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Intergovernmental Review Meeting of Mediterranean Coastal States and First Meeting of the Contracting Parties to the Convention for the Protection of the Mediterranean Sea against Pollution and its Related Protocols

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STUDY CONCERNING MEDITERRANEAN INTER-STATE GUARANTEE FUND AND LIABILITY AND COMPENSATION FOR DAMAGE RESULTING FROM THE POLLUTION OF THE MARINE ENVIRONMENT

Note by the Executive Director

This study was prepared by Mr. A. Lahlou and Mr. M. Loukili, UNEP consultants, acting in their personal capacity. The views and recommendations contained in the study are those of the authors and do not necessarily reflect the views of UNEP.

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ABBREVIATIONS USED IN THIS STUDY

AFDI: Annuaire français de droit international

ICNT: Informal Composite Negotiating Text

IJO: International Juridical Organization (Rome)

IMCO: Inter-Governmental Maritime Consultative Organization

JDI: Journal de droit international (Clunet)

JMLC: Journal of Maritime Law and Commerce

LGDI: Librairie générale de droit international (publishing house, Paris)

OECD: Organization for Economic Co-operation and Development

RCADI: Collected Courses of the Hague Academy of International Law

RDMF: Revue de droit maritime français

RGDIP: Revue générale de droit international public

UNCLOS: United Nations Conference on the Law of the Sea

UNEP: United Nations Environment Programme

YILC: Yearbook of the International Law Commission

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Preliminary note

1. In accordance with recommendation 37 in the report 1/*/ on the work of the Intergovernmental Review Meeting of Mediterranean Coastal States on the Mediterranean Action Plan (Monaco, 9-14 January 1978), Dr. Keckes, Director of the Regional Seas Programme Activity Centre, acting on behalf of the United Nations Environment Programme (UNEP), entrusted Mr. Lahlou and Mr. Loukili with the preparation of a study with a view to:

(a) Collecting, studying and analysing information on the current activities of international organizations with regard to liability and compensation for damage caused by pollution (United Nations Conference on the Law of the Sea, activities of OECD, IMCO, etc.);

(b) Drawing up proposals taking account of the activities referred to under (a) and in line with the particular regional needs of the Mediterranean coastal States, the said proposals to be submitted by the Executive Director to the Contracting Parties for their consideration at their next meeting.

2. To this end, the authors of this study made a fact-finding tour of five European capitals, 2/ where extremely useful contacts were made with persons 3/ experienced in the study of problems related to various aspects of marine environment pollution, and in particular the thorny question of liability and compensation for damage.

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*/ (N.B. For greater convenience the footnotes in the English translation are numbered consecutively throughout the study.)

1/ UNEP/IG.11/4.

2/ Apart from research carried out at the University of Paris II and the Academy of International Law (The Hague, Netherlands).

3/ Rome, 14 October 1978

Professeur R. Ago, Rapporteur of the International Law Commission in the field of international responsibility and a judge at the International Court of Justice; Mr. M. Guiterez, President of the International Juridical Organization, which is organizing a Meeting of Experts on the Legal Aspects of Pollution Resulting from Exploration and Exploitation of the Continental Shelf, the Seabed and its Subsoil in the Mediterranean Sea Area (Rome, 11-15 December 1978); the authors of this study have been invited to the meeting; Mr. E. du Pontavice, Professor at the University of Paris II, France; Mr. P.M. Dupuy, Professor at the University of Paris II; Professor G. Fischer, Vienna University, specialist in nuclear problems; Professor Zamanek (Vienna), Professor O'Connel (London), and Mr. P. Reuter, Professor of International Law and a member of the International Law Commission (France) were not available in October and could not be contacted.

3. Certain international organizations 4/ and national and international private bodies 5/ were also consulted with a view to examining the problems referred to above from a practical standpoint.

4. The authors of the study would like to pay a very warm tribute to Miss Patricia Bliss of UNEP, Geneva, for her commendable spirit of co-operation and her kind assistance, which made it possible for their tour to produce the results hoped for.

5. They would also like to thank all those who helped to facilitate their extremely difficult task.

6. It should be noted that the authors of this study, in their capacity as representatives of Morocco at the seventh session of the Third United Nations Conference on the Law of the Sea (New York, July-August 1978), made a number of contacts among the representatives of the various States attending the Conference and with certain agencies specializing in the fields covered by the study.

7. Because of the extremely short time allowed for the preparation of the report, it cannot be regarded as an exhaustive or detailed study of all the problems related to the determination of liability and compensation for damage caused by marine pollution. The authors therefore regard the study as a work of exploration and reflection serving as a point of reference for the future work of the Committee of Government Experts on the Mediterranean Sea.

4/ London (17-20 October 1978)

Inter-Governmental Maritime Consultative Organization: Mr. Busha, Legal Adviser; Mr. Wonham; Mr. Zimmer.

Brussels (21-23 October 1978)

European Economic Community: Mr. Zito et al., of the Environment and Consumer Protection Service.

Vienna (23-25 October 1978)

OPEC (Organization of Petroleum Exporting Countries): Dr. Santos, Legal Department; Dr. Ivan Bejarano, Transport Division.

Paris (26-28 October 1978)

Organization for Economic Co-operation and Development (OECD): Mr. Smetz, Department of the Environment.

5/ London

TOVALOP: Mr. Ockenden
Indemnity and Protection Club: Mr. Palmer
CRISTAL: The appointment with the official who deals with the problems covered in our study could not be kept because he was not available.

INTRODUCTION

It is generally recognized that the world is becoming increasingly aware that the potentialities of modern technology constitute a very serious danger for the environment in general and for the marine environment in particular. The oceans and seas are peculiarly vulnerable to the increasingly alarming inroads of pollution, the agreed definition of which is: "the introduction by man, directly or indirectly, of substances or energy into the marine environment resulting in such deleterious effects as harm to living resources, hazards to human health, hindrance to marine activities including fishing, impairment of quality for use of sea water and reduction of amenities." 6/

The Informal Composite Negotiating Text 7/ emanating from the sixth session of the Third United Nations Conference on the Law of the Sea contained an identical definition. 8/

Initially the pollution phenomenon gave rise to awareness in international circles which led to the drafting of a series of conventions dealing with different aspects of the problem. However, it frequently happens that the establishment of rules on a world-wide scale fails to meet the special needs of particular regions of the world adequately. This is true, for example, with regard to the slow and gradual degradation of the environment throughout the Mediterranean basin. In fact, while the current world-wide effort to codify the law of the sea through the United Nations is encountering a number of obstacles owing to the divergent interests of a very large number of countries, a sectoral or sub-sectoral approach unquestionably offers greater possibilities for success in achieving agreement between the States directly involved in a given region or sub-region.

In the case of the Mediterranean Sea taken as a whole, at both the sociological and the ecological level, indeed as a veritable ecoregion, the Draconian effects of pollution have given rise to real Mediterranean solidarity based on the profound belief that Mare Nostrum should no longer serve as a refuse dump.

The concern of public opinion in the Mediterranean countries should come as no surprise if we recall that one third of world traffic is concentrated on the shores of this semi-closed sea 9/ which covers 2.5 million km (and this traffic has been further increased by the opening of the Suez Canal); that a percentage of the crude oil transported is discharged into it; and that the 300 million inhabitants of the 18 countries bordering on the Mediterranean are congregating in growing numbers along its shores and urbanizing and industrializing its coast line at a very rapid rate.

6/ Definition adopted by the 1975 Barcelona Convention for the Protection of the Mediterranean Sea against Pollution, article 2 (a).

7/ See document A/CONF.62/WP.10 and Add.1. Official Records of the Third United Nations Conference on the Law of the Sea, (Vol. VIII, sixth session. New York, 23 May-15 July 1977), article 1, para. 4.

8/ A similar definition had already been proposed by the Intergovernmental Working Group on Marine Pollution which met at Ottawa in 1971; it was incorporated in Principle 7 of the Stockholm Declaration, and also appears in regional conventions such as those of Oslo, London and Paris.

9/ E. Wenger "Survie ou mort de la Méditerranée: un texte pour la coóperation internationale" Revue française d'études politiques méditerranéennes, No. 3, March 1975.

These alarming data have led the riparian States of the Mediterranean to work with UNEP to safeguard the Mediterranean basin, particularly since the international conventions do not meet the special needs of this basin, which is notorious for its peculiar vulnerability to all aspects of pollution.

This same spirit of co-operation and joint effort led States at the latest Intergovernmental Meeting in Monaco, from 9 to 14 January 1978, to request the Executive Director of UNEP to establish a group of governmental experts to study the problems relating to the determination of liability and compensation for damage resulting from marine pollution.

An analysis of the concise wording of the basic convention adopted at the Barcelona Conference illustrates the singularly laconic nature of article 12 on the question of liability. Yet the key to the problem of pollution lies precisely in an unambiguous, objective definition of liability of the polluter or polluters and in prompt and equitable compensation for the damage caused by the disaster, since any system of compensation for damage, if it is to work, must contain a guarantee mechanism. It is therefore reasonable to conclude that no satisfactory definition has been established under the two protocols already in force, 10/ or under the preliminary draft protocol for the protection of the Mediterranean Sea against pollution from land-based sources, which is in the process of being adopted.

Considered as a common factor underlying all sources of pollution, the question of liability and compensation for damage through an Inter-State Guarantee Fund, discussed in 1976 at Barcelona, 11/ gave inspiration recently to the signatories of the action plan for the protection and development of the marine environment and coastal zones of Bahrain, Iran, Iraq, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates, and the question is particularly acute at a time when international public opinion is still reeling from the shock of the Amaco Cadiz disaster. 12/

This study will therefore revolve around the following two points:

I. Objective responsibility in regard to marine pollution: A system that has to come

II. Establishment of special machinery for compensation for damage in the Mediterranean; the Inter-State Guarantee Fund

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10/ It should be noted that the delegation of Morocco has submitted written proposals on these questions.

11/ It should be noted that Morocco originated the idea of establishing objective responsibility and setting up an Inter-State Guarantee Fund in the Mediterranean region, c.f. the statement by the Moroccan delegation on this subject (Barcelona, 2-16 February 1976, First Committee, agenda item 9) (UNEP/CONF.1/CRP.12, 7 February 1976).

12/ See the Report of the Commission of Inquiry of the French Senate entitled "La catastrophe de l'Amaco Cadiz" (Hachette, Paris, 1978), and Consideration of Legal Questions Arising from the "Amaco Cadiz Disaster" (IMCO, Legal Committee, thirty-seventh session, (LEG XXXVII/2, 22 September 1978, Note by the secretariat).

PART I. OBJECTIVE RESPONSIBILITY IN THE EVENT OF DAMAGE BY MARINE POLLUTION: A SYSTEM THAT HAS TO COME

1. The object of Part I is to describe the current situation with regard to international law governing responsibility in respect of marine pollution and the best legal prospects for effectively preventing and combating this scourge. 13/ However, we cannot pretend to give here a sound, exhaustive account of the problem, since the law currently in force is due to be amended in the near future.

2. The in-depth analysis of problems concerning compensation for this type of damage, as well as the work done by the international organizations and specialized agencies on the subject, will appear in Part II of this study.

13/ On the general theory of responsibility see: Accioly, (M.), "Principes généraux de la responsabilité internationale d'après la doctrine et la jurisprudence" (Collected Courses of the Hague Academy of International Law (RCADI), vol. 96, 1960); Ago (Roberto), "Le délit international" (RCADI, 1939) and the seven reports of the Special Rapporteur of the International Law Commission on State responsibility; Bollecker-Stern, (B.), "Le préjudice dans la théorie de la responsabilité internationale", (Pedone, Paris, 1973); Combacau (J.), La responsabilité internationale, in Charles Vallée (ed.), Droit international public (Montchrestien, Paris, 1975, pp. 625-671); Garcia Amador, (F.), "State Responsibility - Some New Problems" (RCADI, Vol. 41, 1958), and reports of the International Law Commission on State Responsibility (Six reports, ACDI, 1956 to 1961); Girod (P.), "La réparation du dommage écologique" (Thesis, LGDI, Paris, 1974); Queneudec, (J.P.), "La responsabilité internationale de l'Etat pour les fautes personnelles de ses agents" (LGDI, Paris, 1966); Dupuy, (P.M.), "La responsabilité internationale des Etats pour les dommages d'origine technologique et industrielle" (Pedone, Paris, 1976); Reutér, (P.) "Principes de DIP", (RCADI, Vol. 103, 1961, B, p. 591); "Manuel de droit international public" (Themis, PUF, Paris, 1973, p. 173) and Special doctorate Course on International Responsibility, (University of Paris II, 1972-1973); Treves, (Tullio), "Les tendances récentes du droit conventionnel de la responsabilité et le nouveau droit de la mer", (AFDI, Paris, 1975, pp. 766-783), and "Responsabilité des Etats et responsabilité des particuliers dans le nouveau droit de la mer", (Revue iranienne des responsabilités internationales, Nos. 5 and 6, winter 1975-1976); Personnaz, (Jean) "La réparation du préjudice en droit international public" (Sirey, 1939); Monaco (R.), "Les annonces en droit international" (RCADI, 1960, (II), pp. 289-341). See also "Aspects juridiques de la pollution transfrontière", (OECD, Paris, 1977); Zannas (P.), "La responsabilité internationale des états pour les actes de négligence" (Geneva, 1952).

3. The growing damage to the marine environment caused by various sources of pollution, as a result of the spectacular development of marine science and technology, makes the highly complex problem of responsibility and liability the more urgent and significant and reflects the shortcomings of the traditional system of international responsibility (A). 14/

4. But the growing awareness of the dangers involved in new activities (such as the manufacture and transport of radioactive materials), or activities which have recently taken on new importance, or again the repetition of acts regarded as exceptional in the past, lead inevitably to the introduction of the concept of objective responsibility in the case of marine pollution (B). 15/

14/ See inter alia Fischer (G.), "Les grands problèmes du droit international", (L'Univers Politique, 1969, p. 47); "Nouvelles mesures relatives à la pollution des eaux de mer"; Chauveau (P.), "Rétrospective d'actualité", (RDMF, 1971, Vol. XXIII, p. 3); Jenks (C.W.), "Liability for Ultra Hazardous Activities in International Law", (RCADI, Vol. 117, 1966, I, pp. 99-196); Goldie (L.F.E.), "Liability for Damage and the Progressive Development of International Law" (International and Comparative Law Quarterly, Vol. 14, 1965, pp. 1189-1264); Kelson (J.), "State Responsibility and the Abnormally Dangerous Activity" (Harvard International Law Journal, Vol. 13, 1972, pp. 197-244); Abdelhamid (M.), "Les perspectives d'une responsabilité sans acte illicite", (Typed thesis, Paris, 1964); Springer (Allen L.), "Towards a Meaningful Concept of Pollution in International Law" (International and Comparative Law Quarterly, Vol. 26, part 3); Levy (D.), "Responsabilité pour omission et responsabilité pour risque en droit international public" (RGDIP, 1961, p. 745 et seq.); Goldie (L.F.E.), "International Principles of Responsibility for Pollution" (Columbia Journal of Transnational Law, 1970, No. 2, p. 283 et seq.); and "A General View of International Environmental Law: A survey of capabilities, trends and limits", (The Protection of the Environment and International Law, 1973, pp. 65-91); Hoffman (Kenneth B.), "State Responsibility in International Law and Transboundary Pollution Injuries" (International and Comparative Law Quarterly, Vol. 25, part 3, July 1976, pp. 509-542).

15/ See Chauveau (P.), op. cit. (RDMF); Cahier (Philippe), "Le problème de la responsabilité pour risque en droit international", (Relations internationales dans un monde en mutation, University Institute of Advanced International Studies, Geneva, 1977, Sijthoff, Leiden, pp. 409-434); Furet, (M.F.), "Expérimentation des armes nucléaires et droit international public" (Pedone, Paris, 1966, chapter II). "L'obligation de réparer dommage", pp. 169-185. See also footnote 14.

A. The Shortcomings of the Traditional System of Responsibility

5. We propose to give a general outline of the traditional theory of responsibility and to indicate very briefly the weaknesses charged against it.

(1) The principle of responsibility for fault or wrongful act

6. Regarded as the linchpin of all legal systems, responsibility has traditionally been based on the commission of a fault and is thus bound up with culpable behaviour on the part of the perpetrator of the damage. In other words, compensation is dependent on proof being adduced by the victim that a fault has been committed.

7. However, what international law is concerned with is responsibility for wrongful acts. It is a well-established rule of the law of nations that the State is responsible for failure to observe, breach of and violation of its international obligations. This means that international responsibility may be defined as the "obligation incumbent under international law upon the State to which an act of commission or omission contrary to its international obligations is attributable to compensate the State which has suffered the consequences of such act, either directly or through the person or property of its nationals". 16/ Thus, international responsibility is "a basic concept involving the obligation of the State to make good the consequences of a wrongful act attributable to it". 17/ In other words, the existence of damage is not enough to raise the issue of the international responsibility of the State. Another condition is required, namely the existence of a wrongful act, 18/ that is to say the injured party must prove an objective fault consisting of a violation of the standard rules of conduct.

8. Primarily customary in nature, the theory of international responsibility has not yet attained the necessary juridical maturity to become a well-established rule of international law. It is still part of the progressive development and codification of international law.

9. Beginning in 1969, the International Law Commission, 19/ a subsidiary organ of the United Nations, began codifying the law of the responsibility of States for their wrongful acts, intending to consider separately the question of responsibility arising out of certain lawful acts (in particular, outer space and nuclear activities) as soon as its programme of work allowed. 20/ The reason given for dealing with

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16/ Dictionnaire de terminologie juridique de droit international (Sirey, 1960, p. 541)

17/ See Visscher (Ch. de), (RCADI, Vol. 52, page 421).

18/ "Every violation of a right is a damage", states the International Law Commission's Special Rapporteur on international responsibility for wrongful acts (YILC), 1970, Vol. II, page 195).

19/ See "The Work of the International Law Commission" (United Nations Office of public Information, New York, 1973, pp. 62-65) and Y. Daudet, "La Codification du droit international" (LGDI, 1962).

20/ The United Nations General Assembly has recommended to the International Law Commission that it undertake a study of this aspect of international responsibility at an appropriate time (resolutions 3071 (XXVIII) and 3315 (XXIX)).

responsibility for wrongful acts only is as follows: "The Commission fully recognizes the importance, not only of questions relating to responsibility for internationally wrongful acts, but also of those concerning liability for possible injurious consequences arising out of the performance of certain lawful activities, especially those which because of their nature give rise to certain risks. The Commission takes the view, however, that questions in this latter category should not be dealt with jointly with those in the former category. Owing to the entirely different basis of the so-called responsibility for risk and the different nature of the rules governing it, as well as its content and the forms it may assume, a joint examination of the two subjects could only make both of them more difficult to grasp". 21/

This passage from the Commission's report is interesting, since it shows the importance of the problem and, by the manner in which it is worded, suggests that rules on this subject may already exist.

Professor Roberto Ago, who so far has compiled seven reports on international responsibility, 22/ was asked to draw up a set of draft articles based on the analysis of the internationally wrongful act as being a source of international responsibility. A draft text submitted by this Special Rapporteur was in fact approved by the Commission.

10. It should be pointed out that, with regard to liability for marine pollution, the Informal Composite Negotiating Text emanating from the sixth session of the Third United Nations Conference on the Law of the Sea 23/ adopts the concept of

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21/ Yearbook of the International Law Commission, 1974, Vol. II, part one, page 273.

22/ Reports by Professor Roberto Ago on State responsibility:

(1) "Review of Previous Work on Codification of the Topic of the International Responsibility of States" (YILC, 1969, Vol. II).

(2) "The Origin of International Responsibility" (YILC, 1970, Vol. II, p. 177).

(3) "The Internationally Wrongful Act of the State, Source of International Responsibility", (YILC, 1971, Vol. II, part one, pp. 199-274).

(4) Continued in United Nations document A/CN.4/264 and Add.1 and 2 (YILC, 1972, Vol. II, pp. 71-160).

(5) Continued in document A/CN.4/291 and Add.1 and 2, (YILC, 1976, Vol. II, part one, pp. 3-54).

(6) Continued in document A/CN.4/307.

(7) Continued in document A/CN.4/307/Add.1 of 17 April 1978.

