



**IMO**  
**INTERNATIONAL MARITIME LAW INSTITUTE**  
Established under the auspices of the International Maritime Organization  
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**A LAW ON THE INCORPORATION OF THE  
INTERNATIONAL CONVENTION ON LIABILITY  
AND COMPENSATION FOR DAMAGE IN  
CONNECTION WITH THE CARRIAGE OF  
HAZARDOUS AND NOXIOUS SUBSTANCES BY  
SEA, 2010 INTO THE GREEK LEGAL SYSTEM**

**A Legislation Drafting Project submitted in partial fulfillment of the  
requirements for the award of the Degree of Master of Laws (LL.M.) in  
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## TABLE OF INTERNATIONAL CONVENTIONS

International Convention on Civil Liability for Oil Pollution Damage, Brussels, 29 November 1969, entry into force: 19 June 1975, 973 UNTS 3; 9 ILM 45; RMC I.7.30, II.7.30.

International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, Brussels, 18 December 1971, entry into force: 16 October 1978, 1110 UNTS 57, RMC I.7.90, II.7.90.

International Convention on Liability for Maritime Claims, London, 19 November 1976, entry into force: 1 December 1986, 1456 UNTS 221; 16 ILM 606; RMC I.2.330, II.2.330.

Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, London, 27 November 1992, entry into force: 30 May 1996, 1953 UNTS 330; RMC I.7.111, II.7.111.

Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969, London, 29 November 1992, entry into force: 30 May 1996, 1956 UNTS 255, RMC I.7.51, II.7.51.

International Convention on Liability for Oil Pollution Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, London, 3 May 1996, not yet in force, IMO Doc: LEG/CONF.10/8/2 of 9 May 1996; 35 ILM 1406; RMC I.7.125, II.7.125.

Protocol of 1996 to Amend the Convention on Limitation of Liability for Maritime Claims, 1976, London, 2 May 1996, entry into force: 13 May 2004, LEG/CONF.10/8 of 9 May 1996; 35 ILM 1433; RMC I.2.340, II.2.340.

Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992, London, 16 May 2003, entry into force: 3 March 2005, IMO Doc: LEG7CONF.14/20 of 27 May 2003; RMC I.7.115, II.7.115.

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, London, 30 April 2010, not yet in force, IMO Doc: LEG/CONF.17/10 of 4 May 2010.

### **TABLE OF EU LEGISLATION**

Decision 2002/971/EC: Council Decision of 18 November 2002 authorising the Member States, in the interest of the Community, to ratify or accede to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996, OJ L.337, 13.12.2002.

Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage, OJ L.143 , 30.4.2004.

Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L.351, 20.12.2012.

### **TABLE OF GREEK LEGISLATION**

The Constitution of Greece

The Standing Orders of the Hellenic Republic

Presidential Decree No. 197/1995

Presidential Decree No. 270/1995

Presidential Decree No. 177/2014

Presidential Decree No. 66/2004

Presidential Decree No. 255.1999 (Chapter VI)

Presidential Decree No. 405-19

Civil Procedure Code Law No. 2717/1999

Law No. 1638/1986

Law No. 314/1976

Law No. 3482/2006

## **TABLE OF SELECTED LEGAL INSTRUMENTS**

### **IMO**

Draft IMO Guide for interested Parties on the Workings of the Hazardous and Noxious Substances Convention 1996, HNS Convention, LEG83/INF.3 para. 4.1.

Guidelines on reporting of HNS adopted by the HNS Workshop held at IMO Headquarters, London, on 12 and 13 November 2012 and endorsed by the IMO Legal Committee at its 100th session on 19 April 2013.

IMO Assembly Resolution A.932 (22), adopted on 29 November 2001: Implementation of the HNS Convention.

## **EU**

European Commission's Proposal for a Council Decision on the ratification and accession by Member States on behalf of the Union to 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 with the exception of aspects related to judicial cooperation in civil matters European Council's Decision 2015/0135 (NLE), /\* COM/2015/0304 final - 2015/0135 (NLE) \*/.

European Commission's Proposal for a Council Decision on the ratification and accession by Member States, in the interest of the European Union, to 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, with regard to the aspects related to judicial cooperation in civil Matters 14112/15, 2015/0136 (NLE) /\* COM/2015/0305 final - 2015/0136 (NLE)\*/.

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## I. EXPLANATORY NOTE

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

### TO THE GREEK PARLIAMENT<sup>1</sup>

#### 1. Introduction

The regime of Hazardous and Noxious Substances (HNS),<sup>2</sup> once the Protocol enters into force, will be regulated by 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), i.e. the consolidated text of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (1996 HNS Convention) together with the Protocol 2010 to the 1996 HNS Convention (2010 HNS Protocol). The aim of 2010 HNS Convention is to establish an effective two-tier compensation system for loss or damage (caused also by other risks apart from contamination) to persons, property and the environment arising from the carriage of HNS by sea.<sup>3</sup>

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<sup>1</sup> This is in line with the form in which the explanatory notes are drafted and issued to the Greek Parliament.

<sup>2</sup> Under Article 1 (5) 2010 HNS Convention, the following substances are considered as HNS: 1) Oils, carried in bulk, as defined in regulation 1 of annex I to MARPOL 73/78. 2) Noxious liquid substances, carried in bulk, as defined in regulation 1.10 of Annex II MARPOL 73/78, and those substances provisionally categorized as pollution category X, Y or Z and listed in MEPC 2 Circulars for substances subject to tripartite agreements. 3) Dangerous liquid substances carried in bulk listed in chapter 17 of the IBC Code. 4) Dangerous, hazardous and harmful substances, materials and articles in packaged form covered by the IMDG Code, in effect in 1996. 5) Liquefied gases as listed in chapter 19 of the IGC Code. 6) Liquid substances carried in bulk with a Flash Point not exceeding 60°C. 7) Solid bulk materials possessing chemical hazards covered by the IMSBC Code to the extent that these substances are also subject to the provisions of the IMDG Code in effect in 1996, when carried in packaged form. See IOPC Funds HNS Convention, “Finder Overview”, available online:

<<http://hnsconvention.org/Pages/FinderOverview.aspx>>.

<sup>3</sup> IMO, An overview of the International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010 (The 2010 HNS Convention), available online: <<http://www.imo.org/en/OurWork/Legal/Documents/HNS%20Overview.pdf#search=HNS%20Convention>>, 15 June 2011, p. 2.



According to Resolution 3 of the 2010 International Conference on the Revision of the International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea, Circular letter No. 3111 of 11 October 2010, Greece should deposit the instrument of ratification only in respect of the Protocol, without any references to the 1996 HNS Convention,<sup>4</sup> as the 2010 HNS Convention is not an instrument open to signature or ratification.<sup>5</sup> However, Greece should incorporate the consolidated text of the 1996 HNS Convention together with the 2010 HNS Protocol into the Greek legal system.

This draft law provides for the ratification<sup>6</sup> of the 2010 HNS Protocol by the Hellenic Republic and the incorporation of the 2010 HNS Convention into the Greek legal system. The ratification of the Convention will ensure the compensation of damages and losses suffered by an HNS accident. It will constitute an important step for a country such as Greece, which has a dynamic maritime sector coupled with the fact that it is a member of the International Maritime Organization (IMO) and its Council. However, upon deposit of the instrument of ratification, according to Article 3 of European Council's Decision 13806/15,<sup>7</sup> Greece shall inform the Secretary-General of the IMO in writing that such ratification has taken place in accordance with this Decision. The ratification of the Convention should be accompanied by a declaration<sup>8</sup>

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<sup>4</sup> See Article 20 (8) of 2010 HNS Protocol, which aims to avoid confusion caused by a multiplicity of applicable international regimes dealing with the same issue. In any case, Greece had not expressed its consent to be bound by the 1996 HNS Convention. See also Martinez Gutierrez, Norman, A.; *Limitation of Liability in International Maritime Conventions: The Relationship between Global Limitation Conventions and Particular Liability Regimes*, Routledge, London/New York, 2011, p. 157.

<sup>5</sup> European Commission's Proposal for a Council Decision on the ratification and accession by Member States on behalf of the Union to 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 with the exception of aspects related to judicial cooperation in civil matters European Council's Decision, 2015/0135 (NLE), /\* COM/2015/0304 final - 2015/0135 (NLE) \*/ available online: <<http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A52015PC0304>>.

<sup>6</sup> Greece was one of the eight countries, which signed the 2010 HNS Protocol when it was open for signature at the headquarters of the IMO, i.e. between 1 November 2010 and 31 October 2011. Greece signed the 2010 HNS Protocol on 25 October 2011. See, IMO, Status of multilateral Conventions, available online: <<http://www.imo.org/en/About/Conventions/StatusOfConventions/Documents/Status%20-%202016.pdf>>, p. 479.

<sup>7</sup> European Council's Decision on the ratification and accession by Member States, in the interest of the European Union, to 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, with the exception of the aspects related to judicial cooperation in civil Matters, 13806/15, 2015/0135 (NLE), available online: <<http://data.consilium.europa.eu/doc/document/ST-13806-2015-INIT/en/pdf>>.

<sup>8</sup> The declaration should take the following form: "Judgments on matters covered by the Convention as amended by the Protocol of 2010, when given by a court of a Member State, shall be recognised and enforced in Greece in accordance with the relevant European Union rules on the subject. Judgments on matters covered by the Convention as amended by the Protocol of 2010, when given by a court of the Kingdom of Denmark, shall be recognised and

allowing for a continued application of the EU Regulation 1215/2012,<sup>9</sup> as between Member States with regards to the recognition and enforcement of Judgments. Any other relevant rules of the Union, notably, the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters of 30 October 2007 (the "new Lugano Convention"),<sup>10</sup> should also be included in this declaration.

Moreover, at the time of ratification, Greece has to submit to the Secretary-General of the IMO, relevant data on the total quantities of contributing cargo under the 2010 HNS Convention ("HNS contributing cargo")<sup>11</sup> during the preceding calendar year. Thus, prior to the deposit, Greece should establish a system for the reporting of HNS contributing cargo.<sup>12</sup>

At the time of the deposit of the instrument of ratification or any time after, Greece, according to Article 5 of the 2010 HNS Convention, may declare that the Convention does not apply to ships which do not exceed 200 gross tonnage and which carry HNS only in packaged form and while the ships are engaged on voyages between ports or facilities of Greece.

