

1992 年设立国际油污损害赔偿基金 国际公约的 2003 年议定书

本议定书各缔约国，

忆及《1992 年国际油污损害民事责任公约》(以下简称《1992 年责任公约》)，

审议了《1992 年设立国际油污损害赔偿基金国际公约》(以下简称《1992 年基金公约》)，

确认保持国际油污责任和赔偿体系生命力的重要性，

注意到在某种情况下，《1992 年基金公约》所提供的最高赔偿可能并不能满足该公约的某些缔约国的赔偿需求，

认识到《1992 年责任公约》和《1992 年基金公约》的一些缔约国认为，通过建立缔约国自愿加入的补充机制来设立一项便利的附加赔偿基金是一项重要而紧迫的工作，

相信补充机制应确保遭受油污损害的受害人就其损失和损害获得足额的赔偿，并在依据《1992 年责任公约》和《1992 年基金公约》可获取的赔偿数额恐怕不足以全额支付已确认的索赔，因此 1992 年国际油污赔偿基金已决定暂时只提供任何已确认的索赔的一部分时，应减轻受害人在这种情况下所面对的困难，

考虑到加入补充机制只对《1992 年基金公约》各缔约国开放，

兹协议如下：

一 般 规 定

第 一 条

就本议定书而言：

1. “1992 年责任公约”系指《1992 年国际油污损害民事责任公约》；
2. “1992 年基金公约”系指《1992 年设立国际油污损害赔偿基金国际公约》；
3. “1992 年基金”系指依据《1992 年基金公约》设立的 1992 年国际油污赔偿基金；
4. 除另有规定外，“缔约国”系指本议定书的缔约国；
5. 除另有规定外，将《1992 年基金公约》中的条款并入本议定书时，公约中的“基金”系指补充基金；
6. “船舶”、“人”、“所有人”、“油类”、“污染损害”、“预防措施”和“事故”等名词的含义与《1992 年责任公约》第一条规定者具有相同含义；
7. 除另有规定外，“摊款油”、“计算单位”、“吨”、“担保人”和“码头设施”与《1992 年基金公约》第一条规定者具有相同含义；
8. “已确认的索赔”系指 1992 基金所认可或被主管法院根据 1992 基金作出的不受普通方

式复审的决定所接受的索赔,而且,如果《1992 年基金公约》第四条第 4 款所规定的赔偿限制不适用于该事故,它可能已获得全额赔偿;

9. 除另有规定外,“大会”系指 2003 年国际油污赔偿“补充基金”大会;
10. “本组织”系指国际海事组织;
11. “秘书长”系指本组织秘书长。

第二条

1. 据此建立国际油污损害赔偿补充基金,定名为“2003 年国际油污赔偿补充基金”(以下简称“补充基金”)。
2. “补充基金”在各缔约国须被认为是按照该国法律享有权利和承担义务并能在向该国法院提起的诉讼中作为一方的法人。各缔约国须承认“补充基金”的干事长为“补充基金”的法定代表人。

第三条

本议定书仅适用于:

- (a) 在下列区域内造成的油污损害:
 - (i) 缔约国的领土,包括领海;和
 - (ii) 缔约国按国际法设立的专属经济区,或者,如果缔约国尚未设立这样的区域,则为该国按国际法所确立的、在其领海之外并与其领海毗连的、从测量其领海宽度的基线向外延伸不超过 200 海里的区域;
- (b) 不论在任何地方采取的为防止或减轻这种损害的预防措施。

补充赔偿

第四条

1. 对任一事故,如果由于损害超出或有可能超出《1992 年基金公约》第四条第 4 款规定的适用赔偿限制,任何遭受污染损害的人按照《1992 年基金公约》的条款不能得到损害的全部和足够的赔偿时,“补充基金”须作出赔偿。
2. (a) “补充基金”按照本条对任一事故应付的赔偿合计数额须有限制,即该赔偿数额与按照《1992 年责任公约》和《1992 年基金公约》在本议定书适用范围内对油污损害所实际支付的赔偿合计数额不得超过 7.5 亿计算单位。
(b) 第 2 款(a)中提到的 7.5 亿计算单位须根据 1992 年基金大会按《1992 年责任公约》和《1992 年基金公约》为转换应付最高赔偿额作出决定之日该国货币相对于特别提款权的价值,折算成该国货币。
3. 向“补充基金”提出的已确认的索赔,如金额超出第 2 款规定的应付的赔偿合计总额,则所获赔偿数额的分配,须使任何已确认的索赔与索赔人按本议定书所实际取得的赔偿数额之间的比例,对所有索赔人均相同。
4. “补充基金”须支付且只支付第一条第 8 款中规定的赔偿。

第五条

当1992年基金大会认为已确认的索赔总额超出或有可能超出依据《1992年基金公约》第四条第4款所能获得的赔偿合计数额,而且1992年基金大会决定暂时或永久只按比例支付任何已确认的索赔时,“补充基金”须作出赔偿。对于根据《1992年责任公约》和《1992年基金公约》所不能支付的已确认的索赔部分,补充基金大会须决定“补充基金”是否给予赔偿以及赔偿范围。