23/ A/CONF.62/WP.10 and Add.1, Official Records of the sixth session of the Third United Nations Conference on the Law of the Sea, New York, 23 May - 15 July 1977.

responsibility for internationally wrongful acts. In section 9, entitled "responsibility and liability", article 236, paragraph 1 states: "States are responsible for the fulfilment of their international obligations concerning the protection and preservation of the marine environment. They shall be liable in accordance with international law for damage attributable to them resulting from violations of these obligations."

However, paragraph 3 leaves the way open for the progressive development of international law in the field of responsibility, thereby making it possible to envisage a future study on the problem of no-fault liability.

11. Yet viewed in the context of marine pollution, the concept of responsibility for faults (whether subjective or objective) 24/ would seem to suffer from a certain number of weaknesses. We shall confine ourselves to a brief survey of some of these.

(2) Some shortcomings of the Traditional System of Responsibility

12. The traditional concept of responsibility, as described somewhat briefly above, does not seem to fit in with the special features involved in the risks associated with marine pollution. 25/

Based as it is on the submission of proof of the existence of a fault or a wrongful act, it provides a partial picture of the general problem of responsibility. It ignores responsibility for risks resulting from perfectly lawful acts (such as the carriage of radioactive or noxious substances on oil). There is therefore quite a definite hiatus separating the law from practice: the classical approach to responsibility seems to have been rendered obsolete by the problems posed by modern technology. The nature and scope of the damage caused by new activities or by noxious or dangerous substances has developed far more rapidly than the law governing international responsibility. 26/

24/ Subjective means based on a fault, objective means based on a violation of the rules of a treaty or a rule of international law. (In connexion with this distinction, see inter alia Favre (Antoine), "Principes de droit des gens" (LGDI, 1974), chapter on the international responsibility of the State, p. 627, and in particular para. 49, p. 631; and Furet,(M.F.), "Expérimentation des armes nucléaires et droit international public", Pedone, 1966. (Chapter II concerning the obligation to repair damage, pp. 169-177).

25/ See footnote 1, page 2 of this study; see also Arangioruiz (Gaetano), (RCADI, III, 1962, p. 503), "Some International Legal Problems of the Civil Uses of Nuclear Energy" (particularly chapters V, VI and VII).

26/ See footnote 1, page 2; Bergman (Samuel), "No Fault Liability for Oil Pollution Damage" (JMLC, Vol. 5, No. 1, October 1973, page 1); and Lucchini (L.), "La pollution des mers par les hydrocarbures: les conventions de Bruxelles de Novembre 1969 ou les fissures du droit classique", (JDI, Clunet, No. 4, October-November-December 1970, p. 795), and "Le renforcement du dispositif conventionnal de lutte contre la pollution des mers" (JDI, 1974, No. 4, p. 755).

The risk of being lost in a labyrinth of responsibilities, the difficulties involved for the victim of damage in producing proof, 27/ the slowness of the process of establishing responsibility, the vast extent 28/ of the ecological damage, etc. all illustrate the inflexible nature of the traditional rules of responsibility and militate in favour of a new, more just and more equitable approach to responsibility designed to provide the victim with greater protection. This points to a veritable revolution in the international law of the sea 29/ in general and in pollution law in particular, a revolution

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27/ See OECD document on management of the environment, ENV/TFP/77-1; and for the shortcomings of the classical system of responsibility in respect of marine pollution, see the study by Volker Thiem on the "Compensation fund for Environmental Damage" (OECD, Paris, 25 October, 1977). See also Dupuy (R.J.), "Pétrole et la mer", in the collection "Travaux et recherches", (Institute of Development Law, Nice University, Presses Universitaires de France, Paris 1976), and in particular Dubais (B.A.), "Réparation du dommage en cas de pollution résultant de l'exploration et de l'exploitation des hydrocarbures en mer", page 119. For a critique of responsibility for fault, see also OECD document ENV/TFP/77-23, Paris, 9 December 1977.

28/ Particularly in the case of large-scale disasters such as that involving the Torrey Canyon (1967) or, quite recently, that involving the Amoco Cadiz, to mention only two. On the problem of pollution damage, see in particular du Pontavice (E.) on compensation for so-called "indirect" damage from pollution in various countries and internationally (OECD document ENV/TFP/78.6, 24 March 1978). For a description of cases involving large-scale oil pollution, see the note by the IMCO secretariat in Official Records of the International Legal Conference on Marine Pollution Damage, 1969 (London, 1975, LEG/CONF/6, 13 October 1969). For a comparative study of the cost of cleansing operations, see page 53 of the same document. For the cost of cleansing and the first steps towards compensation for damage resulting from the Amoco Cadiz disaster see Rapport de la Commission d'enquête du Sénat francais sur la "Catastrophe de l'Amoco Cadiz", (Hachette, Paris, 1978, chapter IV, p. 165).

29/ The perfect setting for perpetual conflict between progress and tradition: progress in the field of technology, tradition in the field of legal concepts.

that has its origins "largely in the technological revolution, the extremely rapid progress made in the course of the last few decades, 30/ and the more or less new characteristics of some of the goods being transported", 31/ to say nothing of the more or less dangerous nature of certain substances dumped at sea. 32/

13. One aspect of this process of change is the notion of a special system of responsibility for damage sui generis caused by marine pollution, without any reference to the classical concept of fault as a determining factor of responsibility.

30/ In 1886, when the first tanker was launched, the capacity of an oil tanker was hardly more than 200 tons, whereas that of the Torrey Canyon was 120,000 tons (11 years ago), that of the Amoco Cadiz 230,000 tons and there are currently plans to build super-tankers with a capacity of more than 500,000 tons rising even to 1 million tons. In addition to all this, there are the enormous dangers and risks involved in the carriage of radioactive substances by sea, the use of nuclear-powered ships, and the construction of nuclear power stations on the coast. Attention should also be drawn to the spectacular development of offshore oil exploration (two of the pollution accidents resulting from drilling occurred off extremely heavily populated coasts: one at Santa Barbara in California in 1969, the other in the Ekofisk oil field in the North Sea off Norway in April 1977). On the Torrey Canyon incident, see in particular: IMCO documents C/ES-III/3/Add.1, 2, 3, 4, 5, 6 and 7, C/ES-II/WP.15/Rev.1, C/ES-III/SR.1, 2, 3 and 4; Jenaya, (Ridha), "La pollution des mers par les tankers et le droit international" (Série d'études economiques, Study Research and Publication Centre, Faculty of Law and Political and Economic Science, Tunis, 1977, No. 1); du Pontavice (E.), "La pollution des mers par les hydrocarbures" (LGDI, Paris, 1968); Quenneudec, (I.P.), "Les incidences de l'affaire du Torrey Canyon sur le droit de la mer" (AFDI, 1968, pp. 701-717); Rousseau (Ch.), article in "Chronique des faits internationaux" (RGDIP, 1967, pp. 1090-1099). On the Amoco Cadiz disaster see: IMCO documents MEPC IX/16 of 25 April 1978, LEG XXXVII/2 of 22 September 1978; Rapport de la Commission d'enquête du Sénat francais sur la catastrophe de l'Amoco Cadiz, (Hachette, Paris, 1978); Report of the commission of inquiry set up by the House of Representatives (summarized in Le Monde, Paris, 23 November 1978, p. 38).

31/ Such as oil, which still "by its very nature, involves special risks not associated with traditional cargoes". See Chauveau (P.) (RDMF, Vol. XXII, page 3, 1971).

32/ With regard to "red muds", see the article by Ch. A. Kiss (JDI, Clunet, Paris, 1970, p. 208 et seq.).

B. Advocacy of objective responsibility in relation to marine pollution

14. We shall discuss in turn the principle of objective responsibility and the various applications of and references to that principle in international law.

(1) The principle of objective responsibility

15. Responsibility is termed "objective" when it is not determined by or associated with the violation of a rule of conduct: a party is responsible because of the damage caused and not because a fault has been committed (in the case of an individual) or because a rule of international law has been violated (in the case of a State). It is not necessary to prove the existence of a fault to determine who is responsible. It is enough to show the causal link between the accident and the damage caused.

16. In pollution law, responsibility as introduced by this principle is termed "objective" because the circumstance taken into consideration in obliging the polluter to compensate has no connexion with his behaviour. The mere existence of damage is enough to set the compensation machinery in motion, whether the author of the damage is at fault or not.

17. This new system has the great advantage of simplifying the procedure for establishing responsibility very appreciably, since there is no longer any need to prove a fault or negligence. It reflects a desire for equity, 33/ justice and balance between the risks involved in various activities and the advantages and profit which can be derived therefrom. The philosophy underlying the concept of objective responsibility is based on the general legal principle of ensuring better protection for the victim by relieving injured parties of the need to prove that a fault has been committed in order to gain recognition for their rights; in other words it involves a veritable obligation to compensate. 34/

18. Although unknown in general international law, 35/ the principle of responsibility based on risk has been applied on a number of occasions in the law

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33/ See "Legal Aspects of Transfrontier Pollution" (OECD, Paris, 1977, para. 35).

34/ "The circumstances in which extremely serious damage may be caused as a result of modern technological developments pose problems which national legislation has barely begun to deal with but which public international law can no longer ignore for long. A lawful action on the part of a State may give rise to incalculable damage ... and it may be necessary to make it incumbent upon States to compensate." (Statement by Professor Reuter in his course at the Hague in 1961 (RCADI, "Principes de droit international public", Vol 103, 1961, part II, p.591).)

35/ See Cahier (Ph.), "Le problème de la responsabilité pour risque en droit international", in "Les relations internationales dans un monde en mutation", (University Institute of Advanced International Studies, Geneva, 1977, Sijthoff-Leiden, p. 409).

of treaties. Similarly, in the work on the codification of the law of the sea undertaken within the framework of the Third United Nations Conference on the Law of the Sea, there seems to be a trend towards the acceptance of objective responsibility.

(2) Instances of recognition of the concept of objective responsibility in international practice

19. The tendency to abandon any reference to fault as a determining factor of responsibility, a tendency which began relatively early in municipal law, 36/ has not been without effect in international practice. Outside diplomatic practice 37/ and jurisprudence, 38/ which are very limited and the subject of certain

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36/ It is not possible, in a study of this length, to embark on an in-depth examination of this problem. For details, see inter alia: Savatier (René), "Les métamorphoses économiques et sociaux du droit civil d'aujourd'hui", (Première série, Panorama des mutations, 3e édition, Dalloz, 1964), especially chap. XII: "Vers la socialisation de la responsabilité et des risques individuels (p. 333); Starck (B.), "Droit civil, les obligations", (Librairie technique, 1972), in particular pp. 23-35; Fischerhof (Hans), "Liability in National and International Law for Damage Through Water Pollution - River pollution", Article in Public Health Papers, WHO; "Travaux de l'Association Henri Capitant sur les choses dangereuses", Vol. XIX, 1967 (Dalloz, Paris, 1971), in particular Part I concerning dangerous substances in civil law, pp. 9-179; Cavare (L.), Traité de droit international public positif Vol. II, (Pedone, Paris, 1969, p. 421) concerning the abandonment of the notion of responsibility in relation to fault in French administrative law. There is a fairly clear and steady trend towards the acceptance of responsibility without reference to fault in municipal law, particularly with regard to industrial accidents where, in both French and Moroccan municipal law, the entrepreneur bears total responsibility.

37/ Cf. the case of the Japanese fishermen in 1954 following American nuclear experiments in the Pacific which at the time were perfectly lawful in the eyes of the American Government. This was regarded by one school of thought as "the first and by no means the least significant step towards an explicit revival of the theory of risk as a valid legal basis for the international responsibility that could result from exceptionally dangerous international activities": Abdelhamid (M.), "Les perspectives d'une responsabilité sans acte illicite", (Typed thesis, Paris, 196). Cf. also the nuclear tests in the atmosphere conducted by France from Muroroa, in Polynesia.

38/ Cf. the Trail Smelter case involving the United States and Canada (Reports of International Arbitral Awards, United Nations, Vol. III, p. 1938 et seq.) and the Lac Lanoux case involving Spain and France (ditto, Vol. XII, pp. 303 and 305). For developments in connexion with these two cases, see inter alia: Goldie (L.F.E.), "Liability for Damage and the Progressive Development of International Law" (International Comparative Law Review, 14, 1965, pp. 1189-1264) and "Colloque sur l'environnement", (RCADI, 1973, p. 73 et seq.); Jenks (C.W.), "Liability for Ultra-Hazardous Activities in International Law" (RCADI, Vol. 117 (I), 1966, pp. 99-196). See also Dupuy (P.M.), "La responsabilité internationale des Etats pour les dommages causés par les pollutions transfrontières" ("Legal Aspects of Transfrontier Pollution", OECD, Paris, 1977).

doctrinal controversies, 39/ the principle of objective responsibility has also been applied in treaties (especially in relation to space, nuclear activities and the environment). Similarly, the Third United Nations Conference on the Law of the Sea produced a number of drafts based on the philosophy underlying the Stockholm Declaration on the Environment.

(a) Instances of application of objective responsibility in convention practice

20. Originally applied in nuclear law, the concept of civil liability has come into general use in space and environmental law (in certain clearly defined aspects of the latter). 40/

Space law

21. The Convention of 29 November 1971 41/ on International Liability for Damage Caused by Space Objects was the fruit of a protracted effort following the 1963 Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space. 42/ Article 2 states that "a launching State shall be absolutely liable to pay compensation for damage caused by its space object on the surface of the earth or to aircraft in flight". Thus the victim does not have to prove fault or negligence on the part of the launching State, which would be practically impossible. Nor can the latter take refuge behind the absence of any negligence in order to escape liability. The only proof required is identification of the space object. It should be noted that even when the object launched into space belongs to a private company, the State will still be responsible.

39/ On this topic, see in particular Cahier (Ph.), "Le problème de la responsabilité pour risque en droit international", (Les relations internationales dans un monde en mutation, University Institute of Advanced International Studies, Geneva, 1977 Sijthoff-Leiden, p. 409); and Dupuy (P.M.), "La responsabilité internationale des Etats pour les dommages d'origine technologique" (Pedone, Paris, 1976 especially chap. II, p. 183).

40/ "The principle that where there is no wrongful act, liability exists only if provision is made for it in a specific convention should be maintained. Such conventions are becoming more general with regard to nuclear questions ... marine pollution ... and space," says Professor Reuter pertinently in Manuel de droit international public (PUF, Themis, Paris, 1973, p. 174).

41/ See Deleau (O.), "La Convention sur la responsabilité internationale pour les dommages causés par les objets spatiaux", AFDI, 1971, pp. 876-888; and Mateesco Matte (Nicholas), "Droit aéro-spatial", Pedone, Paris, 1969 (particularly chap. V, p. 395) and "Droit aéro-spatial, de l'exploration scientifique à l'utilisation commerciale" (Pedone, 1976, chap. I, p. 189).

42/ General Assembly resolution 1962 (XVIII) of 13 December 1963. See also Treaty on the Peaceful Uses of Space of 27 January 1967.

Thus the Convention establishes a system of objective and absolute liability in so far as the launching State has to pay the entire compensation for the damage caused. However, no ceiling for compensation has been fixed.

Nuclear law

22. The dangers resulting from space activities are considerable, but those of the peaceful use of atomic energy are even greater. 43/ The damage caused by a nuclear disaster could be enormous. There are several international conventions on the subject, all of which deal with objective liability:

The OECD Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy, with the Additional Protocol of 28 January 1964 and the Supplementary Convention of 31 January 1965. 44/

The Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage.

The Brussels Convention of 25 May 1962 on the Liability of Operators of Nuclear Ships. 45/

The Brussels Convention of 17 December 1971 relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material. 46/

43/ See inter alia Fornasier, "Le droit international face au risque nucléaire" (AFDI, 1964, pp. 303-311); the work of the Henri Capitant Association on "les choses dangereuses", Vol. XIX, 1967, (Dolloz, Paris, 1971) particularly part IV: Les choses dangereuses en droit international public (pp. 323-422), and Rodière (R.), "Spécificité du risque nucléaire et droit maritime" ("Colloque droit nucléaire et droit océanique", Ed. Economica, Paris, 1976, p. 85).

44/ See Dupuy (P.M.), op. cit.; du Pontavice (E.), "Réparation des dommages causés par la pollution des mers" in Droit de la mer, ed. (Institut des Hautes Etudes Internationales de Paris, Pedone, 1977, particularly pp. 110-128), and "Réflexions sur la pollution marine d'origine radio-active" (Revue de droit maritime français, 1976, p. 643).

45/ See inter alia Kovar (R.), "Les accords conclus au sujet du "Savannah" et la responsabilité civile des exploitants de navires nucléaires", (AFDI, 1965, pp. 784-809); Hardy (M.), "The Liability of Operators of Nuclear Ships" (International Law and Quarterly Review, Vol. 12, part 3, July 1963, p. 778); Colliard (C.A.), "La Convention de Bruxelles relative à la responsabilité des exploitants de navires nucléaires" (AFDI, 1962, pp. 41-64); Boulanger (M.), "La Convention de Bruxelles de 1962 et les accords Otto Hahn", (Colloque sur droit nucléaire et droit océanique, op. cit.).

46/ Lagorce (M.), "Le transport de matières nucléaires sous le régime de la Convention de Bruxelles de 1971", (Colloque droit nucléaire, op. cit., p. 61); Duprimoz (J.), "L'assurance de responsabilité pour les transports de matières nucléaires" (Colloque droit nucléaire, op. cit., p. 75); Strohl (Pierre), "La Convention de 1971 relative à la responsabilité civile du transport maritime de matières nucléaires: un essai de conciliation entre le droit maritime et le droit nucléaire" (AFDI, 1972, p. 753); and Sigaudy (R.) and Warot (J.), "La responsabilité civile en matière de transport de substances nucléaires par mer" (RDMF, 1969, p. 387).

23. These conventions are all designed to make compensation for damage caused by nuclear incidents compulsory. To avoid complications, the texts adopt the principle of objective civil liability of the operator of the nuclear installation, 47/ or of the nuclear ship, 48/ whether a private individual or a public body. The liability is focused on the operator and is exclusive, absolute, 49/ limited, 50/ compulsorily covered by insurance, and rounded off by an obligation upon the State to make compensation. 51/

Pollution law

24. It needed a disaster at sea to spark off any genuine momentum in this direction. The wreck of the Torrey Canyon on 18 March 1967, and the well-known disastrous consequences which ensued had the noteworthy effect of alerting people and making public opinion aware of the urgent need to intensify the struggle against marine pollution, which was subsequently considered to be a real scourge threatening the entire human race. As an important reservoir of both halieutic and mineral wealth, the sea has a right to protection from the human race it nourishes: humiliated at seeing itself daily being turned into a refuse dump, the sea is now breaking the silence it has maintained so timidly to date and demanding the right to cleanliness and salubrity. 52/

47/ Articles 3 and II of the Paris and Vienna Conventions respectively.

48/ Article II of the Brussels Convention of 1962.

49/ Article IV, para. 1 of the Vienna Convention states that "the liability of the operator for nuclear damage ... shall be absolute." It is therefore not necessary to prove negligence on the part of the operator. Proof that the incident was the cause of the damage is sufficient. The only grounds for exemption or exoneration are armed conflict, civil war, insurrection or a natural disaster of an exceptional character (article 9 of the Paris Convention and article IV of the Vienna Convention).

50/ I.e. limited in scope. In fact article 7 of the Paris Convention establishes the maximum liability of the operator at 15 million European Monetary Agreement units of account. The Vienna Convention fixes the amount at $US 5 million and in the Brussels Convention of 1962 the ceiling in respect of any one nuclear incident is fixed at 1,500 million francs.

51/ In view of the enormity of the damage caused by a serious nuclear incident, the Convention of 31 January 1963 supplementing the Paris Convention of 1960 provides for State intervention: under article 3, the compensation for each incident shall not exceed 120 million units of account, 5 million being payable by the operator, 65 million out of public funds to be made available by the State in whose territory the nuclear installation is situated, and the difference out of public funds to be made available by the Contracting Parties, according to the system for contributions specified by the Convention.

52/ Concerning what needs to be done to achieve salubrity and acceptable levels of environmental quality, see the Transfrontiers Pollution Group of the OECD Environment Committee, on "the international duty of States to protect the environment against transfrontiers pollution" (Secretariat note, ENV/TFP/78-9, 8 August 1978).

