

1971 年設立油污損害國際賠償基金國際公約 1992 年修正議定書

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

Protocol of 1992 to amend the International Convention on The Establishment of An International Fund for Compensation for Oil Pollution Damage, 1971

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

FUND 1992

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
could continue to be shared by the shipping industry and by the oil
cargo interests,
BEARING IN MIND the adoption of the Protocol of 1992 to
amend the International Convention on Civil Liability for Oil
Pollution Damage, 1969,
HAVE AGREED AS FOLLOWS:

Article 1

The Convention which the provisions of this Protocol amend is the
International Convention on the Establishment of an International
Fund for Compensation for Oil Pollution Damage, 1971,
hereinafter referred to as the "1971 Fund Convention". For States
Parties to the Protocol of 1976 to the 1971 Fund Convention, such
reference shall be deemed to include the 1971 Fund Convention as

本議定書各當事國，
考量 1971 年設立國際油污損害賠償基金
國際公約及其 1984 年議定書，

注意到該公約對增進適用範圍、提高賠
償限額所作出之 1984 年議定書仍未生
效，

確認保持國際油污責任及賠償體系存續
力之重要性，

瞭解確保 1984 年議定書規定應儘快生效
之必要性，

認識到各當事國透過安排，使經修正之
公約於過渡期間與原公約共存並對原公
約加以補充之優點，

確信船舶於海上運送散裝油類所生油污
損害之經濟後果應繼續由航運業及貨油
業分攤，

注意到通過修正 1969 年國際油污損害民
事責任公約之 1992 年議定書，

謹達成協定如下：

第 1 條

本議定書各規定所修正之公約為 1971 年
設立國際油污損害賠償基金國際公約，
以下稱“1971 年基金公約”。就 1971 年基
金公約 1976 年議定書之締約國而言，述
及 1971 年基金公約者應認為包括經該議
定書修正之 1971 年基金公約。

amended by that Protocol.

Article 2

Article 1 of the 1971 Fund Convention is amended as follows:

1. Paragraph 1 is replaced by the following text:
 1. "1992 Liability Convention" means the International Convention on Civil Liability for Oil Pollution Damage, 1992.
2. After paragraph 1 a new paragraph is inserted as follows:
 - 1 bis. "1971 Fund Convention" means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971. For States Parties to the Protocol of 1976 to that Convention, the term shall be deemed to include the 1971 Fund Convention as amended by that Protocol.
3. Paragraph 2 is replaced by the following text:
 2. "Ship", "Person", "Owner", "Oil", "Pollution Damage", "Preventive Measures", "Incident", and "Organization" have the same meaning as in Article I of the 1992 Liability Convention.
4. Paragraph 4 is replaced by the following text:
 4. "Unit of account" has the same meaning as in Article V, paragraph 9, of the 1992 Liability Convention.
5. Paragraph 5 is replaced by the following text:
 5. "Ship's tonnage" has the same meaning as in Article V, paragraph 10, of the 1992 Liability Convention.
6. Paragraph 7 is replaced by the following text:
 7. "Guarantor" means any person providing insurance or other financial security to cover an owner's liability in pursuance of Article VII, paragraph 1, of the 1992 Liability Convention.

Article 3

Article 2 of the 1971 Fund Convention is amended as follows:

Paragraph 1 is replaced by the following text:

1. An International Fund for compensation for pollution damage, to be named "The International Oil Pollution Compensation Fund 1992" and hereinafter referred to as "the Fund", is hereby established with the following aims:
 - (a) to provide compensation for pollution damage to the extent that the protection afforded by the 1992 Liability Convention is inadequate;
 - (b) to give effect to the related purposes set out in this Convention.

Article 4

Article 3 of the 1971 Fund Convention is replaced by the following text:

第 2 條

1971 年基金公約第 1 條修正如下：

1. 以下列條文取代第 1 項：
 1. 1992 年責任公約係指 1992 年國際油污損害民事責任公約。
2. 在第 1 項之後，插入新的一項如下：
 - 1 之一 “1971 年基金公約”係指 1971 年設立國際油污損害賠償基金國際公約。就該公約 1976 年議定書之締約國而言，應認為包括經該議定書修正之 1971 年基金公約。
3. 以下列條文取代第 2 項：
 2. “船舶”、“人”、“船舶所有人”、“油類”、“油污損害”、“預防措施”、“事件”及“本組織”等名詞之意義與 1992 年責任公約第 1 條有關名詞之意義相同。
4. 以下列條文取代第 4 項：
 4. “記帳單位”與 1992 年責任公約第 5 條第 9 項所規定之意義相同。
5. 以下列條文取代第 5 項：
 5. “船舶噸位”與 1992 年責任公約第 5 條第 10 項所規定之意義相同。
6. 以下列條文取代第 7 項：
 7. “保證人”係指依 1992 年責任公約第 7 條第 1 項為船舶所有人之賠償責任提供保險或其他財務擔保之人。

第 3 條

1971 年基金公約第 2 條修正如下：

以下列條文取代第 1 項：

1. 用於賠償污染損害之國際基金，定名為“1992 年國際油污賠償基金”(以下稱為“本基金”)謹為下列目的而設立：
 - (a) 為 1992 年責任公約所提供之防護不足部分提供污染損害賠償；
 - (b) 為實現本公約所規定之有關目的。

第 4 條

以下列文字取代 1971 年基金公約第 3 條：

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 baselines from which the breadth of its territorial sea is measured;
- (b) to preventive measures, wherever taken, to prevent or minimize such damage.

