



INTERNATIONAL CONFERENCE  
ON THE REVISION OF  
THE HNS CONVENTION  
Agenda item 8

LEG/CONF.17/DC/1  
29 April 2010  
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**DRAFT**  
**PROTOCOL OF 2010 TO THE INTERNATIONAL CONVENTION ON LIABILITY AND  
COMPENSATION FOR DAMAGE IN CONNECTION WITH THE CARRIAGE OF  
HAZARDOUS AND NOXIOUS SUBSTANCES BY SEA, 1996**

**Text examined and approved by the drafting committee**

THE STATES PARTIES TO THIS PROTOCOL,

RECOGNIZING the significant contribution which can be made by the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (hereinafter referred to as the "Convention"), to the adequate, prompt and effective compensation of persons who suffer damage caused by incidents in connection with the carriage of hazardous and noxious substances by sea, as well as to the preservation of the marine environment,

RECOGNIZING ALSO that, over many years, a large number of States have consistently expressed their determination to establish a robust and effective compensation regime for the maritime carriage of hazardous and noxious substances based on a system of shared liability and have worked towards a uniform implementation of the Convention,

ACKNOWLEDGING, HOWEVER, that certain issues have been identified as inhibiting the entry into force of the Convention and, consequently, the implementation of the international regime contained therein,

DETERMINED to resolve these issues without embarking on a comprehensive revision of the Convention,

AWARE OF the need to take into account the possible impact on developing countries, as well as the interests of those States which have already ratified the Convention or have almost completed the ratification process,

RECALLING the principles enshrined in IMO resolution A.998(25) "Need for capacity-building for the development and implementation of new, and amendments to existing, instruments", adopted on 29 November 2007,

CONSIDERING that these objectives may best be achieved by the conclusion of a Protocol to the Convention,

HAVE AGREED as follows:

### **Definitions**

#### **Article 1**

For the purposes of this Protocol:

- 1 "Convention" means the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996.
- 2 "Organization" means the International Maritime Organization.
- 3 "Secretary-General" means the Secretary-General of the Organization.

### **General obligations**

#### **Article 2**

The Parties to this Protocol shall give effect to the provisions of this Protocol and the provisions of the Convention, as amended by this Protocol.

#### **Article 3**

**1 Article 1, paragraph 5, of the Convention is replaced by the following text:**

- 5 "Hazardous and noxious substances (HNS)" means:
  - (a) any substances, materials and articles carried on board a ship as cargo, referred to in (i) to (vii) below:
    - (i) oils, carried in bulk, as defined in regulation 1 of Annex I to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended;
    - (ii) noxious liquid substances, carried in bulk, as defined in regulation 1.10 of Annex II to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended, and those substances and mixtures provisionally categorized as falling in pollution category X, Y or Z in accordance with regulation 6.3 of the said Annex II;

- (iii) dangerous liquid substances carried in bulk listed in chapter 17 of the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk, as amended, and the dangerous products for which the preliminary suitable conditions for the carriage have been prescribed by the Administration and port administrations involved in accordance with paragraph 1.1.6 of the Code;
  - (iv) dangerous, hazardous and harmful substances, materials and articles in packaged form covered by the International Maritime Dangerous Goods Code, as amended;
  - (v) liquefied gases as listed in chapter 19 of the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk, as amended, and the products for which preliminary suitable conditions for the carriage have been prescribed by the Administration and port administrations involved in accordance with paragraph 1.1.6 of the Code;
  - (vi) liquid substances carried in bulk with a flashpoint not exceeding 60°C (measured by a closed-cup test);
  - (vii) solid bulk materials possessing chemical hazards covered by the International Maritime Solid Bulk Cargoes Code, as amended, to the extent that these substances are also subject to the provisions of the International Maritime Dangerous Goods Code in effect in 1996, when carried in packaged form; and
- (b) residues from the previous carriage in bulk of substances referred to in (a)(i) to (iii) and (v) to (vii) above.

**2 The following text is added as article 1, paragraphs 5*bis* and 5*ter*, of the Convention:**

*5bis* "Bulk HNS" means any hazardous and noxious substances referred to in article 1, paragraph 5(a)(i) to (iii) and (v) to (vii) and paragraph 5(b).

*5ter* "Packaged HNS" means any hazardous and noxious substances referred to in article 1, paragraph 5(a)(iv).

**3 Article 1, paragraph 10, of the Convention is replaced by the following text:**

10 "Contributing cargo" means any bulk HNS which is carried by sea as cargo to a port or terminal in the territory of a State Party and discharged in that State. Cargo in transit which is transferred directly, or through a port or terminal, from one ship to another, either wholly or in part, in the course of carriage from the port or terminal of original loading to the port or terminal of final destination shall be considered as contributing cargo only in respect of receipt at the final destination.

#### **Article 4**

**Article 3(d) is replaced by the following text:**

- (d) to preventive measures, wherever taken, to prevent or minimize such damage as referred to in (a), (b) and (c) above.

