



IMO
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**AN ACT TO INCORPORATE THE PROTOCOL OF
2003 TO THE 1992 INTERNATIONAL
CONVENTION ON THE ESTABLISHMENT OF AN
INTERNATIONAL FUND FOR COMPENSATION
FOR OIL POLLUTION DAMAGE INTO THE LAWS
OF MALTA**

**A Legislation Drafting Project submitted in partial fulfillment of the
requirements for the award of the Degree of Master of Laws (LL.M.) at
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DECLARATION

I hereby declare that the work and research in this Dissertation are my own personal work and that it has not been previously submitted, or is not concurrently being submitted, in candidature for any other degree or diploma.

Matthew Xerri, L.L.B., N.P.

DEDICATION

To my girlfriend, Daniela, who has given me continuous support and encouragement throughout the whole duration of the course.

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***“I DO NOT WISH TO SEE THE MARITIME
COMMUNITY STAND ACCUSED OF FAILING
IN ITS DUTY TOWARDS THE PROTECTION
AND PRESERVATION OF THIS BEAUTIFUL
PLANET, WHICH, IT SEEMS TO ME, WE HAVE
NEGLECTED FOR TOO LONG.”***

***Efthimios E. Mitropoulos, IMO Secretary-General in his speech on World Maritime
Day, 2007***

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Explanatory Note on the ‘Oil Pollution (Liability and Compensation) (Amendment) Act

1. Introduction

Since time immemorial, the environment is constantly being scrutinised by the human race. During the last few decades the world has realised that our marine environment is being polluted. Marine pollution may be sub-divided into various groups and includes pollution from land based sources, from sea bed activities, pollution by dumping and also ship source pollution. With regards to the latter type of pollution, it can be divided into two groups, operational pollution and accidental pollution. Unfortunately, the sea has been polluted in various incidents which sometimes were quite catastrophic. Hence, steps had to be taken in order to remedy the situation.¹

Most of these accidents can be traced back to the period after the Second World War, where there was an outstanding advancement in technology, and large ships with a huge loading capacity were constructed. At that time the oil industry was also growing and this led to vessels carrying large quantities of oil all over the world. It was thus inevitable that pollution accidents would occur.

Consequently, the international community could not stay passive but had to take appropriate actions. This led to the development of several international instruments regulating various aspects related to the protection of the environment including conventions which deal with liability and compensation² for oil pollution. The latest innovation of the liability and compensation regime is the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (hereinafter referred to as the ‘2003 Supplementary Fund Protocol’) which will be examined below along with its parent convention.

¹ As a matter of fact Article 194 of the United Nations Convention on the Law of the Sea imposes on Member States to take measures to prevent, reduce and control pollution of the marine environment.

² The duty of the international community to provide for prompt and adequate compensation in respect of all damage caused by pollution of the marine environment is found under Article 235 (3) of the United Nations Convention on the Law of the Sea.

2. Events highlighting the dangers of Oil Pollution

The major event which sent a strong outcry for some type of regulation was the *Torrey Canyon* incident of 1967. In this case, the vessel struck Pollard's Rock in the Steven Stones reef between the Scilly Isles and Land's End, England. She was carrying a cargo of 120,000 tons of oil which spilled out from the ship and polluted the coastlines of England and France.

The British government in a desperate attempt to prevent and minimise pollution bombed the wreck in order to burn up the cargo; however, this was not successful and instead it created disastrous environmental repercussions. From this incident, two issues had to be solved i.e. "the rights of a coastal state to intervene in the case of an oil pollution threat and civil liability for oil pollution damages."³ The latter part is relevant to this discussion.

A few years later⁴ another accident involving a tanker, the *Amoco Cadiz*, occurred, which resulted in the spillage of crude oil onto the beaches of Brittany. During the same year, on the 6th of May 1978, the tanker *Eleni V* was split into two after a collision, and "her oil cargo polluted the English coastline which was estimated to cost the British government in the region of £3,000,000."⁵

In 1989 there was the *Exxon Valdez* which spilled more than 10 million gallons of crude oil in Alaskan waters in 1989. After this incident, the United States (US) enacted domestic legislation independent of any international convention. Then on the 12th of December 1999, the *Erika*, broke into two near the Bay of Biscay, France, and some 19,800 tonnes of oil were spilled. By the end of the clean up operation it was calculated that more than 250,000 tonnes of oily waste were collected from shorelines.

Recently, two major incidents which have caught the attention of the maritime world occurred, the first of which was the Bahamas registered tanker *Prestige* in 2002. This

³ D.W. Abecassis, R.L. Jarashow, *Oil Pollution from Ships*, 2nd edition London: Stevens & Sons, 1985, p. 194

⁴ March 1978

⁵ Christopher Hill, *Maritime Law* (5th edition, LLP London 1998) pg 417

vessel also broke into two and spilled some 250,000 tonnes of cargo, once again on the Bay of Biscay and the west coast of Galicia, Spain.

The other incident was the *Hibei Spirit*, when in December of 2007, while it was anchored, was struck by a crane barge. At that time the vessel was laden with about 209,000 tonnes of four different types of crude oils with a total of 9,400 tonnes of oil escaping to the sea. Such a spillage polluted mainly the west coast of the Republic of Korea.

3. The Liability and Compensation Regime for Oil Pollution from Ships

3.1 Former Regime

3.1.1 TOVALOP

The shipping industry, on the other hand, after the *Torrey Canyon* incident decided to take immediate action rather than wait for an international convention to come into force. Thus an agreement was finalised on the 7 January 1969 which was known as the ‘Tanker Owners Voluntary Agreement concerning Liability for Oil Pollution’ or ‘TOVALOP’ and this came into force on the 6 October 1969.

The purpose behind this agreement was for shipowners to compensate national governments for clean up operations or for preventive action taken against oil spills affecting their coastlines. This agreement was voluntary, however, when a State entered into it, the instrument became legally binding. Also subsequently, if a government enforced TOVALOP then it was barred to take any other action under its domestic law.

The main problem with this agreement was that its limits were quite low therefore compensation was not sufficient.⁶ Moreover, even if the owner was at fault he could still limit his liability. However, TOVALOP provided a basis for the International Convention on Civil Liability for Oil Pollution Damage, 1969 (hereinafter referred to as the ‘1969 Convention’).

⁶ The total amount of compensation that a state would get reimbursed was that of \$10 million.

3.1.2 CRISTAL

CRISTAL, which stands for ‘Contracts Regarding an Interim Supplement to Take Liability for Oil Pollution’, was formulated on the 14 January 1971 and came into force on the 1st April of the same year. This voluntary agreement provided for compensation provided for by the oil industry for victims of oil pollution, be they States or individuals, who have not been adequately remunerated by TOVALOP or the 1969 Convention.

The total sum which the victims could claim was \$30 million. However, a number of deductions had to be made to this amount before the victims were paid, at which stage the compensation would still not have been sufficient. This agreement laid down the basis for 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’).

Both of these voluntary agreements stopped functioning on the 20 February 1997. Bearing in mind their effects on the international conventions discussed below, they may be considered as being quite ground-breaking and an excellent starting point for regimes regulating liability and compensation for oil pollution incidents.

3.1.3 The International Convention on Civil Liability for Oil Pollution Damage, 1969 and the “SDR” Protocol of 1976

After the *Torrey Canyon* incident, the International Maritime Organisation (IMO), through its Legal Committee, took immediate action and by November of 1969 a Diplomatic Conference was convened. During this conference, the ‘International Convention on Civil Liability for Oil Pollution Damage, 1969’ was adopted in Brussels on the 29 November, 1969. To enter into force, the 1969 Convention had to be ratified by eight States, five of which had to have a registered minimum combined tanker tonnage of one million tons gross. This was achieved on the 19 June 1975 when the convention entered into force.

Christopher Hill holds that the “agreement arrived at in 1969 was born of a consciousness of four things: first, the dangers of oil pollution inherent in the world-wide carriage of oil in bulk by sea; secondly, the need to ensure that adequate compensation was available to persons who suffer damage caused by pollution resulting from the escape or discharge of oil from ships; thirdly, the paramount desire for the adoption of uniform rules and procedures for determining questions of liability and providing adequate compensation; and fourthly, the desire of governments to feel more confidence in taking early, decisive action.”⁷

The 1969 Convention at the time was seen as quite revolutionary and as an advancement of the current liability position with regards to oil pollution. Nonetheless, upon careful examination of the 1969 Convention one can perceive some defects which were dealt with in future conventions.

The first important feature of the 1969 Convention is found under Article III (1) where the liability of the shipowner for oil pollution is considered to be strict liability. Hence, the shipowner is liable if there is an oil spill independently of his fault and this is quite convenient since it is made immediately clear who is the liable person.

The 1969 Convention applies to sea-going vessels carrying oil in bulk as cargo. Consequently, most of the vessels, like containerships, bulk carriers, car carrier and ro-ro ships are excluded and bunker spills from non-tankers are also not dealt with under the 1969 Convention. The oil must escape or discharge from an oil carrying vessel, thus as noted by *Abecassis* and *Jarashow* “...both accidental and intentional discharges are covered.”⁸

The persons who are liable under the 1969 Convention are the registered owners of the vessel; therefore action under the 1969 Convention can only be taken against the shipowner. The servants or agents of the vessel are immune from liability as provided for in Article III (4). Also the 1969 Convention is not applicable to State-owned vessels which are used for non-commercial purposes. Hence its sphere of application is quite

⁷ *Maritime Law* (n 3) pg 420 – 421

⁸ *Oil Pollution from Ships* (n 1) pg 198

limited. This is also true from the geographical limitation point of view, since the 1969 Convention is only applicable if oil pollution occurs in the territorial sea of a State Party to the Convention.

The liability of the shipowner is for pollution damage and this liability may be limited or excluded. The 1969 Convention provides for the latter under article III (2) and (3). The right to limit liability is dealt with under Article V (1). The unit of the limitation of liability was the Poincare franc, however a Conference was held in London from the 17 to the 19 November 1976, where a Protocol amending the unit of account of the convention was adopted. Such Protocol changed the unit to the Special Drawing Right (SDR) as defined by the International Monetary Fund (IMF).

Nonetheless, such limitation of liability may not be resorted to if the accident has occurred due to the “fault or privity of the owner...”⁹ Another important point on the 1969 Convention relates to Article V (3) which deals with the establishment of the Limitation Fund. Therefore, if a case is brought before a court and the shipowner wants to resort to his limitation of liability, then such an amount has to be deposited with the court or a bank guarantee has to be produced.

A feature which has been seen by many as being positive to the shipping industry is that the 1969 Convention imposes a duty on the shipowner to take on insurance. This is found under Article VII and such duty is imposed on vessels carrying more than 2,000 tons of oil in bulk as cargo. The shipowner is obliged to insure himself up to the maximum amount allowed under the limitation of liability clause. The 1969 Convention also provides for the possibility of instituting proceedings directly against the insurer however, the latter can use all the defences which are available to the shipowner.¹⁰

The 1969 Convention is still in force, even though, it was regarded by many as not being adequate. As of November 2008, the total number of States that have ratified this convention is 38. The 1969 Convention imposes a liability on the shipowner, however it

⁹ International Convention on Civil Liability for Oil Pollution Damage, 1969, Article V (2).

¹⁰ *Ibid*, Article VII (8)

was felt that other parties also had to contribute; thus, there was the formulation of other conventions.

3.1.4 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 and the “SDR” Protocol, 1976

This convention is also known as the 1971 Fund Convention and it entered into force on October 16, 1978. During the negotiations of the 1969 Convention, a compromise was achieved between the ship owners and the cargo owners which resulted in the creation of a working group to examine compensation through a fund. Consequently a Resolution was approved and the IMO called a Diplomatic Conference in which the 1971 Fund Convention was adopted on the 18 December 1971 in Brussels.

The 1971 Fund Convention provides compensation for two different parties. On the one hand there are the victims of the pollution damage in cases where they were not adequately compensated for by the 1969 Convention. On the other hand, the shipowner had the possibility to recover a part of the sum paid out under the 1969 Convention.

Hence the 1971 Fund Convention was founded on two principles, the first of which was that the victims of the oil pollution incidents were to receive adequate compensation, and secondly, the shipowner should not be the only party who is liable for such pollution damage with the other party being the cargo owner.¹¹

The 1971 Fund Convention provides a mechanism for the establishment of an international fund, which is known as the International Oil Pollution Compensation Fund (IOPC). It is considered as being a legal entity which can sue or be sued. The IOPC is funded by those persons or companies who in any one calendar year receive an aggregate amount of at least 150,000 tonnes of oil.

The 1969 and 1971 Conventions are inter-related and, as a matter of fact, there are situations where the same definitions are adopted. The basic principle of the latter

¹¹ Wu Chao, *Pollution from the Carriage of Oil by Sea: Liability and Compensation* (Kluwer Law International, London 1996) pg 77

convention is that, where liability of the 1969 Convention ends, the IOPC Fund's liability commences.¹²

Article 4 of the 1971 Fund Convention provides for the amount of compensation which it may pay in any one incident. This amount cannot exceed 450 million Francs; however, it is possible to increase it up to 900 million Francs. As a matter of fact France tried to increase this amount in 1978 after the *Amoco Cadiz* incident, but it failed to get the necessary majority to pass the amendment.

Another important article of the 1971 Fund Convention is Article 5 which deals with the so called 'roll-back relief' for the shipowners. The maximum amount which can be reimbursed to the shipowner is that of 1,500 francs per ton or 125 million francs whichever is the lower.

Nonetheless, this is subject to exceptions, the first of which is that the fund is not bound to give compensation if the damage resulted from acts of war, hostilities, civil war or insurrection or where oil is spilled from a warship or a ship owned by a government on non-commercial service. The second exception provides for the situation where the claimant fails to prove that the damage resulted from an incident involving one or more ships. If the fund is successful in proving that the damage was caused by the person who suffered the damage, then it will not be responsible to provide compensation.

In 1976, a Protocol was promulgated which changed the unit of account from gold francs to Special Drawing Rights (SDR's). The 1971 Fund Convention has dealt with a considerable number of claims arising throughout the years. One of the most notable incidents being the *Aegean Sea* of 1992, which was carrying 80,000 tonnes of crude oil and broke into two. The total amount of compensation claimed under this case amounted to €289.6 million.

The 1971 Fund Convention ceased to be in force on the 24 May 2002 after its member States signed a Protocol allowing its early winding up. However, there is a successor to this fund and this is the International Convention on the Establishment of an International

¹² *Oil Pollution from Ships (n 1)* pg 254

Fund for Compensation for Oil Pollution Damage, 1992 (hereinafter referred to as the '1992 Fund Convention').

3.2 Current Regime

3.2.1 International Convention on Civil Liability for Oil Pollution Damage, 1992, and the Amendments of the Limits of Liability, 2000

The 1969 Convention proved to be quite successful, albeit its defects, the most notable of which was the level of the limits of liability of the shipowner. There was an attempt to increase such limits through a Protocol in 1984 but it never entered into force. Ultimately, the 1992 Convention was adopted on the 27th of November 1992 and entered into force on 30 May 1996.

Following the *Erika* shipping casualty, in the year 2000, amendments were adopted and came into force on the 1st November 2003 in order to increase the limits. However, the most notable changes to the Liability Convention were made under the 1992 instrument.