Article 5

The heading to Articles 4 to 9 of the 1971 Fund Convention is amended by deleting the words "and indemnification".

Article 6

Article 4 of the 1971 Fund Convention is amended as follows:

1. In paragraph 1 the five references to "the Liability Convention" are replaced by references to "the 1992 Liability Convention".
2. Paragraph 3 is replaced by the following text:
 3. If the Fund proves that the pollution damage resulted wholly or partially either from an act or omission done with the intent to cause damage by the person who suffered the damage or from the negligence of that person, the Fund may be exonerated wholly or partially from its obligation to pay compensation to such person. The Fund shall in any event be exonerated to the extent that the shipowner may have been exonerated under Article III, paragraph 3, of the 1992 Liability Convention. However, there shall be no such exoneration of the Fund with regard to preventive measures.
3. Paragraph 4 is replaced by the following text:
 4.
 - (a) Except as otherwise provided in subparagraphs (b) and (c) of this paragraph, the aggregate amount of compensation payable by the Fund under this Article shall in respect of any one incident be limited, so that the total sum of that amount and the amount of compensation actually paid under the 1992 Liability Convention for pollution damage within the scope of application of this Convention as defined in Article 3 shall not exceed 135 million units of account.
 - (b) Except as otherwise provided in subparagraph (c), the aggregate amount of compensation payable by the Fund under this Article for pollution damage resulting from a natural phenomenon of an exceptional inevitable and irresistible character shall not exceed 135 million units of account.
 - (c) The maximum amount of compensation referred to in

本公約專屬適用於：

- (a) 於下列區域所造成之污染損害：
- (i) 締約國領土，包括領海；及
 - (ii) 締約國依國際法設立之專屬經濟區；如締約國尚未設立該區域，則為該國依國際法所確定，其領海以外與領海毗連之區域，自該國測量其領海寬度之基線起算，外延不超過 200 浬；
- (b) 為預防或減輕該污染損害而於任何地點所採取之預防措施。

第 5 條

修正 1971 年基金公約第 4 條至第 9 條標題，刪去“及補償”。

第 6 條

1971 年基金公約第 4 條修正如下：

1. 第 1 項述及“責任公約”五處均改為“1992 年責任公約”。
2. 以下列文字取代第 3 項：
 3. 經本基金證明，污染損害係全部或部分由受害人故意造成損害之作為或不作為或因受害人之疏忽所致，本基金可全部或部分地免除對此人之賠償義務。於任何情況下，本基金均可在船舶所有人依 1992 責任公約第 3 條第 3 項免除責任之範圍內，免除其責任。但就預防措施而言，本基金不得享有該免責。
3. 以下列文字取代第 4 項：
 4.
 - (a) 除本項第(b)及第(c)項另有規定外，本基金依本條對任一事件應付之賠償總額應限於：該總額加上依 1992 年責任公約於本公約第 3 條規定之適用範圍內對污染損害所實際付出之賠償金額不得超過 135 百萬記帳單位。
 - (b) 除第(c)項另有規定外，對於特殊、不可避免及不可抗力性質之自然現象所致之污染損害，本基金依本條應付之賠償總額不得超過 135 百萬記帳單位。
 - (c) 如於本公約 3 個締約國領土內之

subparagraphs (a) and (b) shall be 200 million units of account with respect to any incident occurring during any period when there are three Parties to this Convention in respect of which the combined relevant quantity of contributing oil received by persons in the territories of such Parties, during the preceding calendar year, equalled or exceeded 600 million tons.

(d) Interest accrued on a fund constituted in accordance with Article V, paragraph 3, of the 1992 Liability Convention, if any, shall not be taken into account for the computation of the maximum compensation payable by the Fund under this Article.

(e) The amounts mentioned in this Article 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 decision of the Assembly of the Fund as to the first date of payment of compensation.

4. Paragraph 5 is replaced by the following text:

5. Where the amount of established claims against the Fund exceeds the aggregate amount of compensation payable under paragraph 4, the amount available shall be distributed in such a manner that the proportion between any established claim and the amount of compensation actually recovered by the claimant under this Convention shall be the same for all claimants.

5. Paragraph 6 is replaced by the following text:

6. The Assembly of the Fund may decide that, in exceptional cases, compensation in accordance with this Convention can be paid even if the owner of the ship has not constituted a fund in accordance with Article V, paragraph 3, of the 1992 Liability Convention. In such case paragraph 4 (e) of this Article applies accordingly.

Article 7

Article 5 of the 1971 Fund Convention is deleted.

