

1992 年設立油污損害國際賠償基金公約 2003 年議定書

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Protocol of 2003 to the International Convention for the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992

London, 16 May 2003 ; Entered into Force on 3 March 2005

FUND 2003

THE CONTRACTING STATES TO THE PRESENT PROTOCOL, BEARING IN MIND the International Convention on Civil Liability for Oil Pollution Damage, 1992 (hereinafter the 1992 Liability Convention.),

HAVING CONSIDERED the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (hereinafter the 1992 Fund Convention.),

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

NOTING that the maximum compensation afforded by the 1992 Fund Convention might be insufficient to meet compensation needs in certain circumstances in some Contracting States to that Convention,

RECOGNIZING that a number of Contracting States to the 1992 Liability and 1992 Fund Conventions consider it necessary as a matter of urgency to make available additional funds for compensation through the creation of a supplementary scheme to which States may accede if they so wish,

BELIEVING that the supplementary scheme should seek to ensure that victims of oil pollution damage are compensated in full for their loss or damage and should also alleviate the difficulties faced by victims in cases where there is a risk that the amount of compensation available under the 1992 Liability and 1992 Fund Conventions will be insufficient to pay established claims in full and that as a consequence the International Oil Pollution Compensation Fund, 1992, has decided provisionally that it will pay only a proportion of any established claim,

CONSIDERING that accession to the supplementary scheme will be open only to Contracting States to the 1992 Fund Convention, Have agreed as follows:

General provisions

Article 1

For the purposes of this Protocol:

1. "1992 Liability Convention" means the International Convention

本議定書各締約國，

回顧 1992 年國際油污損害民事責任公約(以下簡稱“1992 年責任公約”)，

考量 1992 年設立國際油污損害賠償基金國際公約(以下簡稱“1992 年基金公約”)，

確認保持國際油污責任及賠償體系存續之重要性，

注意於某種情況下，1992 年基金公約所提供之最高賠償可能無法滿足該公約某些締約國之賠償要求，

承認 1992 年責任公約及 1992 年基金公約若干締約國認為，透過建立締約國自願加入之補充機制以建立一套便利之額外補償基金是一重要且迫切之任務，

相信補充機制應確保遭受油污損害之受害人就其損失及損害，於依據 1992 年責任公約及 1992 年基金公約可獲取之賠償數額不足以全額支付已確認之求償時，能獲得充足之補償，且 1992 年國際油污賠償基金已決定僅暫時提供任何已確認之求償之一部分時，應減輕受害人於該情況所面對之困境，

考慮到增加補充機制僅對 1992 年基金公約各締約國公開適用，謹達成協議如下：

一般規定

第 1 條

為本議定書之目的：

1. “1992 年責任公約”係指 1992 年國際

- on Civil Liability for Oil Pollution Damage, 1992;
2. "1992 Fund Convention" means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992;
 3. "1992 Fund" means the International Oil Pollution Compensation Fund, 1992, established under the 1992 Fund Convention;
 4. "Contracting State" means a Contracting State to this Protocol, unless stated otherwise;
 5. When provisions of the 1992 Fund Convention are incorporated by reference into this Protocol, "Fund" in that Convention means "Supplementary Fund", unless stated otherwise;
 6. "Ship", "Person", "Owner", "Oil", "Pollution Damage", "Preventive Measures" and "Incident" have the same meaning as in article I of the 1992 Liability Convention;
 7. "Contributing Oil", "Unit of Account", "Ton", "Guarantor" and "Terminal installation" have the same meaning as in article 1 of the 1992 Fund Convention, unless stated otherwise;
 8. "Established claim" means a claim which has been recognised by the 1992 Fund or been accepted as admissible by decision of a competent court binding upon the 1992 Fund not subject to ordinary forms of review and which would have been fully compensated if the limit set out in article 4, paragraph 4, of the 1992 Fund Convention had not been applied to that incident;
 9. "Assembly" means the Assembly of the International Oil Pollution Compensation Supplementary Fund, 2003, unless otherwise indicated;
 10. "Organization" means the International Maritime Organization;
 11. "Secretary-General" means the Secretary-General of the Organization.

