



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND

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PREPARATIONS FOR THE ENTRY INTO FORCE OF THE 1992 PROTOCOLS AMENDING THE 1969 CIVIL LIABILITY CONVENTION AND THE 1971 FUND CONVENTION

Note by the Director

1 Introduction

1.1 As mentioned in document FUND/A.16/10, an International Conference held in November 1992 adopted two Protocols amending the 1969 Civil Liability Convention and the 1971 Fund Convention. The Conference also adopted a Resolution which invited the Assembly of the IOPC Fund to instruct the Director of the present IOPC Fund to carry out duties under the revised Fund Convention (in addition to his functions under the 1971 Fund Convention), to encourage the early entry into force of the 1992 Protocol to the Fund Convention, and to make the necessary preparations for the first session of the Assembly of the organisation ("the 1992 Fund") which would be established under that Protocol. The Resolution also states that the Director should enter into negotiations with the "1992 Fund" with a view to reaching a mutually advantageous arrangement enabling both Funds to share a single Secretariat, headed by the Director. This Resolution is reproduced in Annex I to the present document.

1.2 The present document deals with the role of the IOPC Fund in respect of the preparations for the entry into force of the 1992 Protocol to the Fund Convention.

2 Prospects for the Entry into Force of the 1992 Protocols

2.1 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. The 1992 Protocol to the Fund Convention requires for its entry into force ratification by eight States representing together at least 450 million tonnes of contributing oil received.

2.2 A number of States have indicated that they are preparing legislation necessary for ratification of the 1992 Protocols. In order to enable the Assembly to make an assessment of the prospects for the entry into force of the Protocols, certain factual information as to tanker tonnage and quantities of contributing oil received in Member States is set out in Annex II to this document.

2.3 It is very difficult at this early stage to make any predictions as to the date for the entry into force of the 1992 Protocols. On the basis of the information given by various Member States concerning their timetable for ratification, the Director considers that the conditions for the entry into force of both Protocols might be fulfilled in late 1994 or in early 1995. Each Protocol will enter into force twelve months after these conditions have been met. It is therefore possible that the 1992 Protocol to the Civil Liability Convention and the 1992 Protocol to the Fund Convention will enter into force in late 1995 or in early 1996.

2.4 As mentioned above this prediction as to the date of the entry into force of the 1992 Protocols is very uncertain. The Assembly may nevertheless wish to instruct the Director to commence the preparations necessary 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 would be established under that Protocol.

2.5 Under Article 36 of the Fund Convention, the first Assembly of the "1992 Fund" shall be held within 30 days of the entry into force of the 1992 Protocol. It therefore cannot be ruled out that this session will be held during the latter part of 1995 or in the beginning of 1996. For this reason, the Director considers it prudent to start the preparations for the entry into force of the 1992 Protocol to the Fund Convention.

3 Questions to be Studied

3.1 The first Assembly of the "1992 Fund" will have to take decisions on a number of issues. It will thus have to adopt several documents setting out the framework for the operation of the "1992 Fund", for example:

- (a) Rules of Procedures of the Assembly;
- (b) Internal Regulations;
- (c) Financial Regulations; and
- (d) Staff Regulations and Rules.

3.2 Although the above-mentioned documents could be drafted along the lines of the corresponding documents already applied by the IOPC Fund, it might be appropriate to make modifications in the light of the experience gained over the years from the operation of the IOPC Fund. In addition, account will have to be taken of the fact that during a transitional period there will be two organisations (the "1971 Fund" and the "1992 Fund") operating in parallel.

3.3 Assuming that the "1992 Fund" will have its Headquarters in the United Kingdom, the "1992 Fund" will have to negotiate a Headquarters Agreement with the United Kingdom Government. This agreement might be similar to the one at present in force in respect of the "1971 Fund".

3.4 The "1992 Fund" would have to negotiate an agreement with the International Maritime Organization (IMO) in respect of its offices if the offices of the two Funds were to remain in the IMO building. On that assumption, it would be necessary to conclude an agreement with IMO concerning administrative co-operation between IMO and the "1992 Fund" along the lines applied in respect of the "1971 Fund".

3.5 When the 1992 Protocols were adopted, it was envisaged that the 1969 Civil Liability Convention and the 1971 Fund Convention in their original versions (or as amended by the 1976 Protocols thereto) would remain in force in parallel with the 1992 Protocols to these Conventions for a transitional period, the length of which is impossible to foresee. The systems of compensation which would exist during this transitional period are very complex, due to the different treaty relationships between various groups of States.

