FUTURE DEVELOPMENTS OF IOPCF

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Introduction

Compensation for pollution damage caused by spills from oil tankers is governed by an international regime elaborated under the auspices of the International Maritime Organization (IMO). The framework for the regime was originally the 1969 International Convention on Civil Liability for Oil Pollution Damage (1969 Civil Liability Convention) and the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (1971 Fund Convention). This 'old' regime was amended in 1992 by two Protocols, and the amended Conventions are known as the 1992 Civil Liability Convention and the 1992 Fund Convention. The 1992 Conventions entered into force on 30 May 1996.

Since the 1969 Civil Liability Convention and the 1971 Fund Convention have been denounced by a number of States and are losing importance, this note deals primarily with the 'new' regime, ie the 1992 Civil Liability Convention and the 1992 Fund Convention.

The 1992 Civil Liability Convention governs the liability of shipowners for oil pollution damage. The Convention lays down the principle of strict liability for shipowners and creates a system of compulsory liability insurance. The shipowner is normally entitled to limit his liability to an amount which is linked to the tonnage of his ship.

The 1971 and 1992 Fund Conventions are supplementary to the 1969 Civil Liability Convention and the 1992 Civil Liability Convention respectively. Each Fund Convention establishes a regime for compensating victims when the compensation under the applicable Civil Liability Convention is inadequate. The 1971 and 1992 Fund Conventions each established an intergovernmental organisation to administer the compensation regime created by the respective Fund Convention, the International Oil Pollution Compensation Funds 1971 and 1992 (IOPC Funds). The Organisations have their headquarters in London.

The States Parties to the 1969, 1971 and 1992 Conventions are listed in Annex I.

As at 1 February 2002, 81 States were Parties to the 1992 Civil Liability Convention, and 75 States were Parties to the 1992 Fund Convention.

Information on the international compensation regime and the IOPC Funds is available on the Funds' web site at: **http://www.iopcfund.org**

The international compensation regime

Substantive provisions

Scope of application

The 1969 and 1971 Conventions apply to pollution damage caused by spills of persistent oil from tankers and suffered in the territory (including the territorial sea) of a State Party to the respective Convention. Under the 1992 Conventions, however, the geographical scope is wider, with the cover extended to pollution damage caused in the exclusive zone (EEZ) or equivalent area of a State Party. 'Pollution damage' includes the cost of 'preventive measures', ie measures to prevent or minimise pollution damage.

Damage caused by non-persistent oil is not covered by the Conventions. Spills of gasoline, light diesel oil, kerosene, etc, therefore do not fall within the scope of the Conventions.

The 1969 Civil Liability Convention and the 1971 Fund Convention apply only to measures taken after oil has escaped or been discharged. These Conventions therefore do not apply to pure threat removal measures, ie preventive measures which are so successful that there is no actual spill of oil from the tanker involved. Under the 1992 Conventions, however, expenses incurred for preventive measures are recoverable even when no spill of oil occurs, provided that there was a grave and imminent threat of pollution damage.

The 1969 and 1971 Conventions apply only to ships which actually carry oil in bulk as cargo, ie generally laden tankers. Spills from tankers during ballast voyages are therefore not covered by these Conventions. The 1992 Conventions apply also to spills of bunker oil from unladen tankers in certain circumstances. Neither the 1969/1971 Conventions nor the 1992 Conventions apply to spills of bunker oil from ships other than tankers (ie dry cargo ships).

Shipowner's liability

The owner of a tanker has strict liability (ie he is liable also in the absence of fault) for pollution damage caused by oil spilled from the tanker as a result of an incident. He is exempt from liability under the Civil Liability Conventions only if he proves that:

(a) the damage resulted from an act of war or a grave natural disaster, or
(b) the damage was wholly caused by sabotage by a third party, or
(c) the damage was wholly caused by the negligence of public authorities in maintaining lights or other navigational aids.

Under certain conditions the shipowner is entitled to limit his liability to an amount which is linked to the tonnage of the vessel. The limit of the shipowner's liability under the 1969 Civil Liability Convention is the lower of 133 Special Drawing Rights (SDR)[<1>] (US$165) per ton of the ship's tonnage or 14 million SDR (US$17.4 million). Under the 1992 Civil Liability Convention, the limits are:

(a) for a ship not exceeding 5 000 units of gross tonnage, 3 million SDR (US$3.7 million);
(b) for a ship with a tonnage between 5 000 and 140 000 units of tonnage, 3 million SDR (US$3.7 million) plus 420 SDR (US$521) for each additional unit of tonnage; and
(c) for a ship of 140 000 units of tonnage or over, 59.7 million SDR (US$74 million).

There is a simplified procedure under the 1992 Civil Liability Convention for increasing these limits.

Under the 1969 Civil Liability Convention, the shipowner is deprived of the right to limit his liability if the incident occurred as a result of the owner's personal fault ('actual fault or privity'). Under the 1992 Convention, however, the shipowner is deprived of this right only if it is proved that the pollution damage resulted from the shipowner's personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

Channeling of liability

Claims for pollution damage under the Civil Liability Conventions can be made only against the registered owner of the ship concerned. This does not preclude victims from claiming compensation outside the Conventions from persons other than the owner. However, the 1969 Civil Liability Convention prohibits claims against the servants or agents of the shipowner. The 1992 Civil Liability Convention prohibits not only claims against the servants or agents of the owner, but also claims against the pilot, the charterer (including a bareboat charterer), manager or operator of the ship, or any person carrying out salvage operations or taking preventive measures.

Compulsory insurance

The owner of a tanker carrying more than 2 000 tonnes of persistent oil as cargo is obliged to maintain insurance to cover his liability under the applicable Civil Liability Convention. Tankers must carry a certificate on board attesting the insurance coverage. When entering or leaving a port or terminal installation of a State Party to the 1969 or 1992 Civil Liability Convention, such a certificate is required also for ships flying the flag of a State which is not Party to that Convention.

Claims for pollution damage under the Civil Liability Conventions may be brought directly against the insurer of the owner's liability for pollution damage.

<1> The unit of account in the Conventions is the Special Drawing Right (SDR) as defined by the International Monetary Fund. In this paper, the SDR has been converted into US dollars at the rate of exchange applicable on 1 February 2002, ie 1 SDR = US$1.239770.