#### **Article 5**

**Article 4, paragraph 3(b), is replaced by the following text:**

- 3(b) to damage caused by a radioactive material of class 7 either in the International Maritime Dangerous Goods Code, as amended, or in the International Maritime Solid Bulk Cargoes Code, as amended.

#### **Article 6**

**Article 5, paragraph 5, of the Convention is deleted, and paragraph 6 becomes paragraph 5.**

#### **Article 7**

**Article 9, paragraph 1, of the Convention is replaced by the following text:**

1 The owner of a ship shall be entitled to limit liability under this Convention in respect of any one incident to an aggregate amount calculated as follows:

- (a) Where the damage has been caused by bulk HNS:
  - (i) 10 million units of account for a ship not exceeding 2,000 units of tonnage; and
  - (ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):

for each unit of tonnage from 2,001 to 50,000 units of tonnage, 1,500 units of account;

for each unit of tonnage in excess of 50,000 units of tonnage, 360 units of account;

provided, however, that this aggregate amount shall not in any event exceed 100 million units of account.

- (b) Where the damage has been caused by packaged HNS, or where the damage has been caused by both bulk HNS and packaged HNS, or where it is not possible to determine whether the damage originating from that ship has been caused by bulk HNS or by packaged HNS:
  - (i) 11.5 million units of account for a ship not exceeding 2,000 units of tonnage; and

- (ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):

for each unit of tonnage from 2,001 to 50,000 units of tonnage, 1,725 units of account;

for each unit of tonnage in excess of 50,000 units of tonnage, 414 units of account;

provided, however, that this aggregate amount shall not in any event exceed 115 million units of account.

#### **Article 8**

**In article 16, paragraph 5, of the Convention, the reference to "paragraph 1(c)" is replaced by a reference to "paragraph 1(b)".**

#### **Article 9**

**1 Article 17, paragraph 2, of the Convention is replaced by the following text:**

2 Annual contributions payable pursuant to articles 18, 19 and article 21, paragraph 5, shall be determined by the Assembly and shall be calculated in accordance with those articles on the basis of the units of contributing cargo received during the preceding calendar year or such other year as the Assembly may decide.

**2 In article 17, paragraph 3, of the Convention, a reference to "and paragraph 1 bis," is inserted immediately after the words "article 19, paragraph 1".**

#### **Article 10**

**In article 18, paragraphs 1 and 2, of the Convention a reference to "and paragraph 1 bis," is inserted immediately after the words "article 19, paragraph 1" in both paragraphs.**

#### **Article 11**

**1 In article 19, paragraph 1(b) is deleted and paragraph 1(c) becomes paragraph 1(b).**

**2 In article 19 of the Convention, after paragraph 1, a new paragraph is inserted as follows:**

1 bis (a) In the case of the LNG account, subject to article 16, paragraph 5, annual contributions to the LNG account shall be made in respect of each State Party by any person who in the preceding calendar year, or such other year as the Assembly may decide, was the receiver in that State of any quantity of LNG.

(b) However, any contributions shall be made by the person who, immediately prior to its discharge, held title to an LNG cargo discharged in a port or terminal of that State (the titleholder) where:

- (i) the titleholder has entered into an agreement with the receiver that the titleholder shall make such contributions; and
  - (ii) the receiver has informed the State Party that such an agreement exists.
- (c) If the titleholder referred to in subparagraph (b) above does not make the contributions or any part thereof, the receiver shall make the remaining contributions. The Assembly shall determine in the internal regulations the circumstances under which the titleholder shall be considered as not having made the contributions and the arrangements in accordance with which the receiver shall make any remaining contributions.
- (d) Nothing in this paragraph shall prejudice any rights of recourse or reimbursement of the receiver that may arise between the receiver and the titleholder under the applicable law.

**3 In article 19, paragraph 2, of the Convention a reference to "and paragraph 1 bis" is inserted immediately after the words "paragraph 1".**

#### **Article 12**

**Article 20, paragraph 1, of the Convention is replaced by the following text:**

1 In respect of each State Party, initial contributions shall be made of an amount which shall, for each person liable to pay contributions in accordance with article 16, paragraph 5, articles 18, 19 and article 21, paragraph 5, be calculated on the basis of a fixed sum, equal for the general account and each separate account, for each unit of contributing cargo received in that State during the calendar year preceding that in which this Convention enters into force for that State.

#### **Article 13**

**1 Article 21, paragraph 4, of the Convention is replaced by the following text:**

4 If in a State Party there is no person liable to pay contributions in accordance with articles 18, 19 or paragraph 5 of this article, that State Party shall, for the purposes of this Convention, inform the Director of the HNS Fund thereof.

**2 Article 21, paragraph 5(b), of the Convention is replaced by the following text:**

5(b) instruct the HNS Fund to levy the aggregate amount for each account by invoicing individual receivers, or, in the case of LNG, the titleholder if article 19, paragraph 1 bis(b) is applicable, for the amount payable by each of them. If the titleholder does not make the contributions or any part thereof, the HNS Fund shall levy the remaining contributions by invoicing the receiver of the LNG cargo. These persons shall be identified in accordance with the national law of the State concerned.