3.6 The relationship between the "1971 Fund" and the "1992 Fund" during the transitional period will have to be considered, eg in respect of the financial relations between the two organisations as regards their budgets and the levying of contributions.

3.7 It will be necessary to consider the structure of the Secretariat of the two Funds.

3.8 The first Assembly of the "1992 Fund" will have to determine which intergovernmental and international non-governmental organisations shall be admitted to take part, without voting rights, in meetings of the Assembly and subsidiary bodies.

3.9 Under the 1971 Fund Convention, the IOPC Fund has an Executive Committee which deals mainly with claims for compensation against the Fund. Under the 1992 Protocol there is no Executive Committee, and the Assembly will have to consider how claims should be dealt with.

3.10 It seems appropriate to study at an early stage the problems which will arise when the 1971 Fund Convention ceases to be in force, for example in respect of the position of the personnel employed by the "1971 Fund" at that date.

3.11 The Director submits to the Assembly for consideration whether it may wish to instruct him to study the issues set out in paragraphs 3.1-3.10 above and report the results of this study to the Assembly at its 17th session.

3.12 In the Resolution adopted by the International Conference, the Assembly was requested to instruct the Director to make all possible efforts to encourage the early entry into force of the 1992 Protocol to the Fund Convention. The Assembly may wish to give the Director instructions on this point.

4 Financial Aspects

4.1 In view of the small size of the IOPC Fund Secretariat, it will not be possible for the permanent staff of the Secretariat to carry out a study of all the issues dealt with above. The Director considers that it will be necessary to make use of consultants for part of this work. The Director proposes, therefore, that an amount of £30 000 be allocated in the 1994 budget for the use of consultants for this purpose.

4.2 The above-mentioned Resolution states that the costs incurred by the present IOPC Fund in connection with the preparations for the entry into force of the 1992 Protocol to the Fund Convention should be reimbursed to the "1971 Fund" by the "1992 Fund" when the latter has been set up. It should be noted that certain costs incurred by IMO prior to the entry into force of the 1971 Fund Convention were reimbursed by the IOPC Fund to IMO.

5 Action to be Taken by the Assembly

The Assembly is invited to:

- (a) take note of the information contained in this document and;
- (b) give the Director such instructions in respect of the preparations for the entry into force of the 1992 Protocol to the Fund Convention as it may deem appropriate.

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ANNEX I**RESOLUTION 2****RESOLUTION ON THE ESTABLISHMENT OF THE INTERNATIONAL OIL POLLUTION
COMPENSATION FUND, 1992**

THE CONFERENCE,

HAVING ADOPTED the Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971,

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 Fund (hereinafter referred to as "the Fund") to be established under the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (hereinafter referred to as "the Fund Convention"), can operate properly as from the date of entry into force of the said Protocol,

CONSIDERING that there is a need to provide for a smooth transition of administrative and organizational measures to the regime under the 1992 Fund Convention,

1 REQUESTS the Assembly of the International Oil Pollution Compensation Fund, 1971 (hereinafter referred to as "the 1971 Fund"), established under the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 ("hereinafter referred to as "the 1971 Fund Convention"), to authorize and instruct its Director, on the basis that all expenses that may be incurred would be reimbursed by the Fund:

- (a) to perform, in addition to his functions under the 1971 Fund Convention, duties under the Fund Convention, provided that the interests of Parties to the 1971 Fund Convention are not unduly affected;
- (b) to make all possible efforts, in co-operation with other international organizations concerned such as the International Maritime Organization (IMO), to encourage early entry into force of the said Protocol;
- (c) to provide all necessary assistance for the setting up of the Fund;
- (d) to make the necessary preparations for the first session of the Assembly of the Fund, which is to be convened by the Secretary-General of IMO, in accordance with Article 36 of the Fund Convention;
- (e) to enter into negotiations with IMO with a view to enabling the Fund to reach agreements, as soon as possible, regarding accommodation and supporting services, as appropriate;
- (f) to enter into negotiations with the Fund at the appropriate time with a view to reaching a mutually advantageous arrangement enabling both Funds to share a single Secretariat, headed by the Director;

2 RECOMMENDS that regular sessions of the Assemblies, under Article 19, paragraph 1, of the Fund Convention and the 1971 Fund Convention, be held, as far as practicable, during the same period and at the same place;

3 FURTHER RECOMMENDS that the Fund should:

- (a) ensure, in its Staff Rules and Regulations, that personnel employed by the 1971 Fund on the date when the 1971 Fund Convention ceases to be in force will receive

treatment no less favourable, as regards the terms and conditions of their service, as a result of the change of legal personality of the organization;

- (b) enter into negotiations with the host Government so that the question of the privileges, immunities and facilities to be accorded to the Fund can be considered with a view to its being settled in a mutually satisfactory manner, having regard to the privileges, immunities and facilities accorded at present to the 1971 Fund.

