



## Environment pollution

### *Fund 1992*

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International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (“Fund 1971”) (Brussels, 18 December 1971) as Amended by the International Maritime Organization Protocol of 1992 (“Fund 1992”) (London, 27 November 1992)

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## GENERAL PROVISIONS

### ARTICLE I

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 sub-paragraphs (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 II

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 III

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.

## COMPENSATION

### ARTICLE IV

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 noncommercial 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 ship-owner 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 subparagraphs (b) and (c) of this paragraph, the aggregate amount of compensation payable by the Fund under this Article shall in respect of any one incident be limited, so that the total sum of that amount and the amount of compensation actually paid under the 1992 Liability Convention for pollution damage within the scope of application of this Convention as defined in Article 3 shall to exceed 203.000.000 units of account.

(b) Except as otherwise provided in subparagraph (c), the aggregate amount of compensation payable by the Fund under this Article for pollution damage resulting from a natural phenomenon of an exceptional inevitable and irresistible character shall not exceed 203.000.000 units of account.

(c) The maximum amount of compensation referred to in subparagraphs (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 V (DELETED)

#### ARTICLE VI

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 VII

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 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 judgment 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 judgment rendered by the court in such proceedings shall, after it has become final and enforceable in the State where the judgment was given, become binding upon the Fund in the sense that the facts and findings in that judgment may not be disputed by the Fund even if the Fund has not actually intervened in the proceedings.

#### ARTICLE VIII

Subject to any decision concerning the distribution referred to in Article 4, paragraph 5, any judgment 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 IX

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 X

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) of (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. (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 XI (DELETED)

### ARTICLE XII

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 XIII

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 recommenda-

tion of the Director, decide that no action shall be taken or continued against the contributor.

#### ARTICLE XIV

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 XV

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.

## **ORGANIZATION AND ADMINISTRATION**

### **ARTICLE XVI**

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

### **ASSEMBLY**

#### **ARTICLE XVII**

The Assembly shall consist of all Contracting States to this Convention.

#### **ARTICLE XVIII**

The functions of the Assembly shall be:

1. to elect at each regular session its Chairman and two Vice-Chairmen who shall hold office until the next regular session;
2. to determine its own rules of procedure, subject to the provisions of this Convention;
3. to adopt Internal Regulations necessary for the proper functioning of the Fund;
4. to appoint the Director and make provisions for the appointment of such other personnel as may be

necessary and determine the terms and conditions of service of the Director and other personnel;

5. to adopt the annual budget and fix the annual contributions;

6. to appoint auditors and approve the accounts of the Fund;

7. to approve settlements of claims against the Fund, to take decisions in respect of the distribution among claimants of the available amount of compensation in accordance with Article 4, paragraph 5, and to determine the terms and conditions according to which provisional payments in respect of claims shall be made with a view to ensuring that victims of pollution damage are compensated as promptly as possible;

8. (deleted)

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

10. to determine which non-Contracting States and which inter-governmental and international non-governmental organizations shall be admitted to take part, without voting rights, in meetings of the Assembly and subsidiary bodies;

11. to give instructions concerning the administration of the Fund to the Director and subsidiary bodies;

12. (deleted)

13. to supervise the proper execution of the Convention and of its own decisions;

14. to perform such other functions as are allocated to it under the Convention or are otherwise necessary for the proper operation of the Fund.

#### ARTICLE XIX

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

2. Extraordinary sessions of the Assembly shall be convened by the Director at the request of at least one-third of the members of the Assembly and may be convened on the Director's own initiative after consultation with the Chairman of the Assembly. The Director shall give members at least thirty days' notice of such sessions.

#### ARTICLE XX

A majority of the members of the Assembly shall constitute a quorum for its meetings

#### ARTICLE XXI - XXVII (DELETED)

#### SECRETARIAT

#### ARTICLE XXVIII

1. The Secretariat shall comprise the Director and such staff as the administration of the Fund may require.

2. The Director shall be the legal representative of the Fund.

#### ARTICLE XXIX

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

2. The Director shall in particular:

- (a) appoint the personnel required for the administration of the Fund;
- (b) take all appropriate measures with a view to the proper administration of the Fund's assets;
- (c) collect the contributions due under this Convention while observing in particular the provisions of Article 13, paragraph 3;
- (d) to the extent necessary to deal with claims against the Fund and carry out the other functions of the Fund, employ the services of legal, financial and

other experts;

(e) take all appropriate measures for dealing with claims against the Fund within the limits and on conditions to be laid down in the Internal Regulations, including the final settlement of claims without the prior approval of the Assembly where these Regulations so provide;

(f) prepare and submit to the Assembly the financial statements and budget estimates for each calendar year;

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

(h) prepare, collect and circulate the papers, documents, agenda, minutes and information that may be required for the work of the Assembly and subsidiary bodies.