## Article 14

**The following text is added as article 21*bis* of the Convention:**

### Non-reporting

#### Article 21*bis*

1 Where a State Party does not fulfil its obligations under article 21, paragraph 2, and this results in a financial loss for the HNS Fund, that State Party shall be liable to compensate the HNS Fund for such loss. The Assembly shall, upon recommendation of the Director, decide whether such compensation shall be payable by a State.

2 No compensation for any incident shall be paid by the HNS Fund for damage in the territory, including the territorial sea of a State Party in accordance with article 3(a), the exclusive economic zone or other area of a State Party in accordance with article 3(b), or damage in accordance with article 3(c) in respect of a given incident or for preventive measures, wherever taken, in accordance with article 3(d), until the obligations under article 21, paragraphs 2 and 4, have been complied with in respect of that State Party for all years prior to the occurrence of an incident for which compensation is sought. The Assembly shall determine in the internal regulations of the HNS Fund the circumstances under which a State Party shall be considered as not having fulfilled these obligations.

3 Where compensation has been denied temporarily in accordance with paragraph 2, compensation shall be denied permanently if the obligations under article 21, paragraphs 2 and 4, have not been fulfilled within one year after the Director has notified the State Party of its failure to fulfil these obligations.

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

5 Paragraphs 2 to 4 shall not apply to claims in respect of death or personal injury.

## Article 15

**Article 23, paragraph 1, of the Convention is replaced by the following text:**

1 Without prejudice to article 21, paragraph 5, a State Party may, at the time when it signs without reservation as to ratification, acceptance or approval, or deposits its instrument of ratification, acceptance, approval or accession or at any time thereafter, declare that it assumes responsibility for obligations imposed by this Convention on any person liable to pay contributions in accordance with articles 18, 19, 20 or article 21, paragraph 5, in respect of hazardous and noxious substances received in the territory of that State. Such a declaration shall be made in writing and shall specify which obligations are assumed.

#### **Article 16**

**Article 43 of the Convention is deleted, and article 44 is renumbered as article 43.**

#### **Article 17**

**The model certificate set out in Annex I of the Convention is replaced by the model annexed to this Protocol.**

### **Interpretation and application**

#### **Article 18**

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

2 Articles 1 to 44 and Annexes I and II of the Convention, as amended by this Protocol and the annex thereto, together with articles 20 to 29 of this Protocol (the final clauses), shall *mutatis mutandis* constitute and be called the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010 (2010 HNS Convention). Articles 20 to 29 of this Protocol shall be renumbered sequentially with the preceding articles of the Convention. References within the final clauses to other articles of the final clauses shall be renumbered accordingly.

#### **Article 19**

**In chapter VI, the following text is inserted as article 44bis of the Convention:**

#### **Article 44bis**

**Final clauses of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010.**

The final clauses of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 2010 shall be the final clauses of the Protocol of 2010 to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996.

### **FINAL CLAUSES**

#### **Signature, ratification, acceptance, approval and accession**

#### **Article 20**

1 This Protocol shall be open for signature at the Headquarters of the Organization from 1 November 2010 to 31 October 2011 and shall thereafter remain open for accession.

2 Subject to the provisions in paragraphs 4 and 5, States may express their consent to be bound by this Protocol by:

- (a) signature without reservation as to ratification, acceptance or approval; or



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- (b) signature subject to ratification, acceptance or approval followed by ratification, acceptance or approval; or
  - (c) accession.

3 Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

4 An expression of consent to be bound by this Protocol shall be accompanied by the submission to the Secretary-General of data on the total quantities of contributing cargo liable for contributions received in that State during the preceding calendar year in respect of the general account and each separate account.

5 An expression of consent which is not accompanied by the data referred to in paragraph 4 shall not be accepted by the Secretary-General.

6 Each State which has expressed its consent to be bound by this Protocol shall annually thereafter on or before 31 May until this Protocol enters into force for that State, submit to the Secretary-General data on the total quantities of contributing cargo liable for contributions received in that State during the preceding calendar year in respect of the general account and each separate account.

7 A State which has expressed its consent to be bound by this Protocol and which has not submitted the data on contributing cargo required under paragraph 6 for any relevant years shall, before the entry into force of the Protocol for that State, be temporarily suspended from being a Contracting State until it has submitted the required data.

8 A State which has expressed its consent to be bound by the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 shall be deemed to have withdrawn this consent on the date on which it has signed this Protocol or deposited an instrument of ratification, acceptance, approval or accession in accordance with paragraph 2.

## **Entry into force**

### **Article 21**

1 This Protocol shall enter into force eighteen months after the date on which the following conditions are fulfilled:

- (a) at least twelve States, including four States each with not less than 2 million units of gross tonnage, have expressed their consent to be bound by it; and
- (b) the Secretary-General has received information in accordance with article 20, paragraphs 4 and 6, that those persons in such States who would be liable to contribute pursuant to article 18, paragraphs 1(a) and (c), of the Convention, as amended by this Protocol, have received during the preceding calendar year a total quantity of at least 40 million tonnes of cargo contributing to the general account.

