

Resolution A.729(17)
Adopted on 7 November 1991
(Agenda item 28)

**FUTURE DEVELOPMENT OF THE INTERGOVERNMENTAL OIL POLLUTION
LIABILITY AND COMPENSATION SYSTEM BASED ON THE INTERNATIONAL
CONVENTION ON CIVIL LIABILITY FOR OIL POLLUTION DAMAGE, 1969,
AND THE INTERNATIONAL CONVENTION ON THE ESTABLISHMENT
OF AN INTERNATIONAL FUND FOR COMPENSATION
FOR OIL POLLUTION DAMAGE, 1971**

THE ASSEMBLY,

CONSIDERING that it is desirable to amend the International Convention on Civil Liability for Oil Pollution Damage, done at Brussels on 29 November 1969 (CLC), and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, done at Brussels on 19 December 1971 (Fund), to provide for improved scope and enhanced compensation,

RECOGNIZING that the Protocols of 1984 to amend the CLC and Fund Conventions are unlikely to enter into force in their present form,

BEARING IN MIND that in adopting the International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990, the Conference on International Co-operation on Oil Pollution Preparedness and Response recognized the importance of the international instruments on liability and compensation for oil pollution damage and the compelling need for early entry into force of the 1984 Protocols thereto,

TAKING INTO ACCOUNT resolution No. 8 adopted by the Assembly of the International Oil Pollution Compensation Fund (IOPC Fund) at its fourteenth session and forwarded to the Secretary-General of the Organization, concerning the future development of the intergovernmental oil pollution liability and compensation system based on the CLC and Fund Conventions,

1. REQUESTS the Legal Committee to consider:
 - (a) the draft protocols modifying the 1969 CLC Convention and the 1971 Fund Convention which are attached to this resolution in annexes 1 and 2, respectively;
 - (b) the draft conference resolutions which are attached to this resolution in annexes 3 and 4; and
 - (c) whether there should be introduced in the Fund Convention a system of setting a cap on contributions payable by oil receivers in any given State for a transitional period;
2. DECIDES to include in the work programme of the Organization a provision for an international conference at no cost to the Organization, to be convened not later than December 1992, to adopt the protocols and resolutions referred to in paragraph 1 above.

**DRAFT PROTOCOL TO THE INTERNATIONAL CONVENTION
ON CIVIL LIABILITY FOR OIL POLLUTION DAMAGE, 1969**

THE PARTIES TO THE PRESENT PROTOCOL

HAVING CONSIDERED the International Convention on Civil Liability for Oil Pollution Damage, 1969, and the 1984 Protocol thereto,

HAVING NOTED that the 1984 Protocol to that Convention, which provides for improved scope and enhanced compensation, has not entered into force,

AFFIRMING the importance of maintaining the viability of the international oil pollution liability and compensation system,

AWARE OF the need to ensure the entry into force of the content of the 1984 Protocol as soon as possible,

RECOGNIZING that special provisions are necessary in connection with the introduction of corresponding amendments to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971,

HAVE AGREED as follows:

Article 1 to article 11

*Identical to the text of article 1 to article 11 of the 1984 Protocol to the Civil Liability Convention.**

Article 12

Signature, ratification, etc.

1 This Protocol shall be open for signature at London from to by all States.

2-6 *Identical to the text of article 12, paragraphs 2 to 6, of the 1984 Protocol to the Civil Liability Convention.**

Article 13

Entry into force

1 This Protocol shall enter into force twelve months following the date on which ten States including [four] [five] States each with not less than one million units of gross tanker tonnage have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General of the Organization.

2-4 *Identical to the text of article 13, paragraphs 2 to 4, of the 1984 Protocol to the Civil Liability Convention.**

* The references to "1984" in the 1984 Protocol to the Civil Liability Convention are replaced by references to "19XX" in article XIIter, article 11, paragraph 2, article 12, paragraph 4, article 13, paragraph 2, article 14, paragraphs 1 and 2, article 15, paragraph 5, article 16, paragraph 5 and article 17, paragraph 2(a)(ii) and in the certificate annexed to that Protocol.

Article 14 to article 18

*Identical to the text of article 14 to article 18 of the 1984 Protocol to the Civil Liability Convention.**

DONE AT LONDON, this day of

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments for that purpose, have signed this Protocol.