25. In this general context, and in the light of these data, the States which met at Brussels in 1969 under the auspices of IMCO signed two conventions, 53/ which are innovative to the point of being revolutionary by reason of the Draconian measures they embody. The subject-matter of the two conventions differs widely: one comes under private law and concerns intervention on the high seas in the case of incidents which cause or are liable to cause oil pollution.

The other comes under private law and covers civil liability for oil pollution damage. We propose to examine only the latter, in so far as it directly concerns the subject-matter of this study, namely compensation for damage caused by marine pollution.

26. The 1969 Convention 54/ does in fact deal with the problem of compensation. Article III lays down the principle of objective civil liability of the owner of the ship. The owner of a ship at the time of an incident, i.e. an occurrence which causes pollution damage, shall be liable for any damage caused by oil which has escaped or been discharged from ships carrying a cargo of oil in bulk on the territory including the territorial sea of a Contracting State wherever such escape or discharge may occur (high seas, territorial sea, inland waters).

53/ For a very detailed analysis, see inter alia Dupuy (P.M.), op. cit., chap. III, pp. 140-154; Legendre (C.), "Convention sur la responsabilité civile pour les dommages dus à la pollution par les hydrocarbures" (RDMF, 1970, p. 580); Colliard (C.A.), "Cours de droit international public" (Les cours de droit, Paris, 1974-75, pp. 193-195); du Pontavice (E.), in "Droit de la mer", ed. (Institut des Hautes Etudes Internationales, Paris, 1977, pp. 128-144); Simon (P.), "La réparation civile des dommages causés en mer par les hydrocarbures" (Thesis, University of Paris II, p. 159 et seq.); Bergman (S.), "No Fault Liability for Oil Pollution Damage" (JMLC, Vol. 5, No. 1, October 1973, pp. 1-50); Dubais (B.A.), "The Liability of a Salvor Responsible for Oil Pollution Damage" (JMLC, Vol. 8, No. 3, April 1977, pp. 375-386); Jenayah (Ridha), op. cit., pp. 36-39; McLoughlin, "Responsabilités civile et fonds de garantie", Communication to the Meeting of Experts on the Legal Aspects of Pollution Resulting from Exploration and Exploitation of the Continental Shelf, the Sea-Bed and its Subsoil in the Mediterranean Sea Area (Seminar organized by the International Juridical Organization and the United Nations Environment Programme, N. EP/1400.77.02 (1352), Rome, 11-15 December 1978; Soubeyrol (J.), "Les conventions de lutte contre la pollution de mer de 1954 à 1976" (Lecture given to the Seminar on the Law of the Sea, 1977, organized by the Institute of Public International Law at Thessalonika, Vol. VII, p. 187, and particularly p. 225 et seq.); Juda (Lawrence), "IMCO and the Regulation of Ocean Pollution from Ships" (International and Comparative Law Quarterly, Vol. 26, July 1977, p. 558); Alden (Lowell Doud), "Compensation for Oil Pollution Damage: Further Comment on the Civil Liability and Compensation Fund Conventions" (IJMC, Vol. 4, No. 5, p. 541).

54/ The Brussels Convention of 29 November 1969 on Civil Liability for Oil Pollution Damage entered into force on 19 June 1975. The supplementary Protocol drafted in London on 19 November 1976 has not yet come into force.

27. It should be noted, however, that the spectrum of reasons for exoneration from liability provided for in the Convention is broader than that in nuclear law. No liability for pollution damage shall attach to the owner concerned if he proves that the damage resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irrestible character (i.e. in cases of force majeure). 55/

Again, the owner is exempt from all liability if he proves the existence of fraudulent action by a third party, 56/ i.e. that the damage was caused by a deliberate act or intentional omission by a third party, done with intent to cause damage. He is also exempt from liability if the damage was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids. 57/

Lastly, the owner may be exonerated wholly or partially from his liability if he proves that the pollution damage resulted wholly or partially 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. 58/

Thus the liability is objective, directed towards the owner of the ship, and limited not only with regard to the amount and guarantee, but also with regard to time.

Article V of the Convention provides that the owner may limit his liability, except in the case of his own fault or privity, to an aggregate amount of 2,000 gold francs 59/ for each ton of the ship's tonnage. However, this aggregate must not exceed a total of 210 million gold francs (i.e. approximately 70 million current French francs).

In order to benefit from the system of limitation of liability, the owner or his insurers must constitute a guarantee fund for the total sum representing the limit of his liability. 60/

55/ Article III, para. 2 (a).

56/ Article III, para. 2 (b).

57/ Article III, para. 2 (c).

58/ Article III, para. 3.

59/ The Protocol to the International Convention of 1969 on Civil Liability for Oil Pollution Damage, drafted in London by the Conference to Revise Unit of Account Provisions of the 1969 Convention on Civil Liability, amends this figure. The amendment concerns article V paragraph 1 of the 1969 Convention, which is replaced by the following text: "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 of 133 units of account for each ton of the ship's tonnage. However, this aggregate amount shall not in any event exceed 14 million units of account." The unit of account referred to in the Protocol is the Special Drawing Right as defined by the International Monetary Fund.

60/ Article V, para. 3.

28. Similarly, taking conventional nuclear law as its basis, the Brussels Convention provides that the owner of a ship registered in a Contracting State and carrying more than 2,000 tons of oil in bulk as cargo is required to maintain insurance or other financial security under the conditions prescribed in article V concerning the limitation of liability. 61/

29. Furthermore, under article VIII of the Convention, the right of compensation is extinguished unless an action is brought thereunder within three years from the date when the damage occurred. Any action brought after six years from the date of the incident which caused the damage also involves a statute of limitations situation, and where this incident consists of a series of occurrences, the six-years' period begins from the date of the first such occurrence.

30. Mention should be made of the movement to extend the field of application of this Convention to noxious and hazardous substances other than oil. 62/

31. Taking their cue from the philosophy underlying the 1969 Convention, and wishing to extend its scope and effects to cover substances other than oil, nine North Sea States 63/ meeting in London adopted a Convention on Civil Liability for Oil Pollution Damage Resulting from Exploration for and Exploitation of Sea-bed Mineral Resources 64/ on 17 December 1976. The objective liability 65/

61/ As will be seen in detail in the second part of this study, it should be noted that a resolution was adopted at the 1969 Conference establishing a compensation fund. The resolution requests IMCO to elaborate a draft for a compensation scheme founded, in particular, on the principle of adequate compensation based on strict liability. See the study by OECD Transfrontiers Pollution Group, on insurance against risk of pollution, Working Document No. 4, dated 26 January 1977. See also the second part of this study for an account of the problems relating to the question of compensation and the guarantee fund.

62/ For this reason the Legal Committee of IMCO embarked on a study of the possibility of extending the scope of the 1969 Convention. On this point see RDMF, 1977, page 414 and March 1978, the United Nations Juridical Yearbook, 1972 (ST/LEG/SER.C/10), p. 81, and the report of the Legal Committee on the work of its sixteenth session (IMCO document LEG/XVI/7).

63/ Belgium, Denmark, France, the Federal Republic of Germany, Iceland, the Netherlands, Norway, Sweden and the United Kingdom.

64/ Article 2 of the Convention states that: "This Convention shall apply exclusively to pollution damage:

(a) Resulting from an incident which occurred beyond the coastal low-water line at an installation under the jurisdiction of a Controlling State, and

(b) Suffered in the territory, including the internal waters and territorial sea, of a State Party or in the areas in which, in accordance with international law, it has sovereign rights over natural resources."

In connexion with the 1976 Convention see Dubais (B.A.), "The 1976 London Convention on Civil Liability for Pollution Damage from Offshore Operations", (JMLC, Vol. 9, No. 1, October 1977, pp.61-65).

65/ Article III, para. 1.

of the operator is established therein for any damage caused by oil which has escaped or been discharged from the installation. However, it should be noted that the spectrum of reasons for exoneration provided in the 1976 Convention 66/ is narrower than that of the 1969 Convention and more closely resembles the cases for exoneration envisaged in nuclear law.

The movement towards crystallization of objective liability and its extension to cover the different types of pollution has also made its mark on the work of the various sessions of the Third United Nations Conference on the Law of the Sea.

(b) Instances of recognition of the emergent principle of objective responsibility in the international law of the sea

32. As we have seen, somewhat briefly, in the preceding discussion since 1969 the International Law Commission (ILC) has been entrusted with the study of questions relating to the international responsibility of the State for wrongful acts. 67/ In 1978, however, it began to study the problem of responsibility for perfectly lawful acts 68/ whose consequences prove injurious. It instructed Mr. Robert Q. Quentin Baxter of New Zealand, to prepare a report on the subject. It should be noted that, as things stand, ILC does not seem to have gone beyond this stage. It may, nevertheless, be assumed that the study which will be undertaken on responsibility arising out of internationally lawful acts will necessarily encompass liability for damage caused by a variety of activities, such as activities in relation to outer space, the use of nuclear energy for non-military purposes, and activities arising out of the pollution of sea water. Consequently, ILC will certainly find it necessary to consider the question whether liability incurred under certain of these activities should not, at least in certain cases, be absolute and strict, in other words, objective.

33. Such an initiative, in the area of liability for damage to the environment is logically in keeping with the activity set in motion since the Stockholm Declaration on the Human Environment (1972) 69/ and in particular

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66/ Article III, paras. 3, 4 and 5.

67/ See para. 9 above.

68/ The work of ILC in the field of codification of international responsibility and the discussions in the Sixth Committee of the United Nations General Assembly, show the development of an awareness of the need to study the so-called responsibility for risk arising out of the performance of certain lawful activities which could cause much more extensive and serious damage than that arising out of unlawful acts. (See Official Records of the United Nations General Assembly, twenty-fourth session, 1969, Sixth Committee, pp. 14, 19, 36, 40, 46). See also above, paragraph 9, footnote 20.

69/ On the Stockholm Conference on the Human Environment (5 to 16 June 1972) organized by the United Nations, see Dupuy (P.M.), "La responsabilité des etats pour les dommages d'origine technologique et industrielle" (Pedone, Paris, 1976, pp. 172-176); Kiss (Ch. A.) and Sicault (J.D.), "La conférence de l'ONU sur l'environnement" (AFDI, 1972, p. 101 et seq., and OECD document C.76/54 of 13 April 1976).

Principles 21 and 22 70/ there of relating to the necessary and urgent adaptation of the law to cover compensation for environmental damage.

34. The Third United Nations Conference on the Law of the Sea echoed this movement to establish a system of objective liability in the event of marine pollution. 71/

To make it easier for public and private victims to obtain compensation, to spare them the burden of producing evidence of criminal negligence on the part of the polluter (essential for claiming liability under the traditional system), and to find a solution to the problem of solvency of the polluter, drafts have been introduced at the various sessions of UNCLOS relating to the determination of objective liability for damage caused by marine pollution. For example, two joint draft amendments relating to articles 236 and 264 respectively of the Informal Composite Negotiating Text were submitted to the Third Committee of the Conference (Seventh session, Geneva, March, May 1978). 72/ The purpose of these

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70/ Principle 21 imposes an absolute legal obligation not to cause damage by pollution and the duty to make amends and indemnify, while Principle 22 invites States to "co-operate to develop further the international law regarding liability and compensation for the victims of pollution and other environmental damage". These principles are also referred to in United Nations General Assembly resolutions 2996 (XXVII) of 15 December 1972 and 3129 (XXVIII) of 13 December 1973; the Charter of Economic Rights and Duties of States adopted on 12 December 1974 (article 30); and document UNEP/GC/74 of 9 February 1974.

71/ The United Nations has given special attention to the problem of determination of liability. General Assembly resolution 2749 (XXV) of 17 December 1970 on Principles Governing the Sea-bed and the Ocean Floor, and the Sub-soil Thereof, Beyond the Limits of their National Jurisdiction already takes account of these two problems of responsibility for activities in the international area of the sea-bed (article 15). Similarly, the list of subjects drawn up in 1972 by the Sea-Bed Committee for the United Nations Conference on the Law of the Sea includes as item 20: "Responsibility and liability for damage resulting from the use of the marine environment." The general importance of these questions is further emphasized by the decision taken at the Conference at the opening of the Caracas session in 1974 to include item 20 among the "items to be dealt with in each Main Committee in so far as they are relevant to their mandate". The question of liability arising out of pollution damage also appears in the various informal texts (article 44, chapter VIII, A/CONF.62/WP. Rev.1 revising article 41 A/CONF/62/WP.8, Part III, revised in turn by A/CONF/62/WP.10 and Add.1 dated 15 July 1977).

A number of drafts were submitted by States to the Sea-Bed Committee concerning the establishment of objective responsibility in matters of marine pollution (A/AC.138/SCIII, L.27, L.28, L.32, L.40, L.33, L.41, L.43, L.46).

72/ Documents MP/18 and SR/1 respectively of 2 May 1978, originally submitted by Morocco at the fourth and fifth sessions of the Conference. The drafts submitted by the Moroccan delegation gained a fairly wide hearing in the Conference, and were taken up by the meeting of Arab League experts on the law of the sea (Tunis 1976). See the annexed texts of the drafts.

two drafts is firstly, to establish objective and automatic liability guaranteeing ipso facto compensation for or repair of any damage to the marine environment, or to property or persons therein; and secondly, to set up an international guarantee fund which would make up both for the ineffectiveness of the traditional type of appeal to the courts and the narrow spher of application of contemporary international legislation governing the making good of damage due to marine pollution, 73/ and for the limited extent to which conventional insurers are willing to underwrite incidents exceeding a certain threshold.

It is expected that these proposals which are the outcome of lengthy negotiations, and offer reasonable compromises, will receive special attention in the course of the March 1979 session, particularly since they already enjoy fairly broad support among the representatives and therefore indicate some possibility of arriving at a consensus in this matter. 74/

35. The general philosophy by which States should be guided in this field is the obligation to prevent large-scale pollution at sea, the corollary of which is the obligation to make good any damage. This spirit must, in principle, prevail during the discussions which will take place, at all levels, on the problem of the liability arising out of damage to the environment. Such a principle must unquestionably have the force of a peremptory rule, acknowledged by all, in the interests of mankind as a whole (in other words, a rule of jus cogens). The establishment, the general application of the concept of objective liability is now a necessity, if the common heritage of mankind - the sea - is to be preserved. This is particularly urgent in the case of the Mediterranean, which is a half closed and half dead sea. A legal system of special liability (objective liability) must be envisaged for a special case such as the Mediterranean. 75/ Similarly, the possibility of creating arbitration organs which would at all times act rapidly and expeditiously, as experience shows, should be considered. Nevertheless, any initiative in that direction will be genuinely operational only if accompanied by appropriate machinery for repairing the damage appropriate to the Mediterranean ecoregion, in other words, the establishment of a typically regional guarantee fund which meets the requirements of a genuine categorial solidarity.

73/ For the problems created by the making good of damage, see the second part of this study.

74/ See reports of the committees and negotiating groups on negotiations at the seventh session, Geneva, 19 May 1978, pages 95 and 96. See also, concerning the responsibility of States and that of private individuals, Treves (Tullio), "Les tendances récentes de droit conventionnel de la responsabilité et le nouveau droit de la mer" (AFDI, 1975, p. 767), and "Responsabilité des Etats et responsabilité des particuliers dans le nouveau droit de la mer", Revue Iranienne des relations internationales.

75/ The experts are unanimous as to the particular vulnerability of "mare nostrum" in the event of pollution. The wreck of a supertanker such as the Amoco Cadiz in the Mediterranean would render that sea unfit for human and animal life for more than a century, and there is now considerable tanker traffic, which has been facilitated by the reopening of the Suez Canal.

PART II. ESTABLISHMENT OF A SPECIAL SYSTEM OF COMPENSATION FOR DAMAGE IN THE MEDITERRANEAN - THE INTER-STATE GUARANTEE FUND

The occurrence, followed by the proliferation, of cases of damage due to pollution of the marine environment has given rise to a torrent of theoretical writings and to a whole series of regional and international conventions, all designed initially to lay stress on the prevention of pollution and the establishment of international standards of conduct parallel with technological progress.

Awareness of the problem in this context has been heightened by the vast amount of damage of all kinds affecting the marine environment and persons in or near it. Thus the discharge of chemicals has caused the extermination of biological resources and has destroyed the reproductive possibilities of marine fauna, while wrecks of oil tankers, following on the great increase in shipping, have released large quantities of oil which have not only wiped out stocks of fish but have also led to economic losses almost impossible to estimate, for the coastal populations whose livelihood depends on the sea or tourism. In a word, new risks are created by the exploitation of the mineral resources of the sea. The economic necessity for this is not in question, but the consequences may be damaging for the marine environment. 76/

The economic security of the coastal State is thus clearly in danger. That is why, since the Torrey Canyon catastrophe in 1967, there has been a veritable wind of change, going beyond the preventive measures for the protection of the marine environment, aimed above all at making good the damage arising out of the alarming deterioration of that environment.

A similar change has been evident in connexion with the underlying legal principles relating to the redress of damage. Regard for the concept of equity and social justice has prevailed over the traditional, slow-moving procedure for making good the damage resulting from pollution based on the principle of liability for fault. Thus, to enable equitable and rational redress to be made to the victims, legislatures have sometimes been obliged to replace the traditional principle by that of objective responsibility. With that in mind, writers on the subject have been unanimous in the view that the law stipulating that damage must be made good should be distinct from the rules of general international law, which are usually restrictive in matters of redress. 77/

The process which started at the level of municipal law has gradually spread to the international treaty law. In view of the diversity of the sources of pollution, it became plain to the international community that redress took precedence over the complex ritual of determining fault. The extent of damage started to create a right to redress. This right can only come into force effectively if there are funds readily available. In other words, it is not sufficient to lay down a right to compensation; it is also necessary to set up workable systems of redress, bearing in mind one essential consideration: equity.

76/ See "La réparation du dommage en cas de pollution résultant de l'exploration et de l'exploitation des hydrocarbures en mer" by Bernard Dubais (in Pétrole et la mer, collection travaux et recherches de l'Institut du droit de paix et de développement, University of Nice).

77/ OECD document C/76/54, p.7 of the French text.

It may happen that the person responsible for pollution is insolvent, or even, in rare cases, where he is insured, that the amount of damage caused exceeds the compensation which can be paid by the insurer etc. All this argues in favour of the establishment of collective financial machinery to deal with redress for damage caused.

Pollution damage is of a collective nature: since the risk of pollution is a widespread risk; since the environment is public property; since those causing pollution are often jointly responsible for the damage, in other words interdependent, and since the victims are often numerous, everything argues in favour of collective machinery as regards both organization and finance. 78/

Similarly, in principle there is no redress for the discharge of noxious products on the high seas, which eludes State action. This is a serious omission, as such discharges often take place in areas of sea under the national jurisdiction of the coastal State. What then is the position as to redress for victims in what are essentially international waters?

The establishment of a kind of mutual insurance society with financial contributions from all categories of polluters would guarantee the payment of compensation based on sharing of the risk. It has the great advantage of safeguarding the interests of the victims in the event of insolvency or of failure to identify the polluter, as in the case of pollution from land-based sources.

A disaster like that of the Amoco-Cadiz occurring in the Mediterranean would have even more tragic consequences. The need for collective machinery to indemnify the victims is essential, since there is no doubt that the existing system 79/ is inadequate, particularly because of the recognized compensation ceilings, but also because it only covers oil pollution.

The object of Part II of this study is firstly to analyse the peculiar nature of the Mediterranean case in relation to existing arrangements, and secondly to attempt to set forth the different possible formulas for a guarantee fund for the Mediterranean, and to examine what might be the main components of the different proposed systems of redress for damage by pollution and what the new machinery to operate that fund might be.

In the first place, it seemed highly desirable to throw a little light on the different systems existing at the national and international level, since this forward-looking, analytical exercise enabled us to draw up a series of guidelines for devising possible formulas for the compensation fund calculated to cope with the specific nature of the various sources of pollution in the Mediterranean, bearing in mind that international insurance against pollution risks does not make satisfactory provision for redress in relation to such risks.

78/ OECD document ENV/ECO/77/8, La réparation des dommages dûs à la pollution, p.23 of the French text (Environment Committee, Group of Economic Experts).