IOPC Funds' obligations

The IOPC Funds 1971 and 1992 pay compensation to those suffering oil pollution damage in a State Party to the respective Fund Convention who do not obtain full compensation under the applicable Civil Liability Convention in the following cases:

(a) the shipowner is exempt from liability under the applicable Civil Liability Convention because he can invoke one of the exemptions under that Convention; or
(b) the shipowner is financially incapable of meeting his obligations under the applicable Civil Liability Convention in full and his insurance is insufficient to satisfy the claims for compensation for pollution damage; or
(c) the damage exceeds the shipowner's liability under the applicable Civil Liability Convention.

The compensation payable by the 1971 Fund in respect of an incident is limited to an aggregate amount of 60 million SDR (US$74 million), including the sum actually paid by the shipowner (or his insurer) under the 1969 Civil Liability Convention. The maximum amount payable by the 1992 Fund in respect of an incident is 135 million SDR (US$167 million), including the sum actually paid by the shipowner (or his insurer) under the 1992 Civil Liability Convention.

The 1992 Fund Convention provides a simplified procedure for increasing the maximum amount payable by the 1992 Fund.

The IOPC Funds do not pay compensation if:

(a) the damage occurred in a State which was not a Member of the respective Fund; or
(b) the pollution damage resulted from an act of war or was caused by a spill from a warship; or
(c) the claimant cannot prove that the damage resulted from an incident involving one or more ships as defined in the applicable convention (ie a sea-going vessel or seaborne craft of any type whatsoever actually carrying oil in bulk as cargo under the 1969/1971 Conventions and a seagoing vessel or seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo under the 1992 Conventions)

Jurisdiction and enforcement of judgements

Actions for compensation under the applicable Civil Liability Convention against the shipowner or his insurer may only be brought before the Courts of the State Party to that Convention in the territory, territorial sea or EEZ of which damage was caused.

Actions for compensation under the applicable Fund Convention against the respective Fund may only be brought before the Courts of the State Party to that Convention in the territory, territorial sea or EEZ of which damage was caused.

The Conventions also contain special provisions relating to the recognition and enforcement of judgements.

Comparison between the 'old' and 'new' regimes

The principal differences between the 1969 and 1971 Conventions ('old' regime) and the 1992 Conventions ('new' regime) are summarised in Annex II.

Organisation of the IOPC Funds

Each Fund has an Assembly, which is composed of representatives of all Member States. The Assembly is the supreme organ governing the respective Fund, and it holds regular sessions once a year. Each Assembly elects an Executive Committee comprising 15 Member States. The main function of these Committees is to approve settlements of claims.

The 1992 Fund and the 1971 Fund have a joint Secretariat. The Secretariat is headed by a Director and has at present 26 staff members.

The Director has been granted extensive authority to approve claims for compensation.

Financing of the 1992 Fund

The 1992 Fund is financed by contributions levied on any person who has received in one calendar year more than 150 000 tonnes of crude oil and heavy fuel oil (contributing oil) in a State Party to the 1992 Fund Convention. <2>

Basis of contributions

The levy of contributions is based on reports of oil receipts in respect of individual contributors. A State shall communicate every year to the 1992 Fund the name and address of any person in that State who is liable to contribute, as well as the quantity of contributing oil received by any such person. This applies whether the receiver of oil is a Government authority, a State-owned company or a private company. Except in the case of associated persons (subsidiaries and commonly controlled entities), only persons having received more than 150 000 tonnes of contributing oil in the relevant year should be reported.

Contributing oil is counted for contribution purposes each time it is received at ports or terminal installations in a Member State after carriage by sea. The term received refers to receipt into tankage or storage immediately after carriage by sea. The place of loading is irrelevant in this context; the oil may be imported from abroad, carried from another port in the same State or transported by ship from an off-shore production rig. Also oil received for transhipment to another port or received for further transport by pipeline is considered received for contribution purposes.

Payment of contributions

Annual contributions are levied by the 1992 Fund to meet the anticipated payments of compensation and administrative expenses during the coming year. Each contributor pays a specified amount per tonne of contributing oil received. The amount levied is decided each year by the Assembly.

The Director issues an invoice to each contributor, following the decision taken by the Assembly to levy annual contributions. A system of deferred invoicing exists whereby the Assembly fixes the total amount to be levied in contributions for a given calendar year, but decides that only a specific lower total amount should be invoiced for payment by 1 March in the following year, the remaining amount, or a part thereof, to be invoiced later in the year if it should prove to be necessary.

The contributions are payable by the individual contributors directly to the 1992 Fund. A State is not responsible for the contributions levied on contributors in that State, unless it has voluntarily accepted such responsibility.

The Japanese oil industry is the major contributor to the 1992 Fund, paying 20.01% of the total contributions. The Italian oil industry is the second largest contributor paying 10.69%, followed by the oil industries in the Republic of Korea, the Netherlands, France, United Kingdom, Singapore, Spain, Canada, Germany, Australia and Norway.

Payments made by the IOPC Funds in respect of claims for compensation for oil pollution damage may vary considerably from year to year, resulting in fluctuating levels of contributions.

The following table sets out the contributions levied by the 1992 Fund during the period 1996-2001.

<2> The 1971 Fund is financed in the same way as the 1992 Fund.

Annual contributions	Date due	Total contribution £	Contribution per tonne £	Contribution per million tonnes £
1996	1.2.97	4 000 000	0.0110440	11 044
	1.9.97	10 000 000	0.0188066	18 807
1997	1.2.98	9 500 000	0.0114295	11 430
	Maximum deferred levy	*30 000 000*	*(No deferred levy made)*	-
1998	1.2.99	28 200 000	0.0400684	40 068
	1.9.99	9 000 000	0.0134974	13 497
1999	Credit: 1.3.00	-3 700 000	-0.0056367	-5 637
	1.9.00	53 000 000	0.0552651	55 265
2000	1.3.01	49 500 000	0.0545770	54 577
	Maximum deferred levy	43 000 000	*(No deferred levy made)*	-
2001	1.3.02	41 000 000	0.0428439	42 844
	Maximum deferred levy	21 000 000	0.0188148	18 815

The following table sets out the contributions levied by the 1971 Fund during the period 1990-2001.