2 For a State which expresses its consent to be bound by this Protocol after the conditions for entry into force have been met, such consent shall take effect three months after the date of expression of such consent, or on the date on which this Protocol enters into force in accordance with paragraph 1, whichever is the later.

## Revision and amendment

### Article 22

1 A conference for the purpose of revising or amending the Convention, as amended by this Protocol, may be convened by the Organization.

2 The Secretary-General shall convene a conference of the States Parties to this Protocol, for revising or amending the Convention, as amended by this Protocol, at the request of six States Parties or one third of the States Parties, whichever is the higher figure.

3 Any instrument of ratification, acceptance, approval or accession deposited after the date of entry into force of an amendment to the Convention, as amended by this Protocol, shall be deemed to apply to the Convention as amended.

### Amendment of limits

### Article 23

1 Without prejudice to the provisions of article 22, the special procedure in this article shall apply solely for the purposes of amending the limits set out in article 9, paragraph 1, and article 14, paragraph 5, of the Convention, as amended by this Protocol.

2 Upon the request of at least one half, but in no case less than six, of the States Parties, any proposal to amend the limits specified in article 9, paragraph 1, and article 14, paragraph 5, of the Convention, as amended by this Protocol, shall be circulated by the Secretary-General to all Members of the Organization and to all Contracting States.

3 Any amendment proposed and circulated in accordance with paragraph 2 shall be submitted to the Legal Committee of the Organization (the Legal Committee) for consideration at a date at least six months after the date of its circulation.

4 All Contracting States, 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.

5 Amendments shall be adopted by a two-thirds majority of the Contracting States present and voting in the Legal Committee, expanded as provided in paragraph 4, on condition that at least one half of the Contracting States shall be present at the time of voting.

6 When acting on a proposal to amend the limits, the Legal Committee shall take into account the experience of incidents, in particular the amount of damage resulting therefrom, changes in the monetary values, and the effect of the proposed amendment on the cost of insurance. It shall also take into account the relationship between the limits established in article 9, paragraph 1, and those in article 14, paragraph 5, of the Convention, as amended by this Protocol.

7 (a) No amendment of the limits under this article may be considered less than five years from the date this Protocol was opened for signature nor less than five years from the date of entry into force of a previous amendment under this article.

- (b) No limit may be increased so as to exceed an amount which corresponds to a limit laid down in this Protocol increased by six per cent per year calculated on a compound basis from the date on which this Protocol was opened for signature.
- (c) No limit may be increased so as to exceed an amount which corresponds to a limit laid down in this Protocol multiplied by three.

8 Any amendment adopted in accordance with paragraph 5 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 no less than one-fourth of the States which were Contracting States at the time of the adoption of the amendment have communicated to the Secretary-General that they do not accept the amendment, in which case the amendment is rejected and shall have no effect.

9 An amendment deemed to have been accepted in accordance with paragraph 8 shall enter into force eighteen months after its acceptance.

10 All Contracting States shall be bound by the amendment, unless they denounce this Protocol in accordance with article 24, 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.

11 When an amendment has been adopted 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 8. 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.

## **Denunciation**

### **Article 24**

1 This Protocol may be denounced by any State Party at any time after the expiry of one year following the date on which this Protocol comes into force for that State.

2 Denunciation shall be effected by the deposit of an instrument to that effect 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, following its receipt by the Secretary-General.

4 Notwithstanding a denunciation by a State Party pursuant to this article, any provisions of this Protocol relating to obligations to make contributions under articles 18, 19 or article 21, paragraph 5, of the Convention, as amended by this Protocol, in respect of such payments of compensation as the Assembly may decide relating to an incident which occurs before the denunciation takes effect shall continue to apply.

## Extraordinary sessions of the Assembly

### Article 25

1 Any State Party 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 from the remaining States Parties, request the Director to convene an extraordinary session of the Assembly. The Director shall convene the Assembly to meet not less than sixty days after receipt of the request.

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

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 from the remaining States Parties, 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.

### Cessation

#### Article 26

1 This Protocol shall cease to be in force:

- (a) on the date when the number of States Parties falls below six; or
- (b) twelve months after the date on which data concerning a previous calendar year were to be communicated to the Director in accordance with article 21, of the Convention, as amended by this Protocol, if the data show that the total quantity of contributing cargo to the general account in accordance with article 18, paragraphs 1(a) and (c), of the Convention, as amended by this Protocol, received in the States Parties in that preceding calendar year was less than 30 million tonnes.

Notwithstanding subparagraph (b), if the total quantity of contributing cargo to the general account in accordance with article 18, paragraphs 1(a) and (c), of the Convention, as amended by this Protocol, received in the States Parties in the preceding calendar year was less than 30 million tonnes but more than 25 million tonnes, the Assembly may, if it considers that this was due to exceptional circumstances and is not likely to be repeated, decide before the expiry of the above-mentioned twelve month period that the Protocol shall continue to be in force. The Assembly may not, however, take such a decision in more than two subsequent years.