Article 2

1. An International Supplementary Fund for compensation for pollution damage, to be named "The International Oil Pollution Compensation Supplementary Fund, 2003" (hereinafter .the Supplementary Fund.), is hereby established.
2. The Supplementary Fund shall in each Contracting State be recognized as a legal person capable under the laws of that State of assuming rights and obligations and of being a party in legal proceedings before the courts of that State. Each Contracting State shall recognize the Director of the Supplementary Fund as the legal representative of the Supplementary Fund.

Article 3

This Protocol shall apply exclusively:

- (a) to pollution damage caused:
 - (i) in the territory, including the territorial sea, of a Contracting

油污損害民事責任公約；

2. "1992年基金公約"係指1992年設立國際油污損害賠償基金國際公約；
3. "1992年基金"係指依1992年基金公約所設立之1992年國際油污賠償基金；
4. "締約國"，除另有規定外，係指本議定書之締約國；
5. 除另有規定外，將1992年基金公約之規定併入本議定書時，公約之"基金"係指"補充基金"；
6. "船舶"、"人"、"所有人"、"油類"、"污染損害"、"預防措施"及"事件"等名詞之意義與1992年責任公約第1條規定意義相同；
7. "攤款油"、"記帳單位"、"噸"、"保證人"及"裝卸設施"與1992年基金公約第1條規定之意義相同，但另有規定者除外；
8. "已確認之求償"係指1992年基金所認可或被主管法院依1992年基金所作出不受普通方式審查之決定所接受之求償，且於1992年基金公約第4條第4項所規定之賠償限制不適用於該事故時，仍可獲得全額賠償之求償；
9. "大會"係指2003年國際油污賠償"補充基金"大會，但另有規定者除外；
10. "組織"係指國際海事組織；
11. "秘書長"係指組織秘書長。

第 2 條

1. 國際油污損害賠償補充基金定名為"2003年國際油污賠償補充基金"(以下簡稱"補充基金")，並據此成立。
2. "補充基金"於各締約國應被承認依該國法律享有權利及承擔義務並能於向該國法院所提起之訴訟作為一方當事人之資格。各締約國應承認"補充基金"之董事為"補充基金"之法定代表。

第 3 條

本議定書專屬適用於：

- (a) 於下列區域內所致之污染損害：
 - (i) 締約國領土，包括領海；及

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.

(ii) 締約國依國際法設立之專屬經濟區，或如締約國未設立該區域，則為該國依國際法所確定之超出其領海並與其領海相毗連之區域，且自該國測量其領海寬度的基線起向外延伸不超過 200 哩；

- (b) 於任何地方採取為防止或減輕該損害之預防措施。

Supplementary Compensation

Article 4

1. The Supplementary Fund shall pay compensation to any person suffering pollution damage if such person has been unable to obtain full and adequate compensation for an established claim for such damage under the terms of the 1992 Fund Convention, because the total damage exceeds, or there is a risk that it will exceed, the applicable limit of compensation laid down in article 4, paragraph 4, of the 1992 Fund Convention in respect of any one incident.
2.
 - (a) The aggregate amount of compensation payable by the Supplementary Fund under this article shall in respect of any one incident be limited, so that the total sum of that amount together with the amount of compensation actually paid under the 1992 Liability Convention and the 1992 Fund Convention within the scope of application of this Protocol shall not exceed 750 million units of account.
 - (b) The amount of 750 million units of account mentioned in paragraph 2(a) 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 determined by the Assembly of the 1992 Fund for conversion of the maximum amount payable under the 1992 Liability and 1992 Fund Conventions.
3. Where the amount of established claims against the Supplementary Fund exceeds the aggregate amount of compensation payable under paragraph 2, 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 Protocol shall be the same for all claimants.
4. The Supplementary Fund shall pay compensation in respect of established claims as defined in article 1, paragraph 8, and only in respect of such claims.

