



IMO
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**«A LAW TO INCORPORATE THE PROTOCOL OF 1992
TO AMEND THE INTERNATIONAL CONVENTION ON
CIVIL LIABILITY FOR OIL POLLUTION DAMAGE OF 29
NOVEMBER 1969 AND THE PROTOCOL OF 1992
AMENDING THE INTERNATIONAL CONVENTION ON
THE ESTABLISHMENT OF AN INTERNATIONAL FUND
FOR COMPENSATION FOR OIL POLLUTION DAMAGE,
1971 INTO THE LAWS OF THE REPUBLIC OF
KAZAKHSTAN AND TO PROVIDE FOR THE EFFECTIVE
IMPLEMENTATION THEREOF»**

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EXPLANATORY NOTE

1. INTRODUCTION

The modern international legal framework for liability and compensation for loss or damage arising from oil pollution incidents at sea is very robust and well developed. Relevant International Conventions forming part of the unique compensation regime have been developed and improved upon, primarily in the aftermath of some particularly large oil spills. The first of these, the International Convention on Civil Liability for Oil Pollution Damage of 29 November 1969 (hereinafter 1969 CLC)¹ and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971(1971 Fund Convention)² were negotiated following the *Torrey Canyon* disaster in 1967³, representing clear legislative response of the international community to an oil pollution incident which – at the time- was of unprecedented proportions.

The 1969 CLC and 1971 Fund Convention were subsequently amended due to the realization by the global community of the need to increase the limits and scope of application of the instruments in question for the efficient and adequate compensation procedure. This had led to the adoption of the Protocol of 1992 amending the International Convention on Civil Liability for Oil Pollution Damage, 1969 (1992 CLC)⁴; the Protocol of 1992 amending the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution damage, 1971 (1992 Fund Convention)⁵; and the 2003 Supplementary Fund Protocol⁶ which today represent the most advanced modern legal instruments in the field.

¹ International Convention on Civil Liability for Oil Pollution Damage of 29 November 1969.

² International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971.

³ *The Torrey Canyon* ran aground on Pollard Rock on the Seven Stones Reef, near Lands End, Cornwall on 18th March 1967. Thousands of tonnes of oil were soon spilling from the stricken vessel's ruptured tanks and during the next 12 days the entire cargo of approximately 119,000 tonnes of Kuwait crude oil was lost.

⁴ Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage of 29 November 1969.

⁵ Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971.

⁶ The 2003 Protocol establishing an International Oil Pollution Compensation Supplementary Fund was adopted by a diplomatic conference held at IMO Headquarters in London.

The legal instruments that form part of the Oil Pollution Damage Compensation regime enjoy broad support and have been widely adopted at the international level. However, a considerable number of States, including the Republic of Kazakhstan, that are potentially exposed to the ship-source oil-pollution incidents, are not yet Contracting Parties to the Protocols of 1992, and, as a result, would not benefit fully from the significant compensation means in the event of a major oil-spill affecting their coasts or other areas under their marine jurisdiction (territorial waters⁷ and exclusive economic zone⁸ or, as in the case of the Caspian Sea, zones established by the newly adopted Convention on the Legal Status of the Caspian Sea.⁹)

The purpose of this explanatory note is to provide for a brief overview of the current regime applicable in the Republic of Kazakhstan being a Party to the 1969 CLC¹⁰; to describe in detail further developments of the international legal framework governing liability and compensation for oil pollution from ships (1992 CLC and 1992 Fund Convention); and to consider substantive differences between the relevant Conventions which co-exist at the international level, illustrating their key features together with the highlighting the potential benefits for the Republic of Kazakhstan associated with the denunciation of 1969 CLC and adherence to the both Protocols of 1992.

In addition, drafts of all the new necessary Laws, Resolutions, Regulations and Amendments to already existing ones is attached to this explanatory note in order to demonstrate how the accession of the instruments (namely 1992 CLC and 1992 Fund Convention) and denunciation of 1969 CLC will affect the current state of affairs: who will be responsible for the implementation and enforcement and what are the procedures required for the Republic of Kazakhstan for the efficient fulfilment of obligations that are to be undertaken to ensure the adequate and comprehensive operation of the system for compensation for oil-pollution damage in the State.

⁷ Article II (a)(i) of 1992 CLC.

⁸ Article II(a)(ii) of 1992 CLC.

⁹ The Convention on the Legal Status of the Caspian Sea signed in Aktau on 12 August, 2018.

¹⁰ Decree of the Republic of Kazakhstan dated 4 March, 1994 N244 “Regarding the acceding by the Republic of Kazakhstan to the IMO International Conventions, and to the Convention on the establishment of IMO” 1(r)

2. DEVELOPMENT OF THE INTERNATIONAL CIVIL LIABILITY AND COMPENSATION FRAMEWORK FOR OIL POLLUTION DAMAGE FROM TANKERS

In order to understand why the whole concept of shipowner liability for oil pollution damage came into existence it is important to step back in time, to March 1967, when the super-tanker *Torrey Canyon*, carrying some 120,000 tons of oil, grounded on the Seven Stones reef between Land's End and the Isles of Scilly, making it clear that such damage requires new thinking. The Inter-Governmental Maritime Consultative Organization (currently International Maritime Organization) responded quickly, setting up a specialist Legal Committee to decide on the matter. As a result, two-tier system for compensation for pollution damage by "persistent oil"¹¹ in ships carrying oil in bulk as cargo or bunkers has been developed.

The first tier, 1969 CLC, imposed "no-fault" strict liability on the shipowner. It also requires ships carrying more than 2,000 tons of oil in bulk as cargo to maintain a compulsory insurance.¹² However, liability attached to all vessels, irrespective of tonnage, graduated up to a maximum monetary figure, which was originally measured in gold francs¹³ and subsequently amended to be in International Monetary Fund's Special Drawing Right (SDR).¹⁴

The 1969 CLC has limited geographic scope of application, applying only to pollution damage in the territory of a Contracting State, including the territorial sea and to preventive measures taken to prevent or minimise such damage¹⁵ saving the principle of the International Convention relating to the Limitation of the Liability of Owners of Sea-Going Ships signed in Brussels in October 1957¹⁶ which states that if the incident occurred as the result of the actual fault or privity of the owner the right to limit liability ceases to exist.¹⁷ And while it was hoped that 1969 CLC would provide sufficient

¹¹ Article I (5) of 1969 CLC.

¹² Article VII of 1969 CLC.

¹³ Article V(1).

¹⁴ The SDR was initially defined as equivalent to 0.888671 grams of fine gold—which, at the time, was also equivalent to one U.S. dollar. After the collapse of the Bretton Woods system, the SDR was redefined as a basket of currencies.

¹⁵ Article II of 1969 CLC.

¹⁶ International Convention relating to the Limitation of the Liability of Owners of Sea-Going Ships, October 1957.

¹⁷ Article 1(1) of International Convention relating to the Limitation of the Liability of Owners of Sea-Going Ships, October 1957 and Article V(2) of 1969 CLC.

compensation to satisfy claims for damages, the development in the oil industry and increase in the size of the tankers was clearly indicating that shipowner liability could be exceeded.

A novel approach was therefore taken with the development of a second tier, the 1971 Fund Convention to share liability with cargo interests in the most serious incidents. It would be financed by a levy on oil receivers in the Contracting States to provide additional compensation up to a further over-arching maximum figure.

The incident of *Amoco Cadiz* of 1978¹⁸ even though through a very tragic example, proved an inadequacy of the limits set out in both – 1969 CLC and 1971 Fund Convention – in order to cover the damage to the pollution damage incurred due to the catastrophe. The Conventional figures do not exist in the vacuum, hence, the inflation process led to the result where the limitation amounts were not sufficient to achieve the initial purpose of the Conventions – to compensate the damage caused in connection with a major oil spill. Moreover, this incident further illustrated the need for the adoption of the faster procedure for the purposes of updating the limitation amounts rather than through the full diplomatic conference.¹⁹

In March 1980, another incident involving Malagasy tanker *Tonio* that broke up in the heavy weather off the Brittany coast and spilt around 13,500 tons of her cargo of fuel oil, polluting over 125 miles of shoreline, further indicated the justification for the need to amend the 1969 CLC and 1971 Fund Convention, leading to the adoption of the 1984 Protocols to both 1969 CLC and 1971 Fund Convention. The major changes brought up in the Protocol of 1984 were the definition of pollution damages itself, the extension of the geographic scope of application in order to cover EEZ or similar areas and procedural aspects for the purposes of updating the limits under the Conventions. The numbers were increased from 133 to 420 SDR per unit of tonnage, and the overall limit boosted from 14 to 59.7 million SDR. The limit in the Fund Convention was 135 million SDR, together with scope of extension to 200 million SDR, mainly reflecting the United States position.

¹⁸ The resulting oil spill from the *Amoco Cadiz* was the largest to that date. Some 219,797 tons of light crude with the addition of another 4,000 tons of fuel oil were released into the surrounding water. A 12 mile slick formed and washed ashore onto 45 mile stretch of the French shoreline. More than 20,000 birds perished and the local marine life was deeply impacted. Reports stated that several sheltered areas still contain oil in the sub-surface. Government efforts were only able to recover some 20,000 tons of oil.

¹⁹ Wang, Hanling, “The new international regime of liability and compensation for oil pollution damage : status and trends» (2000). World Maritime University Dissertations. 35. <http://commons.wmu.se/all_dissertations/35> accessed 2 April 2019

The infamous *Exxon Valdez* incident of March 1989²⁰ opened a new page in the book of oil pollution damage legislation. Due to the devastating effect of the incident, the US were pushed to radically and unilaterally decide on the matter. As a consequence, the Oil Pollution Act (OPA)²¹ was already adopted by the US Congress in August 1990, which meant that the 1984 Protocols would not receive ratification from the side of the US, leaving them as mere historical records.

The International Maritime Organization (IMO), realizing the urgent need to “rescue” the 1969 CLC and 1971 Fund Convention, adopted two new Protocols to both of the Conventions - the Protocol of 1992 to amend 1992 CLC and Protocol of 1992 amending the 1971 Fund Convention.

Taking into account all the attempts of the global community to react promptly and adequately on the major oil spill incidents, *Prestige*²² disaster off Cape Finisterre had yet again illustrated that there is still work to be done by the competent organization. The incident occurred off the coast of Spain in 2002, demonstrating the unprecedented extension of the damages exceeding the financial limits set out by both new Protocols together. This culminated in the establishment of the Supplementary Fund, being an optional remedy for compensation in order to cope with the exceptional cases of oil-pollution, when the established claims exceed the highest limits provided under the 1992 CLC and 1992 Fund Convention.

The 2003 Supplementary Fund Protocol entered into force in 2005. However the participation in it is restricted. Only Contracting Parties to the 1992 Fund Convention are allowed to become party to the Supplementary Fund Protocol. Bearing in mind the fact, that 2003 Supplementary Fund is financed in the same manner as the 1992 IOPC Fund,

²⁰ On March 24 1989, the US-flag tanker, *Exxon Valdez* went aground in Prince William Sound, Alaska, spilling more than 11 million gallons of crude oil and polluting more than 1000 miles of the Alaska coastline. The area surrounding the incident was one of the richest fishing grounds in North America. The spill posed threats to the delicate food chain that supports Prince William Sound’s commercial fishing industry. Also in danger were ten million migratory shore birds and waterfowl, hundreds of sea otters, dozens of other species, such as harbor porpoises and sea lions, and several varieties of whales. The spill was the largest in US history.

²¹ The Oil Pollution Act of 1990 (OPA) (101 H.R.1465, P.L. 101-380).

²² In November 2017, the Spanish court ordered the regional government of Galicia, off whose coast the *Prestige* tanker sank, to be compensated 1.8 million euros and neighbouring France, which was affected as well, 61 million euros. Also, the court said the ship’s insurers to pay one billion dollars which is the maximum limit fixed by the company in its contract for the ship.

imposing an additional burden on the oil receivers, the International Group of Protection and Indemnity Clubs (P&I) voluntarily set up a reimbursement scheme by means of two private agreements, which does not interfere with the rights of victims, whereby:

- (i) shipowners shall make payments to the 1992 IOPC Fund in order to adjust the financial effect of the limitation of liability provisions contained in the 1992 CLC for spills from tankers of less than 29,548GT, and
- (ii) shipowners shall indemnify the 2003 Supplementary Fund for 50 per cent of the compensation it pays for pollution damage caused by tankers in the States Party to the Protocol.

Such agreements, named, respectively, the Small Tanker Oil Pollution Indemnification Agreement 2006 (STOPIA 2006) and the Tanker Oil Pollution Indemnification Agreement 2006 (TOPIA 2006), were both revised and amended on February 2017.

While the 1969 CLC continues to be in force internationally, the 1971 Fund Convention, intended to work in tandem with the 1969 CLC, ceased to have effect on 24 May 2002 and does not apply to any incidents occurring after this date. As a result, oil pollution victims in those States are no longer benefitting from a second tier of compensation in respect of damage, which exceeds the limited liability of a shipowner under the 1969 Convention.

The main substantive provisions of the latest of the international legal instruments in the field are explained in a greater detail in the following Sections of this explanatory note.

3. THE PROTOCOL OF 1992 TO AMEND 1969 CLC

3.1 Substantive Scope of Application

The 1992 CLC applies exclusively to the pollution damage caused by the oil carried on board a “ship”. It defines the ship as “any sea-going vessel and seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo.”²³ There is no reference made in respect of the size of the vessel, therefore it is irrelevant for determining the scope of application. Hence, the 1992 CLC applies to the incidents involving not only oil tankers, but also other ships adapted for the carriage of oil in bulk. However, ships, other than those exclusively performing transport of persistent oil cargo, will only be covered by the 1992 CLC in two scenarios – either when actually carrying oil in bulk as cargo or when in ballast following such carriage “unless it is provided that it has no residues of such carriage of oil in bulk on board”.²⁴ This latter category includes combination carriers, OBOs (Oil/Bulk/Ore ships), tankers performing carriage of various types of liquid cargo in bulk, including persistent oil, non-persistent oil or chemicals. As most of the IMO Conventions, the 1992 CLC does not cover warships and other governmental ships, unless they are used to perform commercial activities.²⁵

With respect to certain types of vessels, including vessels registered for both river and sea navigation, or oil barges, the applicability of the definition of “ship” under the 1992 CLC depends on the surrounding circumstances. The general rule is that vessels and crafts operating at sea at the time of the incident and actually carrying oil as cargo will be considered as a “ship” for the purposes of the 1992 CLC.²⁶ The situation, however, is less clear with regard to the offshore units, as for example floating storage units (FSU) or floating production, storage and offloading units (FPSO).²⁷

The 1992 CLC provides for the compensation in respect of pollution damage resulting from “*any persistent hydrocarbon mineral oil such as crude oil, fuel oil, heavy diesel oil*

²³ Article I(1) of 1992 CLC.

²⁴ Ibid.

²⁵ Article XI(1) of 1992 CLC.

²⁶ Colin De La Rue and Charles B. Anderson, *Shipping and the Environment* (2nd edn, Informa Law from Routledge 2009)85

²⁷ Zuzanna Peplowska, ‘What is a ship? The Policy of the International Fund for Compensation for Oil Pollution Damage: the effect of the Greek Supreme Court judgement in the Slops case’ (2010) 1(1) *Aegean Review of the Law of the Sea and Maritime Law*, 157-164

and lubricating oil.”²⁸ Damage caused by non-persistent oil is not covered by the Convention, and this includes, *inter alia*, gasoline, light diesel oil and kerosene. The relevant rationale for a restrictive definition of “oil” appears to be that non-persistent oils are less likely to cause pollution damage.²⁹ It should be noted that the definition of oil under 1992 Fund Convention as regards “contributing oil”, i.e. oil relevant for the purposes of calculating financial contributions to the 1992 IOPC Fund differs slightly.

For the purposes of the 1992 CLC, it is immaterial whether an oil spill is due to operational or accidental causes: oil spills may arise as a result of loading and discharging operations, collisions, groundings, hull failures, equipment failures, bunkering, fires and explosions. Moreover, it is immaterial whether the oil is part of the ship's cargo or escapes from the ship's bunkers. Thus, pollution damage covered by the 1992 CLC may arise both where the ship is actually carrying oil in bulk as cargo, *i.e.* where the ship is laden, or during any voyage following such carriage, *i.e.* where the ship is in ballast.³⁰ By contrast, the Convention does not apply to pollution damage caused by oil, which was not “carried on board” a ship at the time of its escape into the sea. For example, the 1971 IOPC Fund has confirmed the application of the Convention to oil that was inadvertently pumped overboard during deballasting operations³¹ whereas it has also held that oil which escapes from a submarine hose during its discharge from a ship, is no longer carried on board the ship at the time of the spill.³²

In general, the 1992 CLC, the 1992 Fund Convention and the 2003 Supplementary Fund Protocol cover claims relating to property damage, consequential losses, pure economic loss, and environmental damage. In relation to property damage, compensation may be available for the reasonable costs of cleaning, repairing or replacing property that has been contaminated by oil.³³ Consequential losses covered by the Convention are likely to include loss of earnings suffered by the owners of property damaged by oil as a result of the spill, such as fishermen whose nets have become oiled and require cleaning or replacing, which prevents them from fishing.³⁴ Compensation for pure economic loss may be available in certain circumstances for loss of earnings caused by oil pollution for those

²⁸ Article I(5) of the 1992 CLC.

²⁹ 1992 IOPC Fund Claims Manual, December 2008 edition < <https://www.iopcfunds.org/publications/iopc-funds-publications/> > accessed 2 April 2019.

³⁰ Article I(1) of 1992 CLC.

³¹ 71 FUND/EXC.54/10, at para 3.6.

³² 71 FUND/ EXC. 59/17, at para 3.13.