2 States which are bound by this Protocol on the day before the date it ceases to be in force shall enable the HNS Fund to exercise its functions as described under article 27 and shall, for that purpose only, remain bound by this Protocol.

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## Winding up of the HNS Fund

### Article 27

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

### Depositary

### Article 28

- 1 This Protocol and any amendment adopted under article 23 shall be deposited with the Secretary-General.
- 2 The Secretary-General shall:
  - (a) inform all States which have signed this Protocol or acceded thereto, and all Members of the Organization, of:
    - (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession together with the date thereof and data on contributing cargo submitted in accordance with article 20, paragraph 4;
    - (ii) data on contributing cargo submitted annually thereafter, in accordance with article 20, paragraph 6, until the date of entry into force of this Protocol;
    - (iii) the date of entry into force of this Protocol;
    - (iv) any proposal to amend the limits on the amounts of compensation which has been made in accordance with article 23, paragraph 2;
    - (v) any amendment which has been adopted in accordance with article 23, paragraph 5;
    - (vi) any amendment deemed to have been accepted under article 23, paragraph 8, together with the date on which that amendment shall enter into force in accordance with article 23, paragraph 9;

- (vii) the deposit of any instrument of denunciation of this Protocol together with the date on which it is received and the date on which the denunciation takes effect; and
- (viii) any communication called for by any article in this Protocol; and
- (b) transmit certified true copies of this Protocol to all States that have signed this Protocol or acceded thereto.

3 As soon as this Protocol enters into force, a certified true copy thereof shall be transmitted by the depositary to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

### **Languages**

#### **Article 29**

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 thirtieth day of April two thousand and ten.

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

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**ANNEX I**

**CERTIFICATE OF INSURANCE OR OTHER FINANCIAL SECURITY IN  
RESPECT OF LIABILITY FOR DAMAGE CAUSED BY  
HAZARDOUS AND NOXIOUS SUBSTANCES (HNS)**

Issued in accordance with the provisions of Article 12 of the International Convention  
on Liability and Compensation for Damage in Connection with the Carriage of Hazardous  
and Noxious Substances by Sea, 2010

<b>Name of ship</b>	<b>Distinctive number or letters</b>	<b>IMO ship identification number</b>	<b>Port of registry</b>	<b>Name and full address of the principal place of business of the owner</b>

This is to certify that there is in force in respect of the above-named ship a policy of insurance or other financial security satisfying the requirements of Article 12 of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010.

Type of security

Duration of security

Name and address of the insurer(s) and/or guarantor(s)

Name

Address

This certificate is valid until

Issued or certified by the Government of  
(Full designation of the State)

At (Place) On (Date)

(Signature and Title of issuing or certifying official)

**Explanatory Notes:**

- 1 If desired, the designation of the State may include a reference to the competent public authority of the country where the certificate is issued.
- 2 If the total amount of security has been furnished by more than one source, the amount of each of them should be indicated.
- 3 If security is furnished in several forms, these should be enumerated.
- 4 The entry "Duration of the Security" must stipulate the date on which such security takes effect.
- 5 The entry "Address" of the insurer(s) and/or guarantor(s) must indicate the principal place of business of the insurer(s) and/or guarantor(s). If appropriate, the place of business where the insurance or other security is established shall be indicated.



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**DRAFT  
CONFERENCE RESOLUTIONS**

**Text examined and approved by the Drafting Committee**

**RESOLUTION 1**

**RESOLUTION ON SETTING UP THE HNS FUND**

THE CONFERENCE,

HAVING ADOPTED the Protocol of 2010 to the International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (hereinafter "the 2010 HNS Protocol"),

CONSIDERING that, before the 2010 HNS Protocol enters into force and for some time thereafter, it will be necessary to prepare some administrative and financial measures in order to ensure that, as from the date of entry into force of the Protocol, the International Hazardous and Noxious Substances Fund (HNS Fund), to be set up under the 1996 HNS Convention as amended by the 2010 HNS Protocol (hereinafter the 2010 HNS Convention), can operate properly,

1. REQUESTS the Assembly of the International Oil Pollution Compensation Fund, 1992 (IOPC Fund 1992), set up by the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (1992 Fund Convention) to give its Director the following assignments, on the basis that all expenses incurred will be repaid by the HNS Fund:

- (a) to carry out, in addition to the tasks under the 1992 Fund Convention, the administrative tasks necessary for setting up the HNS Fund, in accordance with the provisions of the 2010 HNS Convention, on condition that this does not unduly prejudice the interests of the Parties to the 1992 Fund Convention;
- (b) to give all necessary assistance for setting up the HNS Fund;
- (c) to make the necessary preparations for the first session of the Assembly of the HNS Fund, which is to be convened by the Secretary-General of the International Maritime Organization, in accordance with article 43 of the 2010 HNS Convention;



2. RECOMMENDS that, on behalf of the HNS Fund, the IOPC Fund 1992 should hold negotiations with the Host Government to ensure that the question of the privileges, immunities and facilities accorded to the HNS Fund is considered and satisfactorily settled by mutual agreement, taking into account the privileges, immunities and facilities currently accorded to the IOPC Fund 1992.