Annual Contributions	Due date	Total contribution £	Contribution per tonne £	Contribution per million tonnes £
Initial Contributions			0.0027896	2 790
1990		500 000	0.0005563	556
1991		26 700 000	0.0287013	28 701
1992		10 950 000	0.0116210	11 621
1993		78 000 000	0.0785397	78 540
1994		40 000 000	0.0389400	38 940
1995		43 000 000	0.0391209	39 121
1996	Due 1.2.97:	18 000 000	0.0150285	15 029
	Due 1.9.97:	37 800 000	0.0306697	30 670
1997	Due 1.2.98:	32 200 000	0.0264108	26 411
	Maximum deferred levy	*27 000 000*	*(No deferred levy made)*	
1998	Due 1.2.99:	9 200 000	0.0085939	8 594
	Maximum deferred levy	*17 500 000*	*(No deferred levy made)*	
1999	Due 1.3.00:	3 800 000	0.0025039	2 504
	Maximum deferred levy	*2 000 000*	*(No deferred levy made)*	
2000	Due 1.3.01	0	0	0
	Maximum deferred levy	*25 000 000*	*(No deferred levy made)*	
2001	Due 1.3.02	0	0	0
	Maximum deferred levy	24 200 000	0.0585895	58 590

Recent developments

'Old' regime in decline

The 1969 Civil Liability Convention and the 1971 Fund Convention have been denounced by a number of States, so that the number of 1971 Fund Member States has fallen from 77 to its present level of 24. A further two States have also denounced the 'old' Conventions and will have ceased to be 1971 Fund Member States by May 2002. Meanwhile, the number of 1992 Fund Member States has risen to 64, and a further 11 States have acceded to the 1992 Protocols and will have become 1992 Fund Member States by the end of January 2003. As more States joined the 1992 Fund and ceased to be Members of the 1971 Fund, the 'old' regime has lost its importance.

Financial consequences of the denunciations

With the departure from the 1971 Fund of a number of States, the total quantity of contributing oil on the basis of which contributions are assessed has been reduced from its maximum of some 1 200 million tonnes to its present level of approximately 100 million tonnes. By the end of 2001 the total quantity of contributing oil received in the remaining 1971 Fund Member States will have decreased further to some eight million tonnes.

The effect of this reduction in the contribution base is the considerably increased financial burden which might fall on the contributors in those States which remain Members of the 1971 Fund if a major oil spill occurs in any of those States.

Winding up of the 1971 Fund

The 1971 Fund Convention provides that the Convention will cease to be in force on the date when the number of Contracting States falls below three. Before the 1971 Fund can be wound up, however, the 1971 Fund would have to meet its obligations in respect of all incidents that occurred before the Convention ceased to be in force.

As long as the 1971 Fund remains in existence, it may attract additional liabilities arising out of new incidents in 1971 Fund Member States. There was considerable concern that before the 1971 Fund could be wound up it would face a situation in which an incident occurred and the 1971 Fund had an obligation to pay compensation to victims, but where there were no contributors in any of the remaining Member States. It should be noted that there were over 20 Member States where there are no contributors because no entities in those States receive more than 150 000 tonnes of contributing oil in a calendar year.

In the situation set out above, if a tanker spill occurred the remaining 1971 Fund Member States would not in fact have the financial protection which they would expect in accordance with the provisions of the 1971 Fund Convention.

For these reasons, it was considered important for the 1971 Fund to be wound up as soon as possible.

Operational problems for the 1971 Fund

In April 1998 the 1971 Fund Assembly addressed the problems which would arise for the 1971 Fund if, with the falling membership, the Assembly were unable to achieve a quorum (more than half of the Member States). There was particular concern that certain functions of the Assembly, such as adopting the budget, fixing annual contributions, settling claims and electing a legal representative (ie the Director), could not be carried out. The Assembly therefore adopted a resolution - in the interests of victims of pollution damage - setting out certain measures which would enable the compensation system established under the 1971 Fund Convention to continue to function.

Despite extra efforts on the part of the Secretariat, the 1971 Fund Assembly did not achieve a quorum for its sessions in October 1998 and October 1999, since less than half of the Member States were present at the required time. As a result, the items on the agendas of the Assembly were dealt with by the 1971 Fund's Executive Committee.

Since April 2000 also the Executive Committee has been unable to achieve a quorum of two thirds of its 15 Member States. The functions of the Assembly and Committee were then performed by a newly-created body, known as the Administrative Council, which has no quorum requirement. Decisions of the Administrative Council are taken by majority vote of both 1971 Fund Member States and former 1971 Fund Member States, but former Member States have the right to vote only in respect of issues relating to incidents which occurred while they were Members.

Duty of States to submit oil reports

The obligation to submit oil reports to the 1971 and 1992 Funds rests on the Member States. These reports are essential to the functioning of the Fund system, as they provide the data from which contributions can be assessed and invoices issued. The reports have to be submitted to the Secretariat by 30 April each year. If no entity in a Member State has received more than 150 000 tonnes of contributing oil in the year in question, the State is required to notify the Secretariat accordingly ('nil' reports).

The non-submission of oil reports by a number of States was considered by the delegations at the October 1998 sessions of the governing bodies of both the 1971 Fund and the 1992 Fund to be a matter of serious concern to other Member States and in particular to the contributors in those States, since without oil reports the Secretariat cannot issue invoices for contributions. At the time of the October 2000 session of the 1971 Fund's governing bodies, two thirds of the Member States had not submitted their reports for the previous year.

In accordance with the decisions taken by the Funds' governing bodies in October 1998, if a State does not submit its oil reports in future, the Director will make contacts with that State and emphasise the concerns expressed by the governing bodies of each Organisation. The Assembly will review individually each State which has not submitted its report and decide on the course of action to be taken for each State. Such a review was made at the governing bodies' sessions in October 1999, October 2000 and October 2001.

Diplomatic Conference to amend Article 43.1 of the 1971 Fund Convention

Under Article 43.1 in its original version the 1971 Fund Convention ceases to be in force when the number of Contracting States falls below three. Although many States had denounced the 1971 Fund, it was unlikely that the number of Contracting States would fall below three in the foreseeable future.

In October 1999 a number of ways of accelerating the winding up of the 1971 Fund were considered by the 1971 Fund Executive Committee, acting on behalf of the Assembly. The Committee decided that IMO should be requested to convene urgently a Diplomatic Conference for the purpose of adopting a Protocol amending Article 43.1 of the 1971 Fund Convention, to the effect that the Convention would cease to be in force well before the number of Contracting States would fall below three. In November 1999 the IMO Assembly approved the 1971 Fund's request and the Diplomatic Conference was held from 25 to 27 September 2000. The Conference adopted a Protocol under which the 1971 Fund Convention will cease to be in force on the date on which the number of Contracting States falls below 25, or 12 months following the date on which the Assembly (or any other body acting on its behalf) notes that the total quantity of contributing oil received in the remaining Member States has fallen below 100 million tonnes.

Normally such an amendment to a Convention would be binding only on the States which had expressed their acceptance thereof. However, serious difficulties would result if explicit acceptance were required. For this reason the Protocol provides that the amendment to Article 43.1 will be brought into force by means of a simplified procedure by tacit or implied consent, ie by States failing to object by 27 March 2001. The 2000 Protocol entered into force on 27 June 2001 since no such objections were lodged.