79/ The International Fund for Compensation for Oil Pollution Damage, 1971.

A. How the System of Compensation for Damage Caused by Marine Pollution Works at Present

The urge to seek protection in face of "the pollution risk" carried with it the peoples of different nations (national measures for making good damage caused by marine pollution) and spread to private international companies (private international initiative), and then to Governments meeting in specialist international organs in an attempt to promote the gradual development of international law on redress for damage caused (in particular, the Brussels Conventions of 1969 and 1971). In the case of the Mediterranean basin, the process of reflection and design is under way, and it would be desirable at the next meeting of States parties to the Barcelona Convention in February 1979, to set up a committee of experts to carry out a thorough study of these two questions, which are vital for the future of this special zone.

(1) Experiments at National Level

The need to establish operational machinery to provide redress for damage due to pollution has led certain States to make provision in their national legislation for setting up a compensation fund. The scope of such machinery is very vast 80/, since it extends to many separate fields (aircraft noise, nuclear damage, damage due to atmospheric pollution, etc.) We shall therefore merely cite a few striking examples which are particularly relevant to compensation for damage caused by marine pollution.

The paramount idea which has prompted the legislatures in the countries in question to set up compensation funds is the establishment of a quasi-automatic right to redress through the operation of these funds, which are financed by charges levied on potential polluters. After indemnifying the victim, the fund institutes legal proceedings against the person or body responsible for pollution.

The advantage of such a system of collective responsibility borne by those likely to be responsible for pollution damage is that it brings to an end the "confrontation" between the party suffering the damage, which may be economic, and the party legally responsible, which in the last analysis can only be a professional group (for example, an oil carrier or those exploiting the mineral resources of the sea in the case of offshore exploration and exploitation).

The literature on these problems which we have been able to consult refers systematically to the following examples as constituting very interesting precedents in this field.

80/ Examples are the Dutch Air Pollution Fund; the Japanese law on compensation for physical injury due to pollution; and the French system of compensation for air traffic noise (a solution to the conflict of interests between an airport and people living close by).

(a) Canadian Maritime Pollution Claims Fund 81/

Provision is made for the Fund in the Canadian Shipping Act, which contains a special chapter devoted to water pollution, chiefly by oil. Paragraph 734 of this chapter lays down the principle of objective liability for pollution.

The Fund operates to provide redress for damage due to the discharge of oil when the polluters cannot be identified. It is financed by a tax of 15 cents per ton of oil carried.

(b) Fund for the Protection of the Coast of the State of Maine, United States of America 82/

This Fund has two purposes:

To provide compensation for damage resulting from oil pollution, irrespective of the identity of the polluter. The only condition to be met is to produce tangible proof of the damage suffered as a result of oil discharge.

To promote research and prevention schemes by acquiring efficient equipment for combating pollution.

The Fund is sustained by a tax (0.5 cents per barrel) on oil carried. A permanent revolving fund of $4 million has been set up with the help of these charges.

(c) The Scandinavian countries

Finland has set up an oil pollution protection fund to provide a remedy for the problem of finding a causal link between the damage and the polluter.

In Norway there is a fund to provide compensation for fishing boats and their gear (nets) damaged by materials and waste dumped in the sea. The State institutes proceedings against those responsible.

Since the Torrey Canyon disaster, oil companies have become acutely aware of the foreseeable consequences of the intensive use of the sea by their giant tankers, and for that reason they have taken praiseworthy initiatives.

(2) Private international initiative

(a) Financing systems established by the oil industry

The oil companies, recognizing their responsibility with regard to the marine environment and the economic interests involved, have promoted two complementary systems of financing:

81/ Canadian Maritime Pollution Claims Fund (Canadian Shipping Act): see Thiem (V.): Fonds d'indemnisation des dommages causés à l'environnement (OECD Transfrontier Pollution Group, Working Paper No. 6, 25 October 1977).

82/ At the Federal level the United States Congress had before it in 1975 a bill emanating from the United States President headed: "Comprehensive oil pollution liability and compensation", under which provision was made for a $200 million fund sustained by a tax on oil.

The TOVALOP plan 83/ established by tanker owners, who have created a fund for compensation in the event of "black seas", the capital being supplied as follows: $100 per ton of the ship's tonnage, subject to a maximum of $10 million. The TOVALOP plan covers more than 99 per cent of the gross tonnage of tankers in the free world.

According to its original text, the concern of the TOVALOP plan is mainly to provide indemnity for the cost incurred in cleaning up the coastline following a disaster or accidental pollution, and not for damage suffered by private persons. 84/ Those in charge of this body told us that in actual fact TOVALOP only very rarely pays compensation, but plays the part of adviser to States which so request in the event of a catastrophe or other event. To this end it organizes, in collaboration with those who apply to it, an active anti-pollution campaign by mobilizing its experts and large-scale resources (dispersing agents, specially equipped vessels, helicopters, etc.) for which the applicant States often assume responsibility.

The CRISTAL plan 85/, set up by the giant oil companies, known throughout the world, which have a great deal of shipping. It is a fund, made up of contributions from these giant companies enabling compensation to be paid direct to the victims of pollution subject to a ceiling of $30 million. The interplay between the Cristal plan and the Tovalop plan as regards redress for damage is identical with that between the 1969 and 1971 Conventions.

The Cristal plan was created almost simultaneously with the 1971 Fund, which prescribes the same ceiling for indemnification in respect of the same source of pollution.

Does this mean that these indemnification mechanisms duplicate each other? This question will be considered further on.

(b) Incidents caused by offshore oil-drilling operations (OPOL) 86/

The oil industry has taken an initiative aiming at offsetting the damage caused by offshore oil drilling. The oil companies have established in London the OPOL group, which brings together the operators of offshore installations able to provide financial guarantees. The maximum amount of compensation payable is $25 million.

(c) Oil Insurance Limited 87/

This is a mutual insurance society set up by international companies, chiefly American, its aim being to provide compensation for damage due to operations other than those of transport by sea (damage to property of all kinds), caused to third parties as a result of marine pollution (except by ships).

83/ "Tanker Owners Voluntary Agreement Concerning Liability for Oil Pollution" (6 October 1969).

84/ The ceiling for indemnification has been raised to $16.8 million.

85/ Contract Regarding an Interim Supplement to Tanker Liability for Oil Pollution (1 April 1971). See article by Alden Lowell Doud entitled: "Compensation for Oil Pollution Damage: Further comment on the civil liability and compensation fund conventions" (International Journal of Maritime Law and Commerce, Vol. 4, No. 4, pp.541-542).

86/ "Offshore Pollution Liability" (1 April 1974).

87/ See Roy D. Jadson, President of Oil Insurance Limited, in "Oil Energy Crisis Role".

The amount of the guarantee is $75 million per incident per annum, which exceeds what could be paid by the traditional insurance market.

(d) The "Protection and Indemnity" Clubs

These clubs are simply mutual insurance societies set up by shipowners, whether States, private persons or companies. They cover special types of damage suffered by crews, passengers on board, victims of collisions at sea, dockers, medical expenses incurred, etc. The threshold at which responsibility for damage is assumed is $50 million.

It may be mentioned that the P and I clubs were involved in the Torrey Canyon affair 88/.

(3) International Insurance against the Risk of Pollution 89/

The international insurance market does not willingly provide cover for pollution risks, which are likely to be considerable after spectacular accidents, and the very high financial implications only reinforce the lack of eagerness, not to say the reluctance, of insurers to cover them. Their apprehensions in regard to this risk are due in particular to:

The national and international trend towards recognition of the principle of objective responsibility;

The variety and extent of the damage liable to be charged to the polluter.

They are willing to cover such a risk only if it meets the following criteria:

That pollution standards are observed by the insured person;

That the cause of damage is sudden;

That the nature of the circumstances giving rise to pollution is fortuitous.

These highly restrictive conditions explain why insurance does not cover damage due to pollution, but only that for which the liability of the insured person is proven (application of civil liability). But it must be pointed out that the rules regarding civil liability are inadequate to redress collective damage, as damage caused by pollution frequently is.

Furthermore, industry is hardly insured at all against the risk of pollution, which is excluded from general policies giving third-party cover in respect of accidents. It has to be explicitly mentioned in such policies in order to be covered.

88/ See official records of the International Legal Conference on Marine Pollution Damage, 1969, IMCO, London, 1975.

89/ OECD document No. 4: L'assurance du risque de la pollution, by Jean Bigot, Professor at the University of Paris-Sorbonne.

In this context, the introduction of compulsory insurance for industries causing pollution 90/ is vital, having regard to the potential dangers to which the victims of pollution damage are exposed.

The problem, however, still remains in the event of the occurrence of an uninsured incident. Only a guarantee fund can bear the brunt of damages not covered by insurance and, in general, make good the deficiencies in the existing machinery for making good damage.

(4) International Fund for Compensation for Oil Pollution Damage 91/ (1971 Convention)

The object of establishing the Fund is to set up a collective guarantee backed by all the operators in the oil industry taken together, thus replacing individual operators.

The signatories of the 1969 International Convention on Civil Liability for Oil Pollution Damage adopted a resolution at Brussels on the establishment of an International Fund for Compensation for Oil Pollution Damage. The result was the convening of the 1971 Conference setting up that Fund, but the necessary number of instruments of ratification for its entry into force was obtained only very recently 92/.

It may therefore be well to consider the following points:

The complementary nature of the 1969 and 1971 Conventions;

The nature of the two Funds provided for by the two Conventions;

The future of the 1971 Fund. Should it replace the private initiative taken so far by the world-wide oil companies?

Complementary nature of the two Conventions of 1969 and 1971

There is a close link 93/ between these two Conventions; they aim at complentarity in solving the whole series of problems resulting from oil pollution.

This link is evident at two levels:

Only parties to the 1969 Convention can accede to the 1971 Treaty setting up the Compensation Fund.

As regards the limit of liability and compensation for damage, the 1971 Fund comes into the picture at a second stage, the whole compensation scheme being organized as follows:

90/ For example petrochemicals, paper pulp, chemical fertilizers, etc.

91/ This Convention and that of Brussels were opened for signature by States under the auspices of IMCO.

92/ Algeria, France, Syria, Libya, Tunisia and Yugoslavia recently ratified the 1969 and 1971 Conventions, thus making up the number of signatures necessary to bring the Compensation Fund of 1971 into force on 16 October 1978.

93/ A.W. Hunter used the expression "sister Conventions" to emphasize this interaction between the two treaties. See his article, op.cit., p. 119.

Nature of the two compensation mechanisms established by the 1969 and 1971 Conventions

How the two Funds differ

The 1969 Convention on civil liability requires all ships of States parties carrying over 2,000 tons of oil in bulk to take out an insurance against pollution, the amount depending upon the tonnage of the ship (2,000 gold francs per ton of the ship's tonnage - i.e. $134, with an overall ceiling of 210,000 gold francs, or about $14 million 94/. Each ship must have a certificate issued by the State of registration certifying the existence of this guarantee, without which it cannot operate at sea.

The Fund is therefore based on a principle provided for in the 1969 Convention and has two distinct advantages:

To the shipowner, who is relieved of any liability with regard to the victims of pollution; 95/

To the victim, who is relieved of the necessity for taking proceedings, at times interminably, against the person responsible in order to obtain redress.

The 1971 Brussels Convention established an International Compensation Fund which took over from the fund set up under the 1969 Convention, by way of an additional guarantee given by the owners of the oil carried.

The aims of this International Fund are set out in article 2 of the Convention:

To provide compensation for pollution damage to the extent that the protection afforded by the Liability Convention is inadequate. 96/

To give relief to shipowners in respect of the additional financial burden imposed on them by the 1969 Convention, ($14 million instead of the $7 million under the 1957 Convention. This relief is subject to a number of conditions).

The maximum amount of compensation under the Fund is fixed at $30 million per incident. This ceiling may be reviewed by the Assembly of the Fund.

There are two types of financial contribution to the Fund 97/:

Initial contributions, designed to constitute basic capital for the Fund;

Annual contributions, which may be required to cover the payments to be made by the Fund following an incident.

Each State draws up a list of persons receiving substantial quantities (over 150,000 tons) of oil and thus liable to pay contributions to the Fund.

94/ This ceiling of $14 million is greater than that borne by shipowners within the framework of the International Convention relating to the Limitation of the Liability of Owners of Sea-going Ships, signed at Brussels in 1957, which had laid down a limit of $7 million.

95/ The 1969 Convention does not stipulate any liability for damage where the person responsible is insolvent or where the damage exceeds the amounts laid down in the Convention.

96/ Articles 3 and 4 of the Brussels Convention.

97/ Articles 10 and 11 of the 1971 Convention.

The fate of the 1971 International Fund

Since its establishment, the Fund has been a somewhat moribund institution since the number of instruments of ratification required for its entry into force has not been attained. In the meantime, the Tovalop plan and, more particularly, the Cristal plan have made up for the notorious shortcomings of the international machinery established under the auspices of IMCO. Although the Fund entered into force, legally speaking, on 10 October 1978 in practice it is in a transitional phase of "reactivation" in the hope that it will become genuinely operational in the years to come. To that end, a first regular session of the Assembly of the Fund was held at IMCO headquarters in London from 13 to 17 November 1978 with a substantial agenda. The conclusions of this meeting are interesting in more ways than one, for the following reasons:

Firstly, the maintenance of the Cristal plan side by side with the Compensation Fund could be questioned, because there would be duplication and overlapping of the objectives and component parts of each of the two systems: the contributors are the oil companies, oil carriers, and the maximum amount of compensation is the same ($30 million).

A measure of caution, indeed of circumspection is called for as regards the liquidation of the Cristal plan until such time as the Fund gives evidence of its real strength in regard to compensation for the victims of oil pollution.

However, since only the Western European States, Japan and a very small number of Mediterranean States have ratified the 1969 and 1971 Conventions, it is actually doubtful whether there is any duplication, at least so long as the 1971 Convention has not achieved the status of universality in regard to its field of application. This can be explained by the fact that oil cargoes passing through the sea areas adjacent to the coast of States that are not parties to the 1971 Convention cannot benefit from the compensation machinery established under the Convention if a disaster occurs. Yet they can benefit under the Cristal plan, which also has the advantage of obviating legal proceedings in connexion with compensation for damage, at least in minor cases of pollution of the marine environment.

Secondly, following the Amoco Cadiz affair, the French Government proposed to the IMCO Council that it consider the possibility of increasing the amount established in article 4, paragraph 4. It should also be noted that under paragraph 6 of that article, the Assembly is entitled to increase the aggregate amount of compensation payable by the Fund for a specific incident to 900 million francs.

This is a crucial decision, because the current amount of $35 million is quite inadequate. Disasters caused by pollution are very frequently extremely costly, and the sums involved are considerably in excess of that ceiling. This is precisely one of the main bases of our thinking and a vital concern with regard to the Mediterranean Sea.

B. Need For a Mediterranean Inter-State Guarantee Fund

The Mediterranean Sea, as has been emphasized earlier, is an ailing sea, recognized as a special area. The establishment of a fund covering all sources of pollution is particularly justified.

(1) A special geographical setting and an international economic situation in the throes of change.

In addition to the fact that the Mediterranean is a semi-closed sea, with all the inherent dangers that involves, the Strait of Gibraltar is situated at its

northern end. The Strait is a sea area particularly vulnerable to pollution because of its geographical contours and the very heavy shipping which passes through it.

The increasing number and types of ships 98/ (tankers, nuclear ships, submarines, etc.) which sail along the Mediterranean coasts close inshore or further out when entering or leaving this semi-closed sea constitutes a constant danger of pollution in a sea area which becomes narrower and narrower towards the Strait of Gibraltar. The reopening of the Suez Canal has obviously only increased the congestion at the other exit from the Mediterranean and created added dangers for the riparian States, as a result of technological development.

(2) The adoption of international agreements concerning the indemnification of victims of pollution stems from Principle 22 of the Stockholm Declaration. 99/ Under that important provision, States shall co-operate to develop further the international law regarding liability and compensation for the victims of pollution. Such a principle does not rule out national initiative in this field and certainly can in no way be interpreted as opposing a move to improve and extend the system of compensation for damage, thus taking account of regional constraints and realities.

In accordance with the very spirit of the 1971 Fund, it is vitally important for the coastal States of regions of the world that are particularly sensitive to pollution to promote a suitable regional framework of conventions. The Composite Text of the Third United Nations Conference on the Law of the Sea likewise refers to that possibility. 100/

These legal sources are important because some people might be tempted to claim that the existing international system should replace regional initiatives. Such a statement would be all the more erroneous in that this same system of compensation, as established by the 1971 Convention, is one-dimensional.

(3) The case for a multi-disciplinary fund covering all sources of marine pollution

As stated above, the existing system of redress for pollution damage lacks uniformity, is inadequate, and to make matters worse, only covers a very limited field.

The system of compensation under the 1971 International Fund suffers from the following shortcomings :

It only deals with the most common type of damage, that stemming from the carriage of oil, whereas there are even more disturbing kinds of damage (from the carriage of radioactive substances and dumping of atomic waste for example). Thus accidental pollution from a ship's fuel tanks does not qualify for compensation if the ship is not actually carrying oil at the time of the incident. This criterion is particularly significant in relation to the question of proof.

98/ About 500 ships pass per day (see UNCTAD, "Review of Maritime Transport 1975", TD/B/C.4/149.)

99/ Adopted in 1972 at the United Nations Conference on the Human Environment.

100/ See the Informal Composite Negotiating Text, article 236, para.3.

In spite of everything, the onus of proof rests with the claimant in case of damage. Article 4, paragraph 2(b) of the 1971 Convention on the Establishment of the Fund actually requires that the claimant must prove that the damage resulted from an incident involving one or more ships. This is a Draconian and costly measure, since the cost of proof falls on the claimant, and although it might be inequitable to turn the problem of liability round and require the accused ship to refute the charges levelled against it, it is equally unjust to expect a third party - the innocent victim of pollution - to prove that the source of pollution in the case is a ship or ships carrying oil.

It might be tempting to think that the stipulation in article 4, paragraph 2(b) is aimed at protecting both ship owners and the Fund as a means of obtaining compensation. However, we see that such an interpretation would be wrong if we look at the practical angles of the question. How can a distinction be drawn between oil from a ship and oil from oil companies with installations on the territory of a State (the whole problem raised by pollution from land-based services)?

In the case of damage resulting from offences such as the deliberate discharge of waste in the Mediterranean Sea in violation of the Barcelona Protocol on Dumping, the victims of such dumping may well be unknown, and the traditional liability procedures are not valid in such cases. Nor does the 1971 Fund pay compensation for pollution from this source.

The 1971 Convention establishing the Fund makes provision for a number of exonerations from the obligation to pay compensation to the victim of pollution, 101/ and the shipowner. 102/ Some of these are cases of negligence or deliberate pollution by unidentified polluters, which can preclude any form of compensation for the damage caused. However, in the case of the Mediterranean Sea, such loopholes are incompatible with the spirit of regional solidarity that inspired the States signatories of the legal instruments which emerged from the 1976 Barcelona Conference.

The ceiling for compensation is decidedly inadequate, and this renders the various operational and compensatory procedures of the Fund anachronistic.

In the last 10 years, oil tankers have become even more gigantic, the price of oil has rocketed, and the dollar has depreciated considerably. The combination of these factors calls into question the entire system of the Fund.

The Mediterranean coastal States have not all signed the 1969 and 1971 Conventions, and they are the victims of their geographical location on oil transport routes which expose them to every conceivable source of pollution; thus it is essential to promote a system of compensation for damage which covers the adverse consequences of all the varied and destructive uses of the Mediterranean Sea.

101/ Article 4, para.2(a), (b) and para.3.

102/ Article 5, para.3(a) and (b).

(4) The various possible approaches

At this stage of thinking, the best that can be done is to outline the approaches calculated to improve the current system of compensation for damages, which is both unsatisfactory and inadequate to deal with the disturbing findings reported on the Mediterranean basin.

(a) A preparatory conference

One hard fact should be noted: 13 States cannot pretend to control traffic in the Mediterranean Sea. Obviously, as riparian States they can be polluters, since they use the Mediterranean for various purposes (navigation of their shipping, dumping, exploration and exploitation of their continental shelf, discharges from their territory), but they are obviously not the only ones to do this. If we attempt to arrange the problems in order, we find that the field of investigation has to be widened and a mandatory joint plan with other users, at any rate the most frequent users, has to be devised.