#### ARTICLE XXX

In the performance of their duties the Director and the staff and experts appointed by him shall not seek or receive instructions from any Government or from any authority external to the Fund. They shall refrain from an action which might reflect on their position as international officials. Each Contracting State on its part undertakes to respect the exclusively international character of the responsibilities of the Director and the staff and experts appointed by him, and not to seek to influence them in the discharge of their duties.

#### FINANCES

#### ARTICLE XXXI

1. Each Contracting State shall bear the salary, travel and other expenses of its own delegation to the Assembly and of its representatives on subsidiary bodies.

2. Any other expenses incurred in the operation of the Fund shall be borne by the Fund.

#### VOTING

#### ARTICLE XXXII

The following provisions shall apply to voting in the Assembly:

(a) each member shall have one vote;

(b) except as otherwise provided in Article 33, decisions of the Assembly shall be by a majority vote of

the members present and voting;

(c) decisions where a three-fourths or a two-thirds majority is required shall be by a three-fourths or two-thirds majority vote, as the case may be, of those present;

(d) for the purpose of this Article the phrase “members present” means “members present at the meeting at the time of the vote”, and the phrase “members present and voting” means “members present and casting an affirmative or negative vote”. Members who abstain from voting shall be considered as not voting.

### ARTICLE XXXIII

The following decisions of the Assembly shall require a two-thirds majority:

- (a) a decision under Article 13, paragraph 3, not to take or continue action against a contributor;
- (b) the appointment of the Director under Article 18, paragraph 4;
- (c) the establishment of subsidiary bodies, under Article 18, paragraph 9, and matters relating to such establishment.

### ARTICLE XXXIV

1. The Fund, its assets, income, including contributions, and other property shall enjoy in all Contracting States exemption from all direct taxation.

2. When the Fund makes substantial purchases of movable or immovable property, or has important work carried out which is necessary for the exercise of its official activities and the cost of which includes indirect taxes or sales taxes, the Governments of Member States shall take, whenever possible, appropriate measures for the remission or refund of the amount of such duties and taxes.

3. No exemption shall be accorded in the case of duties, taxes or dues which merely constitute payment for public utility services.

4. The Fund shall enjoy exemption from all customs duties, taxes and other related taxes on articles imported or exported by it or on its behalf for its official use. Articles thus imported shall not be transferred either for consideration or gratis on the territory of the country into which they have been imported except on conditions agreed by the government of that country.

5. Persons contributing to the Fund and victims and

owners of ships receiving compensation from the Fund shall be subject to the fiscal legislation of the State where they are taxable, no special exemption or other benefit being conferred on them in this respect.

6. Information relating to individual contributors supplied for the purpose of this Convention shall not be divulged outside the Fund except in so far as it may be strictly necessary to enable the Fund to carry out its functions including the bringing and defending of legal proceedings.

7. Independently of existing or future regulations concerning currency or transfers, Contracting States shall authorize the transfer and payment of any contribution to the Fund and of any compensation paid by the Fund without any restriction.

### TRANSITIONAL PROVISIONS

#### ARTICLE XXXV

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

#### ARTICLE XXXVI

The Secretary-General of the Organization shall convene the first session of the Assembly. This session shall take place as soon as possible after entry into force of this Convention and, in any case, not more than thirty days after such entry into force.

#### ARTICLE XXXVI Bis

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

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

and also the 1971 Fund Convention.

**(b)** Where an incident has caused pollution damage within the scope of this Convention, the Fund shall pay compensation to any person suffering pollution damage only if, and to the extent that, such person has been unable to obtain full and adequate compensation for the damage under the terms of the 1969 Liability Convention, the 1971 Fund Convention and the 1992 Liability Convention, provided that, in respect of pollution damage within the scope of this Convention in respect of a Party to this Convention but not a Party to the 1971 Fund Convention, the Fund shall pay compensation to any person suffering pollution damage only if, and to the extent that, such person would have been unable to obtain full and adequate compensation had that State been party to each of the above-mentioned Conventions.

