

THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1992

Explanatory note prepared by the 1992 Fund Secretariat

March 2005

1 Introduction

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

Due to a number of recent denunciations of the 1971 Fund Convention, this Convention ceased to be in force on 24 May 2002. A large number of States have also denounced the 1969 Civil Liability Convention. Therefore this note deals primarily with the 'new regime', ie the 1992 Civil Liability Convention and the 1992 Fund Convention.

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

The **1992 Fund Convention**, which is supplementary to the 1992 Civil Liability Convention, establishes a regime for compensating victims when the compensation under the applicable Civil Liability Convention is inadequate. The **International Oil Pollution Compensation Fund 1992**, generally referred to as the **IOPC Fund 1992** or the **1992 Fund**, was set up under the 1992 Fund Convention. The 1992 Fund is a worldwide intergovernmental organisation established for the purpose of administering the regime of compensation created by the 1992 Fund Convention. By becoming Party to the 1992 Fund Convention, a State becomes a Member of the 1992 Fund. The Organisation has its headquarters in London.

As at 1 March 2005, 105 States had ratified the 1992 Civil Liability Convention, and 92 States had ratified the 1992 Fund Convention. The States Parties are listed in the Annex.

2 1992 Civil Liability Convention

2.1 **Scope of application**

The 1992 Civil Liability Convention applies to **oil pollution damage** resulting from spills of **persistent** oil from **tankers**.

The 1992 Civil Liability Convention covers pollution damage suffered in the **territory, territorial sea or exclusive economic zone (EEZ)** or equivalent area of a State Party to the Convention. The flag State of the tanker and the nationality of the shipowner are irrelevant for determining the scope of application.

'**Pollution damage**' is defined as loss or damage caused by contamination. In the case of environmental damage (other than loss of profit from impairment of the environment) compensation is restricted to costs actually incurred or to be incurred for reasonable measures to reinstate the contaminated environment.

The notion of pollution damage includes measures, wherever taken, to prevent or minimise pollution damage in the territory, territorial sea or EEZ or equivalent area of a State Party to the Convention ('preventive measures'). Expenses incurred for preventive measures are recoverable even when no spill of oil occurs, provided that there was a grave and imminent threat of pollution damage.

The 1992 Civil Liability Convention covers spills of **cargo and/or bunker oil** from laden, and in some cases unladen sea-going vessels constructed or adapted to carry oil in bulk as cargo (but not to dry cargo ships).

Damage caused by **non-persistent oil**, such as gasoline, light diesel oil, kerosene etc, is not covered by the 1992 Civil Liability Convention.

2.2 Strict liability

The owner of a tanker has strict liability (ie he is liable also in the absence of fault) for pollution damage caused by oil spilled from his tanker as a result of an incident. He is exempt from liability under the 1992 Civil Liability Convention only if he proves that:

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

2.3 Limitation of liability

The shipowner is normally entitled to limit his liability under the 1992 Civil Liability Convention. The limits were increased by some 50.37% on 1 November 2003 as follows. The increased limits apply to incidents occurring on or after that date:

- (a) for a ship not exceeding 5 000 units of gross tonnage, 4 510 000 Special Drawing Rights (SDR) (US\$7 million);
- (b) for a ship with a tonnage between 5 000 and 140 000 units of tonnage, 4 510 000 SDR (US\$7 million) plus 631 SDR (US\$965) for each additional unit of tonnage; and
- (c) for a ship of 140 000 units of tonnage or over, 89 770 000 SDR (US\$ 136 million)^{<1>}.

If it is proved that the pollution damage resulted from the shipowner's personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result, the shipowner is deprived of the right to limit his liability.

2.4 Channelling of liability

Claims for pollution damage under the 1992 Civil Liability Convention can be made only against the registered owner of the tanker concerned. This does not preclude victims from claiming compensation outside this Convention from persons other than the owner. However, the Convention prohibits claims against the servants or agents of the owner, members of the crew, the pilot, the charterer (including bareboat charterer), manager or operator of the ship, or any person carrying out salvage operations or preventive measures. The owner is entitled to take recourse action against third parties in accordance with national law.

^{<1>} The unit of account in the 1992 Conventions is the Special Drawing Right (SDR) as defined by the International Monetary Fund. In this document, the SDR has been converted into US dollars at the rate of exchange applicable on 1 March 2005, ie 1 SDR = US\$1.530040.