Thus, with regard to the problem of damage resulting from the carriage of oil, it might be useful to convene an international conference to be attended by:

The riparian States of the Mediterranean Sea;

The oil-producing States;

Operators in the Mediterranean Sea, i.e. essentially the multinational companies. 103/

The economic security of the riparian States inevitably depends upon financial contributions from these other users. A dialogue among the various operators in the Mediterranean basin would have the tremendous advantage of arousing greater awareness and a real concern about the oil problem.

In addition to such a fruitful exchange of views, it might be possible to revise the current system of compensation for oil pollution and to remedy its shortcomings by adapting it to the special context of the Mediterranean Sea. Improvement of the current system could enhance its universality and encourage accession by all the Mediterranean coastal States.

The same approach might be advisable in regard to damage resulting from land-based and other sources of pollution. It is a well-known fact that pollution from rivers involves the intervention of other States which do not border on the Mediterranean. Financial solidarity could be established following frank discussion of the various arguments relating to this problem.

Regulation of the problem on a regional scale by means of an international conference could set in motion a process culminating in an international convention in the proper sense of the term.

103/ The whole complex problem of ships registered under flags of convenience must be borne in mind. This is an aspect of the problem which could be studied by the committee of experts of the riparian States of the Mediterranean.

A two-fold system

The question arises whether, as far as the Mediterranean Sea is concerned, it would be wiser to opt for a multi-dimensional fund covering all types of pollution or for two or three funds each covering specific categories of pollution. 104/

Whatever the approach adopted, all funds should be replenished by means of levies on all potential polluters. The Fund would compensate victims and, because of the international legal status accorded to it, it would institute proceedings against the polluter or polluters. These procedures would be justified by the fact that the Fund would intervene as the representative of the whole body of persons affected by the disaster, to pay for the physical or other damage without waiting, perhaps in vain, for a solution to the problem of liability.

A fund covering all sources of pollution is difficult to establish in practice, since polluters vary and are sometimes unidentifiable. Hence a dual system would appear to be more realistic.

A Mediterranean Regional Guarantee Fund Providing Compensation for Damage Resulting from Oil Pollution

(1) Participating States

The list of participants in this Fund should be extended to include:

Oil producing States;

Oil refining States;

States whose shipping passes through the Mediterranean Sea. Egypt could provide statistics on the volume of oil products transported through the Mediterranean from States other than riparian States.

(2) Criteria for financial contributions

At the current stage of our thinking, it is only possible to suggest parameters which call for analysis in depth. Three types of taxation could be envisaged, the amounts to be determined at a later date:

Taxes payable at source in the case of the riparian States of the Mediterranean Sea, in order to avoid double taxation. At the exit from the Suez Canal, all products would be taxed and a certificate of payment of the tax issued.

104/ On page 139 of his article referred to above, A.W. Hunter expresses the view that the shortcomings of the 1969 and 1971 Conventions are so serious that these instruments are no longer likely to be ratified in the short term. The immediate effect of ratification of these two Conventions would be to shelve these problems for the future. He also argues that the best solution would be to work towards a better organized and more extensive international system of compensation for damage which would cover damage from all sources of pollution.

Taxes payable on transit through the Suez Canal for States from outside the Mediterranean area. Producing countries would be taxed only on cargoes passing through the Suez Canal. The Canal authorities must know the destination of oil passing through the Suez Canal. To that end, it should be pointed out that the role which Egypt could play here is fundamental.

Taxes payable on refining or on utilization in ports in the case of oil exploiting countries from outside the Mediterranean area.

(3) Maximum ceiling for compensation

The current ceiling of $30 million provided in the 1971 Convention establishing the Fund is clearly inadequate, for the reasons referred to above. We therefore suggest that the ceiling should be fixed at a reasonable amount to cover disasters such as that of the Amoco Cadiz, and subject to review in the light of the development of international economic structures.

(4) Basis of the Guarantee Fund: objective responsibility

The existence of a cargo necessarily implies objective responsibility, because there is an inherent risk involved in the carriage of oil. This creates liability for a created risk, and this is in line with the evolution of international law in this field.

(5) A Mediterranean Guarantee Fund to provide compensation for pollution from other sources?

This No. 2 Fund approach would actually provide for compensation to cover damage due to three main sources of pollution:

Pollution from land-based sources: the most serious and most complex danger. Everything carried down by the river Rhone, for example, affects other countries bordering on it, as it flows into the Mediterranean.

Pollution resulting from dumping, e.g. ships carrying chemicals which cause discharges.

Pollution resulting from exploration and exploitation by countries with a Mediterranean coastline. At this particular level, there might be two alternatives:

Establishment of a separate mutual insurance society among the riparian States, with the following additional machinery: the contract for the concession would only be granted on condition that the parent company acted as guarantor for the operating company. Similarly, the State granting the concession would have to accept responsibility in the event of an incident, since it has an interest in selling the oil extracted from the sea. In practice, there would have to be machinery for establishing liability and financial contributions involving the riparian State and the contracting company.

Extension of the OPOL agreement to the Mediterranean 105/ and rounding off of the 1976 Convention 106/ in regard to indemnification, particularly since certain riparian States such as Libya, Tunisia and Spain have already begun the exploitation of their continental shelf, with all the potential risks which off-shore operations might create. These two alternatives merit closer analysis.

105/ Thus in his report submitted to the Meeting of Experts on the Legal Aspects of Pollution Resulting from Exploration and Exploitation of the Continental Shelf, the Seabed and its Subsoil in the Mediterranean Sea area, Rome 11-15 December 1978, Mr. James McLouchlin proposed that if the OPOL Agreement were extended to the Mediterranean it would be desirable for the participating States and their nationals if the users were themselves to become parties to the OPOL Agreement (See the IJO-UNEP report of the meeting - basic document No. 4, page 56).

Similarly, in his study included in document No. 3, page 76, Treves discusses the idea of setting up a guarantee fund for the Mediterranean, in relation to OPOL and the possibility of harmonization. He says that the similarity between the two funds might be particularly important if those contributing to the fund set up under an international convention were the same private companies that also contributed to private funds.

At this Rome meeting, the observers for the International Chamber of Commerce submitted to the experts attending the meeting a written statement drawing attention to the OPOL Agreement as offering worthwhile advantages in respect of matters of liability and compensation for damage. Their recommendation reads as follows: "The parties to the OPOL Agreement might be asked to arrange for the OPOL Agreement to be extended to the Mediterranean. Each Mediterranean State could then make the granting of a licence to explore and exploit the continental shelf under its national jurisdiction subject to the condition that the company receiving the concession for exploitation should become a party to the OPOL Agreement."

It should be stressed that it remains to be seen whether this extension of the scope of the OPOL Agreement to the Mediterranean Sea is compatible with the Mediterranean context, and also whether the ceiling for indemnification of $US 25 million per incident is viable and meets the specific conditions of that sea.

106/ Convention on Civil Liability for Oil Pollution Damage from Offshore Operations (Intergovernmental Conference, London 20-31 October and 13-17 December 1976).

Under this Convention, the operator of an offshore rig limits his liability, in the event of damage, by constituting a fund with the court or other competent authority of any one of the States parties in which action is brought.

See in this connexion:

Article by Bernard A. Dubais entitled "The 1976 London Convention on Civil Liability for Oil Pollution Damage from Offshore Operations", in the Journal of Maritime Law and Commerce (Vol.9, No.1, October 1977, p.61).

Peter Archer (U.K.), C.A. Fleisher (Norway), two articles (two views of the Conference), in "Environment Policy and Law" 1976.

Fleischer (C.A.), Offshore Pollution, Convention to limit liability, in "Environment Policy and Law" 1977.

Fleischer (C.A.): Liability for Oil Pollution Damage resulting from Offshore Operations Scandinavian Studies in Law, 1976, pp.105-143 (Concerning not the Convention as such, but the underlying ideas discussed at the 1975-1976 London Conference.)

The following problems arise in connexion with the first two sources of pollution:

Provision of capital for the Fund

The following criteria might be suggested:

A pro rata levy based on the GNP adjusted by the introduction of weighting factors to be determined (e.g., for industrialized States, the GNP index would be exceeded).

A discharge tax for ships throwing out waste. This would be inappropriate, since it would have the effect of legalizing the practice of discharging waste.

With regard to pollution from land-based sources, the contributors, namely the polluters, are very difficult to pin down, since the pollutant causing the damage spreads over a number of places. Since pollution from land-based sources involves problems of national sovereignty, what would be desirable is that each Mediterranean State should prepare legislation in that field which would be much stricter for coastal polluters. It might, for example, indirectly require such polluters to pay the cost of potential damage caused by their discharges through the operation of a kind of taxation, to be decided upon, which would be collected in advance.

Legal basis of the Fund: objective responsibility

This principle is once again necessary, since there is a risk created by the community as a whole when noxious products are thrown into the sea. There are 100 chemical factories spread along the Rhone. It is impossible to detect at Marseilles which chemicals have been discharged by any particular works along the banks of the Rhone, since the product reaching Marseilles would be new. The only solution is to abandon the causal link and to adopt the idea of presumption of collective liability.

CONCLUSION

Now that we have come to the end of the account of our thinking on the question with which this study is concerned, three observations must be made:

(i) The option involving two types of fund does not involve double financial contributions on the part of the States bordering on the Mediterranean, since the problem of oil is quite different from the rest.

(ii) The creation of the compensation fund at the Mediterranean level can scarcely be said to duplicate the 1971 Fund, since there is now an awareness of a Mediterranean entity as a veritable melting pot for a variety of sources of pollution making an adequate treaty framework essential. 107/ This framework can only be complementary in relation to the international conventions dealing with these problems. This leads to the third observation:

107/ See the fifth preambular paragraph of the Barcelona Convention which provides: "... existing Conventions ... do not entirely meet the special requirements of the Mediterranean Sea area."

(iii) There is need for an additional special protocol 108/ covering these very important questions of liability and compensation for damage due to marine pollution, which represent a link, a common denominator for the already existing protocols.

It has to be stressed that this special protocol by nature of its aims goes far beyond the framework of the Barcelona Convention. This protocol would involve the accession of States not bordering on the Mediterranean Sea, since they would be involved in supplying cash for the Fund, if not in its operation.

Article 23, paragraph 1 of the Barcelona Convention provides that "No one may become a Contracting Party to this Convention unless it becomes at the same time a Contracting Party to at least one of the protocols." Thus the wording of this paragraph would need to be reviewed if the special protocol on the questions that concern us here should be adopted one day.

In tackling the question of international responsibility in the event of pollution damage, which we have tried to elucidate in the light of traditional concepts and present-day innovation, and in suggesting possible new approaches for regional compensation machinery in line with Mediterranean needs, which we have tried to outline on the basis of fruitful contacts and analysis of the most recent data, we feel that we have given a rough sketch of potential overall schemes, but more particularly we feel we have provided food for thought to be submitted for appraisal and in-depth analysis to the Committee of Government Experts on the Mediterranean Sea which will be dealing with these questions.

108/ Article 15, paragraph 3 of the Barcelona Convention provides expressly for a diplomatic conference as the procedure for drawing up this additional protocol. That would be in line with the first approach indicated above.

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INTERNATIONAL CONVENTION RELATING TO INTERVENTION ON THE HIGH SEAS IN CASES OF OIL POLLUTION CASUALTIES.

Done at Brussels on 29 November 1969.

The States Parties to the present Convention,

CONSCIOUS of the need to protect the interests of their peoples against the grave consequences of a maritime casualty resulting in danger of oil pollution of sea and coastlines,

CONVINCED that under these circumstances measures of an exceptional character to protect such interests might be necessary on the high seas and that these measures do not affect the principle of freedom of the high seas,

HAVE AGREED as follows:

Article I

1. Parties to the present Convention may take such measures on the high seas as may be necessary to prevent, mitigate or eliminate grave and imminent danger to their coastline or related interests from pollution or threat of pollution of the sea by oil, following upon a maritime casualty or acts related to such a casualty, which may reasonably be expected to result in major harmful consequences.

2. However, no measures shall be taken under the present Convention against any warship or other ship owned or operated by a State and used, for the time being, only on govermnent non-commercial service.

Article II

For the purposes of the present Convention:

1. "Maritime casualty" means a collision of ships, stranding or other incident of navigation, or other occurrence on board a ship or external to it resulting in material damage or imminent threat of material damage to a ship or cargo;

2. "Ship" means:

   (a) any sea-going vessel of any type whatsoever, and

   (b) any floating craft, with the exception of an installation or device engaged in the exploration and exploitation of the resources of the seabed and the ocean floor and the subsoil thereof;

3. "Oil" means crude oil, fuel oil, diesel oil and lubricating oil;

4. "Related interests" means the interests of a coastal State directly affected or threatened by the maritime casualty, such as:

   (a) maritime coastal, port or estuarine activities, including fisheries activities, constituting an essential means of livelihood of the persons concerned;

   (b) tourist attractions of the area concerned;

   (c) the health of the coastal population and the well-being of the area concerned, including conservation of living marine resources and of wildlife;

5. "Organization" means the Inter-Governmental Maritime Consultative Organization.

Article III

When a coastal State is exercising the right to take measures in accordance with Article I, the following provisions shall apply:

(a) before taking any measures, a coastal State shall proceed to consultations with other States affected by the maritime casualty, particularly with the flag State or States;

(b) the coastal State shall notify without delay the proposed measures to any persons physical or corporate known to the coastal State, or made known to it during the consultations, to have interests which can reasonably be expected to be affected by those measures. The coastal State shall take into account any views they may submit:

(c) before any measure is taken, the coastal State may proceed to a consultation with independent experts, whose names shall be chosen from a list maintained by the Organization;

(d) in cases of extreme urgency requiring measures to be taken immediately, the coastal State may take measures rendered necessary by the urgency of the situation, without prior notification or consultation or without continuing consultations already begun;

(e) a coastal State shall, before taking such measures and during their course, use its best endeavours to avoid any risk to human life, and to afford persons in distress any assistance of which they may stand in need, and in appropriate cases to facilitate the repatriation of ships' crews, and to raise no obstacle thereto;

(f) measures which have been taken in application of Article I shall be notified without delay to the States and to the known physical or corporate persons concerned, as well as to the Secretary-General of the Organization.

Article IV

1. Under the supervision of the Organization, there shall be set up and maintained the list of experts contemplated by Article III of the present Convention, and the Organization shall make necessary and appropriate regulations in connexion therewith, including the determination of the required qualifications.

2. Nominations to the list may be made by Member States of the Organization and by Parties to this Convention. The experts shall be paid on the basis of services rendered by the States utilizing those services.

Article V

1 Measures taken by the coastal State in accordance with Article I shall be proportionate to the damage actual or threatened to it.

2. Such measures shall not go beyond what is reasonably necessary to achieve the end mentioned in Article I and shall cease as soon as that end has been achieved; they shall not unnecessarily interfere with the rights and interests of the flag State, third States and of any persons, physical or corporate, concerned.

3. In considering whether the measures are proportionate to the damage, account shall be taken of:

(a) the extent and probability of imminent damage if those measures are not taken; and

(b) the likelihood of those measures being effective; and

(c) the extent of the damage which may be caused by such measures.

Article VI

Any Party which has taken measures in contravention of the provisions of the present Convention causing damage to others, shall be obliged to pay compensation to the extent of the damage caused by measures which exceed those reasonably necessary to achieve the end mentioned in Article I.

Article VII

Except as specifically provided, nothing in the present Convention shall prejudice any otherwise applicable right, duty, privilege or immunity or deprive any of the Parties or any interested physical or corporate person of any remedy otherwise applicable.

Article VIII

1. Any controversy between the Parties as to whether measures taken under Article I were in contravention of the provisions of the present Convention, to whether compensation is obliged to be paid under Article VI, and to the amount of such compensation shall, if settlement by negotiation between the Parties involved or between the Party which took the measures and the physical or corporate claimants has not been possible, and if the Parties do not otherwise agree, be submitted upon request of any of the Parties concerned to conciliation or, if conciliation does not succeed, to arbitration, as set out in the Annex to the present Convention.

2. The Party which took the measures shall not be entitled to refuse a request for conciliation or arbitration under provisions of the preceding paragraph solely on the grounds that any remedies under municipal law in its own courts have not been exhausted.

Article IX

1. The present Convention shall remain open for signature until 31 December 1970 and shall thereafter remain open for accession.

2. States Members of the United Nations or any of the Specialized Agencies or of the International Atomic Energy Agency or Parties to the Statute of the International Court of Justice may become Parties to this Convention by:

(a) signature without reservation as to ratification, acceptance or approval;

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

(c) accession.

Article X

1. 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.

2. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to the present Convention with respect to all existing Parties or after the completion of all measures required for the entry into force of the amendment with respect to those Parties shall be deemed to apply to the Convention as modified by the amendment.

Article XI

1. The present Convention shall enter into force on the ninetieth day following the date on which Governments of fifteen States have either signed it without reservation as to ratification, acceptance or approval or have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General of the Organization.

2. For each State which subsequently ratifies, accepts, approves or accedes to it the present Convention shall come into force on the ninetieth day after deposit by such State of the appropriate instrument.

Article XII

1. The present Convention may be denounced by any Party at any time after the date on which the Convention comes into force for that State.

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

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

Article XIII

1. The United Nations where it is the administering authority for a territory, or any State Party to the present Convention responsible for the international relations of a territory, shall as soon as possible consult with the appropriate authorities of such territories or take such other measures as may be appropriate, in order to extend the present Convention to that territory and may at any time by notification in writing to the Secretary-General of the Organization declare that the present Convention shall extend to such territory.

2. The present Convention shall, from the date of receipt of the notification or from such other date as may be specified in the notification, extend to the territory named therein.

3. The United Nations, or any Party which has made a declaration under paragraph 1 of this Article may at any time after the date on which the Convention has been so extended to any territory declare by notification in writing to the Secretary-General of the Organization that the present Convention shall cease to extend to any such territory named in the notification.

4. The present Convention shall cease to extend to any territory mentioned in such notification one year, or such longer period as may be specified therein, after the date of receipt of the notification by the Secretary-General of the Organization.

Article XIV

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

2. The Organization shall convene a Conference of the States Parties to the present Convention for revising or amending the present Convention at the request of not less than one-third of the Parties.

Article XV

1. The present Convention 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 the Convention of:

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

(ii) the deposit of any instrument of denunciation of this Convention together with the date of the deposit;

(iii) the extension of the present Convention to any territory under paragraph 1 of Article XIII and of the termination of any such extension under the provisions of paragraph 4 of that Article stating in each case the date on which the present Convention has been or will cease to be so extended;

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

Article XVI

As soon as the present Convention comes 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 XVII

The present Convention is established in a single copy in the English and French languages, both texts being equally authentic. Official translations in the Russian and Spanish languages shall be prepared and deposited with the signed original.

IN WITNESS WHEREOF the undersigned being duly authorized by their respective Governments for that purpose have signed the present Convention.

DONE at Brussels this twenty-ninth day of November 1969.

ANNEX

CHAPTER I. CONCILIATION

Article 1

Provided the Parties concerned do not decide otherwise, the procedure for conciliation shall be in accordance with the rules set out in this Chapter.

Article 2

1. A Conciliation Commission shall be established upon the request of one Party addressed to another in application of Article VIII of the Convention.

2. The request for conciliation submitted by a Party shall consist of a statement of the case together with any supporting documents.

3. If a procedure has been initiated between two Parties, any other Party the nationals or property of which have been affected by the same measures, or which is a coastal State having taken similar measures, may join in the conciliation procedure by giving written notice to the Parties which have originally initiated the procedure unless either of the latter Parties object to such joinder.

Article 3

1. The Conciliation Commission shall be composed of three members: one nominated by the coastal State which took the measures, one nominated by the State the nationals or property of which have been affected by those measures and a third, who shall preside over the Commission and shall be nominated by agreement between the two original members.

2. The Conciliators shall be selected from a list previously drawn up in accordance with the procedure set out in Article 4 below.

3. If within a period of 60 days from the date of receipt of the request for conciliation, the Party to which such request is made has not given notice to the other Party to the controversy of the nomination of the Conciliator for whose selection it is responsible, or if, within a period of 30 days from the date of nomination of the second of the members of the Commission to be designated by the Parties, the first two Conciliators have not been able to designate by common agreement the Chairmen of the Commission, the Secretary-General of the Organization shall upon request of either Party and within a period of 30 days, proceed to the required nomination. The members of the Commission thus nominated shall be selected from the list prescribed in the preceding paragraph.