The 1969 Convention provided for compensation if the actual pollution damage occurred within the territorial seas of the Coastal State.¹³ This has changed under the 1992 Convention and as a matter of fact, the shipowner is also liable if the damage is caused within the Exclusive Economic Zone (EEZ) of a State party to the 1992 Fund Convention. It has also been provided that if a State has not declared an EEZ then it will be applicable to an area not exceeding 200 nautical miles “from the baselines from which the breadth of its territorial sea is measured.”¹⁴

Thus, the scope of liability of the polluter has been widened under the 1992 Liability Convention. In fact, the latter convention is also applicable to tankers that are carrying other persistent oil in bulk. This has to be contrasted with the 1969 Convention which covered only pollution from crude oil carried in bulk as cargo, or spills from bunker oil

¹³ International Convention on Civil Liability for Oil Pollution Damage, 1969, Article II

¹⁴ International Convention on Civil Liability for Oil Pollution Damage, 1992, Article II (a) (ii)

carried by laden tankers.¹⁵ Also it has to be mentioned that the 1992 Convention applies also to unladen tankers which may contain some oil residue from previous voyages.

The 1992 Convention holds that the owner of the vessel will be under an obligation to reimburse not only the costs of oil pollution which has escaped or has been discharged, but also for costs of preventive measures. The latter measures may be implemented where there was no oil spill, but there was a grave and imminent threat of pollution damage. These preventive measures may be taken before or after an oil spill occurs, nonetheless in both circumstances the costs of these measures are covered by the 1992 Convention. It is also important to state that these costs have to be reasonable.

The liability of the shipowner is considered to be of strict liability, unless he can prove any one of three exemptions¹⁶ with which he may be exonerated. This is the same position found under the 1969 Convention. The first defence includes amongst other things ‘a grave natural phenomenon’ and this has to be interpreted as being something which is irresistible and unavoidable, for instance a tsunami. A scenario which may fall under the second defence is that of terrorism, whereby a third party intentionally causes damage.

The major development of the 1992 Convention relates to the issue of limitation of liability which was increased. The increased limits are stated under Article V (1)¹⁷. The shipowner also has the option to establish a limitation fund. This is usually done either by a cash payment in court or else by providing a guarantee, as was the situation in the *Sea Empress* Case. The 1992 Convention also provides for a simplified procedure to increase the limits of liability through a resolution of the IMO Legal Office.

¹⁵ Edgar Gold, *Gard Handbook on Protection of the Marine Environment*, (3rd Edition Gard AS, 2006) pg 562

¹⁶ 1992 Liability Convention (n 12) Article III (2) “No liability for pollution damage shall attach to the owner if he proves that the damage: (a) resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or (b) was wholly caused by an act or omission done with intent to cause damage by a third party; or (c) 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.”

¹⁷ “(a) 4,510,000 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, 631 units of account in addition to the amount mentioned in sub-paragraph (a); provided, however, that this aggregate amount shall not in any event exceed 89,770,000 million units of account.”

Nonetheless, in order to balance out the higher liability of the shipowner, the 1992 Convention provides for a stringer test for the limitation of liability to be broken. In fact, Article V (2) holds that the owner shall not be entitled to limit his liability "...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." Under the 1969 Convention, what was required was the actual fault or privity of the owner. The test contained in the 1992 Convention is referred to as unbreakable, since it is almost impossible to prove such requirements. This concept is also found under the International Convention on Limitation of Liability for Maritime Claims, 1976.

The 1992 Convention provides for the channelling of liability whereby no compensation may be claimed against crew members, servants and agents of the shipowner, a principle to be found in the 1969 Convention as well. However, the 1992 Convention includes in this category pilots and other persons carrying out services for the ship as well as charterers, managers, operators, salvors and persons taking preventive measures unless pollution damage was caused intentionally or recklessly.

Two very important cases dealing with the channelling of liability are the Prestige case in New York and the Erika case decided in Paris. In both of these cases there was an identical issue whether the classification society falls under the category of persons carrying out services to the ship and therefore it cannot be held liable. In the first case, the American courts stated that the classification society falls under that category, but the French court came to a different conclusion and found RINA liable. The Prestige case is currently under appeal.

There are some important elements which have been retained from the previous convention and these include Compulsory Insurance which is required for every vessel who is flying the flag of a State member to the 1992 Convention, or if the vessel is entering the port of a member State. Also, under the 1992 Convention, when the shipowner is limiting his liability, he has to constitute a fund or guarantee up to his limitation. This convention has been complemented with the 1992 Fund Convention discussed below.

3.2.2 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 and the Amendments of the Limits of Compensation, 2000

The 1992 Fund Convention provides for a compromise for an increase in the limitation of liability which was not achieved by a Protocol in 1984¹⁸. The 1992 Fund Convention entered into force on the 30th of May 1996 and was amended on the 1st of November 2000. This convention provided that State members to this convention will denounce their membership of the 1971 Fund Convention and this has led to the latter convention ceasing to be in force.

This fund, as the one preceding it, consisted of an International Oil Pollution Compensation (IOPC) Fund, an Assembly, an Executive Committee and a Secretariat. All of the member States to the 1992 Fund Convention have a representative in the Assembly which holds regular sessions once a year. The importance of the Assembly may be perceived from the fact that such a body elects the Executive Committee which is composed by representatives of 15 member States and it is responsible of approving the settlement of claims presented to it.

The 1992 Fund Convention applies in three situations i.e. where the shipowner is exempted from liability or when the shipowner is financially incapable of meeting his obligations or where the damage exceeds the shipowner's limitation of liability. The last scenario is the most common one.

This convention is not applicable if damage results from an act of war, hostilities, civil war or insurrection. This exemption is similar to that of the exclusion of the shipowner's liability with one small difference, that there is no defence for a natural disaster. Hence in the case of, for instance, a tsunami, the fund will have to pay the whole amount. Also there is no provision for intentional acts done by third parties. Thus if there is a terrorist act which has caused damage, then the IOPC Fund will have to cover the amount of damages. Nonetheless, from a practical point of view, it is quite difficult nowadays to

¹⁸ This Protocol never entered into force.

draw a line between an act of terrorism and an act of war. Apart from this, the 1992 Fund Convention does not apply where damage was caused by oil from a warship or other state owned ship operating a non-commercial service.

The Fund is financed by a mechanism, like its predecessor, whereby those individuals or companies receiving at least 150,000 tons of crude oil, by carriage by sea, in a member State of the Fund have to contribute a certain amount. Another article which was retained from the 1971 Fund Convention is Article IV (1) which states the conditions when the Fund is bound to give compensation.

On the other hand, various improvements have been made in the 1992 Fund Convention. The territorial application was extended from the 12 nautical mile territorial sea of a member State to 200 nautical miles. Henceforth, the probability that a member State will claim compensation under this Fund has increased, as well as the liability of the shipowner.

In addition to this, the limits of liability have also increased by 50.37% by the 2000 amendments. An article which was not retained by the 1992 Fund Convention is the roll-back relief article, thus this provides the opportunity for more compensation to be given to the victims of oil pollution.

An interesting point is that the 1992 Fund Convention provides for the situation whereby the shipowner can claim compensation from the IOPC Fund for preventive measures taken voluntarily. However, if the owner is bound to take such preventive measures by international conventions then he cannot claim compensation.

The primary duty of the member States of the 1992 Fund Convention is represented by the duty to submit an oil report containing the names of the oil receivers and the quantity of oil received. The IOPC Fund has no power to enforce such an obligation, however in practice, if the country does not fulfil the obligation and there is an oil pollution incident in such a country, then the IOPC Fund may stop provisionally the payments until all the contributions have been made.

There are some large States which are not members of the 1992 Fund Convention like the USA¹⁹ who has enacted its own legislation, as well as China who however is a member of the 1992 Convention but not of the 1992 Fund Convention. Nonetheless, a quite unique case is that of Hong Kong. When it was under the jurisdiction of the United Kingdom, Hong Kong was part of the 1971 Fund Convention, but this convention is now defunct. Consequently, China ratified the 1992 Fund Convention, but made it applicable only towards Hong Kong. Therefore, the rights and obligations envisaged by this convention apply in the territory of Hong Kong. The major contributors to the IOPC Fund are Japan with 17%, followed by Italy who contributes around 9% and the Republic of Korea with 8%.

Some of the incidents which were dealt with by the 1992 Fund consist of the *Erika*, *Prestige* and *Hibei Spirit*. In the *Erika* incident, some 400 kilometres of shoreline was affected by oil and the amount of claims under the 1992 Fund totalled to about £143 million and this did not include claims from the French Government or TotalFinaElf. Hence the need was felt to increase once more the liability for compensation since in such incidents or later ones like the *Prestige* the 1992 IOPC Fund was not enough to cover all the claims.

3.2.3 Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 [“Supplementary Fund Protocol”]

The *Prestige* and *Erika* incidents produced the necessary evidence that the compensation catered for under the conventions mentioned above was not sufficient to meet all the claims. Hence, the European Commission took the initiative through the *Erika I* and *Erika II* packages and proposed a Compensation Fund for Oil Pollution in European Waters (COPE). This Proposed Fund provided for compensation in excess of that provided by the 1992 Convention and the 1992 Fund Convention.

¹⁹ The United States of America have enacted an Oil Pollution Act which regulates compensation and liability in cases of oil pollution damage affecting its coast.

Consequently, the IMO took immediate action in order to try and remedy the inadequate compensation under the present conventions and also to prevent a regional approach in solving the problem. This led to the development of the Supplementary Fund Protocol which was finalised in London on May 19, 2003. It entered into force in 2005 after it was ratified by eight States who had received a combined total of 450 million tons of contributory oil.

To become a member of the 2003 Supplementary Fund Protocol, a State has to be a member State of the 1992 Convention and the 1992 Fund Convention, since these three are inter-related and complement each other. As was the case in the Fund Convention, the territorial applicability of this Protocol extends to the EEZ of the contracting State.

The 2003 Supplementary Fund is bound to pay compensation not only when the claims exceed those limits provided for under the 1992 Fund Convention, but also when there is a risk that such limits will be exceeded. The latter part is innovative and has been inserted in the Protocol due to the fact that the 1992 IOPC Fund will not pay any compensation unless it is sure that the claims will not exceed its limits, since then compensation will be paid pro-rata. Such an exercise can take several years to finalise and this may lead to great hardship for the victims of an oil pollution incident.

The 2003 Supplementary Fund Protocol tries to remedy the situation and provides for payment not only when it is established that the 1992 Fund compensation is not sufficient but also when there is such a risk. Hence the victims may be compensated at an earlier stage. Nonetheless, the claim considered for compensation has to be an ‘established claim’²⁰ and this has to be proven by the claimant.

Article 10 of the Supplementary Fund Protocol deals with the contributions that have to be made under the 2003 Fund. The requirements are the same as those provided for under the 1992 Fund i.e. by any person or company who in a calendar year has received in total quantities exceeding 150,000 tons of oil. Hence such a person may be called upon to make a second contribution if the claims are not met under the 1992 IOPC Fund. The

²⁰ This has been defined under Article 1 of the protocol as being “a claim which has been recognized by the 1992 Fund or been accepted as admissible by decision of a competent court binding upon the 1992 Fund...”

member States are duty bound, as they were under the previous fund, to provide to the Director of the Supplementary Fund, with information on oil receipts by a person or company who is liable to contribute to the Fund.

One of the major improvements of the 2003 Supplementary Fund Protocol over the 1992 IOPC Fund is the rule contained under Article 14, which is known as the ‘Assumed Minimum Receipt’ or ‘Membership Fee’. Article 14 (1) holds that there will a presumption of “a minimum receipt of 1 million tons of contributing oil in each Contracting State.” This is only applicable to those States that receive less than 1 million tons of oil per calendar year. In such a scenario, the Contracting State will be liable to contribute to the Fund the difference between the supposed 1 million tons of oil received, and the actual amount of oil received in such a country.

The *raison d’être* of this article is that since there has been an increase in the amount of compensation payable by the oil industry of the member States to the Protocol, it would be suitable for all members to contribute at least a minimal amount. This article is further justified by the fact that there can be cases under the 1992 Fund Convention where a State contributes a very small amount, since it receives a minimal amount of oil. However, in the case of a claim, the contribution paid is quite a substantial amount. Therefore there is this imbalance between the level of contribution and the level of compensation. Henceforth, under the 2003 Supplementary Fund Protocol, there is stronger international solidarity among the States, with each Member State contributing at least a minimal amount.

The principle of international solidarity is once again implemented under Article 18. This article holds that for a transitional period of ten years, or until the total quantity of oil received in a Contracting State has reached 1,000 million tons after the date of entry into force of the Protocol, whichever is the earliest, a member State is not liable to contribute more than 20% of the total amount of contribution. Hence the burden can be divided more equally over all the Member States.

The Supplementary Fund Protocol also provides for a Secretariat and a Director which are currently the same organs regulating the 1992 Fund. From this brief overview it is

clear that this protocol is a major step forward for providing a crucial increase in compensation for oil pollution victims. However, the need was also felt for a further contribution by the shipping industry.

3.2.4 *STOPIA 2006 and TOPIA 2006*

After the increase of limitations on the part of the oil industry, the shipowning industry also took initiatives to balance out the contributions made in the case of oil pollution incidents. However, a different approach was taken whereby instead of formulating a Protocol or amending the 1992 Convention, voluntary agreements were devised.

The first was the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) which was revised in 2006. This agreement applies to small tankers which have a capacity of 29, 548 GT or less and is applicable to those incidents falling under the 1992 Fund Convention. The shipowner has to be a member of one of the P&I Clubs. The maximum amount of compensation payable is that of 20 million SDR and such an amount will be given as indemnification to the 1992 Fund.

Then there is also the Tanker Oil Pollution Indemnification Agreement (TOPIA) 2006 which has the same aim of STOPIA 2006, i.e. to provide further compensation from the shipowning industry and balance out the contributions made. However, in the case of TOPIA, this applies to all types of tankers which fall under claims under the Supplementary Fund Protocol. Once again, the tanker owner has to form part of the P&I Clubs. Through TOPIA, the shipowner will be liable to indemnify the Supplementary Fund Protocol 50% of the compensation given for oil pollution incidents. Hence the TOPIA and STOPIA will not give any contribution directly to the pollution victims but towards the Supplementary Fund and the 1992 Fund respectively.

4. Malta's Susceptible Position

Malta is the main island of the Maltese archipelago, with the other principal islands being Gozo and Comino. The island is around 27 kilometres long and 15 kilometres wide. It is located in the heart of the Mediterranean and borders the continents of Europe and Africa.

On the north of the island there is Sicily, while on the west there is Tunisia and in the south Libya.

Malta's position in the middle of the Mediterranean is a strong strategic position which has been used by the major societies in olden times such as the Romans and Phoenicians. Malta boasts of two major ports which are the Valletta Port, also known as the Grand Harbour, and the Port of Marsaxlokk. The former port comprises of various wharfs some of which are today used for cruise ships visiting Malta; while most of the container ships and tankers visit the latter port.