³³ 1992 IOPC Fund Claims Manual, December 2008 edition, 12,27-28

<<https://www.iopcfunds.org/publications/iopc-funds-publications/>> accessed 2 April 2019

³⁴ *Ibid* 12,28-34.

persons whose property has not been polluted.³⁵ For instance, fishermen who are prevented from fishing in a particular area of the sea because of the oil spill, even though their nets have not been damaged may be eligible for compensation. Also, hoteliers who suffer losses because of a downturn in the number of guests due to contamination of a public beach may also have a claim. In addition, compensation for the costs of reasonable measures taken to prevent or reduce pure economic losses following a pollution incident may be recovered, such as the costs of marketing campaigns.³⁶

Compensation for impairment of the environment may also be available, provided that any compensation claimed, other than loss of profit, is limited to costs of reasonable³⁷ measures taken, or to be taken, to restore the environment to the condition it was in before the incident. Such reinstatement measures should be aimed at accelerating the natural recovery of environmental damage. Contributions may, for example, be made to the cost of post-spill studies, including studies to establish the nature and extent of environmental damage caused by an oil spill and to determine whether or not reinstatement measures are necessary and feasible. In this respect, the importance of reference data must be noted, as quantitative – and in some cases qualitative – information will be required in order to assess the environmental damage and consequent restoration measures. It should be noted that general claims for damage to the marine environment are not admissible, as compensation cannot be awarded for claims of a non-economic nature. This must be contrasted with claims for the economic consequences of such damage, such as those suffered by the fishing and other industries described above, which are eligible for compensation.

In addition, the costs of reasonable measures, wherever taken, to prevent or minimize pollution damage may be compensated. This means that where preventive measures were taken on the High Seas or in the territorial waters or Exclusive Economic Zone (EEZ) of a non-Contracting State in order to prevent or minimize pollution damage within the territorial sea or EEZ of a Contracting State, the costs of such measures may be recovered. Expenses incurred for preventive measures may also be recovered where no spill actually occurs, provided that there was a grave and imminent threat of pollution damage.³⁸ Clean-up operations at sea and on-shore are usually considered as preventive measures, as they

³⁵ Ibid 13, 28-34.

³⁶ Ibid 34-35.

³⁷ M Jacobson, "How clean is clean? The concept of reasonableness in the response to tanker oil spills", *Il Diritto Marittimo*, Scritti in Onore di Francesco Berlingieri, (Vol 1, 2010) 565-585.

³⁸ "The International Regime for Compensation for Oil Pollution Damage", Explanatory note prepared by the Secretariat of the International Oil Pollution Compensation Funds (2012) 2 .

are generally intended to prevent or minimise pollution damage. Such compensation also includes the reasonable costs associated with the capture, cleaning and rehabilitation of wildlife, in particular birds, mammals and reptiles.³⁹ Further loss or damage caused by preventive measures is also compensated. The reasonable costs of using advisers to assist claimants in presenting their claims for compensation may also be reimbursed. Account will be taken of the necessity for the claimant to use the adviser, the usefulness and quality of the work carried out, the time reasonably needed and the normal rate in the country concerned for work of that kind.⁴⁰

3.2 Liability of the Shipowner

The 1992 CLC imposes strict liability on the shipowner for any pollution damage caused by his ship as a result of an incident.⁴¹ The term “incident” is defined in Article I(8) as “*any occurrence, or series of occurrences having the same origin, which causes pollution damage or creates a grave and imminent threat of causing such damage*”. Liability is strict, which means that the shipowner will be liable, irrespective of any fault on his part, i.e. even if no negligence was involved.⁴² Under the 1992 CLC liability attaches to the registered shipowner, or in the absence of registration, the person or persons owning the ship;⁴³ in this context, “person” refers to “*any individual or partnership or any public or private body, whether corporate or not, including a State of any of its constituent subdivisions*”.⁴⁴ As a consequence, provided a company is registered as the owner of the ship, there is no scope for “piercing the corporate veil” i.e. for bringing a claim against those who control the company, so-called beneficial owners.⁴⁵ Given that many vessels are operating as one-ship companies, the compulsory insurance requirement imposed by the 1992 CLC is of particular relevance in this context.

Where an incident involving two or more ships occurs with the consequential pollution damage, the owners of all the ships concerned will be jointly and severally liable for all damage that is not reasonably separable.⁴⁶ Therefore, a claimant would not be required to establish which of the different shipowners should be liable in relation to different types

³⁹ *Claims Manual*, 23-27.

⁴⁰ *Claims Manual*, 13.

⁴¹ Article III(1) of 1992 CLC.

⁴² Xu J, ‘The law and economics of pollution damage arising from carriage of oil by sea’, *Maritime Policy and Management* (2009) 309-323.

⁴³ Article I(3) of 1992 CLC.

⁴⁴ Article I(2) of 1992 CLC.

⁴⁵ *Shipping and the Environment*, 85.

⁴⁶ Article VI of 1992 CLC.

of damage. It should, however, be noted that both vessels must also fall within the definition of “ship” under the 1992 CLC. Thus, where a collision occurs between a tanker and a non- tanker, the owner of the tanker would be strictly liable for the pollution damage, although he may be able to recover from the owner of the other vessel outside the 1992 CLC, if the other shipowner was wholly or partly liable for the collision.

The 1992 CLC channels all claims for compensation against the shipowner, by expressly excluding the liability of other parties, and by removing the right to pursue the owner for oil pollution claims outside the 1992 CLC.⁴⁷ Under the 1992 CLC, it is only the shipowner who is strictly liable for pollution damage, as he is also the only party able to limit his liability, and the only party required to obtain insurance for such liability. This system provides a simplified and efficient claims procedure for those who suffer pollution damage, and also allows the insurance market to provide appropriate cover. Accordingly, no claim for pollution damage may be made against:

*(a) the servants or agents of the owner or the members of the crew; this exclusion extends to the employees of representatives of the owner, manager, operator and other parties whose liabilities are excluded.*⁴⁸

(b) the pilot or any other person who performs services for the ship;

(c) any charterer, including bareboat charterer, manager or operator of the ship;

(d) any person performing salvage operations with the consent of the owner or on the instructions of a competent public authority;

(e) any person taking preventive measures, and

*(f) all servants or agents of those persons in subparagraphs (c)-(e).*⁴⁹

Consequently, the shipowner and/or his insurer are the only persons/entities that may be sued under the 1992 CLC. It does not prejudice any right of recourse that the shipowner may have against third parties, and the shipowner may therefore be able to reclaim all or part of any compensation paid by pursuing the person who was at fault regarding the incident.⁵⁰ Such persons will not be excluded from liability however if the damage

⁴⁷ Article III(4) of 1992 CLC.

⁴⁸ *Erika case Court d'appel de Paris, Pole 4, 11 ch.*, 30th March 2010, RG no 08/02278, 255.

⁴⁹ Article III(4) (a)-(f) of 1992 CLC.

⁵⁰ Article III(5) of 1992 CLC.

resulted from a listed person's personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.⁵¹

The strict liability imposed on the shipowner is subject to a limited number of exceptions which, in most cases, reflect the risks that marine liability insurers were unwilling to bear. The exemptions are likely to be construed narrowly, and have so far only become relevant in a small number of cases.

The shipowner will be exempt from liability if he can establish that one of three sets of circumstances applies:

(a) the pollution damage resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character;

This exemption would apply provided that the relevant listed peril was the proximate or dominant cause of the pollution damage. In respect of pollution damage due to natural disasters, it should be noted that the exemption from liability only applies if the relevant natural phenomenon was “*of an exceptional, inevitable and irresistible character*”. Thus, it has been suggested that while the exception may apply to tidal waves, it may not apply to hurricanes, as these can often be avoided by ships.⁵² Moreover, while the 1992 Fund Convention also excludes liability of the 1992 IOPC Fund for pollution damage “*resulting from an act of war, hostilities, civil war, insurrection*”, it is important to note that the 1992 Fund Convention does not exclude liability in respect of pollution damage due to natural disasters.⁵³ Therefore, in cases of pollution damage due to a natural disaster, a claimant would still be able to seek compensation from the 1992 IOPC Fund even if the shipowner was exempt from liability under the 1992 CLC.

(b) the pollution damage was wholly caused by an act or omission done with intent to cause damage by a third party;

This exemption may apply in the case of pollution damage caused by terrorism, sabotage and other malicious acts of third parties. However, the restrictive wording of the provision

⁵¹ Article III(4) of 1992 CLC.

⁵² *Shipping and the Environment*, 99.

⁵³ Provided, however, that the State in which pollution damage was suffered is also a Contracting State to the 1992 Fund Convention.

should be noted. As the pollution damage must have been “wholly caused” by the malicious act, the shipowner may be precluded from invoking the exception if there was any additional contributory cause, however small, such as a failure to take appropriate security measures, for instance, as required under the International Ship and Port Facilities Security (ISPS) Code. Once again, it should be noted that even in cases where the shipowner successfully invokes the exemption, claimants would still be able to seek compensation from the 1992 IOPC Fund under the 1992 Fund Convention.

*(c) the pollution damage was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.*⁵⁴

This exemption from liability only applies if the shipowner proves that damage was “wholly caused” by matters falling within the exclusion. Thus, a shipowner would not be able to rely on the exemption in cases where the relevant pollution damage was also due to another contributory cause, such as contributory negligence by those on board the ship, or indeed, by those on board a colliding ship; a common factor in maritime accidents.⁵⁵ The exemption was considered at length by the Supreme Court of Sweden in *The Tsesis* (1977), where the failure of the Swedish State to mark a shoal on a marine chart and to adjust the white sector from a lighthouse, led to exemption of the shipowners from liability for a spill of approximately 500 tonnes of oil.⁵⁶ Once again, exemption of the shipowner from liability under this heading does not affect the right to compensation under the 1992 Fund Convention. In cases where an intentional act or negligence on the part of the claimant himself has caused or contributed to the oil pollution damage,⁵⁷ the shipowner’s liability may be excluded or reduced. Thus, a claim for compensation by a claimant who is deemed to have also contributed to the incident may be granted only in part, or, depending on the circumstances, be rejected.

As a corollary to the strict nature of liability under the 1992 CLC, the shipowner is entitled to monetary limitation of liability. The relevant limitation amounts depend on the ship’s gross tonnage,⁵⁸ subject to an overall aggregate maximum, and only apply in respect of liability for pollution damage under the Convention; other liabilities are not

⁵⁴ Article III(2)(a)-(c) of 1992 CLC.

⁵⁵ *Shipping and the Environment*, 101-104.

⁵⁶ The case is referred to in *Shipping and the Environment*, 101-102.

⁵⁷ Article III(3) of 1992 CLC.

⁵⁸ Article V(10) of 1992 CLC.

subject to the limitation amount and would need to be compensated separately. For incidents occurring on or after 1 November 2003, the limitation amounts in respect of any one incident are as follows:

(a) for a ship not exceeding 5,000 grt, 4,510,000 SDR ⁵⁹(approximately US\$ 6,96 million);

(b) for a ship with a tonnage between 5,000 and 140,000 grt, 4,510,000 SDR (approximately US\$ 6.96 million) plus 631 SDR (approximately US\$ 974) for each additional unit of tonnage;

(c) for a ship exceeding 140,000 grt, there is a maximum limit of 89,770,000 SDR (approximately US\$ 138.5 million).⁶⁰

The shipowner will lose his right to limit his liability if the claimant can prove that “*the pollution damage resulted from a personal act or omission, committed with the intent to cause such damage, or recklessly with knowledge that such damage would probably result*”.⁶¹

The test regarding recklessness on the part of the shipowner has a very high threshold as it must be proved that the shipowner was aware of the potential for the pollution damage that actually resulted, but continued to act in spite of this knowledge. The test mirrors that in the Convention on Limitation of Liability for Maritime Claims 1976 together with the Protocol of 1996 (LLMC 1976/96), and is likely to be satisfied in very rare cases. In circumstances where the shipowner is a corporation, it seems likely that the right of limitation will only be lost if the requisite act or omission was committed by the *alter ego* of the company, identified in accordance with principles that developed in cases concerning the International Convention Relating to the Limitation of the Liability of Owners of Seagoing Ships, 1957 i.e. at management level.⁶²

In order to benefit from limited liability, the shipowner must constitute a fund for the total sum representing the limit of his liability with the courts or other competent authority of any one of the Contracting States in which an action is or could be brought.⁶³The

⁵⁹ Article V(9) of 1992 CLC.

⁶⁰ Article V(1) of 1992 CLC.

⁶¹ Article V(2) of 1992 CLC.

⁶² *Shipping and the Environment*, 199.

⁶³ Article V(3) of 1992 CLC.

limitation fund may be constituted by depositing the requisite sum or by producing a bank guarantee or other guarantee, acceptable under the national legislation of the Contracting State. Shipowners must also take into consideration any additional provisions of the national law of the State where the damage was suffered. For example, the *Sung II No.1* grounded on 8 November 1994 near Onsan in the Republic of Korea, spilling an estimated quantity of 18 tonnes of oil. The shipowner lost his right to limit his liability, however, because the limitation proceedings were not commenced within the period specified under the law of the Republic of Korea.⁶⁴

Following an incident, where a limitation fund has been constituted in the above manner - and provided the shipowner has not lost the right to limit his liability - claimants are not entitled to exercise any right against other assets of the shipowner in respect of that incident.⁶⁵ The fund is therefore the only asset available for the settlement of claims among different claimants. Moreover, once a limitation fund has been set up, any ship or other property belonging to the owner which may have been arrested following the oil pollution incident and any bail or other security furnished to avoid such arrest must be released.⁶⁶ This, however, only provided that the claimant has access to the court administering the fund and the fund is actually available in respect of his claim.⁶⁷

3.3 Compulsory Insurance, Mandatory Certification and Direct Action

It is often the case that a vessel is rendered a total loss following a pollution incident, removing the main asset that could be used to satisfy claims for compensation. With the proliferation of one-ship companies, the lost vessel may have been the only asset that was available, leaving injured parties without any hope of reimbursement for their losses. To combat this problem, all ships that are registered in a Contracting State that carry more than 2,000 tonnes of oil in bulk as cargo are required by the 1992 CLC to maintain insurance or another form of financial security, such as a bank guarantee or a certificate provided by an international compensation fund.⁶⁸ The insurance or financial security must be adequate to cover the shipowner's limit of liability, as provided by the 1992 CLC. A certificate attesting that such insurance or financial security is in force in accordance with the Convention must be issued to each ship by the appropriate authority of a

⁶⁴ 'Incidents involving the IOPC Funds', (October 2009) 87.

⁶⁵ Article VI(1)(a) of 1992 CLC.

⁶⁶ Article VI(1)(b) of 1992 CLC.

⁶⁷ Article VI(2) of 1992 CLC.

⁶⁸ Article VII(1) of 1992 CLC.

Contracting State.⁶⁹ In the absence of the necessary insurance or financial security, ships carrying more than 2,000 tonnes of oil in bulk as cargo, wherever registered, will not be able to enter or leave a port in a Contracting State's territory, or arrive or leave an off-shore terminal in its territorial sea.⁷⁰ Thus, ships registered in non-Contracting States are required to maintain the necessary financial security in order to operate within the waters of a Contracting State; for these ships, the relevant certificates may be issued by the appropriate authority of any Contracting State.⁷¹ Certificates must be recognised by other Contracting States as having the same force as certificates issued by them, even if issued in respect of a ship not registered in a Contracting State. Furthermore, Contracting States must not permit ships flying their flag to trade unless a certificate has been issued.⁷²

The 1992 CLC establishes a right of direct action for the claimant against the insurer or other person providing financial security to the shipowner.⁷³ This right of action allows the claimant to recover, even where the shipowner is not financially capable of settling claims (for example, where the shipowner has become bankrupt or insolvent). The insurer's liability is always limited to the same limitation amounts available to the shipowner, even where the shipowner has lost his right to limitation, and the insurer may also invoke the same defences available to the shipowner under the 1992 CLC.⁷⁴ Accordingly, if the shipowner's liability is excluded under the Convention, the insurer will not be liable. Furthermore, the insurer can avoid liability altogether if it is proved that the pollution damage resulted from the wilful misconduct of the shipowner himself. The insurer cannot however, avail itself of any other defences that may ordinarily be available, such as avoidance of the insurance contract for breach of a warranty, for misrepresentation, or for breach of the duty of good faith. The insurer is also entitled to constitute a limitation fund on the same conditions and having the same effect as if it were constituted by the shipowner.⁷⁵

⁶⁹ Article VII(2) of 1992 CLC.

⁷⁰ Article VII(11) of 1992 CLC.

⁷¹ Article VII(7) of 1992 CLC.

⁷² Article VII(10) of 1992 CLC.

⁷³ Article VII(8) of 1992 CLC.

⁷⁴ Article VII(8) of 1992 CLC.

⁷⁵ Article V(11) of 1992 CLC.

3.4 Jurisdiction and Time Bar

Actions for compensation may only be brought in the Contracting State(s) in which the pollution damage was suffered.⁷⁶ Once a limitation fund has been constituted in a particular Contracting State, the courts of that State shall be exclusively competent to determine all matters relating to the apportionment and distribution of the fund.⁷⁷ Judgments given by a court with jurisdiction as outlined above must be recognised in all Contracting States, except where the judgment was obtained by fraud or where the defendant was not given reasonable notice and a fair opportunity to present his case.⁷⁸ Such judgments will be enforceable in each Contracting State as soon as any formalities required by that State have been complied with.⁷⁹

Actions for compensation must be brought within the time limits set out in the 1992 CLC.⁸⁰ Generally, an action must be brought within three years from the date when the damage was suffered. However, in no case can actions be brought after six years from the date of the incident which caused the damage. The dual time bar allows for claims to be made where the pollution damage does not occur immediately but is for whatever reason delayed, for example, where a laden tanker sinks but the oil is not released until the vessel deteriorates.

