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

Note by the Director

1 Introduction

An International Conference, which was held in November 1992, adopted two Protocols amending the 1969 Civil Liability Convention and the 1971 Fund Convention. This document sets out the background to the Conference and gives a summary of its outcome.

2 The 1984 Protocols

2.1 In 1984, a Diplomatic Conference held in London under the auspices of the International Maritime Organization (IMO) adopted two Protocols amending the Civil Liability Convention and the Fund Convention, respectively. These Protocols provide higher limits of compensation and a wider scope of application than the Conventions in their original versions.

2.2 The 1984 Protocol to the Civil Liability Convention has been ratified by nine States. Four States have become Parties to the 1984 Protocol to the Fund Convention. The entry into force conditions laid down in the 1984 Protocol to the Fund Convention mean, however, that the Protocol would not enter into force unless ratified by the United States of America. In the United States, Congress considered for some time proposals for new comprehensive oil spill legislation. In that context, consideration was given to ratification of the 1984 Protocols. However, the legislation adopted by Congress which entered into force on 18 August 1990 did not contain provisions implementing the 1984 Protocols; this legislation is in fact incompatible with the Protocols. It thus became clear that the United States would not ratify the 1984 Protocols.

3 Work WithIn the IOPC Fund

3.1 In view of this development, and taking into account the requirements for their entry into force, it became obvious that the 1984 Protocols would not come into force in the foreseeable future. For

this reason the IOPC Fund Assembly decided, at its 13th session held in September 1990, to set up an Intersessional Working Group with the mandate to consider the future development of the intergovernmental oil pollution liability and compensation system. The report of the Working Group was considered by the Assembly at its 14th session, held in October 1991.

3.2 During the discussions in the Assembly, many delegations expressed their strong support of the system of compensation established by the 1969 Civil Liability Convention and the 1971 Fund Convention, which they considered to be working remarkably well. For this reason, a number of delegations stressed the importance that the 1984 Protocols to these Conventions should enter into force as soon as possible, so as to ensure the viability of this system in the future. The Assembly concluded that the best way of facilitating the entry into force of the 1984 Protocols would be to amend their entry into force provisions whilst retaining the substantive provisions of those Protocols. The Assembly agreed in general with draft texts elaborated by the Director for new Protocols containing entry into force provisions differing from those of the 1984 Protocols. On the basis of a proposal by the delegation of Japan, the Assembly also discussed whether a "cap" on contributions payable by oil receivers in any given State should be introduced in the Fund Convention.

3.3 At its 14th session, the IOPC Fund Assembly adopted a Resolution requesting the Secretary-General of IMO to convene an international conference, to be held if possible before the end of 1992, to consider the draft protocols elaborated within the IOPC Fund modifying the 1969 Civil Liability Convention and the 1971 Fund Convention; the conference should also consider 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.

4 Work Within IMO

In November 1991, the Assembly of IMO adopted a resolution requesting the Legal Committee of IMO to consider draft protocols modifying the Civil Liability Convention and the Fund Convention as well as the question of "capping" contributions payable by oil receivers in any given State. The Assembly of IMO also decided that an international conference of one week's duration be held during 1992 to adopt these Protocols. The draft Protocols were examined and approved by the Legal Committee of IMO in March 1992.

5 The 1992 International Conference

5.1 The International Conference on the revision of the 1969 Civil Liability Convention and the 1971 Fund Convention was held under the auspices of IMO from 23 to 27 November 1992 in London.

5.2 The IOPC Fund participated as an observer at the Conference. The Director submitted on behalf of the IOPC Fund a note setting out background information relating to the entry into force of any new Protocols (IMO document LEG/CONF.9/10). He also made such interventions as he considered of assistance to delegates in order to explain the system of compensation administered by the IOPC Fund.

5.3 The Conference adopted two Protocols amending the 1969 Civil Liability Convention and the 1971 Fund Convention, respectively (the 1992 Protocols).

5.4 The new Protocols retain the substantive provisions of the 1984 Protocols but with lower entry into force conditions. The 1992 Protocol to the Civil Liability Convention requires for its entry into force that it be ratified by ten States, including four States each with not less than one million units of gross tanker tonnage, whereas the 1984 Protocol to that Convention required six such States. The 1992 Protocol to the Fund Convention requires for its entry into force, inter alia, ratification by States representing together 450 million tonnes of contributing oil received, a reduction from the figure of 600 million tonnes laid down in the 1984 Protocol to the Fund Convention.