2.5 **Compulsory insurance**

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

Claims for pollution damage under the 1992 Civil Liability Convention may be brought directly against the insurer or other person providing financial security for the owner's liability for pollution damage.

2.6 **Competence of courts**

Actions for compensation under the 1992 Civil Liability Convention against the shipowner or his insurer may only be brought before the Courts of the State Party to that Convention in whose territory, territorial sea or EEZ or equivalent area the damage occurred.

3 **1992 Fund Convention**

3.1 **Supplementary compensation**

The 1992 Fund pays compensation to those suffering oil pollution damage in a State Party to the 1992 Fund Convention who do not obtain full compensation under the 1992 Civil Liability Convention for one of the following reasons:

- (a) the shipowner is exempt from liability under the 1992 Civil Liability Convention because he can invoke one of the exemptions under that Convention; or
- (b) the shipowner is financially incapable of meeting his obligations under the 1992 Civil Liability Convention in full and his insurance is insufficient to satisfy the claims for compensation for pollution damage; or
- (c) the damage exceeds the shipowner's liability under the 1992 Civil Liability Convention.

In order to become Parties to the 1992 Fund Convention, States must also become Parties to the 1992 Civil Liability Convention.

The 1992 Fund does not pay compensation if:

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

3.2 **Limit of compensation**

The maximum amount payable by the 1992 Fund in respect of an incident occurring before 1 November 2003 was 135 million SDR (US\$207 million), including the sum actually paid by the shipowner (or his insurer) under the 1992 Civil Liability Convention. The limit was increased by some 50.37% to 203 million SDR (US\$311 million) on 1 November 2003. The increased limit applies only to incidents occurring on or after this date.

3.3 Competence of courts

Actions for compensation under the 1992 Fund Convention against the 1992 Fund may only be brought before the Courts of the State Party to that Convention in whose territory, territorial sea or EEZ or equivalent area the damage occurred.

Experience in past incidents has shown that most claims are settled out of court.

3.4 Organisation of the 1992 Fund

The 1992 Fund has an **Assembly**, which is composed of representatives of all Member States. The Assembly is the supreme organ governing the 1992 Fund, and it holds regular sessions once a year. The Assembly elects an **Executive Committee** comprising 15 Member States. The main function of this Committee is to approve settlements of claims.

The 1992 Fund shares a Secretariat with the 1971 Fund (see section 4 below). The joint Secretariat is headed by a Director, and has at present 27 staff members.

3.5 Financing of the 1992 Fund

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

Basis of Contributions

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

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

Payment of Contributions

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

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

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

Level of Contributions

Payments made by the 1992 Fund in respect of claims for compensation for oil pollution damage may vary considerably from year to year, resulting in fluctuating levels of contributions. The following table sets out the contributions levied by the 1992 Fund during the period 1996-2004.

Annual contributions	Date due	Total contribution £	Contribution per tonne of contributing oil £
1996	01.02.1997	4 000 000	0.0110440
	01.09.1997	10 000 000	0.0188066
1997	01.02.1998	9 500 000	0.0114295
	<i>Maximum deferred levy</i>	30 000 000	<i>(No deferred levy made)</i>
1998	01.02.1999	28 200 000	0.0400684
	01.09.1999	9 000 000	0.0134974
1999	Credit: 01.03.2000	-3 700 000	-0.0056367
	01.09.2000	53 000 000	0.0552651
2000	01.03.2001	49 500 000	0.0545770
	<i>Maximum deferred levy</i>	43 000 000	<i>(No deferred levy made)</i>
2001	01.03.2002	41 000 000	0.0428439
	<i>Maximum deferred levy</i>	21 000 000	<i>(No deferred levy made)</i>
2002	01.03.2003	31 000 000	0.0274518
2003	01.03.2004	82 000 000	0.0052994
	<i>Maximum deferred levy</i>	40 500 000	<i>(No deferred levy made)</i>
2004	01.03.2005	37 800 000	0.0273362

4 International Oil Pollution Compensation Supplementary Fund

As of March 2005, additional compensation will be available for victims of oil pollution from oil tanker incidents, following the entry in to force of a Protocol establishing an International Oil Pollution Compensation Supplementary Fund. The Protocol was adopted by a Diplomatic Conference held at the Headquarters of the International Maritime Organization (IMO) in London in May 2003.

The aim of the Supplementary Fund is to supplement the compensation available under the 1992 Civil Liability and Fund Conventions with an additional third tier of compensation. Membership of the Supplementary Fund is optional and any State which is a Member of the 1992 Fund may join the Supplementary Fund.