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

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

#### ARTICLE XXXVI *Ter*

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

**2.** If the application of the provisions in paragraphs 2 and 3 of Article 12 would result in the aggregate amount of the contributions payable by contributors in a single Contracting State in respect of a given calendar year exceeding 27.5% of the total annual contributions, the contributions payable by all contributors in that State shall be reduced pro rata so that their aggregate contributions equal 27.5% of the total annual contributions to the Fund in respect of that year.

**3.** If the contributions payable by persons in a given Contracting State shall be reduced pursuant to paragraph 2 of this Article, the contributions payable by persons in all other Contracting States shall be in-

creased pro rata so as to ensure that the total amount of contributions payable by all persons liable to contribute to the Fund in respect of the calendar year in question will reach the total amount of contributions decided by the Assembly.

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

#### ARTICLE XXXVI *Quater*

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

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

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

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

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

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

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

**ARTICLE XXXVI** *Quinquies*

*Final clauses*

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

**FINAL CLAUSES**

**ARTICLE XXVIII**

*Signature, Ratification, Acceptance, Approval and Accession*

1. This Protocol shall be open for signature at London from 15 January 1993 to 14 January 1994 by any State which has signed the 1992 Liability Convention.
2. Subject to paragraph 4, this Protocol shall be ratified, accepted or approved by States which have signed it.
3. Subject to paragraph 4, this Protocol is open for accession by States which did not sign it.
4. This Protocol may be ratified, accepted, approved or acceded to only by States which have ratified, accepted, approved or acceded to the 1992 Liability Convention.
5. Ratification, acceptance, approval or accession shall be effected by the deposit of a formal instrument to that effect with the Secretary-General of the Organization.
6. A State which is a Party to this Protocol but is not a Party to the 1971 Fund Convention shall be bound by the provisions of the 1971 Fund Convention as amended by this Protocol in relation to other Parties hereto, but shall not be bound by the provisions of the 1971 Fund Convention in relation to Parties thereto.
7. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to the 1971 Fund Convention as amended by this Protocol shall be deemed to apply to the Convention so amended, as modified by such amendment.

**ARTICLE XXIX**

*Information on Contributing Oil*

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

2. During the transitional period, the Director shall, for Parties, communicate annually to the Secretary-General of the Organization data on quantities of contributing oil received by persons liable to contribute to the Fund pursuant to Article 10 of the 1971 Fund Convention as amended by this Protocol.

**ARTICLE XXX**

*Entry into Force*

1. This Protocol shall enter into force twelve months following the date on which the following requirements are fulfilled:

- (a) at least eight States have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General of the Organization; and
- (b) the Secretary-General of the Organization has received information in accordance with Article 29 that those persons who would be liable to contribute pursuant to Article 10 of the 1971 Fund Convention as amended by this Protocol have received during the preceding calendar year a total quantity of at least 450 million tons of contributing oil.

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

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

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

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

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

#### ARTICLE XXXI

##### *Denunciation of the 1969 and 1971 Conventions*

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

(a) at least eight States have become Parties to this Protocol or have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General of the Organization, whether or not subject to Article 30, paragraph 4, and  
(b) the Secretary-General of the Organization has received information in accordance with Article 29 that those persons who are or would be liable to contribute pursuant to Article 10 of the 1971 Fund Convention as amended by this Protocol have received during the preceding calendar year a total quantity of at least 750 million tons of contributing oil;

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

#### ARTICLE XXXII

##### *Revision and Amendment*

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

2. The Organization shall convene a Conference of

Contracting States for the purpose of revising or amending the 1992 Fund Convention at the request of not less than one third of all Contracting States.

#### ARTICLE XXXIII

##### *Amendment of Compensation Limits*

1. Upon the request of at least one quarter of the Contracting States, any proposal to amend the limits of amounts of compensation laid down in Article 4, paragraph 4, of the 1971 Fund Convention as amended by this Protocol shall be circulated by the Secretary-General to all Members of the Organization and to all Contracting States.

2. Any amendment proposed and circulated as above shall be submitted to the Legal Committee of the Organization for consideration at a date at least six months after the date of its circulation.

3. All Contracting States to the 1971 Fund Convention as amended by this Protocol, whether or not Members of the Organization, shall be entitled to participate in the proceedings of the Legal Committee for the consideration and adoption of amendments.