4.1 Problem Defined

The island of Malta has very limited natural resources, and, as a matter of fact it produces only 20% of its food needs and has very limited fresh water supplies. The economy of Malta is extremely dependent on foreign trade, manufacturing and tourism. Thus the shipping industry plays a vital role in Malta's economy and consequently major steps have been taken to develop Maltese ports and advertise Malta as a port of transshipment. This has led to an annual increase of vessels visiting the Maltese islands.

The Freeport, situated in the south of Malta in Marsaxlokk, caters mainly for containerships and as already stated above, the number of vessels visiting the Freeport is increasing. Lloyd's Marine Intelligence Unit (MIU), in fact carried out a study whereby it projects the port of Masaxlokk as entering the top 20 Mediterranean Ports by 2016 in terms of number of vessel calls. This is shown in the table in the following page.

Projected Top 20 Mediterranean Ports 2016

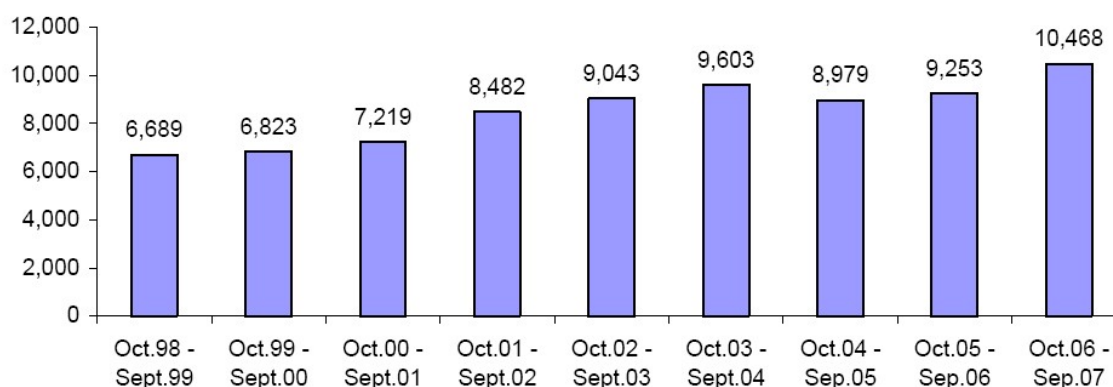
Rank	Port	No. Calls	Port	Mil DWT
1	Barcelona	12,290	Gibraltar*	472.8
2	Gibraltar*	9,796	Algeciras	197.5
3	Leghorn	9,753	Barcelona	190.7
4	Genoa	9,024	Sidi Kerir Term.	188.5
5	Valencia	7,717	Gioia Tauro	156.0
6	Gioia Tauro	7,365	Valencia	153.7
7	Algiers	7,344	Genoa	128.2
8	Palma(Maj)	6,049	Port Said	122.9
9	Ambarli	5,534	Arzew	115.2
10	Algeciras	5,479	Taranto	104.8
11	Marseilles	5,198	Fos	102.2
12	Diliskelesi	5,010	Leghorn	101.3
13	Venice	4,926	Algiers	84.0
14	Alexandria(EGY)	4,770	Marsaxlokk	77.4
15	Ancona	4,382	Piraeus	75.0
16	Ravenna	4,368	Augusta	74.1
17	Naples	4,264	Venice	72.6
18	Fos	4,203	Tarragona	71.6
19	Marsaxlokk	4,058	Trieste	69.3
20	Piraeus	4,000	Port de Bouc	68.4

*Mainly Bunkering Calls

Source: ©Lloyd's MIU

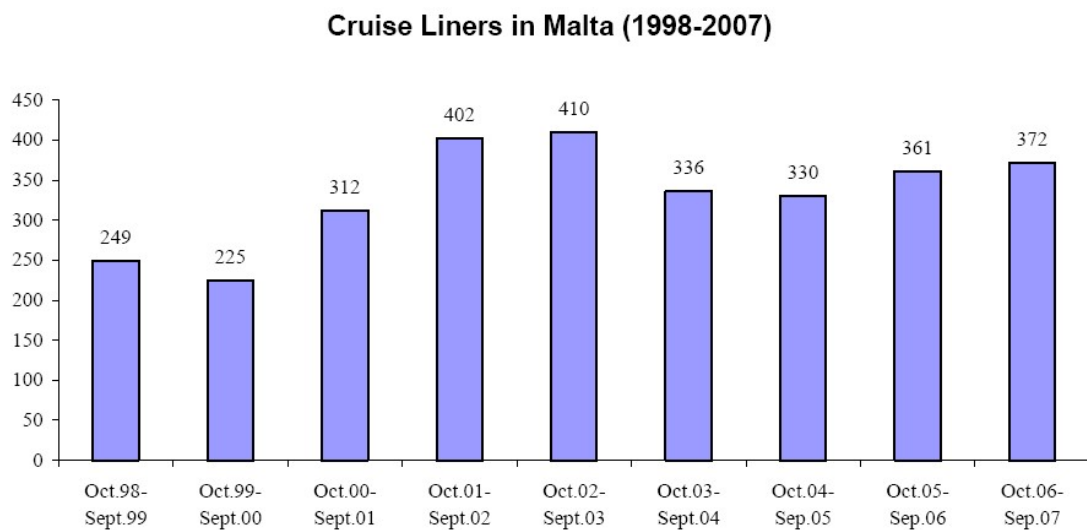
Such an increase of vessel traffic, albeit having a positive effect on the Maltese economy, also represents an increase of possibility of an oil pollution accident occurring within the territorial waters of Malta. Even though such vessels may not be oil tankers, they may still cause oil pollution damage. The table²¹ below shows the increase number of vessels calling in Malta in the year 2007.

Number of Vessels in Malta



²¹ This table was taken from the 2007 Annual Report prepared by the Malta Maritime Authority.

The same can be said with regards to the cruise liner business. Cruise liners have been on the increase and all of them coming to Malta, visit the Grand Harbour. In the year 2007, it has been calculated that there were a total of 33 turnaround operations from 10 different vessels and a total increase of 3% in the number of cruise liners visiting Malta, as can be seen in the table below²². Thus such a large amount of vessels once again represents a high risk of potential oil pollution and the Maltese legal system has to be ready to counter any possible expenses arising from this pollution.



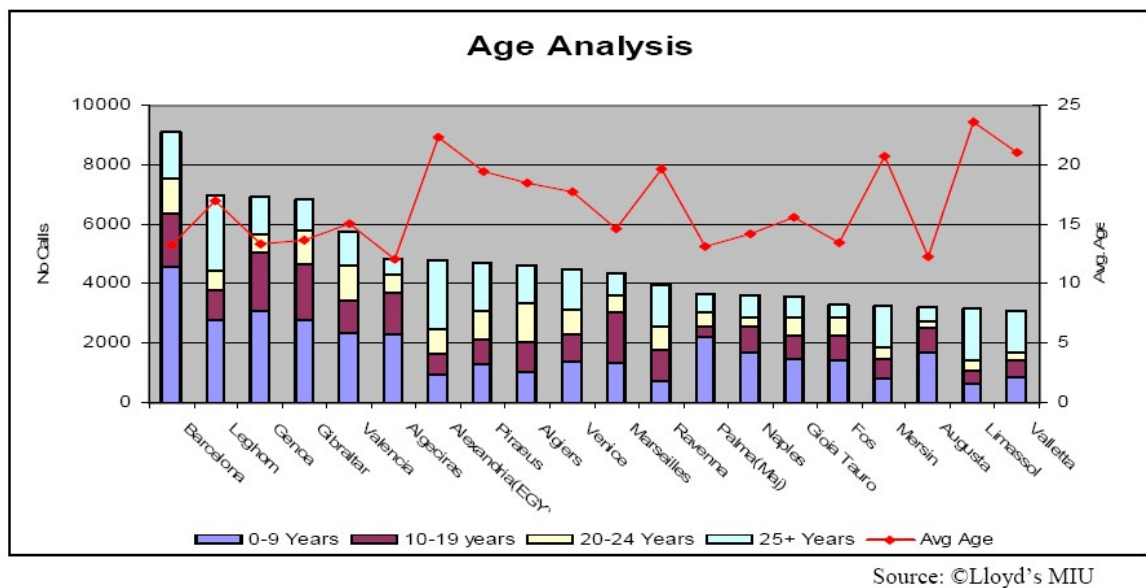
Also, Malta has to import of all its petroleum products from abroad. The discharge of these products takes place mainly at the Enemalta discharge installation point at Birzebbuga. Enemalta Corporation imports around one million tons of petroleum products each year. Then there is also another company, Oil Tanking (Malta) Ltd which operates an independent oil terminal at Marsaxlokk. The facilities of the latter company have a storage capacity of 526,600 cbm.

Hence between these two companies Malta imports a large quantity of oil products as defined in the 1992 Convention. This shows once again the potential danger of an accident happening in the south of Malta.

²² *Ibid*

Another important point which further demonstrates the danger of oil pollution damage is with regards to the age of vessels visiting Malta. Lloyd's MIU has calculated that the average age of vessels visiting the port of Valletta is over 20 years of age, as is shown in the figure below. The use of older tankers in the Maltese port 'potentially exposes this area to greater risk of a casualty related pollution event'.

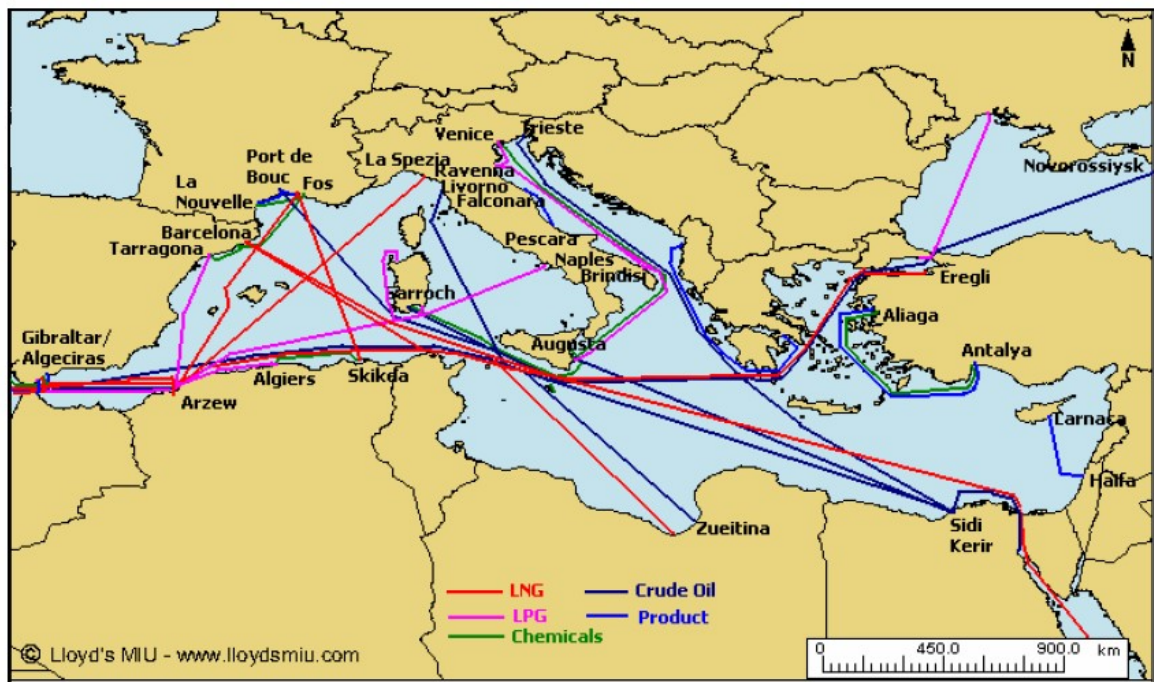
Average Vessel Age – Top 20 Ports



Apart from the domestic scenario, it has to be mentioned that Malta, located in the middle of the Mediterranean is exposed to potential oil pollution from vessels passing near Malta. The Mediterranean Sea is considered as being amongst the world's busiest waterways, catering for 15% of global shipping by number of calls. Vessel activity in the Mediterranean is rising and it is expected that it will continue to rise by a further 18% in the next 10 years.

It has been calculated by Lloyd's MIU that in 2006 there were 4,224 laden oil tanker movements, carrying a total of 421 million tons of crude oil in the Mediterranean Sea. However a more relevant fact to the Maltese Islands is that one has to examine the routes taken by such tankers. As can be seen from the figure below, most of the major tanker routes either pass through the Malta – Sicily Channel, or else on the other side between Malta and Libya or Tunisia.

Major Tanker Routes - 2006



This is an extremely disturbing fact for Malta, since an incident involving one of these tankers may have disastrous effects. It has to be mentioned, that through such routes there are also various vessels carrying not only crude oil but also Chemicals, Liquefied Natural Gas (LNG) and Liquefied Petroleum Gas (LPG). Such high traffic also increases the risk of collisions which may also lead to oil pollution damage.

In the future, it is projected that container and passenger traffic in the Mediterranean will increase and reaching extraordinary heights in the year 2015. As a matter of fact, the 2007 Annual Report of the Malta Maritime Authority states that there is an expected transshipment growth in the Central Mediterranean of about 61-79% by 2015.

4.2 Repercussions

After analysing in depth the susceptible and dangerous position that Malta can encounter, it is necessary to examine the repercussions which may occur if an incident occurs. There are quite a number of marine activities taking place in Malta, Gozo and Comino which

will surely be harmed if an oil spillage occurs within the ports of Malta or along the trade routes near Malta.

These activities include fishing and fish-farming. Fishing is considered as being an industry in itself in Malta. In Valletta and Marsaxlokk there are fish markets in which a good number of fishermen make a living by selling their fish. Then there is also fish-farming with most of the artificial pools located in Marsaxlokk harbour. These activities take place around the two major ports in Malta and an oil spill in these ports would ruin the income of a number of Maltese families.

A new and growing business in Malta is the yachting industry. There are a total of five major yacht marinas in Malta and Gozo. These are Portomaso, Manoel Island Marina, Grand Harbour Marina, Msida Yachting Centre and the Mgarr Marina. The major attraction of yachting in Malta is once again its strategic position in the heart of the Mediterranean from where most of the major ports can be reached with considerable ease. Also, since winter in Malta does not attract hazardous weather there is a demand for winter berths in the marinas. An oil pollution incident will certainly be the end of such a lucrative industry since there can be the possibility that the oil spillage will ruin the Marinas.

Nonetheless, without any doubt, the tourism industry in Malta will be greatly affected. Malta is famous for its beaches and spectacular sea views all over the island. A tragedy on the same scale as that of *The Erika* or *The Prestige* would destroy the Maltese and Gozitan beaches and consequently tourism would decline. It has to be mentioned that marine activity in Malta, including imports and exports and the cruise liner industry, comprises around 15% of Malta's Gross Domestic Product (GDP), therefore the Maltese economy as a whole would be heavily affected by such an oil spillage incident.

Malta can also boast of a good number of historic buildings around the Grand Harbour mainly the bastions which were built by the Knights of St. John in the 14th century and also the Forts of St. Elmo and St. Angelo located in Valletta and Birgu respectively. These buildings are considered as being part of the World's Heritage and since they were built close to the shoreline, they may also be affected by oil pollution incidents. Any

damage occurring to these historic buildings would mean a huge expense for the Maltese community in order to restore them to their original condition.

