

1969 年油污損害民事責任國際公約 1992 年議定書

1992 年 11 月 27 日 訂於倫敦，1996 年 5 月 30 日生效

1992 Protocol to The International Convention on Civil Liability for Oil Pollution Damage, 1969

London, 27 November, 1992 ; Entered into Force on 30 May, 1996

CLC 1992

THE PARTIES TO THE PRESENT PROTOCOL,
HAVING CONSIDERED the International Convention of 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

The Convention which the provisions of this Protocol amend is the International Convention on Civil Liability for Oil Pollution Damage, 1969, hereinafter referred to as the "1969 Liability Convention". For States Parties to the Protocol of 1976 to the 1969 Liability Convention, such reference shall be deemed to include the 1969 Liability Convention as amended by that Protocol.

Article 2

Article I of the 1969 Liability Convention is amended as follows:

1. Paragraph 1 is replaced by the following text:

1. "Ship" means any sea-going vessel and sea-borne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo, provided that a ship capable of carrying oil and other cargoes shall be regarded as a ship only when it is actually carrying oil in bulk as cargo and during any voyage following such carriage unless it is proved that it has no residues of such carriage

本議定書各當事國，
審議 1969 年國際油污損害民事責任公約及其 1984 年議定書，

注意到對於增進適用範圍、增加賠償而為規定之該公約 1984 年議定書尚未生效，

確認保持國際油污責任及賠償體系存續力之重要，

注意到確保 1984 年議定書內容得以儘快生效之必要性，

認識到為採用 1971 年設立國際油污損害賠償基金國際公約之相應修正案，必須為一些特別規定，

茲達成協定如下：

第 1 條

本議定書規定所修正之公約為 1969 年國際油污損害民事責任公約(此後稱 1969 年責任公約)。對 1969 年責任公約之 1976 年議定書之當事國而言，述及 1969 年責任公約應視為包括由該議定書修正之 1969 年責任公約。

第 2 條

1969 年責任公約第 1 條為如下修正：

1. 以下列條文取代第 1 項：

1. "船舶"係指為運送散裝油類貨物而建造或改建之任何類型之海船及海上航具；然能運送油類及其他貨物之船舶，僅在其實際運送散裝油類貨物，及於該運送之後之任何航程(已證明船上無該散裝油類運送之殘餘物者除外)期間，始應視為船

of oil in bulk aboard.

2. Paragraph 5 is replaced by the following text:

5. "Oil" means any persistent hydrocarbon mineral oil such as crude oil, fuel oil, heavy diesel oil and lubricating oil, whether carried on board a ship as cargo or in the bunkers of such a ship.

3. Paragraph 6 is replaced by the following text:

6. "Pollution damage" means:

(a) loss or damage caused outside the ship by contamination resulting from the escape or discharge of oil from the ship, wherever such escape or discharge may occur, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken;

(b) the costs of preventive measures and further loss or damage caused by preventive measures.

4. Paragraph 8 is replaced by the following text:

8. "Incident" means any occurrence, or series of occurrences having the same origin, which causes pollution damage or creates a grave and imminent threat of causing such damage.

5. Paragraph 9 is replaced by the following text:

9. "Organization" means the International Maritime Organization.

6. After paragraph 9 a new paragraph is inserted reading as follows:

10. "1969 Liability Convention" means the International Convention of Civil Liability for Oil Pollution Damage, 1969. For States Parties to the Protocol of 1976 to that Convention, the term shall be deemed to include the 1969 Liability Convention as amended by that Protocol.

Article 3

Article II of the 1969 Liability Convention is replaced by the following text:

This Convention shall apply exclusively:

(a) to pollution damage caused:

(i) in the territory, including the territorial sea, of a Contracting State, and

(ii) in the exclusive economic zone of a Contracting State, established in accordance with international law, or, if a Contracting State has not established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured;

(b) to preventive measures, wherever taken, to prevent or minimize such damage.

Article 4

Article III of the 1969 Liability Convention is amended as follows:

1. Paragraph 1 is replaced by the following text:

1. Except as provided in paragraphs 2 and 3 of this Article, the

ship.

