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INTERNATIONAL CONVENTION ON LIABILITY AND COMPENSATION FOR DAMAGE IN CONNECTION WITH THE CARRIAGE OF HAZARDOUS AND NOXIOUS SUBSTANCES BY SEA

ANNUAL CONTRIBUTIONS TO THE LNG ACCOUNT

Submitted by Canada, Denmark, France and Norway

Summary:	This document discusses the provisions in the HNS Convention concerning the LNG account, in particular issues concerning contributors to the LNG account that are not subject to the jurisdiction of any State Party.
Action to be taken:	To consider the establishment of an informal correspondence group to explore issues concerning contributions to the LNG account from contributors who are not subject to the jurisdiction of any State Party (paragraph 6).

1 Introduction

- 1.1 The HNS Convention aims to ensure adequate, prompt and effective compensation for damage caused by the maritime transport of hazardous and noxious substances. To this end, the HNS Convention establishes a 'two tier' compensation regime. The first tier is provided by the shipowner and his insurer under Chapter II of the Convention. The second tier is provided by the HNS Fund under Chapter III of the Convention. The HNS Fund is financed through contributions from the cargo interests. The contribution system in the second tier has been designed to avoid any cross subsidisation between persistent oils, other oils, LNG, LPG, bulk solids, and other HNS substances, respectively. This is done through an account system^{<1>}, with separate accounts for oil^{<2>}, LNG^{<3>} and LPG^{<4>} and a separate sector in the general account for bulk solids^{<5>}.

* This document has been re-issued because of the use of the incorrect terminology in the previous version.

<1> Article 16.
<2> Article 16 paragraph 2(a).
<3> Article 16 paragraph 2(b).
<4> Article 16 paragraph 2(c).
<5> Article 18 paragraph 1(a).

- 1.2 The rules concerning contributions to the LNG account are different from the rules concerning the other accounts (cf section 3 below), and raise an issue which is mentioned in section 6.3 of the 'Guide to the implementation to the HNS Convention', produced by the Secretariat of the 1992 Fund in September 2005, which states that:

'As regards LNG, pursuant to Article 19.1(b), the person liable for contributions may or may not be subject to the jurisdiction of the State in which the LNG is discharged.'

- 1.3 The sponsors of this document suggest that interested States, through an informal correspondence group, explore how the State Parties, through their national legislation, can best secure the effectiveness of the contribution system concerning LNG where the contributor is not subject to the jurisdiction of any Contracting State.

2 Some background: the world trade in LNG

- 2.1 In 2005, the world trade in LNG was 188.8 billion cubic metres (bcm), which equals 158.59 million tonnes (mmt). The import and export of LNG was as follows^{<6>}:

Imports in 2005, in billion cubic metres (million metric tonnes)			Exports in 2005, in billion cubic metres (million metric tonnes)		
	bcm	mmt		bcm	mmt
Japan	76.32	(64.11)	Indonesia	31.46	(26.43)
Republic of Korea	30.45	(25.58)	Malaysia	28.52	(23.96)
Spain	21.85	(18.36)	Qatar	27.10	(22.76)
United States of America	17.87	(15.01)	Algeria	25.68	(12.57)
France	12.83	(10.78)	Australia	14.85	(12.47)
India	6.04	(5.07)	Trinidad and Tobago	14.01	(11.77)
Turkey	4.88	(4.10)	Nigeria	12.04	(10.11)
Belgium	2.98	(2.50)	Oman	9.22	(7.74)
Italy	2.50	(2.10)	Brunei Darussalam	9.15	(7.69)
Portugal	1.58	(1.33)	United Arab Emirates	7.14	(6.0)
Puerto Rico	0.67	(0.56)	Egypt	6.93	(5.82)
United Kingdom	0.52	(0.44)	United States of America	1.84	(1.55)
Greece	0.46	(0.39)	Libya	0.87	(0.73)
Dominican Republic	0.25	(0.21)			
Other	9.61	(8.07)			

- 2.2 The LNG trade is developing rapidly. States which became involved in the LNG trade in 2006 do not appear on the above list from 2005. For example, Russia, which is expected to become a major exporter of LNG, started to export LNG in 2006. Norway will be exporting LNG from 2007.
- 2.3 LNG is loaded onto special LNG carriers at specialised liquefaction plants, where the natural gas (NG) is cooled to minus 164 degrees. At the destination point, the LNG is usually discharged into regasification terminals. There were 46 LNG import terminals worldwide as of October 2003^{<7>}.
- 2.4 The end buyers of LNG are often the power companies who run regasification terminals.
- 2.5 Most LNG cargoes are sold under long-term contracts because of the power companies' need for security of supply. However, a short-term market for LNG has been developing, and represented around 8% of the world LNG imports in 2002^{<8>}. It is estimated that short-term trading of LNG

<6> Provisional numbers from Cedigaz. Source: BP Statistical Review of World Energy 2006, <http://bp.com/productlanding.do?categoryId=6842&contentId=7021390>

<7> Source: The Official Energy Statistics from the US Government <http://www.eia.doe.gov>

<8> Source: As in note 7.

will continue to grow and that it could reach 15 to 20 % of LNG imports worldwide over the next decade^{<9>}. World LNG demand is expected to rise considerably in the years to come. In one study LNG demand is forecast to rise to 269 bcm by 2010 and 428.5 bcm by 2020^{<10>}.