4.3 EU Council Decision 2004/246/EC

The importance of the Supplementary Fund Protocol was also identified by the European Union (EU). Indeed, the European Council adopted a decision²³ authorising EU Member States to sign, ratify or accede to the Protocol. It was advised by the EU for its States to adhere to the Protocol by the end of June 2004. In the case of Malta, this was not possible since it joined the EU on the 1st of May 2004. Nonetheless, it is imperative that Malta adheres to the Protocol so as to follow the EU Council Decision.

However there was an incompatibility between the Supplementary Fund Protocol and the workings of the EU. This was due to the fact that Articles 7 and 8 of the Protocol deals with the jurisdiction, recognition and enforcement of judgements whilst, with regards to EU Member States, this competence is regulated by Council Regulation (EC) No 44/2001 of 22nd December 2000 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters.

Hence the EU Member States could not adhere to the Supplementary Fund Protocol without prior authorisation of the EU. This was achieved by the Council Decision 2004/246/EC mentioned above. Also it has to be stated that the Council Decision 2004/246/EC imposes upon Member States, that when signing, ratifying or acceding to the Supplementary Fund Protocol they are to inform the Secretary-General of the International Maritime Organisation in writing that such signature, ratification or accession has taken place in accordance with this Decision.

4.4 The Way Forward

After the considerations mentioned above, Malta is in a position to take two options, the first of which is to keep its current liability and compensation scheme. This means that the 1992 Liability Convention and the 1992 Fund Convention will be implemented. By

²³ European Council Decision 2004/246/EC.

doing so the oil receivers in Malta would not be burdened by extra compensation. Also, no changes to the existing legislation will be required.

However, by keeping this position certain disadvantages will arise. The first of which is that level of compensation which is available under the present law may not be sufficient to meet all the claims of the victims of incidents involving carriage of persistent oil by sea. Also payment for the damages will not be given promptly. This might consequently result in long-lasting damage caused to the environment. Another point is that Malta would be failing to follow the EU Council Decision mentioned above and encourage the resurfacing of the proposed regional COPE Fund Regulation which was frowned upon by the IMO.

The second option would be to adhere to the Supplementary Fund Protocol and implement it under the Laws of Malta. The main advantage of this would be prompt and adequate compensation for the victims of oil pollution. By doing so, Malta would also be adhering to the EU Council Decisions and keeping in line with developments of an international level rather than on a regional level.

This option also has some disadvantages, one of these being that there will be an increased burden on the oil receivers as would be the situation in Malta. Also, since the 2003 Supplementary Fund Protocol is a voluntary agreement, unlike the 1992 Fund Convention, it is possible that fewer States would be members of the Protocol and thus there would be greater financial contributions on a smaller number of States. The implementation of the Protocol could alter the 'equal balance of burden costs between oil and shipping industries for compensation for pollution damage'.

Nonetheless, in taking into account all of the arguments mentioned above as well as Malta's susceptible position and potential repercussions it would be extremely prudent that the Malta legislation is prepared for any of these tragedies. The latest liability and compensation regime i.e. the 2003 Supplementary Fund Protocol provides more compensation which would hopefully satisfy all of the claims arising under a carriage of oil by sea incident.

Thus it is crucial for Malta to adhere to the Protocol, although this may be more burdensome on the oil receivers. The shipowning industry has formulated the STOPIA and TOPIA 2006 which will balance out more the contributions. Malta's small size and limited resources will be heavily affected and its economy is not strong enough to cope with such an incident by itself. Hence it is quite clear that the way forward for Malta is to adopt the Supplementary Fund Protocol.

5. Implementation under Maltese Law

The Maltese legal system has Anglo-Saxon, as well as Civil law elements. Most of the civil law countries such as Italy and France are monist systems, therefore in order to implement an international convention into their domestic system they only need to adhere to the instrument. On the other hand, common law countries take the dualist approach, whereby a domestic instrument is required to incorporate an international convention in their national laws.

Malta is considered to be a civil law country, since it has a written constitution and most of its laws are contained in codes. Nonetheless, it still employs the dualist system rather than the monist approach. Hence Malta has to perform certain tasks both on an international level as well as on a domestic level. In default of such domestic instrument, the international agreement applies only on the international plane and not within the domestic context.

Malta's 'Ratification of Treaties Act'²⁴ regulates the ratification of an international convention and holds under Article 3 (4) that:

"The instrument of ratification shall be issued under the signature of the Minister responsible for foreign affairs."

Nonetheless there still has to be the approval of the Cabinet of Ministers following a recommendation of the responsible minister.

²⁴ Chapter 304 of the Laws of Malta

The term “Treaties” is defined under Article 2 of this Act in the same way as under the Vienna Convention on the Law of Treaties. Therefore whatever the title of the agreement, be it a protocol²⁵ or a convention, if it is written, then it would hence fall within the jurisdiction of this law:

“treaty means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation;”

When the Government adheres to a treaty which falls under this definition then it is bound to this treaty, even though the Government has not undergone a process to incorporate such treaty into domestic law. This links up with the principle that a State cannot rely on its lack of legislative propriety in order to do away with its international obligations.

Treaties may be divided into two categories: (i) those which can be ratified, adhered to or acceded to by the government without the need to refer to the mechanism found in the Act itself; and (ii) those treaties which are subject to the specific mechanism of approval. This latter category is further subdivided into three main types of treaties, each of which is regulated by specific provisions of such an approval mechanism, by virtue of Article 3 (1):

(1) “Where a treaty to which Malta becomes party after coming into force of this Act is one which affects or concerns:

- a. The status of Malta under international law or the maintenance or support of such States, or*
- b. The security of Malta, its sovereignty, independence, unity or territorial integrity, or*

²⁵ Therefore the Supplementary Fund Protocol falls within this definition.

c. The relationship of Malta with any multinational organisation, agency, association or similar body,

such treaty shall not enter into force with respect to Malta unless it has been ratified or its ratification has been authorised or approved in accordance with the provisions of this Act.

The following sub-article deals with the method of authorisation of these types of conventions:

(2) “A treaty to which subsection (1) of this section applies shall be ratified or shall have its ratification authorised or approved as follows:

a. Where such treaty concerns a matter referred to in paragraph (a) or (b) of subsection (1) of this section or concerns any provision which is to become, or to be enforceable as, part of the law of Malta, by Act of Parliament;

b. In any other case, by Resolution of the House of Representatives.”

Therefore, with regards to the Supplementary Fund Protocol, this has to become part of the law of Malta, hence, an Act of Parliament has to be promulgated. This is confirmed further on by Article 3 (3):

“No provision of a treaty shall become, or be enforceable as, part of the law of Malta except by or under an Act of Parliament.”

With regards to the instrument of ratification, i.e. the instrument or note that the Government presents to the depositary of the treaty to signify its intention to adhere to

the treaty, this has to be signed by the Minister of Foreign Affairs, as is stated under Article 3 (4).

Since the Maltese legal system is a dualist system, the ratification of an international treaty has to be followed by a separate instrument i.e. an Act of Parliament, which has to be promulgated and bring the international convention into force domestically in order for the court and the citizens to be conferred rights and obligations under the international treaty. This is essential with regards to the Supplementary Fund Protocol, since for the victims of an oil incident to claim compensation, the Protocol has to be implemented.

Under the current domestic legislation, pollution from the carriage of oil by sea is regulated by the Oil Pollution (Liability and Compensation) Act²⁶. This act provides for Malta's accession to the 1992 Liability Convention and the 1992 Fund Convention and for the implementation of the provisions of these Protocols. This act was amended by Legal Notice 223 of 2003 to increase the limits of compensation provided for by the 2000 amendments to the conventions.

Article 8 (2) of this Act gives the Minister the power to amend, add, vary, revoke or substitute the Schedules to this Act to conform with any amendments to the 1992 Liability Convention or the 1992 Fund Convention. This occurred as a matter of fact with regards to the 2000 amendments. However, in the case of the Supplementary Fund Protocol, an Act of Parliament is required.

The best option is to amend Chapter 412 of the Laws of Malta by an amendment act called Oil Pollution (Liability and Compensation) (Amendment) Act. This Act would make the necessary changes in order to implement the Supplementary Fund Protocol.

An Act is usually prepared by the sub-committees of the relevant Ministry responsible for the area. After drafting this act it has to be passed through three readings in front of the Parliament. The first reading will consist of the reading of the short title of the act. Then there will be the reading of the whole act in the second reading whereby the members of

²⁶ Chapter 412 of the Laws of Malta

parliament can prepare their comments and possible amendments. Subsequently there would be the third and final reading of the act.

After these readings the parliament would take a vote to accept or decline the act. An Act of Parliament may be adopted with a simple majority vote. Once an international convention or treaty has been duly ratified and transposed into domestic law by an Act of Parliament, such Act must be subsequently published in the Malta Government Gazette to have the force of law. Article 72 (4) of the Constitution of Malta lays down that:

“When a law has been assented to by the President it shall without delay be published in the Gazette and shall not come into operation until it has been so published, but Parliament may postpone the coming into operation of any such law and may make laws with retrospective effect.”

After this whole process the Supplementary Fund Protocol of 2003 would become part of the Laws of Malta. This would ensure proper and adequate compensation and Malta would be in line with all its international and domestic obligations, as was stated by the IMO General-Secretary, to perform “its duty towards the protection and preservation of this beautiful planet...”

6. Explanation of the Amendment Act

The Oil Pollution (Liability and Compensation) (Amendment) Act (hereinafter referred to as the Amendment Act) will amend and incorporate into the laws of Malta, the Supplementary Fund Protocol. This act is composed of eleven articles, which will be explained in detail below.

The first article of the Amendment Act states the short title of the Act and goes on to hold that the Amendment Act shall be read in conjunction with the Oil Pollution (Liability and Compensation) Act (hereinafter referred to as the principal Act). Consequently upon the coming into force of the Amendment Act, the principal Act will be amended.

Also Article 1 (2) deals with the date of commencement of this Act. It will come into force when the Minister who is responsible for shipping will appoint and this is done by a notice in the Government Gazette. This provision also provides for the possibility of different provisions coming into force on different dates.

Moreover, the Amendment Act provides for new definitions to be incorporated into article 2 of the principal Act and these include the definition of the ‘Supplementary Fund’ and the ‘Supplementary Fund Protocol’. It has to be stated that article 3 provides for the accession of Malta into the Supplementary Fund Protocol.

Major amendments are made to article 5 of the principal Act, and these are provided for in article 4 of the Amendment Act. First of all, the sub-articles are re-numbered to allow space for a new sub-article 2 which states that certain provisions of the Supplementary Fund Protocol will form part of the Laws of Malta.

In article 4 (d) of the Amendment Act, provisions are made to make those persons receiving oil in Malta liable to inform the Minister in Malta of the quantity of oil which he has received. While, article 4 (e) obliges the Minister to inform the director of the Supplementary Fund the information required by the Supplementary Fund Protocol.

Extremely important amendments are provided for in article 4 (f) of the Amendment Act. This article provides for a new article 5 (5) which sets out the liability of the person receiving oil towards to the Supplementary Fund. The Supplementary Fund Protocol, under article 14 deals with the liability of the State if the amount of oil received by that state does not amount to 1 million tons and this is provided for under article 4 (g) of the Amendment Act which includes a new proviso in the principal act.

The other amendment contained in articles 4 (h) gives the possibility of claims brought in front of the Maltese court against the Supplementary Fund. The last amendment effected to article 5 of the principal Act relates to sub-article 8 whereby the Supplementary Fund is recognised as a legal person in Malta and could thus take action in front of the Courts of Malta. The amendments stated in article 5 of the Amendment Act are minor and amends article 6 of the principal Act dealing with procedure.

A very interesting provision is Article 6 of the Amendment Act which includes a new Article 6A of the principal Act. This article deals with judgements of foreign courts and if a court which has jurisdiction under the 1992 Liability Convention and/or the 1992 Fund Convention and/or the Supplementary Fund Protocol and who has given a judgment, will be enforceable under in Malta unless the judgement was fraudulently obtained or else the defendant was not given reasonable notice and a fair opportunity to present his case.

If such a court pronouncing a judgement regarding the 1992 Liability Convention, the 1992 Fund Convention or the Supplementary Fund Protocol is one situated in a Member State of the EU and to which Decision 2004/246/EC applies will be recognised and enforced in Malta according to the relevant internal Community Rules. However it has to be noted that this is not applicable to Denmark, since the latter country in accordance with a protocol which is annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not bound by this Council Decision and neither is it subject to its application. A provision to this respect has been inserted in the principal Act.

Another important amendment is found under article 7 of the Amendment Act which provides the Minister with the power to make regulations to carry into effect the Supplementary Fund Protocol. Consequently, the Minister is also given the power under article 7 of the Amendment Act to provide for regulations to amend, revoke or substitute the Schedules to the principal Act which now includes certain provisions of the Supplementary Fund Protocol.

The last article of the Amendment Act incorporates articles 1 till 15 of the Supplementary Fund Protocol into the laws of Malta as the Third Schedule to the principal Act. The Amendment Act is found below and is followed by the principal Act as amended by the Amendment Act. It has to be stated that in the amended principal Act, the changes are highlighted in bold so that the changes can be traced in a more efficient manner.

7. Oil Pollution (Liability and Compensation) (Amendment) Act

I assent.

EDWARD FENECH

ADAMI

President

1st January, 2009

ACT No. I of 2009

AN ACT to amend the Oil Pollution (Liability and Compensation) Act, Cap. 412

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same as follows:

1. (1) This Act may be cited as the Oil Pollution (Liability and Compensation) (Amendment) Act, 2009, and it shall be read and construed as one with the Oil Pollution (Liability and Compensation) Act, hereinafter referred to as “the principal Act.”

Short title and
commencement.
Cap. 412.

(2) This Act shall come into force on such date as the Minister responsible for shipping may, by notice in the Gazette, appoint, and different dates may be appointed for different provisions and different purposes thereof.

2. Article 2 of the principal Act shall be amended as follows:

Amendment of
Article 2 of the
principal Act.

(a) immediately after the definition of “Registrar-General” there shall be added the following new definition:

“ “Supplementary Fund” means the International Oil Pollution Compensation Supplementary Fund, 2003 established pursuant to the Supplementary Fund Protocol;”;

(b) immediately after the definition of “Supplementary Fund” there shall be added the following new definition:

“ “Supplementary Fund Protocol” means the Protocol of 2003 to the International Convention on the Establishment of an International Fund for

Compensation for Oil Pollution Damage, 1992, and any amendments thereto accepted by the Government of Malta;”.

3. In Article 3 of the principal Act, immediately after the words “1992 Fund Protocol” there shall be added the words “the Supplementary Fund Protocol”.

Amendment of
Article 3 of the
principal Act.

4. Article 5 of the principal Act shall be amended as follows:

Amendment of
Article 5 of the
principal Act.