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**RESOLUTION 2****RESOLUTION ON PROMOTION OF TECHNICAL CO-OPERATION  
AND ASSISTANCE**

THE CONFERENCE,

HAVING ADOPTED the Protocol of 2010 to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (hereinafter "the 2010 HNS Protocol"),

RECOGNIZING the need to ensure the adequate, prompt and effective compensation of persons who suffer damage caused by incidents in connection with the carriage of hazardous and noxious substances by sea, as well as the preservation of the marine environment,

BEING AWARE of the need for the development of appropriate legislation in order to establish a robust and effective compensation regime for the carriage of hazardous and noxious substances by sea based on a system of shared liability,

BELIEVING that the promotion of technical co-operation at the international level will assist those States not yet having adequate capacity to implement the measures required by the 2010 HNS Protocol,

NOTING that the objectives of the 2010 HNS Protocol complement those of the Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances, 2000,

BEING CONVINCED that the promotion of technical co-operation will expedite the acceptance, uniform implementation and enforcement of the 2010 HNS Protocol by States,

1. URGES States Parties to the 2010 HNS Protocol, Member States of the International Maritime Organization (IMO), other appropriate organizations and the maritime industry to provide assistance, either directly or through IMO, to those States which require support in the consideration of adoption and in the implementation of the 2010 HNS Protocol;

2. INVITES the Secretary-General of IMO to make adequate provision in its Integrated Technical Co-operation Programme (ITCP) related to the ratification and effective implementation of the Protocol and, in particular, to address requests for assistance in developing appropriate national legislation;

3. INVITES States Parties to the 2010 HNS Protocol, Member States of IMO, other appropriate organizations and the maritime industry to provide financial and in-kind support to IMO for technical assistance activities related to the adoption and effective implementation of the 2010 HNS Protocol.

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### RESOLUTION 3

#### **RESOLUTION ON AVOIDANCE OF A SITUATION IN WHICH TWO CONFLICTING TREATY REGIMES ARE OPERATIONAL**

THE CONFERENCE,

HAVING ADOPTED the Protocol of 2010 to the International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (hereinafter "the 2010 HNS Protocol"),

CONSIDERING that the entry into force of the 2010 HNS Protocol, as well as the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (hereinafter "the 1996 HNS Convention") would create an undesirable situation in which two conflicting regimes would become operational,

SATISFIED that States which decide to become Party to the 2010 HNS Protocol need only express their consent to be bound by the Protocol without also taking any action in respect of the 1996 HNS Convention,

DESIROUS of bringing the 2010 HNS Protocol into force as soon as possible,

1. INVITES all States to give early and urgent consideration to the 2010 HNS Protocol with a view to their acceptance thereof at an early date;
2. URGES all States which decide to become Party to the 2010 HNS Protocol to deposit the appropriate instruments with the Secretary-General of the International Maritime Organization (IMO) as soon as possible;
3. APPEALS to all States which decide to become Party to the 2010 HNS Protocol to ensure that they deposit instruments only in respect of the Protocol, without any references to the 1996 HNS Convention;
4. REQUESTS the Secretary-General of IMO to bring this resolution, in particular the appeal in paragraph 3 above, to the attention of all States entitled to become Party to the 2010 HNS Protocol;
5. FURTHER REQUESTS the Secretary-General of IMO to provide all possible advice and assistance to States considering becoming Party to the 2010 HNS Protocol in order to ensure that action taken by these States shall be in accordance with this resolution;
6. AUTHORIZES AND REQUESTS the Secretary-General, in his capacity as depositary of the 2010 HNS Protocol, to give every assistance in conformity with the law of treaties and the depositary practice of IMO and the United Nations, so that all instruments deposited by States after the adoption of the Protocol will facilitate the entry into force of the Protocol only, and will not contribute to fulfil the conditions for the entry into force of the 1996 HNS Convention.

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**RESOLUTION 4****RESOLUTION ON THE IMPLEMENTATION OF THE 2010 HNS PROTOCOL**

THE CONFERENCE,

HAVING ADOPTED the Protocol of 2010 to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (hereinafter referred to as "the 2010 HNS Protocol"),

RECOGNIZING the dangers posed by the worldwide carriage of hazardous and noxious substances by sea,

BEING AWARE of the need to ensure that prompt, adequate and effective compensation is available to persons who suffer damage caused by incidents in connection with the carriage of such substances by sea,

HAVING AGREED to adopt uniform international rules and procedures for determining questions of liability and compensation in respect of such damage,

RECALLING the adoption by the Legal Committee of the International Maritime Organization (IMO), at its eighty-fourth session, in April 2002, of an overview of the 1996 HNS Convention for the purpose of providing guidance to States by giving explanations and useful information on the key issues that fall within the scope of the 1996 HNS Convention,

