

14 MAY 1986

STATEMENT OF  
RADM J. WILLIAM KIME  
BEFORE THE  
SENATE FOREIGN RELATIONS COMMITTEE  
UNITED STATES SENATE

15 MAY 1986

GOOD MORNING MR. CHAIRMAN,

I AM REAR ADMIRAL J. WILLIAM KIME, CHIEF OF THE COAST GUARD OFFICE OF MERCHANT MARINE SAFETY. I AM VERY PLEASED TO BE HERE THIS MORNING TO PROVIDE SOME DETAILS ON THE 1984 PROTOCOLS TO THE 1969 CIVIL LIABILITY AND 1971 FUND CONVENTIONS (CLC AND FUND). MY BRIEF STATEMENT WILL ADDRESS FOUR SPECIFIC AREAS OF CONCERN<sup>f</sup> RESPECTING THE PROTOCOLS:

- NATURAL RESOURCE DAMAGE,
- LIMITATION AMOUNT UP-DATING,
- PERCENTAGE OF U.S. CONTRIBUTION TO THE FUND ESTABLISHED BY THE FUND PROTOCOL, AND
- A COMPARISON OF SAFETY AND ENVIRONMENTAL STANDARDS BETWEEN U.S. AND FOREIGN FLAG TANKERS.

NATURAL RESOURCE DAMAGE

SECRETARY DOLE HAS SAID ON A NUMBER OF OCCASIONS THAT SHE OPPOSES PAYMENT OF THEORETICAL OR SPECULATIVE CLAIMS AND LIABILITY AND COMPENSATION REGIMES WHICH WOULD ENCOURAGE PAYMENT OF OTHER THAN CLEARLY IDENTIFIABLE DAMAGES.

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THE DEFINITION OF "POLLUTION DAMAGE" UNDER THE PROTOCOLS SUBSTANTIALLY RESTRICTS AND NARROWS THE SCOPE OF A COURT'S DISCRETION FROM THAT WHICH APPLIES UNDER THE CURRENT (1969 AND 1971) CONVENTIONS, ESPECIALLY IN THE AREA OF "IMPAIRMENT OF THE ENVIRONMENT". FURTHER, UNCHALLENGED STATEMENTS BY THE UNITED STATES AND OTHERS IN THE "LEGISLATIVE HISTORY" OF THE DIPLOMATIC CONFERENCE CLEARLY DEMONSTRATE THE INTENT THAT COSTS OF RESTORATION MEASURES TO BE UNDERTAKEN MUST BE CONSISTENT WITH RESTORATION PLANS REVIEWED BY THE COURT, PRIOR TO ITS DETERMINATION OF THE AMOUNT.

PRESIDENT REAGAN, IN HIS TRANSMITTAL OF THE PROTOCOLS TO THE SENATE, HAS INCLUDED AN "UNDERSTANDING" ON THIS MATTER WHICH WOULD BE DEPOSITED WITH THE U.S. RATIFICATION OF THE PROTOCOLS WHICH WILL ENSURE A PROPER BALANCE WITH RESPECT TO RESTORATION OF NATURAL RESOURCE DAMAGE, ENCOURAGING LEGITIMATE RESTORATION WHILE OPPOSING THAT WHICH IS SPECULATIVE OR BASED ON ABSTRACT QUALIFICATIONS OR THEORETICAL MODELS. THE PARTICIPATION OF THE UNITED STATES AND OTHER MAJOR CONTRIBUTORS IN THE FUND'S SETTLEMENT PROCESS WILL SERVE TO LIMIT THE RISK OF PAYMENT OF SUCH SPECULATIVE CLAIMS, REGARDLESS OF THEIR SUBJECT MATTER.

#### LIMITS OF COMPENSATION UPDATING

THE MAJOR REASON THAT AN EFFORT WAS UNDERTAKEN TO REVISE THE 1969 AND 1971 CONVENTIONS WAS THE NEED TO RAISE THEIR COMPENSATION LEVELS, WHOSE VALUE HAD BEEN SERIOUSLY ERODED SINCE ADOPTION. THE REVISION PROCESS, CULMINATING IN THE 1984 CONFERENCE, REQUIRED NEARLY THREE YEARS OF DEDICATED EFFORT BY THE INTERESTED GOVERNMENTS. SHOULD THE PROTOCOLS ENTER INTO FORCE IN 1990, AS SOME OBSERVERS PROJECT, THE REVISED LIMITS WILL NOT APPLY UNTIL THEN.

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THE PARTICIPANTS IN THE REVISION PROCESS RECOGNIZED THAT THE RATE OF MONETARY VALUE CHANGE IN PRESENT TIMES MAKES THIS EXTENDED PROCESS INADEQUATE.