(a) sub-articles (2), (3), (4), (5) and (6) shall be re-numbered as (3), (4), (5), (6) and (7) respectively; and

(b) in sub-article (1) the phrase “sub-articles (2) to (6)” shall be substituted with the following “sub-articles (3) to (7); and

(c) immediately after sub-article (1) there shall be added the following new sub-article (2):

“(2) Subject to the provisions of sub-articles (3) to (7) of this article, those provisions of the Supplementary Fund Protocol contained in the Third Schedule to this Act, shall form part of and be enforceable as part of the Law of Malta.”; and

(d) in sub-article (3) thereof as re-numbered, immediately after the words “1992 Fund Convention” there shall be added the words “and also liable to contribute to the Supplementary Fund pursuant to article 10 of the Supplementary Fund Protocol”; and

(e) for sub-article (4) thereof as re-numbered there shall be substituted the following paragraph:

“(4) The Minister shall, at a time and in the manner prescribed in the Internal Regulations of the IOPC Fund and the Internal Regulations of the Supplementary Fund, communicate the information mentioned in paragraph 2 of article 15 of the 1992 Fund Convention to the Director of the IOPC Fund and the information mentioned in paragraph 1 of article 13 of the Supplementary Fund Protocol to the Director of the Supplementary Fund, as the case may be.”; and

(f) for sub-article (5) thereof as re-numbered, subparagraph (b) there shall be substituted with the following paragraph:

“(b) Any person having received in a calendar year contributing oil in ports or other installations in Malta in the manner specified in sub-paragraphs (a) and (b) of paragraph 1 of article 10 of the 1992 Fund in total quantities exceeding 150,000 tonnes, and in paragraph (a) and (b) of paragraph 1 of article 10 of the Supplementary Fund Protocol in total quantities exceeding 150,000 tonnes shall pay contributions to the IOPC Fund and the Supplementary Fund in accordance with articles 10, 12 and 13 of the Fund Convention and in accordance with articles 10, 11 and 12 of the Supplementary Fund Protocol respectively, in the amount and by the date determined by the IOPC Fund Assembly and by the Supplementary Fund Assembly as the case may be.”

(g) immediately after the proviso contained in sub-article 5 there shall be inserted the following new proviso:

“Provided that if the aggregate quantity of contributing oil received in Malta is less than 1 million tons, then the Government of Malta shall assume the obligations, as stated under Article 14 of the Supplementary Fund Protocol, to contribute to the Supplementary Fund in respect of oil received within the territory of Malta in so far as no liable person exists for the aggregated quantity of oil received.”

(h) in sub-article (6) thereof as re-numbered immediately after the words “1992 Fund Convention” there shall be added the words “and/or against the Supplementary Fund for compensation under article 4 of the Supplementary Fund Protocol”; and

(i) in sub-article (8) thereof as re-numbered immediately after the words “IOPC Fund” there shall be added the words “and the Supplementary Fund”.

5. Article 6 of the principal Act shall be amended as follows:

Amendment of
Article 6 of the
principal Act.

(a) in paragraph (b) immediately after the words “against the IOPC Fund” there shall be added the words “or the Supplementary Fund”; and

(b) in paragraph (b) immediately after the words “designated the IOPC Fund” there shall be added the

words “or the Supplementary Fund as the case may be”; and

(c) in paragraph (b) immediately after the words “IOPC Fund” there shall be added the words “or the Supplementary Fund”; and

(d) in sub-article (c) immediately after the words “IOPC Fund” there shall be added the words “or of the Supplementary Fund as the case may be”; and

(e) in sub-article (d) immediately after the words “IOPC Fund” there shall be added the words “or against the Supplementary Fund”.

6. Immediately after Article 6 of the principal Act, there shall be inserted the following new Article 6A of the principal Act:

New Article
6A of the
principal Act.

“6A. (1) Judgements of foreign courts having jurisdiction under Article IX of the 1992 Liability Convention and/or Article 7 of the 1992 Fund Convention and/or Article 7 of the Supplementary Fund Protocol and adjudicating compensation for pollution damage are recognised and declared enforceable in Malta unless:

Judgements of
foreign courts.

- (a) the judgement was fraudulently obtained;
- (b) the defendant was not given reasonable notice and a fair opportunity to present his case.

(2) Judgements on matters covered by the 1992 Liability Convention, 1992 Fund Convention and the Supplementary Fund Protocol, when given by a court of a Member State to which Decision 2004/246/EC applies, other than a court of the Republic of Denmark, be recognised and enforced in Malta according to the relevant internal Community Rules.”

7. In Article 7 of the principal Act, immediately after the words “the 1992 Fund Convention” there shall be added the words “or the Supplementary Fund Protocol”.

Amendment of
Article 7 of the
principal Act.

8. In Article 8 of the principal Act, as thereof re-numbered, immediately after the words “the 1992 Fund Convention”, whenever they appear in the said article, there

Amendment of
Article 8 of the
principal Act.

shall be added the words “or the Supplementary Fund Protocol”.

9. Immediately after the Second Schedule to the principal Act, there shall be added the following Third Schedule:

“THIRD SCHEDULE
(Articles 5 and 8)

Text of articles 1 to 15 of the Protocol of 2003 to the International Convention on the establishment of an International Fund for Compensation for Oil Pollution Damage, 1992.

Article 1

For the purposes of this Protocol:

1. “1992 Liability Convention” means the International Convention on Civil Liability for Oil Pollution Damage, 1992;
2. “1992 Fund Convention” means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage; 1992;
3. “1992 Fund” means the International Oil Pollution Compensation Fund, 1992, established under the 1992 Fund Convention;
4. “Contracting State” means a Contracting State to this Protocol, unless stated otherwise;
5. When provisions of the 1992 Fund Convention are incorporated by reference into this Protocol, “Fund” in that Convention means “Supplementary Fund”, unless stated otherwise,
6. “Ship”, “Person”, “Owner”, “Oil”, “Pollution Damage”, “Preventive Measures” and “Incident” have the same meaning as in article I of the 1992 Liability Convention;
7. “Contributing Oil”, “Unit of Account”, “Ton”, “Guarantor” and “Terminal installation” have the same meaning as in article 1 of the 1992 Fund Convention, unless stated otherwise;

8. “Established claim” means a claim which has been recognised by the 1992 Fund or been accepted as admissible by decision of a competent court binding upon the 1992 Fund not subject to ordinary forms of review and which would have been fully compensated if the limit set out in article 4, paragraph 4, of the 1992 Fund Convention had not been applied to that incident;
9. “Assembly means the Assembly of the International Oil Pollution Compensation Supplementary Fund, 2003, unless otherwise indicated;
10. “Organization” means the International Maritime Organization;
11. “Secretary-General” means the Secretary-General of the Organization.

Article 2

1. An International Supplementary Fund for compensation for pollution damage, to be named “The International Oil Pollution Compensation Supplementary Fund, 2003” (hereinafter “the Supplementary Fund”), is hereby established.
2. The Supplementary Fund shall in each Contracting State be recognized as a legal person capable under the laws of that State of assuming rights and obligations and of being a party in legal proceedings before the courts of that State. Each Contracting State shall recognize the Director of the Supplementary Fund as the legal representative of the Supplementary Fund.

Article 3

This Protocol 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

1. The Supplementary Fund shall pay compensation to any person suffering pollution damage if such person has been unable to obtain full and adequate compensation for an established claim for such damage under the terms of the 1992 Fund Convention, because the total damage exceeds, or there is a risk that it will exceed, the applicable limit of compensation laid down in article 4, paragraph 4, of the 1992 Fund Convention in respect of any one incident.
2. (a) The aggregate amount of compensation payable by the Supplementary Fund under this article shall in respect of any one incident be limited, so that the total sum of that amount together with the amount of compensation actually paid under the 1992 Liability Convention and the 1992 Fund Convention within the scope of application of this Protocol shall not exceed 750 million units of account.

(b) The amount of 750 million units of account mentioned in paragraph 2(a) 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 determined by the Assembly of the 1992 Fund for conversion of the maximum amount payable under the 1992 Liability and 1992 Fund Conventions.
3. Where the amount of established claims against the Supplementary Fund exceeds the aggregate amount of compensation payable under paragraph 2, 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 Protocol shall be the same for all claimants.

4. The Supplementary Fund shall pay compensation in respect of established claims as defined in article 1, paragraph 8, and only in respect of such claims.

Article 5

The Supplementary Fund shall pay compensation when the Assembly of the 1992 Fund has considered that the total amount of the established claims exceeds, or there is a risk that the total amount of established claims will exceed the aggregate amount of compensation available under article 4, paragraph 4, of the 1992 Fund Convention and that as a consequence the Assembly of the 1992 Fund has decided provisionally or finally that payments will only be made for a proportion of any established claim. The Assembly of the Supplementary Fund shall then decide whether and to what extent the Supplementary Fund shall pay the proportion of any established claim not paid under the 1992 Liability Convention and the 1992 Fund Convention.

Article 6

1. Subject to article 15, paragraphs 2 and 3, rights to compensation against the Supplementary Fund shall be extinguished only if they are extinguished against the 1992 Fund under article 6 of the 1992 Fund Convention.
2. A claim made against the 1992 Fund shall be regarded as a claim made by the same claimant against the Supplementary Fund.

Article 7

1. The provisions of article 7, paragraphs 1, 2, 4, 5 and 6, of the 1992 Fund Convention shall apply to actions for compensation brought against the Supplementary Fund in accordance with article 4, paragraph 1, of this Protocol.
2. Where an action for compensation for pollution damage has been brought before a court competent

under article IX of the 1992 Liability Convention against the owner of a ship or his guarantor, such court shall have exclusive jurisdictional competence over any action against the Supplementary Fund for compensation under the provisions of article 4 of this Protocol in respect of the same damage. However, where an action for compensation for pollution damage under the 1992 Liability Convention has been brought before a court in a Contracting State to the 1992 Liability Convention but not to this Protocol, any action against the Supplementary Fund under article 4 of this Protocol shall at the option of the claimant be brought either before a court of the State where the Supplementary Fund has its headquarters or before any court of a Contracting State to this Protocol competent under article IX of the 1992 Liability Convention.

3. Notwithstanding paragraph 1, where an action for compensation for pollution damage against the 1992 Fund has been brought before a court in a Contracting State to the 1992 Fund Convention but not to this Protocol, any related action against the Supplementary Fund shall, at the option of the claimant, be brought either before a court of the State where the Supplementary Fund has its headquarters or before any court of a Contracting State competent under paragraph 1.

Article 8

1. Subject to any decision concerning the distribution referred to in article 4, paragraph 3 of this Protocol, any judgment given against the Supplementary Fund by a court having jurisdiction in accordance with article 7 of this Protocol, shall, when it has become enforceable in the State of origin and is in that State no longer subject to ordinary forms of review, be recognized and enforceable in each Contracting State on the same conditions as are prescribed in article X of the 1992 Liability Convention.
2. A Contracting State may apply other rules for the recognition and enforcement of judgments, provided that their effect is to ensure that judgments are recognised and enforced at least to the same extent as under paragraph 1.

Article 9

1. The Supplementary Fund shall, in respect of any amount of compensation for pollution damage paid by the Supplementary Fund in accordance with article 4, paragraph 1, of this Protocol, acquire by subrogation the rights that the person so compensated may enjoy under the 1992 Liability Convention against the owner or his guarantor.
2. The Supplementary Fund shall acquire by subrogation the rights that the person compensated by it may enjoy under the 1992 Fund Convention against the 1992 Fund.
3. Nothing in this Protocol shall prejudice any right of recourse or subrogation of the Supplementary Fund against persons other than those referred to in the preceding paragraphs. In any event the right of the Supplementary Fund to subrogation against such person shall not be less favourable than that of an insurer of the person to whom compensation has been paid.
4. Without prejudice to any other rights of subrogation or recourse against the Supplementary Fund which may exist, a Contracting State or agency thereof which has paid compensation for pollution damage in accordance with provisions of national law shall acquire by subrogation the rights which the person so compensated would have enjoyed under this Protocol.

Article 10

1. Annual contributions to the Supplementary Fund shall be made in respect of each Contracting State by any person who, in the calendar year referred to in article 11, paragraph 2(a) or (b), has received in total quantities exceeding 150,000 tons:
 - (a) in the ports or terminal installations in the territory of that State contributing oil carried by sea to such ports or terminal installations; and
 - (b) in any installations situated in the territory of that Contracting State contributing oil which has been carried by sea and discharged in a port or terminal installation of a non-Contracting State, provided that contributing oil shall only be taken into account by virtue of this sub-paragraph on first receipt in a Contracting State after its discharge in that non-Contracting State.

2. The provisions of article 10, paragraph 2, of the 1992 Fund Convention shall apply in respect of the obligation to pay contributions to the Supplementary Fund.

Article 11

1. With a view to assessing the amount of annual contributions due, if any, and taking account of the necessity to maintain sufficient liquid funds, the Assembly shall for each calendar year make an estimate in the form of a budget of:

(i) Expenditure

(a) costs and expenses of the administration of the Supplementary Fund in the relevant year and any deficit from operations in preceding years;

(b) payments to be made by the Supplementary Fund in the relevant year for the satisfaction of claims against the Supplementary Fund due under article 4, including repayments on loans previously taken by the Supplementary Fund for the satisfaction of such claims;

(ii) Income

(a) surplus funds from operations in preceding years, including any interest;

(b) annual contributions, if required to balance the budget;

(c) any other income.

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

(a) in so far as the contribution is for the satisfaction of payments referred to in paragraph 1(i)(a) on the basis of a fixed sum for each ton of contributing oil received in the

relevant State by such person during the preceding calendar year; and

(b) in so far as the contribution is for the satisfaction of payments referred to in paragraph 1(i)(b) on the basis of a fixed sum for each ton of contributing oil received by such person during the calendar year preceding that in which the incident in question occurred, provided that State was a Contracting State to this Protocol at the date of the incident.

3. The sums referred to in paragraph 2 shall be arrived at 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.
4. The annual contribution shall be due on the date to be laid down in the Internal Regulations of the Supplementary Fund. The Assembly may decide on a different date of payment.
5. The Assembly may decide, under conditions to be laid down in the Financial Regulations of the Supplementary Fund, to make transfers between funds received in accordance with paragraph 2(a) and funds received in accordance with paragraph 2(b).

Article 12

1. The provisions of article 13 of the 1992 Fund Convention shall apply to contributions to the Supplementary Fund.
2. A Contracting State itself may assume the obligation to pay contributions to the Supplementary Fund in accordance with the procedure set out in article 14 of the 1992 Fund Convention.

Article 13

1. Contracting States shall communicate to the Director of the Supplementary Fund information on oil receipts in accordance with article 15 of the 1992 Fund Convention provided, however, that communications made to the Director of the 1992 Fund under article 15, paragraph 2, of the 1992 Fund Convention shall be deemed to have been made also under this Protocol.

2. Where a Contracting State does not fulfil its obligations to submit the communication referred to in paragraph 1 and this results in a financial loss for the Supplementary Fund, that Contracting State shall be liable to compensate the Supplementary Fund for such loss. The Assembly shall, on the recommendation of the Director of the Supplementary Fund, decide whether such compensation shall be payable by that Contracting State.