The 2010 HNS Convention will enter into force eighteen months following the ratification by twelve States, provided that four of the States have a registered ship's tonnage of at least 2 million GT each, and contributors in the States that have expressed their consent to be

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enforced in Greece in accordance with the 2005 Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. Judgments on matters covered by the Convention as amended by the Protocol of 2010, when given by a court of a third State bound by the Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters of 30 October 2007, shall be recognised and enforced in Greece in accordance with that Convention". See Annex of the European Council's Decision 14112/15, 2015/0136 (NLE), available online: [http://www.iopcfunds.org/fileadmin/IOPC\\_Upload/Downloads/English/14112-15\\_EU\\_Council\\_Decision\\_on\\_ratification\\_of\\_HNS2010.pdf](http://www.iopcfunds.org/fileadmin/IOPC_Upload/Downloads/English/14112-15_EU_Council_Decision_on_ratification_of_HNS2010.pdf).

<sup>9</sup> Regulation (EU) No 1215/2012, available online:

<http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32012R1215>.

<sup>10</sup> This solution was proposed by the European Commission envisaging two Council decisions authorizing the Member States to proceed to ratification and accession to the 2010 Protocol in order to ensure that the objectives of the Treaties as enshrined in Directive 2004/35/EC and Regulation (EU) No 1215/2012 are attained and that the provisions of Protocol 22 are complied with. See European Commission Proposal, 2015/0135 (NLE), *op.cit.*

<sup>11</sup> Article 20 of the 2010 HNS Convention.

<sup>12</sup> Greece should ideally take into account the Guidelines on reporting of HNS adopted by the HNS Workshop held at IMO Headquarters, London, on 12 and 13 November 2012 and endorsed by the IMO Legal Committee at its 100th session on 19 April 2013, available online:

[http://hnsconvention.org/Documents/2010%20HNS%20Convention%20Consolidated%20text\\_e.pdf](http://hnsconvention.org/Documents/2010%20HNS%20Convention%20Consolidated%20text_e.pdf).

bound by the Convention have received during the preceding calendar year at least 40 million tonnes of cargo contributing to the general account.<sup>13</sup>

## 2. Historical background

In 1984, IMO convened a Diplomatic Conference to consider a new instrument addressing the issue of compensation for accidents involving HNS. However, the conference did not lead to the adoption of any particular instrument.<sup>14</sup> Nonetheless, on the 3rd May 1996, the 1996 HNS Convention was adopted under the auspices of IMO, during a Diplomatic Conference, which was the same Conference which adopted the 1996 Protocol (1996 Protocol) of the Convention on Limitation of Liability for Maritime Claims, 1976.<sup>15</sup> The 1996 HNS Convention was based on the model of the 1992 International Convention on Civil Liability for Oil Pollution Damage.<sup>16</sup> However, even until 2009, it had not entered into force, due to its complexity.<sup>17</sup> There were some specific issues which were identified by the “Focus Group”, set up by the International Oil Pollution and Compensation Funds (IOPC Funds), which prepared a draft Protocol aiming to amend the text of the original 1996 HNS Convention. On the 30th April 2010,

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<sup>13</sup> Article 46 of the 2010 HNS Convention.

<sup>14</sup> REMPEC, Training Course on the Protocol of 2010 to Amend the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (HNS PROT 2010), available online: <<http://safemedproject.rempec.org/activities/container-folder/activity-5-environment/task-5.9-training-course-on-hns-2010-protocol/E-%20Final%20Report%20-5.9%20TC%20on%20the%20HNS%20PROT%202010%20.pdf>>.

<sup>15</sup> Martinez Gutierrez, Norman, A.; *Limitation of Liability in International Maritime Conventions: The Relationship between Global Limitation Conventions and Particular Liability Regimes*, Routledge, London/New York, 2011, p.103.

<sup>16</sup> IMO, An overview of the 2010 HNS Convention, *op.cit.*, p. 2.

<sup>17</sup> The Convention was ratified by only 13 States. It is noteworthy that only Lithuania and Cyprus ratified the 1996 HNS Convention even if 2002/971/EC Council Decision of 18 November authorized the Member States to ratify or accede to the Convention, available online:

<<http://eurlex.europa.eu/legalcontent/EN/TXT/?uri=CELEX%3A32002D0971>>. See also IMO, Status of Conventions, available online:

<<http://www.imo.org/en/About/Conventions/StatusOfConventions/Pages/Default.aspx>>, 11/02/2016. See also Shaw, Richard; “News from Intergovernmental and International Organizations: News from IMO: IMO Diplomatic Conference adopts HNS Protocol on 30 April 2010”, Comité Maritime International (CMI), CMI Newsletter, No. 1 - January/ March 2010, ISSN 0778-9882, available online: <<http://www.comitemaritime.org/Uploads/pdf/newsletters/CMI%20Newsletter%20no1-2010.pdf>>, p. 8-11.

the Plenary Session of the Diplomatic Conference adopted the final text of the Protocol to the Convention.<sup>18</sup>

### 3. The 2010 HNS Convention

This chapter provides a presentation of salient features of the 2010 HNS Convention.

Under the 2010 HNS Convention, a liability and compensation regime covering any damage caused by HNS carried by ship as cargo and not for another purpose (e.g. as fuel for the operation of the ship) is established. The meaning of HNS is defined in Article 1 (5) of the Convention by reference to codes and regulations<sup>19</sup> related to maritime safety and marine pollution and comprises 6,500 substances.<sup>20</sup> Both bulk cargoes (i.e. solids, liquids, oils or liquefied gases) and packaged goods are included.<sup>21</sup>

It is essential that the oil is included first on the list, as it engages the risk of fire and explosion damage.<sup>22</sup> Particularly “the fumes emitted by residues of oil and other substances can in certain circumstances present a greater risk of fire and explosion on a vessel in ballast than on carrying the substance in bulk”.<sup>23</sup> Bulk solids such as coal and iron ore, which engage low hazards, are excluded.<sup>24</sup> In accordance with Article 1 (6) “where it is not reasonably possible to separate damage caused by the hazardous and noxious substances from that caused by other factors, all such damage shall be deemed to be caused by the hazardous and noxious substances

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<sup>18</sup> Shaw, Richard; “News from Intergovernmental and International Organizations: News from IMO: IMO Diplomatic Conference adopts HNS Protocol on 30 April 2010”, Comité Maritime International (CMI), CMI Newsletter, No. 1 - January/ March 2010, ISSN 0778-9882, available online: <http://www.comitemaritime.org/Uploads/pdf/newsletters/CMI%20Newsletter%20no1-2010.pdf>, p. 8-11.

<sup>19</sup> For solid bulk materials possessing chemical hazards, see also IMO Circular letter No.3144, of 6 January 2011.

<sup>20</sup> Government of Australia. Regulation Impact Statement, International Convention on the Transportation of HNS by Sea, available online: <https://ris.govspace.gov.au/files/2012/11/03-International-Convention-on-the-Transportation-of-HNS-by-Sea-RIS.pdf>, p.7.

<sup>21</sup> IMO, An overview of the 2010 HNS Convention, *op.cit.*, p. 3.

<sup>22</sup> Coal is not included in the definition of HNS by the Convention. The explanation is that as the carriage of coal is usually in small quantities and does not present high risk, it would be disproportionate to impose the obligation of contribution to coal receivers. See also De La Rue, Colin and Anderson, Charles B.; *Shipping and the Environment: Law and Practice*, Second Edition, Informa, London, 2009, p. 275.

<sup>23</sup> *Ibid*, p. 274.

<sup>24</sup> IMO, An overview of the 2010 HNS Convention, *op.cit.*, p. 3.

except if, and to the extent that, the damage caused by other factors is damage of a type referred to in article 4, paragraph 3.”<sup>25</sup>

The 2010 HNS Convention covers the following categories of damage: “(a) loss of life or personal injury on board or outside the ship carrying the hazardous and noxious substances caused by those substances; (b) loss of or damage to property outside the ship carrying the hazardous and noxious substances caused by those substances; (c) loss or damage by contamination of the environment caused by the hazardous and noxious substances, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken;”<sup>26</sup> and (d) the costs of reasonable preventive measures, including *inter alia* clean-up or removal of HNS from a wreck,<sup>27</sup> and further loss or damage caused by preventive measures and; (e) loss of income in fishing and tourism industry caused by contamination of the environment.<sup>28</sup> To avoid overlap, the 2010 HNS Convention covers only non-pollution damage caused by persistent oil, e.g. damage caused by fire or explosion, as pollution damage caused by persistent oil is already covered by the International Convention on Civil Liability for Oil Pollution Damage of 1969 (CLC 1969) and 1992 (CLC 1992) and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage of 1992 (the 1992 Fund Convention). Damage caused by radioactive material is not covered.<sup>29</sup> The Convention also covers damage caused during the loading and unloading of HNS from a ship.<sup>30</sup>

The geographical scope of application of the Convention extends to any damage occurred in the territory or territorial sea and in the exclusive economic zone (EEZ) of a State Party. In

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<sup>25</sup> Article 4 (3) of the 2010 HNS Convention states: “This Convention shall not apply: (a) to pollution damage as defined in the International Convention on Civil Liability for Oil Pollution Damage, 1969, as amended, whether or not compensation is payable in respect of it under that Convention; and (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.”

<sup>26</sup> Article 1 (6) of the 2010 HNS Convention. According to Article 4 (2) of the 2010 HNS Convention, the Convention does not apply to the extent that its provisions are incompatible with those of the national law relating to workers' compensation or social security schemes.

<sup>27</sup> Mandaraka - Sheppard, Aleka; *Modern Maritime Law, Volume 2: Managing Risks and Liabilities*, Third Edition, informa law from Routledge, 2013, p. 867.

<sup>28</sup> IMO, An overview of the 2010 HNS Convention, *op.cit.*, p. 3.

<sup>29</sup> *Ibid.*

<sup>30</sup> Article 1 (9) of the 2010 HNS Convention.

default of such EEZ, as it is in the case of Greece, the Convention shall also apply to any contamination in such area beyond and adjacent to the territorial sea of that State as determined under international law and extending up to 200 nautical miles from the baselines from which the breadth of its territorial sea is measured,<sup>31</sup> (quasi-EEZ).<sup>32</sup> Thus, the Convention applies even if the incident occurs in the high seas, provided that pollution damage materializes in one of the above-mentioned geographical areas. At this point, it should be mentioned that it is advisable that Greece proclaims an Ecological Protection Zone, in order to ensure the application of the Convention in case of contamination in such area beyond and adjacent to its territorial sea, as Greece has not proclaimed an EEZ. In accordance with Article 3 (c), the application of the Convention extends to damage, “other than contamination, caused outside the territory, including the territorial sea of any State”, however, caused by cargo carried on board a ship flying the flag of a State Party.