The Supplementary Fund will have available an amount of 547 million SDR (US\$837 million), in addition to the amount of 203 million SDR (US\$311 million) which is available in the present 1992 Fund after the increase which took effect on 1 November 2003. As a result, the total amount available for compensation for each incident in the States which are Members of the Supplementary Fund will be 750 million SDR (US\$1 148 million).

One important effect of the Protocol will be that, in practically all cases, it will be possible to pay compensation at 100% of the amount of the damage agreed between the Fund and the victim. It will also avoid the need to fix the level of payment below 100% of the amount of the damage suffered during the early stages of most major incidents as has been the case in respect of several recent incidents.

The Protocol will enter into force three months after it has been ratified by at least eight States which have received a combined total of 450 million tons of contributing oil in a calendar year. The conditions for the entry into force of the Supplementary Fund Protocol were fulfilled on 3 December 2004 when the Protocol had been ratified by Denmark, Finland, France, Germany, Ireland, Japan, Norway and Spain, which had received an aggregate quantity of some 532 million tonnes of contributing oil during 2003. The Protocol will therefore enter into force on 3 March 2005. Portugal ratified the Protocol on 15 February 2005 and will become a Member of the Supplementary Fund on 15 May 2005.

The Supplementary Fund will only pay compensation for pollution damage in States which are Members of the Supplementary Fund for incidents which occur after the Protocol has entered into force.

5 The 'old' regime: the 1969 Civil Liability Convention and the 1971 Fund Convention

5.1 1969 Civil Liability Convention

The 1969 Civil Liability Convention entered into force in 1975. As at 1 March 2005, 45 States were Parties to the Convention (as listed in the Annex).

The main features of the Convention are the same as those of the 1992 Civil Liability Convention, except on the following points.

Unlike the 1992 Civil Liability Convention, the 1969 Convention is limited to pollution damage suffered in the territory (including the territorial sea) of a State Party to the Convention. Furthermore, it applies only to damage caused or measures taken after an incident has occurred in which oil has escaped or been discharged. The Convention therefore does not apply to threat removal measures, ie preventive measures which are so successful that there is no actual spill of oil from the tanker involved.

The 1969 Civil Liability Convention applies only to ships which are actually carrying oil in bulk as cargo, ie laden tankers. Spills of bunkers from tankers during ballast voyages are therefore not covered by the 1969 Convention, nor are spills of bunker oil from ships other than tankers.

Under the 1969 Civil Liability Convention, the limit of the shipowner's liability is much lower than under the 1992 Civil Liability Convention, ie 133 SDR (US\$203) per ton of the ship's tonnage or 14 million SDR (US\$ 21 million), whichever is the lower.

The shipowner may be deprived of the right to limit his liability if a claimant proves that the incident occurred as a result of the personal fault (the 'actual fault or privity') of the owner.

Claims for pollution damage under the 1969 Civil Liability Convention can be made only against the registered owner of the tanker concerned. This does not preclude victims from claiming compensation outside this Convention from persons other than the owner. However, the Convention prohibits claims against the servants or agents of the owner. The owner is entitled to take recourse action against third parties in accordance with national law.

5.2 1971 Fund Convention

The International Oil Pollution Compensation Fund 1971, generally referred to as the IOPC Fund 1971 or the 1971 Fund, was set up under the 1971 Fund Convention, when the latter entered into force in 1978. The 1971 Fund Convention ceased to be in force on 24 May 2002 and does not apply to incidents occurring after that date.

The total amount of compensation payable by the 1971 Fund per incident was much lower than the maximum amount payable by the 1992 Fund, ie 60 million SDR (US\$92 million), including the sum actually paid by the shipowner (or his insurer) under the 1969 Civil Liability Convention.

In the great majority of incidents dealt with by the 1971 Fund, all claims have been settled out of court. So far, court actions against the 1971 Fund have been taken in respect of only seven incidents

Before the 1971 Fund can be wound up it has to fulfil its obligations to pay compensation to victims of incidents which occurred when the 1971 Fund Convention was in force. During the winding up period the 1971 Fund is governed by an Administrative Council composed of all States which at any time were Parties to the 1971 Fund Convention. As indicated above (section 3.4), the 1971 Fund shares a Secretariat with the 1992 Fund.

The 1971 Fund has been financed in the same way as the 1992 Fund.