⁷⁶Article IX(1) of 1992 CLC.

⁷⁷Article IX(3) of 1992 CLC.

⁷⁸Article X(1) of 1992 CLC.

⁷⁹Article X(2) of 1992 CLC.

⁸⁰Article VIII of 1992 CLC.

4. 1992 FUND CONVENTION

The 1992 Fund Convention established the 1992 IOPC Fund to provide compensation for oil pollution damage in circumstances where the protection afforded by the 1992 CLC is not sufficient. As already noted, only Contracting States to the 1992 CLC may become Party to the 1992 Fund Convention. Moreover, compensation from the 1992 IOPC Fund will only be available in respect of incidents which occur after the 1992 Fund Convention has entered into force for the State concerned.⁸¹

4.1 Compensation from the 1992 Fund

The 1992 IOPC Fund will provide compensation where a claimant has been unable to obtain full and adequate compensation under the 1992 CLC. This may arise in three sets of circumstances.

(a) No liability for the damage arises under the 1992 CLC.⁸²

No liability may arise under the 1992 CLC in cases where the claimant is unable to identify the owner of the ship concerned, or where the shipowner is exonerated from liability under the Convention. As noted above, the shipowner will not be liable for damage resulting from certain types of natural disaster; from the intentional act or omission of a third party; or from the negligence of an authority responsible for the maintenance of navigational aids. While the shipowner is exempt from liability in these cases, compensation may be available from the 1992 IOPC Fund.

(b) The shipowner liable for the damage under the 1992 CLC is financially incapable of meeting his obligations in full and any insurance or financial security of the shipowner does not cover/is insufficient to satisfy the claims for compensation for the damage.⁸³

For instance, following the sinking of the *Vistabella*, resulting in an unknown quantity of heavy fuel oil being spilled, the 1971 IOPC Fund paid compensation amounting to FFr 2,354,000 (around € 359,000) to the French Government in respect of clean-up operations. The *Vistabella* was not insured by a P&I Club but was covered by third party liability insurance with a Trinidad insurance company. The insurer argued that the

⁸¹Article 28(4) of the Protocol of 1992 amending the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971.

⁸²Article 4(1)(a) of the 1992 Fund Convention.

⁸³Article 4(1)(b) of the 1992 Fund Convention.

insurance did not cover the incident and refused to establish a limitation fund and take part in the claims-settlement procedure. The 1971 IOPC Fund consequently initiated legal proceedings to recover the amount paid by the Fund from the shipowner and his insurer.⁸⁴ There have also been instances where the 1971 and 1992 IOPC Funds have paid compensation in cases where the vessel involved in the incident had no insurance whatsoever. In 2000, the *Al Jaziah 1* sank near Abu Dhabi, resulting in between 100-200 tonnes of oil escaping from the wreck. The vessel was not entered with any classification society, nor did it hold any liability insurance, as its insurance policies had expired. At the time of the incident, the United Arab Emirates was a party to both the 1969/1971 CLC and Fund Convention as well as the 1992 Fund Convention, and it was decided that both sets of Conventions applied to the incident and that the liabilities were to be distributed between the two IOPC Funds on a 50:50 basis. Accordingly, the IOPC Funds settled various claims for clean-up costs and preventive measures, and jointly pursued the shipowner to recover the monies paid. What is interesting to note in this case is that the ship had not even been registered as an oil tanker; it was designed as a water carrier; and it had not been authorised by the United Arab Emirates' Ministry of Communications to carry oil. In the criminal proceedings against the Master, it was held that the ship did not fulfil basic safety requirements and that it was not fit to sail.⁸⁵

(c) The damage exceeds the amount of the shipowner's limited liability under the 1992 CLC.⁸⁶

There have been numerous instances where the 1992 IOPC Fund has provided compensation because the relevant loss claimed exceeded the shipowner's limit of liability under the 1992 CLC. A recent example is the compensation provided by the 1992 IOPC Fund for the major spill of around 19,800 tonnes of heavy fuel oil off the coast of France following the breaking into two of the *Erika* in 1999. As at October 2011, payments of compensation had been made in respect of 5,939 claims for a total of €129.7 million, out of which the shipowner's insurer had paid €12.8 million and the 1992 IOPC Fund had paid €116.9 million.⁸⁷ It should be noted that expenses reasonably incurred or sacrifices reasonably made by the shipowner on a voluntary basis, to prevent or minimize

⁸⁴IOPC Funds Annual Report 2008, 56-57 < <https://www.iopcfunds.org/publications/iopc-funds-publications/> > accessed 2 April 2019.

⁸⁵IOPC Funds Annual Report 2008, 72-74 < <https://www.iopcfunds.org/publications/iopc-funds-publications/> > accessed 2 April 2019.

⁸⁶Article 4(1)(c) of the Protocol of 1992 amending the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971.

⁸⁷Incidents involving IOPC Fund (2012) 6-10.

<https://www.iopcfunds.org/uploads/tx_iopcpublishations/incidents2012_e.pdf> accessed 2 April 2019

pollution damage, may also be compensated by the 1992 IOPC Fund; relevant claims will rank equally with other claims.

The 1992 IOPC Fund will assess each claim to ensure, *inter alia*, that the loss or damage claimed falls within the scope of the 1992 CLC, that the shipowner's liability has been exceeded, and that the claim is not time barred. Where the damage results from an incident that is not covered by the 1992 CLC, then the IOPC Fund will not provide compensation. For example, in 1998, an estimated quantity of 262 tonnes of oil was spilled following an incident involving the *Maritza Sayalero* in Carenero Bay, Bolivarian Republic of Venezuela. As the incident was caused by a ruptured discharge pipe, the 1971 IOPC Fund considered that the Conventions did not apply to this incident and, consequently, did not provide any compensation for claims related to environmental damage or clean-up and preventive measures.⁸⁸

Also, the 1992 IOPC Fund will incur no liability where the claimant cannot prove that the damage resulted from an incident involving one or more ships.⁸⁹ For instance, in 1994, claims were made against the 1971 IOPC Fund for clean-up and preventive measures following a spill from an unknown source in Mohammédia, Morocco. The 1971 IOPC Fund did not provide any compensation, as it was not established that the oil originated from a ship as defined in the 1969 CLC and 1971 Fund Convention.⁹⁰ However, if the claimant can prove that the oil that caused the damage came from *a ship* (as defined in the 1992 Conventions); the 1992 IOPC Fund will be obliged to compensate the claimant. The 1992 IOPC Fund may therefore be liable for “mystery” oil spills where the ship that caused the damage cannot be identified.

In addition, there are certain, very limited, sets of circumstances where the IOPC Fund is exempt from liability and is therefore not required to provide compensation. These correspond to some of the exceptions of liability that are equally applicable under the 1992 CLC. Thus, the 1992 IOPC Fund will not be liable where it proves that the pollution damage resulted from an *act of war, hostilities, civil war or insurrection*, or was *caused by oil which escaped or was discharged from a warship or other State-owned ship being used for non-commercial activities at the time of the incident*.⁹¹ Moreover, where the 1992

⁸⁸Incidents involving IOPC Fund (2009) 93.

<https://www.iopcfunds.org/uploads/tx_iopcpublishations/incidents2012_e.pdf> accessed 2 April 2019

⁸⁹Article 4(1)(b) of 1992 Fund Convention.

⁹⁰Incidents involving IOPC Fund (2009) 87

<https://www.iopcfunds.org/uploads/tx_iopcpublishations/incidents2012_e.pdf> accessed 2 April 2019.

⁹¹Article 4(2)(a) of 1992 Fund Convention.

IOPC Fund proves that the pollution damage resulted wholly or partially from *negligence of the claimant or from an act or omission on the part of the claimant, done with the intent to cause damage*, the 1992 IOPC Fund may be discharged wholly or partially from its obligation to pay compensation.⁹²

The 1992 Fund Convention allows a claimant to recover compensation for pollution damage from the 1992 IOPC Fund in addition to any compensation received from the shipowner or his insurer⁹³ under the 1992 CLC, subject to an overall monetary limit. Thus, in certain circumstances, the IOPC Fund will “top up” the amount received from the shipowner or his insurer, while in others, the entire claim will be paid by the 1992 IOPC Fund. For incidents occurring on or after 1 November 2003, the liability of the 1992 IOPC Fund in respect of any one incident is limited to the aggregate sum of 203 million SDR (approximately US\$ 313.21 million). This amount is available irrespective of the size of the ship and includes any compensation actually paid under the 1992 CLC.⁹⁴

The same limit of liability applies in respect of pollution damage due to “*a natural phenomenon of an exceptional, inevitable and irresistible character*”.⁹⁵ However, in these cases, the liability limit of the IOPC Fund applies to all pollution damage resulting from the phenomenon, rather than to each individual pollution incident which the natural disaster may have caused. It should be noted that the 1992 Fund Convention envisages a higher limit of liability of 300,740 million SDR in circumstances where three contributing State Parties to the 1992 Fund Convention receive 600 million tonnes or more of “contributing oil” in any one year.⁹⁶ This situation has, however, not yet arisen and appears to be unlikely in the near future.⁹⁷

Where the total amount of claims exceeds the total amount of compensation available under both the 1992 CLC and the 1992 Fund Convention, the compensation paid to each claimant will be reduced proportionately. When there is a risk that this situation may arise, the 1992 IOPC Fund may have to restrict compensation payments to ensure that all claimants are given equal treatment.⁹⁸ The payment level may however be increased at a

⁹² Article 4(3) of 1992 Fund Convention.

⁹³ Article 1(7) of 1992 Fund Convention.

⁹⁴ Article 4(4)(a) of 1992 Fund Convention.

⁹⁵ Article 4(4)(b) of 1992 Fund Convention.

⁹⁶ Article 4(4)(c) of 1992 Fund Convention.

⁹⁷ At present, India is the biggest contributor to the IOPC Fund with 14 per cent of total amount of contributions made (presentation by Mr.Kobayashi at IMLI, April 9, 2019).

⁹⁸ W Oosterveen, ‘Some recent developments regarding liability for damage resulting from oil pollution – from perspective of an EU member state’ [2004] ELR 223-239.

later stage, if the uncertainty about the total amount of established claims is reduced.⁹⁹ This has happened in a number of cases including the sinking of the *Pontoon 300* in 1998. In that incident, in view of the uncertainty regarding the total amount of claims for compensation, the 1971 IOPC Fund limited its payments to 75% of the loss or damage actually suffered by each claimant. It was, however, later decided to increase the level of payments to 100% of all settled claims. For Contracting States to the 2003 Supplementary Fund Protocol, claimants may also be able to claim against the Supplementary IOPC Fund for the remainder of their losses.

4.2 Contributions to the 1992 IOPC Fund

The 1992 IOPC Fund is financed by contributions from oil receivers in each Contracting State to the 1992 Fund Convention. Annual contributions to the 1992 IOPC Fund must be made in respect of each Contracting State by any person who, in any calendar year, has received total quantities of “*contributing oil*” exceeding 150,000 tonnes, which has been *carried by sea* to the ports or terminal installations in the territory of that State.¹⁰⁰ Accordingly, oil importers, but *not* oil exporters, in Contracting States contribute to the 1992 IOPC Fund. Contracting States in which no company or entity is liable to pay contributions benefit from the substantial compensation available under the 1992 Fund Convention without incurring any financial burden. Contracting States are required, under their national law, to ensure that any obligation to contribute in respect of oil received in its territory is fulfilled.¹⁰¹ A Contracting State is, however, not responsible for the payment of individual contributions, unless it has voluntarily assumed such responsibility.¹⁰² Accordingly, Contracting States do not pay contributions unless they choose to do so, and only a few States have done this. Each Contracting State is required to report to the 1992 IOPC Fund, on an annual basis, the name and address of any person in the State who is liable to contribute to the 1992 IOPC Fund, as well as data on the relevant quantities of “contributing oil” received by that person during the preceding calendar year.¹⁰³ Such persons¹⁰⁴ could be private companies, State-owned companies or Government authorities.¹⁰⁵ “Contributing oil” refers to crude oil and fuel oil, as further

⁹⁹ *Claims Manual*, 11.

¹⁰⁰ Article 10(1)(a) of 1992 Fund Convention.

¹⁰¹ Article 13(2) of 1992 Fund Convention.

¹⁰² Article 14 of 1992 Fund Convention.

¹⁰³ Article 15 of 1992 Fund Convention.

¹⁰⁴ Article 1(2) of 1992 Fund Convention.

¹⁰⁵ Article 10(2)(a) and (b) of 1992 Fund Convention.

defined in the 1992 Fund Convention.¹⁰⁶ The explanatory notes to the IOPC Fund standard form for reporting “contributing oil” also provides a list of examples of both contributing and non-contributing oil.¹⁰⁷ “Contributing oil” should be counted each time it is received at a port or terminal installation¹⁰⁸ situated in a Contracting State after it has been carried by sea.¹⁰⁹ “Received” refers to receipt into tankage or storage immediately after carriage, and discharge into a floating tank within the territorial waters of a Contracting State will also constitute a receipt, irrespective of whether the tank is connected with onshore installations or not.¹¹⁰ Ship-to-ship transfers do not constitute as receipts, irrespective of where or how such transfers take place. It is important to note that “contributing oil” may include both oil that has been carried from abroad or from another port in the same State (domestic coastal transport), transported by ship from an offshore production rig or received for transshipment to another port or for further transport by pipeline.¹¹¹ The first physical receiver of oil in a Contracting State is liable to pay, as long as the “contributing oil” has been carried by sea. Thus companies that receive oil temporarily in a storage facility for others may also be liable to contribute.

Annual contributions are levied by the 1992 IOPC Fund, taking into consideration the anticipated payments of compensation for the coming year, expenditure of the 1992 IOPC Fund including administrative expenses, and any income.¹¹² Income may include surplus funds from previous years including any interest, annual contributions and any other income. The amount of the annual contribution is then calculated by dividing the relevant total amount of contributions required by the total amount of “contributing oil” received in all Contracting States in the relevant year.¹¹³ Consequently, each contributor will be required to pay annually a specified amount per tonne of “contributing oil” received.

Once the amount of annual contributions has been levied by the 1992 IOPC Fund, each contributor will receive an invoice for their contribution. Payment by individual contributors is made directly to the 1992 IOPC Fund. A system of ‘deferred invoicing’ exists whereby the contributor will only pay part of his annual contribution by 1 March of the following year, and the remaining amount (or part of the remaining amount) will only be paid if it is required to provide funding for successful claims. Where required, the

¹⁰⁶ Article 1(3)(a) and (b) of 1992 Fund Convention.

¹⁰⁷ *Explanatory notes to the IOPC Fund standard form for reporting «contributing oil», 4.*

¹⁰⁸ Article 1(8) of 1992 Fund Convention.

¹⁰⁹ Article 10(1)(a) of 1992 Fund Convention.

¹¹⁰ *Explanatory notes to the IOPC Fund standard form for reporting «contributing oil», 4.*

¹¹¹ *Ibid.*

¹¹² Article 12 of 1992 Fund Convention.

¹¹³ Article 12(3) of 1992 Fund Convention.

contributor will be invoiced for the remaining amount later in the year. The amounts of compensation paid out by the 1992 IOPC Fund for oil pollution damage varies considerably from year to year, as it is dependent on the number and gravity of incidents that create pollution damage. As a consequence, the amount of contributions levied by the Fund will also differ each year. An overview of contributions levied by the 1992 IOPC Fund during the period 2013-2017 is set out in Table 1.

4.3 Jurisdiction and Time Limit for Proceedings

Actions against the 1992 IOPC Fund for compensation should be brought before the courts of the State Party who would also have jurisdiction under the 1992 CLC.¹¹⁴ Where an action has been brought against a shipowner or his insurer before the courts of a State that is a Contracting Party to both 1992 Conventions, those courts will have exclusive jurisdictional competence over any actions against the 1992 IOPC Fund for compensation in respect of the same damage. Where however, an action for compensation has been brought before the courts of a State who is not a Contracting Party to the 1992 Fund Convention, any action against the 1992 IOPC Fund can, at the option of the claimant, be brought before the courts of the State where the 1992 IOPC Fund has its headquarters (England), or before the courts of any State Party who would also have jurisdiction under the 1992 CLC.¹¹⁵ Where an action has been brought against a shipowner or his insurer under the 1992 CLC, each party will be entitled to notify the 1992 IOPC Fund of the proceedings. Such notification will allow the 1992 IOPC Fund to intervene in the proceedings, and consequently, any final judgment of the court will also be binding on the 1992 IOPC Fund.¹¹⁶ Nevertheless, the 1992 IOPC Fund has a general right to intervene as a party to any legal proceedings instituted against the shipowner or his insurer,¹¹⁷ and the 1992 IOPC Fund will not be bound by any judgment or decision in proceedings or by any settlement to which it has not been a party.¹¹⁸

Judgments given by a court with jurisdiction as outlined above must be recognised in all Contracting States, except where the judgment was obtained by fraud or where the defendant was not given reasonable notice and a fair opportunity to present his case.¹¹⁹

¹¹⁴ Article 7(1) of 1992 Fund Convention.

¹¹⁵ Article 7(3) of 1992 Fund Convention.

¹¹⁶ Article 7(6) of 1992 Fund Convention.

¹¹⁷ Article 7(4) of 1992 Fund Convention.

¹¹⁸ Article 7(5) of 1992 Fund Convention.

¹¹⁹ Article 8 of the 1992 Fund Convention; Article X(1)(a)-(b) of the 1992 CLC.