- 2.6 By 2006 the LNG tanker Fleet counted 206 LNG tankers worldwide^{<11>}. In the LNG trade, ships have traditionally been used on dedicated routes for specific projects, but recently some large oil companies have ordered ships not dedicated to a project^{<12>}.

3 The contributor to the LNG account: the Titleholder

- 3.1 Under the HNS Convention, the annual contributions to the LNG account shall be made 'by any person who in the preceding calendar year, or such other year as the Assembly may decide, immediately prior to its discharge, held title to an LNG cargo discharged in a port or terminal' in a State Party^{<13>}. In the following paragraphs, this person is referred to as 'the Titleholder'. This rule represents an exception from the general rule for the general account of the HNS Fund, as well as the LPG account and the oil accounts, where it is the receiver of the cargo who shall pay contributions to the HNS Fund (Article 19, paragraph 1(a) and (c)). The background for this special rule for the contributions to the LNG account seems to have been that the industry sectors involved in the LNG trade at the time defended a solution where 'the contributor to the LNG account is the owner of the cargo at the time it crosses the territorial border of the receiving State'^{<14>}.

- 3.2 Who the Titleholder to an LNG cargo is, will depend on the contractual relationship between the buyer and seller of the LNG. Where the title to an LNG cargo passes to the buyer at loading, the Titleholder will be the buyer. This will be the case both where the cargo is sold 'Free on Board' (FOB^{<15>}) and 'Cost Insurance Freight' (CIF^{<16>}). Where the title to an LNG cargo does not pass to the buyer until the port of destination, the Titleholder will be the seller. This will be the case where the cargo is sold 'Delivered ex Ship' (DES^{<17>}) or 'Delivered Ex Quay' (DEQ^{<18>}). Where LNG is shipped on DES contracts, which some say is traditionally the case, the seller keeps title to the LNG until discharge. According to some sources, new LNG shipping contracts are more often on FOB terms, where the title passes to the buyer on loading^{<19>}. This may be a matter for debate. However, it seems that one can say at least that LNG buyers are increasingly interested in negotiating FOB agreements, but that many LNG producers still accept only to enter into Ex-ship based discussions.

4 The reporting requirement as regards LNG

- 4.1 The State Party where an LNG cargo is discharged must report to the HNS Fund the identity and address of the Titleholder and the quantities of LNG^{<20>}. The implementation legislation should

<9> Source: As in note 7.

<10> Source: The study "World LNG to 2020: Prospects for Trade and Shipping", from the UK based independent research company Ocean Shipping Consultants Ltd.

<11> Source: As in note 7.

<12> Source: As in note 7.

<13> Article 19 paragraph 1(b).

<14> See Leg 71/3/4 page 18 paragraph 127.

<15> Under FOB terms, the seller delivers when the goods pass the ship's rail at the port of shipment.

<16> Under CIF terms, the seller delivers when the goods pass the ship's rail in the port of shipment.

<17> Under DES terms, the seller delivers when the goods are placed at the disposal of the buyer on board the ship not cleared for import at the named port of destination.

<18> Under DEQ terms, the seller delivers when the goods are placed at the disposal of the buyer not cleared for import at the quay at the named port of destination.

<19> Source: As in note 7.

<20> Under Article 21 paragraph 2, the State Parties shall report to the Director the name and address of any persons who in respect of the State is liable to pay contributions in accordance with Article 19, as well as the relevant quantities of the contributing cargo for which such a person is liable to contribute, For LNG,

therefore include provisions to the effect that the parties involved in the LNG transport are required to report these facts. The authorities in the State Party where the LNG cargo is discharged will usually be able to obtain this information from the buyer of the LNG cargo. (As mentioned above, most LNG contracts are long-term contracts, and the buyer is usually the power company running the regasification terminal. However, also in case of the short-term contracts, the buyer will usually know with whom he or she had a contract).

- 4.2 Taking the above background into account, the sponsors of this document would like to explore further if it should be recommended that the implementation legislation of the State Parties to the HNS Convention requires that the buyer of LNG that is discharged in that State, shall report the identity and address of the Titleholder, as well as the quantities that were discharged, to the authorities of that State. It should be noted that it might follow by the general obligations of the State Parties under Article 6 of the Convention^{<21>}, that the State Parties should have such reporting requirements in their national legislation, if this is necessary for the Convention to operate properly.