Due to a number of recent denunciations of the 1971 Fund Convention, the number of Contracting States will fall below 25 on 24 May 2002, and the Convention will therefore cease to be in force on 24 May 2002. The Convention will therefore not apply to incidents occurring after that date.

Claims Settlement

Claims experience

Since its establishment in 1978, the 1971 Fund has been involved in some 105 incidents. The 1971 Fund has paid over US$410 million in compensation. So far the 1992 Fund has been involved in 12 incidents and has made compensation payments totalling US$87 million.

In the great majority of these incidents, all claims have been settled out of court. So far, court actions against the 1971 Fund have been taken in respect of only seven incidents, namely the *Haven* (Italy, 1991), *Aegean Sea* (Spain, 1992), *Braer* (United Kingdom, 1993) and *Keumdong N°5, Sea Prince* and *Yuil N°1* (Republic of Korea, 1993, 1995 and 1995) and *Nissos Amorgos* (Venezuela, 1997) incidents. In most of these cases, the aggregate amounts claimed greatly exceeded the maximum amount payable under the 1969 Civil Liability Convention and the 1971 Fund Convention. However, except as regards the *Aegean Sea* incident, most of the claims were settled out of court. In March 1999 all outstanding issues arising out of the *Haven* incident were settled out of court. As for the *Keumdong N°5*, the *Sea Prince*, the *Yuil N°1 and the Nissos Amorgos*, only a few claims are pending in court.

The cases involving the largest total payments so far are the *Braer* and *Nadhodka* incidents, where £46.4 million (US$68 million) and £91.5 million (US$133 million) respectively have been paid to claimants.

Claims Handling

Co-operation between the IOPC Funds and P&I Clubs

In the handling of claims the IOPC Funds co-operate closely with the shipowner and his insurer, who in nearly all major cases is one of the Protection and Indemnity Associations (P&I Clubs) belonging to the International Group of P&I Clubs.

There are several reasons why co-operation with the P&I Clubs is so important. Firstly, under the Conventions the primarily liable subject is the shipowner and his insurer. Secondly, if the claims handling is carried out jointly by the IOPC Funds and the P&I Club, it facilitates the procedure for the claimants who can submit their claims only once and receive only one assessment. Finally, and most importantly, without close co-operation between the Funds and the Clubs there is a risk that the position taken by the Funds and that taken by the Clubs in respect of individual claims would differ. This would not only place the claimant in a difficult position, but would also result in a very complex legal situation when the amounts available under the Conventions are to be distributed between claimants. This would be so in particular in cases where the total amount available under the applicable Civil Liability Convention and Fund Convention is insufficient to compensate the claimants in full and the payments therefore have to be limited to a certain percentage of the admissible loss or damage.

It should be recognised, however, that in certain cases there exists a conflict of interests between the shipowner/P&I Club and the IOPC Funds, for example where the IOPC Funds decide to challenge, or consider challenging, the shipowner's right to limit his liability. In such cases there are clearly limits to the extent of this co-operation. Even in these cases, however, it would normally be possible and beneficial for the handling of claims for compensation to be carried out in close co-operation between the IOPC Funds and the P&I Club concerned.

Use of technical experts

Since the IOPC Funds have a small Secretariat, they normally use external experts to assist the permanent staff to monitor the clean-up operations and to examine and assess claims, at least in respect of major incidents. For the reasons given above, the external experts are usually appointed jointly by the IOPC Funds and the P&I Club concerned.

The selection of experts will depend on the characteristics of the particular oil spill. In countries where there are experts who have sufficient knowledge and experience, local experts will normally be engaged. Where no such expertise exists in the country concerned, foreign experts will have to be engaged

In order to contribute to the uniformity in application and consistency of approach, the IOPC Funds prefer to engage the same team of experts in all major incidents, wherever they occur. The Funds therefore normally use the experts of the International Tanker Owners Pollution Federation Limited (ITOPF) who have the appropriate technical knowledge and are familiar with the IOPC Funds' policy in respect of the admissibility of claims. These experts have attended some 400 oil spills all over the world and have accumulated enormous experience. In cases where local expertise is available, ITOPF experts work together with local experts. In special fields, eg fishery and tourism, the Funds sometimes engage other experts with international experience.

It should be emphasised that decisions on the admissibility of claims and the admissible quantum is taken by the Director of the IOPC Funds; the role of the experts (be it local experts or those from ITOPF) is always only that of advisers.

Claims settlement procedures

It is vital for the Funds to be notified immediately of new incidents in which it might become involved or in respect of which there is a real possibility that the Funds might have to pay compensation, so that their experts can attend the site of a spill as soon as possible.

In some cases claims are channelled through the office of a designated local surveyor. Occasionally, when an incident gives rise to a large number of claims, the IOPC Funds and the P & I Club have jointly set up a local claims office so that claims may be processed more easily. Neither designated local surveyors nor local claims offices decide on the admissibility of claims; decisions are taken by the respective Fund and the P & I Club.

The Director of the Funds is authorised to settle the claims and pay compensation if it is unlikely that the total payments by the respective Fund in respect of the incident in question will exceed 2.5 million SDR (US$3.1 million). For incidents leading to higher claims, the Director needs the approval of the settlement from the Executive Committee of the 1971 or 1992 Fund. However, in recent cases the Executive Committees have given the Director very extensive authority to settle claims arising out of particular incidents. The Director is permitted, in certain circumstances and within certain limits, to make provisional payment of compensation

before a claim is settled, if this is necessary to mitigate undue financial hardship to victims of pollution incidents. These procedures are designed to expedite the payment of compensation.

It should be pointed out that the Funds become involved in the payment of compensation only if the aggregate amount of the proven damage arising out of a particular incident exceeds the limitation amount under the relevant Civil Liability Convention (except in the rare cases where the shipowner is exonerated from liability). For this reason, the Funds cannot make any payments unless it is established that the shipowner's limitation amount will in fact be exceeded.

The joint Secretariat of the two Funds is always ready to offer assistance to those who seek information on how to present their claims against the Funds.

It must be emphasised that the time needed for the settlement of claims is almost entirely dependent on the quality of the documentation submitted in support of the claims. In cases where the claims are well documented, it is often possible to reach a settlement within a short period of time after the presentation of the documentation. If, however, the documentation is insufficient, it may take a considerable time before a settlement can be reached, since protracted correspondence between the Fund and the claimant may be necessary.