2. 以下列條文取代第 5 項：

5. "油類"係指任何持久性烴類礦物油，如原油、燃料油、重柴油及潤滑油，不論是位於船上作為貨物運送或是位於該船舶之燃料艙中。

3. 以下列條文取代第 6 項：

6. "污染損害"係指：

(a) 油類從船上溢出或排放所致之污染於該船之外造成之滅失或損害，無論該溢出或排放發生於何處；然對環境損害(不包括該損害之營利損失)之賠償，應限於已實際採取或即將採取之合理恢復措施之費用；

(b) 預防措施費用及預防措施所造成之進一步滅失或損害。

4. 以下列條文取代第 8 項：

8. "事故"係指具同一起源之造成污染損害或形成造成該損害之嚴重及緊迫威脅之一或一系列事件。

5. 以下列條文取代第 9 項：

9. "本組織"係指國際海事組織。

6. 於第 9 項後加一新項，條文如下：

10. "1969 年責任公約"係指 1969 年國際油污損害民事責任公約。就該公約之 1976 年議定書締約國而言，該詞應視為包括經該議定書修正之 1969 年責任公約。

第 3 條

以下列條文取代 1969 年責任公約的第 2 條：

本公約僅適用於：

(a) 於下列區域所造成之污染損害：

(i) 締約國之領土，包括領海；及

(ii) 締約國依據國際法設立之專屬經濟區。如締約國尚未設立該區域，則為該國依據國際法所確定並與其領海毗連之區域以外，自該國測量其領海寬度之基線算起，外延不超過 200 哩；

(b) 為預防或減輕該損害而於任何地點採取之預防措施。

第 4 條

1969 年責任公約第 3 條修正如下：

1. 以下列條文取代第 1 項：

1. 除本條第 2 項及第 3 項另有規定

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 the ship as a result of the incident.

2. Paragraph 4 is replaced by the following text:

4. No claim for compensation for pollution damage may be made against the owner otherwise than in accordance with this Convention. Subject to paragraph 5 of this Article, no claim for compensation for pollution damage under this Convention or otherwise may be made against:

- (a) the servants or agents of the owner or the members of the crew;
- (b) the pilot or any other person who, without being a member of the crew, performs services for the ship;
- (c) any charterer (howsoever described, including a bareboat charterer), manager or operator of the ship;
- (d) any person performing salvage operations with the consent of the owner or on the instructions of a competent public authority;
- (e) any person taking preventive measures;
- (f) all servants or agents of persons mentioned in subparagraphs (c), (d) and (e);

unless the damage resulted from their personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

Article 5

Article IV of the 1969 Liability Convention is replaced by the following text:

When an incident involving two or more ships occurs 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 6

Article V of the 1969 Liability Convention is amended as follows:

1. Paragraph 1 is replaced by the following text:

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 calculated as follows:

- (a) 3 million units of account for a ship not exceeding 5,000 units of tonnage;
 - (b) for a ship with a tonnage in excess thereof, for each additional unit of tonnage, 420 units of account in addition to the amount mentioned in subparagraph (a);
- provided, however, that this aggregate amount shall not in any event exceed 59.7 million units of account.

2. Paragraph 2 is replaced by the following text:

2. The owner shall not be entitled to limit his liability under this Convention if it is proved that the pollution damage resulted from his personal act or omission, committed with the

外，於事件發生時，或如該事件包括一系列事故，則在其第一次事故發生時，船舶所有人應對該船因該事件所致之任何污染損害負責賠償。

2.以下列條文取代第 4 項：

4. 除依本公約規定外，不得對船舶所有人提出污染損害賠償求償。除本條第 5 項另有規定外，不論依據本公約與否，不得對下列人等提出污染損害賠償求償：

- (a) 船舶所有人之受雇人或代理人或船員；
- (b) 引水人或為船舶提供服務之非屬船員之任何其他人士；
- (c) 任何租僱船人(任何類型之租僱船人，包括光船租船人)、船舶經理人或營運人；
- (d) 經船舶所有人同意或依據有關主管機關之命令進行救助作業之任何人；
- (e) 採取預防措施之任何人；
- (f) 第(c)、(d)、(e)款所提及人之受雇人或代理人；