Article 5

The Supplementary Fund shall pay compensation when the Assembly of the 1992 Fund has considered that the total amount of the established claims exceeds, or there is a risk that the total amount of

補充賠償

第 4 條

1. 就任一事故因損害超出或可能超出 1992 年基金公約第 4 條第 4 項所規定適用之賠償限額時，任何遭受污染損害之人，就其損害，依 1992 年基金公約規定無法獲得全額及足額賠償時，“補充基金”即應給付賠償。
2.
 - (a) “補充基金”依本條對任一事件應付之賠償總額應有限制，即該賠償金額與依 1992 年責任公約及 1992 年基金公約於本議定書適用範圍內對污染損害所實際支付之賠償金額之總合不應超過 750 百萬記帳單位。
 - (b) 第 2 項(a)款所述之 750 百萬記帳單位應依 1992 年基金公約大會依 1992 年公約為轉換應付最高賠償額為決定之日之特別提款權與該國貨幣之比值，折算成該國貨幣。
3. 如向“補充基金”提出已確認之求償金額超出第 2 項應付賠償總額時，賠償金額之分配應使任何經確認之求償與依本議定書所實際取得之賠償金額間之比例，對所有求償人均應一致。
4. “補充基金”應支付且僅用於支付第 1 條第 8 項所規定之賠償。

第 5 條

於 1992 年基金大會考慮到已確認之求償總額超出或有可能超出依 1992 年基金公約第 4 條第 4 項所能獲得之賠償

established claims will exceed the aggregate amount of compensation available under article 4, paragraph 4, of the 1992 Fund Convention and that as a consequence the Assembly of the 1992 Fund has decided provisionally or finally that payments will only be made for a proportion of any established claim. The Assembly of the Supplementary Fund shall then decide whether and to what extent the Supplementary Fund shall pay the proportion of any established claim not paid under the 1992 Liability Convention and the 1992 Fund Convention.

Article 6

1. Subject to article 15, paragraphs 2 and 3, rights to compensation against the Supplementary Fund shall be extinguished only if they are extinguished against the 1992 Fund under article 6 of the 1992 Fund Convention.
2. A claim made against the 1992 Fund shall be regarded as a claim made by the same claimant against the Supplementary Fund.

Article 7

1. The provisions of article 7, paragraphs 1, 2, 4, 5 and 6, of the 1992 Fund Convention shall apply to actions for compensation brought against the Supplementary Fund in accordance with article 4, paragraph 1, of this Protocol.
2. Where an action for compensation for pollution damage has been brought before a court competent under article IX of the 1992 Liability Convention against the owner of a ship or his guarantor, such court shall have exclusive jurisdictional competence over any action against the Supplementary Fund for compensation under the provisions of article 4 of this Protocol in respect of the same damage. However, where an action for compensation for pollution damage under the 1992 Liability Convention has been brought before a court in a Contracting State to the 1992 Liability Convention but not to this Protocol, any action against the Supplementary Fund under article 4 of this Protocol shall at the option of the claimant be brought either before a court of the State where the Supplementary Fund has its headquarters or before any court of a Contracting State to this Protocol competent under article IX of the 1992 Liability Convention.
3. Notwithstanding paragraph 1, where an action for compensation for pollution damage against the 1992 Fund has been brought before a court in a Contracting State to the 1992 Fund Convention but not to this Protocol, any related action against the Supplementary Fund shall, at the option of the claimant, be brought either before a court of the State where the Supplementary Fund has its headquarters or before any court of a Contracting State competent under paragraph 1.

總額，1992 年基金大會決定暫時或永久的僅支付已確認之求償之一部分時，“補充基金”應予以賠償。對於依 1992 年責任公約及 1992 年基金公約所無法支付之已確認之求償部分，“補充基金”大會應決定“補充基金”是否給予賠償及其賠償範圍。

第 6 條

1. 於適用第 15 條第 2 及 3 項情況下，僅依 1992 年基金公約第 6 條，向 1992 年基金提出賠償之權利喪失時，向“補充基金”提出賠償之權利才應隨之喪失。
2. 向 1992 年基金提出之求償應被認定為由同一求償人向“補充基金”提出之求償。