Admissibility of Claims for Compensation

General considerations

The Funds can pay compensation to a claimant only to the extent that his claim is justified and meets the criteria laid down in the applicable Fund Convention. To this end, a claimant is required to prove his claim by producing explanatory notes, invoices, receipts and other documents to support the claim.

For a claim to be accepted by the Funds, it has to be proved that the claim is based on a real expense actually incurred, that there was a link between the expense and the incident and that the expense was made for reasonable purposes.

The IOPC Funds have acquired considerable experience with regard to the admissibility of claims. In connection with the settlement of claims they have developed certain principles as regards the meaning of the definition of 'pollution damage', which is specified as 'damage caused by contamination'. In 1994 a Working Group of the 1971 Fund examined in depth the criteria for the admissibility of claims for compensation within the scope of the 1969 Civil Liability Convention, the 1971 Fund Convention and the 1992 Protocols. The Report of the Working Group was endorsed by the Assembly of the 1971 Fund. The Assembly of the 1992 Fund has adopted a Resolution to the effect that this Report shall form the basis of its policy on the criteria for the admissibility of claims.

The 1971 and 1992 Fund Assemblies have expressed the opinion that a uniform interpretation of the definition of 'pollution damage' is essential for the functioning of the regime of compensation established by the Conventions. The IOPC Funds' position in this regard applies not only to questions of principle relating to the admissibility of claims but also to the assessment of the actual loss or damage where the claims do not give rise to any question of principle.

The importance of uniformity of application is obvious, since the oil industry in one Member State pays for the cost of clean-up operations incurred and economic losses suffered in other Member States. Unless a reasonably high degree of uniformity and consistency is achieved, there is a risk of great tensions arising between Member States and of the international compensation systems no longer being able to function properly.

The Funds consider each claim on the basis of its own merits, in the light of the particular circumstances of the case. Whilst criteria for the admissibility of claims have been adopted, a certain flexibility is nevertheless allowed, enabling the Funds to take into account new situations and new types of claims. Generally, the Funds follow a pragmatic approach, so as to facilitate out-of-court settlements.

Decisions on the admissibility of claims which are of general interest are reported in the IOPC Funds' Annual Report.

The IOPC Funds have published Claims Manuals which contain general information on how claims should be presented and set out the general criteria for the admissibility of various types of claims.

Property damage

Pollution incidents often result in damage to property: the oil may contaminate fishing boats, fishing gear, yachts, beaches, piers and embankments. The Funds accept costs for cleaning polluted property. If the polluted property (eg fishing gear) cannot be cleaned, the Funds compensate the cost of replacement, subject to deduction for wear and tear. Measures taken to combat an oil spill may cause damage to roads, piers and embankments and thus necessitate repair work, and reasonable costs for such repairs are accepted by the Funds.

Clean-up operations on shore and at sea, and preventive measures

The Funds pay compensation for expenses incurred for clean-up operations at sea or on the shore. Operations at sea may relate to the deployment of vessels, the salaries of crew, the use of booms and the spraying of dispersants. In respect of onshore clean-up, the operations may result in major costs for personnel, equipment, absorbents etc.

Claims for measures to prevent or minimise pollution damage are assessed on the basis of objective criteria. The fact that a government or other public body decides to take certain measures does not in itself mean that the measures are reasonable for the purpose of the Conventions. The technical reasonableness is assessed on the basis of the facts available at the time of the decision to take the measures. However, those in charge of the operations should continually reappraise their decisions in the light of developments and further technical advice.

Claims for costs are not accepted when it could have been foreseen that the measures taken would be ineffective. On the other hand, the fact that the measures prove to be ineffective is not in itself a reason for rejection of a claim for the costs incurred. The costs incurred, and the relationship between those costs and the benefits derived or expected, should be reasonable. In the assessment, the IOPC Funds take account of the particular circumstances of the incident.

Measures taken to prevent or minimise pollution damage ('preventive measures') are compensated by the Funds. Measures may have to be taken to prevent oil which has escaped from a ship from reaching the coast, eg by placing booms along the coast which is threatened. Dispersants may be used at sea to combat the oil. Costs for such operations are in principle considered as costs of preventive measures. It must be emphasised, however, that the definition only covers costs of *reasonable* measures.

Salvage operations may in some cases include an element of preventive measures. Such operations can be considered as *preventive measures* only if the primary purpose is to prevent *pollution damage*. If the operations have another purpose, such as salving hull and cargo, the costs incurred are not admissible under the Conventions. If the activities are undertaken for the purpose of both preventing pollution and salving the ship and cargo, but it is not possible to establish with any certainty the primary purpose of the operations, the costs are apportioned between pollution prevention and other activities. The assessment of compensation for activities which are considered to be *preventive measures* is not made on the basis of the criteria applied for assessing salvage awards; the compensation is limited to costs, including a reasonable element of profit.

Fixed costs

Claims submitted by public authorities for carrying out clean-up operations and preventive measures often include elements covering costs which would have arisen even if the incident had not occurred (eg normal salaries for permanently employed personnel). Such fixed-costs are distinguished from additional costs, ie costs incurred solely as a result of the incident which would not have arisen otherwise (eg payments for overtime).

The Funds' position is that a reasonable proportion of fixed costs should be admissible, provided that such costs correspond closely to the clean-up period in question and do not include remote overhead charges.

Consequential loss and pure economic loss

The Funds accept in principle claims relating to loss of earnings suffered by the owners or users of property which had been contaminated as a result of a spill (consequential loss). One example of consequential loss is a fisherman's loss of income as a result of his nets becoming polluted.

An important group of claims comprises those relating to *pure economic loss*, ie loss of earnings sustained by persons whose property has not been polluted. A fisherman whose boat and nets have not been contaminated may be prevented from fishing because the area of the sea where he normally fishes is polluted and he cannot fish elsewhere. Similarly, a hotelier or restaurateur whose premises are close to a contaminated public beach may suffer loss of profit because the number of guests falls during the period of pollution.

Claims for pure economic loss are admissible only if they are for loss or damage caused by contamination. The starting point is the pollution, not the incident itself.

In order to qualify for compensation the basic criterion is that a reasonable degree of proximity exists between the contamination and the loss or damage sustained by the daimant. A claim is not admissible on the sole criterion that the loss or damage would not have occurred but for the oil spill in question. When considering whether the criterion of reasonable proximity is fulfilled, the following elements are taken into account:

- ?? the geographic proximity between the claimant's activity and the contamination
- ?? the degree to which a claimant is economically dependent on an affected resource
- ?? the extent to which a claimant has alternative sources of supply or business opportunities
- ?? the extent to which a claimant's business forms an integral part of the economic activity within the area affected by the spill

Account is also taken of the extent to which a claimant can mitigate his loss.