5.5 The 1992 Protocol to the Fund Convention introduces provisions setting a cap on contributions to the IOPC Fund payable by oil receivers in any given State. This cap was fixed by the Conference at 27.5% of the total annual contributions to the IOPC Fund. The capping system will cease to apply when the total quantity of contributing oil received during a calendar year in all States Parties to the 1992 Protocol to the Fund Convention exceeds 750 million tonnes, or at the expiry of a period of five years from the entry into force of that Protocol, whichever is the earlier.

5.6 The Conference adopted a Resolution which invited the Assembly of the IOPC Fund to instruct the Director of the Fund to carry out duties under the revised Fund Convention (in addition to his functions under the 1971 Fund Convention), and to make the necessary preparations for the entry into force of the 1992 Protocol to the Fund Convention, in particular as regards the administration of the Organisation ("the 1992 Fund") which will be established under that Protocol. The role of the IOPC Fund in respect of these preparations is dealt with in document FUND/A.16/11.

6 Main Amendments to the Conventions Introduced by the 1992 Protocols

The main differences between the Civil Liability Convention and the Fund Convention in their original versions and the Conventions as amended by the 1992 Protocols are as follows.

6.1 Higher Limits of Compensation

6.1.1 The limit of the shipowner's liability is changed by the introduction of a special liability limit for small vessels and by a substantial increase of the limitation amounts. The limitation figures under the 1992 Protocol to the Civil Liability Convention are:

- (a) for a ship not exceeding 5 000 gross tonnage, 3 million SDR (£2.8 million or US \$4.2 million);
- (b) for a ship with a tonnage between 5 000 and 140 000 gross tonnage, 3 million SDR plus 420 SDR (£391 or US \$590) for each additional unit of tonnage;
- (c) for a ship exceeding 140 000 gross tonnage, 59.7 million SDR (£54 million or US \$84 million).

6.1.2 The maximum compensation payable by the IOPC Fund under the 1992 Protocol to the Fund Convention in respect of any one incident is increased to 135 million SDR (£126 million or US\$189 million), including the compensation payable by the shipowner under the Civil Liability Convention as amended by the 1992 Protocol thereto. The limitation figure will be increased automatically to 200 million SDR (£186 million or US \$281 million) when there are three States Parties to the 1992 Protocol to the Fund Convention whose combined quantity of contributing oil received during a given year in their respective territories exceeds 600 million tonnes.

6.1.3 The 1992 Protocols provide for a simplified procedure to increase these limits, if the experience of incidents should justify it.

6.2 No Indemnification of Shipowners

Pursuant to the Fund Convention in its original version, the IOPC Fund indemnifies the shipowner, under certain conditions, for part of the total amount of his liability under the Civil Liability Convention. Under the 1992 Protocol to the Fund Convention there is no indemnification payable to the shipowner. The shipowner's liability under the revised Civil Liability Convention is, therefore, the net liability to be borne by him or his insurer.

6.3 Geographical Scope of Application

The Conventions in their original versions apply only to pollution damage in the territory, including the territorial sea, of a Contracting State. The geographical scope of application of the Conventions is extended by the 1992 Protocols to the exclusive economic zone (EEZ), established under the 1982 United Nations Convention on the Law of the Sea.

6.4 Spills from Unladen Tankers

Pollution damage caused by spills of persistent oil from unladen tankers is to be compensated under the Civil Liability Convention and the Fund Convention as amended by the 1992 Protocols. This is in contrast to the Conventions in their original versions.

6.5 Pre-spill Preventive Measures

Unlike under the original texts of the Conventions, expenses incurred for preventive measures are recoverable under the amended Conventions even when there is no spill of oil as a result of the incident, provided that there is a grave and imminent danger of pollution damage.

6.6 Definition of "Pollution Damage"

The 1992 Protocol to the Civil Liability Convention contains a new definition of the notion of "pollution damage" which retains the basic wording of the present definition with the addition of a phrase to clarify the question of whether and to what extent damage to the environment is covered by the definition. It is provided that compensation for impairment of the environment (other than loss of profit from such impairment) shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken.

7 Action to be Taken by the Assembly

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