On the other hand, damage caused during the transport of HNS to or from a ship is not covered.<sup>33</sup> Ship is defined as “any seagoing vessel and seaborne craft of any type whatsoever”.<sup>34</sup> Warships and other ships owned or operated by a State and used for public purposes are excluded.<sup>35</sup> However, States Parties are entitled to include in the scope of application of the Convention such ships owned by them provided that they notified the Secretary-General accordingly.<sup>36</sup> Moreover, as mentioned above, a State is entitled to exclude from the application of the Convention ships “which do not exceed 200 gross tonnage” and which carry HNS only in packaged form and while the ships “are engaged on voyages between ports or facilities of that State” by making a relevant declaration.<sup>37</sup>

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<sup>31</sup> Article 3 (1), (a), (b) of the 2010 HNS Convention.

<sup>32</sup> Mandaraka - Sheppard, Aleka; *op.cit.*, p. 868.

<sup>33</sup> IMO, An overview of the 2010 HNS Convention, *op.cit.*, p. 2.

<sup>34</sup> Article 1 (1) of the 2010 HNS Convention.

<sup>35</sup> Article 4 (4) of the 2010 HNS Convention.

<sup>36</sup> Article 4 (5) of the 2010 HNS Convention.

<sup>37</sup> Article 5 (1) of the 2010 HNS Convention.

### 3.1 The two-tier Liability and Compensation System

The Convention adopts a strict liability regime, which includes a two-tier liability and compensation system.<sup>38</sup> First tier imposes liability on the shipowner, whereas the second tier imposes liability on the International Hazardous and Noxious Substances Fund (HNS Fund).<sup>39</sup>

#### 3.1.2 1st Tier - Liability of the Shipowner - Strict Liability of the Shipowner

The Convention imposes strict liability on the shipowner, as his liability does not depend upon his fault. Hence, the existence of a causal link<sup>40</sup> between the damage and the HNS cargo is sufficient.

In case two or more ships carrying HNS have caused damage, each of their shipowners shall be liable. In case the damage is “not reasonably separable”, “the shipowners shall be jointly and severally liable for all such damage.”<sup>41</sup>

Corollary to the provision of the strict liability, the Convention provides that no claim for compensation may be made against the persons connected with the operation of the vessel, unless it is proved that the damage resulted from their own recklessness or “committed with the intent to cause such damage”.<sup>42</sup> The purpose is to avoid “unnecessary litigation”.<sup>43</sup>

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<sup>38</sup> Martinez Gutierrez, Norman, A.; *op.cit.*, p. 155.

<sup>39</sup> Article 14 of the 2010 HNS Convention.

<sup>40</sup> IMO, An overview of the 2010 HNS Convention, *op.cit.*, p. 3.

<sup>41</sup> Article 8 of the 2010 HNS Convention.

<sup>42</sup> Article 7 (5) of the 2010 HNS Convention.

<sup>43</sup> Draft IMO Guide for interested Parties on the Workings of the Hazardous and Noxious Substances Convention 1996, HNS Convention, LEG 83/INF.3 para. 4.1. See also Guner - Ozbek, Meltem Deniz; *The Carriage of Dangerous Goods by Sea*, Hamburg Studies on Maritime Affairs, Springer, 2008, p. 266.

Reasonably, claims against third parties that are not listed in Article 7 (5) will not be brought, even if it is permitted, as the compensation either from the shipowner or the HNS Fund is guaranteed.<sup>44</sup>

### **3.1.2.1 Invocation of defences**

Shipowner's liability is not absolute and no liability attaches to the shipowner, if he proves that: "(a) the damage resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or (b) the damage was wholly caused by an act or omission done with the intent to cause damage by a third party; or (c) the damage was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function; or (d) the failure of the shipper or any other person to furnish information concerning the hazardous and noxious nature of the substances shipped either: (i) has caused the damage, wholly or partly; or (ii) has led the owner not to obtain insurance; provided that neither the shipowner, nor his servants or agents knew or ought reasonably to have known of the hazardous and noxious nature of the substances shipped."<sup>45</sup> The exception is reasonable as, shipment of HNS in different forms of packaging without a sufficient description of the contents, is usual.<sup>46</sup>

### **3.1.3 Limitation of liability**

The shipowner has the right "to limit his liability in respect of any one incident to an aggregate amount calculated, as follows:

(a) Where the damage has been caused by bulk HNS:

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<sup>44</sup> Government of Australia. Regulation Impact Statement, International Convention on the Transportation of HNS by Sea, *op.cit.*, p. 11.

<sup>45</sup> Article 7 (2) of the 2010 HNS Convention.

<sup>46</sup> De La Rue, Colin and Anderson, Charles B.; *Shipping and the Environment: Law and Practice*, Second Edition, Informa, London, 2009, p. 282, as cited in Martinez Gutierrez, Norman, A.; *op.cit.*, p.153.



(i) 10 million Special Drawing Rights (SDR)<sup>47</sup> for a ship not exceeding 2,000 GT; and  
(ii) for a ship in excess of 2000 GT, 10 million SDR plus;  
for each unit of tonnage from 2,001 to 50,000 GT, 1500 SDR; and for each unit of tonnage in excess of 50,000 GT, 360 SDR; provided, however, that this aggregate amount shall not in any event exceed 100 million SDR.

<b>Tonnage</b>	<b>Shipowner's Limit of Liability</b>
Ships < 2,000 GT	10 million SDR
2,001 - 50,00 GT	1,500 SDR for each unit of tonnage
≥ 50,000 GT	360 SDR for each unit of tonnage (the aggregate amount shall not in any event exceed 100 million SDR)

(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 SDR for a ship not exceeding 2,000 GT; 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 GT, 1,725 SDR; and for each unit of tonnage in excess of 50,000 GT, 414 SDR; provided, however, that this aggregate amount shall not in any event exceed 115 million SDR.<sup>48</sup>

<sup>47</sup> The Special Drawing Rights is a monetary unit established by the International Monetary Fund (IMF); as at 30 December 2010, 1 SDR = £0.997755 or US\$1.54003.

<sup>48</sup> Article 9 (1) of the 2010 HNS Convention.

<b>Tonnage</b>	<b>Shipowner's Limit of Liability</b>
Ships < 2,000 GT	11.5 million SDR
2,001 - 50,000 GT	1,725 SDR for each unit of tonnage
≥ 50,000 GT	414 SDR for each unit of tonnage (the aggregate amount shall not in any event exceed 115 million SDR)

The liability limits of packaged HNS are 15% higher than the limits in the case of bulk HNS. This difference can be explained on the basis that the receivers of packaged HNS are not obliged to pay contributions to the HNS Fund, and thus the liability limits reflect the fairness of the Convention.<sup>49</sup>

Shipowners are not permitted to limit their liability, if it is proved that the damage resulted from their “personal act or omission, committed with the intent to cause such damage, or recklessly and with the knowledge” that such consequences would ensue.<sup>50</sup>

### **3.1.4 Compulsory insurance**

States Parties shall ensure that shipowners of ships registered under their flag and ships, which enter their ports, even if they are registered under the flag of a non-State Party, “maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution” in order to cover their liability.<sup>51</sup> This provision empowers the Convention and may trigger the ratification of the Convention by more States, because after the entry into force, their

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<sup>49</sup> Government of Australia, Regulation Impact Statement, International Convention on the Transportation of HNS by Sea, *op.cit.*, p. 12.

<sup>50</sup> Article 9 (2) of the 2010 HNS Convention.

<sup>51</sup> Article 12 (1) of the 2010 HNS Convention.

ships engaging in international trade will be required to acquire insurance, even if they are not contracting States.

The issuance of the compulsory insurance certificates will be conducted by “the appropriate authority of the State” of the ship's register or, if that State is not party to the Convention, by “the appropriate authority” of any contracting State.<sup>52</sup> In the latter case, a blue card will be issued by Protection and Indemnity Clubs,<sup>53</sup> which shall be accepted by all States Parties. The conditions of issuance of the certificate will be determined by each State Party.<sup>54</sup> The shipowner of any ship, “wherever registered”, entering a port in the territory of a contracting State, or arriving at an offshore facility in its territorial sea is also obliged to present a compulsory insurance certificate, as evidence of insurance cover.<sup>55</sup> States Parties shall not permit a ship under their flag, to which Article 12 applies, to trade in case the required certificate has not been issued.<sup>56</sup>

### **3.1.5 The right of direct action**

The Convention provides also for direct claims against the insurer or person providing financial security. However, the insurer is entitled to limit his liability, even in case the shipowner's right to limit his own liability is lost. Any defences that are available to the shipowner, apart from “the bankruptcy or winding up of the owner”, are available to the insurer, together with the defence that the damage was the result of “the wilful misconduct” of the shipowner.<sup>57</sup> However, the insurer cannot rely on any defences, “which the defendant might have been entitled to invoke in proceedings brought by the owner against the defendant.”<sup>58</sup> This provision together with the exception of the bankruptcy or winding up of the shipowner handles

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<sup>52</sup> Article 12 (2) of the 2010 HNS Convention.

<sup>53</sup> Guner-Ozbek, Meltem Deniz, *The Carriage of Dangerous Goods by Sea*, Hamburg Studies on Maritime Affairs, Springer, 2008, p. 271.

<sup>54</sup> Article 12 (6) of the 2010 HNS Convention.

<sup>55</sup> Article 12 (11) of the 2010 HNS Convention.

<sup>56</sup> Article 12 (10) of the 2010 HNS Convention.

<sup>57</sup> Article 12 (8) of the 2010 HNS Convention. See also Government of Australia, Regulation Impact Statement, International Convention on the Transportation of HNS by Sea, *op.cit.*, p. 14.

<sup>58</sup> *Ibid.*

the problem posed by clauses (known as “pay to be paid” clauses), under which the insurer pays under the policy only in case the shipowner has already paid the damages claim.<sup>59</sup>

### **3.2 2nd tier – The HNS Fund – establishment and governance**

The HNS Fund shall have legal personality recognised under the domestic law of States Parties, and thus, may be sue and be sued. The Director of the HNS Fund shall be recognised by contracting States as its legal representative.<sup>60</sup> States Parties shall also designate the competent courts in respect of actions brought by or against the HNS Fund.<sup>61</sup>

The HNS Fund will have an Assembly, which will be the “governing body of the HNS Fund”<sup>62</sup> and will consist of all States Parties, a Secretariat and a Director.<sup>63</sup>

#### **3.2.1 Payment of compensation**

The HNS Fund caters for the payment of compensation only in certain circumstances, i.e. only when the liability scheme provided under the first tier is “inadequate or not available”.<sup>64</sup> The HNS Fund pays, if the shipowner is not liable to pay compensation, or is financially incapable of meeting his obligation or when the damage exceeds the shipowner’s liability. It also pays in case that the financial security, which may be provided, “does not cover or is insufficient to satisfy the claims”.<sup>65</sup>

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<sup>59</sup> Government of Australia, Regulation Impact Statement, International Convention on the Transportation of HNS by Sea, *op.cit.*, p. 14.

