



LEGAL COMMITTEE
95th session
Agenda item 3

LEG 95/3
19 January 2009
Original: ENGLISH

**MONITORING THE IMPLEMENTATION OF THE HNS CONVENTION:
DEVELOPMENT OF A POSSIBLE DRAFT PROTOCOL TO THE CONVENTION**

TEXT OF THE DRAFT PROTOCOL

Note by the Secretariat

SUMMARY

<i>Executive summary:</i>	The annex to this document contains the text of a draft protocol prepared by the HNS Focus Group, established by the 1992 IOPC Fund Assembly and approved, in principle, with amendments, by the IMO Legal Committee at its ninety-fourth session
<i>Strategic direction:</i>	1.2
<i>High-level action:</i>	1.2.1, 2.1.1
<i>Planned output:</i>	1.2.1.1, 2.1.1.3
<i>Action to be taken:</i>	Paragraph 4
<i>Related documents:</i>	LEG 94/12, paragraphs 4.43 to 4.71; C 101/8, paragraphs 4 to 33 and C 101/D, paragraphs 8.2 and 8.3

1 The annex to this document contains a draft protocol to amend the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996. The draft protocol was prepared by the HNS Focus Group, established by the 1992 Fund Assembly, with the aim of facilitating the entry into force of the Convention.

2 The Legal Committee, at its ninety-fourth session (20-24 October 2008), approved the draft protocol in principle, with amendments, and requested the Secretariat to prepare a clean version of the protocol incorporating all the amendments thus far agreed, together with a consolidated version of the 1996 Convention and the prospective protocol. The latter will be submitted in a separate document.

For reasons of economy, this document is printed in a limited number. Delegates are kindly asked to bring their copies to meetings and not to request additional copies.

3 The Council, at its 101st session (10-14 November 2008), noted the Committee's discussions and actions with respect to the draft protocol and endorsed, in principle, the Committee's recommendation that a diplomatic conference be convened, as early as possible in 2010, for the purpose of considering and adopting a protocol to the 1996 HNS Convention.

Action requested of the Legal Committee

4 The Legal Committee is invited to consider the text of the draft protocol contained in the annex to this document and to comment and decide as appropriate.

ANNEX

**DRAFT PROTOCOL OF [20..] TO AMEND THE INTERNATIONAL CONVENTION
ON LIABILITY AND COMPENSATION FOR DAMAGE IN CONNECTION
WITH THE CARRIAGE OF HAZARDOUS AND NOXIOUS SUBSTANCES
BY SEA, 1996¹**

The 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 preservation of the environment and 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,

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 wholesale 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 are at an advanced stage in so doing,

ALSO AWARE OF the principles enshrined in IMO Assembly 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 this objective may best be achieved by the conclusion of a Protocol relating to the Convention,

HAVE AGREED as follows:

¹ (Notes: Bold face additions, and overstriking, show changes to the text in document LEG 94/4, annex 1. Articles inserted as *bis* in this text will be numbered, and consequential re-numbering of other articles will be inserted in the final version of the draft protocol).

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 1.1.3 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 Code of Safe Practice for Solid Bulk Cargoes, 2004, as amended, to the extent that these substances are also subject to the provisions of the International Maritime Dangerous Goods Code ~~as amended in effect in 1996~~², 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 5bis and 5ter, 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 are 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.

² Refer to the International Maritime Dangerous Goods Code, approved by the Organization by resolution A.81(IV) and incorporating amendments up to and including Amendment 27-1994 (Amdt.27-94), the latter being adopted by MSC/Circ.643, in accordance with Assembly resolution A.716(17).

Article 4

Article 5, paragraph 5, of the Convention is deleted.

Article 5

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) $[10 + W]$ 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, $[1,500 + X]$ units of account;

for each unit of tonnage in excess of 50,000 units of tonnage, $[360 + Y]$ units of account;

provided, however, that this aggregate amount shall not in any event exceed $[100 + Z]$ million units of account.

Article 5bis

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

Article 6

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 ~~or, in respect of cargoes referred to in article 19, paragraph 1(b), discharged~~ 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 1bis,” is inserted immediately after the words “article 19, paragraph 1”.

Article 6bis

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

Article 7

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:

- 1bis* (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) 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 ~~national~~ law.

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

Article 8

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 9

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 titleholders, if article 19, paragraph 1bis(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 10

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

Non-reporting

Article 21bis

- 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, on the recommendations of the Director, decide whether such compensation shall be payable by a State Party.
- 2 No compensation for any incident shall be paid by the HNS Fund for damage in the territory, including the territorial sea in accordance with article 3(a) of this Convention, exclusive economic zone or other area in accordance with article 3(b) of this Convention, or damage in accordance with article 3(c) of this Convention, of a State Party in respect of a given incident or for preventive measures, wherever taken, in accordance with article 3(d) of this Convention, 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 11

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 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 12

Article 43 of the Convention is deleted.

Article 13

The model of a certificate annexed to the Convention is replaced by the model annexed to this Protocol.

Interpretation and application

Article 14

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

Article 15

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

Article 44*bis*

Final clauses of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, [20..]

- 1 Articles 1 to 44 and Annexes I and II of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996, as amended by the Protocol of [20..] thereto, together with the final clauses, shall 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, [20..] ([20..] HNS Convention).
- 2 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 [20..] shall be this article and the final clauses of the Protocol of [20..] to amend the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996.
- 3 The articles comprising 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, 1996, as amended by the Protocol of [20..] shall be renumbered sequentially with the preceding articles of that Convention. References within the final clauses to other articles of the final clauses shall be renumbered accordingly.

FINAL CLAUSES

Signature, ratification, acceptance, approval and accession

Article 16

- 1 This Protocol shall be open for signature at the Headquarters of the Organization from [.....] to [.....] 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
 - (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 of or accession in accordance with paragraph 2.

Entry into force

Article 17

- 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 16, 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 18

- 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 19

- 1 Without prejudice to the provisions of article 18, 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 as above 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 and, in particular, the amount of damage resulting there from, 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 20, 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 20

- 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 21

- 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 22

- 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 23 and shall, for that purpose only, remain bound by this Protocol.

Winding up of the HNS Fund

Article 23

- 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 24

- 1 This Protocol and any amendment adopted under article 19 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 16, paragraph 4;
 - (ii) data on contributing cargo submitted annually thereafter, in accordance with article 16, 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 19, paragraph 2;
 - (v) any amendment which has been adopted in accordance with article 19, paragraph 5;
 - (vi) any amendment deemed to have been accepted under article 19, paragraph 8, together with the date on which that amendment shall enter into force in accordance with paragraphs 9 and 10 of that article;
 - (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 25

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 [] this [] day of [] two thousand and [].

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

* * *

ANNEX

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, [20..]

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

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, [20..].

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.