocols in the foreseeable future. The Working Group had therefore concentrated its efforts on finding a solution that would enable the substance of the 1984 Protocols to enter into force. There had been general agreement that this could best be achieved by lowering the conditions for entry into force, in particular for the Fund Convention where it was extremely unlikely that the required quantity of contributing oil could be obtained without the participation of the United States. Agreement had also been reached that from a treaty law point of view, the best alternative would be to elaborate new protocols containing the same substantive and administrative provisions as the 1984 Protocols but with different provisions on the entry into force. The draft conference resolutions had been put forward in order to overcome possible problems of a treaty law nature by discouraging States from ratifying the 1984 Protocols after the adoption of new protocols in order to ensure that the 1984 Protocols did not enter into force. Furthermore, States already party to the 1984 Protocols were encouraged to withdraw their ratifications of these Protocols when depositing instruments of ratification in respect of the new protocols. The IOPC Fund Assembly had also considered a proposal by one Member State to introduce a system of "capping" contributions payable under the 1984 Fund Protocol in a given State for a transitional period. Although there had not been much support for this proposal, there had been general agreement that this question was mainly a political one and that the final decision on this issue would have to be taken by the diplomatic conference convened for the adoption of any new instruments. With this exception, it had however been emphasized that the revision must not be used to re-open other issues which had already been given careful consideration at the 1984 Conference. Any such attempts could jeopardize the early entry into force of the new protocols.

126 Many delegations expressed strong support for the liability and compensation system established by the 1969 Civil Liability Convention and the 1971 Fund Convention. They considered the system to be working remarkably well and would have wished the 1984 Protocols to enter into force as soon as possible. That would have ensured the viability and continuance of the system in the future and would have led to the introduction of a number of improvements and a necessary increase in the level of compensation. However, since it was unlikely that the 1984 Protocols would enter into force in the near future, these delegations concluded that the best way of ensuring the entry into force of the content of the 1984 Protocols was to modify the entry into force provisions. Therefore there

was general support for the draft protocols and for their early submission to a diplomatic conference. The Committee also agreed in general that the draft resolutions dealt with the treaty law issues in an appropriate way.

127 With reference to the possibility of introducing in the Fund Convention a system of setting a "cap" on contributions payable by oil receivers in any given State, as a transitional measure, most delegations were of the view that such a system would not be acceptable. Contributions were not levied on Member States but on individual contributors in these States. These delegations were therefore, in principle, against any such system. A capping system would introduce an element of discrimination since contributors in Member States entitled to capping would be paying a lower amount per tonne of contributing oil than oil receivers in other Member States. Hence, competition between industries in various Member States would be distorted.

128 It was however recognized that this was not a legal but a political issue. The Committee therefore agreed that the final decision on this issue had to be taken by the diplomatic conference.

129 The delegation that had proposed the introduction of a capping system explained that it could understand the opposition to this proposal. This delegation stressed that this was a vital issue for its oil industry which without such a capping system might have to carry a very heavy burden during an initial phase. Strong opposition from this industry could lead to the Government losing the possibility of ratifying the protocols at an early stage. It agreed that this was not a legal but a political problem and would therefore be satisfied with the issue being considered by the diplomatic conference. This delegation expressed gratitude to the delegations which had given their opinion on the system and not opposed the submission to the diplomatic conference of the draft provisions on the capping system.

130 One delegation mentioned that it had submitted several proposals during the discussions in the IOPC Fund which in its view were clear improvements of the texts of the 1984 Protocols. These proposals had, however, not received sufficient support to be accepted. While supporting the idea of limiting the revision to the entry into force provisions, this delegation therefore reserved its right to propose further amendments at the diplomatic conference.

131 Another delegation emphasized that it could only accept the simultaneous entry into force of the two protocols. It would therefore have been preferable if the amendments to the two Conventions had been contained in one protocol only. Another solution would in the view of this delegation be to make the entry into force of the protocol to the Civil Liability Convention conditional upon the entry into force of the protocol to the Fund Convention, or to allow any State to make its ratification of the CLC protocol binding on such State only when conditions for the entry into force of the Fund Protocol are fulfilled. This would also eliminate the risk that the protocol to the Civil Liability Convention entered into force long before the conditions for the entry into force of the Fund protocol had been met. This delegation emphasized that this solution would in no way be in conflict with the Vienna Convention on the Law of Treaties. The observer delegation of ICS fully agreed that a solution should be found to ensure the simultaneous entry into force of the new protocols. In the view of this delegation a compromise might be an undertaking from a sufficiently large number of Governments to co-ordinate simultaneous ratification of the new protocols.