<sup>60</sup> Article 13 (2) of the 2010 HNS Convention.

<sup>61</sup> Article 39 of the 2010 HNS Convention.

<sup>62</sup> Government of Australia, Regulation Impact Statement, International Convention on the Transportation of HNS by Sea, *op.cit.*, p. 14.

<sup>63</sup> Articles 24, 25 and 26 of the 2010 HNS Convention.

<sup>64</sup> Article 13 (1) of the 2010 HNS Convention.

<sup>65</sup> Article 14 (1) of the 2010 HNS Convention.

Article 14 (3) provides for defences of force majeure,<sup>66</sup> which can be invoked by the HNS Fund, which holds the burden of proof.<sup>67</sup> The Article goes one step further, providing that the HNS Fund will not be liable in case “the claimant cannot prove that there is a reasonable probability that the damage resulted from an incident involving one or more ships.”<sup>68</sup> However, even if the particular ship causing the damage cannot be identified, the HNS Fund may still be liable.<sup>69</sup> Another defence is the one of contributory negligence. More specifically, the Fund shall be exonerated wholly or partly, from its obligation to pay compensation, except in the cases of preventive measures and when it can prove that the damage resulted wholly or partly from the negligent or intentional act or omission of the victim.<sup>70</sup>

HNS Fund is entitled to be subrogated to the compensated person’s rights against the owner or the owner’s guarantor. Besides, the HNS Fund retains the right of subrogation or recourse against any other person, including persons referred to in Article 7 (2) (d), other than the owner or the owner’s guarantor, provided that they can limit their liability.<sup>71</sup>

The maximum amount of compensation provided by the HNS Fund in respect of any one incident will be capped at 250 million SDR, inclusive of the amount paid by the shipowner or his insurer.<sup>72</sup> Where the aggregate amount is less than this maximum sum, all claims are paid in full.<sup>73</sup> In the contrary case, the payments will be made on a pro rata basis.<sup>74</sup>

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<sup>66</sup> It must be proved that “the damage resulted from an act of war, hostilities, civil war or insurrection or was caused by hazardous and noxious substances which had escaped or been discharged from a warship or other ship owned or operated by a State and used, at the time of the incident, only on Government non-commercial service”.

<sup>67</sup> Article 14 (4) of the 2010 HNS Convention.

<sup>68</sup> *Ibid.*

<sup>69</sup> IMO, An overview of the 2010 HNS Convention, *op.cit.*, p. 6.

<sup>70</sup> Article 14 (4) of the 2010 HNS Convention.

<sup>71</sup> Article 41 of the 2010 HNS Convention.

<sup>72</sup> Article 14 (5) of the 2010 HNS Convention. See also IMO, An overview of the 2010 HNS Convention, *op.cit.*, p. 6.

<sup>73</sup> IMO, An overview of the 2010 HNS Convention, *op.cit.*, p. 5.

<sup>74</sup> Article 14 (6) of the 2010 HNS Convention.

### 3.2.2 Contributions to the HNS Fund - Confidentiality

Contributions to the HNS Fund will be made by HNS receivers, who have received contributing cargo that exceeds the thresholds set out in the Convention. According to Article 1 (4), a “receiver” is: “(a) the person who physically receives contributing cargo discharged in the ports and terminals of a State Party; provided that if at the time of receipt the person who physically receives the cargo acts as an agent for another who is subject to the jurisdiction of any State Party, then the principal shall be deemed to be the receiver, if the agent discloses the principal to the HNS Fund; or (b) the person in the State Party who in accordance with the national law of that State Party is deemed to be the receiver of contributing cargo discharged in the ports and terminals of a State Party, provided that the total contributing cargo received according to such national law is substantially the same as that which would have been received under (a).” The provision of Article 1 (4) (b) facilitates the implementation, excluding the possibility for a State to obtain “an unfair commercial advantage”.<sup>75</sup>

The amount of the contribution is specified in proportion to the receipts of HNS received annually and is payable after the occurrence of an incident involving the HNS Fund.<sup>76</sup> In contrast to the situation prior to adoption of the 2010 HNS Convention, only bulk HNS is now considered as contributing cargo.<sup>77</sup> This decision is “due to the sheer volume and range of packaged HNS that is transported by sea”.<sup>78</sup> Cargo in transit shall be considered to be contributing cargo only after receipt at the final destination.<sup>79</sup> The notion of contributing cargo includes also cargoes received after transport by sea between ports of the same State.<sup>80</sup> Upon becoming a contracting State, a “one-off initial contribution,” which will be calculated in accordance with Article 20 (1), shall be paid from the receivers of that State. The initial contributions will address the expenses for the establishment of the HNS Fund.<sup>81</sup>

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<sup>75</sup> IMO, An overview of the 2010 HNS Convention, *op.cit.*, p. 7.

<sup>76</sup> Article 19 of the 2010 HNS Convention. See also IMO, An overview of the 2010 HNS Convention, *op.cit.*, p. 6.

<sup>77</sup> Article 1 (10) of the 2010 HNS Convention.

<sup>78</sup> Government of Australia, Regulation Impact Statement, International Convention on the Transportation of HNS by Sea, *op.cit.*, p. 19.

<sup>79</sup> Article 1 (10) of the 2010 HNS Convention.

<sup>80</sup> IMO, An overview of the 2010 HNS Convention, *op.cit.*, p. 7.

<sup>81</sup> Government of Australia, Regulation Impact Statement, International Convention on the Transportation of HNS by Sea, *op.cit.*, p. 21.

A contracting State, when expressing its consent to be bound by the 2010 HNS Convention shall annually thereafter on or before 31st May until the Convention enters into force for the State in question,<sup>82</sup> submit to the Director of the HNS Fund, reports<sup>83</sup> consisting of the name and address of receivers of quantities of contributing cargo exceeding the thresholds and the quantities of cargo received by each of such receivers,<sup>84</sup> in order to enable the Secretary-General of IMO to determine the date of the entry into force of the 2010 HNS Convention. The contributions shall be invoiced to individual receivers.<sup>85</sup> However, in case of LNG, the titleholder shall pay.<sup>86</sup> States shall be held liable for any financial losses caused to the HNS Fund in case the required information is not provided.<sup>87</sup> Until the reporting obligations have been fulfilled, the HNS Fund will not proceed to compensation for claims for damage resulting from the carriage of HNS by ships in the State Party's territory, including territorial sea and EEZ,<sup>88</sup> except in the case of death and personal injury. States failing to meet their reporting obligations will be "temporarily suspended" from being contracting States.<sup>89</sup>

Any information relating to individual contributors shall be kept confidential. Exceptions are permitted only in cases in which the disclosure is strictly necessary for the functions of the Fund, "including bringing and defending legal proceedings".<sup>90</sup>

### **3.2.3 Division of the HNS Fund into accounts and sectors**

The HNS Fund will have four accounts: Oil, Liquefied Natural Gas (LNG), Liquefied Petroleum Gas (LPG) and a general account divided in the sectors: Bulk solids and Other HNS.<sup>91</sup>

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<sup>82</sup> Article 45 (6) of the 2010 HNS Convention.

<sup>83</sup> In order to assist States to execute this obligation, the HNS Workshop held at IMO Headquarters, London, on 12 and 13 November 2012, as mentioned above, adopted Guidelines on reporting of HNS which were endorsed by the IMO Legal Committee at its 100th session on 19 April 2013, available online:

[http://hnsconvention.org/Documents/2010%20HNS%20Convention%20Consolidated%20text\\_e.pdf](http://hnsconvention.org/Documents/2010%20HNS%20Convention%20Consolidated%20text_e.pdf), p. 43-51.

<sup>84</sup> Article 21 (2) of the 2010 HNS Convention.

<sup>85</sup> Article 21 (5) (b) of the 2010 HNS Convention.

<sup>86</sup> Article 19 (1) *bis. b* of the 2010 HNS Convention.

<sup>87</sup> Article 21 of the 2010 HNS Convention.

<sup>88</sup> Article 21 *bis* of the 2010 HNS Convention.

<sup>89</sup> Article 45 (7) of the 2010 HNS Convention.

<sup>90</sup> Article 36 of the 2010 HNS Convention.

Each account can only be used to compensate for damage caused by the type of HNS to which the account corresponds.<sup>92</sup> Each receiver is liable to contribute to the relevant account only when the total quantity of HNS received by him annually exceeds the following thresholds:<sup>93</sup>

Persistent oil	150,000 tons
Non-persistent oil,	20,000 tons
LNG	No minimum quantity
LPG	20,000 tons
Bulk solids and other HNS	20,000 tons

The accounts will begin to operate, once the total quantity of contributing cargo received in Member States during the preceding year, or any such year as the HNS Assembly decides, exceeds specific levels, as listed below:<sup>94</sup>

<b>A.General account</b>	40 million tonnes
<b>B. Separate accounts (or sectors within the general account)</b>	
Oil account	350 million tons
LNG account	20 million tons
LPG account	15 million tons

<sup>91</sup> Article 16 (2) of the 2010 HNS Convention.

<sup>92</sup> LEG 83/INF.3, para.7.1. See also Guner-Ozbek, Meltem Deniz; *The Carriage of Dangerous Goods by Sea*, Hamburg Studies on Maritime Affairs, Springer, 2008, p. 278.

<sup>93</sup> Article 19 (1) of the 2010 HNS Convention.

<sup>94</sup> Article 19 (3) of the 2010 HNS Convention.