Such judgments will be enforceable in each Contracting State as soon as any formalities required by that State have been complied with.¹²⁰

The time bar under the 1992 Fund Convention¹²¹ is similar to the time bar under the 1992 CLC. In order to prevent a claim from becoming time-barred, an action must be brought against the 1992 IOPC Fund or notification of an action against the shipowner or his insurer must be made to the Fund¹²² within three years from the date when the damage occurred. However, in no case may actions be brought against the 1992 IOPC Fund after six years from the date of the incident which caused the damage. This means that even where the claimant has notified the IOPC Fund of an action against the shipowner or his insurer within the initial three year period, a claim against the IOPC Fund will still be time-barred unless the claimant brings an action against the Fund within six years of the date of the incident. The dual time bar aims to provide an extension in circumstances where, for example, it is not immediately evident that the shipowner will be unable to provide the requisite compensation or that the damages will exceed the shipowner's liability. Given the importance of the time bar, claimants are advised to initiate actions against the 1992 IOPC Fund within the relevant time limits, even where it is not clear that the compensation claimed will exceed the shipowner's limits of liability; this will ensure that any potential claims against the 1992 IOPC Fund are not excluded for mere procedural reasons.

¹²⁰ Article 1(2) 1992 Fund Convention; Article X(2) of 1992 CLC.

¹²¹ Article 6 (1) of 1992 Fund Convention.

¹²² Article 7(6) of 1992 Fund Convention.

5. CONSIDERATIONS FOR ACCESSION TO THE 1992 CLC/FUND CONVENTION

5.1 Relative Benefits of Adherence to the Latest of the Relevant International Legal Instruments

In general, States that are Contracting Parties to the relevant international legal instruments are better placed to deal with the financial consequences of a tanker oil spill than those who are not. Under both the 1969 CLC and the 1992 CLC, *compensation for pollution damage from persistent oil is available regardless of the flag of the tanker, the ownership of the oil, or the place where the incident occurred, as long as the damage is suffered in a Contracting State*. The practical enforceability of claims is safeguarded by a statutory mechanism requiring *mandatory liability insurance* for vessels operating in Contracting States, coupled with a *claimant's right of direct action against insurers*. Compensation is available for governments and other authorities, as well as private companies and individuals that have incurred costs as part of the clean-up operations, as a result of any preventive measures taken or in respect of reasonable measures to restore the environment. Compensation is also available to those who have suffered physical or economic losses due to the oil pollution, such as fishermen or those engaged in the tourist industry.¹²³ However, there are important differences depending on which of the Conventions apply, with potential claimants enjoying significantly better protection under the more modern legal instruments.

Thus, potential claimants in Contracting States to the more recent 1992 CLC benefit additionally from its broader geographic and substantive scope of application. While the 1969 CLC covers oil pollution damage suffered in the territory or territorial waters of a Contracting State, application of the 1992 CLC extends to oil pollution damage suffered in the Exclusive Economic Zone (EEZ) or equivalent area of a Contracting State (i.e. up to 200 nautical miles from the baseline). This broader geographical scope of application may be of particular importance in connection with any national fisheries industry that may be affected by an oil spill. Moreover, the 1992 CLC covers damage arising from any relevant oil pollution incident involving an oil tanker, rather than only from incidents that arise in the course of a laden voyage.

¹²³ Incidents involving the IOPC Funds (2011) < http://iopcfunds.org/npdf/incidents2011_e.pdf > accessed 2 April 2019.

In addition, compensation available to oil pollution victims varies considerably. This is not only due to the fact that liability amounts under the 1992 CLC are significantly higher than those envisaged in the 1969 CLC, in particular for larger vessels which may be involved in particularly damaging oil pollution incidents. As was described, depending on the ship size, a shipowner's liability under the 1969 CLC is limited to a maximum of 14 million SDR (approximately US\$ 21,6 million), whereas under the 1992 CLC, the relevant liability rises up to a maximum of 89,77 million SDR (approximately US\$ 138,5 million), per incident.

Importantly, in respect of oil pollution damage in Contracting States to the 1969 CLC, a "second tier" of additional compensation from a fund is no longer available to claimants, since the 1971 Fund Convention ceased to be effective as of 24 May 2002.¹²⁴ As a result, the overall maximum compensation available to oil pollution victims in these States is determined by the limits of liability set out in the 1969 CLC, i.e. depending on the ship size up to a maximum of 14 million SDR per incident.

By contrast, oil pollution victims in Contracting States to the 1992 Fund Convention benefit from additional compensation available from the 1992 IOPC Fund, up to an overall aggregate amount – irrespective of vessel size – of 203 million SDR per incident (approximately US\$ 313,21 million). This compensation is available even where the oil receivers based in that Contracting State have not contributed to the 1992 IOPC Fund, as their annual receipts do not require them to do so. Thus, Contracting States with "contributory" oil receipts of less than 150.000 mt annually benefit from the substantive compensation available from the 1992 IOPC Fund without any financial burden arising for oil receivers (importers) based in that State.

5.2 Financial Burden Associated with Adherence to the 1992 Fund Convention

As noted, adherence to the 1992 CLC is not associated with any financial implications for Contracting States, or for their national shipping and/or oil industries. Moreover, no financial burden arises from adoption of the 1992 Fund Convention for States with "contributing oil" receipts of less than 150.000 mt annually. Thus, for these States, adherence to the 1992 CLC and 1992 Fund Convention represents a 'win-win' situation. For those Contracting States to the 1992 Fund Convention, whose annual receipts of oil

¹²⁴ 1971 IOPC Fund was wound up in 2014, straight after it has paid compensations to victims of pollution damage from the incidents occurred when Convention was in force.

are in excess of 150.000 mt and who need to report relevant “persons” and quantities of oil to the 1992 IOPC Fund, contributions are payable directly by each of the reported recipients of more than 150.000 mt of oil. Each contributor pays a specified amount per tonne of “contributing oil” received. This amount, levied on an annual basis (in £ Sterling, GBP) by the Assembly of the IOPC Fund, varies, depending on the number and size of claims expected.¹²⁵ As a result, the potential financial exposure arising for those Contracting States that are required to contribute to the 1992 IOPC Fund may also vary from year to year. However, an overview of annual contributions levied by the 1992 IOPC Fund during the period 2013-2017 provides some indication of the financial burden that has, in the past, been associated with participation in the 1992 IOPC Fund (Table 1, below).

Annual Contributions	Oil year	Date due	Total Contribution (€)	Contribution per tonne of contributing oil (€)
2013	2012	01.03.2014	3 300 000	0.0021077
2014	2013	01.03.2015	3 800 000	0.0024779
2015	2014	01.03.2016	4 400 000	0.0029061
2016	2015	01.03.2017	9 700 000	0.0062582
2017	2016	01.03.2018	1 500 000	0.0009734

Table 1. Contributions levied by the 1992 IOPC Fund during the period 2013-2017

While these examples provide only a crude snapshot of potential financial burdens arising in a given year and are based on past experience, they nevertheless illustrate the relevant order of magnitude of contributions to the 1992 IOPC Fund. Even for Contracting States with considerable quantities of “contributing oil” receipts, the relevant annual contributions levied since 1996 appear modest, when juxtaposed with the potential compensation available to the victims of any one oil pollution incident in a Contracting State to the 1992 Fund Convention which - including compensation available from the shipowner under the 1992 CLC - amounts to around £200 million.

Given the relatively limited financial exposure that has, in the past, been associated with participation in the 1992 IOPC Fund, national policymakers, in particular in coastal developing States that are not yet Party to the 1992 CLC and 1992 Fund Convention but

¹²⁵ A system of deferred invoicing is in place, whereby part of the annual contributions levied for a given calendar year are invoiced later in the year, in case this proves to be necessary.

(i) may face potentially significant exposure to tanker oil spill incidents and/or (ii) receive limited shipments of crude/heavy fuel oil, may wish to consider the merits of accession.

6. NATIONAL PERSPECTIVE OF THE REPUBLIC OF KAZAKHSTAN REGARDING THE QUESTION OF CIVIL LIABILITY FOR THE OIL POLLUTION DAMAGE FROM SHIPS

6.1 Why should Kazakhstan accede to the 1992 CLC and the 1992 Fund Convention?

The aspect of the energy resources is among most important driving forces of the world economic progress affecting directly the wellbeing of billions of people. Each country tries to develop its energy potentials and to use its resources to the fullest extent possible, the Republic of Kazakhstan is not an exception to this case. Starting from early 90s, following the independence after the collapse of the Soviet Union, it was decided by the new settled Government to focus primarily on the oil and gas sectors and to attract large amounts of the foreign investments in this industry, expanding cooperation with developed countries.

In the official address of the former President Nursultan Nazarbaev to the public named “New Kazakhstan in a New World”, as well as in the subsequent national policy on the State’s development – “Kazakhstan-2030”,¹²⁶ the former Head of the Government noted the exceptional value of the oil for the Republic, its role in the national interest and defined a strict political and legal basis for the oil policy of the State. The oil and gas industry, by providing significant amounts of money to the budget, contributes to the development of other sectors of economy and hence increases the standard of living of the local population.

The Republic of Kazakhstan is among the 15 (placed 13) leading countries of the world with respect to the explored oil reserves, having 3.3 per cent of all hydrocarbon reserves in the world.¹²⁷ The total estimated exploitable hydrocarbon resources in the country are

¹²⁶ Nursultan Nazarbaev, New Kazakhstan in a New World Address 2007, The «Kazakhstan-2030» Strategy at a New Stage of Development of Kazakhstan containing 30 major directions of Domestic and Foreign Policy of Kazakhstan <<http://mfa.gov.kz/en/consuldubai/content-view/kazakstan-respublikasyny-prezidenti-nazarbaevty-kazakstan-halkyna-zoldauy-2007-zylgy-28-akpan> > accessed 20 April 2019.

¹²⁷ *Annual Statistical Bulletin (2018)*, Organization of the Petroleum Exploring Countries <https://www.opec.org/opec_web/en/press_room/5027.htm > accessed 20 April 2019.

17 billion tons, 8 of which are located in the continental shelf of the Kazakh sector of Caspian Sea (KCKS).¹²⁸

The tankers in the Caspian Sea transport roughly 12 to 14 million tons of oil annually, which is about 2 500 voyages per year.¹²⁹ With a new oil deposits being recently explored, further increase in the oil transshipment is expected. Heavy traffic, especially in the severe winter storm conditions and technical condition of some ships significantly increases the likelihood of major accidents. The scale of the ecological disaster that may occur in the Caspian Sea can be represented by the example of the tankers' collision on 11 November, 2007 in the Kerch Strait, where the environmental damage caused by more than 3.2 thousand tons of cargo oil spilled in the waters of Azov Sea and Black Sea totaled in 6,2 billion rubles.¹³⁰

With respect to the Kazakh Sector, more than 300 ships operate in the KSCS under the flag of the Republic of Kazakhstan. 12 of them are involved in the international trade, others support the operations required for the purposes of the oil fields exploitation. Moreover, dozens of ships from other Caspian States call at the port of the Republic of Kazakhstan on a daily basis. The intensity of the operation of vessels in KSCS together with the volumes of transported oil products increase the risk of the potential water pollution. In order to prevent the state of emergency, when no compensation for the damage occurred may be obtained, the Government is urgently required to expand the regulatory framework relating to the liability arising out of the damage caused to the marine environment by the oil from ships.

¹²⁸ *Основные месторождения нефти в Казахстане* (The main oil deposits in the Kazakhstan) (05/24/2018) Nur.KZ <<https://www.nur.kz/1733607-osnovnye-mestorozdenia-nefti-v-kazahstane.html> > accessed 20 April 2019.

¹²⁹ *Торговый флот Казахстана пополнится 20 новыми судами до 2020 г.* (The merchant fleet of Kazakhstan will get 20 more vessels till the end of 2020)(12/07/2016) TACC <<https://tass.ru/transport/3447939>> accessed 20 April 2019.

¹³⁰ Oil spill in the Kerch Strait in November 2007 Five ships sank during a violent storm on the Black Sea on November 11, 2007. Of these ships, four sank in the Kerch Strait, South of the island of Tuzla. Thirteen more ships were heavily damaged or washed ashore. Three bulk carriers spilled 6,726 tonnes of granulated sulphur into the sea in the Kerch Strait. The tanker "Volgoneft-139" broke in half and discharged 1,300 tons of fuel oil into the sea. This tanker disaster in the Kerch Strait is considered to have caused the most significant oil spill in the Black Sea over the last few decades. The total area of the Black Sea and the Sea of Azov that was contaminated has been estimated at about 700 km². The length of the contaminated shoreline was about 183 km.

The Republic of Kazakhstan has been party to the 1969 CLC (together with the 1976 Protocol) since 1994.¹³¹ However, as was discussed in the explanatory note, it is beneficial for the State to denounce such IMO instrument and adhere to the most recent regime – 1992 CLC and 1992 Fund Convention – due to the following reasons: expansion of the geographical scope of application, increase in the limits of liability of the shipowner and financial burden taken by the 1992 IOPC Fund in order to cover the damages above the shipowner’s liability. Moreover, from the practical side, adherence to the latest instrument will provide for the update in the issuance of the insurance certificate (coverage of the sum equal to the higher limit, established by the 1992 CLC), facilitating the operation of the ships engaged in the international voyages.

With respect to the geographical scope of application, it is important to note that until recently, there was no clear definition of the legal status of the Caspian Sea. Hence it was not easy from the practical side for the States to extend the application of the instruments further than territorial waters (sea) as no other zones were yet established. However, newly adopted Convention on the Legal Status of the Caspian Sea, signed on 12th of August, 2018, in Aktau, Republic of Kazakhstan¹³² and ratified by the Government of the Republic Kazakhstan on 8 February 2019,¹³³ had established the zones accordingly: territorial waters (breadth not exceeding 15 nautical miles from the baselines),¹³⁴ fishery zone (not exceeding 25 nautical miles from the baselines)¹³⁵ and seabed sectors (determined by means of bilateral treaties between neighbouring States)¹³⁶. New approach taken in establishment of the maritime zones in the Caspian Sea is an additional factor why the old regime needs to be amended with accordance to the 1992 CLC.

6.2 Procedural Aspects of the Accession to the 1992 CLC and 1992 Fund

Convention and their effective implementation in the Republic of Kazakhstan

The main source of law in the Republic of Kazakhstan is the Constitution, laws corresponding to it, supplementary regulatory legal acts, international contractual and other obligations, as well as regulatory decisions of the Constitutional Council and the

¹³¹ Decree of the Republic of Kazakhstan dated 4 March, 1994 N244 “ Regarding the acceding by the Republic of Kazakhstan to the IMO International Conventions, and to the Convention on the establishment of IMO” 1(r).

¹³² The Convention on the Legal Status of the Caspian Sea signed in Aktau on 12 August, 2018.

¹³³ The Law dated 8 February, 2019 N222-VI 3PK “ On Ratification of the Convention on the Legal Status of the Caspian Sea”.

¹³⁴ Ibid Article 7(1).

¹³⁵ Ibid Article 9(1).

¹³⁶ Ibid Article 8 (1).

Supreme Court of the Republic of Kazakhstan. The Constitution has the highest legal force and direct effect throughout the Republic. International treaties ratified by the Republic take precedence over national laws and apply directly, unless international treaty or convention itself requires the domestication for the purposes of proper application. Apart from it, all the international treaties to which State bounds itself should be published. Official publication is a prerequisite for the application of the laws concerning rights, freedoms and duties of persons (being physical or juridical). The Law of the Republic of Kazakhstan of 14 December 2000 “On ratification of the Convention concerning Abolition of Forced Labour” is attached in the form of the annex (Annex 2) to this drafting project to illustrate the format adopted by the Government of the Republic of Kazakhstan to incorporate international conventions into domestic legislation.

The main legislative acts regulating relations in the field of shipping are the Law of the Republic of Kazakhstan dated January 17, 2002 No 284-II “On Merchant shipping” (with amendments and additions as of 04.07.2013) and the Law of the Republic of Kazakhstan dated July 6, 2004 No 574-II “On Inland Water Transport” (with amendments and additions as of 13.06.2017). The same instruments govern issues in relation to the field of oil transportation by ships. Additionally, the issues of environmental safety during the transportation of oil are regulated by the following acts:

1. Rules for maintaining the Oil Operations Journal for all vessels¹³⁷
2. Rules for maintaining the Oil Operations Journal for oil tankers¹³⁸

Authorized bodies responsible in the field of safety and security at sea and environmental protection are: Transport Committee (Maritime Administration of Kazakhstan); Committee for Environmental Regulation, Control and State Inspection in the Oil and Gas Industry; Traffic Accident Investigation Department; Emergency Response Committee; and Industrial Development and Industrial Safety Committee. Hence, the system of measures to be taken for proper implementation and subsequent enforcement of the relative international legal instruments (CLC 1992 and Fund Convention 1992) is the following:

1. Ratification of an international treaty (law);

¹³⁷ Rules for maintaining the Oil Operations Journal for all vessels¹³⁷ (approved by order of the Minister of Transport and Communications of the Republic of Kazakhstan dated April 28, 2003 No 152-I).

¹³⁸ Rules for maintaining the Oil Operations Journal for oil tankers (approved by order of the Minister of Transport and Communications of the Republic of Kazakhstan dated April 28, 2003 No 152-I).

2. Implementation of norms of a ratified international treaty into national legislation (On merchant shipping, Certification documents) plus Government decrees and orders of ministries; and
3. Control and supervision of compliance with legal requirements (sanctions - Code of Administrative Offenses)¹³⁹

The main provisions on the civil liability for oil pollution damage under domestic laws of the Republic of Kazakhstan are contained in the Merchant Shipping Act (MSA RK)¹⁴⁰. Particularly, Chapter 18 of the Act “On Liability for damage, caused by the carriage of dangerous cargo and marine pollution by oil from ships”, which is based on the 1969 CLC (for the purposes of convenience the copy of the English version of the Chapter 18 of MSA RK will be attached in the form of annex (Annex 1) to the Law amending the provisions of the Chapter).