5 The payment of contributions to the LNG account

- 5.1 Annual contributions shall be made to the LNG account of the HNS Fund^{<22>}, as determined by the Assembly^{<23>}. Such annual contributions shall be levied only as required to make payments from the account^{<24>}. There shall also be initial contributions to the LNG account, as determined by the Assembly^{<25>}.
- 5.2 The Assembly may, under Article 17, paragraph 4, also levy annual contributions for administrative costs and decide on the distribution of such costs between the sectors of the general account and the separate accounts.
- 5.3 The HNS Fund will levy the Titleholders directly for the contributions to the HNS Fund; in the same way as the 1992 Fund does under the 1992 Fund Convention.
- 5.4 All Titleholders to LNG cargoes that are discharged in a State Party are subject to the obligations to contribute to the LNG account under the Convention, regardless of whether or not the Titleholder is subject to the jurisdiction of a State Party. The HNS Fund must therefore levy all Titleholders, regardless of the jurisdiction in which they are situated. However, in States not party to the Convention, the contributions may not be collectable. Such States are under no obligation concerning the contributions to the HNS Fund, and may not necessarily recognise the claims from the HNS Fund as being enforceable. Further study may be needed to determine whether any other international law may assist the HNS Fund to recover contributions from Titleholders in non-Contracting States.
- 5.5 In case of arrears of contributions, the Assembly may, when the circumstances so warrant, and upon recommendation of the Director, decide that no action shall be taken or continued against the contributor^{<26>}. In such case, the contributions must be written off as a loss. In this situation however, for the HNS Fund to be able to fulfil its obligations to pay compensation to the victims,

this means that the State Party must report "any person who in the preceding calendar year, or such other year as the Assembly may decide, immediately prior to its discharge held title to an LNG cargo discharged in a port or terminal of that state" (Article 19 paragraph 1(b)).

<21> Article 6 states that: "Each State Party shall ensure that any obligation arising under this Convention is fulfilled and shall take appropriate measures under its law including the imposing of sanctions as it may deem necessary, with a view to the effective execution of any such obligation".

<22> Article 19 paragraph 1(b).

<23> Article 17 paragraph 2.

<24> Article 17 paragraph 1.

<25> Article 20.

<26> Article 22 paragraph 2.

it is necessary that such loss be compensated through other means. To this end, the contributions in arrears can probably, if the Assembly so decides, be seen as administrative costs under Article 17, paragraph 4. In such event, it will be up to the Assembly to decide how this should be distributed between the contributors to the different accounts, for example whether all contributors to the HNS Fund should pay additional contributions to cover the amounts that have been written off as loss, or if only the contributors to the LNG account should pay such additional contributions.

- 5.6 A situation where substantial additional contributions must be levied under Article 17, paragraph 4, due to arrears in the LNG account, if a disaster with sea-transport of LNG should occur, should be avoided. It is therefore important that the State Parties take such measures as are necessary in order to ensure that contributions to the LNG are paid from all Titleholders, also those who are not subject to the jurisdiction of any Contracting State. Furthermore, under Article 6 of the HNS Convention (cf footnote 21), State Parties are under an obligation to take appropriate measures in order to ensure contributions.
- 5.7 Professor Rosaeg of Norway has suggested that one possible solution may be a system whereby the receiving terminals in the State Parties require the Titleholder to provide security for the levy, for example a bank guarantee, as a condition for discharge, thus making the contributions easily collectable. Others have suggested that one could look at the LNG seller's role in the chartering of LNG vessels where the LNG is sold on DES conditions, and the possibility to require some kind of special insurance cover connected to the charterer of the vessel. The sponsors of this document wish to further explore these, and any other suggestions for possible solutions.
- 5.8 If no solution can be found at this time that would ensure an effective operation of the Convention with respect to LNG contributions, it would be of crucial importance to the HNS Assembly to consider this problem at its inaugural session and to decide how to deal with this issue.

6 An informal LNG correspondence group

The sponsors of this document propose that an informal correspondence group should be established and given a mandate to reflect on and recommend elements that would be helpful to include in the implementation legislation of State Parties to the HNS Convention, in order to ensure as far as possible the payment of contributions to the LNG account from contributors who are not subject to the jurisdiction of any State Party. This would include further considerations of the measures dealt with in paragraphs 4.2 and 5.7 above, as well as any other measures that interested States would like to consider. Such correspondence group should work quickly, with a view to present suggestions and recommendations to the next session of the 1992 Fund Assembly in October 2007.

7 Action to be taken by the Assembly

The Assembly is invited:

- (a) to take note of the information contained in this document; and
 - (b) to consider the establishment of an informal correspondence group to explore issues concerning contributions to the LNG account from contributors who are not subject to the jurisdiction of any State Party (paragraph 6).
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