4. In no case shall the Chairman of the Commission be or have been a national of one of the original Parties to the procedure, whatever the method of his nomination.

Article 4

1. The list prescribed in Article 3 above shall consist of qualified persons designated by the Parties and shall be kept up to date by the Organization.

Each Party may designate for inclusion on the list four persons, who shall not necessarily be its nationals. The nominations shall be for periods of six years each and shall be renewable.

2. In the case of the decease or resignation of a person whose name appears on the list, the Party which nominated such person shall be permitted to nominate a replacement for the remainder of the term of office.

Article 5

1. Provided the Parties do not agree otherwise, the Conciliation Commission shall establish its own procedures, which shall in all cases permit a fair hearing. As regards examination, the Commission, unless it unanimously decides otherwise, shall conform with the provisions of Chapter III of The Hague Convention for the Peaceful Settlement of International Disputes of 18 October 1907.

2. The Parties shall be represented before the Conciliation Commission by agents whose duty shall be to act as intermediaries between the Parties and the Commission. Each of the Parties may seek also the assistance of advisers and experts nominated by it for this purpose and may request the hearing of all persons whose evidence the Party considers useful.

3. The Commission shall have the right to request explanations from agents, advisers and experts of the Parties as well as from any persons whom, with the consent of their Governments, it may deem useful to call.

Article 6

Provided the Parties do not agree otherwise, decisions of the Conciliation Commission shall be taken by a majority vote and the Commission shall not pronounce on the substance of the controversy unless all its members are present.

Article 7

The Parties shall facilitate the work of the Conciliation Commission and in particular, in accordance with their legislation, and using all means at their disposal:

(a) provide the Commission with the necessary documents and information;

(b) enable the Commission to enter their territory, to hear witnesses or experts, and to visit the scene.

Article 8

The task of the Conciliation Commission will be to clarify the matters under dispute, to assemble for this purpose all relevant information by means of examination or other means, and to endeavour to reconcile the Parties. After examining the case, the Commission shall communicate to the Parties a recommendation which appears to the Commission to be appropriate to the matter and shall fix a period of not more than 90 days within which the Parties are called upon to state whether or not they accept the recommendation.

Article 9

The recommendation shall be accompanied by a statement of reasons. If the recommendation does not represent in whole or in part the unanimous opinion of the Commission, any Conciliator shall be entitled to deliver a separate opinion.

Article 10

A conciliation shall be deemed unsuccessful if, 90 days after the Parties have been notified of the recommendation, either Party shall not have notified the other Party of its acceptance of the recommendation. Conciliation shall likewise be deemed unsuccessful if the Commission shall not have been established within the period prescribed in the third paragraph of Article 3 above, or provided the Parties have not agreed otherwise, if the Commission shall not have issued its recommendation within one year from the date on which the Chairman of the Commission was nominated.

Article 11

1. Each member of the Commission shall receive remuneration for his work, such remuneration to be fixed by agreement between the Parties which shall each contribute an equal proportion.

2. Contributions for miscellaneous expenditure incurred by the work of the Commission shall be apportioned in the same manner.

Article 12

The parties to the controversy may at any time during the conciliation procedure decide in agreement to have recourse to a different procedure for settlement of disputes.

CHAPTER II. ARBITRATION

Article 13

1. Arbitration procedure, unless the Parties decide otherwise, shall be in accordance with the rules set out in this Chapter.

2. Where conciliation is unsuccessful, a request for arbitration may only be made within a period of 180 days following the failure of conciliation.

Article 14

The Arbitration Tribunal shall consist of three members: one Arbitrator nominated by the coastal State which took the measures, one Arbitrator nominated by the State the nationals or property of which have been affected by those measures, and another Arbitrator who shall be nominated by agreement between the two first-named, and shall act as its Chairman.

Article 15

1. If, at the end of a period of 60 days from the nomination of the second Arbitrator, the Chairman of the Tribunal shall not have been nominated, the Secretary-General of the Organization upon request of either Party shall within a further period of 60 days proceed to such nomination, selecting from a list of qualified persons previously drawn up in accordance with the provisions of Article 4 above. This list shall be separate from the list of experts prescribed in Article IV of the Convention and from the list of Conciliators prescribed in Article 4 of the present Annex; the name of the same person may, however, appear both on the list of Conciliators and on the list of Arbitrators. A person who has acted as Conciliator in a dispute may not, however, be chosen to act as Arbitrator in the same matter.

2. If, within a period of 60 days from the date of the receipt of the request, one of the Parties shall not have nominated the member of the Tribunal for whose designation it is responsible, the other Party may directly inform the Secretary-General of the Organization who shall nominate the Chairman of the Tribunal within a period of 60 days, selecting him from the list prescribed in paragraph 1 of the present Article.

3. The Chairman of the Tribunal shall, upon nomination, request the Party which has not provided an Arbitrator, to do so in the same manner and under the same conditions. If the Party does not make the required nomination, the Chairman of the Tribunal shall request the Secretary-General of the Organization to make the nomination in the form and conditions prescribed in the preceding paragraph.

4. The Chairman of the Tribunal, if nominated under the provisions of the present Article, shall not be or have been a national of one of the Parties concerned, except with the consent of the other Party or Parties.

5. In the case of the decease or default of an Arbitrator for whose nomination one of the Parties is responsible, the said Party shall nominate a replacement within a period of 60 days from the date of decease or default. Should the said Party not make the nomination, the arbitration shall proceed under the remaining Arbitrators. In the case of decease or default of the Chairman of the Tribunal, a replacement shall be nominated in accordance with the provisions of Article 14 above, or in the absence of agreement between the members of the Tribunal within a period of 60 days of the decease or default, according to the provisions of the present Article.

Article 16

If a procedure has been initiated between two Parties, any other Party, the nationals or property of which have been affected by the same measures or which is a coastal State having taken similar measures, may join in the arbitration procedure by giving written notice to the Parties which have originally initiated the procedure unless either of the latter Parties object to such joinder.

Article 17

Any Arbitration Tribunal established under the provisions of the present Annex shall decide its own rules of procedure.

Article 18

1. Decisions of the Tribunal both as to its procedure and its place of meeting and as to any controversy laid before it, shall be taken by majority vote of its members; the absence or abstention of one of the members of the Tribunal for whose nomination the Parties were responsible shall not constitute an impediment to the Tribunal reaching a decision. In cases of equal voting, the Chairman shall cast the deciding vote.

2. The Parties shall facilitate the work of the Tribunal and in particular, in accordance with their legislation, and using all means at their disposal:

(a) provide the Tribunal with the necessary documents and information;

(b) enable the Tribunal to enter their territory, to hear witnesses or experts, and to visit the scene.

3. Absence or default of one Party shall not constitute an impediment to the procedure.

Article 19

1. The award of the Tribunal shall be accompanied by a statement of reasons. It shall be final and without appeal. The Parties shall immediately comply with the award.

2. Any controversy which may arise between the Parties as regards interpretation and execution of the award may be submitted by either Party for judgment to the Tribunal which made the award, or, if it is not available, to another Tribunal constituted for this purpose in the same manner as the original Tribunal.

Annex II

INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR OIL POLLUTION DAMAGE

Done at Brussels on 29 November 1969.

The States Parties to the present Convention,

CONSCIOUS of the dangers of pollution posed by the worldwide maritime carriage of oil in bulk,

CONVINCED of the need to ensure that adequate compensation is available to persons who suffer damage caused by pollution resulting from the escape or discharge of oil from ships,

DESIRING to adopt uniform international rules and procedures for determining questions of liability and providing adequate compensation in such cases,

HAVE AGREED as follows:

Article I

For the purposes of this Convention:

1. "Ship" means any sea-going vessel and any seaborne craft of any type whatsoever, actually carrying oil in bulk as cargo.

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 oil such as crude oil, fuel oil, heavy diesel oil, lubricating oil and whale oil, whether carried on board a ship as cargo or in the bunkers of such a ship.

6. "Pollution damage" means loss or damage caused outside the ship carrying oil by contamination resulting from the escape or discharge of oil from the ship, wherever such escape or discharge may occur, and includes 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.

9. "Organization" means the Inter-Governmental Maritime Consultative Organization.

Article II

This Convention shall apply exclusively to pollution damage caused on the territory including the territorial sea of a Contracting State and to preventive measures 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 oil which has escaped or been discharged from 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 shall be made against the owner otherwise than in accordance with this Convention. No claim for pollution damage under this Convention or otherwise may be made against the servants or agents of the owner.

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

Article IV

When oil has escaped or has been discharged from two or more ships, 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 of 2,000 francs for each ton of the ship's tonnage. However, this aggregate amount shall not in any event exceed 210 million francs.

2. If the incident occurred as a result of the actual fault or privity of the owner, he shall not be entitled to avail himself of the limitation provided in paragraph 1 of this Article.

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. 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 another 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. The franc mentioned in this Article shall be a unit consisting of sixty-five and a half milligrams of gold of millesimal fineness nine hundred. The amount mentioned in paragraph 1 of this Article shall be converted into the national currency of the State in which the fund is being constituted on the basis of the official value of that currency by reference to the unit defined above on the date of the constitution of the fund.

10. For the purpose of this Article the ship's tonnage shall be the net tonnage of the ship with the addition of the amount deducted from the gross tonnage on account of engine room space for the purpose of ascertaining the net tonnage. In the case of a ship which cannot be measured in accordance with the normal rules of tonnage measurement, the ship's tonnage shall be deemed to be 40 per cent of the weight in tons (of 2240 lbs) of oil which the ship is capable of carrying.

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 in the event of the actual fault or privity of the owner 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 or 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. It shall be issued or certified by the appropriate authority of the State of the ship's registry after determining that the requirements of paragraph 1 of this Article have been complied with. 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.

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 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. A Contracting State may at any time request consultation with the State of a ship's registry 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, irrespective of the actual fault or privity of the owner, 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 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, 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 judgment 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 judgment was obtained by fraud; or

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

2. A judgment 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 non-commercial 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.

Article XII

This Convention shall supersede any International Conventions in force or open for signature, ratification or accession at the date on which the Convention is opened for signature, but only to the extent that such Conventions would be in conflict with it; however, nothing in this Article shall affect the obligations of Contracting States to non-Contracting States arising under such International Conventions.

Article XIII

1. The present Convention shall remain open for signature until 31 December 1970 and shall thereafter remain open for accession.

2. States Members of the United Nations or any of the Specialized Agencies or of the International Atomic Energy Agency or Parties to the Statute of the International Court of Justice may become Parties to this Convention by:

(a) signature without reservation as to ratification, acceptance or approval;

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

(c) accession.

Article XIV

1. 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.

2. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to the present Convention with respect to all existing Contracting States, or after the completion of all measures required for the entry into force of the amendment with respect to those Contracting States shall be deemed to apply to the Convention as modified by the amendment.

Article XV

1. The present Convention shall enter into force on the ninetieth day following the date on which Governments of eight States including five States each with not less than 1,000,000 gross tons of tanker tonnage have either signed it without reservation as to ratification, acceptance or approval or have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General of the Organization.

2. For each State which subsequently ratifies, accepts, approves or accedes to it the present Convention shall come into force on the ninetieth day after deposit by such State of the appropriate instrument.

Article XVI

1. The present Convention may be denounced by any Contracting State at any time after the date on which the Convention comes into force for that State.

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

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

Article XVII

1. The United Nations, where it is the administering authority for a territory, or any Contracting State responsible for the international relations of a territory, shall as soon as possible consult with the appropriate authorities of such territory or take such other measures as may be appropriate, in order to extend the present Convention to that territory and may at any time by notification in writing to the Secretary-General of the Organization declare that the present Convention shall extend to such territory.

2. The present Convention shall, from the date of receipt of the notification or from such other date as may be specified in the notification, extend to the territory named therein.

3. The United Nations, or any Contracting State which has made a declaration under paragraph 1 of this Article may at any time after the date on which the Convention has been so extended to any territory declare by notification in writing to the Secretary-General of the Organization that the present Convention shall cease to extend to any such territory named in the notification.

4. The present Convention shall cease to extend to any territory mentioned in such notification one year, or such longer period as may be specified therein, after the date of receipt of the notification by the Secretary-General of the Organization.

Article XVIII

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

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

Article XIX

1. The present Convention 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 the Convention of:

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

(ii) the deposit of any instrument of denunciation of this Convention together with the date of the deposit;

(iii) the extension of the present Convention to any territory under paragraph 1 of Article XVII and of the termination of any such extension under the provisions of paragraph 4 of that Article stating in each case the date on which the present Convention has been or will cease to be so extended;

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

Article XX

As soon as the present Convention comes 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 XXI

The present Convention is established in a single copy in the English and French languages, both texts being equally authentic. Official translations in the Russian and Spanish languages shall be prepared and deposited with the signed original.

IN WITNESS WHEREOF the undersigned being duly authorized by their respective Governments for that purpose have signed the present Convention.

DONE at Brussels this twenty-ninth day of November 1969.

ANNEX

Certificate of insurance or other financial security in respect of civil liability for oil pollution damage.

[Not reproduced]

RESOLUTION ON ESTABLISHMENT OF AN INTERNATIONAL COMPENSATION FUND FOR OIL POLLUTION DAMAGE

The International Legal Conference on Marine Pollution Damage, 1969,

NOTING that the International Convention on Civil Liability for Oil Pollution Damage, 1969, although it lays down the principle of strict liability and provides for a system of compulsory insurance or other financial guarantee for ships carrying oil in bulk as cargo, does not afford full protection for victims in all cases,

RECOGNIZING the view having emerged during the Conference that some form of supplementary scheme in the nature of an international fund is necessary to ensure that adequate compensation will be available for victims of large-scale oil pollution incidents,

TAKING ACCOUNT of the report submitted by the working party set up by the Committee of the Whole II to study the problems relating to the constitution of an international compensation fund,

REALIZING, however, that the time available for the Conference has not made it possible to give full consideration to all aspects of such a compensation scheme,

REQUESTS the Inter-Governmental Maritime Consultative Organization to elaborate as soon as possible, through its Legal Committee and other appropriate legal bodies, a draft for a compensation scheme based upon the existence of an international fund,

CONSIDERS that such a compensation scheme should be elaborated taking into account as a foundation the following principles:

1. Victims should be fully and adequately compensated under a system based upon the principle of strict liability.

2. The fund should in principle relieve the shipowner of the additional financial burden imposed by the present Convention.

REQUESTS IMCO to convene, not later than the year 1971, an International Legal Conference for the consideration and adoption of such a compensation scheme.

INTERNATIONAL CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL FUND FOR COMPENSATION FOR OIL POLLUTION DAMAGE

(Supplementary to the International Convention on Civil Liability for Oil Pollution Damage, 1969)

Done at Brussels on 18 December 1971

The States Parties to the present Convention,

BEING PARTIES to the International Convention on Civil Liability for Oil Pollution Damage, adopted at Brussels on 29 November 1969,

CONSCIOUS of the dangers of pollution posed by the world-wide maritime carriage of oil in bulk,

CONVINCED of the need to ensure that adequate compensation is available to persons who suffer damage caused by pollution resulting from the escape or discharge of oil from ships,

CONSIDERING that the International Convention of 29 November 1969, on Civil Liability for Oil Pollution Damage, by providing a régime for compensation for pollution damage in Contracting States and for the costs of measures, wherever taken, to prevent or minimize such damage, represents a considerable progress towards the achievement of this aim,

CONSIDERING HOWEVER that this régime does not afford full compensation for victims of oil pollution damage in all cases while it imposes an additional financial burden on shipowners,

CONSIDERING FURTHER that the economic consequences of oil pollution damage resulting from the escape or discharge of oil carried in bulk at sea by ships should not exclusively be borne by the shipping industry but should in part be borne by the oil cargo interests,

CONVINCED of the need to elaborate a compensation and indemnification system supplementary to the International Convention on Civil Liability for Oil Pollution Damage with a view to ensuring that full compensation will be available to victims of oil pollution incidents and that the shipowners are at the same time given relief in respect of the additional financial burdens imposed on them by the said Convention,

TAKING NOTE of the Resolution on the Establishment of an International Compensation Fund for Oil Pollution Damage which was adopted on 29 November 1969 by the International Legal Conference on Marine Pollution Damage,

HAVE AGREED as follows:

General Provisions

Article 1

For the purposes of this Convention:

1. "Liability Convention" means the International Convention on Civil Liability for Oil Pollution Damage, adopted at Brussels on 29 November 1969.

2. "Ship", "Person", "Owner", "Oil", "Pollution Damage", "Preventive Measures", "Incident" and "Organization", have the same meaning as in Article I of the Liability Convention, provided however that, for the purposes of these terms, "oil" shall be confined to persistent hydrocarbon mineral oils.

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. "Franc" means the unit referred to in Article V, paragraph 9 of the Liability Convention.

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

   (b) to give relief to shipowners in respect of the additional financial burden imposed on them by the Liability Convention, such relief being subject to conditions designed to ensure compliance with safety at sea and other conventions;

   (c) 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:

1. With regard to compensation according to Article 4, exclusively to pollution damage caused on the territory including the territorial sea of a Contracting State, and to preventive measures taken to prevent or minimize such damage;

2. With regard to indemnification of shipowners and their guarantors according to Article 5, exclusively in respect of pollution damage caused on the territory, including the territorial sea, of a State Party to the Liability Convention by a ship registered in or flying the flag of a Contracting State and in respect of preventive measures taken to prevent or minimize such damage.

Compensation and indemnification

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 Liability Convention,

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

(b) because the owner liable for the damage under the 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 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 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 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 provided, however, that there shall be no such exoneration with regard to such preventive measures which are compensated under paragraph 1. 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 Liability Convention.

4. (a) Except as otherwise provided in sub paragraph (b) 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 Liability Convention for pollution damage caused in the territory of the Contracting States, including any sums in respect of which the Fund is under an obligation to indemnify the owner pursuant to Article 5, paragraph 1, of this Convention, shall not exceed 450 million francs.

(b) 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 450 million francs.

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 the Liability Convention and this Convention shall be the same for all claimants.

6. The Assembly of the Fund (hereinafter referred to as "the Assembly") may, having regard to the experience of incidents which have occurred and in particular the amount of damage resulting therefrom and to changes in the monetary values, decide that the amount of 450 million francs referred to in paragraph 4, sub paragraphs (a) and (b), shall be changed; provided, however, that this amount shall in no case exceed 900 million francs or be lower than 450 million francs. The changed amount shall apply to incidents which occur after the date of the decision effecting the change.

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 5

1. For the purpose of fulfilling its function under Article 2, paragraph 1(b), the Fund shall indemnify the owner and his guarantor for that portion of the aggregate amount of liability under the Liability Convention which:

(a) is in excess of an amount equivalent to 1,500 francs for each ton of the ship's tonnage or of an amount of 125 million francs, whichever is the less, and

(b) is not in excess of an amount equivalent to 2,000 francs for each ton of the said tonnage or an amount of 210 million francs, whichever is the less,

provided, however, that the Fund shall incur no obligation under this paragraph where the pollution damage resulted from the wilful misconduct of the owner himself.

2. The Assembly may decide that the Fund shall, on conditions to be laid down in the Internal Regulations, assume the obligations of a guarantor in respect of ships referred to in Article 3, paragraph 2, with regard to the portion of liability referred to in paragraph 1 of this Article. However, the Fund shall assume such obligations only if the owner so requests and if he maintains adequate insurance or other financial security covering the owner's liability under the Liability Convention up to an amount equivalent to 1,500 francs for each ton of the ship's tonnage or an amount of 125 million francs, whichever is the less. If the Fund assumes such obligations, the owner shall in each Contracting State be considered to have complied with Article VII of the Liability Convention in respect of the portion of his liability mentioned above.