6 Conclusions

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

As mentioned above, the 1969 Civil Liability Convention and the 1971 Fund Convention have been denounced by a number of States, and the 1971 Fund Convention ceased to be in force on 24 May 2002. Moreover, the 1992 Civil Liability Convention and the 1992 Fund Convention provide a wider scope of application on several points and much higher limits of compensation than the Conventions in their original versions. For these reasons, it is recommended that States which have not already done so should accede to the 1992 Protocols to the Civil Liability Convention and the Fund Convention (and not to the 1969 and 1971 Conventions) and thereby become Parties to the Conventions as amended by the Protocols (the 1992 Conventions). The 1992 Protocols would enter into force for the State in question 12 months after the deposit of its instrument(s) of accession.

States which are already Parties to the 1969 Civil Liability Convention are advised to denounce that Convention at the same time as they deposit their instruments in respect of the 1992 Protocols, so that the denunciation of that Convention would take effect on the same day as the 1992 Protocols enter into force for that State.

ANNEX

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

as at 1 March 2005

<i>86 States for which Fund Protocol is in force (and therefore Members of the 1992 Fund)</i>		
Algeria	Georgia	Panama
Angola	Germany	Papua New Guinea
Antigua and Barbuda	Ghana	Philippines
Argentina	Greece	Poland
Australia	Grenada	Portugal
Bahamas	Guinea	Qatar
Bahrain	Iceland	Republic of Korea
Barbados	India	Russian Federation
Belgium	Ireland	Saint Vincent and the Grenadines
Belize	Italy	Samoa
Brunei Darussalam	Jamaica	Seychelles
Cambodia	Japan	Sierra Leone
Cameroon	Kenya	Singapore
Canada	Latvia	Slovenia
Cape Verde	Liberia	Spain
China (Hong Kong Special Administrative Region)	Lithuania	Sri Lanka
Colombia	Madagascar	Sweden
Comoros	Malta	Tonga
Congo	Marshall Islands	Trinidad and Tobago
Croatia	Mauritius	Tunisia
Cyprus	Mexico	Turkey
Denmark	Monaco	United Arab Emirates
Djibouti	Morocco	United Kingdom
Dominica	Mozambique	United Republic of Tanzania
Dominican Republic	Namibia	Uruguay
Fiji	Netherlands	Vanuatu
Finland	New Zealand	Venezuela
France	Nigeria	
Gabon	Norway	
	Oman	
<i>6 States which have deposited instruments of accession, but for which the Fund Protocol does not enter into force until date indicated</i>		
Saint Lucia		20 May 2005
Malaysia		9 June 2005
Tuvalu		30 June 2005
Estonia		5 August 2005
South Africa		1 October 2005
Israel		21 October 2005

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

as at 1 March 2005

(and therefore not Members of the 1992 Fund)

<i>9 States for which Protocol to Civil Liability Convention is in force</i>			
Bulgaria	Egypt	Indonesia	Switzerland
Chile	El Salvador	Romania	Viet Nam
China			
<i>5 states which have deposited instruments of accession, but for which the Protocol to the Civil Liability Convention does not enter into force until date indicated</i>			
Kuwait			16 April 2005
Solomon Islands			30 June 2005
Azerbaijan			16 July 2005
Saint Kitts and Nevis			7 October 2005
Syrian Arab Republic			22 February 2006

States Parties to the 1969 Civil Liability Convention

as at 1 March 2005

<i>45 States Parties to the 1969 Civil Liability Convention</i>		
Albania	Gambia	Mauritania
Azerbaijan	Georgia	Mongolia
Benin	Ghana	Nicaragua
Brazil	Guatemala	Peru
Cambodia	Guyana	Portugal
Chile	Honduras	Saint Kitts and Nevis
Colombia	Indonesia	Sao Tomé and Príncipe
Costa Rica	Jordan	Saudi Arabia
Côte d'Ivoire	Kazakhstan	Senegal
Dominican Republic	Kuwait	Serbia & Montenegro
Ecuador	Latvia	South Africa
Egypt	Lebanon	Syrian Arab Republic
El Salvador	Luxembourg	Tuvalu
Equatorial Guinea	Malaysia	United Arab Emirates
Estonia	Maldives	Yemen
<i>5 States which have deposited instruments of denunciation which will take effect on date indicated</i>		
Malaysia		9 June 2005
Tuvalu		30 June 2005
Estonia		6 August 2005
Portugal		1 December 2005
Colombia		25 January 2006

Note: the 1971 Fund Convention ceased to be in force on 24 May 2002