

IMO Protocol Of 1992 to Amend The International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971, IMO 1992

International Maritime Organization (IMO)

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1 **Protocol Of 1992 to Amend The International Convention**
2 **on the Establishment of an International Fund for**
3 **Compensation for Oil Pollution Damage 1971, IMO**
4 **1992**

5 **[Preamble]**

6 THE PARTIES TO THE PRESENT PROTOCOL,

7 HAVING CONSIDERED the International Convention on the Estab-
8 lishment of an International Fund for Compensation for Oil Pollution
9 Damage, 1971, and the 1984 Protocol thereto,

10 HAVING NOTED that the 1984 Protocol to that Convention, which
11 provides for improved scope and enhanced compensation, has not
12 entered into force,

13 AFFIRMING the importance of maintaining the viability of the inter-
14 national oil pollution liability and compensation system,

15 AWARE OF the need to ensure the entry into force of the content
16 of the 1984 Protocol as soon as possible,

17 RECOGNIZING the advantage for the States Parties of arranging
18 for the amended Convention to coexist with and be supplementary
19 to the original Convention for a transitional period,

20 CONVINCED that the economic consequences of pollution dam-
21 age resulting from the carriage of oil in bulk at sea by ships could
22 continue to be shared by the shipping industry and by the oil cargo
23 interests,

24 BEARING IN MIND the adoption of the Protocol of 1992 to amend
25 the International Convention on Civil Liability for Oil Pollution Dam-
26 age, 1969,

27 HAVE AGREED AS FOLLOWS:

28 **Article 1**

29 The Convention which the provisions of this Protocol amend is the
30 International Convention on the Establishment of an International
31 Fund for Compensation for Oil Pollution Damage, 1971, hereinafter
32 referred to as the “1971 Fund Convention”. For States Parties to
33 the Protocol of 1976 to the 1971 Fund Convention, such reference
34 shall be deemed to include the 1971 Fund Convention as amended
35 by that Protocol.

36 **Article 2**

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

38 1. Paragraph 1 is replaced by the following text:

39 1. “1992 Liability Convention” means the International Convention
40 on Civil Liability for Oil Pollution Damage, 1992.

41 2. After paragraph 1 a new paragraph is inserted as follows:

42 1 bis. “1971 Fund Convention” means the International Convention
43 on the Establishment of an International Fund for Compensation for
44 Oil Pollution Damage, 1971. For States Parties to the Protocol of
45 1976 to that Convention, the term shall be deemed to include the
46 1971 Fund Convention as amended by that Protocol.

47 3. Paragraph 2 is replaced by the following text:

48 2. “Ship”, “Person”, “Owner”, “Oil”, “Pollution Damage”, “Pre-
49 ventive Measures”, “Incident”, and “Organization” have the same
50 meaning as in Article I of the 1992 Liability Convention.

51 4. Paragraph 4 is replaced by the following text:

52 4. “Unit of account” has the same meaning as in Article V, para-
53 graph 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:

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:

48 4.

49 (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.

50 (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.

51 (c) The maximum amount of compensation referred to in 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.

52 (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.

53 (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.

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4. Paragraph 5 is replaced by the following text:

54 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.

55 5. Paragraph 6 is replaced by the following text:

56 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.

57 **Article 7**

58 Article 5 of the 1971 Fund Convention is deleted.

59 **Article 8**

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

61 1. In paragraph 1 the paragraph number and the words “or indemnification under Article 5” are deleted.

62 2. Paragraph 2 is deleted.

63 **Article 9**

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

65 1. In paragraphs 1, 3, 4 and 6 the seven references to “the Lia-

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bility Convention” are replaced by references to “the 1992 Liability Convention”.

67 2. In paragraph 1 the words “or indemnification under Article 5” are deleted.

68 3. In the first sentence of paragraph 3 the words “or indemnification” and “or 5” are deleted.

69 4. In the second sentence of paragraph 3 the words “or under Article 5, paragraph 1” are deleted.

70 **Article 10**

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

72 **Article 11**

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

74 1. Paragraph 1 is replaced by the following text:

75 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.

76 2. In paragraph 2 the words “or indemnification” are deleted.