Measures to prevent pure economic loss

Claims for the cost of measures to prevent pure economic loss may be admissible if they fulfil the following requirements:

- ?? the cost of the proposed measures is reasonable
- ?? the cost of the measures is not disproportionate to the further damage or loss which they are intended to mitigate
- ?? the measures are appropriate and offer a reasonable prospect of being successful
- ?? in the case of a marketing campaign, the measures relate to actual targeted markets.

To be admissible, the costs should relate to measures to prevent or minimise losses which, if sustained, would qualify for compensation under the Conventions. Claims for the cost of marketing campaigns or similar activities are accepted only if the activities undertaken are in addition to measures normally carried out for this purpose. In other words, compensation is granted only for the additional costs resulting from the need to counteract the negative effects of the pollution.

Environmental damage

In 1980 the 1971 Fund Assembly adopted an important Resolution on the admissibility of claims relating to damage to the environment. In the Resolution it is stated that the assessment of compensation "... is not to be made on the basis of an abstract quantification of damage calculated in accordance with theoretical models". In other words, compensation can be granted only if a claimant, who has a legal right to claim under national law, has suffered quantifiable economic loss.

Damage to the marine environment cannot be easily assessed in monetary terms, as the marine environment does not have a direct market value. In recent years models have been elaborated in many countries for the assessment of damage to the marine environment. It is submitted that any assessment of ecological damage to the marine environment in monetary terms would require sweeping assumptions regarding relationships between different components of the environment and economic values. Any calculation of the damage suffered in monetary terms would by necessity be arbitrary. For this reason, it is maintained that it would be inappropriate to admit claims for compensating damage to unexploited natural resources which have no owner.

The 1992 Conventions contain an amended wording of the definition of pollution damage. A proviso was added to the effect that compensation for impairment of the environment (other than loss of profit from such impairment) should be limited to costs of reasonable measures of reinstatement actually undertaken or to be

undertaken. This new wording was not in any way intended to widen the concept, but rather to codify the interpretation of the definition as developed by the 1971 Fund.

The Funds have decided that in order for claims for the cost of measures to reinstate the marine environment to be admissible for compensation, the measures should fulfil the following criteria:

- ?? the cost of the measures should be reasonable;
- ?? the cost of the measures should not be disproportionate to the results achieved or the results which could reasonably be expected; and
- ?? the measures should be appropriate and offer a reasonable prospect of success.

The test of reasonableness laid down in the 1992 Protocol to the Civil Liability Convention is an objective one, ie the measures should be reasonable from an objective point of view in the light of the information available when the specific measures are taken. Compensation is payable only in respect of measures actually undertaken or to be undertaken.

Post-spill environmental studies are sometimes carried out to establish the precise nature and extent of the pollution damage caused by an oil spill and/or the need for reinstatement measures. The 1992 Fund may contribute to the cost of such studies, provided that the studies concern damage which falls within the definition of *pollution damage* laid down in the Conventions as interpreted by the 1992 Fund, including reasonable measures to reinstate the environment. In such cases, the 1992 Fund should be given the possibility of becoming involved at an early stage in the selection of the experts who will carry out the studies, and in the determination of the mandate of these experts. The studies should be practical and likely to deliver the required data. Their scale should not be out of proportion to the extent of the contamination and the predictable effects. The extent of the studies and associated costs should also be reasonable from an objective point of view and the costs incurred should be reasonable.

Increase in the maximum amount of compensation available under the 1992 Conventions

At its session in October 2000, the Legal Committee of IMO considered a proposal by a number of States to increase the limits of liability and compensation laid down in the 1992 Civil Liability Convention and the 1992 Fund Convention by using the special procedure laid down in the Conventions, the 'tacit amendment procedure'. The Committee adopted two resolutions increasing the limits contained in the Conventions by some 50.37%.

The amendments will enter into force on 1 November 2003, unless prior to 1 May 2002 not less than one quarter of the States which were Contracting States to the respective Conventions on 18 October 2000 have communicated to IMO that they do not accept these amendments. So far no such communications have been received.

The increased limits of the shipowner's liability would be as follows:

a) for a ship not exceeding 5 000 units of gross tonnage, 4 510 000 SDR (US$5.6 million);

b) for a ship with a tonnage between 5 000 and 140 000 units of tonnage, 4 510 000 SDR (US$5.6 million) plus 631 SDR (US$782) for each additional unit of tonnage; and

a) for a ship of 140 000 units of tonnage or over, 89 770 000 SDR (US$111 million).

The amendment to the 1992 Fund Convention would bring the total amount available under the 1992 Conventions to 203 million SDR (US$252 million).

Review of the adequacy of the international compensation regime

<u>Working Group established to consider the issues involved</u>

In April 2000, the 1992 Fund Assembly established a Working Group to examine the adequacy of the international compensation regime established by the 1992 Civil Liability Convention and the 1992 Fund Convention. The point was made that although the system had worked well on many occasions there were inadequacies in the system.

The Working Group met on 6 July 2000 for a preliminary exchange of views and to draw up a list of issues for further consideration. The Working Group met again in March and June 2001. Its Report was considered by the Assembly in October 2001.

Maximum level of compensation

During the discussions in the Working Group a number of States maintained that in order for the international compensation system to retain credibility the maximum compensation levels should be sufficiently high to ensure full compensation to victims even in the most serious oil spill incidents. Other delegations, however, did not see the need to increase the maximum level of compensation over and above the increases adopted within the International Maritime Organization (IMO) in October 2000 which would bring the total amount available to 203 million SDR (US$252 million) from 1 November 2003.

In light of this difference in views, the Working Group considered a proposal to establish an optional third tier of compensation by means of a Supplementary Compensation Fund, which would provide additional compensation over and above the compensation available under the 1992 Civil Liability Convention and the 1992 Fund Convention (ie 135 million SDR or from 1 November 2003 203 million SDR).

A number of delegations expressed their support for the proposed Supplementary Fund. It was emphasised that such a supplementary scheme should preferably be set up on a global rather than a regional basis. Several delegations stated that, although their States were not interested in joining the proposed supplementary scheme, they supported the proposed scheme or did not oppose its creation.

The observer delegations representing shipping, insurance and oil interests supported the Supplementary Fund scheme in principle. It was emphasised, however, that it was important to preserve the sharing of the burden of compensating oil spills between shipping and oil interests.