In order to reflect the changes that 1992 Protocol brought to the initial 1969 CLC, it is important to first incorporate the definitions used in the CLC 1992 into the MSA RK. For this purpose draft law suggests the amendment of the Article 1 of MSA RK containing definitions. Due to the complicated structure of MSA RK (both dangerous cargo and oil cargo is covered by the same Chapter), the following is being proposed: *“to amend Article 1 subparagraph 36 by adding after the words “and oil products” the following: “, provided that a ship capable of carrying oil and other cargoes shall be regarded as an oil tanker for the purposes of Chapter 18 only when it is actually carrying oil in bulk as cargo and during any voyage following such carriage unless it is proved that it has no residues of such carriage in bulk aboard, provided also that any reference to “ships” in Chapter 18, in so far as it relates to oil pollution damage shall include oil tankers”*.

Moreover, since the application of the 1992 CLC depends on the type of the oil being carried, following definition needs to be incorporated in the MSA RK: *to add in Article 1 sub-paragraph 36-1) stating the following: 36-1) “oil” - any persistent hydrocarbon mineral oil such as crude oil, fuel oil, heavy diesel oil and lubricating oil, whether carried on board a ship as cargo or in the bunkers of such a ship*. Even though the 1969 CLC has the same condition as the prerequisite for its application, it seems that there was an

¹³⁹ The Code of Administrative Offences of the Republic of Kazakhstan dated July 5, 2014 No 235-V (with amendments and additions as of 14.04.2019).

¹⁴⁰ Law of the Republic of Kazakhstan dated January 17, 2002 No 284-II “On Merchant shipping” (with amendments and additions as of 04.07.2013).

omission on the part of the drafters to include this aspect in the law while implementing the 1969 CLC.

Another important issue – the right of recourse needs to be reflected in the domestic law as the part of implementation process of the 1992 CLC. For this purpose it is suggested to incorporate Article 3 subparagraph 4 and 5 of the 1992 CLC by adding to Article 174 of MSA RK the following:

4. No claim for compensation for pollution damage may be made against the owner otherwise than in accordance with this Chapter. Subject to subparagraph 5 of this Article, no claim for compensation for pollution damage under this Chapter or otherwise may be made against:

(1) the servants or agents of the owner or the members of the crew;

(2) the pilot or any other person who, without being a member of the crew, performs services for the ship;

(3) any charterer (how so ever described, including a bareboat charterer), manager or operator of the ship;

(4) any person performing salvage operations with the consent of the owner or on the instructions of a competent public authority;

(5) any person taking preventive measures;

(6) all servants or agents of persons mentioned in subparagraphs (3), (4) and (5);

unless the damage resulted from their personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

5. Nothing in this Chapter shall prejudice any right of recourse of the owner against third parties.

Both instruments allow the shipowner to limit his liability if certain conditions are met. According to the Article 174 of MSA RK, which itself is the reflection of the Article V of the 1969 CLC, limitation of liability option exists unless “*it is proved that the pollution damage resulted from his(her) own actions (or inaction), committed intentionally or through gross negligence*”. 1992 CLC, does not require “*gross negligence*” so it would be practical to amend the Article 173 subparagraph 1 with the following text: “*it is proved*

that the pollution damage resulted from his personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.”

The amount calculation procedure in this Article reflects the figures established by the old regime; hence it is important to amend the numbers to reflect the 1992 CLC position.

The provisions of Article VII of the 1992 CLC¹⁴¹ - requirement to carry the certificate of compulsory insurance and a details concerning its issuance are already incorporated by means of the Article 177 of the MSA RK, according to which *“every ship, carrying dangerous cargo, as well as oil in excess of two thousand tons shall insure the risk of liability for pollution or provide financial security”* and be in possession of a certificate, confirming such insurance or financial security.¹⁴²

According to the sub Article 3 of the Article 177 of MSA RK,¹⁴³ which implements Article VII (6) of the 1969 CLC, the conditions for the issuance and check of the certificates, confirming the insurance or other form of financial security, is to be prescribed by the competent authority, in this particular case, Transport Committee of the Republic of Kazakhstan. This obligation upon the Government was undertaken in the 2002 Decree *“On the approval of the Rules regulating the issuance of the certificate of insurance or other financial security of civil liability for oil pollution damage”* together with the rules itself and annex, demonstrating the format of the certificate.¹⁴⁴ In this regard, the rules are made in accordance with the requirements of 1969 CLC and need to be amended together with the certificate format according to the regime established in 1992 CLC. For this purposes 2 amendments were proposed in the draft: first is where the reference in the Regulations is made to the 1969 CLC to replace it with the following words *“International Maritime Organization Protocol of 1992 to amend the International Convention on Civil Liability fo Oil Pollution Damage of 29 November 1969”* in order to avoid any inconsistencies in the case. Secondly, the definition of ship in the current Regulations does not reflect the position taken by the drafters of the 1992 CLC, hence it is important to introduce this change in the new version of the Regulations.

¹⁴¹ Article VII of 1992 CLC.

¹⁴² Ibid Article 177 *“An insurance or financial security of liability”*

¹⁴³ Article 177(3) of the Law of the Republic of Kazakhstan dated January 17, 2002 No 284-II *“On Merchant shipping”* (with amendments and additions as of 04.07.2013).

¹⁴⁴ Decree of the Republic of Kazakhstan *“On the approval of the Rules regulating the issuance of the certificate of insurance or other financial security of civil liability for oil pollution damage”* (signed by the Minister of Transport and Communications of the Republic of Kazakhstan dated June 17, 2002 No 251-I).

Contrary to the 1969 CLC, the Republic of Kazakhstan has never ratified the 1971 Fund Convention; hence there is no template available for the purposes of the accession to 1992 Fund Convention. In order to become party to the 1992 Fund Convention, the Government of the Republic of Kazakhstan is required to comply with the procedure applicable in the cases, where the State intends to participate in the international treaty of such nature. After the approval of the parliament, the note is to be submitted to the IMO depositary. At the meantime law on the ratification of the 1992 Fund Convention is to be promulgated.

However, the procedure described above will not be sufficient for the fulfillment of the obligations undertaken by the participation of Republic of Kazakhstan in the 1992 Fund Convention, according to which the State must ensure that any persons on its territory being the receiver of the persistent oil transported by sea are subject to the payment of contributions to the Fund established. It is necessary to establish the system of measures at governmental level in order to ensure that the Republic of Kazakhstan fulfills obligations undertaken. For this reason, Government of the Republic of Kazakhstan is required to adopt a Resolution “On the procedure for implementing the provisions of the 1992 Protocol to the International Convention on the Establishment of the International Fund for Compensation for Oil Pollution Damage 1971”, where the Ministry for Investments and Development together with the Ministry of Energy of the Republic of Kazakhstan will be entrusted with the implementation of the obligations arising from the participation of the Republic of Kazakhstan in 1992 Fund Convention.

Due to the similarities in the process of implementation of both States– Republic of Kazakhstan and Russian Federation, the Resolution of the Parliament of Russian Federation “On the procedure for implementing the provisions of the 1992 Protocol to the International Convention on the Establishment of the International Fund for Compensation for Oil Pollution Damage 1971”,¹⁴⁵ was used as the smoothly working example to build up the text of the draft Resolution for the Republic of Kazakhstan. The Resolution will oblige the entities in the Republic of Kazakhstan, who are recipients of oil and oil products transported by sea and subject to the contributions under the 1992 Fund Convention to pay contributions to the International Fund in accordance with the 1992 Fund Convention. In this respect, the recipient entities will be obliged to submit to the Ministry of Energy of the Republic of Kazakhstan information on the amount of oil and

¹⁴⁵ Постановление Правительства РФ от 10.05.2001 N 362.

oil products transported by sea received during the previous calendar year annually, not later than 1st March. The Ministry of Energy, in turn, must annually, before March 15, compile and submit a list of recipient organizations that are obliged to pay contributions to the International Fund in accordance with the 1992 Fund Convention to the Ministry for Investments and Development, indicating the number received during the previous calendar year oil and oil products transported by sea by each recipient organization. According to Resolution, the Ministry for Investments and Development will be further obliged to submit to the International Fund information received from the Ministry of Energy (in the form and within the timeframes established by the Fund Convention) in order to calculate the amount of the annual contribution.

**MODEL INSTRUMENT OF ACCESSION
(1992 CLC Prot and 1992 Fund Prot)
AND DENUNCIATION(1969 CLC)**

WHEREAS the Republic of Kazakhstan is a Party to the International Convention on Civil Liability for Oil Pollution Damage adopted at Brussels on 29 November 1969,

WHEREAS the Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969 and the Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 were adopted at London on 27 November 1992 by the International Conference on the Revision of the 1969 Civil Liability Convention and the 1971 Fund Convention,

AND WHEREAS the Republic of Kazakhstan is a State entitled to become a Party to the said Protocols,

NOW THEREFORE, the Government of the Republic of Kazakhstan having considered and approved the said Protocols,

HEREBY DENOUNCES the said 1969 Convention for the Republic of Kazakhstan as a whole in conformity with Article XVI of the said 1969 Convention,

AND FORMALLY DECLARES ITS ACCESSION to the Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969 and to the Protocol of 1992 to amend the International Convention on the Establishment Fund for Compensation for Oil Pollution Damage, 1971.

IN WITNESS WHEREOF I,,
President of the Republic of Kazakhstan have signed this Instrument of Accession and Denunciation and affixed the official seal.

DONE at thisday of20 .

[Seal]

[Signature]
[President]

A draft.

The Decree of the Government of the Republic of Kazakhstan

A draft Law of the Republic of Kazakhstan

«On denunciation of the International Convention on Civil Liability for Oil Pollution Damage, 1969 and ratification of the Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969 and to the Protocol of 1992 to amend the International Convention on the Establishment Fund for Compensation for Oil Pollution Damage, 1971»

The Government of the Republic of Kazakhstan decrees:

1. To introduce for consideration and approval to the Parliament of the Republic of Kazakhstan a draft Law of the Republic of Kazakhstan « On denunciation of the International Convention on Civil Liability for Oil Pollution Damage, 1969 and accession to the of the Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969 and to the Protocol of 1992 to amend the International Convention on the Establishment Fund for Compensation for Oil Pollution Damage, 1971».
2. This Decree shall come into force from the date of its signature.

Prime Minister of

The Republic of Kazakhstan

A draft

The Law of the Republic of Kazakhstan

«On accession of the Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969 and to the Protocol of 1992 to amend the International Convention on the Establishment Fund for Compensation for Oil Pollution Damage, 1971»

To accede the the Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969 and to the Protocol of 1992 to amend the International Convention on the Establishment Fund for Compensation for Oil Pollution Damage, 1971.

President of the

Republic of Kazakhstan

International Maritime Organization Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage of 29 November 1969

(London, 27 November 1992)

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

The Convention which the provisions of this Protocol amend is the International Convention on Civil Liability for Oil Pollution Damage, 1969, hereinafter referred to as the "1969 Liability Convention". For States Parties to the Protocol of 1976 to the 1969 Liability Convention, such reference shall be deemed to include the 1969 Liability Convention as amended by that Protocol.

Article 2

Article I of the 1969 Liability Convention is amended as follows:

1. Paragraph 1 is replaced by the following text:

1. "Ship" means any sea-going vessel and seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo, provided that a ship capable of carrying oil and other cargoes shall be regarded as a ship only when it is actually carrying oil in bulk as cargo and during any voyage following such carriage unless it is proved that it has no residues of such carriage of oil in bulk aboard.

2. Paragraph 5 is replaced by the following text:

5. "Oil" means any persistent hydrocarbon mineral oil such as crude oil, fuel oil, heavy diesel oil and lubricating oil, whether carried on board a ship as cargo or in the bunkers of such a ship.

3. Paragraph 6 is replaced by the following text:

6. "Pollution damage" means:

(a) loss or damage caused outside the ship by contamination resulting from the escape or discharge of oil from the ship, wherever such escape or discharge may occur, 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;

(b) the costs of preventive measures and further loss or damage caused by preventive measures.

4. Paragraph 8 is replaced by the following text:

8. "Incident" means any occurrence, or series of occurrences having the same origin, which causes pollution damage or creates a grave and imminent threat of causing such damage.

5. Paragraph 9 is replaced by the following text:

9. "Organization" means the International Maritime Organization.

6. After paragraph 9 a new paragraph is inserted reading as follows:

10. "1969 Liability Convention" means the International Convention on Civil Liability for Oil Pollution Damage, 1969. For States Parties to the Protocol of 1976 to that Convention, the term shall be deemed to include the 1969 Liability Convention as amended by that Protocol.

Article 3

Article II of the 1969 Liability Convention is replaced by the following text:

This Convention shall apply exclusively:

(a) to pollution damage caused:

(i) in the territory, including the territorial sea, of a Contracting State, and

(ii) in the exclusive economic zone of a Contracting State, established in accordance with international law, or, if a Contracting State has not established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured;

(b) to preventive measures, wherever taken, to prevent or minimize such damage.

Article 4

Article III of the 1969 Liability Convention is amended as follows:

1. Paragraph 1 is replaced by the following text:

1. Except as provided in paragraphs 2 and 3 of this Article, the owner of a ship at the time of an incident, or, where the incident consists of a series of occurrences, at the time of the first such occurrence, shall be liable for any pollution damage caused by the ship as a result of the incident.

2. Paragraph 4 is replaced by the following text:

4. No claim for compensation for pollution damage may be made against the owner otherwise than in accordance with this Convention. Subject to paragraph 5 of this Article, no claim for compensation for pollution damage under this Convention or otherwise may be made against:

(a) the servants or agents of the owner or the members of the crew;

(b) the pilot or any other person who, without being a member of the crew, performs services for the ship;

(c) any charterer (howsoever described, including a bareboat charterer), manager or operator of the ship;

(d) any person performing salvage operations with the consent of the owner or on the instructions of a competent public authority;

(e) any person taking preventive measures;

(f) all servants or agents of persons mentioned in subparagraphs (c), (d) and (e);

unless the damage resulted from their personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

Article 5

Article IV of the 1969 Liability Convention is replaced by the following text:

When an incident involving two or more ships occurs and pollution damage results therefrom, the owners of all the ships concerned, unless exonerated under Article III, shall be jointly and severally liable for all such damage which is not reasonably separable.

Article 6

Article V of the 1969 Liability Convention is amended as follows:

1. Paragraph 1 is replaced by the following text:

1. The owner of a ship shall be entitled to limit his liability under this Convention in respect of any one incident to an aggregate amount calculated as follows:

(a) 3 million units of account for a ship not exceeding 5,000 units of tonnage;

(b) for a ship with a tonnage in excess thereof, for each additional unit of tonnage, 420 units of account in addition to the amount mentioned in subparagraph (a);

provided, however, that this aggregate amount shall not in any event exceed 59.7 million units of account.

2. Paragraph 2 is replaced by the following text:

2. The owner shall not be entitled to limit his liability under this Convention if it is proved that the pollution damage resulted from his personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

3. Paragraph 3 is replaced by the following text:

3. For the purpose of availing himself of the benefit of limitation provided for in paragraph 1 of this Article the owner shall constitute a fund for the total sum representing the limit of his liability with the Court or other competent authority of any one of the Contracting States in which action is brought under Article IX or, if no action is brought, with any Court or other competent authority in any one of the Contracting States in which an action can be brought under Article IX. The fund can be constituted either by depositing the sum or by producing a bank guarantee or other guarantee, acceptable under the legislation of the Contracting State where the fund is constituted, and considered to be adequate by the Court or other competent authority.

4. Paragraph 9 is replaced by the following text:

9(a). The "unit of account" referred to in paragraph 1 of this Article is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in paragraph 1 shall be converted into national currency on the basis of the value of that currency by reference to the Special Drawing Right on the date of the constitution of the fund referred to in paragraph 3. The value of the national currency, in terms of the Special Drawing Right, of a Contracting State which is a member of the International Monetary Fund shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect on the date in question for its operations and transactions. The value of the national currency, in terms of the Special Drawing Right, of a Contracting State which is not a member of the International Monetary Fund shall be calculated in a manner determined by that State.

9(b). Nevertheless, a Contracting State which is not a member of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 9(a) may, at the time of ratification, acceptance, approval of or accession to this Convention or at any time thereafter, declare that the unit of account referred to in paragraph 9(a) shall be equal to 15 gold francs. The gold franc referred to in this paragraph corresponds to sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. The conversion of the gold franc into the national currency shall be made according to the law of the State concerned.

9(c). The calculation mentioned in the last sentence of paragraph 9(a) and the conversion mentioned in paragraph 9(b) shall be made in such manner as to express in the national currency of the Contracting State as far as possible the same real value for the amounts in paragraph 1 as would result from the application of the first three sentences of paragraph

9(a). Contracting States shall communicate to the depositary the manner of calculation pursuant to paragraph 9(a), or the result of the conversion in paragraph 9(b) as the case may be, when depositing an instrument of ratification, acceptance, approval of or accession to this Convention and whenever there is a change in either.

5. Paragraph 10 is replaced by the following text:

10. For the purpose of this Article the ship's tonnage shall be the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex I of the International Convention on Tonnage Measurement of Ships, 1969.

6. The second sentence of paragraph 11 is replaced by the following text:

Such a fund may be constituted even if, under the provisions of paragraph 2, the owner is not entitled to limit his liability, but its constitution shall in that case not prejudice the rights of any claimant against the owner.