THIS RECOGNITION LED TO THE INCLUSION OF A TACIT LIMITATION AMOUNT AMENDMENT PROCEDURE IN EACH PROTOCOL. UNDER THIS PROCEDURE, ASSUMING (1) THAT THE PROTOCOLS ENTER INTO FORCE IN 1990 AND (2) THAT THERE IS AN IMMEDIATELY RECOGNIZED NEED TO REVISE THE LIMITS IN THE PROTOCOLS, UPDATED LIMITATION AMOUNTS MAY ENTER INTO FORCE AND BE BINDING ON ALL PARTIES TO THE RESPECTIVE PROTOCOLS IN THREE YEARS FROM THE DATE OF ADOPTION, I.E., 1993.

BECAUSE ALL PARTIES WILL BE BOUND BY THE REVISED LIMITS WHEN THEY ENTER INTO FORCE, THE PROTOCOLS CONTAIN A NUMBER OF PROCEDURAL SAFEGUARDS TO PROTECT THE INTERESTS OF THE PARTIES:

- AT LEAST ONE QUARTER OF THE CONTRACTING STATES MUST REQUEST A REVISION;
- ALL CONTRACTING STATES MUST RECEIVE NOTICE OF THE PROPOSAL TO REVISE;
- CONTRACTING STATES MUST HAVE SIX MONTHS TO CONSIDER THE PROPOSAL BEFORE THE REVISION MEETING (UNDER THE AUSPICES OF THE INTERNATIONAL MARITIME ORGANIZATION LEGAL COMMITTEE) IS HELD.

AT THE MEETING (A) AT LEAST ONE-HALF OF THE CONTRACTING STATES MUST BE PRESENT, AND (B) THE REVISIONS MUST BE AGREED TO BY AT LEAST TWO-THIRDS OF THE CONTRACTING STATES PRESENT AND VOTING, AND WITHIN THE EIGHTEEN-MONTH PERIOD FOLLOWING A REVISION'S ADOPTION, IT MAY BE REJECTED IF AT LEAST ONE-QUARTER OF THE CONTRACTING STATES GIVE NOTICE THAT IT IS UNACCEPTABLE.

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EIGHTEEN MONTHS AFTER THE CONCLUSION OF THAT PERIOD THE REVISIONS ENTER INTO FORCE, THREE YEARS AFTER ADOPTION.

IN ORDER TO PRECLUDE THE UNWISE USE OF THIS PROCEDURE, OTHER CONSTRAINTS ARE IMPOSED ON THE REVISION DECISION-MAKING PROCESS:

- CONSIDERATION MUST BE GIVEN TO (A) POLLUTION INCIDENT EXPERIENCE, (B) MONETARY VALUE CHANGES, (C) RELATIONSHIP BETWEEN THE LIMITS IN THE TWO PROTOCOLS, AND (D) (CLC PROTOCOL ONLY) INSURANCE COSTS;
- FIVE YEARS MUST ELAPSE FROM THE TIME ONE REVISION ENTERS INTO FORCE UNTIL THE NEXT ONE MAY BE CONSIDERED; AND
- LIMITS MAY NOT BE REVISED TO EXCEED (A) SIX PER CENT PER YEAR COMPOUNDED, OR (B) THREE TIMES THE AMOUNTS SET FORTH IN THE PROTOCOL.

WE BELIEVE THIS PROCEDURE STRIKES A GOOD BALANCE BETWEEN PROVIDING ADEQUATE LIMITS IN THE FUTURE, AND PROTECTING THE FUND'S MAJOR CONTRIBUTIONS.

U.S. CONTRIBUTIONS TO THE FUND

MR. CHAIRMAN, I WANT TO POINT OUT THAT THE INTERNATIONAL FUND TO BE ESTABLISHED BY THE PROTOCOLS IS FINANCED ON THE BASIS OF OIL RECEIPTS. SINCE THE UNITED STATES RECEIVES MORE SEA-BORNE OIL THAN ANY OTHER COUNTRY, IT WOULD BEAR A GREATER PROPORTION OF THE COMPENSATION BURDEN WHEN THE INTERNATIONAL FUND IS CALLED UPON TO SATISFY THOSE PORTIONS OF VALID CLAIMS WHICH ARE NOT MET BY THE SHIPOWNER'S LIABILITY. THE OTHER SIDE OF THE COIN, OF COURSE, IS

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THAT WE HAVE A GREATER EXPOSURE TO POTENTIAL SPILLS THAN ANY OTHER NATION BECAUSE OF THE LARGE QUANTITY OF IMPORTED OIL MOVING IN OUR WATERS.