Annex 2

**DRAFT PROTOCOL TO THE INTERNATIONAL CONVENTION
ON THE ESTABLISHMENT OF AN INTERNATIONAL FUND
FOR COMPENSATION FOR OIL POLLUTION
DAMAGE, 1971**

THE PARTIES TO THE PRESENT PROTOCOL,

HAVING CONSIDERED the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, and the 1984 Protocol thereto,

HAVING NOTED that the 1984 Protocol to that Convention, which provides for improved scope and enhanced compensation, has not entered into force,

AFFIRMING the importance of maintaining the viability of the international oil pollution liability and compensation system,

AWARE OF the need to ensure the entry into force of the content of the 1984 Protocol as soon as possible,

RECOGNIZING the advantage for the States Parties of arranging for the amended Convention to coexist with and be supplementary to the original Convention for a transitional period,

CONVINCED that the economic consequences of pollution damage resulting from the carriage of oil in bulk at sea by ships should continue to be shared by the shipping industry and by the oil cargo interests,

BEARING IN MIND the adoption of the Protocol of 19XX to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969,

HAVE AGREED as follows:

Article 1 to article 27

*Identical to the text of article 1 to article 27 of the 1984 Protocol to the Fund Convention.***

* The references to "1984" in the 1984 Protocol to the Civil Liability Convention are replaced by references to "19XX" in article XIIter, article 11, paragraph 2, article 12, paragraph 4, article 13, paragraph 2, article 14, paragraphs 1 and 2, article 15, paragraph 5, article 16, paragraph 5 and article 17, paragraph 2(a)(ii) and in the certificate annexed to that Protocol.

** The references to "1984" in the 1984 Protocol to the Fund Convention are replaced by references to "19XX" in article 2, paragraphs 1 to 6, article 3, article 6, paragraphs 1 to 3 and 5, article 9, paragraph 1, article 10, article 11, paragraph 1, article 27, article 28, paragraph 4, article 30, paragraphs 2 and 6, article 33, paragraph 5, article 34, paragraph 4, article 36bis and article 36quater.

Article 28

Signature, ratification, etc.

1 This Protocol shall be open for signature at London from to by any State which has signed the 19XX Liability Convention.

2-7 *Identical to the text of article 28, paragraphs 2 to 7, of the 1984 Protocol to the Fund Convention.**

Article 29

*Identical to the text of article 29 of the 1984 Protocol to the Fund Convention.**

Article 30

Entry into force

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

- (a) at least eight States have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General of the Organization; and
- (b) the Secretary-General of the Organization has received information in accordance with article 29 that those persons who would be liable to contribute pursuant to article 10 of the 1971 Fund Convention as amended by this Protocol have received during the preceding calendar year a total quantity of at least [500] [450] [400] million tons of contributing oil.

2-6 *Identical to the text of article 30, paragraphs 2 to 6, of the 1984 Protocol to the Fund Convention.**

Article 31 to article 39

*Identical to the text of article 31 to article 39 of the 1984 Protocol to the Fund Convention.**

DONE AT LONDON, this day of

IN WITNESS WHEREOF the undersigned being duly authorized for that purpose have signed this Protocol.

Annex 3

**DRAFT RESOLUTION 1
relating to the need to avoid a situation in which
two conflicting treaty regimes are operational**

THE CONFERENCE,

HAVING ADOPTED the Protocol of 19.. to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969 (1969 Civil Liability Convention) and the Protocol of 19.. to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (1971 Fund Convention) (hereinafter referred to as the "19.. Protocols"),

* The references to "1984" in the 1984 Protocol to the Fund Convention are replaced by references to "19XX" in article 2, paragraphs 1 to 6, article 3, article 6, paragraphs 1 to 3 and 5, article 9, paragraph 1, article 10, article 11, paragraph 1, article 27, article 28, paragraph 4, article 30, paragraphs 2 and 6, article 33, paragraph 5, article 34, paragraph 4, article 36bis, and article 36quater.

RECALLING the Protocols which were adopted in 1984 to amend the 1969 Civil Liability Convention and 1971 Fund Convention (hereinafter referred to as the "1984 Protocols"),

NOTING that the 19.. Protocols incorporate all the provisions of the 1984 Protocols with the exception of the provisions on entry into force,

HAVING AGREED that the 19.. Protocols should constitute the amending instruments to the 1969 Civil Liability Convention and the 1971 Fund Convention, in place of the 1984 Protocols which should no longer be viable,

CONSIDERING that the entry into force of the 19.. Protocols as well as the 1984 Protocols would create an undesirable situation in which two conflicting regimes would become operational,

CONVINCED that the 1969 Civil Liability Convention and the 1971 Fund Convention, as modified by the 19.. Protocols, constitute an adequate international treaty regime on liability and compensation for oil pollution damage,

SATISFIED that States which decide to participate in a modernized regime on compensation for oil pollution damage need only express their consent to be bound by the 19.. Protocols without also taking any action in respect of the 1984 Protocols,

DESIROUS of bringing the 19.. Protocols into force with minimum delay in order to bring the modernized regime of compensation into operation as soon as possible,