In case that during the initial operation of the HNS Fund, the contributing quantities of HNS received in Member States are not sufficient, only one account for oil and one general account including the rest sectors shall operate.<sup>95</sup> Also, the operation of the separate accounts can be suspended by the Assembly, in case the total unpaid contributions to that account “exceed 10% of the most recent levy to that account.”<sup>96</sup> In that case, the persons liable to pay contributions will contribute to the general account.<sup>97</sup>

### **3.2.4 Jurisdiction**

Claims against shipowners, providers of insurance or financial security for the owner’s liability and the HNS Fund for incidents occurring in the territory of a contracting State, including its territorial sea and EEZ, can be brought only in the courts of that State. In case of incidents occurring outside the territory of the contracting State, including its territorial sea and EEZ, only the courts of a contracting State, which is the flag State of the vessel, or where the shipowner resides or has its permanent place of business or has constituted a fund to address the claims against him, will be competent.<sup>98</sup>

In case the ship involved in an HNS incident has not been identified, claims can be brought against the Fund only in the contracting State where the damage has been caused.<sup>99</sup>

### **3.3 Options of Greece under the Convention**

The options that are available to Greece according to the Convention are the following. Firstly, Greece can extend the application of the Convention to Greek warships and ships that are

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<sup>95</sup> IMO, An overview of the 2010 HNS Convention, *op.cit.*, p. 8.

<sup>96</sup> Article 19 (4) of the 2010 HNS Convention.

<sup>97</sup> IMO, An overview of the 2010 HNS Convention, *op.cit.*, p. 8.

<sup>98</sup> Article 9 (3) and 38 (1) (2) of the 2010 HNS Convention. See also Government of Australia, Regulation Impact Statement, International Convention on the Transportation of HNS by Sea, *op.cit.*, p. 21.

<sup>99</sup> Article 39 (2) of the 2010 HNS Convention. See also Mandaraka - Sheppard, Aleka; *op.cit.*, p. 871.

used on non-commercial service.<sup>100</sup> Secondly, Greece can exclude from the scope of application of the Convention, ships which do not exceed 200 gross tonnage and which carry HNS only in packaged form and while the ships are engaged on voyages between ports of Greece or between ports of Greece and neighbouring States.<sup>101</sup> Additionally, Greece is given the option to self-insure ships owned by the Greek State, instead of obtaining liability insurance cover for these ships.<sup>102</sup> Another option is that Greece can deem other persons instead of those defined in Article 1 (4) (a) as receivers.<sup>103</sup> Finally, Greece can assume responsibility for payment of contributions, instead of receivers, in respect of HNS received in the territory of Greece.<sup>104</sup>

Beyond that, it is advisable that Greece makes a reservation under Article 18 (1) (b) of the Convention on Limitation of Liability for Maritime Claims, 1976 (1976 Convention), as amended by the 1996 Protocol, excluding maritime claims for damage within the definition given under the 2010 HNS Convention. However, as this draft law proposes the exclusion of ships which do not exceed 200 gross tonnage and which carry HNS only in packaged form and while the ships are engaged on voyages between ports of Greece from the scope of application of the 2010 HNS Convention, the above mentioned reservation should exclude maritime claims for damage within the definition given under the 2010 HNS Convention, apart from the case of ships which do not exceed 200 gross tonnage and which carry HNS only in packaged form and while the ships are engaged on voyages between ports of Greece.

#### **4. The Importance of Implementation and the Perspective of Greece**

Considering that approximately 90 per cent of world trade is carried by the international shipping industry<sup>105</sup> and the significant share HNS cargo represents in maritime freight transport

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<sup>100</sup> Article 4 (5) of the 2010 HNS Convention.

<sup>101</sup> Article 5 (1) (2) of the 2010 HNS Convention.

<sup>102</sup> Article 12 (12) of the 2010 HNS Convention. See also Government of Australia, Regulation Impact Statement, International Convention on the Transportation of HNS by Sea, *op.cit.*, p. 28.

<sup>103</sup> Article 1 (4) (b) of the 2010 HNS Convention.

<sup>104</sup> Article 23 of the 2010 HNS Convention. See also Government of Australia, Regulation Impact Statement, International Convention on the Transportation of HNS by Sea, *op.cit.*, p. 28.

<sup>105</sup> International Chamber of Shipping, Shipping Facts, available online: <<http://www.ics-shipping.org/shipping-facts/shipping-facts>>.

worldwide, the entry into force of an International Convention regulating the claims relevant to damages resulting from the carriage of such cargo is of great importance. It is true that more than 200 million tonnes of chemicals are traded by tankers every year. More importantly, the number of vessels carrying HNS is increasing.<sup>106</sup> The number of container ships carrying packaged HNS has increased from 2600 in 2000 to 5000 in 2015; of LNG tankers from 250 in 2007 to 420 in 2014; of chemical tankers from 3100 in 2005 to 4070 in 2014; and of LPG tankers from 940 in 2000 to 1250 in 2014.<sup>107</sup> On the other hand, HNS accidents do happen and entail significant and costly consequences. According to observations from data collected on accidents in the Mediterranean involving HNS, in the period 1988-2010, the number of incidents causing or likely to cause pollution by HNS is 114 and the quantities released 120,858 tons.<sup>108</sup>

This Convention constitutes the last part of the puzzle, as international regulations for prevention, preparedness and response concerning the carriage of HNS by sea are already in place. The only missing part is the assurance of compensation under a uniform and comprehensive international regime.<sup>109</sup> Nevertheless, the ratification of the 2010 HNS Convention is even more essential for Greece, given that it is not a party to the Protocol relating to intervention on the High Seas in cases of pollution by substances other than oil, 1973, as amended, which extends right of intervention of coastal State, among contracting States, to include cases involving pollution or threat of pollution by substances other than oil. However, there is something beyond that; the 2010 HNS Convention is based on a “long-standing and successful oil pollution regime”,<sup>110</sup> which can guarantee its success. Besides, the notion of damage under the 2010 HNS Convention is broad and it covers also loss of life or personal injury on board or outside the ship carrying the HNS, which is not covered under the CLC 1969, CLC 1992 and the 1992 Fund Convention. It should be also mentioned that the notion of HNS

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<sup>106</sup> IOPC Funds, The HNS Convention, Why it is needed, available online: <[http://www.iopcfunds.org/fileadmin/IOPC\\_Upload/Downloads/English/Final\\_HNS\\_Why\\_it\\_is\\_needed\\_brochure\\_-\\_web\\_version\\_e.pdf](http://www.iopcfunds.org/fileadmin/IOPC_Upload/Downloads/English/Final_HNS_Why_it_is_needed_brochure_-_web_version_e.pdf)>, p. 2.

<sup>107</sup> *Ibid.*

<sup>108</sup> Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea (REMPEC)-Mediterranean Action Plan (MAP), Statistical analysis Alerts and accidents database, 2011, available online: <<http://www.rempec.org/admin/store/wywigImg/file/Tools/Operational%20tools/Alerts%20and%20accidents%20atabase/Statistics%20accidents%202011%20EN%20FINAL.pdf>>, p. 21.

<sup>109</sup> IMO, The HNS Convention, available online: <<http://www.imo.org/en/MediaCentre/HotTopics/Pages/HNS-2010.aspx>>.

<sup>110</sup> IOPC Funds, The HNS Convention, Why it is needed, *op.cit.*, p. 6.

also includes non-persistent oils (e.g. light diesel, gasoline, etc.) which are not covered under CLC 1969, CLC 1992 the 1992 Fund Convention.

It is indicative that, resolution A 932 (22) adopted by the IMO Assembly at its twenty-second session considered the 1996 HNS Convention's implementation of high priority.<sup>111</sup> More importantly, IMO has urged States to bring the new consolidated 2010 HNS Convention into force.<sup>112</sup> Recently, the European Commission on 22 June 2015, issued a proposal for a Council decision "on the ratification and accession by Member States on behalf of the Union to the 2010 HNS Protocol to the International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea, with the exception of aspects related to judicial cooperation in civil matters."<sup>113</sup> Finally, on 10 December 2015, two Council Decisions (13806/15<sup>114</sup> and 14112/15<sup>115</sup>) which authorize<sup>116</sup> EU Member States to ratify or accede to the 2010 HNS Convention were adopted by the Council. The decisions will be issued to the European Parliament for its consent.<sup>117</sup>

Especially for a traditionally maritime Country such as Greece, of which the strategic geographic position, with 16,000 km coastline and over 3,000 islands and rocky islets, made shipping the most lucrative and thriving sector of the local economy since the ancient times, it is of utmost importance to proceed to ratification of this Convention. The increasing number of merchant vessels operating both on the Aegean and the Ionian seas, and the unique quality of the marine environment of Greece, should not be neglected. A disaster caused by HNS could lead to

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<sup>111</sup> IMO Assembly Resolution A.932 (22) available online:

[http://www.imo.org/blast/blastDataHelper.asp?data\\_id=24586&filename=A932\(22\).pdf](http://www.imo.org/blast/blastDataHelper.asp?data_id=24586&filename=A932(22).pdf), p. 2.

<sup>112</sup> See IMO Secretary-General urges States to ratify 2010 HNS Protocol as signature period ends, available online: <http://www.imo.org/en/MediaCentre/PressBriefings/Pages/53-hns-2010.aspx#.VoWkL8ZUSt8>, 1 November 2011.

<sup>113</sup> European Commission Proposal, 2015/0135 (NLE), *op.cit.*

<sup>114</sup> European Council's Decision 13806/15, *op.cit.*

<sup>115</sup> European Council's Decision on the ratification and accession by Member States, in the interest of the European Union, to 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, with regard to the aspects related to judicial cooperation in civil Matters, 14112/15, 2015/0136 (NLE), available online: [http://www.iopcfunds.org/fileadmin/IOPC\\_Upload/Downloads/English/14112-15\\_EU\\_Council\\_Decision\\_on\\_ratification\\_of\\_HNS2010.pdf](http://www.iopcfunds.org/fileadmin/IOPC_Upload/Downloads/English/14112-15_EU_Council_Decision_on_ratification_of_HNS2010.pdf) >.

<sup>116</sup> This authorization is required, given the European Union's exclusive competence in maritime transport and the European Union's secondary legislation on the jurisdiction, recognition and enforcement of judgments.

<sup>117</sup> IOPC Funds, Council of the European Union in agreement to authorise EU Member States to ratify or accede to the 2010 HNS Convention, available online: <http://www.iopcfunds.org/news-events/detail/item/484/> >.

an inconceivable loss for the tourist industry, fisheries and the environment of the country, taking into account the fragile marine ecosystem of the semi-enclosed Mediterranean Sea.<sup>118</sup> Especially, it should be mentioned that the threat to the wildlife is serious, as unlike the effects of oil pollution, the effects of HNS on wildlife have not been assessed and cleaning procedures, which would allow a prompt restoration, have not yet been defined.<sup>119</sup> More importantly, HNS incidents could entail great health risks for Greek population without excluding the potential of death.