Article 8

Article 6 of the 1971 Fund Convention is amended as follows:

1. In paragraph 1 the paragraph number and the words "or indemnification under Article 5" are deleted.
2. Paragraph 2 is deleted.

Article 9

Article 7 of the 1971 Fund Convention is amended as follows:

1. In paragraphs 1, 3, 4 and 6 the seven references to "the Liability Convention" are replaced by references to "the 1992 Liability Convention".
2. In paragraph 1 the words "or indemnification under Article 5"

人所接收有關攤款油類總量於前一曆年度等於或超過 600 百萬噸，則不論發生何種事故，亦不論何時發生事故，第(a)及第(b)項所述之最高賠償金額應為 200 百萬記帳單位。

(d) 於計算本基金依本條應付之最高賠償金額時，不應計入依 1992 年責任公約第 5 條第 3 項所規定之基金應收利息。

(e) 本條所述金額應依本基金大會決定支付賠償之日特別提款權與該國貨幣之兌換率折算成該國貨幣。

4. 以下列文字取代第 5 項：

5. 如向本基金提出已確認之求償金額超過依第 4 項應付之賠償總額，賠償金額之分配應使任何已確認之求償與其求償人依本公約所實際取得之賠償金額間之比例，對所有求償人均應一致。

5. 以下列文字取代第 6 項：

6. 本基金大會可決定，於特殊情況下，即使船舶所有人未依 1992 年責任公約第 5 條第 3 項設立基金，亦可支付依本公約應付之賠償。於此情況下，本條第 4 項第(e)項應予以準用。

第 7 條

刪除 1971 年基金公約第 5 條。

第 8 條

1971 年基金公約第 6 條修正如下：

1. 於第 1 項，刪除該項編號及“或依第 5 條取得補償”。
2. 刪除第 2 項。

第 9 條

1971 年基金公約第 7 條修正如下：

1. 於第 1、3、4、及 6 項提及“責任公約”七處均改為“1992 年責任公約”。
2. 於第 1 項，刪除“或依第 5 條取得補償”。

are deleted.

3. In the first sentence of paragraph 3 the words "or indemnification" and "or 5" are deleted.
4. In the second sentence of paragraph 3 the words "or under Article 5, paragraph 1" are deleted.

Article 10

In Article 8 of the 1971 Fund Convention the reference to "the Liability Convention" is replaced by a reference to "the 1992 Liability Convention".

Article 11

Article 9 of the 1971 Fund Convention is amended as follows:

1. Paragraph 1 is replaced by the following text:
 1. The Fund shall, in respect of any amount of compensation for pollution damage paid by the Fund in accordance with Article 4, paragraph 1, of this Convention, acquire by subrogation the rights that the person so compensated may enjoy under the 1992 Liability Convention against the owner or his guarantor.
2. In paragraph 2 the words "or indemnification" are deleted.

Article 12

Article 10 of the 1971 Fund Convention is amended as follows:
The opening phrase of paragraph 1 is replaced by the following text:

Annual contributions to the Fund shall be made in respect of each Contracting State by any person who, in the calendar year referred to in Article 12, paragraph 2 (a) or (b), has received in total quantities exceeding 150,000 tons:

Article 13

Article 11 of the 1971 Fund Convention is deleted.

Article 14

Article 12 of the 1971 Fund Convention is amended as follows:

1. In the opening phrase of paragraph 1 the words "for each person referred to in Article 10" are deleted.
2. In paragraph 1 (i), subparagraphs (b) and (c), the words "or 5" are deleted and the words "15 million francs" are replaced by the words "four million units of account".
3. Subparagraph 1 (ii) (b) is deleted.
4. In paragraph 1 (ii), subparagraph (c) becomes (b) and subparagraph (d) becomes (c).

償”。

3. 於第3項第1句刪除“或補償”及“或第5條”字樣。
4. 於第3項第2句，刪除“或第5條第1項”。

第 10 條

在 1971 年基金公約第 8 條中，將“責任公約”改為“1992 年責任公約”。

第 11 條

1971 年基金公約第 9 條修正如下：

1. 以下列文字取代第 1 項
 - (1) 對於由本基金依本公約第 4 條第 1 項對污染損害支付之任何賠償，本基金得代位取得受償人依 1992 年責任公約對船舶所有人或其擔保人所能享有之權益。
2. 於第 2 項，刪除“或補償”。

第 12 條

1971 年基金公約第 10 條修正如下：
以下列文字取代第 1 項首句：

任一締約國對本基金之年度攤款，應由於第 12 條第 2 項第(a)或第(b)項規定之曆年度所收到油類總量超過 150,000 噸之人交付之：

第 13 條

刪除 1971 年基金公約第 11 條。

第 14 條

1971 年基金公約第 12 條修正如下：

1. 於第 1 項首句，刪除“依第 10 條所述之任何人”。
2. 於第 1 項第(i)款第(b)及第(c)目，刪除“或第 5 條”，並以“400 萬記帳單位”取代“1,500 萬法郎”。
3. 刪除第 1 項第(ii)款(b)目。
4. 於第 1 項(ii)款，第(c)目成為第(b)目，及第(d)目成為第(c)目。