1. INVITES all States to give early and urgent consideration to the 19.. Protocols with a view to their acceptance thereof at an early date;
2. URGES all States which decide to participate in the modernized regime of compensation to deposit the appropriate instruments with the Secretary-General of the International Maritime Organization (IMO) as soon as possible;
3. APPEALS to all States which decide to participate in the modernized regime to ensure that they deposit instruments only in respect of the 19.. Protocols and without any references to the 1984 Protocols;
4. REQUESTS the Secretary-General of IMO to bring the terms of this resolution, and in particular the appeal in paragraph 3 above, to the attention of all States entitled to become Parties to the 19.. Protocols;
5. FURTHER REQUESTS the Secretary-General of IMO, in co-operation as necessary with the Director of the International Oil Pollution Compensation Fund (IOPC Fund), to provide all possible advice and assistance to States considering becoming Party to the 19.. Protocols, in order to ensure that the action taken by such States shall be in accordance with the terms of this resolution;
6. AUTHORIZES AND REQUESTS the Secretary-General, in his capacity as depositary of the Protocols, to take all appropriate steps, in conformity with the law of treaties and the depositary practice of IMO and the United Nations, to ensure that all instruments deposited by States after the adoption of the 19.. Protocols will facilitate the entry into force of only the 19.. Protocols, and will not also contribute to fulfil the conditions for the entry into force of the 1984 Protocols;
7. INVITES the Secretary-General of IMO to seek the views and guidance of the Legal Committee or the Council of IMO, as may be appropriate, in dealing with problems which may arise in connection with the implementation of this resolution;
8. REQUESTS the Secretary-General of IMO to seek the views and co-operation of the Director of the IOPC Fund in connection with the implementation of this resolution.

DRAFT RESOLUTION 2
in respect of certain treaty-law issues relating to States which have already
expressed their consent to be bound by the 1984 Protocols

THE CONFERENCE,

HAVING ADOPTED the Protocol of 19.. to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969 (1969 Civil Liability Convention), and the Protocol of 19.. to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (1971 Fund Convention) (hereinafter referred to as the "19.. Protocols"),

RECALLING the Protocols which were adopted in 1984 to amend the 1969 Civil Liability Convention and the 1971 Fund Convention (hereinafter referred to as the "1984 Protocols"),

NOTING that a number of States have already deposited instruments of ratification, acceptance, approval or accession in respect of the 1984 Protocols prior to the adoption of the 19.. Protocols,

NOTING ALSO that the 1984 Protocols have not entered into force, and that it is unlikely that their conditions for entry into force will be satisfied following the adoption of the 19.. Protocols to replace them,

RECOGNIZING, however, that there is the possibility in theory that the 1984 Protocols might enter into force even after the entry into force of the 19.. Protocols,

APPRECIATING that the States which have consented to be bound by the 1984 Protocols might face difficulties if they were to become Parties to the 19.. Protocols without being allowed to withdraw their consent to be bound by the 1984 Protocols,

CONSIDERING that it is advisable for the States which have consented to be bound by the 1984 Protocols and which also wish to become Parties to the 19.. Protocols to take measures to avoid the situation in which they might be obliged to apply two conflicting regimes on compensation,

CONSIDERING ALSO that the most effective way for the States concerned to avoid bringing two conflicting treaty regimes into force is for such States to withdraw their consent to be bound by the 1984 Protocols before or when expressing their consent to be bound by the 19.. Protocols,

BEING OF THE VIEW that withdrawal of a consent to be bound by a treaty in such a situation would not contravene any rule of international treaty law,

CONVINCED that action by States to bring the 19.. Protocols into force will help to promote the object and purpose for which the 1984 Protocols were originally adopted,

1. INVITES the States which have already expressed their consent to be bound by the 1984 Protocols and which wish to become Parties to the 19.. Protocols to consider formally withdrawing their consent in respect of the 1984 Protocols prior to or at the time of expressing their consent to be bound by the 19.. Protocols;
2. REQUESTS the Secretary-General of the International Maritime Organization (IMO), as the depositary of the 1984 Protocols and the 19.. Protocols, to bring the contents of this resolution to the attention of all States entitled to become Parties to the 1984 Protocols and the 19.. Protocols;
3. FURTHER REQUESTS the Secretary-General of IMO to take all necessary and appropriate steps to advise and assist the States concerned which wish to take action in accordance with the terms of this resolution;

4. ALSO REQUESTS the Director of the International Oil Pollution Compensation Fund to extend appropriate co-operation and assistance to the Secretary-General of IMO in the implementation of this resolution;
5. INVITES the Secretary-General of IMO to consult with and seek the views and guidance of the Legal Committee or the Council of IMO, as may be appropriate, in dealing with problems which may arise in connection with the implementation of this resolution.