It should be underlined that the safeguard of Greek coast environments constitutes, under Greek Constitution,<sup>120</sup> a commitment of the Greek State. Moreover, the entry into force of this Convention will ensure legal certainty. Actually, it will ensure the compensation of damages and losses suffered and especially of costs for preventive measures, clean-up and removal of HNS substances up to 250 million SDR per incident,<sup>121</sup> thus leading to an adequate protection of an already sensitive area, and of sectors vital for the future of Greece. At the same time, the ratification is also important for the prestige of Greece, which is a founding member of IMO. Besides, maritime activity, as a predominantly international activity, is important to be governed by regulations of international acceptance and not by regulations of regional character or by regulations of limited geographical application.

Finally, it should be borne in mind that Greece was one of the eight countries, which signed the 2010 HNS Protocol when it was open for signature at the headquarters of the IMO, on 25 October 2011.<sup>122</sup> Hence, the action that Greece should take in order to express its willingness to be bound is the ratification of the 2010 HNS Protocol.

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<sup>118</sup> Grbec, Mitja; *Extension of Coastal State Jurisdiction in Enclosed and Semi-enclosed Seas: A Mediterranean and Adriatic Perspective*, Routledge, Oxon, UK, 2014, p. 6.

<sup>119</sup> See Oiledwildlife.eu, Effects of hazardous and noxious substances (HNS) on wildlife, available online: < <http://www.oiledwildlife.eu/background-information/why-respond-oiled-wildlife/effects-hazardous-and-noxious-substances-hns-wildl>>.

<sup>120</sup> Article 24 of the Greek Constitution.

<sup>121</sup> Article 14 (5) of the 2010 HNS Convention.

<sup>122</sup> See footnote number 6.

## 5. Ratification of the Convention by the Hellenic Republic

As Greece is a monist country, Greek Parliament's approval for the ratification of the Convention is required prior to the deposit of the instrument of ratification. For this purpose, a statutory law titled as a law on the approval of the Convention by the Hellenic Republic will be prepared by the Ministry of Shipping, the Ministry of Environment and the Ministry of Finance.

In accordance with Article 104 of the Introductory Law of the Civil Code,<sup>123</sup> the law implementing the Convention shall enter into force on the date designated in its last Article after being published in the Government Gazette of the Hellenic Republic or, if left blank, it will be ten days after publication. Moreover, according to Article 28 (1) of the Constitution, the law from its coming into force "shall constitute an integral part of domestic Greek law and shall prevail over any contrary statutory provision."<sup>124</sup>

Article 1 incorporates the text of the 2010 HNS Convention and its Annexes, as originally drafted in English followed by the Greek translation. The following Articles include specialised implementing provisions addressing mainly administrative issues. Article 3 deals with the scope of application of the provisions of this law, the Convention, its Annexes and any Presidential or Ministerial Decrees for its implementation, excluding the application to ships which do not exceed 200 gross tonnage and which carry HNS only in packaged form and while the ships are engaged on voyages between ports of Greece. This option was included, as small ships reasonably do not pose a considerable danger of great HNS incidents, and as mentioned above, they will be covered by the 1976 Convention, as amended by the 1996 Protocol, in case Greece proceeds to the relevant proposed reservation to the 1976 LLMC Convention, as amended by the 1996 Protocol. The competent Authorities for the application of the provisions of this draft law are designated in Article 4.<sup>125</sup> Article 7 provides for the certification. It should be clarified that the proposed amount of the fee for the issuance of the certificate has been left in

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<sup>123</sup> Article 104 of the Introductory Law of the Civil Code, (A.N. 2783/1941).

<sup>124</sup> Article 28 (1) of the Greek Constitution. The Article is in line with the doctrine of *pacta sunt servanda*. See Dimitropoulos, Andreas; *General Constitutional Theory, Constitutional Law System*, Volume I, Sakkoulas, Athens - Komotini, 2004, p. 201.

<sup>125</sup> It should be clarified that the Greek Port Authorities form part of the Hellenic Coast Guard and they are responsible for the cancellation of the compulsory insurance certificate. See Article 8 of the draft law.

brackets in order to be amended accordingly in the case that a different amount is considered to be more appropriate by the Greek Parliament.<sup>126</sup> Article 10, providing for sanctions and appeals, in accordance with Greek domestic law, implements the Article 6 of the 2010 HNS Convention, which requires States Parties to take appropriate measures and establish sanctions under their national law for “the effective execution” of any obligation arising under the Convention. As in the case of Article 7, the amount of the fine has been left in brackets in order to be amended accordingly in the case that a different amount is considered to be more appropriate by the Greek Parliament.<sup>127</sup> Moreover, Article 11 ensures the compliance of the Greek law with European legislation in accordance with Council’s Decision 14112/15 and as requested by the Regulation 1215/2012, which concerns the recognition and enforcement of judgments. Article 13 provides for the procedure of adoption of any amendments to the Convention by the IMO or the Marine Environment Protection Committee (MEPC) and for the possibility of a future codification of the Convention and its Annexes into a consolidated text in the nature of a code at the proposal of the Minister of Shipping.

This law has been drafted in a manner akin to the law 314/1976,<sup>128</sup> the Presidential Decree 197/1995<sup>129</sup> and the Presidential Decree 270/1995.<sup>130</sup> The language used is in line with the drafting technique followed by other laws of Greece. Thus, for reasons of consistency in drafting, the wording Greek waters following the wording used in the Law 314/1976 is used in Article 3.

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<sup>126</sup> The amount has been decided in line with Article 7 (1) (a) (b) of the Law 314/1976.

<sup>127</sup> The amount has been decided in line with Article 5 (1) of the Law 314/1976.

<sup>128</sup> The Law 314/1976 implemented the International Convention on Civil Liability for Oil Pollution Damage, 1969.

<sup>129</sup> The Presidential Decree 197/1995 implemented the Protocol of 1992, which amended the International Convention on Civil Liability for Oil Pollution Damage, 1969.

<sup>130</sup> The Presidential Decree 270/1995 implemented the Protocol of 1992, which amended the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971.



# GOVERNMENT GAZETTE OF THE HELLENIC REPUBLIC

Gazette No. \_\_\_\_\_

dd / mm / yyyy

LAW No. \_\_\_\_\_

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

**THE PRESIDENT  
OF THE HELLENIC REPUBLIC**

Issues the following law enacted by Parliament



## **Article one**

The International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010, adopted on the 30th of April 2010, is hereby approved and constitutes part of the domestic legislation as stipulated in Article 28 para.1 of the Constitution. The Convention's original text in English and the respective translation in Greek is as follows:

### **INTERNATIONAL CONVENTION ON LIABILITY AND COMPENSATION FOR DAMAGE IN CONNECTION WITH THE CARRIAGE OF HAZARDOUS AND NOXIOUS SUBSTANCES BY SEA, 2010 (2010 HNS CONVENTION)**

(Consolidated text of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996, and the Protocol of 2010 to the Convention)

**[Preamble omitted]**

#### **Chapter I**

#### **GENERAL PROVISIONS**

#### **Article 1**

#### **Definitions**

For the purposes of this Convention:

- 1 "Ship" means any seagoing vessel and seaborne craft, of any type whatsoever.
- 2 "Person" means any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent subdivisions.
- 3 "Owner" means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship. However, in the case of a ship owned by a State and operated by a company which in that State is registered as the ship's operator, "owner" shall mean such company.
- 4 "Receiver" means either:
  - (a) the person who physically receives contributing cargo discharged in the ports and terminals of a State Party; provided that if at the time of receipt the person who physically receives the cargo acts as an agent for another who is subject to the jurisdiction of any State Party, then the

principal shall be deemed to be the receiver, if the agent discloses the principal to the HNS Fund;  
or

(b) the person in the State Party who in accordance with the national law of that State Party is deemed to be the receiver of contributing cargo discharged in the ports and terminals of a State Party, provided that the total contributing cargo received according to such national law is substantially the same as that which would have been received under (a).

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.

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).

6 "Damage" means:

(a) loss of life or personal injury on board or outside the ship carrying the hazardous and noxious substances caused by those substances;

(b) loss of or damage to property outside the ship carrying the hazardous and noxious substances caused by those substances;

(c) loss or damage by contamination of the environment caused by the hazardous and noxious substances, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken; and

(d) the costs of preventive measures and further loss or damage caused by preventive measures.

Where it is not reasonably possible to separate damage caused by the hazardous and noxious substances from that caused by other factors, all such damage shall be deemed to be caused by the hazardous and noxious substances except if, and to the extent that, the damage caused by other factors is damage of a type referred to in article 4, paragraph 3.

In this paragraph, "caused by those substances" means caused by the hazardous or noxious nature of the substances.

7 "Preventive measures" means any reasonable measures taken by any person after an incident has occurred to prevent or minimize damage.

8 "Incident" means any occurrence or series of occurrences having the same origin, which causes damage or creates a grave and imminent threat of causing damage.

9 "Carriage by sea" means the period from the time when the hazardous and noxious substances enter any part of the ship's equipment, on loading, to the time they cease to be present in any part of the ship's equipment, on discharge. If no ship's equipment is used, the period begins and ends respectively when the hazardous and noxious substances cross the ship's rail.

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.

11 The "HNS Fund" means the International Hazardous and Noxious Substances Fund established under article 13.

12 "Unit of account" means the Special Drawing Right as defined by the International Monetary Fund.

13 "State of the ship's registry" means in relation to a registered ship the State of registration of the ship, and in relation to an unregistered ship the State whose flag the ship is entitled to fly.

14 "Terminal" means any site for the storage of hazardous and noxious substances received from waterborne transportation, including any facility situated off-shore and linked by pipeline or otherwise to such site.

15 "Director" means the Director of the HNS Fund.

16 "Organization" means the International Maritime Organization.

17 "Secretary-General" means the Secretary-General of the Organization.

## **Article 2**

### **Annexes**

The Annexes to this Convention shall constitute an integral part of this Convention.

## **Article 3**

### **Scope of application**

This Convention shall apply exclusively:

- (a) to any damage caused in the territory, including the territorial sea, of a State Party;
- (b) to damage by contamination of the environment caused in the exclusive economic zone of a State Party, established in accordance with international law, or, if a State Party has not

established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured;

(c) to damage, other than damage by contamination of the environment, caused outside the territory, including the territorial sea, of any State, if this damage has been caused by a substance carried on board a ship registered in a State Party or, in the case of an unregistered ship, on board a ship entitled to fly the flag of a State Party; and

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

#### **Article 4**

1 This Convention shall apply to claims, other than claims arising out of any contract for the carriage of goods and passengers, for damage arising from the carriage of hazardous and noxious substances by sea.