77 **Article 12**

78 Article 10 of the 1971 Fund Convention is amended as follows:

The opening phrase of paragraph 1 is replaced by the following text: 79

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: 80

Article 13

Article 11 of the 1971 Fund Convention is deleted. 81

Article 14

Article 12 of the 1971 Fund Convention is amended as follows: 82

1. In the opening phrase of paragraph 1 the words “for each person referred to in Article 10” are deleted. 85

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”. 86

3. Subparagraph 1 (ii) (b) is deleted. 87

4. In paragraph 1 (ii), subparagraph (c) becomes (b) and subparagraph (d) becomes (c). 88

5. The opening phrase in paragraph 2 is replaced by the following text: 89

The Assembly shall decide the total amount of contributions to be levied. On the basis of that decision, the Director shall, in respect of each Contracting State, calculate for each person referred to in Article 10 the amount of his annual contribution: 90

6. Paragraph 4 is replaced by the following text:

4. The annual contribution shall be due on the date to be laid down in the Internal Regulations of the Fund. The Assembly may decide on a different date of payment.

7. Paragraph 5 is replaced by the following text:

5. The Assembly may decide, under conditions to be laid down in the Financial Regulations of the Fund, to make transfers between funds received in accordance with Article 12.2 (a) and funds received in accordance with Article 12.2 (b).

8. Paragraph 6 is deleted.

Article 15

Article 13 of the 1971 Fund Convention is amended as follows:

1. Paragraph 1 is replaced by the following text:

1. The amount of any contribution due under Article 12 and which is in arrears shall bear interest at a rate which shall be determined in accordance with the Internal Regulations of the Fund, provided that different rates may be fixed for different circumstances.

2. In paragraph 3 the words "Articles 10 and 11" are replaced by the words "Articles 10 and 12" and the words "for a period exceeding three months" are deleted.

Article 16

A new paragraph 4 is added to Article 15 of the 1971 Fund Convention:

4. Where a Contracting State does not fulfill its obligations to sub-

mit to the Director the communication referred to in paragraph 2 and this results in a financial loss for the Fund, that Contracting State shall be liable of compensate the Fund for such loss. The Assembly shall, on the recommendation of the Director, decide whether such compensation shall be payable by that Contracting State.

Article 17

Article 16 of the 1971 Fund Convention is replaced by the following text:

The Fund shall have an Assembly and a Secretariat headed by a Director.

Article 18

Article 18 of the 1971 Fund Convention is amended as follows:

1. In the opening sentence of the article the words ", subject to the provisions of Article 26," are deleted.

2. Paragraph 8 is deleted.

3. Paragraph 9 is replaced by the following text:

9. to establish any temporary or permanent subsidiary body it may consider to be necessary, to define its terms of reference and to give it the authority needed to perform the functions entrusted to it; when appointing the members of such body, the Assembly shall endeavour to secure an equitable geographical distribution of members and to ensure that the Contracting States, in respect of which the largest quantities of contributing oil are being received, are appropriately represented; the Rules of Procedure of the Assembly

may be applied, mutatis mutandis, for the work of such subsidiary body;

113 4. In paragraph 10 the words “, the Executive Committee,” are deleted.

114 5. In paragraph 11 the words “, the Executive Committee” are deleted.

115 6. Paragraph 12 is deleted.

116 **Article 19**

117 Article 19 of the 1971 Fund Convention is amended as follows:

118 1. Paragraph 1 is replaced by the following text:

119 1. Regular sessions of the Assembly shall take place once every calendar year upon convocation by the Director.

120 2. In paragraph 2 the words “of the Executive Committee or” are deleted.

121 **Article 20**

122 Articles 21 to 27 of the 1971 Fund Convention and the heading to these articles are deleted.

123 **Article 21**

124 Article 29 of the 1971 Fund Convention is amended as follows:

125 1. Paragraph 1 is replaced by the following text:

126 1. The Director shall be the chief administrative officer of the Fund.

Subject to the instructions given to him by the Assembly, he shall perform those functions which are assigned to him by this Convention, the Internal Regulations of the Fund and the Assembly.