Article 14

1. Notwithstanding article 10, for the purposes of this Protocol there shall be deemed to be a minimum receipt of 1 million tons of contributing oil in each Contracting State.
2. When the aggregate quantity of contributing oil received in a Contracting State is less than 1 million tons, the Contracting State shall assume the obligations that would be incumbent under this Protocol on any person who would be liable to contribute to the Supplementary Fund in respect of oil received within the territory of that State in so far as no liable person exists for the aggregated quantity of oil received.

Article 15

1. If in a Contracting State there is no person meeting the conditions of article 10, that Contracting State shall for the purposes of this Protocol inform the Director of the Supplementary Fund thereof.
2. No compensation shall be paid by the Supplementary Fund for pollution damage in the territory, territorial sea or exclusive economic zone or area determined in accordance with article 3(a)(ii), of this Protocol, of a Contracting State in respect of a given incident or for preventive measures, wherever taken, to prevent or minimize such damage, until the obligations to communicate to the Director of the Supplementary Fund according to article 13, paragraph 1 and paragraph 1 of this article have been complied with in respect of that Contracting State for all years prior to the occurrence of that incident. The Assembly shall determine in the Internal Regulations the circumstances under which a Contracting State shall be considered as having failed to comply with its obligations.

3. Where compensation has been denied temporarily in accordance with paragraph 2, compensation shall be denied permanently in respect of that incident if the obligations to communicate to the Director of the Supplementary Fund under article 13, paragraph 1 and paragraph 1 of this article, have not been complied with within one year after the Director of the Supplementary Fund has notified the Contracting State of its failure to report.
4. Any payments of contributions due to the Supplementary Fund shall be set off against compensation due to the debtor, or the debtor's agents."

8. The amended Oil Pollution (Liability and Compensation) Act

CHAPTER 412

OIL POLLUTION (LIABILITY AND COMPENSATION) ACT

*To provide for Malta's accession to the Protocol of 1992 amending the International Convention on Civil Liability for Oil Pollution Damage, 1969 and the Protocol of 1992 amending the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 and **the Protocol of 2003 to the International Convention on the establishment of an International Fund for Compensation for Oil Pollution Damage, 1992**, and for the implementation of the provisions of these Protocols.*

17th December, 1999;
6th January 2001;
1st January 2009

ACT XX of 1999, as amended by Legal Notice 223 of 2003 and Act I of 2009.

1. The title of this Act is Oil Pollution (Liability and Compensation) Act.

Title.

2. (1) In this Act, unless the context otherwise requires –

Interpretation.

“Conventions” means the 1992 Fund Convention and the 1992 Liability Convention;

“Fund Convention” means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, adopted at Brussels on 18 December, 1971, as amended by the Protocol thereto due in London on the 19 November, 1976;

“IOPC Fund” means The International Oil Pollution Compensation Fund 1992 established under the provisions of the 1992 Fund Convention;

“Liability Convention” means the International Convention on Civil Liability for Oil Pollution Damage adopted at Brussels on 29 November, 1969, as amended by the Protocol thereto done at London on the 19 November 1976;

“Minister” means the Minister responsible for shipping and except for the power to make regulations granted to the Minister by this Act, includes any public officer, or any officer of any body corporate established by law, acting under his authority;

"Registrar-General" means the Registrar-General of Shipping and Seamen appointed under article 363 of the Merchant Shipping Act and includes any person acting under his authority;

Cap. 234.

“Supplementary Fund” means the International Oil Pollution Compensation Supplementary Fund, 2003 established pursuant to the Supplementary Fund Protocol;

“Supplementary Fund Protocol” means the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992, and any amendments thereto accepted by the Government of Malta;

"territorial waters of Malta" shall have the same meaning as is assigned to the term in the Territorial Waters and Contiguous Zone Act;

Cap. 226.

"1992 Fund Convention" means the Fund Convention as amended by the 1992 Fund Protocol known as the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992, and any amendments thereto accepted by the Government of Malta;

"1992 Fund Protocol" means the Protocol of 1992, adopted at London on the 27th November, 1992, amending the Fund Convention;

"1992 Liability Convention" means the Liability Convention as amended by the 1992 Liability Protocol known as the International Convention on Civil Liability for Oil Pollution Damage, 1992, and any amendments thereto accepted by the Government of Malta;

"1992 Liability Protocol" means the Protocol of 1992, adopted at London on the 27th November, 1992, amending the Liability Convention.

(2) In this Act and in any regulations made thereunder, if there is any conflict between the English and Maltese text, the English text shall prevail.

(3) Unless the context otherwise requires, words and expressions used in this Act shall have the same meaning assigned to them in the Conventions.

3. For the purposes of any law thereto applicable the Government of Malta is hereby authorised to accede to the 1992 Fund Protocol, **the Supplementary Fund Protocol** and the 1992 Liability Protocol and to denounce the Fund Convention and the Liability Convention thus becoming a party to the 1992 Fund Convention, **the Supplementary Fund Protocol** and the 1992 Liability Convention.

Accession of Conventions and denunciation of the Fund Convention and the Liability Convention.

4. (1) Subject to the provisions of sub-articles (2) to (5) of this article and notwithstanding the provisions of any other law, those provisions of the 1992 Liability Convention, contained in the First Schedule to this Act, shall form part of and be enforceable as part of the Law of Malta.

Certain provisions of the 1992 Liability Convention given force of law in Malta.

(2) Where any action is being brought in Malta in terms of the provisions of the 1992 Liability Convention any reference in that convention to "the Court", or to "the Court or other competent authority", shall in each case be read and construed as reference to the Civil Court, First Hall.

(3) Where pollution damage, resulting from an incident, has been sustained in Malta, including the territorial waters of Malta and any exclusive economic zone of Malta as may be established in accordance with international law or similar area determined by Malta in accordance with international law, including the waters enclosed in Malta's contiguous zone claim and the waters superjacent to Malta's continental shelf claim, or if measures have been taken to prevent or minimise such damage in that area, action for compensation under the provisions of the 1992 Liability Convention shall be brought in Malta before the Civil Court, First Hall, by presenting a claim before such Court. Such a claim shall

Cap. 12

be instituted in accordance with subtitle III of Title VIII of Part I of Book Second of the Code of Organization and Civil Procedure:

Provided that where any such exclusive economic zone or any such similar area has been established by Malta, the Minister shall by Order in the Gazette prescribe that the provisions of this Act shall also apply to such exclusive economic zone or such similar area as may be established in such Order.

(4) The Civil Court, First Hall shall determine the distribution of the limitation fund, and where such fund is insufficient to satisfy the claims of those who are entitled to compensation, the amount of compensation of each claimant shall be reduced *pro rata*.

(5) The appropriate authority for the purpose of issuing a certificate of insurance referred to in paragraph 2 of article VII of the 1992 Liability Convention, in respect of Maltese ships shall be the Registrar-General who shall for the purpose of paragraph 6 of Article VII of that convention and subject to the provisions of the same convention and of any regulations made under the Act determine the conditions of issue and validity of such certificate and, in respect of ships flying the flag of a state not party to the 1992 Liability Convention shall be the said Registrar-General who shall have such powers as aforesaid or the appropriate authority of a state party to the convention in accordance with the provisions thereof.

5. (1) Subject to the provisions of sub-articles (3) to (7) of this article, those provisions of the 1992 Fund Convention, contained in the Second Schedule to this Act, shall form part of and be enforceable as part of the Law of Malta.

Certain provisions of the 1992 Fund Convention and the Supplementary Fund Protocol given force of law in Malta.

(2) Subject to the provisions of sub-articles (3) to (7) of this article, those provisions of the Supplementary Fund Protocol contained in the Third Schedule to this Act, shall form part of and be enforceable as part of the Law of Malta.

(3) Any person who in a calendar year has received contributing oil so as to be liable to contribute to the IOPC Fund pursuant to article 10 of the 1992 Fund Convention and also liable to contribute to the Supplementary Fund pursuant to article 10 of the Supplementary Fund Protocol, shall, not later than the

1st March of the following year, inform the Minister of the quantity of such oil received by him.

(4) The Minister shall, at a time and in the manner prescribed in the Internal Regulations of the IOPC Fund and the Internal Regulations of the Supplementary Fund, communicate the information mentioned in paragraph 2 of article 15 of the 1992 Fund Convention to the Director of the IOPC Fund and the information mentioned in paragraph 1 of article 13 of the Supplementary Fund Protocol to the Director of the Supplementary Fund, as the case may be.

(5) (a) For the purposes of this sub-article "associated person" means a company or other body corporate which in either case is another company's subsidiary, associate or holding company, or is the manager of or managed by, or otherwise controls or is controlled by that body corporate or a subsidiary or associate of that body corporate's holding company - and associate of a body corporate means a body corporate being the subsidiary of the same holding company.

(b) Any person having received in a calendar year contributing oil in ports or other installations in Malta in the manner specified in sub-paragraphs (a) and (b) of paragraph 1 of article 10 of the 1992 Fund in total quantities exceeding 150,000 tonnes, and in paragraph (a) and (b) of paragraph 1 of article 10 of the Supplementary Fund Protocol in total quantities exceeding 150,000 tonnes shall pay contributions to the IOPC Fund and the Supplementary Fund in accordance with articles 10, 12 and 13 of the Fund Convention and in accordance with articles 10, 11 and 12 of the Supplementary Fund Protocol respectively, in the amount and by the date determined by the IOPC Fund Assembly and by the Supplementary Fund Assembly as the case may be.

Provided that, notwithstanding that the quantity received in Malta in a calendar year by any such person does not exceed 150,000 tonnes but when aggregated with the quantity of contributing oil received in the same calendar year in Malta by any associated person or persons

exceeds 150,000 tonnes, such person shall pay contributions in respect of the actual quantity received by him.

Provided that if the aggregate quantity of contributing oil received in Malta is less than 1 million tons, then the Government of Malta shall assume the obligations, as stated under Article 14 of the Supplementary Fund Protocol, to contribute to the Supplementary Fund in respect of oil received within the territory of Malta in so far as no liable person exists for the aggregated quantity of oil received.

(6) Where pollution damage resulting from an incident has been sustained in Malta, including the territorial waters of Malta and any area determined by an Order of the Minister made for the purposes of the proviso to article 4(3) of this Act, or if measures have been taken to prevent or minimise such damage in that area, any action against the IOPC Fund for compensation under article 4 of the 1992 Fund Convention **and/or against the Supplementary Fund for compensation under article 4 of the Supplementary Fund Protocol** shall be brought in Malta before the Civil Court, First Hall.

(7) The notification to the IOPC Fund under paragraph 6 of article 7 of the 1992 Fund Convention shall be made by means of a judicial act against the IOPC Fund and notified in the office of the Minister.

(8) The IOPC Fund **and the Supplementary Fund** shall be entitled to take action against defaulting contributions before the Civil Court, First Hall.

6. Notwithstanding the provisions of any other law

Procedure.

(a) the Civil Court, First Hall shall have jurisdiction to try and determine cases and actions that in accordance with this Act are to be brought before it;

(b) when a written pleading or other judicial act is to be filed against the IOPC Fund **or the Supplementary Fund**, it shall be sufficient if in such pleading or act there is designated the IOPC Fund **or the Supplementary Fund as the case may be** and it shall not be necessary in such pleading or act to name the office or the name of the person for the time being

holding the office having, in accordance with the constitution of the IOPC Fund **or the Supplementary Fund**, the judicial representation of that Fund;

(c) the pleadings and acts referred to in paragraph (b) of this article shall be notified at the office of the Minister who shall within five working days transmit the same to the headquarters of the IOPC Fund **or the Supplementary Fund as the case may be** through the Ministry responsible for foreign affairs;

(d) all judicial terms for the filing of any written pleadings or other acts by the IOPC Fund **or against the Supplementary Fund** shall be extended by five working days and no such times may be abridged to less than five working days.

6A. (1) Judgments of foreign courts having jurisdiction under Article IX of the 1992 Liability Convention and/or Article 7 of the 1992 Fund Convention and/or Article 7 of the Supplementary Fund Protocol and adjudicating compensation for pollution damage are recognized and declared enforceable in Malta unless:

Judgments of foreign courts.

- (a) the judgment was fraudulently obtained;**
- (b) the defendant was not given reasonable notice and a fair opportunity to present his case.**

(2) Judgments on matters covered by the 1992 Liability Convention, 1992 Fund Convention and the Supplementary Fund Protocol, when given by a court of a Member State to which Decision 2004/246/EC applies, other than a court of the Republic of Denmark, be recognized and enforced in Malta according to the relevant internal Community Rules.

7. (1) Without prejudice to the powers conferred by article 8 of this Act, the Minister may make regulations, rules or orders, or give instructions, as are necessary for carrying into effect of the provisions of the 1992 Liability Convention or the 1992 Fund Convention or the Supplementary Fund Protocol.

Power to make regulations.

(2) Any power conferred on the Minister by this Act to make regulations, rules or orders or to give instructions, shall include power –

(a) to vary, alter, substitute or repeal any such regulation, rule, order or instruction, without prejudice to the making of a new regulation, rule or order, or the giving of a new instruction;

(b) to prescribe that any person liable to make any contribution under this Act shall give such security for the payment thereof as may be prescribed;

(c) to make such transitional or other incidental or supplementary provision as may appear to the Minister to be appropriate;

(d) to prescribe anything that may be or is to be prescribed under this Act.

(3) Regulations, rules and orders made under any of the provisions of this Act, may be made in the English language only.

8. (1) The Schedules to this Act shall be in the English language only, and such text shall apply also to the Maltese text of this Act.

Language and
amendment of
Schedules.

(2) The Minister may by regulations amend, add to, vary, revoke or substitute the Schedules to this Act to conform with any amendments to the 1992 Liability Convention or the 1992 Fund Convention **or the Supplementary Fund Protocol**, made in accordance with the said Conventions and accepted by the Government of Malta and may by any such regulations alter the reference in any article of this Act to any provision of the 1992 Liability Convention or the 1992 Fund Convention **or the Supplementary Fund Protocol** by a reference to such provision of the convention which in accordance with any amendment thereto accepted by the Government of Malta replaces such provision.

FIRST SCHEDULE
(Articles 4 and 8)

**Text of articles I to XI of the International Convention on Civil Liability for Oil
Pollution Damage, 1992**

Article I

For the purposes of this Convention:

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. "Person" means any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent subdivisions.

3. "Owner" means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship. However in the case of a ship owned by a State and operated by a company which in that State is registered as the ship's operator, "owner" shall mean such company.

4. "State of the ship's registry" means in relation to registered ships the State of registration of the ship, and in relation to unregistered ships the State whose flag the ship is flying.

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.

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.

7. "Preventive measures" means any reasonable measures taken by any person after an incident has occurred to prevent or minimize pollution damage.

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.

9. "Organization" means the International Maritime Organization.

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 II

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 III

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. No liability for pollution damage shall attach to the owner if he proves that the damage:

- (a) resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character, or
- (b) was wholly caused by an act or omission done with intent to cause damage by a third party, or
- (c) 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.

3. If the owner proves that the pollution damage resulted wholly or partially either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the owner may be exonerated wholly or partially from his liability to such person.
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 sub-paragraphs (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 Convention shall prejudice any right of recourse of the owner against third parties.

Article IV

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 V

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) 4,510,000 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, 631 units of account in addition to the amount mentioned in sub-paragraph (a);

provided, however, that this aggregate amount shall not in any event exceed 89,770,000 units of account.