132 Some delegations expressed sympathy for the wish to secure the simultaneous entry into force of the two protocols and explained that the second alternative merited some further consideration. With regard to the option of having all amendments in one protocol only, there was however general agreement that this solution was no longer realistic. Such a solution would require very careful consideration and redrafting of the instruments and would therefore lead to undue delay.

133 With regard to treaty law issues one delegation referred to the fact that there were no specific provisions in the Vienna Convention which give States the right to withdraw their consent to be bound by a treaty before the treaty has entered into force. A State which was already party to one or both of the 1984 Protocols should therefore be allowed to declare at the time of becoming party to the new protocols that it considered its previous ratification obsolete, upon the entry into force of the new protocol. A provision to this effect could be inserted in the final clauses of both protocols. This proposal was submitted to the Committee under reference LEG 66/WP.1.

134 The Director of the IOPC Fund, intervening as an observer delegation, expressed some doubts whether the proposal could achieve what it was set out to achieve. In particular, he noted that the proposed provision to be inserted in the final clauses of the new protocols could not have any binding effect on those Contracting States to the 1984 Protocols which choose not to become party to the new protocols. It was for this reason that it had been concluded that it would be better to deal with the treaty law questions in the resolutions to be adopted by the diplomatic conference. These resolutions would not bind any State, but would nevertheless be regarded as an interpretation of treaty law by States participating in the conference.

135 This view was supported by one delegation which emphasized that the new protocols could have no legal effect on the 1984 Protocols. There is no particular relationship between these protocols and the matter must therefore be solved outside the new protocols. For this reason this delegation was not in the position of supporting the German proposal.

136 Another delegation felt however that, as a Contracting State to the 1984 Protocols, it would prefer to have a stronger basis for solving the treaty law issues than a conference resolution. For this reason, this delegation was in favour of the German proposal.

137 Other delegations also expressed sympathy and understanding for the concern underlying the German proposal. There was, however, general agreement that the proposal needed further consideration and elaboration before it could be adopted.

138 In this connection one delegation drew attention to the contradiction between the draft resolution No.2 and the proposal under consideration. The Committee obviously had to make a choice between these two options.

139 In the light of the comments above, the Committee decided that the draft resolution No.2 should be retained but that the text proposed in LEG 66/WP.1 should be submitted to the diplomatic conference for further consideration as an alternative. The Committee further agreed to replace the words "A State which has ratified..." in the first line of the proposal by "Contracting States to...".

140 In conclusion the Committee decided to approve the draft protocols to the 1969 Civil Liability Convention and the 1971 Fund Convention contained in annexes 1.1 and 1.2 to document LEG 66/5 for submission to the diplomatic conference.

141 The Committee also approved the texts of the two draft conference resolutions as contained in annexes 1.3 and 1.4 to document LEG 66/5 and decided to transmit them to the diplomatic conference for further consideration. Finally, the Committee approved the submission to the diplomatic conference of draft provisions on a capping system as contained in annex 2 to document LEG 66/5 and the text proposed in LEG 66/WP.1 with the amendment referred to in paragraph 139 above.

ANNEX III

IMO Document LEG 66/WP.1

**CONSIDERATION OF DRAFT PROTOCOLS WITH AMENDMENTS TO THE INTERGOVERNMENTAL
OIL POLLUTION LIABILITY AND COMPENSATION SYSTEM BASED ON THE
1969 CIVIL LIABILITY CONVENTION AND THE
1971 FUND CONVENTION AND RELATED ISSUES**

Proposal by Germany

Insert the following text in the final clauses of both protocols:

"A State which has ratified the Protocol of 1984 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969 [International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971] may declare at the time of signature, ratification, acceptance, approval or accession to this Protocol that it regards its ratification of the said Protocol of 1984 obsolete when this Protocol enters into force".

ANNEX III

IMO Document LEG 66/WP.1

**CONSIDERATION OF DRAFT PROTOCOLS WITH AMENDMENTS TO THE INTERGOVERNMENTAL
OIL POLLUTION LIABILITY AND COMPENSATION SYSTEM BASED ON THE
1969 CIVIL LIABILITY CONVENTION AND THE
1971 FUND CONVENTION AND RELATED ISSUES**

Proposal by Germany

Insert the following text in the final clauses of both protocols:

"A State which has ratified the Protocol of 1984 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969 [International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971] may declare at the time of signature, ratification, acceptance, approval or accession to this Protocol that it regards its ratification of the said Protocol of 1984 obsolete when this Protocol enters into force".