第 7 條

1. 依本議定書第 4 條第 1 項，1992 年基金公約第 7 條第 1、2、4、5、6 項之規定適用於向補充基金所提出之賠償訴訟。
2. 向 1992 年責任公約第 9 條規定之管轄法院提出對船舶所有人或其保證人請求污染損害賠償之訴訟時，該法院依本議定書第 4 條有關該同一損害對“補充基金”賠償之任何訴訟應具有專屬管轄權限。但於依 1992 年責任公約向 1992 年責任公約締約國而非本議定書締約國之法院提出油污損害賠償訴訟時，任何依本議定書第 4 條向“補充基金”提起之訴訟可由求償人選擇向“補充基金”總部設立所在之國家法院提出，或向本議定書締約國依 1992 年責任公約第 9 條規定之任何管轄法院提出。
3. 無論第 1 項規定為何，向 1992 年基金公約締約國而非本議定書締約國之法院針對 1992 年基金提出污染損害賠償訴訟時，向“補充基金”提起之任何相關訴訟，應由求償人選擇向“補充基金”總部設立所在之國家法院提出，或向第 1 項規定之締約國之任何管轄法院提出。

Article 8

1. Subject to any decision concerning the distribution referred to in article 4, paragraph 3 of this Protocol, any judgment given against the Supplementary Fund by a court having jurisdiction in accordance with article 7 of this Protocol, shall, when it has become enforceable in the State of origin and is in that State no longer subject to ordinary forms of review, be recognized and enforceable in each Contracting State on the same conditions as are prescribed in article X of the 1992 Liability Convention.
2. A Contracting State may apply other rules for the recognition and enforcement of judgments, provided that their effect is to ensure that judgments are recognized and enforced at least to the same extent as under paragraph 1.

Article 9

1. The Supplementary Fund shall, in respect of any amount of compensation for pollution damage paid by the Supplementary Fund in accordance with article 4, paragraph 1, of this Protocol, acquire by subrogation the rights that the person so compensated may enjoy under the 1992 Liability Convention against the owner or his guarantor.
2. The Supplementary Fund shall acquire by subrogation the rights that the person compensated by it may enjoy under the 1992 Fund Convention against the 1992 Fund.
3. Nothing in this Protocol shall prejudice any right of recourse or subrogation of the Supplementary Fund against persons other than those referred to in the preceding paragraphs. In any event the right of the Supplementary Fund to subrogation against such person shall not be less favourable than that of an insurer of the person to whom compensation has been paid.
4. Without prejudice to any other rights of subrogation or recourse against the Supplementary Fund which may exist, a Contracting State or agency thereof which has paid compensation for pollution damage in accordance with provisions of national law shall acquire by subrogation the rights which the person so compensated would have enjoyed under this Protocol.

Contributions

Article 10

1. Annual contributions to the Supplementary Fund shall be made in respect of each Contracting State by any person who, in the calendar year referred to in article 11, paragraph 2(a) or (b), has received in total quantities exceeding 150,000 tons:
 - (a) in the ports or terminal installations in the territory of that State contributing oil carried by sea to such ports or terminal installations; and
 - (b) in any installations situated in the territory of that Contracting

第 8 條

1. 於適用依本議定書第 4 條第 3 項所述有關分配問題之任何決定之情況下，依本議定書第 7 條，具有審判權之法院對“補充基金”所做出之任何判決，於該判決於原判國已可執行且於該國不再需通常再審程序時，應於與 1992 年責任公約第 10 條規定同等條件之各締約國獲得承認及執行。
2. 締約國可適用其他規定以承認及執行該判決，但適用該規定之效果應至少能確保判決與第 1 項所述相同程度之承認及執行。

第 9 條

1. 對於由本補充基金依本議定書第 4 條第 1 項對污染損害支付之任何賠償，本補充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. “補充基金”應以代位方式取得受償人依 1992 年基金公約對 1992 基金所享有之權利。
3. 本公約並無任何規定可損及補充基金針對前項所指以外之人之追償權利或代位權利。在任何情況下，基金對該人之代位權，其有利程度不應低於已付賠償或補償之保險人。
4. 於不損及得向補充基金主張之任何可能存在之其他代位權或追償權利之情況下，締約國或其官署依其國內法已對污損為給付賠償者，得代位取得受賠償人依本議定書所能享有之權利。

攤款

第 10 條

1. 任一締約國對補充基金之年度攤款，應由於第 11 條第 2 項(a)或(b)款規定之曆年度內於下列地點收受油類總量超過 15 萬噸之人繳付：
 - (a) 於該國領土內之港口或裝卸設施收到從海上運至該港口或裝卸設施之攤款油；及
 - (b) 於位於締約國領土內之任何裝