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. 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. The fund shall be distributed among the claimants in proportion to the amounts of their established claims.

5. If before the fund is distributed the owner or any of his servants or agents or any person providing him insurance or other financial security has as a result of the incident in question, paid compensation for pollution damage, such person shall, up to the amount he has paid, acquire by subrogation the rights which the person so compensated would have enjoyed under this Convention.

6. The right of subrogation provided for in paragraph 5 of this Article may also be exercised by a person other than those mentioned therein in respect of any amount of compensation for pollution damage which he may have paid but only to the extent that such subrogation is permitted under the applicable national law.

7. Where the owner or any other person establishes that he may be compelled to pay at a later date in whole or in part any such amount of compensation, with regard to which such person would have enjoyed a right of subrogation under paragraphs 5 or 6 of this Article, had the compensation been paid before the fund was distributed, the Court or other competent authority of the State where the fund has been constituted may order that a sufficient sum shall be provisionally set aside to enable such person at such later date to enforce his claim against the fund.

8. Claims in respect of expenses reasonably incurred or sacrifices reasonably made by the owner voluntarily to prevent or minimize pollution damage shall rank equally with other claims against the fund.

- 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.

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.

11. The insurer or other person providing financial security shall be entitled to constitute a fund in accordance with this Article on the same conditions and having the same effect as if it were constituted by the owner. 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 VI

1. Where the owner, after an incident, has constituted a fund in accordance with Article V, and is entitled to limit his liability,

- (a) no person having a claim for pollution damage arising out of that incident shall be entitled to exercise any right against any other assets of the owner in respect of such claim;
 - (b) the Court or other competent authority of any Contracting State shall order the release of any ship or other property belonging to the owner which has been arrested in respect of a claim for pollution damage arising out of that incident, and shall similarly release any bail or other security furnished to avoid such arrest.
2. The foregoing shall, however, only apply if the claimant has access to the Court administering the fund and the fund is actually available in respect of his claim.

Article VII

1. The owner of a ship registered in a Contracting State and carrying more than 2,000 tons of oil in bulk as cargo shall be required to maintain insurance or other financial security, such as the guarantee of a bank or a certificate delivered by an international compensation fund, in the sums fixed by applying the limits of liability prescribed in Article†V, paragraph 1 to cover his liability for pollution damage under this Convention.

2. 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. This certificate shall be in the form of the annexed model and shall contain the following particulars:

- (a) name of ship and port of registration;
- (b) name and principal place of business of owner;
- (c) type of security;
- (d) name and principal place of business of insurer or other person giving security and, where appropriate, place of business where the insurance or security is established;
- (e) period of validity of certificate which shall not be longer than the period of validity of the insurance or other security.

3. The certificate shall be in the official language or languages of the issuing State. If the language used is neither English nor French, the text shall include a translation into one of these languages.

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.

5. An insurance or other financial security shall not satisfy the requirements of this Article if it can cease, for reasons other than the expiry of the period of validity of the insurance or security specified in the certificate under paragraph 2 of this Article, before three months have elapsed from the date on which notice of its termination is given to the authorities referred to in paragraph 4 of this Article, unless the certificate has been surrendered to these authorities or a new certificate has been issued within the said period. The foregoing provisions shall similarly apply to any modification which results in the insurance or security no longer satisfying the requirements of this Article.

6. The State of registry shall, subject to the provisions of this Article, determine the conditions of issue and validity of the certificate.

7. 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. A Contracting State may at any time request consultation with the issuing or certifying State should it believe that the insurer or guarantor named in the certificate is not financially capable of meeting the obligations imposed by this Convention.

8. Any claim for compensation for pollution damage may be brought directly against the insurer or other person providing financial security for the owner's liability for pollution damage. 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. He may further avail himself of the defences (other than the bankruptcy or winding up of the owner) which the owner himself would have been entitled to invoke. Furthermore, the defendant may avail himself of the defence that the pollution damage resulted from the wilful misconduct of the owner himself, but the defendant shall not avail himself of any other defence which he might have been entitled to invoke in proceedings brought by the owner against him. The defendant shall in any event have the right to require the owner to be joined in the proceedings.

9. Any sums provided by insurance or by other financial security maintained in accordance with paragraph 1 of this Article shall be available exclusively for the satisfaction of claims under this Convention.

10. A Contracting State shall not permit a ship under its flag to which this Article applies to trade unless a certificate has been issued under paragraph 2 or 12 of this Article.

11. Subject to the provisions of this Article, each Contracting State shall ensure, under its national legislation, that insurance or other security to the extent specified in paragraph 1 of this Article is in force in respect of any ship, wherever registered, entering or leaving a port in its territory, or arriving at or leaving an off-shore

terminal in its territorial sea, if the ship actually carries more than 2,000 tons of oil in bulk as cargo.

12. If insurance or other financial security is not maintained in respect of a ship owned by a Contracting State, the provisions of this Article relating thereto shall not be applicable to such ship, but the ship shall carry a certificate issued by the appropriate authorities of the State of the ship's registry stating that the ship is owned by that State and that the ship's liability is covered within the limits prescribed by Article V, paragraph 1. Such a certificate shall follow as closely as practicable the model prescribed by paragraph 2 of this Article.

Article VIII

Rights of compensation under this Convention shall be extinguished unless an action is brought thereunder within three years from the date when the damage occurred. However, in no case shall an action be brought after six years from the date of the incident which caused the damage. Where this incident consists of a series of occurrences, the six years' period shall run from the date of the first such occurrence.

Article IX

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.

2. Each Contracting State shall ensure that its Courts possess the necessary jurisdiction to entertain such actions for compensation.

3. After the fund has been constituted in accordance with Article V the Courts of the State in which the fund is constituted shall be exclusively competent to determine all matters relating to the apportionment and distribution of the fund.

Article X

1. Any judgement given by a Court with jurisdiction in accordance with Article IX which is enforceable in the State of origin where it is no longer subject to ordinary forms of review, shall be recognized in any Contracting State, except:

(a) where the judgement was obtained by fraud; or

(b) where the defendant was not given reasonable notice and a fair opportunity to present his case.

2. A judgement recognized under paragraph 1 of this Article shall be enforceable in each Contracting State as soon as the formalities required in that State

have been complied with. The formalities shall not permit the merits of the case to be re-opened.

Article XI

1. The provisions of this Convention shall not apply to warships or other ships owned or operated by a State and used, for the time being, only on government noncommercial service.

2. With respect to ships owned by a Contracting State and used for commercial purposes, each State shall be subject to suit in the jurisdictions set forth in Article IX and shall waive all defences based on its status as a sovereign State.

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
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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

(Place)

On

(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.

SECOND SCHEDULE

(Articles 5 and 8)

Text of articles 1 to 4, 6 to 10 and 12 to 15 of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992.

Article 1

For the purposes of this Convention:

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

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.

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.

3. "Contributing Oil" means crude oil and fuel oil as defined in subparagraphs (a) and (b) below:

(a) "Crude Oil" means any liquid hydrocarbon mixture occurring naturally in the earth whether or not treated to render it suitable for transportation. It also includes crude oils from which certain distillate fractions have been removed (sometimes referred to as "topped crudes") or to which certain distillate fractions have been added (sometimes referred to as "spiked" or "reconstituted" crudes).

(b) "Fuel Oil" means heavy distillates or residues from crude oil or blends of such materials intended for use as a fuel for the production of heat or power of a quality equivalent to the "American Society for Testing and

Materials' Specification for Number Four Fuel Oil (Designation D 396-69)", or heavier.

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

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

6. "Ton", in relation to oil, means a metric ton.

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.

8. "Terminal Installation" means any site for the storage of oil in bulk which is capable of receiving oil from waterborne transportation, including any facility situated off-shore and linked to such site.

9. Where an incident consists of a series of occurrences, it shall be treated as having occurred on the date of the first such occurrence.

Article 2

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.

2. The Fund shall in each Contracting State be recognized as a legal person capable under the laws of that State of assuming rights and obligations and of being a party in legal proceedings before the courts of that State. Each Contracting State shall recognize the Director of the Fund (hereinafter referred to as "The Director") as the legal representative of the Fund.

Article 3

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

1. For the purpose of fulfilling its function under Article 2, paragraph 1(a), the Fund shall pay compensation to any person suffering pollution damage if such person has been unable to obtain full and adequate compensation for the damage under the terms of the 1992 Liability Convention,

(a) because no liability for the damage arises under the 1992 Liability Convention;

(b) because the owner liable for the damage under the 1992 Liability Convention is financially incapable of meeting his obligations in full and any financial security that may be provided under Article VII of that Convention does not cover or is insufficient to satisfy the claims for compensation for the damage; an owner being treated as financially incapable of meeting his obligations and a financial security being treated as insufficient if the person suffering the damage has been unable to obtain full satisfaction of the amount of compensation due under the 1992 Liability Convention after having taken all reasonable steps to pursue the legal remedies available to him;

(c) because the damage exceeds the owner's liability under the 1992 Liability Convention as limited pursuant to Article V, paragraph 1, of that Convention or under the terms of any other international Convention in force or open for signature, ratification or accession at the date of this Convention.

Expenses reasonably incurred or sacrifices reasonably made by the owner voluntarily to prevent or minimize pollution damage shall be treated as pollution damage for the purposes of this Article.

2. The Fund shall incur no obligation under the preceding paragraph if:

(a) it proves that the pollution damage resulted from an act of war, hostilities, civil war or insurrection or was caused by oil which has escaped or been discharged from a warship or other ship owned or operated by a State and used, at the time of the incident, only on Government non-commercial service; or

(b) the claimant cannot prove that the damage resulted from an incident involving one or more ships.

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.

4.
 - (a) Except as otherwise provided in sub-paragraphs (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 203,000,000 units of account.
 - (b) Except as otherwise provided in sub-paragraph (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 203,000,000 units of account.
 - (c) The maximum amount of compensation referred to in sub-paragraphs (a) and (b) shall be 300,740,000 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.
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.
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.
7. The Fund shall, at the request of a Contracting State, use its good offices as necessary to assist that State to secure promptly such personnel, material and services

as are necessary to enable the State to take measures to prevent or mitigate pollution damage arising from an incident in respect of which the Fund may be called upon to pay compensation under this Convention.

8. The Fund may on conditions to be laid down in the Internal Regulations provide credit facilities with a view to the taking of preventive measures against pollution damage arising from a particular incident in respect of which the Fund may be called upon to pay compensation under this Convention.

Article 6

Rights to compensation under Article 4 shall be extinguished unless an action is brought thereunder or a notification has been made pursuant to Article 7, paragraph 6, within three years from the date when the damage occurred. However, in no case shall an action be brought after six years from the date of the incident which caused the damage.

Article 7

1. Subject to the subsequent provisions of this Article, any action against the Fund for compensation under Article 4 of this Convention shall be brought only before a court competent under Article IX of the 1992 Liability Convention in respect of actions against the owner who is or who would, but for the provisions of Article III, paragraph 2, of that Convention, have been liable for pollution damage caused by the relevant incident.

2. Each Contracting State shall ensure that its courts possess the necessary jurisdiction to entertain such actions against the Fund as are referred to in paragraph 1.

3. Where an action for compensation for pollution damage has been brought before a court competent under Article IX of the 1992 Liability Convention against the owner of a ship or his guarantor, such court shall have exclusive jurisdictional competence over any action against the Fund for compensation under the provisions of Article 4 of this Convention in respect of the same damage. However, where an action for compensation for pollution damage under the 1992 Liability Convention has been brought before a court in a State Party to the 1992 Liability Convention but not to this Convention, any action against the Fund under Article 4 of this Convention shall at the option of the claimant be brought either before a court of the State where the Fund has its headquarters or before any court of a State Party to this Convention competent under Article IX of the 1992 Liability Convention.

4. Each Contracting State shall ensure that the Fund shall have the right to intervene as a party to any legal proceedings instituted in accordance with Article IX of the 1992 Liability Convention before a competent court of that State against the owner of a ship or his guarantor.

5. Except as otherwise provided in paragraph 6, the Fund shall not be bound by any judgement or decision in proceedings to which it has not been a party or by any settlement to which it is not a party.

6. Without prejudice to the provisions of paragraph 4, where an action under the 1992 Liability Convention for compensation for pollution damage has been brought against an owner or his guarantor before a competent court in a Contracting State, each party to the proceedings shall be entitled under the national law of that State to notify the Fund of the proceedings. Where such notification has been made in accordance with the formalities required by the law of the court seized and in such time and in such a manner that the Fund has in fact been in a position effectively to intervene as a party to the proceedings, any judgement rendered by the court in such proceedings shall, after it has become final and enforceable in the State where the judgement was given, become binding upon the Fund in the sense that the facts and findings in that judgement may not be disputed by the Fund even if the Fund has not actually intervened in the proceedings.

Article 8

Subject to any decision concerning the distribution referred to in Article 4, paragraph 5, any judgement given against the Fund by a court having jurisdiction in accordance with Article 7, paragraphs 1 and 3, shall, when it has become enforceable in the State of origin and is in that State no longer subject to ordinary forms of review, be recognized and enforceable in each Contracting State on the same conditions as are prescribed in Article X of the 1992 Liability Convention.

Article 9

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. Nothing in this Convention shall prejudice any right of recourse or subrogation of the Fund against persons other than those referred to in the preceding paragraph. In any event the right of the Fund to subrogation against such person shall not be less favourable than that of an insurer of the person to whom compensation has been paid.

3. Without prejudice to any other rights of subrogation or recourse against the Fund which may exist, a Contracting State or agency thereof which has paid compensation for pollution damage in accordance with provisions of national law shall acquire by subrogation the rights which the person so compensated would have enjoyed under this Convention.

Contributions

Article 10

1. 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:

- (a) in the ports or terminal installations in the territory of that State contributing oil carried by sea to such ports or terminal installations; and
 - (b) in any installations situated in the territory of that Contracting State contributing oil which has been carried by sea and discharged in a port or terminal installation of a non-Contracting State, provided that contributing oil shall only be taken into account by virtue of this subparagraph on first receipt in a Contracting State after its discharge in that non-Contracting State.
2. (a) For the purposes of paragraph 1, where the quantity of contributing oil received in the territory of a Contracting State by any person in a calendar year when aggregated with the quantity of contributing oil received in the same Contracting State in that year by any associated person or persons exceeds 150,000 tons, such person shall pay contributions in respect of the actual quantity received by him notwithstanding that that quantity did not exceed 150,000 tons.
- (b) "Associated person" means any subsidiary or commonly controlled entity. The question whether a person comes within this definition shall be determined by the national law of the State concerned.

Article 12

1. With a view to assessing the amount of annual contributions due, if any, and taking account of the necessity to maintain sufficient liquid funds, the Assembly shall for each calendar year make an estimate in the form of a budget of:

(i) Expenditure

- (a) costs and expenses of the administration of the Fund in the relevant year and any deficit from operations in preceding years;
- (b) payments to be made by the Fund in the relevant year for the satisfaction of claims against the Fund due under Article 4, including repayment on loans previously taken by the Fund for the satisfaction of such claims, to the extent that the aggregate amount of such claims in respect of any one incident does not exceed four million units of account;
- (c) payments to be made by the Fund in the relevant year for the satisfaction of claims against the Fund due under Article 4, including repayments on loans previously taken by the Fund for the satisfaction of such claims, to the extent that the aggregate amount of such claims in respect of any one incident is in excess of four million units of account;

(ii) Income

- (a) surplus funds from operations in preceding years, including any interest;

(b) annual contributions, if required to balance the budget;

(c) any other income.