Article 7

Article VII of the 1969 Liability Convention is amended as follows:

1. The first two sentences of paragraph 2 are replaced by the following text:

A certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Convention shall be issued to each ship after the appropriate authority of a Contracting State has determined that the requirements of paragraph 1 have been complied with. With respect to a ship registered in a Contracting State such certificate shall be issued or certified by the appropriate authority of the State of the ship's registry; with respect to a ship not registered in a Contracting State it may be issued or certified by the appropriate authority of any Contracting State.

2. Paragraph 4 is replaced by the following text:

4. The certificate shall be carried on board the ship and a copy shall be deposited with the authorities who keep the record of the ship's registry or, if the ship is not registered in a Contracting State, with the authorities of the State issuing or certifying the certificate.

3. The first sentence of paragraph 7 is replaced by the following text:

Certificates issued or certified under the authority of a Contracting State in accordance with paragraph 2 shall be accepted by other Contracting States for the purposes of this Convention and shall be regarded by other Contracting States as having the same force as certificates issued or certified by them even if issued or certified in respect of a ship not registered in a Contracting State.

4. In the second sentence of paragraph 7 the words "with the State of a ship's registry" are replaced by the words "with the issuing or certifying State".

5. The second sentence of paragraph 8 is replaced by the following text:

In such case the defendant may, even if the owner is not entitled to limit his liability according to Article V, paragraph 2, avail himself of the limits of liability prescribed in Article V, paragraph 1.

Article 8

Article IX of the 1969 Liability Convention is amended as follows:

Paragraph 1 is replaced by the following text:

1. Where an incident has caused pollution damage in the territory, including the territorial sea or an area referred to in Article II, of one or more Contracting States or preventive measures have been taken to prevent or minimize pollution damage in such territory including the territorial sea or area, actions for compensation may only be brought in the Courts of any such Contracting State or States. Reasonable notice of any such action shall be given to the defendant.

Article 9

After Article XII of the 1969 Liability Convention two new Articles are inserted as follows:

Article XII bis

Transitional provisions

The following transitional provisions shall apply in the case of a State which at the time of an incident is a Party both to this Convention and to the 1969 Liability Convention:

(a) where an incident has caused pollution damage within the scope of this Convention, liability under this Convention shall be deemed to be discharged if, and to the extent that, it also arises under the 1969 Liability Convention;

(b) where an incident has caused pollution damage within the scope of this Convention, and the State is a Party both to this Convention and to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, liability remaining to be discharged after the application of subparagraph (a) of this Article shall arise under this Convention only to the extent that pollution damage remains uncompensated after application of the said 1971 Convention;

(c) in the application of Article III, paragraph 4, of this Convention the expression "this Convention" shall be interpreted as referring to this Convention or the 1969 Liability Convention, as appropriate;

(d) in the application of Article V, paragraph 3, of this Convention the total sum of the fund to be constituted shall be reduced by the amount by which liability has been deemed to be discharged in accordance with subparagraph (a) of this Article.

Article XII ter

Final clauses

The final clauses of this Convention shall be Articles 12 to 18 of the Protocol of 1992 to amend the 1969 Liability Convention. References in this Convention to Contracting States shall be taken to mean references to the Contracting States of that Protocol.

Article 10

The model of a certificate annexed to the 1969 Liability Convention is replaced by the model annexed to this Protocol.

Article 11

1. The 1969 Liability Convention and this Protocol shall, as between the Parties to this Protocol, be read and interpreted together as one single instrument.

2. Articles I to XII ter, including the model certificate, of the 1969 Liability Convention as amended by this Protocol shall be known as the International Convention on Civil Liability for Oil Pollution Damage, 1992 (1992 Liability Convention).

FINAL CLAUSES

Article 12

Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open for signature at London from 15 January 1993 to 14 January 1994 by all States.

2. Subject to paragraph 4, any State may become a Party to this Protocol by:

(a) signature subject to ratification, acceptance or approval followed by ratification, acceptance or approval; or

(b) accession.

3. Ratification, acceptance, approval or accession shall be effected by the deposit of a formal instrument to that effect with the Secretary-General of the Organization.

4. Any Contracting State to 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, may ratify, accept, approve or accede to this Protocol only if it ratifies, accepts, approves or accedes to the Protocol of 1992 to amend that Convention at the same time, unless it denounces the 1971 Fund Convention to take effect on the date when this Protocol enters into force for that State.

5. A State which is a Party to this Protocol but not a Party to the 1969 Liability Convention shall be bound by the provisions of the 1969 Liability Convention as amended by this Protocol in relation to other States Parties hereto, but shall not be bound by the provisions of the 1969 Liability Convention in relation to States Parties thereto.

6. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to the 1969 Liability Convention as amended by this

Protocol shall be deemed to apply to the Convention so amended, as modified by such amendment.

Article 13

Entry into force

1. This Protocol shall enter into force twelve months following the date on which ten States including four 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.

2. However, any Contracting State to the 1971 Fund Convention may, at the time of the deposit of its instrument of ratification, acceptance, approval or accession in respect of this Protocol, declare that such instrument shall be deemed not to be effective for the purposes of this Article until the end of the six-month period in Article 31 of the Protocol of 1992 to amend the 1971 Fund Convention. A State which is not a Contracting State to the 1971 Fund Convention but which deposits an instrument of ratification, acceptance, approval or accession in respect of the Protocol of 1992 to amend the 1971 Fund Convention may also make a declaration in accordance with this paragraph at the same time.

3. Any State which has made a declaration in accordance with the preceding paragraph may withdraw it at any time by means of a notification addressed to the Secretary-General of the Organization. Any such withdrawal shall take effect on the date the notification is received, provided that such State shall be deemed to have deposited its instrument of ratification, acceptance, approval or accession in respect of this Protocol on that date.

4. For any State which ratifies, accepts, approves or accedes to it after the conditions in paragraph 1 for entry into force have been met, this Protocol shall enter into force twelve months following the date of deposit by such State of the appropriate instrument.

Article 14

Revision and amendment

1. A Conference for the purpose of revising or amending the 1992 Liability Convention may be convened by the Organization.

2. The Organization shall convene a Conference of Contracting States for the purpose of revising or amending the 1992 Liability Convention at the request of not less than one third of the Contracting States.

Article 15

Amendments of limitation amounts

1. Upon the request of at least one quarter of the Contracting States any proposal to amend the limits of liability laid down in Article V, paragraph 1, of the 1969 Liability Convention as amended by this Protocol shall be circulated by the Secretary-General to all Members of the Organization and to all Contracting States.

2. Any amendment proposed and circulated as above shall be submitted to the Legal Committee of the Organization for consideration at a date at least six months after the date of its circulation.
3. All Contracting States to the 1969 Liability Convention as amended by this Protocol, whether or not Members of the Organization, shall be entitled to participate in the proceedings of the Legal Committee for the consideration and adoption of amendments.
4. Amendments shall be adopted by a two-thirds majority of the Contracting States present and voting in the Legal Committee, expanded as provided for in paragraph 3, on condition that at least one half of the Contracting States shall be present at the time of voting.
5. When acting on a proposal to amend the limits, the Legal Committee shall take into account the experience of incidents and in particular the amount of damage resulting therefrom, changes in the monetary values and the effect of the proposed amendment on the cost of insurance. It shall also take into account the relationship between the limits in Article V, paragraph 1, of the 1969 Liability Convention as amended by this Protocol and those in Article 4, paragraph 4, of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992.
6. (a) No amendment of the limits of liability under this Article may be considered before 15 January 1998 nor less than five years from the date of entry into force of a previous amendment under this Article. No amendment under this Article shall be considered before this Protocol has entered into force.

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

(c) No limit may be increased so as to exceed an amount which corresponds to the limit laid down in the 1969 Liability Convention as amended by this Protocol multiplied by 3.
7. Any amendment adopted in accordance with paragraph 4 shall be notified by the Organization to all Contracting States. The amendment shall be deemed to have been accepted at the end of a period of eighteen months after the date of notification, unless within that period not less than one quarter of the States that were Contracting States at the time of the adoption of the amendment by the Legal Committee have communicated to the Organization that they do not accept the amendment in which case the amendment is rejected and shall have no effect.
8. An amendment deemed to have been accepted in accordance with paragraph 7 shall enter into force eighteen months after its acceptance.
9. All Contracting States shall be bound by the amendment, unless they denounce this Protocol in accordance with Article 16, paragraphs 1 and 2, at least six months before the amendment enters into force. Such denunciation shall take effect when the amendment enters into force.
10. When an amendment has been adopted by the Legal Committee but the eighteen-month period for its acceptance has not yet expired, a State which becomes a Contracting State during that period shall be bound by the amendment if it enters into force. A State

which becomes a Contracting State after that period shall be bound by an amendment which has been accepted in accordance with paragraph 7. In the cases referred to in this paragraph, a State becomes bound by an amendment when that amendment enters into force, or when this Protocol enters into force for that State, if later.

Article 16

Denunciation

1. This Protocol may be denounced by any Party at any time after the date on which it enters into force for that Party.
2. Denunciation shall be effected by the deposit of an instrument with the Secretary-General of the Organization.
3. A denunciation shall take effect twelve months, or such longer period as may be specified in the instrument of denunciation, after its deposit with the Secretary-General of the Organization.
4. As between the Parties to this Protocol, denunciation by any of them of the 1969 Liability Convention in accordance with Article XVI thereof shall not be construed in any way as a denunciation of the 1969 Liability Convention as amended by this Protocol.
5. Denunciation of the Protocol of 1992 to amend the 1971 Fund Convention by a State which remains a Party to the 1971 Fund Convention shall be deemed to be a denunciation of this Protocol. Such denunciation shall take effect on the date on which denunciation of the Protocol of 1992 to amend the 1971 Fund Convention takes effect according to Article 34 of that Protocol.

Article 17

Depositary

1. This Protocol and any amendments accepted under Article 15 shall be deposited with the Secretary-General of the Organization.
2. The Secretary-General of the Organization shall:
 - (a) inform all States which have signed or acceded to this Protocol of:
 - (i) each new signature or deposit of an instrument together with the date thereof;
 - (ii) each declaration and notification under Article 13 and each declaration and communication under Article V, paragraph 9, of the 1992 Liability Convention;
 - (iii) the date of entry into force of this Protocol;
 - (iv) any proposal to amend limits of liability which has been made in accordance with Article 15, paragraph 1;
 - (v) any amendment which has been adopted in accordance with Article 15, paragraph 4;

(vi) any amendment deemed to have been accepted under Article 15, paragraph 7, together with the date on which that amendment shall enter into force in accordance with paragraphs 8 and 9 of that Article;

(vii) the deposit of any instrument of denunciation of this Protocol together with the date of the deposit and the date on which it takes effect;

(viii) any denunciation deemed to have been made under Article 16, paragraph 5;

(ix) any communication called for by any Article of this Protocol;

(b) transmit certified true copies of this Protocol to all Signatory States and to all States which accede to this Protocol.

3. As soon as this Protocol enters into force, the text shall be transmitted by the Secretary-General of the Organization to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

Article 18

Languages

This Protocol is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

DONE AT LONDON, this twenty-seventh day of November one thousand nine hundred and ninety-two.

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

ANNEX

CERTIFICATE OF INSURANCE OR OTHER FINANCIAL SECURITY IN RESPECT OF CIVIL LIABILITY FOR OIL POLLUTION DAMAGE

Issued in accordance with the provisions of Article VII of the International Convention on Civil Liability for Oil Pollution Damage, 1992.

Name of ship	Distinctive number or letters	Port of registry	Name and address of owner

This is to certify that there is in force in respect of the above-named ship a policy of insurance or other financial security satisfying the requirements of Article VII of the International Convention on Civil Liability for Oil Pollution Damage, 1992.

Type of security

Duration of security

Name and address of the insurer(s) and/or guarantor(s) name

Address

This certificate is valid until

Issued or certified by the Government of

(Full designation of the State)

At On

(Place) (Date)

.....

Signature and title of issuing or certifying official

Explanatory Notes:

1. If desired, the designation of the State may include a reference to the competent public authority of the country where the certificate is issued.
2. If the total amount of security has been furnished by more than one source, the amount of each of them should be indicated.
3. If security is furnished in several forms, these should be enumerated.
4. The entry "Duration of Security" must stipulate the date on which such security takes effect.

PROTOCOL OF 1992 TO AMEND 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 could continue to be shared by the shipping industry and by the oil cargo interests,

BEARING IN MIND the adoption of the Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969,

HAVE AGREED AS FOLLOWS:

Article 1

The Convention which the provisions of this Protocol amend is 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". For States Parties to the Protocol of 1976 to the 1971 Fund Convention, such reference shall be deemed to include the 1971 Fund Convention as amended by that Protocol.

Article 2

Article 1 of the 1971 Fund Convention is amended as follows:

1. Paragraph 1 is replaced by the following text:

1. "1992 Liability Convention" means the International Convention on Civil Liability for Oil Pollution Damage, 1992.

2. After paragraph 1 a new paragraph is inserted as follows:

1 bis. "1971 Fund Convention" means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971. For States Parties to the Protocol of 1976 to that Convention, the term shall be deemed to include the 1971 Fund Convention as amended by that Protocol.

3. Paragraph 2 is replaced by the following text:

2. "Ship", "Person", "Owner", "Oil", "Pollution Damage", "Preventive Measures", "Incident", and "Organization" have the same meaning as in Article I of the 1992 Liability Convention.

4. Paragraph 4 is replaced by the following text:

4. "Unit of account" has the same meaning as in Article V, paragraph 9, of the 1992 Liability Convention.

5. Paragraph 5 is replaced by the following text:

5. "Ship's tonnage" has the same meaning as in Article V, paragraph 10, of the 1992 Liability Convention.

6. Paragraph 7 is replaced by the following text:

7. "Guarantor" means any person providing insurance or other financial security to cover an owner's liability in pursuance of Article VII, paragraph 1, of the 1992 Liability Convention.

Article 3

Article 2 of the 1971 Fund Convention is amended as follows:

Paragraph 1 is replaced by the following text:

1. An International Fund for compensation for pollution damage, to be named "The International Oil Pollution Compensation Fund 1992" and hereinafter referred to as "the Fund", is hereby established with the following aims:

(a) to provide compensation for pollution damage to the extent that the protection afforded by the 1992 Liability Convention is inadequate;

(b) to give effect to the related purposes set out in this Convention.

Article 4

Article 3 of the 1971 Fund Convention is replaced by the following text:

This Convention shall apply exclusively:

(a) to pollution damage caused:

(i) in the territory, including the territorial sea, of a Contracting State, and

(ii) in the exclusive economic zone of a Contracting State, established in accordance with international law, or, if a Contracting State has not established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law baselines from which the breadth of its territorial sea is measured;

(b) to preventive measures, wherever taken, to prevent or minimize such damage.

Article 5

The heading to Articles 4 to 9 of the 1971 Fund Convention is amended by deleting the words "and indemnification".

Article 6

Article 4 of the 1971 Fund Convention is amended as follows:

1. In paragraph 1 the five references to "the Liability Convention" are replaced by references to "the 1992 Liability Convention".

2. Paragraph 3 is replaced by the following text:

3. If the Fund proves that the pollution damage resulted wholly or partially either from an act or omission done with the intent to cause damage by the person who suffered the damage or from the negligence of that person, the Fund may be exonerated wholly or partially from its obligation to pay compensation to such person. The Fund shall in any event be exonerated to the extent that the shipowner may have been exonerated under Article III, paragraph 3, of the 1992 Liability Convention. However, there shall be no such exoneration of the Fund with regard to preventive measures.

3. Paragraph 4 is replaced by the following text:

4. (a) Except as otherwise provided in subparagraphs (b) and (c) of this paragraph, the aggregate amount of compensation payable by the Fund under this Article shall in respect of any one incident be limited, so that the total sum of that amount and the amount of compensation actually paid under the 1992 Liability Convention for pollution damage within the scope of application of this Convention as defined in Article 3 shall not exceed 135 million units of account.

(b) Except as otherwise provided in subparagraph (c), the aggregate amount of compensation payable by the Fund under this Article for pollution damage resulting from a natural phenomenon of an exceptional inevitable and irresistible character shall not exceed 135 million units of account.

(c) The maximum amount of compensation referred to in subparagraphs (a) and (b) shall be 200 million units of account with respect to any incident occurring during any period when there are three Parties to this Convention in respect of which the combined relevant quantity of contributing oil received by persons in the territories of such Parties, during the preceding calendar year, equalled or exceeded 600 million tons.

(d) Interest accrued on a fund constituted in accordance with Article V, paragraph 3, of the 1992 Liability Convention, if any, shall not be taken into account for the computation of the maximum compensation payable by the Fund under this Article.

(e) The amounts mentioned in this Article shall be converted into national currency on the basis of the value of that currency by reference to the Special Drawing Right on the date of the decision of the Assembly of the Fund as to the first date of payment of compensation.

4. Paragraph 5 is replaced by the following text:

5. Where the amount of established claims against the Fund exceeds the aggregate amount of compensation payable under paragraph 4, the amount available shall be distributed in such a manner that the proportion between any established claim and the amount of compensation actually recovered by the claimant under this Convention shall be the same for all claimants.

5. Paragraph 6 is replaced by the following text:

6. The Assembly of the Fund may decide that, in exceptional cases, compensation in accordance with this Convention can be paid even if the owner of the ship has not constituted a fund in accordance with Article V, paragraph 3, of the 1992 Liability Convention. In such case paragraph 4 (e) of this Article applies accordingly.

Article 7

Article 5 of the 1971 Fund Convention is deleted.

Article 8

Article 6 of the 1971 Fund Convention is amended as follows:

1. In paragraph 1 the paragraph number and the words "or indemnification under Article 5" are deleted.
2. Paragraph 2 is deleted.