然損害如係因其本人有意造成該損害或是明知可能造成該損害而毫不在意之作為或不作為所致者除外。

第 5 條

以下列文字取代 1969 年責任公約第 4 條：

於發生涉及兩艘或以上船舶之事件並造成污染損害時，所有有關船舶之所有人，除依第 3 條得主張免責外，應對所有無法合理區分之該損害負連帶賠償責任。

第 6 條

1969 年責任公約第 5 條修改如下：

1.以下列條文取代第 1 項：

1.船舶所有人有權依本公約將其對任一事件之賠償責任限於依下列方法計算出之總額：

- (a) 不超過 5,000 噸位單位之船舶為 300 萬記帳單位；
- (b) 超過該噸位之船舶，除第(a)款所述數額外，每增加一噸位單位，增加 420 記帳單位；

然該總額於任何情況下不得超過 5,970 萬記帳單位。

2.以下列條文取代第 2 項：

2.如經證明污染損害係因船舶所有人本人有意造成該損害或是明知可能造成該損害而毫不在意之作

intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

3. Paragraph 3 is replaced by the following text:

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 or, if no action is brought, with any Court or other competent authority in any one of the Contracting States in which an action can be 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 other competent authority.

4. Paragraph 9 is replaced by the following text:

9 (a). The "unit of account" referred to in paragraph 1 of this Article is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in paragraph 1 shall be converted into national currency on the basis of the value of that currency by reference to the Special Drawing Right on the date of the constitution of the fund referred to in paragraph 3. The value of the national currency, in terms of the Special Drawing Right, of a Contracting State which is a member of the International Monetary Fund shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect on the date in question for its operations and transactions. The value of the national currency, in terms of the Special Drawing Right, of a Contracting State which is not a member of the International Monetary Fund shall be calculated in a manner determined by that State.

9 (b). Nevertheless, a Contracting State which is not a member of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 9 (a) may, at the time of ratification, acceptance, approval of or accession to this Convention or at any time thereafter, declare that the unit of account referred to in paragraph 9 (a) shall be equal to 15 gold francs. The gold franc referred to in this paragraph corresponds to sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. The conversion of the gold franc into the national currency shall be made according to the law of the State concerned.

9 (c). The calculation mentioned in the last sentence of paragraph 9 (a) and the conversion mentioned in paragraph 9 (b) shall be made in such manner as to express in the national currency of the Contracting State as far as possible the same real value for the amounts in paragraph 1 as would result from the application of the first three sentences of paragraph 9 (a). Contracting States shall communicate to the depositary the manner of calculation pursuant to paragraph 9 (a), or the result of the conversion in paragraph 9 (b) as the case may be, when depositing an instrument of ratification, acceptance, approval of or accession to this Convention and whenever there is a change in either.

為或不作為所致，船舶所有人無權依本公約限制其責任。

3.以下列條文取代第 3 項：

3. 為主張本條第 1 項所規定之責任限制權利，船舶所有人應於依第 9 條提起訴訟之任一締約國法院或其他主管機關設立相當於其責任限額總額之基金；如未提起訴訟，則應在可依第 9 條提起訴訟之任一締約國之任一法院或其他主管機關設立該基金。設立該基金時可將其總額以現金提存，或設立基金之締約國法律可接受，法院或其他主管機關認為合適之銀行擔保或其他擔保。

4.以下列條文取代第 9 項：

9(a) 本條第 1 項所述之“記帳單位”為國際貨幣基金所規定之特別提款權。第 1 項所述之數額，應依據本條第 3 項所述基金設立日，該國貨幣與特別提款權相應之價值折算成該國貨幣。凡屬國際貨幣基金成員國之締約國，其依特別提款權折算之該國貨幣之價值，應依國際貨幣基金於前述日期於其經營及交易所適用之現行定價辦法計算之。非屬國際貨幣基金成員國之締約國，其依特別提款權折算之該國貨幣之價值，應依該國所確定之辦法計算之。

9(b) 然非屬國際貨幣基金成員國之締約國，且其法律又不允許執行第 9 項第(a)款規定時，可於批准、接受、核准或加入本公約時，或在其後之任何時間，聲明第 9 項第(a)款所述記帳單位相當於 15 金法郎。本項所述金法郎相當於純度為千分之九百的黃金 65.5 毫克，金法郎折算為國家貨幣時，應依該國法律辦理。