第六条

1. 在第十五条第2和3款的前提下,只有按照《1992年基金公约》第六条向1992年基金提出赔偿的权利消失时,向“补充基金”提出赔偿的权利才须消失。
2. 向1992年基金提出的索赔须被视为由同一索赔人向“补充基金”提出的索赔。

第七条

1. 《1992年基金公约》第七条第1、2、4、5和6款的规定适用于根据本议定书第四条第1款向补充基金提出的赔偿诉讼。
2. 如向《1992年责任公约》第九条规定的主管法院提出针对船舶所有人或其担保人的油污损害赔偿诉讼,该法院对根据本议定书第四条就同一损害向“补充基金”提出的任一赔偿诉讼有专属管辖权。但是,如按照《1992年责任公约》向《1992年责任公约》缔约国但并非本议定书缔约国的法院提出油污损害赔偿诉讼,根据本议定书第四条向“补充基金”提起的任一诉讼,可由索赔人选择向“补充基金”设有总部的缔约国法院提出,或向《1992年责任公约》第九条规定的、本议定书缔约国的任一主管法院提出。
3. 尽管有第1款的规定,如已向《1992年基金公约》缔约国但并非本议定书缔约国的法院提起针对1992年基金的油污损害赔偿诉讼,向“补充基金”提起的任一相关诉讼,须由索赔人选择向“补充基金”设有总部的国家法院提出,或向第1款规定的缔约国的任一主管法院提出。

第八条

1. 在本议定书第四条第3款涉及到的有关分配问题的任一决定的前提下,按照本议定书第七条具有管辖权的法院对“补充基金”的任一判决,当它已在起源缔约国成为可执行且在该国不再受普通方式复审时,须在各缔约国中以《1992年责任公约》第十条规定的同等条件获得承认和可以实施。
2. 缔约国可应用其他规定来承认和实施判决,但适用这些规定的效果至少确保判决获得与第1款所述相同程度的承认和实施。

第九条

1. 对于“补充基金”按照本议定书第四条第1款为油污损害赔偿的任一数额,“补充基金”须通过代位取得受偿人根据《1992年责任公约》可以享有的针对船舶所有人或其担保

人的权利。

2. “补充基金”须通过代位取得受偿人根据《1992 年基金公约》可以享有的针对 1992 基金的权利。
3. 本议定书不得损害“补充基金”对上款所述以外的人员的求偿权或代位权。在任何情况下,“补充基金”对此人的代位权不得低于已接受赔偿的人的承保人的权利。
4. 在无损可能存在的对“补充基金”的任何其他代位权或求偿权的情况下,已按照国内法的规定赔付油污损害缔约国或其代理机构,须通过代位取得受偿人按本议定书所应享有的权利。

摊 款 第十条

1. 各缔约国对“补充基金”的年度摊款须由在第十一条第 2 款第 (a) 或 (b) 项提到的日历年度中如下接收总油量超过 15 万吨的任何人交纳:
 - (a) 在该国领土内的港口或码头设施收到从海上运至这些港口或码头设施的摊款油;和
 - (b) 在该缔约国的领土内的任何码头设施收到从海上运来而卸于非缔约国港口或码头设施的摊款油,但这些摊款油只有在卸载于该非缔约国后在一个缔约国第一次收到时凭借这一项加以计入。
2. 《1992 年基金公约》的第十条第 2 款的规定适用于向“补充基金”交纳摊款的责任。

第十一条

1. 为了估算应交纳的年度摊款数额和考虑到维持足够的流动基金的需要,大会须在每日历年以预算的形式对下列项目作出估算:
 - (i) 经费
 - (a) 在有关年份中“补充基金”的管理成本和费用以及前几年业务的任何赤字;
 - (b) 在有关年份中为清偿按第四条向“补充基金”提出的索赔而应由“补充基金”支付的款项,包括偿还“补充基金”之前为清偿该索赔而借贷的款项;
 - (ii) 收入
 - (a) 在以前各年份中的业务盈余,包括任何利息;
 - (b) 在需要平衡预算时的年度摊款;
 - (c) 任何其他收入。
2. 大会须决定征收的摊款总额。在该决定的基础上,“补充基金”的干事长须为各缔约国计算出第十条所述的以下范围内的每个人年度摊款额:
 - (a) 只要摊款是以这些人在上一日历年在有关国家中收到的每吨摊款油的固定数额为基础,用于偿付第 1 款(i)第(a)项所述款项;和
 - (b) 只要摊款是以这些人在发生有关事故当年的上一日历年在有关国家中收到的每吨摊款油的固定数额为基础,用于偿付第 1 款(i)第(b)项所述款项,但该国在发生事故之日应系本议定书的缔约国。

3. 以上第2款所述总数,须以所需的有关摊款总数除以所有缔约国在有关年度收到摊款油总量得出。
4. 年度摊款须在《补充基金内部条例》规定的日期到期应付,大会可选定不同的付款日期。
5. 大会可在《补充基金财务条例》规定的条件下,决定在按第2款(a)项收到的基金和按第2款(b)项收到的基金之间转账。

