

C-2: INTERNATIONAL CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL FUND FOR COMPENSATION FOR OIL POLLUTION DAMAGE

Name of the convention: International Convention on the establishment of an International Fund for Compensation for Oil Pollution Damage

Acronym or short name: FUND Convention

International organisation in charge of it: International Maritime Organization (IMO) and International Oil Pollution Convention Fund (IOPC Fund)

Summary description (in plain language): The 1971 Fund Convention (1971 FUND) supplements the 1969 Civil Liability Convention (CLC 1969). The objective of the 1971 Fund Convention is to provide additional compensation for pollution damage to extent that the protection afforded by the 1969 CLC is inadequate. The 1971 Fund is under an obligation to pay compensation to States and persons who suffer pollution damage, if such persons are unable to obtain compensation from the owner of the ship from which the oil escaped or if the compensation due from such owner is not sufficient to cover damage suffered (art.4). Under CLC the liability of the ship-owner is limited and under certain circumstances the ship-owner may be exempted from liability (art. III-2 and -3 CLC). In those cases the 1971 Fund will compensate parties suffering damage from the oil pollution to a certain level.

1971 Fund contains provisions on the procedure for claims, rights and obligations, and jurisdiction. Contributions to the Fund are raised from (substantial) oil importers based in the Contracting States. The Fund's organization consists of an Assembly of States (art.17), a Secretariat (art.28) headed by a director appointed by the Assembly; and executive Committee (art.21).

Date of signature: 18 December 1971

Date of entry into force: 16 October 1978

Major Revision or Amendments:

Protocol of 1976; (Adoption 19 November 1976, Entry into force 22 November 1994)

The Protocol provides for a new unit of account based on the Special Drawing Right (SDR)

Protocol of 1984; (Adoption 25 May 1984, Superseded by the Protocol 1992)

The Protocol intends to raise the limits of liability but it is superseded by the 1992 Protocol

Protocol of 1992 (The 1992 FUND): (Adoption 27 November 1992, Entry into force 30 May 1996)

The Protocol amended the 1971 Fund Convention and the amended Convention is known as **the 1992 Fund Convention**. The Protocol modifies the entry into force requirements and increases compensation amounts. The scope of coverage was extended in line with the 1992 CLC. It established a separate **1992 International Oil Pollution Compensation Fund** "1992 Fund". Under this Protocol, the maximum amount of compensation payable by the Fund for a single incident, including the limit established under the 1992 CLC Protocol, is 135 million SDR . However, if 3 States contributing to the Fund receive more than 600 million m.t. of oil per annum, the maximum amount is raised to 200 million SDR. From 16 May 1998, Parties to the 1992 Protocol ceased to be Parties to the 1971 Fund Convention due to a mechanism for compulsory denunciation of the "old" regime established in the 1992 Protocol. Due to a number of denunciations, the 1971 Fund Convention ceased to be in force on 24 May 2002.

2000 Amendments; (Adoption 18 October 2000, Entry into force 1 November 2003)

The 2000 Amendments raise the maximum amount of compensation payable from the IOPC Fund for a single incident, including the limit established under the 2000 CLC amendments, to 203 million SDR, up from 135 million SDR. However, if 3 States contributing to the Fund receive more than 600 million m.t. of oil per annum, the maximum amount is raised to 300,740,000 SDR, up from 200 million SDR.

2003 Protocol; (Adoption 16 May 2003, Entry into force 3 March 2005)

The 2003 Protocol establishes an **International Oil Pollution Compensation Supplementary Fund**. The aim of this Fund is to supplement the compensation available under the 1992 CLC and Fund Conventions with an additional, third tier of compensation. The Protocol is optional and participation is open to all Contracting States to the 1992 Fund Convention. The total amount of compensation payable for any one incident will be limited to a combined total of 750 million SDR including the amount of compensation paid under the existing CLC/Fund Convention.

Applicability (situation of ratification): The 1992 Fund Convention shall enter into force twelve months following the date on which the following requirements are fulfilled: at least eight states

have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General of the organization, the Secretary-General of the Organization has received information in accordance with article 29 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 450 million tons of contributing oil (art.30 of the 1992 Fund).

Situation of ratification:

1992 Protocol (The 1992 Fund Convention); 102 States, 93.66% of world tonnage (as at 30 September 2008)

2003 Protocol; 21 States, 18.67% of world tonnage (as at 30 September 2008)

Stakes for ports: This Fund Convention is a compensation instrument for oil pollution damages occurred in ports or territorial waters of the State parties to the CLC/Fund Convention caused by oil tankers. The Fund may provide compensation of the 2nd tier of damage on top of the limitation fund provided by ship owner under CLC. According to both the 1969 and the 1992 CLC Convention, ports can be liable for the damage which is caused by their negligence in maintaining lights or other navigational aids (art.III (c)).

Links with other conventions: CLC, MARPOL 73/78, SOLAS, Load Lines, COLREG

Key-words: fund, compensation, oil pollution damage, liability

Internet hyperlink with other website: <http://www.imo.org/>; <http://www.un.org/>;
<http://www.comitemaritime.org/> ; <http://www.iopcfund.org/> ;

(full text 1971 FUND) <http://www.admiraltylawguide.com/conven/oilpolfund1971.html>

(full text 1992 FUND) <http://www.admiraltylawguide.com/conven/protooilpolfund1992.html>