9(c) 第 9 項第(a)款末句所述之計算及第 9 項第(b)項所述之折算，其方式應盡可能使第 1 項之金額於以該締約國貨幣為表示時，具有與依第 9 項第(a)款前三句所定辦法而獲得之結果相同之真實價值。締約國於交存批准、接受、核准或加入本公約之文件時，及上述計算或折算發生變動時，應視情況將其依第 9 項第(a)款進行計算之辦法，或依第 9 項第(b)款進行折算之結果通知本組織秘書長。

5. Paragraph 10 is replaced by the following text:

10. For the purpose of this Article the ships tonnage shall be the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex I of the International Convention on Tonnage Measurement of Ships, 1969.

6. The second sentence of paragraph 11 is replaced by the following text:

Such a fund may be constituted even if, under the provisions of paragraph 2, the owner is not entitled to limit his liability, but its constitution shall in that case not prejudice the rights of any claimant against the owner.

Article 7

Article VII of the 1969 Liability Convention is amended as follows:

1. The first two sentences of paragraph 2 are replaced by the following text:

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 after the appropriate authority of a Contracting State has determined that the requirements of paragraph 1 have been complied with. With respect to a ship registered in a Contracting State such certificate shall be issued or certified by the appropriate authority of the State of the ship's registry; with respect to a ship not registered in a Contracting State it may be issued or certified by the appropriate authority of any Contracting State.

2. Paragraph 4 is replaced by the following text:

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 or, if the ship is not registered in a Contracting State, with the authorities of the State issuing or certifying the certificate.

3. The first sentence of paragraph 7 is replaced by the following text:

Certificates issued or certified under the authority of a Contracting State in accordance with paragraph 2 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 even if issued or certified in respect of a ship not registered in a Contracting State.

4. In the second sentence of paragraph 7 the words "with the State of a ship's registry" are replaced by the words "with the issuing or certifying State".

5. The second sentence of paragraph 8 is replaced by the following text:

In such case the defendant may, even if the owner is not entitled to limit his liability according to Article V, paragraph 2, avail himself of the limits of liability prescribed in Article V, paragraph 1.

Article 8

Article IX of the 1969 Liability Convention is amended as follows:

5. 以下列條文取代第 10 項：

於本條，船舶噸位應為依照 1969 年國際船舶噸位丈量公約附則 I 之噸位丈量規則計算之總噸。

6. 以下列條文取代第 11 項的第 2 句：

即使於依照第 2 項規定船舶所有人無權限制其賠償責任之情況下，仍可設立該基金；然於此情況下，基金之設立不得影響任何求償人要求船舶所有人賠償之權利。

第 7 條

對 1969 年責任公約第 7 條作如下修正：

1. 以下列文字取代第 2 項之前兩段：

締約國主管機關於確信第 1 項要求已獲得滿足後，應向該船舶簽發一證書，證明保險或其他財務擔保依據本公約規定之效力。對於締約國登記之船舶，該證書應由船舶登記國主管機關頒發或簽證；對於非在締約國登記之船舶，證書可由任何一締約國主管機關頒發或簽證。

2. 以下列條文取代第 4 項：

4. 證書應存放船上，其副本一份應交由保存該船登記記錄之主管機關留存。如該船未於締約國登記，則應交由頒發或簽證該證書之國家主管機關留存。

3. 以下列條文取代第 7 項第 1 段：

締約國主管機關依照第 2 項頒發或簽證之證書，即使是未於締約國登記之船舶所頒發或簽證之證書，就本公約而言，亦應為其他締約國所接受，並應被其他締約國視為與其本國頒發或簽證之證書具有同等效力。

4. 在第 7 項第 2 句中，用“頒發或認證國”取代“船舶登記國”。

5. 以下列條文取代第 8 項第 2 段：

於該情況下，即使依照第 5 條第 2 項船舶所有人不得限制其賠償責任，被告仍得援用第 5 條第 1 項規定之責任限制。

第 8 條

對 1969 年責任公約第 9 條作如下修正：