2. 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:

- (a) in so far as the contribution is for the satisfaction of payments referred to in paragraph 1(i)(a) and (b) on the basis of a fixed sum for each ton of contributing oil received in the relevant State by such persons during the preceding calendar year; and
- (b) in so far as the contribution is for the satisfaction of payments referred to in paragraph 1(i)(c) of this Article on the basis of a fixed sum for each ton of contributing oil received by such person during the calendar year preceding that in which the incident in question occurred, provided that State was a Party to this Convention at the date of the incident.

3. The sums referred to in paragraph 2 above shall be arrived at 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.

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.

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).

Article 13

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. Each Contracting State shall ensure that any obligation to contribute to the Fund arising under this Convention in respect of oil received within the territory of that State is fulfilled and shall take any appropriate measures under its law, including the imposing of such sanctions as it may deem necessary, with a view to the effective execution of any such obligation; provided, however, that such measures shall only be directed against those persons who are under an obligation to contribute to the Fund.

3. Where a person who is liable in accordance with the provisions of Articles 10 and 12 to make contributions to the Fund does not fulfil his obligations in respect of any such contribution or any part thereof and is in arrear, the Director shall take all appropriate action against such person on behalf of the Fund with a view to the recovery of the amount due. However, where the defaulting contributor is manifestly insolvent or

the circumstances otherwise so warrant, the Assembly may, upon recommendation of the Director, decide that no action shall be taken or continued against the contributor.

Article 14

1. Each Contracting State may at the time when it deposits its instrument of ratification or accession or at any time thereafter declare that it assumes itself obligations that are incumbent under this Convention on any person who is liable to contribute to the Fund in accordance with Article 10, paragraph 1, in respect of oil received within the territory of that State. Such declaration shall be made in writing and shall specify which obligations are assumed.

2. Where a declaration under paragraph 1 is made prior to the entry into force of this Convention in accordance with Article 40, it shall be deposited with the Secretary-General of the Organization who shall after the entry into force of the Convention communicate the declaration to the Director.

3. A declaration under paragraph 1 which is made after the entry into force of this Convention shall be deposited with the Director.

4. A declaration made in accordance with this Article may be withdrawn by the relevant State giving notice thereof in writing to the Director. Such notification shall take effect three months after the Director's receipt thereof.

5. Any State which is bound by a declaration made under this Article shall, in any proceedings brought against it before a competent court in respect of any obligation specified in the declaration, waive any immunity that it would otherwise be entitled to invoke.

Article 15

1. Each Contracting State shall ensure that any person who receives contributing oil within its territory in such quantities that he is liable to contribute to the Fund appears on a list to be established and kept up to date by the Director in accordance with the subsequent provisions of this Article.

2. For the purposes set out in paragraph 1, each Contracting State shall communicate, at a time and in the manner to be prescribed in the Internal Regulations, to the Director the name and address of any person who in respect of that State is liable to contribute to the Fund pursuant to Article 10, as well as data on the relevant quantities of contributing oil received by any such person during the preceding calendar year.

3. For the purposes of ascertaining who are, at any given time, the persons liable to contribute to the Fund in accordance with Article 10, paragraph 1, and of establishing, where applicable, the quantities of oil to be taken into account for any such person when determining the amount of his contribution, the list shall be *prima facie* evidence of the facts stated therein.

4. Where a Contracting State does not fulfil 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 to 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.

THIRD SCHEDULE
(Articles 5 and 8)

Text of articles 1 to 15 of the Protocol of 2003 to the International Convention on the establishment of an International Fund for Compensation for Oil Pollution Damage, 1992.

Article 1

For the purposes of this Protocol:

12. “1992 Liability Convention” means the International Convention on Civil Liability for Oil Pollution Damage, 1992;

13. “1992 Fund Convention” means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage; 1992;

14. “1992 Fund” means the International Oil Pollution Compensation Fund, 1992, established under the 1992 Fund Convention;

15. “Contracting State” means a Contracting State to this Protocol, unless stated otherwise;

16. When provisions of the 1992 Fund Convention are incorporated by reference into this Protocol, “Fund” in that Convention means “Supplementary Fund”, unless stated otherwise,

17. “Ship”, “Person”, “Owner”, “Oil”, “Pollution Damage”, “Preventive Measures” and “Incident” have the same meaning as in article I of the 1992 Liability Convention;

18. “Contributing Oil”, “Unit of Account”, “Ton”, “Guarantor” and “Terminal installation” have the same meaning as in article 1 of the 1992 Fund Convention, unless stated otherwise;

19. “Established claim” means a claim which has been recognised by the 1992 Fund or been accepted as admissible by decision of a competent court binding upon the 1992 Fund not subject to ordinary forms of review and which would have been fully compensated if the limit set out in article 4, paragraph 4, of the 1992 Fund Convention had not been applied to that incident;

20. “Assembly” means the Assembly of the International Oil Pollution Compensation Supplementary Fund, 2003, unless otherwise indicated;

21. “Organization” means the International Maritime Organization;

22. “Secretary-General” means the Secretary-General of the Organization.

Article 2

2. An International Supplementary Fund for compensation for pollution damage, to be named “The International Oil Pollution Compensation Supplementary Fund, 2003” (hereinafter “the Supplementary Fund”), is hereby established.

2. The Supplementary Fund shall in each Contracting State be recognized as a legal person capable under the laws of that State of assuming rights and obligations and of being a party in legal proceedings before the courts of that State. Each Contracting State shall recognize the Director of the Supplementary Fund as the legal representative of the Supplementary Fund.

Article 3

This Protocol 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

1. The Supplementary Fund shall pay compensation to any person suffering pollution damage if such person has been unable to obtain full and adequate compensation for an established claim for such damage under the terms of the 1992 Fund Convention, because the total damage exceeds, or there is a risk that it will exceed, the applicable limit of compensation laid down in article 4, paragraph 4, of the 1992 Fund Convention in respect of any one incident.

2. (a) The aggregate amount of compensation payable by the Supplementary Fund under this article shall in respect of any one incident be limited, so that the total sum of that amount together with the amount of compensation actually paid under the 1992 Liability Convention and the 1992 Fund Convention within the scope of application of this Protocol shall not exceed 750 million units of account.

(b) The amount of 750 million units of account mentioned in paragraph 2(a) 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 determined by the Assembly of the 1992 Fund for conversion of the maximum amount payable under the 1992 Liability and 1992 Fund Conventions.

3. Where the amount of established claims against the Supplementary Fund exceeds the aggregate amount of compensation payable under paragraph 2, 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 Protocol shall be the same for all claimants.

4. The Supplementary Fund shall pay compensation in respect of established claims as defined in article 1, paragraph 8, and only in respect of such claims.

Article 5

The Supplementary Fund shall pay compensation when the Assembly of the 1992 Fund has considered that the total amount of the established claims exceeds, or there is a risk that the total amount of established claims will exceed the aggregate amount of compensation available under article 4, paragraph 4, of the 1992 Fund Convention and that as a consequence the Assembly of the 1992 Fund has decided provisionally or finally that payments will only be made for a proportion of any established claim. The Assembly of the Supplementary Fund shall then decide whether and to what extent the Supplementary Fund shall pay the proportion of any established claim not paid under the 1992 Liability Convention and the 1992 Fund Convention.

Article 6

1. Subject to article 15, paragraphs 2 and 3, rights to compensation against the Supplementary Fund shall be extinguished only if they are extinguished against the 1992 Fund under article 6 of the 1992 Fund Convention.

2. A claim made against the 1992 Fund shall be regarded as a claim made by the same claimant against the Supplementary Fund.

Article 7

1. The provisions of article 7, paragraphs 1, 2, 4, 5 and 6, of the 1992 Fund Convention shall apply to actions for compensation brought against the Supplementary Fund in accordance with article 4, paragraph 1, of this Protocol.

2. Where an action for compensation for pollution damage has been brought before a court competent under article IX of the 1992 Liability Convention against the owner of a ship or his guarantor, such court shall have exclusive jurisdictional competence over any action against the Supplementary Fund for

compensation under the provisions of article 4 of this Protocol in respect of the same damage. However, where an action for compensation for pollution damage under the 1992 Liability Convention has been brought before a court in a Contracting State to the 1992 Liability Convention but not to this Protocol, any action against the Supplementary Fund under article 4 of this Protocol shall at the option of the claimant be brought either before a court of the State where the Supplementary Fund has its headquarters or before any court of a Contracting State to this Protocol competent under article IX of the 1992 Liability Convention.

3. Notwithstanding paragraph 1, where an action for compensation for pollution damage against the 1992 Fund has been brought before a court in a Contracting State to the 1992 Fund Convention but not to this Protocol, any related action against the Supplementary Fund shall, at the option of the claimant, be brought either before a court of the State where the Supplementary Fund has its headquarters or before any court of a Contracting State competent under paragraph 1.

Article 8

1. Subject to any decision concerning the distribution referred to in article 4, paragraph 3 of this Protocol, any judgment given against the Supplementary Fund by a court having jurisdiction in accordance with article 7 of this Protocol, shall, when it has become enforceable in the State of origin and is in that State no longer subject to ordinary forms of review, be recognized and enforceable in each Contracting State on the same conditions as are prescribed in article X of the 1992 Liability Convention.

2. A Contracting State may apply other rules for the recognition and enforcement of judgments, provided that their effect is to ensure that judgments are recognised and enforced at least to the same extent as under paragraph 1.

Article 9

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

2. The Supplementary Fund shall acquire by subrogation the rights that the person compensated by it may enjoy under the 1992 Fund Convention against the 1992 Fund.

3. Nothing in this Protocol shall prejudice any right of recourse or subrogation of the Supplementary Fund against persons other than those referred to in the preceding paragraphs. In any event the right of the Supplementary Fund to subrogation against such person shall not be less favourable than that of an insurer of the person to whom compensation has been paid.

4. Without prejudice to any other rights of subrogation or recourse against the Supplementary Fund which may exist, a Contracting State or agency thereof which has paid compensation for pollution damage in accordance with provisions of national law shall acquire by subrogation the rights which the person so compensated would have enjoyed under this Protocol.

Article 10

1. Annual contributions to the Supplementary Fund shall be made in respect of each Contracting State by any person who, in the calendar year referred to in article 11, paragraph 2(a) or (b), has received in total quantities exceeding 150,000 tons:

- (a) in the ports or terminal installations in the territory of that State contributing oil carried by sea to such ports or terminal installations; and
- (b) in any installations situated in the territory of that Contracting State contributing oil which has been carried by sea and discharged in a port or terminal installation of a non-Contracting State, provided that contributing oil shall only be taken into account by virtue of this sub-paragraph on first receipt in a Contracting State after its discharge in that non-Contracting State.

2. The provisions of article 10, paragraph 2, of the 1992 Fund Convention shall apply in respect of the obligation to pay contributions to the Supplementary Fund.

Article 11

1. With a view to assessing the amount of annual contributions due, if any, and taking account of the necessity to maintain sufficient liquid funds, the Assembly shall for each calendar year make an estimate in the form of a budget of:

(i) Expenditure

- (a) costs and expenses of the administration of the Supplementary Fund in the relevant year and any deficit from operations in preceding years;
- (b) payments to be made by the Supplementary Fund in the relevant year for the satisfaction of claims against the Supplementary Fund due under article 4, including repayments on loans previously taken by the Supplementary Fund for the satisfaction of such claims;

(ii) Income

(a) surplus funds from operations in preceding years, including any interest;

(b) annual contributions, if required to balance the budget;

(c) any other income.

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

(a) in so far as the contribution is for the satisfaction of payments referred to in paragraph 1(i)(a) on the basis of a fixed sum for each ton of contributing oil received in the relevant State by such person during the preceding calendar year; and

(b) in so far as the contribution is for the satisfaction of payments referred to in paragraph 1(i)(b) on the basis of a fixed sum for each ton of contributing oil received by such person during the calendar year preceding that in which the incident in question occurred, provided that State was a Contracting State to this Protocol at the date of the incident.

3. The sums referred to in paragraph 2 shall be arrived at 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.

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

5. The Assembly may decide, under conditions to be laid down in the Financial Regulations of the Supplementary Fund, to make transfers between funds received in accordance with paragraph 2(a) and funds received in accordance with paragraph 2(b).

Article 12

1. The provisions of article 13 of the 1992 Fund Convention shall apply to contributions to the Supplementary Fund.

2. A Contracting State itself may assume the obligation to pay contributions to the Supplementary Fund in accordance with the procedure set out in article 14 of the 1992 Fund Convention.

Article 13

1. Contracting States shall communicate to the Director of the Supplementary Fund information on oil receipts in accordance with article 15 of the 1992 Fund Convention provided, however, that communications made to the Director of the 1992 Fund under article 15, paragraph 2, of the 1992 Fund Convention shall be deemed to have been made also under this Protocol.

2. Where a Contracting State does not fulfil its obligations to submit the communication referred to in paragraph 1 and this results in a financial loss for the Supplementary Fund, that Contracting State shall be liable to compensate the Supplementary Fund for such loss. The Assembly shall, on the recommendation of the Director of the Supplementary Fund, decide whether such compensation shall be payable by that Contracting State.

Article 14

1. Notwithstanding article 10, for the purposes of this Protocol there shall be deemed to be a minimum receipt of 1 million tons of contributing oil in each Contracting State.

2. When the aggregate quantity of contributing oil received in a Contracting State is less than 1 million tons, the Contracting State shall assume the obligations that would be incumbent under this Protocol on any person who would be liable to contribute to the Supplementary Fund in respect of oil received within the territory of that State in so far as no liable person exists for the aggregated quantity of oil received.

Article 15

1. If in a Contracting State there is no person meeting the conditions of article 10, that Contracting State shall for the purposes of this Protocol inform the Director of the Supplementary Fund thereof.

2. No compensation shall be paid by the Supplementary Fund for pollution damage in the territory, territorial sea or exclusive economic zone or area determined in accordance with article 3(a)(ii), of this Protocol, of a Contracting State in respect of a given incident or for preventive measures, wherever taken, to prevent or minimize such damage, until the obligations to communicate to the Director of the Supplementary Fund according to article 13, paragraph 1 and paragraph 1 of this article have been complied with in respect of that Contracting State for all years prior to the occurrence of that incident. The Assembly shall determine in the Internal Regulations the circumstances under which a Contracting State shall be considered as having failed to comply with its obligations.

3. Where compensation has been denied temporarily in accordance with paragraph 2, compensation shall be denied permanently in respect of that incident if the obligations to communicate to the Director of the Supplementary Fund under article 13, paragraph 1 and paragraph 1 of this article, have not been complied with

within one year after the Director of the Supplementary Fund has notified the Contracting State of its failure to report.

4. Any payments of contributions due to the Supplementary Fund shall be set off against compensation due to the debtor, or the debtor's agents.