2. In paragraph 2 (e) the words “or to the Executive Committee” 127 are deleted.

3. In paragraph 2 (f) the words “or to the Executive Committee, as 128 the case may be,” are deleted.

4. Paragraph 2 (g) is replaced by the following text: 129

(g) prepare, in consultation with the Chairman of the Assembly, and 130 publish a report of the activities of the Fund during the previous calendar year;

5. In paragraph 2 (h) the words “, the Executive Committee” are 131 deleted.

Article 22 132

In Article 31, paragraph 1, of the 1971 Fund Convention, the words 133 “on the Executive Committee and” are deleted.

Article 23 134

Article 32 of the 1971 Fund Convention is amended as follows: 135

1. In the opening phrase the words “and the Executive Committee” 136 are deleted.

2. In subparagraph (b) the words “and the Executive Committee” 137 are deleted.

Article 24

139 Article 33 of the 1971 Fund Convention is amended as follows:

- 140 1. Paragraph 1 is deleted.
- 141 2. In paragraph 2 the paragraph number is deleted.
- 142 3. Subparagraph (c) is replaced by the following text:
- 143 (c) the establishment of subsidiary bodies, under Article 18, paragraph 9, and matters relating to such establishment.

Article 25

144 Article 35 of the 1971 Fund Convention is replaced by the following text:

145 Claims for compensation under Article 4 arising from incidents occurring after the date of entry into force of this Convention may not be brought against the Fund earlier than the one hundred and twentieth day after that date.

Article 26

147 After Article 36 of the 1971 Fund Convention four new articles are inserted as follows:

148 Article 36 bis

149 The following transitional provisions shall apply in the period, hereinafter referred to as the transitional period, commencing with the date of entry into force of this Convention and ending with the date on which the denunciations provided for in Article 31 of the 1992 Protocol to amend the 1971 Fund Convention take effect:

150 (a) In the application of paragraph 1 (a) of Article 2 of this Conven-

138 tion, the reference to the 1992 Liability Convention shall include reference to the International Convention on Civil Liability for Oil Pollution Damage, 1969, either in its original version or as amended by the Protocol thereto of 1976 (referred to in this Article as “the 1969 Liability Convention”), and also the 1971 Fund Convention.

(b) Where an incident has caused pollution damage within the scope of this Convention, the Fund shall pay compensation to any person suffering pollution damage only if, and to the extent that, such person has been unable to obtain full and adequate compensation for the damage under the terms of the 1969 Liability Convention, the 1971 Fund Convention and the 1969 Liability Convention, provided that, in respect of pollution damage within the scope of this Convention in respect of a Party to this Convention but not a Party to the 1971 Fund Convention, the Fund shall pay compensation to any person suffering pollution damage only if, and to the extent that, such person would have been unable to obtain full and adequate compensation had that State been party to each of the above-mentioned Conventions.

(c) In the application of Article 4 of this Convention, the amount to be taken into account in determining the aggregate amount of compensation payable by the Fund shall also include the amount of compensation actually paid under the 1969 Liability Convention, if any, and the amount of compensation actually paid or deemed to have been paid under the 1971 Fund Convention.

(d) Paragraph 1 of Article 9 of this Convention shall also apply to the rights enjoyed under the 1969 Liability Convention.

Article 36 ter

1. Subject to paragraph 4 of this Article, 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 27.5% of the total amount of annual contributions pur-

157 suant to the 1992 Protocol to amend the 1971 Fund Convention, in
158 respect of that calendar year.

157 2. If the application of the provisions in paragraphs 2 and 3 of
158 Article 12 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 27.5% of the total annual contri-
butions, the contributions payable by all contributors in that State
shall be reduced pro rata so that their aggregate contributions equal
27.5% of the total annual contributions to the Fund in respect of that
year.

159 3. If the contributions payable by persons in a given Contracting
State shall be reduced pursuant to paragraph 2 of this Article, 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
Fund in respect of the calendar year in question will reach the total
amount of contributions decided by the Assembly.

160 4. The provisions in paragraphs 1 to 3 of this Article shall operate
until the total quantity of contributing oil received in all Contracting
States in a calendar year has reached 750 million tons or until a
period of 5 years after the date of entry into force of the said 1992
Protocol has elapsed, whichever occurs earlier.