第十二条

1. 《1992年基金公约》第十三条规定须适用于“补充基金”的摊款。
2. 缔约国可以根据《1992年基金公约》第十四条规定的程序自行承担向“补充基金”交纳摊款的义务。

第十三条

1. 缔约国须根据《1992年基金公约》第十五条规定将接收油类的资料通知“补充基金”的干事长,但是,按《1992年基金公约》第十五条第2款规定向1992年基金的干事长作出的通知,也须被视为按本议定书作出的通知。
2. 若一个缔约国因未履行第1款所述的提交通知义务而造成“补充基金”财务损失,则该缔约国须承担向“补充基金”赔偿此种损失的责任。大会须根据补充基金干事长的建议决定该缔约国是否须支付该赔偿。

第十四条

1. 尽管有第十条规定,就本议定书而言,各缔约国须视为至少接收100万吨的摊款油。
2. 当在一个缔约国内收到的摊款油类总量少于100万吨时,只要不存在为收到的油类总量承担摊款责任的人,对有责任为在其领土内收到的油类向“补充基金”交纳摊款的任何人按照本议定书承担的摊款义务,须由该缔约国承担。

第十五条

1. 若一个缔约国内无人满足第十条的条件,该缔约国仍须按本议定书规定将此通知“补充基金”的干事长。
2. 对于发生在缔约国的领土、领海或专属经济区或根据本议定书第三条第(a)款(ii)项设定的区域内的特定事故的污染损害,或无论在何地采取的防止或减轻这种损害的预防措施,如果此次事故发生前的所有年度里该缔约国未按第十三条第1款和本条第1款规定向“补充基金”干事长履行通知义务,“补充基金”将不予赔偿。大会须在内部条例里决定缔约国须视为没有履行其义务的情况。
3. 根据上述第2款被暂时拒绝给予赔偿的缔约国,若在“补充基金”干事长通知其未报告事故后一年内,仍未按第十三条第1款和本条第1款规定履行通知义务,则须被永久拒绝对此起事件的赔偿。
4. 应向“补充基金”交付的任何摊款须与债务人或其代理人应得的赔偿相抵消。

组织和管理

第十六条

1. “补充基金”须设有一个大会和一个以干事长为首的秘书处。
2. 《1992 年基金公约》第十七至二十条和第二十八至三十三条须适用于“补充基金”的大会、秘书处和干事长。
3. 《1992 年基金公约》第三十四条须适用于“补充基金”。

第十七条

1. 以 1992 基金干事长为首的 1992 基金秘书处,也可履行“补充基金”秘书处和干事长的职能。
2. 如果按照第 1 款,1992 基金的秘书处和干事长也履行“补充基金”秘书处和干事长的职能,在 1992 基金与“补充基金”的利益发生冲突时,“补充基金”须由大会主席代表。
3. “补充基金”的干事长及其任命的职员和专家,在履行本议定书和《1992 年基金公约》规定的职责时,只要他们按照本条履行其职责,便不得被视为违反本议定书第十六条第 2 款引用的《1992 年基金公约》第三十条的规定。
4. 大会须努力不作出与 1992 基金大会不一致的决定。如果对于共同管理问题有不同意见,大会须以相互合作的精神并根据两个组织的共同目标,努力与 1992 基金大会达成一致意见。
5. “补充基金”须将 1992 基金为“补充基金”进行管理服务而引起的所有费用和开支偿还给 1992 基金。

第十八条

过渡性规定

1. 在第 4 款的前提下,对某一日历年度中某单一缔约国所收到的摊款油的应交纳合计年度摊款额,在该日历年中不得超过本议定书所规定的年度摊款总额的 20%。
2. 如果适用第十一条第 2 款和第 3 款的规定将导致某单一缔约国中的摊款人在某特定日历年中的应付合计摊款额超过年度摊款总额的 20%,则该国中的所有摊款人的应付摊款额应按比例减少,使其合计摊款额等于在该日历年中向“补充基金”支付的总年度摊款额的 20%。
3. 如果某特定缔约国的摊款人的应交纳摊款额须按本条第 2 款予以减少,则所有其他缔约国的摊款人的应交纳摊款额须按比例增加,以保证在所述日历年全部有义务向“补充基金”交纳摊款的人的应交纳摊款总额达到大会确定的摊款总额。
4. 本条第 1 至第 3 款规定的实施,到所有缔约国在某一日历年中接收的摊款油总量(包括第十四条第 1 款所提及的油量)达到 10 亿吨时为止,或在本议定书生效之日起满 10 年时为止,以较早者为准。

最后条款

第十九条

签署、批准、接受、核准和加入

1. 本议定书须于2003年7月31日至2004年7月30日在伦敦开放供签署。
2. 各国可通过下列方式表示其同意受本议定书约束；
 - (a) 签署,并对批准、接受或核准无保留;或
 - (b) 签署,但有待批准、接受或核准,随后予以批准、接受或核准;或
 - (c) 加入。
3. 仅《1992年基金公约》缔约国方可成为本议定书的缔约国。
4. 批准、接受、核准或加入须向秘书长交存一份相应的正式文件方为有效。