2 This Convention shall not apply to the extent that its provisions are incompatible with those of the applicable law relating to workers' compensation or social security schemes.

3 This Convention shall not apply:

(a) to pollution damage as defined in the International Convention on Civil Liability for Oil Pollution Damage, 1969, as amended, whether or not compensation is payable in respect of it under that Convention; and

(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.

4 Except as provided in paragraph 5, the provisions of this Convention shall not apply to warships, naval auxiliary or other ships owned or operated by a State and used, for the time being, only on Government non-commercial service.

5 A State Party may decide to apply this Convention to its warships or other vessels described in paragraph 4, in which case it shall notify the Secretary-General thereof specifying the terms and conditions of such application.

6 With respect to ships owned by a State Party and used for commercial purposes, each State shall be subject to suit in the jurisdictions set forth in article 38 and shall waive all defences based on its status as a sovereign State.

## **Article 5**

1 A State may, at the time of ratification, acceptance, approval of, or accession to, this Convention, or any time thereafter, declare that this Convention does not apply to ships:

- (a) which do not exceed 200 gross tonnage; and
- (b) which carry hazardous and noxious substances only in packaged form; and
- (c) while they are engaged on voyages between ports or facilities of that State

2 Where two neighbouring States agree that this Convention does not apply also to ships which are covered by paragraph 1(a) and (b) while engaged on voyages between ports or facilities of those States, the States concerned may declare that the exclusion from the application of this Convention declared under paragraph 1 covers also ships referred to in this paragraph.

3 Any State which has made the declaration under paragraph 1 or 2 may withdraw such declaration at any time.

4 A declaration made under paragraph 1 or 2, and the withdrawal of the declaration made under paragraph 3, shall be deposited with the Secretary-General who shall, after the entry into force of this Convention, communicate it to the Director.

5 The HNS Fund is not liable to pay compensation for damage caused by substances carried by a ship to which the Convention does not apply pursuant to a declaration made under paragraph 1 or 2, to the extent that:

- (a) the damage as defined in article 1, paragraph 6(a), (b) or (c) was caused in:
  - (i) the territory, including the territorial sea, of the State which has made the declaration, or in the case of neighbouring States which have made a declaration under paragraph 2, of either of them; or
  - (ii) the exclusive economic zone, or area mentioned in article 3(b), of the State or States referred to in (i);
- (b) the damage includes measures taken to prevent or minimize such damage.

## **Article 6**

### **Duties of State Parties**

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.

## **Chapter II LIABILITY**

### **Article 7**

#### **Liability of the owner**

1 Except as provided in paragraphs 2 and 3, the owner at the time of an incident shall be liable for damage caused by any hazardous and noxious substances in connection with their carriage by sea on board the ship, provided that if an incident consists of a series of occurrences having the same origin the liability shall attach to the owner at the time of the first of such occurrences.

2 No liability shall attach to the owner if the owner proves that:

(a) the damage resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or

(b) the damage was wholly caused by an act or omission done with the intent to cause damage by a third party; or

(c) the damage was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function; or

(d) the failure of the shipper or any other person to furnish information concerning the hazardous and noxious nature of the substances shipped either:

(i) has caused the damage, wholly or partly; or

(ii) has led the owner not to obtain insurance in accordance with article 12;

provided that neither the owner nor its servants or agents knew or ought reasonably to have known of the hazardous and noxious nature of the substances shipped.

3 If the owner proves that the damage resulted wholly or partly either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the owner may be exonerated wholly or partially from liability to such person.

4 No claim for compensation for damage shall be made against the owner otherwise than in accordance with this Convention.

5 Subject to paragraph 6, no claim for compensation for damage under this Convention or otherwise may be made against:

(a) the servants or agents of the owner or the members of the crew;

- (b) the pilot or any other person who, without being a member of the crew, performs services for the ship;
  - (c) any charterer (howsoever described, including a bareboat charterer), manager or operator of the ship;
  - (d) any person performing salvage operations with the consent of the owner or on the instructions of a competent public authority;
  - (e) any person taking preventive measures; and
  - (f) the servants or agents of persons mentioned in (c), (d) and (e);
- unless the damage resulted from their personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.
- 6 Nothing in this Convention shall prejudice any existing right of recourse of the owner against any third party, including, but not limited to, the shipper or the receiver of the substance causing the damage, or the persons indicated in paragraph 5.

## **Article 8**

### **Incidents involving two or more ships**

- 1 Whenever damage has resulted from an incident involving two or more ships each of which is carrying hazardous and noxious substances, each owner, unless exonerated under article 7, shall be liable for the damage. The owners shall be jointly and severally liable for all such damage which is not reasonably separable.
- 2 However, owners shall be entitled to the limits of liability applicable to each of them under article 9.
- 3 Nothing in this article shall prejudice any right of recourse of an owner against any other owner.

## **Article 9**

### **Limitation of liability**

- 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.

2 The owner shall not be entitled to limit liability under this Convention if it is proved that the damage resulted from the personal act or omission of the owner, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

3 The owner shall, for the purpose of benefitting from the limitation provided for in paragraph 1, constitute a fund for the total sum representing the limit of liability established in accordance with paragraph 1 with the court or other competent authority of any one of the States Parties in which action is brought under article 38 or, if no action is brought, with any court or other competent authority in any one of the States Parties in which an action can be brought under article 38. The fund can be constituted either by depositing the sum or by producing a bank guarantee or other guarantee, acceptable under the law of the State Party where the fund is constituted, and considered to be adequate by the court or other competent authority.

4 Subject to the provisions of article 11, the fund shall be distributed among the claimants in proportion to the amounts of their established claims.

5 If before the fund is distributed the owner or any of the servants or agents of the owner or any person providing to the owner insurance or other financial security has as a result of the incident in question, paid compensation for damage, such person shall, up to the amount that person has

paid, acquire by subrogation the rights which the person so compensated would have enjoyed under this Convention.

6 The right of subrogation provided for in paragraph 5 may also be exercised by a person other than those mentioned therein in respect of any amount of compensation for damage which such person may have paid but only to the extent that such subrogation is permitted under the applicable national law.

7 Where owners or other persons establish that they may be compelled to pay at a later date in whole or in part any such amount of compensation, with regard to which the right of subrogation would have been enjoyed under paragraphs 5 or 6 had the compensation been paid before the fund was distributed, the court or other competent authority of the State where the fund has been constituted may order that a sufficient sum shall be provisionally set aside to enable such person at such later date to enforce the claim against the fund.

8 Claims in respect of expenses reasonably incurred or sacrifices reasonably made by the owner voluntarily to prevent or minimize damage shall rank equally with other claims against the fund.

9 (a) The amounts mentioned in paragraph 1 shall be converted into national currency on the basis of the value of that currency by reference to the Special Drawing Right on the date of the constitution of the fund referred to in paragraph 3. The value of the national currency, in terms of the Special Drawing Right, of a State Party which is a member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect on the date in question for its operations and transactions. The value of the national currency, in terms of the Special Drawing Right, of a State Party which is not a member of the International Monetary Fund, shall be calculated in a manner determined by that State.

(b) Nevertheless, a State Party which is not a member of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 9(a) may, at the time of ratification, acceptance, approval of or accession to this Convention or at any time thereafter, declare that the unit of account referred to in paragraph 9(a) shall be equal to 15 gold francs. The gold franc referred to in this paragraph corresponds to sixty-five-and-a-half milligrammes of gold of millesimal fineness nine hundred. The conversion of the gold franc into the national currency shall be made according to the law of the State concerned.

(c) The calculation mentioned in the last sentence of paragraph 9(a) and the conversion mentioned in paragraph 9(b) shall be made in such manner as to express in the national currency of the State Party as far as possible the same real value for the amounts in paragraph 1 as would result from the application of the first two sentences of paragraph 9(a). States Parties shall communicate to the Secretary-General the manner of calculation pursuant to paragraph 9(a), or the result of the conversion in paragraph 9(b) as the case may be, when depositing an instrument of ratification, acceptance, approval of or accession to this Convention and whenever there is a change in either.

10 For the purpose of this article the ship's tonnage shall be the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex I of the International Convention on Tonnage Measurement of Ships, 1969.

11 The insurer or other person providing financial security shall be entitled to constitute a fund in accordance with this article on the same conditions and having the same effect as if it were constituted by the owner. Such a fund may be constituted even if, under the provisions of paragraph 2, the owner is not entitled to limitation of liability, but its constitution shall in that case not prejudice the rights of any claimant against the owner.

#### **Article 10**

1 Where the owner, after an incident, has constituted a fund in accordance with article 9 and is entitled to limit liability:

(a) no person having a claim for damage arising out of that incident shall be entitled to exercise any right against any other assets of the owner in respect of such claim; and

(b) the court or other competent authority of any State Party shall order the release of any ship or other property belonging to the owner which has been arrested in respect of a claim for damage arising out of that incident, and shall similarly release any bail or other security furnished to avoid such arrest.

2 The foregoing shall, however, only apply if the claimant has access to the court administering the fund and the fund is actually available in respect of the claim.

## **Article 11**

### **Death and injury**

Claims in respect of death or personal injury have priority over other claims save to the extent that the aggregate of such claims exceeds two-thirds of the total amount established in accordance with article 9, paragraph 1.

## **Article 12**

### **Compulsory insurance of the owner**

1 The owner of a ship registered in a State Party and actually carrying hazardous and noxious substances shall be required to maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution, in the sums fixed by applying the limits of liability prescribed in article 9, paragraph 1, to cover liability for damage under this Convention.

2 A compulsory insurance certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Convention shall be issued to each ship after the appropriate authority of a State Party has determined that the requirements of paragraph 1 have been complied with. With respect to a ship registered in a State Party such compulsory insurance certificate shall be issued or certified by the appropriate authority of the State of the ship's registry; with respect to a ship not registered in a State Party it may be issued or certified by the appropriate authority of any State Party. This compulsory insurance certificate shall be in the form of the model set out in Annex I and shall contain the following particulars:

- (a) name of the ship, distinctive number or letters and port of registry;
- (b) name and principal place of business of the owner;
- (c) IMO ship identification number;
- (d) type and duration of security;
- (e) name and principal place of business of insurer or other person giving security and, where appropriate, place of business where the insurance or security is established; and
- (f) period of validity of certificate, which shall not be longer than the period of validity of the insurance or other security.

3 The compulsory insurance certificate shall be in the official language or languages of the issuing State. If the language used is neither English, nor French nor Spanish, the text shall include a translation into one of these languages.