3. The Fund may be exonerated wholly or partially from its obligations under paragraph 1 towards the owner and his guarantor if the Fund proves that as a result of the actual fault or privity of the owner:

(a) the ship from which the oil causing the pollution damage escaped did not comply with the requirements laid down in:

(i) the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, as amended in 1962; or

(ii) the International Convention for the Safety of Life at Sea, 1960; or

(iii) the International Convention on Load Lines, 1966; or

(iv) the International Regulations for Preventing Collisions at Sea, 1960; or

(v) any amendments to the above-mentioned Conventions which have been determined as being of an important nature in accordance with Article XVI(5) of the Convention mentioned under (i), Article IX(c) of the Convention mentioned under (ii) or Article 29(3)(d) or (4)(d) of the Convention mentioned under (iii), provided, however, that such amendments had been in force for at least twelve months at the time of the incident;

and

(b) the incident or damage was caused wholly or partially by such non-compliance.

The provisions of this paragraph shall apply irrespective of whether the Contracting State in which the ship was registered or whose flag it was flying is a Party to the relevant Instrument.

4. Upon the entry into force of a new Convention designed to replace, in whole or in part, any of the Instruments specified in paragraph 3, the Assembly may decide at least six months in advance a date on which the new Convention will replace such Instrument or part thereof for the purpose of paragraph 3. However, any State Party to this Convention may declare to the Director before that date that it does not accept such replacement; in which case the decision of the Assembly shall have no effect in respect of a ship registered in, or flying the flag of, that State at the time of the incident. Such a declaration may be withdrawn at any later date and shall in any event cease to have effect when the State in question becomes a Party to such new Convention.

5. A ship complying with the requirements in an amendment to an Instrument specified in paragraph 3 or with requirements in a new Convention, where the amendment or Convention is designed to replace in whole or in part such Instrument, shall be considered as complying with the requirements in the said Instrument for the purposes of paragraph 3.

6. Where the Fund, acting as a guarantor by virtue of paragraph 2, has paid compensation for pollution damage in accordance with the Liability Convention, it shall have a right of recovery from the owner if and to the extent that the Fund would have been exonerated pursuant to paragraph 3 from its obligations under paragraph 1 to indemnify the owner.

7. Expenses reasonably incurred and sacrifices reasonably made by the owner voluntarily to prevent or minimize pollution damage shall be treated as included in the owner's liability for the purposes of this Article.

Article 6

1. Rights to compensation under Article 4 or indemnification under Article 5 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.

2. Notwithstanding paragraph 1, the right of the owner or his guarantor to seek indemnification from the Fund pursuant to Article 5, paragraph 1, shall in no case be extinguished before the expiry of a period of six months as from the date on which the owner or his guarantor acquired knowledge of the bringing of an action against him under the Liability Convention.

Article 7

1. Subject to the subsequent provisions of this Article, any action against the Fund for compensation under Article 4 or indemnification under Article 5 of this Convention shall be brought only before a court competent under Article IX of the 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 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 or indemnification under the provisions of Article 4 or 5 of this Convention in respect of the same damage. However, where an action for compensation for pollution damage under the Liability Convention has been brought before a court in a State Party to the Liability Convention but not to this Convention, any action against the Fund under Article 4 or under Article 5, paragraph 1, 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 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 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 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 8

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 Liability Convention.

Article 9

1. Subject to the provisions of Article 5, 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 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 or indemnification 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. 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 11, paragraph 1, as regards initial contributions and in Article 12, paragraphs 2 (a) or (b), as regards annual contributions, 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 11

1. In respect of each Contracting State initial contributions shall be made of an amount which shall for each person referred to in Article 10 be calculated on the basis of a fixed sum for each ton of contributing oil received by him during the calendar year preceding that in which this Convention entered into force for that State.

2. The sum referred to in paragraph 1 shall be determined by the Assembly within two months after the entry into force of this Convention. In performing this function the Assembly shall, to the extent possible, fix the sum in such a way that the total amount of initial contributions would, if contributions were to be made in respect of 90 per cent of the quantities of contributing oil carried by sea in the world, equal 75 million francs.

3. The initial contributions shall in respect of each Contracting State be paid within three months following the date at which the Convention entered into force for that State.

Article 12

1. With a view to assessing for each person referred to in Article 10 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 or 5, 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 15 million francs;

(c) payments to be made by the Fund in the relevant year for the satisfaction of claims against the Fund due under Article 4 or 5, 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 15 million francs;

(ii) *Income*

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

(b) initial contributions to be paid in the course of the year;

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

(d) any other income.

2. For each person referred to in Article 10 the amount of his annual contribution shall be determined by the Assembly and shall be calculated in respect of each Contracting State:

(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 Assembly shall decide the portion of the annual contribution which shall be immediately paid in cash and decide on the date of payment. The remaining part of each annual contribution shall be paid upon notification by the Director.

5. The Director may, in cases and in accordance with conditions to be laid down in the Internal Regulations of the Fund, require a contributor to provide financial security for the sums due from him.

6. Any demand for payments made under paragraph 4 shall be called rateably from all individual contributors.

Article 13

1. The amount of any contribution due under Article 12 and which is in arrear shall bear interest at a rate which shall be determined by the Assembly for each calendar year 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 11 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 for a period exceeding three months, 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.

Organization and Administration

Article 16

The Fund shall have an Assembly, a Secretariat headed by a Director and, in accordance with the provisions of Article 21, an Executive Committee.

Assembly

Article 17

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

Article 18

The functions of the Assembly shall, subject to the provisions of Article 26, 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. to elect the members of the Assembly to be represented on the Executive Committee, as provided in Articles 21, 22 and 23;

9. to establish any temporary or permanent subsidiary body it may consider to be necessary;

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, the Executive Committee, and subsidiary bodies;

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

12. to review and approve the reports and activities of the executive Committee;

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 19

1. Regular sessions of the Assembly shall take place once every calendar year upon convocation by the Director; provided, however, that if the Assembly allocates to the Executive Committee the functions specified in Article 18, paragraph 5, regular sessions of the Assembly shall be held once every two years.

2. Extraordinary sessions of the Assembly shall be convened by the Director at the request of the Executive Committee or 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 20

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

Executive Committee

Article 21

The Executive Committee shall be established at the first regular session of the Assembly after the date on which the number of Contracting States reaches fifteen.

Article 22

1. The Executive Committee shall consist of one-third of the members of the Assembly but of not less than seven or more than fifteen members. Where the number of members of the Assembly is not divisible by three, the one-third referred to shall be calculated on the next higher number which is divisible by three.

2. When electing the members of the Executive Committee the Assembly shall:

   (a) secure an equitable geographical distribution of the seats on the Committee on the basis of an adequate representation of Contracting States particularly exposed to the risks of oil pollution and of Contracting States having large tanker fleets, and

(b) elect one half of the members of the Committee, or in case the total number of members to be elected is uneven, such number of the members as is equivalent to one half of the total number less one, among those Contracting States in the territory of which the largest quantities of oil to be taken into account under Article 10 were received during the preceding calendar year, provided that the number of States eligible under this sub-paragraph shall be limited as shown in the table below:

Total number of Members on the Committee	Number of States eligible under sub-paragraph (b)	Number of States to be elected under sub-paragraph (b)
7	5	3
8	6	4
9	6	4
10	8	5
11	8	5
12	9	6
13	9	6
14	11	7
15	11	7

3. A member of the Assembly which was eligible but was not elected under sub-paragraph (b) shall not be eligible to be elected for any remaining seat on the Executive Committee.

Article 23

1. Members of the Executive Committee shall hold office until the end of the next regular session of the Assembly.

2. Except to the extent that may be necessary for complying with the requirements of Article 22, no State Member of the Assembly may serve on the Executive Committee for more than two consecutive terms.

Article 24

The Executive Committee shall meet at least once every calendar year at thirty days' notice upon convocation by the Director, either on his own initiative or at the request of its Chairman or of at least one-third of its members. It shall meet at such places as may be convenient.

Article 25

At least two-thirds of the members of the Executive Committee shall constitute a quorum for its meetings.

Article 26

1. The functions of the Executive Committee shall be:

(a) to elect its Chairman and adopt its own rules of procedure, except as otherwise provided in this Convention;

(b) to assume and exercise in place of the Assembly the following functions:

(i) making provision for the appointment of such personnel, other than the Director, as may be necessary and determining the terms and conditions of service of such personnel;

(ii) approving settlements of claims against the Fund and taking all other steps envisaged in relation to such claims in Article 18, paragraph7 ;

(iii) giving instructions to the Director concerning the administration of the Fund and supervising the proper execution by him of the Convention, of the decisions of the Assembly and of the Committee's own decisions; and

(c) to perform such other functions as are allocated to it by the Assembly.

2. The Executive Committee shall each year prepare and publish a report of the activities of the Fund during the previous calendar year.

Article 27

Members of the Assembly who are not members of the Executive Committee shall have the right to attend its meetings as observers.

Secretariat

Article 28

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 29

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

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 or the Executive Committee where these Regulations so provide;

(f) Prepare and submit to the Assembly or to the Executive Committee, as the case may be, the financial statements and budget estimates for each calendar year;

(g) assist the Executive Committee in the preparation of the report referred to in Article 26, paragraph 2;

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

Article 30

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 any 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 31

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

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

Voting

Article 32

The following provisions shall apply to voting in the Assembly and the Executive Committee:

(a) each member shall have one vote;

(b) except as otherwise provided in Article 33, decisions of the Assembly and the Executive Committee 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 33

1. The following decisions of the Assembly shall require a three-fourths majority:

(a) an increase in accordance with Article 4, paragraph 6, in the maximum amount of compensation payable by the Fund;

(b) a determination, under Article 5, paragraph 4, relating to the replacement of the instruments referred to in that paragraph;

(c) the allocation to the Executive Committee of the functions specified in Article 18, paragraph 5.

2. 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.

Article 34

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.

Article 35

1. The Fund shall incur no obligation whatsoever under Article 4 or 5 in respect of incidents occurring within a period of one hundred and twenty days after the entry into force of this Convention.

2. Claims for compensation under Article 4 and claims for indemnification under Article 5, arising from incidents occurring later than one hundred and twenty days but not later than two hundred and forty days after the entry into force of this Convention may not be brought against the Fund prior to the elapse of the two hundred and fortieth day after the entry into force of this Convention.

Article 36

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.

Final Clauses

Article 37

1. This Convention shall be open for signature by the States which have signed or which accede to the Liability Convention, and by any State represented at the Conference on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971. The Convention shall remain open for signature until 31 December 1972.

2. Subject to paragraph 4, this Convention shall be ratified, accepted or approved by the States which have signed it.

3. Subject to paragraph 4, this Convention is open for accession by States which did not sign it.

4. This Convention may be ratified, accepted, approved or acceded to, only by States which have ratified, accepted, approved or acceded to the Liability Convention.

Article 38

1. 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.

2. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Convention with respect to all existing Contracting States or after the completion of all measures required for the entry into force of the amendment with respect to those Parties shall be deemed to apply to the Convention as modified by the amendment.

Article 39

Before this Convention comes into force a State shall, when depositing an instrument referred to in Article 38, paragraph 1, 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 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.

Article 40

1. This Convention shall enter into force on the ninetieth day 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 39 that those persons in such States who would be liable to contribute pursuant to Article 10 have received during the preceding calendar year a total quantity of at least 750 million tons of contributing oil.

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

3. For each State which subsequently ratifies, accepts, approves or accedes to it, this Convention shall enter into force on the ninetieth day after deposit by such State of the appropriate instrument.

Article 41

1. This Convention may be denounced by any Contracting State at any time after the date on which the Convention comes into force for that State.

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

3. A denunciation shall take effect one year, 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 Liability Convention shall be deemed to be a denunciation of this Convention. Such denunciation shall take effect on the same date as the denunciation of the Liability Convention takes effect according to paragraph 3 of Article XVI of that Convention.

5. Notwithstanding a denunciation by a Contracting State pursuant to this Article, any provisions of this Convention relating to the obligations to make contributions under Article 10 with respect to an incident referred to in Article 12, paragraph 2(b), and occurring before the denunciation takes effect shall continue to apply.

Article 42

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 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 for 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 that denunciation takes effect, denounce this Convention with effect from the same date.

Article 43

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

2. Contracting States which are bound by this Convention on the date before the day it ceases to be in force shall enable the Fund to exercise its functions as described under Article 44 and shall, for that purpose only, remain bound by this Convention.

Article 44

1. If this Convention ceases to be in force, the Fund shall nevertheless
   (a) meet its obligations in respect of any incident occurring before the Convention 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 sub-paragraph (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 45

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

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

Article 46

1. This Convention 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 Convention of:
      (i) each new signature or deposit of instrument and the date thereof;
      (ii) the date of entry into force of the Convention;
      (iii) any denunciation of the Convention and the date on which it takes effect;
   (b) transmit certified true copies of this Convention to all Signatory States and to all States which accede to the Convention.

Article 47

As soon as this Convention enters into force, a certified true copy thereof 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 48

This Convention is established in a single original in the English and French languages, both texts being equally authentic. Official translations in the Russian and Spanish languages shall be prepared by the Secretariat of the Organization and deposited with the signed original.

IN WITNESS WHEREOF the undersigned plenipotentiaries being duly authorized for that purpose have signed the present Convention.

DONE at Brussels this eighteenth day of December one thousand nine hundred and seventy-one.

CONVENTION ON CIVIL LIABILITY FOR OIL POLLUTION DAMAGE RESULTING FROM EXPLORATION FOR AND EXPLOITATION OF SEABED MINERAL RESOURCES

The States Parties to this Convention,

Conscious of the dangers of oil pollution posed by the exploration for and exploitation of, certain seabed mineral resources,

Convinced of the need to ensure that adequate compensation is available to persons who suffer damage caused by such pollution,

Desiring to adopt uniform rules and procedures for determining questions of liability and providing adequate compensation in such cases,

Have agreed as follows:

ARTICLE 1

For the purposes of this Convention:

1. (*a*) "Oil" means crude oil and natural gas liquids, whether or not such oil or liquids are mixed with or present in other substances; and

   (*b*) "crude oil" includes crude oil treated to render it suitable for transmission, for example, by adding or removing certain fractions.

2. "Installation" means:

(*a*) any well or other facility, whether fixed or mobile, which is used for the purpose of exploring for, producing, treating, storing, transmitting or regaining control of the flow of crude oil from the seabed or its subsoil;

(*b*) any well which has been used for the purpose of exploring for, producing or regaining control of the flow of crude oil from the seabed or its subsoil and which has been abandoned after the entry into force of this Convention for the Controlling State concerned;

(*c*) any well which is used for the purpose of exploring for, producing or regaining control of the flow of gas or natural gas liquids from the seabed or its subsoil during the period that any such well is being drilled, including completion, or worked upon except for normal maintenance operations;

(*d*) any well which is used for the purpose of exploring for any mineral resources other than crude oil, gas or natural gas liquids, where such exploration involves the deep penetration of the subsoil of the seabed; and

(e) any facility which is normally used for storing crude oil from the seabed or its subsoil;

which, or a substantial part of which, is located seaward of the low-water line along the coast as marked on large-scale charts officially recognized by the Controlling State;

provided, however, that

(i) where a well or a number of wells is directly connected to a platform or similar facility, the well or wells together with such platform or facility shall constitute one installation; and

(ii) a ship as defined in the International Convention on Civil Liability for Oil Pollution Damage, done at Brussels on 29 November 1969 shall not be considered to be an installation.

3. "Operator", means the person, whether licensee or not, designated as operator for the purposes of this Convention by the Controlling State, or, in the absence of such designation, the person who is in overall control of the activities carried on at the installation.

4. "Controlling State" means the State Party which exercises sovereign rights for the purpose of exploring for and exploiting the resources of the seabed and its subsoil in the area in or above which the installation is situated. In the case of an installation extending over areas in which two or more States Parties exercise such rights, these States may agree which of them shall be the Controlling State.

5. "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.

6. "Pollution damage" means loss or damage outside the installation caused by contamination resulting from the escape or discharge of oil from the installation and includes the cost of preventive measures and further loss or damage outside the installation caused by preventive measures.

7. "Preventive measures" means any reasonable measures taken by any person in relation to a particular incident to prevent or minimize pollution damage with the exception of well control measures and measures taken to protect, repair or replace an installation.

8. "Incident" means any occurrence, or series of occurrences having the same origin, which causes pollution damage.

9. "Special Drawing Right" means Special Drawing Right as defined by the International Monetary Fund and used for its own operations and transactions.

ARTICLE 2

This Convention shall apply exclusively to pollution damage:

(a) resulting from an incident which occurred beyond the coastal low-water line at an installation under the jurisdiction of a Controlling State, and

(*b*) suffered in the territory, including the internal waters and territorial sea, of a State Party or in the areas in which, in accordance with international law, it has sovereign rights over natural resources,

and to preventive measures, wherever taken, to prevent or minimize such pollution damage.

ARTICLE 3

1. Except as provided in paragraphs 3, 4 and 5 of this Article, the operator of the installation at the time of an incident shall be liable for any pollution damage resulting from the incident. When the incident consists of a series of occurrences, liability for pollution damage arising out of each occurrence shall attach to the operator of the installation at the time of that occurrence.

2. Where an installation has more than one operator they shall be jointly and severally liable.

3. No liability for pollution damage shall attach to the operator if he proves that the damage resulted from an act of war, hostilities, civil war, insurrection, or a natural phenomenon of an exceptional, inevitable and irresistible character.

4. No liability for pollution damage shall attach to the operator of an abandoned well if he proves that the incident which caused the damage occurred more than five years after the date on which the well was abandoned under the authority and in accordance with the requirements of the Controlling State. Where a well has been abandoned in other circumstances, the liability of the operator shall be governed by the applicable national law.

5. If the operator proves that the pollution damage resulted wholly or partly 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 operator may be exonerated wholly or partly from his liability to such person.

ARTICLE 4

1. No claim for compensation for pollution damage shall be made against the operator otherwise than in accordance with this Convention.

2. No claim for compensation for pollution damage under this Convention or otherwise may be made against the servants or agents of the operator.

3. Nothing in this Convention shall prejudice the question whether the operator liable for damage in accordance with its provisions has a right of recourse.

ARTICLE 5

1. When oil has escaped or has been discharged from two or more installations, and pollution damage results therefrom, the operators of all the installations concerned, unless exonerated under Article 3, shall be jointly and severally liable for all such damage which is not reasonably separable.

2. When oil has escaped or has been discharged from one installation as a result of an incident, and pollution damage results therefrom, and during the course of the incident there is a change of operator, all operators of the installation, unless exonerated under Article 3, shall be jointly and severally liable for all such damage which is not reasonably separable.

ARTICLE 6

1. The operator shall be entitled to limit his liability under this Convention for each installation and each incident to the amount of 30 million Special Drawing Rights until five years have elapsed from the date on which the Convention is opened for signature and to the amount of 40 million Special Drawing Rights thereafter.

2. Where operators of different installations are liable in accordance with paragraph 1 of Article 5, the liability of the operator of any one installation shall not for any one incident exceed any limit which may be applicable to him in accordance with the provisions of this Article and of Article 15.

3. Where in the case of any one installation more than one operator is liable under this Convention, the aggregate liability of all of them in respect of any one incident shall not exceed the highest amount that could be awarded against any of them, but none of them shall be liable for an amount in excess of the limit applicable to him.

4. The operator shall not be entitled to limit his liability if it is proved that the pollution damage occurred as a result of an act or omission by the operator himself, done deliberately with actual knowledge that pollution damage would result.

5. For the purpose of availing himself of the benefit of limitation to which he may be entitled under paragraph 1 of this Article, the operator 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 States Parties in which action is brought under Article 11. A fund constituted by one of the operators mentioned in paragraph 2 of Article 3 shall be deemed to be constituted by all of them. 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 State Party where the fund is constituted, and considered to be adequate by the court or other competent authority.

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

7. If before the fund is distributed the operator or any of his servants or agents or any person providing him with 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.

8. The right of subrogation provided for in paragraph 7 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.

9. Where the operator 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 paragraph 7 or 8 of this Article, had the compensation been paid before the fund was distributed, the court or other competent authority of the State Party 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.

10. An operator who has taken preventive measures shall in respect of those measures have the same rights against the fund as any other claimant.

11. The amount referred to in paragraph 1 of this Article shall be converted into the national currency of the State Party in which the fund is constituted on the basis of the value of that currency by reference to the average, during the thirty days immediately preceding the date on which the fund is constituted, of the Special Drawing Rights as published by the International Monetary Fund.