第二十条

摊款油资料

在本议定书对某一国家生效之前,该国须在根据第十九条第2款(a)项签署本议定书时,或在交存本议定书第十九条第4款所述文件时和此后每年在秘书长决定的日期,把该国按第十条有责任向“补充基金”交纳摊款的任何人的姓名和地址及任何这些人在上一日历年年度在该国领土内接收有关摊款油数量的资料通报秘书长。

第二十一条

生效

1. 本议定书须在达到以下要求之日起3个月后生效：
 - (a) 至少已有8个国家签署了本议定书而对批准、接受或核准无保留,或已向秘书长交存了批准、接受、核准或加入文件;和
 - (b) 本组织秘书长从1992基金干事长收到的资料表明,按第十条有责任交纳摊款的人在前一日历年年度收到的摊款油总量至少达到4.5亿吨,包括第十四条第1款所提及的油量。
2. 对于在第1款规定的生效条件满足之后签署本议定书而对批准、接受或核准无保留,或批准、接受、核准或加入本议定书的各国,本议定书须自该国交存适当文件之日起3个月后生效。
3. 尽管有上述第1款和第2款的规定,对任何国家,在《1992年基金公约》对其生效之前,本议定书不得生效。

第二十二条

大会第一次会议

秘书长须召集大会第一次会议,该次会议须于本议定书生效后尽快召开,且在任何情况下不得超过议定书生效后30天。

第二十三条 修订和修正

1. 本组织可召集修订或修正本议定书的会议。
2. 本组织须在不少于三分之一的缔约国提出要求后,召集修订或修正本议定书的缔约国会议。

第二十四条 对赔偿限额的修正

1. 应至少四分之一缔约国请求,秘书长须向本组织的所有会员国和所有缔约国分发有关旨在修正第四条第 2 款(a)项规定的赔偿限额的任何提案。
2. 提出并按上述方式分发的任一修正案,须提交本组织法律委员会,供其在分发之日后至少 6 个月的某一日期审议。
3. 本议定书的所有缔约国,不论是否为本组织会员国,均须有权参加法律委员会审议和通过修正案的议项。
4. 修正案须由在第 3 款规定的扩大法律委员会上出席并参加投票的缔约国的三分之二多数通过,且在投票时须至少有半数缔约国出席。
5. 就修改限额的提案采取行动时,法律委员会须考虑事故的经过,特别是事故所造成的损害数额和币值的变化。
6. (a) 在本议定书生效前或自按本条作出的前一修正案生效之日起不足 3 年时,不可审议本条规定的有关限额的任一修正案。
(b) 限额的增加不得超过本议定书规定的限额从本议定书开放供签署之日起到法律委员会决定本议定书生效之日止,以复利年均增长率为 6% 计算所得的数额。
(c) 限额的增加不得超过本议定书所规定的限额的 3 倍。
7. 按照第 4 款通过的任一修正案,须由本组织通知所有缔约国。自通知之日起 12 个月后,该修正案须视为已被接受,除非在此期间内有不少于四分之一的在法律委员会通过修正案时为缔约国的国家通知本组织不接受该修正案,在此情况下,该修正案则遭到否决,并属无效。
8. 按第 7 款视为已被接受的修正案,须在其被接受后 12 个月生效。
9. 所有缔约国均须受该修正案的约束,除非它们按照第二十六条第 1 款和第 2 款在修正案生效前至少 6 个月退出本议定书。这种退出须在修正案生效时生效。
10. 当一项修正案已被法律委员会通过,但 12 个月的接受期限尚未届满时,如该修正案已生效,则在此期间成为缔约国的国家须受其约束。在此期间之后成为缔约国的国家,须受按第 7 款被接受的修正案的约束。在本款所述情况下,缔约国须在修正案生效时,或在本议定书对该国生效时(如晚于前者),受该修正案的约束。

第二十五条

《1992 年基金公约》的议定书

1. 如果《1992 年基金公约》的某一议定书提高了其规定的限额,第四条第 2 款(a)项规定的限额可以通过第二十四条规定的程序提高相同的数额。在这种情形里,第二十四条第 6 款的规定不适用。
2. 如果已适用上述第 1 款提及的程序,就第二十四条第 6 款(b)和(c)项而言,通过实施第二十四条规定的程序对第四条第 2 款规定限额的任一相应修正,须根据上述第 1 款在提高的新限额的基础上进行计算。

第二十六条

退 出

1. 任一缔约国可在本议定书对该国生效之日后随时退出本议定书。
2. 退出本议定书须向秘书长交存一份文件方为有效。
3. 退出本议定书须在秘书长收到文件十二个月后,或退出文件可能规定的较此为长的期限生效。
4. 退出《1992 年基金公约》须被视为退出本议定书。这种退出须在按照修正《1971 年基金公约》的《1992 年议定书》第三十四条规定退出该议定书之日生效。
5. 尽管某一缔约国按照本条退出了本议定书,但是如果本议定书第十一条第 2 款(b)项所述的事发生在退出生效之前,则本议定书任何关于“补充基金”规定的摊款义务的规定须继续适用。