4. Amendments shall be adopted by a two-thirds majority of the Contracting States present and voting in the Legal Committee, expanded as provided for in paragraph 3, on condition that at least one half of the Contracting States shall be present at the time of voting.

5. When acting on a proposal to amend the limits, the Legal Committee shall take into account the experience of incidents and in particular the amount of damage resulting therefrom and changes in the monetary values. It shall also take into account the relationship between the limits in Article 4, paragraph 4, of the 1971 Fund Convention as amended by this Protocol and those in Article V, paragraph 1, of the International Convention on Civil Liability for Oil Pollution Damage, 1992.

6. (a) No amendment of the limits under this Article may be considered before 15 January 1998 nor less than five years from the date of entry into force of a previous amendment under this Article. No amendment under this Article shall be considered before this Protocol has entered into force.

(b) No limit may be increased so as to exceed an amount which corresponds to the limit laid down in the 1971 Fund Convention as amended by this Pro-

to be increased by six per cent per year calculated on a compound basis from 15 January 1993.

(c) No limit may be increased so as to exceed an amount which corresponds to the limit laid down in the 1971 Fund Convention as amended by this Protocol multiplied by three.

7. Any amendment adopted in accordance with paragraph 4 shall be notified by the Organization to all Contracting States. The amendment shall be deemed to have been accepted at the end of a period of eighteen months after the date of notification unless within that period not less than one quarter of the States that were Contracting States at the time of the adoption of the amendment by the Legal Committee have communicated to the Organization that they do not accept the amendment in which case the amendment is rejected and shall have no effect.

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

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

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

#### ARTICLE XXXIV *Denunciation*

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

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

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

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

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

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

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

#### ARTICLE XXXV *Extraordinary Sessions of the Assembly*

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

2. The Director may convene, on his own initiative,

an extraordinary session of the Assembly to meet within sixty days after the deposit of any instrument of denunciation, if he considers that such denunciation will result in a significant increase in the level of contributions of the remaining Contracting States.

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

#### ARTICLE XXXVI

##### *Termination*

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

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

#### ARTICLE XXXVII

##### *Winding up of the Fund*

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

(a) meet its obligations in respect of any incident occurring before the Protocol ceased to be in force;  
(b) be entitled to exercise its rights to contributions to the extent that these contributions are necessary to meet the obligations under subparagraph (a), including expenses for the administration of the Fund necessary for this purpose.

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

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

#### ARTICLE XXXVIII

##### *Depositary*

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

2. The Secretary-General of the Organization shall:  
(a) inform all States which have signed or acceded to this Protocol of:

- (i) each new signature or deposit of an instrument together with the date thereof;
  - (ii) each declaration and notification under Article 30 including declarations and withdrawals deemed to have been made in accordance with that Article;
  - (iii) the date of entry into force of this Protocol;
  - (iv) the date by which denunciations provided for in Article 31 are required to be made;
  - (v) any proposal to amend limits of amounts of compensation which has been made in accordance with Article 33, paragraph 1;
  - (vi) any amendment which has been adopted in accordance with Article 33, paragraph 4;
  - (vii) any amendment deemed to have been accepted under Article 33, paragraph 7, together with the date on which that amendment shall enter into force in accordance with paragraphs 8 and 9 of that Article;
  - (viii) the deposit of an instrument of denunciation of this Protocol together with the date of the deposit and the date on which it takes effect;
  - (ix) any denunciation deemed to have been made under Article 34, paragraph 5;
  - (x) any communication called for by any Article in this Protocol;
- (b) transmit certified true copies of this Protocol to all Signatory States and to all States which accede to the Protocol.

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

#### ARTICLE XXXIX

##### *Languages*

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







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Whilst every care has been taken to ensure the correctness of the legal act above, as well as the correspondence thereof to the official text and the accuracy of the relevant information at the time of publication, this legal act and the relevant information are intended as guidance only. For any further information and legal advice, please contact Dardani Studio Legale.

**DARDANI**  

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**STUDIO LEGALE**

Salita di Santa Caterina 10/8a - 16123 Genova - Tel. +39 010 576 18 16 - Fax +39 010 595 77 05  
Via Cernaia 4 - 20121 Milano - Tel +39 02 36 59 3170 - fax +39 02 36 59 3179  
[www.dardani.it](http://www.dardani.it)