Article 9

Article 7 of the 1971 Fund Convention is amended as follows:

1. In paragraphs 1, 3, 4 and 6 the seven references to "the Liability Convention" are replaced by references to "the 1992 Liability Convention".
2. In paragraph 1 the words "or indemnification under Article 5" are deleted.
3. In the first sentence of paragraph 3 the words "or indemnification" and "or 5" are deleted.
4. In the second sentence of paragraph 3 the words "or under Article 5, paragraph 1" are deleted.

Article 10

In Article 8 of the 1971 Fund Convention the reference to "the Liability Convention" is replaced by a reference to "the 1992 Liability Convention".

Article 11

Article 9 of the 1971 Fund Convention is amended as follows:

1. Paragraph 1 is replaced by the following text:

1. The Fund shall, in respect of any amount of compensation for pollution damage paid by the Fund in accordance with Article 4, paragraph 1, of this Convention, acquire by subrogation the rights that the person so compensated may enjoy under the 1992 Liability Convention against the owner or his guarantor.

2. In paragraph 2 the words "or indemnification" are deleted.

Article 12

Article 10 of the 1971 Fund Convention is amended as follows:

The opening phrase of paragraph 1 is replaced by the following text:

Annual contributions to the Fund shall be made in respect of each Contracting State by any person who, in the calendar year referred to in Article 12, paragraph 2 (a) or (b), has received in total quantities exceeding 150.000 tons:

Article 13

Article 11 of the 1971 Fund Convention is deleted.

Article 14

Article 12 of the 1971 Fund Convention is amended as follows:

1. In the opening phrase of paragraph 1 the words "for each person referred to in Article 10" are deleted.

2. In paragraph 1 (i), subparagraphs (b) and (c), the words "or 5" are deleted and the words "15 million francs" are replaced by the words "four million units of account".

3. Subparagraph 1 (ii) (b) is deleted.

4. In paragraph 1 (ii), subparagraph (c) becomes (b) and subparagraph (d) becomes (c).

5. The opening phrase in paragraph 2 is replaced by the following text:

The Assembly shall decide the total amount of contributions to be levied. On the basis of that decision, the Director shall, in respect of each Contracting State, calculate for each person referred to in Article 10 the amount of his annual contribution:

6. Paragraph 4 is replaced by the following text:

4. The annual contribution shall be due on the date to be laid down in the Internal Regulations of the Fund. The Assembly may decide on a different date of payment.

7. Paragraph 5 is replaced by the following text:

5. The Assembly may decide, under conditions to be laid down in the Financial Regulations of the Fund, to make transfers between funds received in accordance with Article 12.2 (a) and funds received in accordance with Article 12.2 (b).

8. Paragraph 6 is deleted.

Article 15

Article 13 of the 1971 Fund Convention is amended as follows:

1. Paragraph 1 is replaced by the following text:

1. The amount of any contribution due under Article 12 and which is in arrears shall bear interest at a rate which shall be determined in accordance with the Internal Regulations of the Fund, provided that different rates may be fixed for different circumstances.

2. In paragraph 3 the words "Articles 10 and 11" are replaced by the words "Articles 10 and 12" and the words "for a period exceeding three months" are deleted.

Article 16

A new paragraph 4 is added to Article 15 of the 1971 Fund Convention:

4. Where a Contracting State does not fulfill its obligations to submit to the Director the communication referred to in paragraph 2 and this results in a financial loss for the Fund, that Contracting State shall be liable of compensate the Fund for such loss. The Assembly shall, on the recommendation of the Director, decide whether such compensation shall be payable by that Contracting State.

Article 17

Article 16 of the 1971 Fund Convention is replaced by the following text:

The Fund shall have an Assembly and a Secretariat headed by a Director.

Article 18

Article 18 of the 1971 Fund Convention is amended as follows:

1. In the opening sentence of the article the words ", subject to the provisions of Article 26," are deleted.

2. Paragraph 8 is deleted.

3. Paragraph 9 is replaced by the following text:

9. to establish any temporary or permanent subsidiary body it may consider to be necessary, to define its terms of reference and to give it the authority needed to perform the functions entrusted to it; when appointing the members of such body, the Assembly shall endeavour to secure an equitable geographical distribution of members and to ensure that the Contracting States, in respect of which the largest quantities of contributing oil are being received, are appropriately represented; the Rules of Procedure of the Assembly may be applied, mutatis mutandis, for the work of such subsidiary body;

4. In paragraph 10 the words ", the Executive Committee," are deleted.

5. In paragraph 11 the words ", the Executive Committee" are deleted.

6. Paragraph 12 is deleted.

Article 19

Article 19 of the 1971 Fund Convention is amended as follows:

1. Paragraph 1 is replaced by the following text:

1. Regular sessions of the Assembly shall take place once every calendar year upon convocation by the Director.

2. In paragraph 2 the words "of the Executive Committee or" are deleted.

Article 20

Articles 21 to 27 of the 1971 Fund Convention and the heading to these articles are deleted.

Article 21

Article 29 of the 1971 Fund Convention is amended as follows:

1. Paragraph 1 is replaced by the following text:

1. The Director shall be the chief administrative officer of the Fund. Subject to the instructions given to him by the Assembly, he shall perform those functions which are assigned to him by this Convention, the Internal Regulations of the Fund and the Assembly.

2. In paragraph 2 (e) the words "or to the Executive Committee" are deleted.

3. In paragraph 2 (f) the words "or to the Executive Committee, as the case may be," are deleted.

4. Paragraph 2 (g) is replaced by the following text:

(g) prepare, in consultation with the Chairman of the Assembly, and publish a report of the activities of the Fund during the previous calendar year;

5. In paragraph 2 (h) the words ", the Executive Committee" are deleted.

Article 22

In Article 31, paragraph 1, of the 1971 Fund Convention, the words "on the Executive Committee and" are deleted.

Article 23

Article 32 of the 1971 Fund Convention is amended as follows:

1. In the opening phrase the words "and the Executive Committee" are deleted.
2. In subparagraph (b) the words "and the Executive Committee" are deleted.

Article 24

Article 33 of the 1971 Fund Convention is amended as follows:

1. Paragraph 1 is deleted.
2. In paragraph 2 the paragraph number is deleted.
3. Subparagraph (c) is replaced by the following text:

(c) the establishment of subsidiary bodies, under Article 18, paragraph 9, and matters relating to such establishment.

Article 25

Article 35 of the 1971 Fund Convention is replaced by the following text:

Claims for compensation under Article 4 arising from incidents occurring after the date of entry into force of this Convention may not be brought against the Fund earlier than the one hundred and twentieth day after that date.

Article 26

After Article 36 of the 1971 Fund Convention four new articles are inserted as follows:

Article 36 bis

The following transitional provisions shall apply in the period, hereinafter referred to as the transitional period, commencing with the date of entry into force of this Convention and ending with the date on which the denunciations provided for in Article 31 of the 1992 Protocol to amend the 1971 Fund Convention take effect:

(a) In the application of paragraph 1 (a) of Article 2 of this Convention, the reference to the 1992 Liability Convention shall include reference to the International Convention on Civil Liability for Oil Pollution Damage, 1969, either in its original version or as amended by the Protocol thereto of 1976 (referred to in this Article as "the 1969 Liability Convention"), and also the 1971 Fund Convention.

(b) Where an incident has caused pollution damage within the scope of this Convention, the Fund shall pay compensation to any person suffering pollution damage only if, and to the extent that, such person has been unable to obtain full and adequate compensation for the damage under the terms of the 1969 Liability Convention, the 1971 Fund Convention and the 1969 Liability Convention, provided that, in respect of pollution damage within the scope of this Convention in respect of a Party to this Convention but not a Party to the 1971 Fund Convention, the Fund shall pay compensation to any person suffering pollution damage only if, and to the extent that, such person would have been unable to obtain full and adequate compensation had that State been party to each of the above-mentioned Conventions.

(c) In the application of Article 4 of this Convention, the amount to be taken into account in determining the aggregate amount of compensation payable by the Fund shall also include the amount of compensation actually paid under the 1969 Liability Convention, if any, and the amount of compensation actually paid or deemed to have been paid under the 1971 Fund Convention.

(d) Paragraph 1 of Article 9 of this Convention shall also apply to the rights enjoyed under the 1969 Liability Convention.

Article 36 ter

1. Subject to paragraph 4 of this Article, the aggregate amount of the annual contributions payable in respect of contributing oil received in a single Contracting State during a calendar year shall not exceed 27.5% of the total amount of annual contributions pursuant to the 1992 Protocol to amend the 1971 Fund Convention, in respect of that calendar year.

2. If the application of the provisions in paragraphs 2 and 3 of

Article 12 would result in the aggregate amount of the contributions payable by contributors in a single Contracting State in respect of a given calendar year exceeding 27.5% of the total annual contributions, the contributions payable by all contributors in that State shall be reduced pro rata so that their aggregate contributions equal 27.5% of the total annual contributions to the Fund in respect of that year.

3. If the contributions payable by persons in a given Contracting State shall be reduced pursuant to paragraph 2 of this Article, the contributions payable by persons in all other Contracting States shall be increased pro rata so as to ensure that the total amount of contributions payable by all persons liable to contribute to the Fund in respect of the calendar year in question will reach the total amount of contributions decided by the Assembly.

4. The provisions in paragraphs 1 to 3 of this Article shall operate until the total quantity of contributing oil received in all Contracting States in a calendar year has reached 750 million tons or until a period of 5 years after the date of entry into force of the said 1992 Protocol has elapsed, whichever occurs earlier.

Article 36 quater

Notwithstanding the provisions of this Convention, the following provisions shall apply to the administration of the Fund during the period in which both the 1971 Fund Convention and this Convention are in force:

(a) The Secretariat of the Fund, established by the 1971 Convention (hereinafter referred to as "the 1971 Fund"), headed by the Director, may also function as the Secretariat and the Director of the Fund.

(b) If, in accordance with subparagraph (a), the Secretariat and the Director of the 1971 Fund also perform the function of Secretariat and Director of the Fund, the Fund shall be represented, in cases of conflict of interests between the 1971 Fund and the Fund, by the Chairman of the Assembly of the Fund.

(c) The Director and the staff and experts appointed by him, performing their duties under this Convention and the 1971 Fund Convention, shall not be regarded as contravening the provisions of Article 30 of this Convention in so far as they discharge their duties in accordance with this Article.

(d) The Assembly of the Fund shall endeavour not to take decisions which are incompatible with decisions taken by the Assembly of the 1971 Fund. If differences of opinion with respect to common administrative issues arise, the Assembly of the Fund shall try to reach a consensus with the Assembly of the 1971 Fund, in a spirit of mutual co-operation and with the common aims of both organizations in mind.

(e) The Fund may succeed to the rights, obligations and assets of the 1971 Fund if the Assembly of the 1971 Fund so decides, in accordance with Article 44, paragraph 2, of the 1971 Fund Convention.

(f) The Fund shall reimburse to the 1971 Fund all costs and expenses arising from administrative services performed by the 1971 Fund on behalf of the Fund.

Article 36 quinquies

Final clauses

The final clauses of this Convention shall be Articles 28 to 39 of the Protocol of 1992 to amend the 1971 Fund Convention. References in this Convention to Contracting States shall be taken to mean references to the Contracting States of that Protocol.

Article 27

1. The 1971 Fund Convention and this Protocol shall, as between the Parties to this Protocol, be read and interpreted together as one single instrument.

2. Articles 1 to 36 quinquies of the 1971 Fund Convention as amended by this Protocol shall be known as the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (1992 Fund Convention).

FINAL CLAUSES

Article 28

Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open for signature at London from 15 January 1993 to 14 January 1994 by any State which has signed the 1992 Liability Convention.

2. Subject to paragraph 4, this Protocol shall be ratified, accepted or approved by States which have signed it.
3. Subject to paragraph 4, this Protocol is open for accession by States which did not sign it.
4. This Protocol may be ratified, accepted, approved or acceded to only by States which have ratified, accepted, approved or acceded to the 1992 Liability Convention.
5. Ratification, acceptance, approval or accession shall be effected by the deposit of a formal instrument to that effect with the Secretary-General of the Organization.
6. A State which is a Party to this Protocol but is not a Party to the 1971 Fund Convention shall be bound by the provisions of the 1971 Fund Convention as amended by this Protocol in relation to other Parties hereto, but shall not be bound by the provisions of the 1971 Fund Convention in relation to Parties thereto.
7. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to the 1971 Fund Convention as amended by this Protocol shall be deemed to apply to the Convention so amended, as modified by such amendment.

Article 29

Information on contributing oil

1. Before this Protocol comes into force for a State, that State shall, when depositing an instrument referred to in Article 28, paragraph 5, and annually thereafter at a date to be determined by the Secretary-General of the Organization, communicate to him the name and address of any person who in respect of that State would be liable to contribute to the Fund pursuant to Article 10 of the 1971 Fund Convention as amended by this Protocol as well as data on the relevant quantities of contributing oil received by any such person in the territory of that State during the preceding calendar year.
2. During the transitional period, the Director shall, for Parties, communicate annually to the Secretary-General of the Organization data on quantities of contributing oil received by persons liable to contribute to the Fund pursuant to article 10 of the 1971 Fund Convention as amended by this Protocol.

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 450 million tons of contributing oil.

2. However, this Protocol shall not enter into force before the 1992 Liability Convention has entered into force.

3. For each State which ratifies, accepts, approves or accedes to this Protocol after the conditions in paragraph 1 for entry into force have been met, the Protocol shall enter into force twelve months following the date of the deposit by such State of the appropriate instrument.

4. Any State may, at the time of the deposit of its instrument of ratification, acceptance, approval or accession in respect of this Protocol declare that such instrument shall not take effect for the purpose of this Article until the end of the six-month period in Article 31.

5. Any State which has made a declaration in accordance with the preceding paragraph may withdraw it at any time by means of a notification addressed to the Secretary-General of the Organization. Any such withdrawal shall take effect on the date the notification is received, and any State making such a withdrawal shall be deemed to have deposited its instrument of ratification, acceptance, approval or accession in respect of this Protocol on that date.

6. Any State which has made a declaration under Article 13, paragraph 2, of the Protocol of 1992 to amend the 1969 Liability Convention shall be deemed to have also made a declaration under paragraph 4 of this Article. Withdrawal of a declaration under the said Article 13, paragraph 2, shall be deemed to constitute withdrawal also under paragraph 5 of this Article.

Article 31

Denunciation of the 1969 and 1971 Conventions

Subject to Article 30, within six months following the date on which the following requirements are fulfilled:

(a) at least eight States have become Parties to this Protocol or have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General of the Organization, whether or not subject to Article 30, paragraph 4, and

(b) the Secretary-General of the Organization has received information in accordance with Article 29 that those persons who are or 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 750 million tons of contributing oil;

each Party to this Protocol and each State which has deposited an instrument of ratification, acceptance, approval or accession, whether or not subject to Article 30, paragraph 4, shall, if Party thereto, denounce the 1971 Fund Convention and the 1969 Liability Convention with effect twelve months after the expiry of the above-mentioned six-month period.

Article 32

Revision and amendment

1. A conference for the purpose of revising or amending the 1992 Fund Convention may be convened by the Organization.
2. The Organization shall convene a Conference of Contracting States for the purpose of revising or amending the 1992 Fund Convention at the request of not less than one third of all Contracting States.

Article 33

Amendment of compensation limits

1. Upon the request of at least one quarter of the Contracting States, any proposal to amend the limits of amounts of compensation laid down in Article 4, paragraph 4, of the 1971 Fund Convention as amended by this Protocol shall be circulated by the Secretary-General to all Members of the Organization and to all Contracting States.
2. Any amendment proposed and circulated as above shall be submitted to the legal Committee of the Organization for consideration at a date at least six months after the date of its circulation.
3. All Contracting States to the 1971 Fund Convention as amended by this Protocol, whether or not Members of the Organization, shall be entitled to participate in the proceedings of the Legal Committee for the consideration and adoption of amendments.
4. Amendments shall be adopted by a two-thirds majority of the Contracting States present and voting in the Legal Committee, expanded as provided for in paragraph 3, on condition that at least one half of the Contracting States shall be present at the time of voting.
5. When acting on a proposal to amend the limits, the Legal Committee shall take into account the experience of incidents and in particular the amount of damage resulting therefrom and changes in the monetary values. It shall also take into account the relationship between the limits in Article 4, paragraph 4, of the 1971 Fund Convention as amended by this Protocol and those in Article V, paragraph 1, of the International Convention on Civil Liability for Oil Pollution Damage, 1992.
6. (a) No amendment of the limits under this Article may be considered before 15 January 1998 nor less than five years from the date of entry into force of a previous amendment under this Article. No amendment under this Article shall be considered before this Protocol has entered into force.

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

(c) No limit may be increased so as to exceed an amount which corresponds to the limit laid down in the 1971 Fund Convention as amended by this Protocol multiplied by three.
7. Any amendment adopted in accordance with paragraph 4 shall be notified by the Organization to all Contracting States. The amendment shall be deemed to have been

accepted at the end of a period of eighteen months after the date of notification unless within that period not less than one quarter of the States that were Contracting States at the time of the adoption of the amendment by the Legal Committee have communicated to the Organization that they do not accept the amendment in which case the amendment is rejected and shall have no effect.

8. An amendment deemed to have been accepted in accordance with paragraph 7 shall enter into force eighteen months after its acceptance.

9. All Contracting States shall be bound by the amendment, unless they denounce this Protocol in accordance with Article 34, paragraphs 1 and 2, at least six months before the amendment enters into force. Such denunciation shall take effect when the amendment enters into force.

10. When an amendment has been adopted by the Legal Committee but the eighteen-month period for its acceptance has not yet expired, a State which becomes a Contracting State during that period shall be bound by the amendment if it enters into force. A State which becomes a Contracting State after that period shall be bound by an amendment which has been accepted in accordance with paragraph 7. In the cases referred to in this paragraph, a State becomes bound by an amendment when that amendment enters into force, or when this Protocol enters into force for that State, if later.