RECALLING FURTHER that the IMO Legal Committee, at its eighty-seventh session, in October 2003, agreed that the outcome of the Special Consultative Meeting held in Ottawa, from 3 to 5 June 2003, represented the best approach for the implementation of the 1996 HNS Convention,

NOTING the need to review the overview of the 1996 HNS Convention to ensure that it is in alignment with the 1996 HNS Convention as amended by the 2010 HNS Protocol,

NOTING ALSO the need to keep under review matters related to the implementation of the 2010 HNS Protocol,

1. INVITES the Legal Committee of IMO to review the overview of the 1996 HNS Convention in light of the adoption of the 2010 HNS Protocol and revise and expand it, as appropriate, to encourage early entry into force of the Protocol and to ensure global, uniform and effective implementation and enforcement of the relevant requirements of the Protocol;

2. INVITES FURTHER the Legal Committee of IMO to keep under review matters related to the entry into force and issues that may arise from the implementation of the 2010 HNS Protocol and take appropriate action.

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INTERNATIONAL CONFERENCE  
ON THE REVISION OF  
THE HNS CONVENTION  
Agenda item 8

LEG/CONF.17/DC/3  
29 April 2010  
Original: ENGLISH

**DRAFT**

**FINAL ACT OF THE INTERNATIONAL CONFERENCE  
ON THE REVISION OF THE HNS CONVENTION**

**Text examined and approved by the Drafting Committee**

1 In accordance with Article 2(b) of the Convention on the International Maritime Organization, the Council of the Organization, at its one-hundred-and-second session in June 2009, endorsed the request of the Legal Committee of the Organization at its ninety-fifth session in April 2009, that a diplomatic conference be convened to consider the adoption of a protocol to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996. The Assembly of the Organization, at its twenty-sixth regular session, concurred with this decision, in resolution A.1014(26) of 2 December 2009 on the Results-Based Budget for the 2010-2011 Biennium.

2 The Conference was held at the Headquarters of the Organization in London from 26 to 30 April 2010.

3 Representatives of 79 States participated in the Conference, namely the representatives of:

ALGERIA	CYPRUS
ANGOLA	DEMOCRATIC PEOPLE'S
ARGENTINA	REPUBLIC OF KOREA
AUSTRALIA	DENMARK
AZERBAIJAN	EGYPT
BAHAMAS	ESTONIA
BANGLADESH	FINLAND
BELGIUM	FRANCE
BOLIVIA (PLURINATIONAL	GABON
STATE OF)	GEORGIA
BRAZIL	GERMANY
BULGARIA	GHANA
CAMEROON	GREECE
CANADA	GRENADA
CHILE	INDIA
CHINA	INDONESIA
COLOMBIA	IRAN (ISLAMIC REPUBLIC OF)
COOK ISLANDS	ITALY
CROATIA	JAPAN

KAZAKHSTAN	PORTUGAL
KENYA	REPUBLIC OF KOREA
LATVIA	ROMANIA
LIBERIA	RUSSIAN FEDERATION
LIBYAN ARAB JAMAHIRIYA	SAINT KITTS AND NEVIS
LITHUANIA	SAUDI ARABIA
MALAYSIA	SINGAPORE
MALTA	SLOVENIA
MARSHALL ISLANDS	SOUTH AFRICA
MEXICO	SPAIN
MONACO	SWEDEN
MONTENEGRO	SYRIAN ARAB REPUBLIC
MOROCCO	TRINIDAD AND TOBAGO
NETHERLANDS	TUNISIA
NEW ZEALAND	TURKEY
NIGERIA	UNITED KINGDOM OF
NORWAY	GREAT BRITAIN AND
PANAMA	NORTHERN IRELAND
PAPUA NEW GUINEA	UNITED STATES OF AMERICA
PARAGUAY	URUGUAY
PERU	VANUATU
PHILIPPINES	VENEZUELA (BOLIVARIAN
POLAND	REPUBLIC OF)

4 Hong Kong, China, an Associate Member of the Organization, sent observers to the Conference.

5 The following United Nations agency sent an observer to the Conference:

UN CONFERENCE ON TRADE AND DEVELOPMENT (UNCTAD)

6 The following intergovernmental organizations sent observers to the Conference:

EUROPEAN COMMISSION (EC)  
INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS (IOPC FUNDS)  
MARITIME ORGANIZATION FOR WEST AND CENTRAL AFRICA (MOWCA)  
INTERNATIONAL MOBILE SATELLITE ORGANIZATION (IMSO)

7 The following non-governmental international organizations sent observers to the Conference:

INTERNATIONAL CHAMBER OF SHIPPING (ICS)  
INTERNATIONAL UNION OF MARINE INSURANCE (IUMI)  
COMITÉ MARITIME INTERNATIONAL (CMI)  
INTERNATIONAL ASSOCIATION OF PORTS AND HARBORS (IAPH)  
BIMCO  
EUROPEAN CHEMICAL INDUSTRY COUNCIL (CEFIC)  
OIL COMPANIES INTERNATIONAL MARINE FORUM (OCIMF)  
INTERNATIONAL SALVAGE UNION (ISU)  
INTERNATIONAL ASSOCIATION OF INDEPENDENT TANKER OWNERS  
    (INTERTANKO)  
INTERNATIONAL GROUP OF P & I ASSOCIATIONS (P & I CLUBS)  
INTERNATIONAL TANKER OWNERS POLLUTION FEDERATION LIMITED  
    (ITOPF)  
IBEROAMERICAN INSTITUTE OF MARITIME LAW (IIDM)  
WORLD NUCLEAR TRANSPORT INSTITUTE (WNTI)  
THE NAUTICAL INSTITUTE