第二十七条

大会特别会议

1. 在交存退出文件后 90 天之内,如任一缔约国认为此种退出将大大提高其余缔约国的摊款水平,则可要求“补充基金”的干事长召集大会特别会议。干事长须在接到要求后不迟于 60 天召集大会开会。
2. 如果“补充基金”的干事长认为此种退出将大大提高其余缔约国的摊款水平,则可在任一退出文件交存后不迟于 60 天主动召集大会特别会议。
3. 如果大会在按第 1 款或第 2 款召开的特别会议上确认,退出将大大提高其余缔约国的摊款水平,则任一此种国家可在不迟于该退出生效之日前 120 天内退出本议定书;此种退出在同一日期生效。

第二十八条

终 止

1. 本议定书须在缔约国的数目降至不足 7 个或者其余缔约国收到的摊款油总量(包括根据第十四条第 1 款所提及的油量)低于 3.5 亿吨之日起终止,以较早者为准。
2. 在本议定书终止之日前仍受本议定书约束的国家,须使“补充基金”能够履行本议定书

第二十九条对其规定的职能,并仅此而言,须继续受本议定书的约束。

第二十九条 “补充基金”的结束

1. 如果本议定书停止有效,本“补充基金”仍须:
 - (a) 对在本议定书失效前所发生的任一事故履行义务;
 - (b) 在摊款为必须履行的第1款(a)项规定的义务的范围内,有权行使摊款权,包括为此目的所必需的基金管理开支。
2. 大会须采取一切适当措施完成本“补充基金”的结束工作,包括将任何剩余资产在本“补充基金”的摊款人之间进行公平的分配。
3. 就本条而言,本“补充基金”须仍然是法人。

第三十条 保 存 人

1. 本议定书及任一根据第二十四条被接受的修正案须交秘书长保存。
2. 秘书长须:
 - (a) 将下列事项通知签署或加入本议定书的所有国家;
 - (i) 每一新的签署或文件交存,及其日期;
 - (ii) 本议定书的生效日期;
 - (iii) 按第二十四条第1款所提出的修正赔偿限额的任一提案;
 - (iv) 按第二十四条第4款获得通过的任一修正案;
 - (v) 根据第二十四条第7款被视为已被接受的任一修正案及其按照该条第8款和第9款生效的日期;
 - (vi) 退出本议定书的任何文件的交存及交存日期和退出生效日期;
 - (vii) 本议定书任一条款所要求的任一通知;
 - (b) 将本议定书的核证无误副本发送给所有签字国和已加入本议定书的所有国家。
3. 本议定书一经生效,秘书长须按《联合国宪章》第一百零二条将其文本发送联合国秘书处,以供登记和公布。

第三十一条 语 言

本议定书正本一份,用阿拉伯文、中文、英文、法文、俄文和西班牙文写成,每种文本同等作准。

2003年5月16日订于伦敦。

下列具名者,均经各自政府正式授权,特签署本议定书,以昭信守^①。

^① 签字从略。

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

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 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 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.

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 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.

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 recognised 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 (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 State contributing oil which has been carried by sea and discharged in a port or terminal installation of a non-Contracting State, provided that contributing oil shall only be taken into account by virtue of this sub-paragraph on first receipt in a Contracting State after its discharge in that non-Contracting State.
2. The provisions of article 10, paragraph 2, of the 1992 Fund Convention shall apply in respect of the obligation to pay contributions to the Supplementary Fund.

Article 11

1. With a view to assessing the amount of annual contributions due, if any, and taking account

of the necessity to maintain sufficient liquid funds, the Assembly shall for each calendar year make an estimate in the form of a budget of:

- (i) Expenditure
 - (a) costs and expenses of the administration of the Supplementary Fund in the relevant year and any deficit from operations in preceding years;
 - (b) payments to be made by the Supplementary Fund in the relevant year for the satisfaction of claims against the Supplementary Fund due under article 4, including repayments on loans previously taken by the Supplementary Fund for the satisfaction of such claims;
 - (ii) Income
 - (a) surplus funds from operations in preceding years, including any interest;
 - (b) annual contributions, if required to balance the budget;
 - (c) any other income.
2. The Assembly shall decide the total amount of contributions to be levied. On the basis of that decision, the Director of the Supplementary Fund shall, in respect of each Contracting State, calculate for each person referred to in article 10, the amount of that person's annual contribution:
 - (a) in so far as the contribution is for the satisfaction of payments referred to in paragraph 1(i)(a) on the basis of a fixed sum for each ton of contributing oil received in the relevant State by such person during the preceding calendar year; and
 - (b) in so far as the contribution is for the satisfaction of payments referred to in paragraph 1(i)(b) on the basis of a fixed sum for each ton of contributing oil received by such person during the calendar year preceding that in which the incident in question occurred, provided that State was a Contracting State to this Protocol at the date of the incident.
 3. The sums referred to in paragraph 2 shall be arrived at by dividing the relevant total amount of contributions required by the total amount of contributing oil received in all Contracting States in the relevant year.
 4. The annual contribution shall be due on the date to be laid down in the Internal Regulations of the Supplementary Fund. The Assembly may decide on a different date of payment.
 5. The Assembly may decide, under conditions to be laid down in the Financial Regulations of the Supplementary Fund, to make transfers between funds received in accordance with paragraph 2(a) and funds received in accordance with paragraph 2(b).