THE GENERAL PRINCIPLE UNDERLYING THE FUND'S FINANCING MECHANISM IS THAT THOSE WHOSE REQUIREMENTS FOR SEABORNE OIL CREATE A POLLUTION RISK SHOULD BEAR THAT RISK IN PROPORTION TO THE AMOUNT OF OIL TRANSPORTED AT SEA TO MEET THOSE REQUIREMENTS. NOTABLY, THE 1984 PROTOCOL'S FUND FINANCING APPROACH HAS PROVEN ITSELF TO BE AN EFFICIENT AND EFFECTIVE ONE UNDER BOTH THE 1971 CONVENTION AND THE OIL INDUSTRY'S VOLUNTARY CRISTAL SYSTEM. AS SECRETARY DOLE POINTED OUT, IT IS ESTIMATED THAT, UNDER THE 1984 FUND PROTOCOL, THE COST TO U.S. OIL RECEIVERS WOULD APPROXIMATE TWO TENTHS OF ONE CENT PER BARREL OF OIL.

#### U.S. AND FOREIGN SAFETY STANDARDS

ON A RELATED POINT, IT HAS BEEN SUGGESTED THAT SAFETY AND ENVIRONMENTAL STANDARDS APPLIED BY THE UNITED STATES ARE MORE STRINGENT THAN THOSE APPLIED IN OTHER COUNTRIES. THIS IS NOT ACCURATE. UNITED STATES' REQUIREMENTS FOR SAFETY AND ENVIRONMENTAL PROTECTION ON VESSELS, WITH LIMITED EXCEPTIONS, FOLLOW STANDARDS ADOPTED INTERNATIONALLY -- IN PARTICULAR, THOSE CONTAINED IN THE 1974 SAFETY OF LIFE AT SEA CONVENTION (SOLAS) AND IN THE PROTOCOL OF 1978 RELATING TO THE 1973 CONVENTION FOR THE PREVENTION OF POLLUTION FROM SHIPS (MARPOL).

TANKERS REGISTERED IN THE 37 COUNTRIES WHICH ARE PARTIES TO MARPOL REPRESENT 74 PERCENT OF THE TANKERS IN INTERNATIONAL TRADE (4913/6590). SIMILARLY, TANKERS REGISTERED IN THE 117 COUNTRIES WHICH ARE PARTIES TO SOLAS '74 REPRESENT UPWARDS OF 87 PERCENT OF THE TANKERS IN INTERNATIONAL TRADE. A

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FEATURE OF BOTH TREATIES IS A NO MORE FAVORABLE TREATMENT CLAUSE WHICH REQUIRES PARTIES TO TREAT NON-PARTY VESSELS NO MORE FAVORABLY THAN PARTY VESSELS. THE RESULT IS, THAT IF A NON-PARTY TANKER COMES TO A PARTY'S PORT, IT IS REQUIRED TO MEET THE TREATIES' REQUIREMENTS, MAKING BOTH TREATIES ALMOST UNIVERSAL ON APPLICATION.

MARPOL AND SOLAS PROVIDE STRINGENT DESIGN, CONSTRUCTION AND OPERATION MEASURES TO REDUCE BOTH OPERATIONAL AND ACCIDENTAL POLLUTION. THE IMPLEMENTING UNITED STATES' LEGISLATION SPECIFICALLY ENDORSES THESE TREATIES BY RECOGNIZING THE SOLAS AND MARPOL CERTIFICATES. ONLY IN SOME VERY LIMITED AREAS DOES THE U.S. EXCEED THE INTERNATIONALLY DEVELOPED STANDARDS. THE MOST NOTABLE OF THESE ARE STANDARDS DESIGNED TO REDUCE OPERATIONAL OIL OUTFLOWS FROM OLDER TANKERS IN THE 20,000 - 40,000 DWT RANGE.

THUS, A FOREIGN FLAG VESSEL MEETING THE INTERNATIONAL STANDARDS AND HOLDING THE APPROPRIATE INTERNATIONAL CERTIFICATES WILL NOT BE REQUIRED, IN MOST SITUATIONS, TO MEET ADDITIONAL U.S. STANDARDS IN ORDER TO CALL AT A PORT OF THE UNITED STATES. HOWEVER, SUCH A VESSEL IS SUBJECT TO CONTROL IN THE PORTS OF ALL MARPOL AND SOLAS STATES, IN ORDER TO ENSURE COMPLIANCE WITH THE INTERNATIONAL STANDARDS. INDEED, EUROPEAN MARITIME AND PORT ADMINISTRATIONS ARE CURRENTLY OPERATING UNDER AN INTERNATIONAL AGREEMENT TO COORDINATE THEIR EFFORTS IN THIS REGARD.

MR. CHAIRMAN, SECRETARY DOLE HAS POINTED OUT THAT THE 1984 PROTOCOLS TO CLC AND FUND SERVE U.S. INTERESTS WELL. I HOPE MY TESTIMONY HIGHLIGHTS THIS ON THE FOUR SPECIFIC POINTS I HAVE COVERED. I WILL BE HAPPY TO ANSWER ANY QUESTIONS YOU MAY HAVE ON THESE POINTS, OR OTHERS.