The International Group of P & I Clubs informed the Working Group that the P & I Clubs, with the support of shipowners, were developing a proposal for a voluntary increase in the limit of liability for small ships under the 1992 Civil Liability Convention which would apply only in the States which ratified the proposed Supplementary Fund Protocol. It was stated that the precise level of the increase had not yet been decided.

The Working Group decided to submit a draft Protocol on the establishment of a Supplementary Fund to the Assembly for consideration at its October 2001 session.

The Working Group further proposed that if the Assembly approved the draft Protocol, the Assembly should request the Secretary-General of IMO to convene a Diplomatic Conference to consider the draft Protocol

Shipowner's liability

The Working Group examined the provisions in the 1992 Civil Liability Convention governing the shipowner's liability. It was considered that any attempt at this stage to include shipowners in the funding of the proposed third tier of compensation would create complications and could result in an unacceptable delay in the setting up of the Supplementary Fund. Several options for the shipowner's involvement in the supplementary compensation tier were presented, namely: voluntary increase of the shipowner's/insurer's liability at the lower end of the scale of liability under the 1992 Civil Liability Convention; a four layer system with an additional layer of shipowner's liability forming the third layer and a another layer funded by oil receivers forming the fourth layer; a third tier of compensation which would be financed both by shipowners and oil receivers; and a future revision of the 1992 Civil Liability Convention.

It was agreed that the issue of whether to revise the 1992 Civil Liability Convention in respect of the shipowner's liability would have to be considered in the longer term.

Environmental damage and environmental studies

The Working Group considered a proposal to introduce the concept of compensation for environmental damage as a violation of collective property whereby compensation would be available to the State on the basis of international rights under other Conventions to which it was a Party, the amount of compensation to be based on the conclusions of environmental impact studies conducted in accordance with procedures adopted by the 1992 Fund. The Working Group also examined a proposal to change the 1992 Fund's policy as regards environmental damage to the effect that compensation for environmental damage would no longer be limited to cases where the claimant had suffered economic loss and to allow compensation to be calculated through theoretical models.

These proposals were not accepted since it was considered that they went beyond the present definition of 'pollution damage' in the 1992 Conventions.

It was agreed that an examination should be made of what could be achieved within the present definition of 'pollution damage' as regards the admissibility of claims for reinstatement of the environment and for cost of environmental impact studies. A proposal to address these issues in an Assembly Resolution received considerable support.

There was also support for considering the issue of environmental damage in depth in the longer term.

Other issues

The Working Group also considered other proposals such as the possibility of developing alternative settlement procedures, like mediation, the possible ranking of claims within the Conventions and the possibility of increasing the limitation amount for ships of low quality or carrying cargoes representing a risk of causing serious pollution and the weighting of contributions to the IOPC Funds according to the quality of the ships used for the transport of oil and/or the type of oil transported.

Consideration by the 1992 Fund Assembly

The 1992 Fund Assembly considered the Working Group's report at its session held from 16 to 19 October 2001.

The Assembly adopted the draft Protocol on the establishment of a Supplementary Fund submitted by the Working Group with some modifications. The Assembly instructed the Director to submit the text of the draft protocol to the Secretary-General of the International Maritime Organization, requesting him to convene a diplomatic conference to consider the draft Protocol at the earliest opportunity.

The Supplementary Fund would only pay compensation for pollution damage in States Parties to the proposed Protocol. In view of the difficulties from a treaty law point of view which would arise if the third tier were to contain a layer financed by the shipowners, the third tier would be financed only by the oil receivers. The Supplementary Fund would be financed by contributions from oil receivers in the States which became Parties to the Protocol. To ensure its optional and distinct character, the Supplementary Fund would be a separate legal entity.

As for the issues of environmental damage and environmental studies, the Assembly considered a document submitted by some delegations, which contained a proposal for new criteria for the admissibility of claims for measures of reinstatement of the environment and for post-spill studies. The Assembly noted that although there was a clear majority in favour of the proposals set out in the document, a significant number of delegations had expressed serious doubts about the wording of the proposed criteria in respect of reinstatement measures. It was decided that for this reason the matter should be referred back to the Working Group for further consideration.

The Assembly gave the Working Group a revised mandate, namely to continue an exchange of views concerning the need for and the possibilities of further improving the compensation regime established by the 1992 Civil Liability Convention and the 1992 Fund Convention, including certain issues which had already been identified by the Working Group, but not yet resolved.

Concluding remarks

The international compensation regimes established under the Civil Liability and Fund Conventions are one of the most successful compensation schemes in existence over the years. Most compensation claims have been settled amicably as a result of negotiations.

The advantages for a State of being a Member of the 1992 Fund can be summarised as follows. If a pollution incident occurs involving a tanker, compensation is available to governments or other authorities which have incurred costs for clean-up operations or preventive measures and to private bodies or individuals who have suffered damage as a result of the pollution. For example, fishermen whose nets have become polluted are entitled to compensation, and compensation for loss of income is payable to fishermen and to hoteliers at seaside resorts. This is independent of the flag of the tanker, the ownership of the oil or the place where the incident occurred, provided that the damage is suffered within a 1992 Fund Member State.

As mentioned above, the 1969 Civil Liability Convention and the 1971 Fund Convention have been denounced by a number of States, and the 1971 Fund Convention will cease to be in force from 25 May 2002. Moreover, the 1992 Civil Liability Convention and the 1992 Fund Convention provide a wider scope of application on several points than the Conventions in their original versions, and much higher limits of compensation. It is expected that most States which have not already done so will in the near future become parties to the 1992 Conventions.

Very often the question is made why the IOPC Funds are not prepared to accept certain types of claims. In my view this is an incorrect question. The real question is: how far are the Governments of Member States willing to put an economic burden on their oil industry. This is a political question which was answered by the Diplomatic Conferences which adopted the Conventions.

It should also be noted that under the 1992 Conventions there is only a limited amount available for the payment of compensation. If the 1992 Fund were to accept claims with only an indirect connection to an oil spill or claims for general damage to the ecosystem, that could result in more directly affected victims not being able to receive full compensation.

There has been a considerable increase in the amount of compensation claimed from the IOPC Funds over the years. In several recent cases involving the 1971 Funds, the total amount of the claims greatly exceeded the amount of compensation payable under the 1971 Fund Convention, and the same happened or may happen in respect of two recent cases involving the 1992 Fund. Claims have also been presented which in the Funds' view do not fall within the definition of pollution damage laid down in the Conventions. There have also been claims which, although admissible in principle, are for amounts which the Funds consider greatly exaggerated. As a result the 1971 Fund and the claimants have become involved in lengthy legal proceedings. In these circumstances, it is becoming increasingly difficult for the Funds to achieve their aim of providing prompt payments of admissible claims.