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ANNEX II**BACKGROUND INFORMATION RELEVANT TO THE
ENTRY INTO FORCE OF THE 1992 PROTOCOLS****1 Protocol to the Civil Liability Convention**

1.1 The entry into force of the 1992 Protocol to the Civil Liability Convention requires ratification by ten States, including four States each with not less than one million units of gross tanker tonnage.

1.2 In accordance with Lloyds Register of Shipping, Statistical Tables, November 1992, at 30 June 1992 the following 22 States had gross tanker tonnage exceeding one million units:

Bahamas	Kuwait
Brazil	Liberia
China	Malta
Cyprus	Marshall Islands
Denmark	Norway
France	Panama
Greece	Russian Federation
India	Singapore
Iran, Islamic Republic of	Spain
Italy	United Kingdom
Japan	United States

1.3 Only three of the above-mentioned 22 States (namely the Islamic Republic of Iran, the Marshall Islands and the United States) are not Parties to the 1969 Civil Liability Convention.

2 Protocol to the Fund Convention

2.1 The 1992 Protocol to the Fund Convention will enter into force after ratification by at least eight States, provided that the States which have become Parties to the Protocol have received during the preceding calendar year a total quantity of at least 450 million tonnes of contributing oil.

2.2 The quantities of contributing oil received in States Parties to the 1971 Fund Convention are set out in the following table. The figures are based on the reports submitted to the IOPC Fund by Governments of these States in respect of 1992 or, if the 1992 report has not been submitted or is incomplete, in respect of the most recent available figure, as indicated:

State	Contributing Oil (tonnes)
Japan (1992)	269 932 430
Italy (1992)	148 507 529
Netherlands (1992)	97 735 913
France (1992)	92 028 206
United Kingdom (1992)	82 477 057
Republic of Korea (1992)	82 076 982
Spain (1992)	57 686 894
India (1992)	39 169 000
Germany (1992)	32 457 327
Canada (1992)	30 805 464
Norway (1992)	23 990 310
Sweden (1992)	19 008 159
Greece (1991)	15 723 826

Portugal (1992)	10 739 302
Indonesia (1992)	9 972 439
Finland (1992)	8 762 427
Denmark (1992)	7 129 245
Bahamas (1992)	5 586 812
Poland (1991)	5 058 160
Russian Federation (1991)	3 481 000
Côte d'Ivoire (1992)	3 243 086
Kuwait (1991)	2 982 000
Ireland (1992)	2 710 953
Tunisia (1992)	2 589 972
Cyprus (1992)	1 410 207
Sri Lanka (1992)	1 303 553
Nigeria (1987)	1 284 634
Cameroon (1991)	1 179 849
Ghana (1991)	947 031
Algeria (1992)	555 583
Syrian Arab Republic (1989)	421 078
Gabon (1987)	420 099

Total	1 061 376 527
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2.3 Of the remaining States Parties to the 1971 Fund Convention, some have reported that no contributing oil was received in 1992 (Estonia, Iceland, Monaco, Papua New Guinea, Slovenia, Tuvalu and Vanuatu). In some States Parties, no contributing oil was received for the last year in respect of which a report was submitted (Benin, Djibouti, Fiji, Liberia, Maldives, Oman, Qatar, Seychelles and United Arab Emirates). Other States Parties have not yet submitted any reports to the IOPC Fund (Brunei Darussalam, Croatia, Gambia, Kenya, Malta, Morocco and Venezuela). In respect of the Federal Republic of Yugoslavia (Serbia and Montenegro), no reports have been received since the dissolution of the Socialist Federal Republic of Yugoslavia.

2.4 Contributing oil is received in significant quantities in the following States not Parties to the Fund Convention; the figures given below are estimates made by the Director of the IOPC Fund on the basis of available information:

State	Contributing Oil (tonnes)
United States (estimate)	460 000 000
Brazil (estimate)	60 000 000
Singapore (estimate)	50 000 000
Australia (estimate)	20 000 000
Malaysia (estimate)	20 000 000
Total	610 000 000