Article 12

1. The provisions of article 13 of the 1992 Fund Convention shall apply to contributions to the Supplementary Fund.
2. A Contracting State itself may assume the obligation to pay contributions to the Supplementary

Fund in accordance with the procedure set out in article 14 of the 1992 Fund Convention.

Article 13

1. Contracting States shall communicate to the Director of the Supplementary Fund information on oil receipts in accordance with article 15 of the 1992 Fund Convention provided, however, that communications made to the Director of the 1992 Fund under article 15, paragraph 2, of the 1992 Fund Convention shall be deemed to have been made also under this Protocol.
2. Where a Contracting State does not fulfil its obligations to submit the communication referred to in paragraph 1 and this results in a financial loss for the Supplementary Fund, that Contracting State shall be liable to compensate the Supplementary Fund for such loss. The Assembly shall, on the recommendation of the Director of the Supplementary Fund, decide whether such compensation shall be payable by that Contracting State.

Article 14

1. Notwithstanding article 10, for the purposes of this Protocol there shall be deemed to be a minimum receipt of 1 million tons of contributing oil in each Contracting State.
2. When the aggregate quantity of contributing oil received in a Contracting State is less than 1 million tons, the Contracting State shall assume the obligations that would be incumbent under this Protocol on any person who would be liable to contribute to the Supplementary Fund in respect of oil received within the territory of that State in so far as no liable person exists for the aggregated quantity of oil received.

Article 15

1. If in a Contracting State there is no person meeting the conditions of article 10, that Contracting State shall for the purposes of this Protocol inform the Director of the Supplementary Fund thereof.
2. No compensation shall be paid by the Supplementary Fund for pollution damage in the territory, territorial sea or exclusive economic zone or area determined in accordance with article 3 (a) (ii), of this Protocol, of a Contracting State in respect of a given incident or for preventive measures, wherever taken, to prevent or minimize such damage, until the obligations to communicate to the Director of the Supplementary Fund according to article 13, paragraph 1 and paragraph 1 of this article have been complied with in respect of that Contracting State for all years prior to the occurrence of that incident. The Assembly shall determine in the Internal Regulations the circumstances under which a Contracting State shall be considered as having failed to comply with its obligations.
3. Where compensation has been denied temporarily in accordance with paragraph 2, compensation shall be denied permanently in respect of that incident if the obligations to communicate to the Director of the Supplementary Fund under article 13, paragraph 1 and paragraph 1 of

this article, have not been complied with within one year after the Director of the Supplementary Fund has notified the Contracting State of its failure to report.

4. Any payments of contributions due to the Supplementary Fund shall be set off against compensation due to the debtor, or the debtor's agents.

Organization and administration

Article 16

1. The Supplementary Fund shall have an Assembly and a Secretariat headed by a Director.
2. Articles 17 to 20 and 28 to 33 of the 1992 Fund Convention shall apply to the Assembly, Secretariat and Director of the Supplementary Fund.
3. Article 34 of the 1992 Fund Convention shall apply to the Supplementary Fund.

Article 17

1. The Secretariat of the 1992 Fund, headed by the Director of the 1992 Fund, may also function as the Secretariat and the Director of the Supplementary Fund.
2. If, in accordance with paragraph 1, the Secretariat and the Director of the 1992 Fund also perform the function of Secretariat and Director of the Supplementary Fund, the Supplementary Fund shall be represented, in cases of conflict of interests between the 1992 Fund and the Supplementary Fund, by the Chairman of the Assembly.
3. The Director of the Supplementary Fund, and the staff and experts appointed by the Director of the Supplementary Fund, performing their duties under this Protocol and the 1992 Fund Convention, shall not be regarded as contravening the provisions of article 30 of the 1992 Fund Convention as applied by article 16, paragraph 2, of this Protocol in so far as they discharge their duties in accordance with this article.
4. The Assembly shall endeavour not to take decisions which are incompatible with decisions taken by the Assembly of the 1992 Fund. If differences of opinion with respect to common administrative issues arise, the Assembly shall try to reach a consensus with the Assembly of the 1992 Fund, in a spirit of mutual co-operation and with the common aims of both organizations in mind.
5. The Supplementary Fund shall reimburse the 1992 Fund all costs and expenses arising from administrative services performed by the 1992 Fund on behalf of the Supplementary Fund.

Transitional provisions

Article 18

1. Subject to paragraph 4, the aggregate amount of the annual contributions payable in respect of contributing oil received in a single Contracting State during a calendar year shall not exceed 20% of the total amount of annual contributions pursuant to this Protocol in respect of that calendar year.

2. If the application of the provisions in article 11, paragraphs 2 and 3, would result in the aggregate amount of the contributions payable by contributors in a single Contracting State in respect of a given calendar year exceeding 20% of the total annual contributions, the contributions payable by all contributors in that State shall be reduced *pro rata* so that their aggregate contributions equal 20% of the total annual contributions to the Supplementary Fund in respect of that year.
3. If the contributions payable by persons in a given Contracting State shall be reduced pursuant to paragraph 2, the contributions payable by persons in all other Contracting States shall be increased *pro rata* so as to ensure that the total amount of contributions payable by all persons liable to contribute to the Supplementary Fund in respect of the calendar year in question will reach the total amount of contributions decided by the Assembly.
4. The provisions in paragraphs 1 to 3 shall operate until the total quantity of contributing oil received in all Contracting States in a calendar year, including the quantities referred to in article 14, paragraph 1, has reached 1,000 million tons or until a period of 10 years after the date of entry into force of this Protocol has elapsed, whichever occurs earlier.