12. The insurer or other person providing financial security shall be entitled, alone or together with the operator, 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 operator. Such a fund may be constituted even where the pollution damage occurred as a result of an act or omission by the operator himself, done deliberately with actual knowledge that pollution damage would result, but the constitution of the fund shall in that case not prejudice the rights of any claimant against the operator.

Article 7

1. Where the operator, after an incident, has constituted a fund in accordance with Article 6 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 operator in respect of such claim;

(*b*) the court or other competent authority of any State Party shall order the release of any property belonging to the operator 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. Paragraph 1 of this Article 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 8

1. To cover his liability under this Convention, the operator shall be required to have and maintain insurance or other financial security to such amount, of such type and on such terms as the Controlling State shall specify, provided that that amount shall not be less than 22 million Special Drawing Rights until five years have elapsed from the date on which this Convention is opened for signature and not less than 35 million Special Drawing Rights thereafter. However the Controlling State may exempt the operator wholly or in part from the requirement to have and maintain such insurance or other financial security to cover his liability for pollution damage wholly caused by an act of sabotage or terrorism.

2. 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, before two months have elapsed from the date on which notice of its termination is given to the competent public authority of the Controlling State. The foregoing provision shall similarly apply to any modification which results in the insurance or security no longer satisfying the requirements of this Article.

3. Any claim for compensation for pollution damage may be brought directly against the insurer or other person providing financial security for the operator's liability for pollution damage. In such case the liability of the defendant shall be limited to the amount specified in accordance with paragraph 1 of this Article irrespective of the fact that the pollution damage occurred as a result of an act or omission by the operator himself, done deliberately with actual knowledge that pollution damage would result. The defendant may further avail himself of the defences, other than the bankruptcy or winding-up of the operator, which the operator 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 operator himself, but the defendant may not avail himself of any other defence which he might have been entitled to invoke in proceedings brought by the operator against him. The defendant shall in any event have the right to require the operator to be joined in the proceedings.

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

5. Where the operator is a State Party, the operator shall not be required to maintain insurance or other financial security to cover its liability.

ARTICLE 9

1. A Committee composed of a representative of each State Party is hereby established.

2. If a State Party considers that any of the amounts currently applicable under Article 6 or 8 is no longer adequate, or is otherwise unrealistic, it may convene a meeting of the Committee to consider the matter. States which have signed this Convention but are not yet Parties will be invited to participate in the work of the Committee as observers. The Committee may recommend to the States Parties an amendment to any of the amounts if representatives of at least three-quarters of the States Parties to this Convention vote in favour of such a recommendation. In making such a recommendation, the Committee shall take into account:

(*a*) any information concerning events causing or likely to cause pollution damage having a bearing on the objects of this Convention;

(*b*) any information on increases and decreases occurring after the entry into force of this Convention in the costs of goods and services of the kinds involved in the treatment and remedying of marine oil spillages;

(*c*) the availability of reliable insurance cover against the risk of liability for pollution damage.

3. Any amount recommended in accordance with paragraph 2 of this Article shall be notified by the depositary Government to all States Parties. It shall replace the amount currently applicable thirty days after its acceptance by all States Parties. A State Party which has not, within six months of such notification or such other period as has been specified in the recommendation, notified the depositary Government that it is unable to accept the recommended amount, shall be deemed to have accepted it.

4. If the recommended amount has not been accepted by all States Parties within six months, or such other period as has been specified in the recommendation, after it has been notified by the depositary Government it shall, thirty days thereafter, replace the amount currently applicable as between those States Parties which have accepted it. Any other State Party may subsequently accept the recommended amount which shall become applicable to it thirty days thereafter.

5. A State acceding to this Convention shall be bound by any recommendation of the Committee which has been unanimously accepted by States Parties. Where a recommendation has not been so accepted, an acceding State shall be deemed to have accepted it unless, at the time of its accession, that State notifies the depositary Government that it does not accept such a recommendation.

ARTICLE 10

Rights of compensation under this Convention shall be extinguished unless, within twelve months of the date on which the person suffering the damage knew or ought reasonably to have known of the damage, the claimant has in writing notified the operator of his claim or has brought an action in respect of it. However in no case shall an action be brought after four years from the date of the incident which caused the damage. Where the incident consists of a series of occurrences, the four years' period shall run from the date of the last occurrence.

ARTICLE 11

1. Actions for compensation under this Convention may be brought only in the courts of any State Party where pollution damage was suffered as a result of the incident or in the courts of the Controlling State. For the purpose of determining where the damage was suffered, damage suffered in an area in which, in accordance with international law, a State has sovereign rights over natural resources shall be deemed to have been suffered in that State.

2. Each State Party 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 6, the courts of the State Party in which the fund is constituted shall be exclusively competent to determine all matters relating to the apportionment and distribution of the fund.

ARTICLE 12

1. Any judgment given by a court with jurisdiction in accordance with Article 11, which is enforceable in the State of origin where it is no longer subject to ordinary forms of review, shall be recognized in any State Party, except:

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

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

2. A judgment recognized under paragraph 1 of this Article shall be enforceable in each State Party 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, nor a reconsideration of the applicable law.

ARTICLE 13

Where a State Party is the operator, such State shall be subject to suit in the jurisdictions set forth in Article 11 and shall waive all defences based on its status as a sovereign State.

ARTICLE 14

No liability shall arise under this Convention for damage caused by a nuclear incident:

(*a*) if the operator of a nuclear installation is liable for such damage under either the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy or the Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage, or if the operator of a nuclear ship is liable for such damage under the Brussels Convention of 25 May 1962 on the Liability of Operators of Nuclear Ships; or

(*b*) if the operator of a nuclear installation or the operator of a nuclear ship is liable for such damage by virtue of a national law governing the liability for such damage, provided that such law is in all respects as favourable to persons who may suffer damage as, in the case of the operator of a nuclear installation, either the Paris or the Vienna Convention or, in the case of the operator of a nuclear ship, the Brussels Convention.

ARTICLE 15

1. This Convention shall not prevent a State from providing for unlimited liability or a higher limit of liability than that currently applicable under Article 6 for pollution damage caused by installations for which it is the Controlling State and suffered in that State or in another State Party; provided however that in so doing it shall not discriminate on the basis of nationality. Such provision may be based on the principle of reciprocity.

2. The courts of each State Party shall apply the law of the Controlling State in order to determine whether the operator is entitled under the provisions of this Article and paragraph 1 of Article 6 to limit his liability and, if so, the amount of such liability.

3. Nothing in this Article shall affect the amount of compensation available for pollution damage suffered in States Parties in respect of which the provision made in accordance with paragraph 1 of this Article does not apply.

4. For the purposes of this Article, pollution damage suffered in a State Party means pollution damage suffered in the territory of that State or in the areas in which, in accordance with international law, it has sovereign rights over natural resources.

ARTICLE 16

This Convention shall be open for signature at London from 1 May 1977 until 30 April 1978 by the States invited to participate in the Inter-governmental Conference on the Convention on Civil Liability for Oil Pollution Damage from Offshore Operations, held there from 20 October to 31 October 1975 and from 13 December to 17 December 1976, and shall thereafter be open for accession by such States.

ARTICLE 17

This Convention shall be subject to ratification, acceptance or approval.

ARTICLE 18

The States Parties may unanimously invite to accede to this Convention other States which have coastlines on the North Sea, the Baltic Sea or that part of the Atlantic Ocean to the north of 36° North latitude.

ARTICLE 19

The instruments of ratification, acceptance, approval and accession shall be deposited with the Government of the United Kingdom of Great Britain and Northern Ireland.

ARTICLE 20

1. This Convention shall enter into force on the ninetieth day following the date of deposit of the fourth instrument of ratification, acceptance, approval or accession.

2. For each State ratifying, accepting, approving or acceding to the Convention after the deposit of the fourth instrument, the Convention shall enter into force on the ninetieth day after deposit by such State of its instrument.

ARTICLE 21

A State Party may denounce this Convention at any time by means of a notice in writing addressed to the depositary Government. Any such denunciation shall take effect twelve months after the date on which the depositary Government has received such notice, or at such later date as may be specified in the notice.

ARTICLE 22

1. Any State may, at the time of ratification, acceptance, approval or accession or at any later date, declare by means of a notice in writing addressed to the depositary Government that this Convention shall apply to all or any of the territories for whose international relations it is responsible, provided that they are situated within the area defined in Article 18.

2. Such declaration shall take effect on the ninetieth day after its receipt by the depositary Government or, if on such date the Convention has not yet entered into force, from the date of its entry into force.

3. Each State Party which has made a declaration in accordance with paragraph 1 of this Article may, in accordance with Article 21, denounce this Convention in relation to all or any of the territories concerned.

ARTICLE 23

Any State Party may, after having obtained the agreement of at least one-third of the States Parties, convene a Conference of States Parties for the revision or amendment of this Convention.

ARTICLE 24

No reservation may be made to this Convention.

ARTICLE 25

The depositary Government shall inform the States referred to in Article 16 and the acceding States:

(*a*) of signatures to this Convention, of the deposit of instruments of ratification, acceptance, approval or accession, of the receipt of notices in accordance with Article 22, and of the receipt of notices of denunciation;

(*b*) of the date on which the Convention will enter into force; and

(*c*) of the recommendations of the Committee convened under Article 9, of the acceptances and non-acceptances of such recommendations, and of the dates on which these recommendations take effect.

ARTICLE 26

The original of this Convention, of which the English and French texts are equally authentic, shall be deposited with the Government of the United Kingdom of Great Britain and Northern Ireland, which shall send certified copies thereof to the States referred to in Article 16 and the acceding States and which, upon its entry into force, shall transmit a certified copy to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

CONVENTION RELATING TO CIVIL LIABILITY IN THE FIELD OF MARITIME CARRIAGE OF NUCLEAR MATERIAL.

Done at Brussels on 17 December 1971.

The High Contracting Parties,

CONSIDERING that the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy and its Additional Protocol of 28 January 1964 (hereinafter referred to as "the Paris Convention") and the Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage (hereinafter referred to as "the Vienna Convention") provide that, in the case of damage caused by a nuclear incident occurring in the course of maritime carriage of nuclear material covered by such Conventions, the operator of a nuclear installation is the person liable for such damage,

CONSIDERING that similar provisions exist in the national law in force in certain States,

CONSIDERING that the application of any preceding international Convention in the field of maritime transport is however maintained,

DESIROUS of ensuring that the operator of a nuclear installation will be exclusively liable for damage caused by a nuclear incident occurring in the course of maritime carriage of nuclear material,

HAVE AGREED as follows:

ARTICLE 1

Any person who by virtue of an international convention or national law applicable in the field of maritime transport might be held liable for damage caused by a nuclear incident shall be exonerated from such liability:

(a) if the operator of a nuclear installation is liable for such damage under either the Paris or the Vienna Convention, or

(b) if the operator of a nuclear installation is liable for such damage by virtue of a national law governing the liability for such damage, provided that such law is in all respects as favourable to persons who may suffer damage as either the Paris or the Vienna Convention.

ARTICLE 2

1. The exoneration provided for in Article 1 shall also apply in respect of damage caused by a nuclear incident:

(a) to the nuclear installation itself or to any property on the site of that installation which is used or to be used in connexion with that installation, or

(b) to the means of transport upon which the nuclear material involved was at the time of the nuclear incident,

for which the operator of the nuclear installation is not liable because his

liability for such damage has been excluded pursuant to the provisions of either the Paris or the Vienna Convention, or, in cases referred to in Article 1(b), by equivalent provisions of the national law referred to therein.

2. The provisions of paragraph 1 shall not, however, affect the liability of any individual who has caused the damage by an act or omission done with intent to cause damage.

ARTICLE 3

No provision of the present Convention shall affect the liability of the operator of a nuclear ship in respect of damage caused by a nuclear incident involving the nuclear fuel of or radioactive products or waste produced in such ship.

ARTICLE 4

The present Convention shall supersede any international Conventions in the field of maritime transport which, at the date on which the present Convention is opened for signature, are in force or open for signature, ratification or accession but only to the extent that such Conventions would be in conflict with it; however, nothing in this Article shall affect the obligations of the Contracting Parties to the present Convention to non-Contracting States arising under such international Conventions.

ARTICLE 5

1. The present Convention shall be opened for signature in Brussels and shall remain open for signature in London at the Headquarters of the Inter-Governmental Maritime Consultative Organization (hereinafter referred to as "the Organization") until 31 December 1972 and shall thereafter remain open for accession.

2. States Members of the United Nations or any of the Specialized Agencies or of the International Atomic Energy Agency or Parties to the Statute of the International Court of Justice may become Parties to the present Convention by:

(a) signature without reservation as to ratification, acceptance or approval;

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

(c) accession.

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

ARTICLE 6

1. The present Convention shall enter into force on the ninetieth day following the date on which five States have either signed it without reservation as to ratification, acceptance or approval or have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General of the Organization.

2. For any State which subsequently signs the present Convention without reservation as to ratification, acceptance or approval, or deposits its instrument of ratification, acceptance, approval or accession, the Convention shall come into force on the ninetieth day after the date of such signature or deposit.

ARTICLE 7

1. The present Convention may be denounced by any Contracting Party to it at any time after the date on which the Convention comes into force for that State.

2. Denunciation shall be effected by a notification in writing delivered to the Secretary-General of the Organization.

3. A denunciation shall take effect one year, or such longer period as may be specified in the notification, after its receipt by the Secretary-General of the Organization.

4. Notwithstanding a denunciation by a Contracting Party pursuant to this Article the provisions of the present Convention shall continue to apply to any damage caused by a nuclear incident occurring before the denunciation takes effect.

ARTICLE 8

1. The United Nations where it is the administering authority for a territory, or any Contracting Party to the present Convention responsible for the international relations of a territory, may at any time by notification in writing to the Secretary-General of the Organization declare that the present Convention shall extend to such territory.

2. The present Convention shall, from the date of receipt of the notification or from such other date as may be specified in the notification, extend to the territory named therein.

3. The United Nations, or any Contracting Party which had made a declaration under paragraph 1 of this Article may at any time after the date on which the Convention has been so extended to any territory declare by notification in writing to the Secretary-General of the Organization that the present Convention shall cease to extend to any such territory named in the notification.

4. The present Convention shall cease to extend to any territory mentioned in such notification one year, or such longer period as may be specified therein, after the date of receipt of the notification by the Secretary-General of the Organization.

ARTICLE 9

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

2. The Organization shall convene a Conference of the Contracting Parties to the present Convention for revising or amending it at the request of not less than one-third of the Contracting Parties.

ARTICLE 10

A Contracting Party may make reservations corresponding to those which it has validly made to the Paris or Vienna Convention. A reservation may be made at the time of signature, ratification, acceptance, approval or accession.

ARTICLE 11

1. The present Convention 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 the present Convention of:

(i) each new signature and each deposit of an instrument together with the date thereof;

(ii) any reservation made in conformity with the present Convention;

(iii) the date of entry into force of the present Convention;

(iv) any denunciation of the present Convention and the date on which it takes effect;

(v) the extension of the present Convention to any territory under paragraph 1 of Article 8 and of the termination of any such extension under the provisions of paragraph 4 of that Article stating in each case the date on which the present Convention has been or will cease to be so extended;

(b) transmit certified true copies of the present Convention to all Signatory States and to all States which have acceded to the present Convention.

3. As soon as the present Convention comes into force, a certified true copy thereof 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 12

The present Convention is established in a single original in the English and French languages, both texts being equally authentic. Official translations in the Russian and Spanish languages shall be prepared by the Secretariat of the Organization and deposited with the signed original.

IN WITNESS WHEREOF the undersigned being duly authorized by their respective Governments for that purpose have signed the present Convention.

DONE at Brussels this seventeenth day of December 1971.

SR/1
2 May 1978

ENGLISH
Original: ARABIC

THIRD COMMITTEE (INFORMAL MEETING)

(SCIENTIFIC RESEARCH)

INFORMAL SUGGESTION BY BAHRAIN, DEMOCRATIC YEMEN, EGYPT, IRAQ, JORDAN, KUWAIT, LEBANON, LIBYAN ARAB JAMAHIRIYA, MAURITANIA, MOROCCO, OMAN, PORTUGAL, QATAR, SAUDI ARABIA, SOMALIA, SUDAN, SYRIAN ARAB REPUBLIC, TUNISIA, UNITED ARAB EMIRATES, YEMEN

Article 264

Amend the text to read:

"1. Any damage to the marine environment, or to property or persons therein resulting from scientific research shall give rise to a claim for compensation for such damage.

"2. Should such damage result from the acts of a particular State, that State shall be held responsible:

(a) In accordance with the rules of international law, if it carried out an act of sovereignty;

(b) In accordance with the rules of private law if it was carrying out any other act, such as a commercial transaction. States shall have an obligation to provide compensation for or to repair such damage, and for this purpose, the State concerned shall designate the party to represent it in any legal proceedings.

"3. Should such damage result from acts of other natural or juridical persons, such persons shall be held responsible in accordance with the rules of private law and shall have an obligation to provide compensation for or to repair such damage.

"4. States and specialized international organizations shall fulfil the necessary legislative and organizational requirements for the prevention of any marine scientific research in violation of the provisions of the present Convention within the areas under their sovereignty or jurisdiction. They shall also fulfil the same requirements with respect to natural or juridical persons who are their nationals or to persons under their jurisdiction and prescribe the penalty applicable for such violations.

"5. States shall fulfil the necessary legislative and organizational requirements with a view to providing the injured party with recourse to their courts or national authorities in order that that party may obtain compensation for or the repair of damage in any case where such acts take place, or such damage occurs, within areas under their sovereignty or jurisdiction or through non-sovereign acts on their part or through acts by natural or juridical persons under their jurisdiction. The injured party shall be entitled to choose the party from which compensation for or the repair of the damage is to be claimed, if there should be more than one such party.

"6 States shall establish regional and international financial and technical institutions to which claims for compensation for, or for the repair of, damage may be addressed in cases where those responsible for the damage remain unknown or are unable, partially or wholly, to provide compensation for or to repair such damage. Such institutions shall generally co-operate in developing the international law relating to the protection and preservation of the marine environment, the assessment of damage, the payment of compensation and the settlement of disputes arising in such cases."

MP/18
2 May 1978

ENGLISH
Original: ARABIC

THIRD COMMITTEE (INFORMAL MEETING)

(PROTECTION AND PRESERVATION OF THE MARINE ENVIRONMENT)

INFORMAL SUGGESTION BY BAHRAIN, DEMOCRATIC YEMEN, EGYPT, IRAQ, KUWAIT, LEBANON, LIBYAN ARAB JAMAHIRIYA, MAURITANIA, MOROCCO, OMAN, PORTUGAL, QATAR, SAUDI ARABIA, SOMALIA, SUDAN, SYRIAN ARAB REPUBLIC, TUNISIA, UNITED ARAB EMIRATES, YEMEN

Article 236

Amend the text to read:

"1. Any damage to the marine environment or to properties or persons therein that is caused by pollution shall give rise to a claim for compensation for such damage.

"2. Should such damage result from acts of a particular State, that State shall be liable:

(a) In accordance with the rules of international law, in cases where that State has carried out an act of sovereignty;

(b) In accordance with private law, in cases where that State has carried out any other act, such as a commercial transaction. States shall have an obligation to provide compensation for or to repair such damage, and for this purpose, the State concerned shall designate the party to represent it in any legal proceedings.

"3. Should such damage result from acts of other natural or juridical persons, such persons shall be held responsible in accordance with the rules of private law and shall have an obligation to provide compensation for or to repair such damage.

"4. States shall fulfil the necessary legislative and organizational requirements to provide the injured party with recourse to their courts or national authorities, in order that that party may obtain compensation for or the repair of the damage, whenever such acts take place or such damage occurs within areas under their sovereignty or jurisdiction or through non-sovereign acts on their part or through acts by natural or juridical persons under their jurisdiction. The injured party shall be entitled to choose the party from which compensation for or repair of damage is to be claimed in any case where there is more than one such party.

"5. States shall establish regional and international financial and technical institutions to which claims for compensation for, or for the repair of, damage may be addressed in any case where those responsible for the damage remain unknown or are unable, partially or wholly, to provide compensation for or to repair such damage. Such institutions shall generally co-operate in developing the international law relating to the protection and preservation of the marine environment, the assessment of damage thereto, the payment of compensation and the settlement of disputes arising in any such cases."