161 Article 36 quater

162 Notwithstanding the provisions of this Convention, the following
provisions shall apply to the administration of the Fund during the
period in which both the 1971 Fund Convention and this Conven-
tion are in force:

163 (a) The Secretariat of the Fund, established by the 1971 Conven-
tion (hereinafter referred to as “the 1971 Fund”), headed by the
Director, may also function as the Secretariat and the Director of
the Fund.

(b) If, in accordance with subparagraph (a), the Secretariat and the
Director of the 1971 Fund also perform the function of Secretariat
and Director of the Fund, the Fund shall be represented, in cases
of conflict of interests between the 1971 Fund and the Fund, by the
Chairman of the Assembly of the Fund. 164

(c) The Director and the staff and experts appointed by him, per-
forming their duties under this Convention and the 1971 Fund Con-
vention, shall not be regarded as contravening the provisions of
Article 30 of this Convention in so far as they discharge their duties
in accordance with this Article. 165

(d) The Assembly of the Fund shall endeavour not to take decisions
which are incompatible with decisions taken by the Assembly of the
1971 Fund. If differences of opinion with respect to common admin-
istrative issues arise, the Assembly of the Fund shall try to reach a
consensus with the Assembly of the 1971 Fund, in a spirit of mu-
tual co-operation and with the common aims of both organizations
in mind. 166

(e) The Fund may succeed to the rights, obligations and assets of
the 1971 Fund if the Assembly of the 1971 Fund so decides, in
accordance with Article 44, paragraph 2, of the 1971 Fund Con-
vention. 167

(f) The Fund shall reimburse to the 1971 Fund all costs and ex-
penses arising from administrative services performed by the 1971
Fund on behalf of the Fund. 168

Article 36 quinques 169

Final clauses 170

The final clauses of this Convention shall be Articles 28 to 39 of the
Protocol of 1992 to amend the 1971 Fund Convention. References
in this Convention to Contracting States shall be taken to mean
references to the Contracting States of that Protocol. 171

172 **Article 27**

173 1. The 1971 Fund Convention and this Protocol shall, as between
the Parties to this Protocol, be read and interpreted together as one
single instrument.

174 2. Articles 1 to 36 quinquies of the 1971 Fund Convention as
amended by this Protocol shall be known as the International Con-
vention on the Establishment of an International Fund for Com-
pensation for Oil Pollution Damage, 1992 (1992 Fund Conven-
tion).

175 **FINAL CLAUSES**

176 **Article 28 - Signature, ratification, acceptance, approval and
accession**

177 1. This Protocol shall be open for signature at London from 15
January 1993 to 14 January 1994 by any State which has signed
the 1992 Liability Convention.

178 2. Subject to paragraph 4, this Protocol shall be ratified, accepted
or approved by States which have signed it.

179 3. Subject to paragraph 4, this Protocol is open for accession by
States which did not sign it.

180 4. This Protocol may be ratified, accepted, approved or acceded to
only by States which have ratified, accepted, approved or acceded
to the 1992 Liability Convention.

181 5. Ratification, acceptance, approval or accession shall be ef-
fected by the deposit of a formal instrument to that effect with the
Secretary-General of the Organization.

182 6. A State which is a Party to this Protocol but is not a Party to
the 1971 Fund Convention shall be bound by the provisions of the

1971 Fund Convention as amended by this Protocol in relation to
other Parties hereto, but shall not be bound by the provisions of the
1971 Fund Convention in relation to Parties thereto.

7. Any instrument of ratification, acceptance, approval or ac-
cession deposited after the entry into force of an amendment to
the 1971 Fund Convention as amended by this Protocol shall be
deemed to apply to the Convention so amended, as modified by
such amendment.

Article 29 - Information on contributing oil

1. Before this Protocol comes into force for a State, that State
shall, when depositing an instrument referred to in Article 28, para-
graph 5, and annually thereafter at a date to be determined by
the Secretary-General of the Organization, communicate to him
the name and address of any person who in respect of that State
would be liable to contribute to the Fund pursuant to Article 10 of
the 1971 Fund Convention as amended by this Protocol 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.

2. During the transitional period, the Director shall, for Parties,
communicate annually to the Secretary-General of the Organiza-
tion data on quantities of contributing oil received by persons liable
to contribute to the Fund pursuant to article 10 of the 1971 Fund
Convention as amended by this Protocol.