Final clauses

Article 19

Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open for signature at London from 31 July 2003 to 30 July 2004.
2. States may express their consent to be bound by this Protocol by:
 - (a) signature without reservation as to ratification, acceptance or approval; or
 - (b) signature subject to ratification, acceptance or approval followed by ratification, acceptance or approval; or
 - (c) accession.
3. Only Contracting States to the 1992 Fund Convention may become Contracting States to this Protocol.
4. Ratification, acceptance, approval or accession shall be effected by the deposit of a formal instrument to that effect with the Secretary-General.

Article 20

Information on contributing oil

Before this Protocol comes into force for a State, that State shall, when signing this Protocol in accordance with article 19, paragraph 2(a), or when depositing an instrument referred to in article 19, paragraph 4 of this Protocol, and annually thereafter at a date to be determined by the Secretary-General, communicate to the Secretary-General the name and address of any person who in respect of that State would be liable to contribute to the Supplementary Fund pursuant to article 10 as well as data on the relevant quantities of contributing oil received by any such person in the

territory of that State during the preceding calendar year.

Article 21

Entry into force

1. This Protocol shall enter into force three months following the date on which the following requirements are fulfilled:
 - (a) at least eight States have signed the Protocol without reservation as to ratification, acceptance or approval, or have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General; and
 - (b) the Secretary-General has received information from the Director of the 1992 Fund that those persons who would be liable to contribute pursuant to article 10 have received during the preceding calendar year a total quantity of at least 450 million tons of contributing oil, including the quantities referred to in article 14, paragraph 1.
2. For each State which signs this Protocol without reservation as to ratification, acceptance or approval, or which ratifies, accepts, approves or accedes to this Protocol, after the conditions in paragraph 1 for entry into force have been met, the Protocol shall enter into force three months following the date of the deposit by such State of the appropriate instrument.
3. Notwithstanding paragraphs 1 and 2, this Protocol shall not enter into force in respect of any State until the 1992 Fund Convention enters into force for that State.

Article 22

First session of the Assembly

The Secretary-General shall convene the first session of the Assembly. This session shall take place as soon as possible after the entry into force of this Protocol and, in any case, not more than thirty days after such entry into force.

Article 23

Revision and amendment

1. A conference for the purpose of revising or amending this Protocol may be convened by the Organization.
2. The Organization shall convene a Conference of Contracting States for the purpose of revising or amending this Protocol at the request of not less than one third of all Contracting States.

Article 24

Amendment of compensation limit

1. Upon the request of at least one quarter of the Contracting States, any proposal to amend the limit of the amount of compensation laid down in article 4, paragraph 2 (a), shall be circulated by the Secretary-General to all Members of the Organization and to all Contracting

States.

2. Any amendment proposed and circulated as above shall be submitted to the Legal Committee of the Organization for consideration at a date at least six months after the date of its circulation.
3. All Contracting States to this Protocol, whether or not Members of the Organization, shall be entitled to participate in the proceedings of the Legal Committee for the consideration and adoption of amendments.
4. Amendments shall be adopted by a two-thirds majority of the Contracting States present and voting in the Legal Committee, expanded as provided for in paragraph 3, on condition that at least one half of the Contracting States shall be present at the time of voting.
5. When acting on a proposal to amend the limit, the Legal Committee shall take into account the experience of incidents and in particular the amount of damage resulting therefrom and changes in the monetary values.
6. (a) No amendments of the limit under this article may be considered before the date of entry into force of this Protocol nor less than three years from the date of entry into force of a previous amendment under this article.
(b) The limit may not be increased so as to exceed an amount which corresponds to the limit laid down in this Protocol increased by six per cent per year calculated on a compound basis from the date when this Protocol is opened for signature to the date on which the Legal Committee's decision comes into force.
(c) The limit may not be increased so as to exceed an amount which corresponds to the limit laid down in this Protocol multiplied by three.
7. Any amendment adopted in accordance with paragraph 4 shall be notified by the Organization to all Contracting States. The amendment shall be deemed to have been accepted at the end of a period of twelve months after the date of notification, unless within that period not less than one quarter of the States that were Contracting States at the time of the adoption of the amendment by the Legal Committee have communicated to the Organization that they do not accept the amendment, in which case the amendment is rejected and shall have no effect.
8. An amendment deemed to have been accepted in accordance with paragraph 7 shall enter into force twelve months after its acceptance.
9. All Contracting States shall be bound by the amendment, unless they denounce this Protocol in accordance with article 26, paragraphs 1 and 2, at least six months before the amendment enters into force. Such denunciation shall take effect when the amendment enters into force.
10. When an amendment has been adopted by the Legal Committee but the twelve-month period for its acceptance has not yet expired, a State which becomes a Contracting State during that period shall be bound by the amendment if it enters into force. A State which becomes a Contracting State after that period shall be bound by an amendment which has been accepted in accordance with paragraph 7. In the cases referred to in this paragraph, a State becomes

bound by an amendment when that amendment enters into force, or when this Protocol enters into force for that State, if later.