8 Her Highness Princess Lalla Joumala Alaoui, Ambassador Extraordinary and Plenipotentiary of the Kingdom of Morocco to the Court of St. James's, was elected President of the Conference.

9 The Vice-Presidents elected by the Conference were:

- H.E. Mrs. Ana Maria Teles Carreira, Ambassador Extraordinary and Plenipotentiary of the Republic of Angola to the Court of St. James's and Permanent Representative of the Republic of Angola to IMO;
- Mrs. Birgit Sølling Olsen, Deputy Director-General, Danish Maritime Authority;
- Mrs. Dorota Lost-Sieminska, Director, Maritime Transport and Inland Navigation Department, Ministry of Infrastructure, Poland;
- H.E. Dr. James E. Williams, High Commissioner of Saint Kitts and Nevis to the Court of St. James's and Permanent Representative of Saint Kitts and Nevis to IMO; and
- H.E. Mr. Iztok Jarc, Ambassador Extraordinary and Plenipotentiary of the Republic of Slovenia to the Court of St. James's and Permanent Representative of the Republic of Slovenia to IMO.

10 The Secretariat of the Conference consisted of the following officers:

Secretary-General	Mr. E.E. Mitropoulos Secretary-General of the Organization
Executive Secretary	Dr. R.P. Balkin Director, Legal Affairs and External Relations Division
Deputy Executive Secretaries	Mr. G. Librando Senior Deputy Director/Head, Sub-Division for Legal Affairs Legal Affairs and External Relations Division
	Mr. C.M. Young Deputy Director/Head, International Maritime Law and Technical Co-operation Section, Sub-Division for Legal Affairs Legal Affairs and External Relations Division

11 The Conference established a Committee of the Whole with the mandate to consider a draft protocol to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996.

12 The Drafting Committee established by the Conference was composed of representatives of the following nine States:

CHINA	MARSHALL ISLANDS
EGYPT	RUSSIAN FEDERATION
FRANCE	SPAIN
GHANA	UNITED KINGDOM
MALAYSIA	

13 A Credentials Committee was appointed to examine the credentials of representatives attending the Conference. The Committee was composed of representatives of the following five States:

ARGENTINA	LITHUANIA
BELGIUM	VANUATU
INDONESIA	

14 The officers elected for the Committees were as follows:

**Committee of the Whole:**

Chairman:	Mr. Alfred Popp, QC (Canada)
First Vice-Chairman:	Mr. Gaute Sivertsen (Norway)
Second Vice-Chairman:	H.E. Captain Ian Finley (Cook Islands)

**Drafting Committee:**

Chairman:	Mr. Kofi Mbiah (Ghana)
Vice-Chairman:	Mr. Simon Cockburn (United Kingdom)

**Credentials Committee:**

Chairman:	Capt. Hadi Supriyono (Indonesia)
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15 The Conference used, as the basis of its work, a draft protocol to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 as prepared by the IMO Legal Committee.

16 Also before the Conference were a number of documents containing proposals and comments submitted by Governments and interested organizations on the above-mentioned draft text.

17 As a result of its deliberations, the Conference adopted the following instrument:

PROTOCOL OF 2010 TO THE INTERNATIONAL CONVENTION ON LIABILITY AND COMPENSATION FOR DAMAGE IN CONNECTION WITH THE CARRIAGE OF HAZARDOUS AND NOXIOUS SUBSTANCES BY SEA, 1996



18 The Conference also adopted the following resolutions contained in the Attachment to this Final Act:

- 1 RESOLUTION ON SETTING UP THE HNS FUND
- 2 RESOLUTION ON PROMOTION OF TECHNICAL CO-OPERATION AND ASSISTANCE
- 3 RESOLUTION ON AVOIDANCE OF A SITUATION IN WHICH TWO CONFLICTING TREATY REGIMES ARE OPERATIONAL
- 4 RESOLUTION ON IMPLEMENTATION OF THE 2010 HNS PROTOCOL

19 This Final Act is established in a single original text in the Arabic, Chinese, English, French, Russian and Spanish languages, which is to be deposited with the Secretary-General of the Organization.

20 The Secretary-General shall send certified copies of this Final Act with its Attachment, and certified copies of the authentic texts of the instrument referred to in paragraph 17 above, to the Governments of the States invited to be represented at the Conference.

IN WITNESS WHEREOF the undersigned have affixed their signatures to this Final Act.

DONE IN LONDON this thirtieth day of April, two thousand and ten.

  

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