Article 30 - Entry into force

1. This Protocol shall enter into force twelve months following the
date on which the following requirements are fulfilled:

(a) at least eight States have deposited instruments of ratification,

acceptance, approval or accession with the Secretary-General of the Organization; and

190 (b) the Secretary-General of the Organization has received information in accordance with Article 29 that those persons who would be liable to contribute pursuant to Article 10 of the 1971 Fund Convention as amended by this Protocol have received during the preceding calendar year a total quantity of at least 450 million tons of contributing oil.

191 2. However, this Protocol shall not enter into force before the 1992 Liability Convention has entered into force.

192 3. For each State 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 twelve months following the date of the deposit by such State of the appropriate instrument.

193 4. Any State may, at the time of the deposit of its instrument of ratification, acceptance, approval or accession in respect of this Protocol declare that such instrument shall not take effect for the purpose of this Article until the end of the six-month period in Article 31.

194 5. Any State which has made a declaration in accordance with the preceding paragraph may withdraw it at any time by means of a notification addressed to the Secretary-General of the Organization. Any such withdrawal shall take effect on the date the notification is received, and any State making such a withdrawal shall be deemed to have deposited its instrument of ratification, acceptance, approval or accession in respect of this Protocol on that date.

195 6. Any State which has made a declaration under Article 13, paragraph 2, of the Protocol of 1992 to amend the 1969 Liability Convention shall be deemed to have also made a declaration under

paragraph 4 of this Article. Withdrawal of a declaration under the said Article 13, paragraph 2, shall be deemed to constitute withdrawal also under paragraph 5 of this Article.

Article 31 - Denunciation of the 1969 and 1971 Conventions

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Subject to Article 30, within six months following the date on which the following requirements are fulfilled:

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(a) at least eight States have become Parties to this Protocol or have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General of the Organization, whether or not subject to Article 30, paragraph 4, and

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(b) the Secretary-General of the Organization has received information in accordance with Article 29 that those persons who are or would be liable to contribute pursuant to Article 10 of the 1971 Fund Convention as amended by this Protocol have received during the preceding calendar year a total quantity of at least 750 million tons of contributing oil;

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each Party to this Protocol and each State which has deposited an instrument of ratification, acceptance, approval or accession, whether or not subject to Article 30, paragraph 4, shall, if Party thereto, denounce the 1971 Fund Convention and the 1969 Liability Convention with effect twelve months after the expiry of the above-mentioned six-month period.

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Article 32 - Revision and amendment

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1. A conference for the purpose of revising or amending the 1992 Fund Convention may be convened by the Organization.

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2. The Organization shall convene a Conference of Contracting

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States for the purpose of revising or amending the 1992 Fund Convention at the request of not less than one third of all Contracting States.

Article 33 - Amendment of compensation limits

1. Upon the request of at least one quarter of the Contracting States, any proposal to amend the limits of amounts of compensation laid down in Article 4, paragraph 4, of the 1971 Fund Convention as amended by this Protocol 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 the 1971 Fund Convention as amended by 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 limits, 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. It shall also take into account the relationship between the limits in Article 4, paragraph 4, of the 1971 Fund Convention as amended by this Protocol and those in Article V, paragraph 1, of the International Convention on Civil Liability for Oil Pollution Damage, 1992.

6. (a) No amendment of the limits under this Article may be considered before 15 January 1998 nor less than five years from the date of entry into force of a previous amendment under this Article. No amendment under this Article shall be considered before this Protocol has entered into force.

(b) No limit may be increased so as to exceed an amount which corresponds to the limit laid down in the 1971 Fund Convention as amended by this Protocol increased by six per cent per year calculated on a compound basis for 15 January 1993.

(c) No limit may be increased so as to exceed an amount which corresponds to the limit laid down in the 1971 Fund Convention as amended by 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 eighteen 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 eighteen months after its acceptance.

9. All Contracting States shall be bound by the amendment, unless they denounce this Protocol in accordance with Article 34, 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 eighteen-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.

217 **Article 34 - Denunciation**

218 1. This Protocol may be denounced by any Party at any time after the date on which it enters into force for that Party.