During the period 1978-1996, ie until the 1992 Convention entered into force, the number of 1971 Fund Member States increased from 14 to 76. In the years since entry into force of the 1992 Protocols, the number of 1992 Fund Member States has increased from nine to 64, with 11 more States joining within the next 12 months. It is expected that a large number of States will ratify the 1992 Protocols in the near future. It is interesting to note that many States which have ratified the 1992 Conventions in the last few years were not previously parties to the 1969 and 1971 Conventions. This increase in the number of Member States appears to indicate that the Governments have in general considered the international compensation regime to be working reasonably well.

The efficient operation of the IOPC Funds has only been possible due to the strong support which the organisations have had over the years from the Governments of Member States. The close cooperation with the

P&I Clubs has also facilitated the operation. The IOPC Funds have also enjoyed strong support from the shipping industry and the oil industry.

Although the Conventions were revised in 1992, the main features of the regime were decided in the late sixties and early seventies. It is not surprising therefore that the Contracting States have found that the regime needs to be revisited for modifications in the light of experience, so as to enable the regime to adapt to the changing needs of society and to ensure the regime's survival by remaining attractive to states.

The amendments that were adopted by the IMO Legal Committee in October 2000 are very limited, since they relate only to increases in the maximum amount of compensation available under the 1992 Conventions.

In the context of revisiting the regime it will be important to distinguish between issues which could be dealt with within the framework of the 1992 Conventions (eg by agreements between contracting states, Fund Assembly Resolutions, clarification in national law) and issues where improvements can only be brought about by formal amendments to the Conventions through a Diplomatic Conference followed by ratification by states. If it is decided to carry out a revision of the 1992 Conventions, it will be necessary to consider carefully which issues should be retained for inclusion in the revision, in order to make it possible to complete the work within a reasonable period of time.

* * *

ANNEX I

States Parties to both the
1992 Protocol to the Civil Liability Convention and the
1992 Protocol to the Fund Convention

as at 1 February 2002

64 States for which Fund Protocol is in force (and therefore Members of the 1992 Fund)		
Algeria	Germany	Norway
Antigua and Barbuda	Greece	Oman
Argentina	Grenada	Panama
Australia	Iceland	Papua New Guinea
Bahamas	India	Philippines
Bahrain	Ireland	Poland
Barbados	Italy	Republic of Korea
Belgium	Jamaica	Russian Federation
Belize	Japan	Seychelles
Canada	Kenya	Singapore
China (Hong Kong Special Administrative Region)	Latvia	Slovenia
	Liberia	Spain
Comoros	Lithuania	Sri Lanka
Croatia	Malta	Sweden
Cyprus	Marshall Islands	Tonga
Denmark	Mauritius	Trinidad and Tobago
Djibouti	Mexico	Tunisia
Dominican Republic	Monaco	United Arab Emirates
Fiji	Morocco	United Kingdom
Finland	Netherlands	Uruguay
France	New Zealand	Vanuatu
Georgia		Venezuela

11 States which have deposited instruments of accession, but for which the Fund Protocol does not enter into force until date indicated	
Sierra Leone	4 June 2002
Cambodia	8 June 2002
Turkey	17 August 2002
Dominica	31 August 2002
Angola	4 October 2002
Saint Vincent and the Grenadines	9 October 2002
Cameroon	15 October 2002
Portugal	13 November 2002
Colombia	19 November 2002
Qatar	20 November 2002
Brunei Darussalam	31 January 2003

States Parties to the
1992 Protocol to the Civil Liability Convention
but not to the 1992 Protocol to the Fund Convention

as at 1 February 2002

(and therefore not Members of the 1992 Fund)

5 States for which Protocol to Civil Liability Convention is in force			
China	Egypt	Indonesia	Romania
Switzerland			

1 State which has deposited an instrument of accession, but for which the Protocol to the Civil Liability Convention does not enter into force until date indicated	
El Salvador	2 January 2003

States Parties to both the 1969 Civil Liability Convention and the 1971 Fund Convention

as at 1 February 2002

(and therefore Members of the 1971 Fund)

Note: the Convention will cease to be in force on 24 May 2002

24 States Parties to the 1971 Fund Convention		
Albania	Gambia	Nigeria
Benin	Ghana	Portugal
Brunei Darussalam	Guyana	Qatar
Cameroon	Kuwait	Saint Kitts and Nevis
Colombia	Malaysia	Sierra Leone
Côte d'Ivoire	Maldives	Syrian Arab Republic
Estonia	Mauritania	Tuvalu
Gabon	Mozambique	Yugoslavia

2 States Parties to the 1971 Fund Convention which have deposited instruments of denunciation which will take effect on date indicated	
Djibouti	17 May 2002
United Arab Emirates	24 May 2002

States Parties to the 1969 Civil Liability Convention but not to the 1971 Fund Convention

as at 1 February 2002

(and therefore not Members of the 1971 Fund)

24 States Parties to the 1969 Civil Liability Convention		
Brazil	Georgia	Nicaragua
Cambodia	Guatemala	Peru
Chile	Honduras	Saint Vincent and the Grenadines
Costa Rica	Indonesia	Sao Tomé and Principe
Dominican Republic	Kazakhstan	Saudi Arabia
Ecuador	Latvia	Senegal
Egypt	Lebanon	South Africa
Equatorial Guinea	Luxembourg	Yemen

1 State which has deposited an instrument of accession, but for which the Protocol to the Civil Liability Convention does not enter into force until date indicated	
El Salvador	2 April 2002

ANNEX II

Comparison of 'old' and 'new' regimes

	'Old' Regime		'New' Regime	
	1969 CLC	**1971 FC**	**1992 CLC**	**1992 FC**
SCOPE				
Geographical	Territory including territorial sea		Territory including territorial sea and EEZ or equivalent, if declared	
Pure threat-removal measures	Not covered		Covered if grave and imminent threat of pollution	
Unladen tankers	Not covered		Covered	
SHIPOWNER'S LIABILITY				
Dependent on size of tanker	Yes		Yes	
Minimum for small ships	None		3 million SDR (US$3.8 million)	
Maximum liability	14.0 million SDR (**US$17 million**)		59.7 million SDR (**US$74.0 million**)	
FUND'S COMPENSATION				
Maximum (including CLC)		60 million SDR (**US$74.4 million**)		135 million SDR (**US$167.4 million**)
INCREASING LIMITS	Requires diplomatic conference		Simplified procedure established	
ORGANISATION		1971 Fund		1992 Fund