Article 34

Denunciation

1. This Protocol may be denounced by any Party at any time after the date on which it enters into force for that Party.

2. Denunciation shall be effected by the deposit of an instrument with the Secretary-General of the Organization.

3. A denunciation shall take effect twelve months, or such longer period as may be specified in the instrument of denunciation, after its deposit with the Secretary-General of the Organization.

4. Denunciation of the 1992 Liability Convention shall be deemed to be a denunciation of this Protocol. Such denunciation shall take effect on the date on which denunciation of the Protocol of 1992 to amend the 1969 Liability Convention takes effect according to Article 16 of that Protocol.

5. Any Contracting State to this Protocol which has not denounced the 1971 Fund Convention and the 1969 Liability Convention as required by Article 31 shall be deemed to have denounced this Protocol with effect twelve months after the expiry of the six-month period mentioned in that Article. As from the date on which the denunciations provided for in Article 31 take effect, any Party to this Protocol which deposits an 1969 Liability Convention shall be deemed to have denounced this Protocol with effect from the date on which such instrument takes effect.

6. As between the Parties to this Protocol, denunciation by any of them of the 1971 Fund Convention in accordance with Article 41 thereof shall not be construed in any way as a denunciation of the 1971 Fund Convention as amended by this Protocol.

7. Notwithstanding a denunciation of this Protocol by a Party pursuant to this Article, any provisions of this Protocol relating to the obligations to make contributions under Article 10 of the 1971 Fund Convention as amended by this Protocol with respect to an incident referred to in Article 12, paragraph 2 (b), of that amended Convention and occurring before the denunciation takes effect shall continue to apply.

Article 35

Extraordinary sessions of the Assembly

1. Any Contracting State may, within ninety days after the deposit of an instrument of denunciation the result of which it considers will significantly increase the level of contributions for the remaining Contracting States, request the Director to convene an extraordinary session of the Assembly. The Director shall convene the Assembly to meet not later than sixty days after receipt of the request.

2. The Director may convene, on his own initiative, an extraordinary session of the Assembly to meet within sixty days after the deposit of any instrument of denunciation, if he considers that such denunciation will result in a significant increase in the level of contributions of the remaining Contracting States.

3. If the Assembly at an extraordinary session convened in accordance with paragraph 1 or 2 decides that the denunciation will result in a significant increase in the level of contributions for the remaining Contracting States, any such State may, not later than one hundred and twenty days before the date on which the denunciation takes effect, denounce this Protocol with effect from the same date.

Article 36

Termination

1. This Protocol shall cease to be in force on the date when the number of Contracting States falls below three.

2. States which are bound by this Protocol on the day before the date it ceases to be in force shall enable the Fund to exercise its functions as described under Article 37 of this Protocol and shall, for that purpose only, remain bound by this Protocol.

Article 37

Winding up of the Fund

1. If this Protocol ceases to be in force, the Fund shall nevertheless:

(a) meet its obligations in respect of any incident occurring before the Protocol ceased to be in force;

(b) be entitled to exercise its rights to contributions to the extent that these contributions are necessary to meet the obligations under subparagraph (a), including expenses for the administration of the Fund necessary for this purpose.

2. The Assembly shall take all appropriate measures to complete the winding up of the Fund including the distribution in an equitable manner of any remaining assets among those persons who have contributed to the Fund.

3. For the purposes of this Article the Fund shall remain a legal person.

Article 38

Depositary

1. This Protocol and any amendments accepted under Article 33 shall be deposited with the Secretary-General of the Organization.

2. The Secretary-General of the Organization shall:

(a) inform all States which have signed or acceded to this Protocol of:

(i) each new signature or deposit of an instrument together with the date thereof,

(ii) each declaration and notification under Article 30 including declarations and withdrawals deemed to have been made in accordance with that Article;

(iii) the date of entry into force of this Protocol;

(iv) the date by which denunciations provided for in Article 31 are required to be made;

(v) any proposal to amend limits of amounts of compensation which has been made in accordance with Article 33, paragraph 1;

(vi) any amendment which has been adopted in accordance with Article 33, paragraph 4;

(vii) any amendment deemed to have been accepted under Article 33, paragraph 7, together with the date on which that amendment shall enter into force in accordance with paragraphs 8 and 9 of that Article;

(viii) the deposit of an instrument of denunciation of this Protocol together with the date of the deposit and the date on which it takes effect;

(ix) any denunciation deemed to have been made under Article 34, paragraph 5;

(x) any communication called for by any Article in this Protocol;

(b) transmit certified true copies of this Protocol to all Signatory States and to all States which accede to the Protocol.

3. As soon as this Protocol enters into force, the text shall be transmitted by the Secretary-General of the Organization to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

Article 39

Languages

This protocol is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

DONE AT LONDON this twenty-seventh day of November one thousand nine hundred and ninety-two.

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

A draft.

Law of the Republic of Kazakhstan

"On introducing amendments to the Law of the Republic of Kazakhstan "On Merchant Shipping"

Article 1. To introduce to the Law of the Republic of Kazakhstan dated 17 January 2002 "On Merchant Shipping" the following amendments:

1) To amend Article 1 subparagraph 36 by adding after the words "and oil products" the following: " , provided that a ship capable of carrying oil and other cargoes shall be regarded as an oil tanker for the purposes of Chapter 18 only when it is actually carrying oil in bulk as cargo and during any voyage following such carriage unless it is proved that it has no residues of such carriage in bulk aboard, provided also that any reference to "ships" in Chapter 18, in so far as it relates to oil pollution damage shall include oil tankers".

2) To add in Article 1 sub-paragraph 36-1) stating the following:

36-1)"oil" - any persistent hydrocarbon mineral oil such as crude oil, fuel oil, heavy diesel oil and lubricating oil, whether carried on board a ship as cargo or in the bunkers of such a ship.

3) To add in Article 174 sub-paragraph 4 stating the following:

4. No claim for compensation for pollution damage may be made against the owner otherwise than in accordance with this Chapter. Subject to subparagraph 5 of this Article, no claim for compensation for pollution damage under this Chapter or otherwise may be made against:

- (a) the servants or agents of the owner or the members of the crew;
- (b) the pilot or any other person who, without being a member of the crew, performs services for the ship;
- (c) any charterer (how so ever described, including a bareboat charterer), manager or operator of the ship;
- (d) any person performing salvage operations with the consent of the owner or on the instructions of a competent public authority;
- (e) any person taking preventive measures;
- (f) all servants or agents of persons mentioned in subparagraphs (c), (d) and (e);

unless the damage resulted from their personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

5. Nothing in this Chapter shall prejudice any right of recourse of the owner against third parties.

4) To replace Article 173 subparagraph 1 with the following text:

“it is proved that the pollution damage resulted from his personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.”

5) To amend Article 174 sub-paragraph 2 as follows:

2. The shipowner shall be entitled to limit his liability for damage, caused by oil pollution at sea in respect of any one incident to an aggregate amount calculated as follows:

- 1) 4.510.000 units of account for a ship not exceeding 5,000 units of tonnage;
 - 2) for a ship with a tonnage in excess thereof, for each additional unit of tonnage, 631 units of account in addition to the amount mentioned in sub-paragraph (1);
- provided however, that this aggregate amount shall not in any event exceed 89.770.000 units of account;

6) To amend in Article 246 sub-paragraph 1 as follows:

1. Damage from marine pollution by oil from ships, caused in the territory of the Republic of Kazakhstan, including the territorial waters, the area covered by the fishery zone and and the waters superjacent to the Kazakh sector of the Caspian Sea, established in accordance with the Convention on the Legal Status of the Caspian Sea of 2018;

Article 2. This Law enters into force from the date of its official publication.

President of
The Republic of Kazakhstan

Annex 1

THE LAW OF THE REPUBLIC OF KAZAKHSTAN DATED 17 JANUARY, 2002 No. 284 «ON MERCHANT SHIPPING»

Chapter 18. Liability for damage, caused by the carriage of dangerous cargo and marine pollution by oil from ships

Article 171. Liability of the ship owner

1. The ship owner from the time of the incident due to the carriage of dangerous cargo and (or) of marine pollution by oil from ships shall be liable for the harm and damage, caused to the injured person, except for the cases, provided in Article 175 of this Law.

2. Damage in connection with the carriage of dangerous cargo shall be:

1) causing by dangerous cargo harm to the life and health of the citizen on board or outside the ship;

2) the loss, shortage or damage (deterioration) of the property, caused by the dangerous cargo on board or outside the ship;

3) damage from environmental pollution, caused by dangerous cargo, limited by spending on remedial measures, as well as loss of profit as a result of such damage;

4) the expenses of preventive measures and consequential damages, caused by such measures.

3. Damage from marine pollution by oil from ships, carried as cargo or the ship's own fuel shall be:

1) damage, caused outside the ship by contamination, resulting from the leaks or discharge of oil from the ship, wherever such leaks or discharge may occur, limited by spending of remedial measures, as well as loss of profit as a result of such damage;

2) the expenses of preventive measures and consequential damages, caused by such measures.

Article 172. Joint and several liability of the owners of two or more ships

In the case of damage from pollution as a result of an incident involving two or more ships, all owners of ships, involved in the incident, if the owners are not exempted from liability under Article 175 of this Law, shall be jointly and severally liable for all the damage from pollution.

Article 173. Full liability of the ship owner

The ship owner shall be liable in full, if:

1) it is proved that the pollution damage resulted from his (her) own actions (or inaction), committed intentionally or through gross negligence;

2) he (she) does not fulfill the requirements for the creation of a liability limitation fund, provided for in Article 176 of this Law.

Article 174. Limitation of liability of the ship owner

1. The extent of the ship owner's liability in connection with the carriage of dangerous cargo is limited in relation to one incident to total amount, calculated as follows:

1) ten million units for a ship with a capacity of not more than two thousand tons;

2) for a ship with a capacity of more than two thousand tons by the amount, specified in subparagraph 1) of this paragraph, for each subsequent ton capacity, provided that the total amount does not exceed one hundred million units, added:

from two thousand one to fifty thousand tons and a half thousand units of account;

more than fifty thousand three hundred sixty tons of units of account.

2. The ship owner is entitled to limit its liability for damage, caused by oil pollution at sea in relation to the same incident by the total amount of one hundred thirty three units of account for each ton of the ship's tonnage. The total amount may not exceed fourteen million units of account.

Article 175. Exemption from liability of the ship owner

1. The ship owner shall not be liable for damage resulting from the carriage of dangerous cargo and oil pollution at sea, if he (she) proves that the damage caused:

1) as a result of military operations, natural disasters;

2) by intentional action (or inaction) of a third party;

3) as a result of improper operation of navigational aids outside the ship.

2. If the ship owner proves that the damage was caused intentionally or by gross negligence of the injured person, the amount of compensation for damage can be reduced or compensation for damages may be denied.

3. In causing harm to life and health of the citizen, the complete denial from compensation is not allowed.

Article 176. Mandatory liability limitation Fund

1. Pursuant to the compensation obligations for the carriage of dangerous cargo and (or) marine pollution by oil from ships, the ship owner shall establish a liability limitation fund for a total amount equal to the amount of his (her) liability.

Liability limitation fund may be established by placing the money due from it under the terms of the deposit in the name of court or provide a bank guarantee or other financial security, recognized by the court as sufficient.

2. The expenses of the ship owner to prevent or reduce the damage caused by the carriage of dangerous cargo and marine pollution by oil from ships give him (her) the same rights with respect to the liability limitation fund, which have other lenders.

3. The insurer or the person, providing financial security of obligations or the ship owner shall have the right to establish a liability limitation fund in accordance with the rules, provided for in this Article. Establishment of a fund shall not apply to the rights of the victim against the ship owner.

4. The rules, provided for in Article 202 of this Law, on the distribution of a liability limitation fund shall apply to the liability limitation fund established in accordance with paragraph 1 of this Article.

Claims for compensation of damage to life and health of the citizen, shall take priority over other claims to the extent that the total amount of such claims does not exceed the total amount, specified in paragraph 1 of Article 174 of this Law.

5. In the case of establishment of a liability limitation fund by the ship owner, levy of execution on claims for compensation of damages on other property of the ship owner, is not allowed. The measures to ensure that a claim for compensation of damages on carriage of dangerous cargo and marine pollution by oil from ships, including seizure shall not be applied by court.

Article 177. An insurance or financial security of liability

1. The ship owner, carrying dangerous cargo, as well as oil in excess of two thousand tons, shall insure the risk of liability for pollution or provide financial security for performance of the obligation, stipulated by the legislation of the Republic of Kazakhstan or the contract, in the amount of liability for pollution damage, determined in accordance with Article 174 of this Law.

2. (is excluded – No. 55 dated 06.06.2005).

3. The ship must have on board a certificate, confirming the insurance or financial security of the liability. The certificate is issued by the authority for the state registration of the ship in the manner, prescribed by the authorized body.

Article 178. A claim for compensation for pollution damage

1. Submission of claims for compensation for pollution damage to the ship owner, insurer or the person, providing financial security for performance of the obligation by the ship owner shall be in accordance with the legislative acts of the Republic of Kazakhstan.

2. The insurer or the person, providing financial security for performance of the obligation by the ship owner, acting in court as a defendant, shall have the right to present at trial any objections made by the ship owner, except in cases of bankruptcy and liquidation. If pollution damage caused by the ship owner as a result of willful misconduct, the ship owner may be held by the court as co-respondent.

Article 246. Relations, arising from damage of marine pollution by oil from ships

When causing damage from marine pollution by oil from ships the rules set out in Chapter 18 of this Law shall apply to:

1) damage from marine pollution by oil from ships, caused in the territory of the Republic of Kazakhstan;

2) preventive measures to prevent or minimize such damage, wherever they were taken.

A draft.

Resolution No. _____

Of the Government of the Republic of Kazakhstan dated _____

“On the procedure of effective implementation of the provisions of the Protocol of 1992 amending the International Convention on the Establishment Fund for Compensation for Oil Pollution Damage of 1971”

In order to fulfil its obligations arising out of the participation of the Republic of Kazakhstan in the the Protocol of 1992 amending the International Convention on the Establishment Fund for Compensation for Oil Pollution Damage of 1971, Government of the Republic of Kazakhstan decrees:

1. To entrust the Ministry of Industry and Infrastructural Development, Transport Committee and Customs Committee with the fulfillment of obligations arising from the participation of the Republic of Kazakhstan in the the Protocol of 1992 amending the International Convention on the Establishment Fund for Compensation for Oil Pollution Damage of 1971(hereinafter referred to as the Convention).
2. To establish that organizations operating in the territory of the Republic of Kazakhstan being the first recipients (hereinafter referred to as recipient organizations) of the persistent oil which is transferred by sea (falling under the definition prescribed by the Convention) are obliged to pay contributions according to the Convention to the International Oil Pollution Compensation Fund.
3. The National Customs Committee shall collect information on the amount of persistent oil imported by sea into the ports of the Republic of Kazakhstan during the previous calendar year, which are subject to the contributions under the Convention. The Transport Committee, shall also collect information regarding the amount of persistent oil transported by sea between the ports of the Republic of Kazakhstan (cabotage) during the previous calendar year; shall summarize all the information regarding the amount of contributing oil received in the Republic of Kazakhstan and shall provide confirmation in respect of the reliability of this information from the recipient organizations according to the procedure stipulated by the Convention.
4. The National Customs Committee shall submit to the Transport Committee of the Republic of Kazakhstan information on the total amount of conventional oil imported into the Republic of Kazakhstan during the previous calendar year for each recipient organization not later than March, 1.
5. The Transport Committee of the Republic of Kazakhstan shall submit to the International Oil Pollution Compensation Fund 1992 all the information received and gathered in the form and according to the terms established by the Convention in order to calculate the amount of the annual contribution to be charged from each recipient organization, and shall inform the Government of the Republic of Kazakhstan about such submission.

6. This Resolution shall come into force on the date of its signing.

Prime Minister
of the Republic of Kazakhstan

A draft.

Law of the Republic of Kazakhstan

"On introducing amendments to the "Regulations concerning the issuance of the certificate of insurance or other financial security in respect of civil liability for the oil pollution damage" approved by the Decree of Minister responsible for Transport and Communications of the Republic of Kazakhstan dated July 17, 2002 N 251-I

Article 1. To introduce to the "Regulations concerning the issuance of the certificate of insurance or other financial security in respect of civil liability for the oil pollution damage" the following amendments:

1) In the whole text of the Regulations, the words "International Convention on Civil Liability for Oil Pollution Damage of 29 November 1969" shall be replaced by "International Maritime Organization Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage of 29 November 1969";

2) To amend Article 3 sub-paragraph 1 as follows:

3. 1) ship – any sea-going vessel and seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo, provided that a ship capable of carrying oil and other cargoes shall be regarded as a ship only when it is actually carrying oil in bulk as cargo and during any voyage following such carriage unless it is proved that it has no residues of such carriage of oil in bulk aboard;

Article 2. This Law enters into force from the date of its official publication.

President of
The Republic of Kazakhstan

Annex 2

On ratification of the Convention concerning Abolition of Forced Labour

Unofficial translation

Law of the Republic of Kazakhstan of 14 December 2000

To ratify the Convention of the International Labour Organisation concerning Abolition of Forced Labour Convention (Convention No 105), adopted on the 40-th session of General conference of the International Labor Organization in Geneva, 25 June 1957.

President of the Republic of Kazakhstan N. NAZARBAYEV

Convention No105 of the International Labour Organisation concerning Abolition of Forced Labour

(Geneva, 25 June 1957)

[Thereafter follows the complete text of the Convention]