219 2. Denunciation shall be effected by the deposit of an instrument with the Secretary-General of the Organization.

220 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 of the Organization.

221 4. Denunciation of the 1992 Liability 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 1969 Liability Convention takes effect according to Article 16 of that Protocol.

222 5. Any Contracting State to this Protocol which has not denounced the 1971 Fund Convention and the 1969 Liability Convention as required by Article 31 shall be deemed to have denounced this Protocol with effect twelve months after the expiry of the six-month period mentioned in that Article. As from the date on which the denunciations provided for in Article 31 take effect, any Party to this Protocol which deposits an 1969 Liability Convention shall be deemed to have denounced this Protocol with effect from the date on which such instrument takes effect.

223 6. As between the Parties to this Protocol, denunciation by any of them of the 1971 Fund Convention in accordance with Article 41 thereof shall not be construed in any way as a denunciation of the 1971 Fund Convention as amended by this Protocol.

224 7. Notwithstanding a denunciation of this Protocol by a Party pursuant to this Article, any provisions of this Protocol relating to the obligations to make contributions under Article 10 of the 1971 Fund Convention as amended by this Protocol with respect to an incident referred to in Article 12, paragraph 2 (b), of that amended Convention and occurring before the denunciation takes effect shall continue to apply.

Article 35 - Extraordinary sessions of the Assembly

225 226 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 to convene an extraordinary session of the Assembly. The Director shall convene the Assembly to meet not later than sixty days after receipt of the request.

227 2. The Director may convene, on his own initiative, an extraordinary session of the Assembly to meet within sixty days after the deposit of any instrument of denunciation, if he considers that such denunciation will result in a significant increase in the level of contributions of the remaining Contracting States.

228 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 denuncia-

tion takes effect, denounce this Protocol with effect from the same date. 238

229 Article 36 - Termination

- 230 1. This Protocol shall cease to be in force on the date when the number of Contracting States falls below three.
- 231 2. States which are bound by this Protocol on the day before the date it ceases to be in force shall enable the Fund to exercise its functions as described under Article 37 of this Protocol and shall, for that purpose only, remain bound by this Protocol.

232 Article 37 - Winding up of the Fund

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

Article 38 - Depositary

1. This Protocol and any amendments accepted under Article 33 shall be deposited with the Secretary-General of the Organization. 239
2. The Secretary-General of the Organization shall: 240
- (a) inform all States which have signed or acceded to this Protocol of: 241
- (i) each new signature or deposit of an instrument together with the date thereof, 242
- (ii) each declaration and notification under Article 30 including declarations and withdrawals deemed to have been made in accordance with that Article; 243
- (iii) the date of entry into force of this Protocol; 244
- (iv) the date by which denunciations provided for in Article 31 are required to be made; 245
- (v) any proposal to amend limits of amounts of compensation which has been made in accordance with Article 33, paragraph 1; 246
- (vi) any amendment which has been adopted in accordance with Article 33, paragraph 4; 247
- (vii) any amendment deemed to have been accepted under Article 33, paragraph 7, together with the date on which that amendment shall enter into force in accordance with paragraphs 8 and 9 of that Article; 248
- (viii) 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; 249
- (ix) any denunciation deemed to have been made under Article 34, paragraph 5; 250

251 (x) any communication called for by any Article in this Proto-
col;

252 (b) transmit certified true copies of this Protocol to all Signatory
States and to all States which accede to the Protocol.

253 3. As soon as this Protocol enters into force, the text shall be trans-
mitted by the Secretary-General of the Organization to the Secre-
tariat of the United Nations for registration and publication in accor-
dance with Article 102 of the Charter of the United Nations.

254 **Article 39 - Languages**

255 This protocol is established in a single original in the Arabic, Chi-
nese, English, French, Russian and Spanish languages, each text
being equally authentic.

[Post Provisions]

***[Post Clauses (If any: Signed; Witnessed; Done; Authentic
Texts; & Deposited Clauses)]***

256 DONE AT LONDON this twenty-seventh day of November one
thousand nine hundred and ninety-two.

257 IN WITNESS WHEREOF the undersigned being duly authorized
for that purpose have signed this Protocol.

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