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Office of the Assistant Secretary for Public Affairs
Washington, D.C. 20590

Contact: Jennifer Hillings
Tele.: (202) 426-4570

STATEMENT OF SECRETARY OF TRANSPORTATION
ELIZABETH HANFORD DOLE
BEFORE THE SENATE FOREIGN RELATIONS COMMITTEE
MAY 15, 1986

I'm delighted to have this opportunity to convey President Reagan's continued strong support for the 1984 Protocols which revised the 1969 Civil Liability and 1971 Fund Conventions (CLC and Fund) and to urge the Senate to give its advice and consent to ratification of the Protocols. Adoption of these Protocols is an essential element of the comprehensive compensation regime I am working with the Congress to secure.

The regime I am supporting will implement the 1984 Protocols to CLC and Fund, thereby making the United States a party to a broad international solution to oil spill problems. It will consolidate the existing patchwork of related federal laws into a single regime which prescribes a clear standard of liability with high limits. The regime also would establish a user-fee financed fund to pay for on-going response efforts and to compensate the victims of pollution damage for removal and cleanup costs, property damage and natural resource restoration or replacement.

The regime would support itself, for the fund would cover its administrative costs. It would also consolidate duplicative elements of state liability regimes into the federal system, after an appropriate transition period.

As you know, Mr. Chairman, there is widespread agreement in the Congress, the Administration, the oil and shipping industries and the environmental community that this country needs and deserves a first class oil spill response capability, as well as an equitable and adequate system to compensate those damaged by spills. That system must include adoption of the international regime created by the 1984 Protocols to CLC and Fund.

I am determined that the hard work of the Congress on this subject will come to fruition in this session. My goal is to work with you in this committee to ensure the Senate's advice and consent to ratification of the 1984 Protocols. Despite efforts to maintain and enforce high pollution prevention standards, tanker mishaps will continue to occur and victims must have a clear and certain means of compensation. It is essential that our citizens and our environment have the best protection and recourse possible. Further, it is clear that oil spills are an international problem requiring an international solution. Neither the oil nor the tanker industries are limited by national boundaries.

Mr. Chairman, you may know that I visited the International Maritime Organization (IMO) and talked with Secretary General Srivastava personally during the diplomatic conference of May 1984 (at which the Protocols were developed) when negotiations had reached a critical stage. I stressed the importance to the United States of several points, including the necessity for liability levels and compensation to be sufficiently high to cover all legitimate claims. I also stressed the importance of an amendment procedure for the monetary levels which would ensure that the Protocols do not become outdated due to inflationary pressures or other factors.

My visit, in conjunction with the hard work of a fine delegation of U.S. experts, resulted in a number of nations moving considerably closer to our position, making the levels of liability and compensation sufficiently high for broad agreement. We also negotiated a tacit amendment procedure to facilitate future changes. The U.S. is the only major maritime nation that is not now a party to the Protocols. Accommodations by a number of nations, now justifies the U.S. becoming a party.

An interim voluntary system for oil spill liability and compensation is currently provided under the tanker owners' agreements, Tovalop and Cristal. But a voluntary system is not the solution to the long-term problem -- Tovalop and Cristal are subject to termination at any time, are not judicially enforceable, and the U.S. as a government does not have a voice in the settlement process of these voluntary regimes.

In fact, recent developments have placed the future of Tovalop and Cristal in question. The replacement regime updating Tovalop and Cristal has failed to attract the necessary participation to bring it into force and it is not at all certain that they will continue.

Therefore, both Secretary Shultz and I agree that ratification of the international regime established by the Protocols should proceed without delay and, as you know, President Reagan forwarded the Protocols for the Senate's advice and consent on November 5, 1985.

Mr. Chairman, let me highlight again the primary reasons for action: That regime establishes a clear, internationally recognized standard of liability for tanker owners, strict financial responsibility requirements and enhanced enforceability of judgments. Jurisdiction is clearly

established in the courts of the country where damage occurs and the shipowner's liability is backed by an internationally enforced compulsory insurance system. United States citizens will benefit from greatly improved coverage and enhanced speed and certainty of settlement of their claims. We will be able to use U.S. courts to obtain judgments against the shipowner, the shipowner's insurer, and the international fund. These judgments are directly enforceable as a matter of right in the courts of other countries which are parties to the Protocols. Every country which is a party to the Protocols is also required to assure that every ship (regardless of its flag), which calls at its ports carrying more than 2,000 tons of oil as cargo, has or obtains insurance to cover that liability. Any insurer which provides this necessary coverage is itself subject to direct action in court by pollution damage victims. Accordingly, in view of the fact that a clear, strict liability standard applies, insurers and their insured shipowners will be strongly motivated to settle most bona fide claims promptly in order to avoid costly litigation.

The revised Fund Convention provides a supplemental compensation, paid by the oil industry, up to a per incident combined coverage total of 160 million dollars. The coverage can be expanded to 238 million dollars when 3 countries party to the Protocols reach combined total oil receipts of 600 million tons per year. Since U.S. oil imports approximate 450 million tons per year, U.S. ratification would virtually assure expanded coverage.

Mr. Chairman, this is excellent coverage!

It is also important to point out that the increase in shipowner liability limits established by the 1984 Protocols, and in particular the new minimum liability established, will act to reduce the number of incidents requiring expenditures from the fund. By raising the overall limit substantially, the 1984 Protocols will have the effect of providing coverage for currently uncompensated costs and damages. Most of this new coverage will be provided by the fund.

However, because the shipowner's limit is also being sharply raised, much of the fund's current compensation burden will be shifted onto shipowners who bear the responsibility for safe vessel operation as well as the initial cost under the CLC. The net result is likely to be a doubling of the proportion of major spill costs falling to the shipowners' account, virtually no change in the burden placed on the fund, and coverage for all damage which may reasonably be expected to arise. The fund would only be involved in catastrophic incidents, where the shipowner's liability limit is exceeded.

The 1984 Protocol to the Fund Convention provides an option under which the government of a country may pay contributions to the international fund on behalf of those who receive oil in its territory. Under the bill that has passed the House which would implement the Protocols (Title IV of H.R. 2005), the United States would avail itself of this option and pay all U.S.

source contributions due the international fund from a domestic oil spill compensation fund. I support this approach.

Mr. Chairman, I believe that the Protocols offer excellent insurance to the United States with respect to U.S., and more importantly, foreign flag carriers. Our response and prevention record is among the best in the world; however, as recent spill history indicates, we can expect occasional spills of oil from both U.S. and foreign flag tankers. Our ratification of the Protocols has been put off for too many years. The United States should assume a meaningful and effective leadership role in pollution cleanup and compensation by immediate ratification of the Protocols.

Thank you, Mr. Chairman. This concludes my summary. I have submitted a long statement for inclusion in the Record. I will be pleased to respond to any questions you may have.

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