Article 25

Protocols to the 1992 Fund Convention

1. If the limits laid down in the 1992 Fund Convention have been increased by a Protocol thereto, the limit laid down in article 4, paragraph 2(a), may be increased by the same amount by means of the procedure set out in article 24. The provisions of article 24, paragraph 6, shall not apply in such cases.
2. If the procedure referred to in paragraph 1 has been applied, any subsequent amendment of the limit laid down in article 4, paragraph 2, by application of the procedure in article 24 shall, for the purpose of article 24, paragraphs 6(b) and (c), be calculated on the basis of the new limit as increased in accordance with paragraph 1.

Article 26

Denunciation

1. This Protocol may be denounced by any Contracting State at any time after the date on which it enters into force for that Contracting State.
2. Denunciation shall be effected by the deposit of an instrument with the Secretary-General.
3. A denunciation shall take effect twelve months, or such longer period as may be specified in the instrument of denunciation, after its deposit with the Secretary-General.
4. Denunciation of the 1992 Fund Convention shall be deemed to be a denunciation of this Protocol. Such denunciation shall take effect on the date on which denunciation of the Protocol of 1992 to amend the 1971 Fund Convention takes effect according to article 34 of that Protocol.
5. Notwithstanding a denunciation of the present Protocol by a Contracting State pursuant to this article, any provisions of this Protocol relating to the obligations to make contributions to the Supplementary Fund with respect to an incident referred to in article 11, paragraph 2(b), and occurring before the denunciation takes effect, shall continue to apply.

Article 27

Extraordinary sessions of the Assembly

1. Any Contracting State may, within ninety days after the deposit of an instrument of denunciation the result of which it considers will significantly increase the level of contributions for the remaining Contracting States, request the Director of the Supplementary Fund to convene an extraordinary session of the Assembly. The Director of the Supplementary Fund shall convene the Assembly to meet not later than sixty days after receipt of the request.
2. The Director of the Supplementary Fund may take the initiative to convene an extraordinary session of the Assembly to meet within sixty days after the deposit of any instrument of denun-

ciation, if the Director of the Supplementary Fund considers that such denunciation will result in a significant increase in the level of contributions of the remaining Contracting States.

3. If the Assembly at an extraordinary session convened in accordance with paragraph 1 or 2 decides that the denunciation will result in a significant increase in the level of contributions for the remaining Contracting States, any such State may, not later than one hundred and twenty days before the date on which the denunciation takes effect, denounce this Protocol with effect from the same date.

Article 28

Termination

1. This Protocol shall cease to be in force on the date when the number of Contracting States falls below seven or the total quantity of contributing oil received in the remaining Contracting States, including the quantities referred to in article 14, paragraph 1, falls below 350 million tons, whichever occurs earlier.
2. States which are bound by this Protocol on the day before the date it ceases to be in force shall enable the Supplementary Fund to exercise its functions as described in article 29 and shall, for that purpose only, remain bound by this Protocol.

Article 29

Winding up of the Supplementary Fund

1. If this Protocol ceases to be in force, the Supplementary Fund shall nevertheless:
 - (a) meet its obligations in respect of any incident occurring before the Protocol ceased to be in force;
 - (b) be entitled to exercise its rights to contributions to the extent that these contributions are necessary to meet the obligations under paragraph 1 (a), including expenses for the administration of the Supplementary Fund necessary for this purpose.
2. The Assembly shall take all appropriate measures to complete the winding up of the Supplementary Fund, including the distribution in an equitable manner of any remaining assets among those persons who have contributed to the Supplementary Fund.
3. For the purposes of this article the Supplementary Fund shall remain a legal person.

Article 30

Depositary

1. This Protocol and any amendments accepted under article 24 shall be deposited with the Secretary-General.
2. The Secretary-General shall:
 - (a) inform all States which have signed or acceded to this Protocol of:
 - (i) each new signature or deposit of an instrument together with the date thereof;

- (ii) the date of entry into force of this Protocol;
 - (iii) any proposal to amend the limit of the amount of compensation which has been made in accordance with article 24, paragraph 1;
 - (iv) any amendment which has been adopted in accordance with article 24, paragraph 4;
 - (v) any amendment deemed to have been accepted under article 24, paragraph 7, together with the date on which that amendment shall enter into force in accordance with paragraphs 8 and 9 of that article;
 - (vi) the deposit of an instrument of denunciation of this Protocol together with the date of the deposit and the date on which it takes effect;
 - (vii) any communication called for by any article in this Protocol;
- (b) transmit certified true copies of this Protocol to all Signatory States and to all States which accede to the Protocol.
3. As soon as this Protocol enters into force, the text shall be transmitted by the Secretary General to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

Article 31

Languages

This Protocol is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

DONE AT LONDON this sixteenth day of May two thousand and three.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments for that purpose, have signed this Protocol. ❶

❶ Signatures omitted.