4 The compulsory insurance certificate shall be carried on board the ship and a copy shall be deposited with the authorities who keep the record of the ship's registry or, if the ship is not registered in a State Party, with the authority of the State issuing or certifying the certificate.

5 An insurance or other financial security shall not satisfy the requirements of this article if it can cease, for reasons other than the expiry of the period of validity of the insurance or security specified in the certificate under paragraph 2, before three months have elapsed from the date on which notice of its termination is given to the authorities referred to in paragraph 4, unless the compulsory insurance certificate has been surrendered to these authorities or a new certificate has been issued within the said period. The foregoing provisions shall similarly apply to any modification which results in the insurance or security no longer satisfying the requirements of this article.

6 The State of the ship's registry shall, subject to the provisions of this article, determine the conditions of issue and validity of the compulsory insurance certificate.

7 Compulsory insurance certificates issued or certified under the authority of a State Party in accordance with paragraph 2 shall be accepted by other States Parties for the purposes of this Convention and shall be regarded by other States Parties as having the same force as compulsory insurance certificates issued or certified by them even if issued or certified in respect of a ship not registered in a State Party. A State Party may at any time request consultation with the issuing or certifying State should it believe that the insurer or guarantor named in the compulsory insurance certificate is not financially capable of meeting the obligations imposed by this Convention.

8 Any claim for compensation for damage may be brought directly against the insurer or other person providing financial security for the owner's liability for damage. In such case the defendant may, even if the owner is not entitled to limitation of liability, benefit from the limit of liability prescribed in accordance with paragraph 1. The defendant may further invoke the defences (other than the bankruptcy or winding up of the owner) which the owner would have been entitled to invoke. Furthermore, the defendant may invoke the defence that the damage resulted from the wilful misconduct of the owner, but the defendant shall not invoke any other defence which the defendant might have been entitled to invoke in proceedings brought by the owner against the defendant. The defendant shall in any event have the right to require the owner to be joined in the proceedings.

9 Any sums provided by insurance or by other financial security maintained in accordance with paragraph 1 shall be available exclusively for the satisfaction of claims under this Convention.

10 A State Party shall not permit a ship under its flag to which this article applies to trade unless a certificate has been issued under paragraph 2 or 12.

11 Subject to the provisions of this article, each State Party shall ensure, under its national law, that insurance or other security in the sums specified in paragraph 1 is in force in respect of any ship, wherever registered, entering or leaving a port in its territory, or arriving at or leaving an offshore facility in its territorial sea.

12 If insurance or other financial security is not maintained in respect of a ship owned by a State Party, the provisions of this article relating thereto shall not be applicable to such ship, but the ship shall carry a compulsory insurance certificate issued by the appropriate authorities of the State of the ship's registry stating that the ship is owned by that State and that the ship's liability is covered within the limit prescribed in accordance with paragraph 1. Such a compulsory insurance certificate shall follow as closely as possible the model prescribed by paragraph 2.

### **Chapter III**

## **COMPENSATION BY THE INTERNATIONAL HAZARDOUS AND NOXIOUS SUBSTANCES FUND (HNS FUND)**

### **Article 13**

#### **Establishment of the HNS Fund**

1 The International Hazardous and Noxious Substances Fund (HNS Fund) is hereby established with the following aims:

(a) to provide compensation for damage in connection with the carriage of hazardous and noxious substances by sea, to the extent that the protection afforded by chapter II is inadequate or not available; and

(b) to give effect to the related tasks set out in article 15.

2 The HNS Fund shall in each State Party be recognized as a legal person capable under the laws of that State of assuming rights and obligations and of being a party in legal proceedings before the courts of that State. Each State Party shall recognize the Director as the legal representative of the HNS Fund.

**Article 14**  
**Compensation**

1 For the purpose of fulfilling its function under article 13, paragraph 1(a), the HNS Fund shall pay compensation to any person suffering damage if such person has been unable to obtain full and adequate compensation for the damage under the terms of chapter II:

- (a) because no liability for the damage arises under chapter II;
- (b) because the owner liable for the damage under chapter II is financially incapable of meeting the obligations under this Convention in full and any financial security that may be provided under chapter II does not cover or is insufficient to satisfy the claims for compensation for damage; an owner being treated as financially incapable of meeting these obligations and a financial security being treated as insufficient if the person suffering the damage has been unable to obtain full satisfaction of the amount of compensation due under chapter II after having taken all reasonable steps to pursue the available legal remedies;
- (c) because the damage exceeds the owner's liability under the terms of chapter II.

2 Expenses reasonably incurred or sacrifices reasonably made by the owner voluntarily to prevent or minimize damage shall be treated as damage for the purposes of this article.

3 The HNS Fund shall incur no obligation under the preceding paragraphs if:

- (a) it proves that the damage resulted from an act of war, hostilities, civil war or insurrection or was caused by hazardous and noxious substances which had escaped or been discharged from a warship or other ship owned or operated by a State and used, at the time of the incident, only on Government non-commercial service; or
- (b) the claimant cannot prove that there is a reasonable probability that the damage resulted from an incident involving one or more ships.

4 If the HNS Fund proves that the damage resulted wholly or partly either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the HNS Fund may be exonerated wholly or partially from its obligation to pay compensation to such person. The HNS Fund shall in any event be exonerated to the extent that the owner may have been exonerated under article 7, paragraph 3. However, there shall be no such exoneration of the HNS Fund with regard to preventive measures.

5 (a) Except as otherwise provided in subparagraph (b), the aggregate amount of compensation payable by the HNS Fund under this article shall in respect of any one incident be limited, so that

the total sum of that amount and any amount of compensation actually paid under chapter II for damage within the scope of application of this Convention as defined in article 3 shall not exceed 250 million units of account.

(b) The aggregate amount of compensation payable by the HNS Fund under this article for damage resulting from a natural phenomenon of an exceptional, inevitable and irresistible character shall not exceed 250 million units of account.

(c) Interest accrued on a fund constituted in accordance with article 9, paragraph 3, if any, shall not be taken into account for the computation of the maximum compensation payable by the HNS Fund under this article.

(d) The amounts mentioned in this article shall be converted into national currency on the basis of the value of that currency with reference to the Special Drawing Right on the date of the decision of the Assembly of the HNS Fund as to the first date of payment of compensation.

6 Where the amount of established claims against the HNS Fund exceeds the aggregate amount of compensation payable under paragraph 5, the amount available shall be distributed in such a manner that the proportion between any established claim and the amount of compensation actually recovered by the claimant under this Convention shall be the same for all claimants. Claims in respect of death or personal injury shall have priority over other claims, however, save to the extent that the aggregate of such claims exceeds two-thirds of the total amount established in accordance with paragraph 5.

7 The Assembly of the HNS Fund may decide that, in exceptional cases, compensation in accordance with this Convention can be paid even if the owner has not constituted a fund in accordance with chapter II. In such cases paragraph 5(d) applies accordingly.

## **Article 15**

### **Related tasks of the HNS Fund**

For the purpose of fulfilling its function under article 13, paragraph 1(a), the HNS Fund shall have the following tasks:

(a) to consider claims made against the HNS Fund;

(b) to prepare an estimate in the form of a budget for each calendar year of:

Expenditure:

(i) costs and expenses of the administration of the HNS Fund in the relevant year and any deficit from operations in the preceding years; and



(ii) payments to be made by the HNS Fund in the relevant year;

Income:

(iii) surplus funds from operations in preceding years, including any interest;

(iv) initial contributions to be paid in the course of the year;

(v) annual contributions if required to balance the budget; and

(vi) any other income;

(c) to use at the request of a State Party its good offices as necessary to assist that State to secure promptly such personnel, material and services as are necessary to enable the State to take measures to prevent or mitigate damage arising from an incident in respect of which the HNS Fund may be called upon to pay compensation under this Convention; and

(d) to provide, on conditions laid down in the internal regulations, credit facilities with a view to the taking of preventive measures against damage arising from a particular incident in respect of which the HNS Fund may be called upon to pay compensation under this Convention.

## **Article 16**

### **General provisions on contributions**

1 The HNS Fund shall have a general account, which shall be divided into sectors.

2 The HNS Fund shall, subject to article 19, paragraphs 3 and 4, also have separate accounts in respect of:

(a) oil as defined in article 1, paragraph 5(a)(i) (oil account);

(b) liquefied natural gases of light hydrocarbons with methane as the main constituent (LNG) (LNG account); and

(c) liquefied petroleum gases of light hydrocarbons with propane and butane as the main constituents (LPG) (LPG account).

3 There shall be initial contributions and, as required, annual contributions to the HNS Fund.

4 Contributions to the HNS Fund shall be made into the general account in accordance with article 18, to separate accounts in accordance with article 19 and to either the general account or separate accounts in accordance with article 20 or article 21, paragraph 5. Subject to article 19, paragraph 6, the general account shall be available to compensate damage caused by hazardous and noxious substances covered by that account, and a separate account shall be available to compensate damage caused by a hazardous and noxious substance covered by that account.

5 For the purposes of article 18, article 19, paragraph 1(a)(i), paragraph 1(a)(ii) and paragraph 1(b), article 20 and article 21, paragraph 5, where the quantity of a given type of contributing cargo received in the territory of a State Party by any person in a calendar year when aggregated with the quantities of the same type of cargo received in the same State Party in that year by any associated person or persons exceeds the limit specified in the respective subparagraphs, such a person shall pay contributions in respect of the actual quantity received by that person notwithstanding that that quantity did not exceed the respective limit.

6 "Associated person" means any subsidiary or commonly controlled entity. The question whether a person comes within this definition shall be determined by the national law of the State concerned.

## **Article 17**

### **General provisions on annual contributions**

1 Annual contributions to the general account and to each separate account shall be levied only as required to make payments by the account in question.

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.

3 The Assembly shall decide the total amount of annual contributions to be levied to the general account and to each separate account. Following that decision the Director shall, in respect of each State Party, calculate for each person liable to pay contributions in accordance with article 18, article 19, paragraph 1 and paragraph 1bis, and article 21, paragraph 5, the amount of that person's annual contribution to each account, on the basis of a fixed sum for each unit of contributing cargo reported in respect of the person during the preceding calendar year or such other year as the Assembly may decide. For the general account, the above-mentioned fixed sum per unit of contributing cargo for each sector shall be calculated pursuant to the regulations contained in Annex II to this Convention. For each separate account, the fixed sum per unit of contributing cargo referred to above shall be calculated by dividing the total annual contribution to be levied to that account by the total quantity of cargo contributing to that account.

4 The Assembly may 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 The Assembly shall also decide on the distribution between the relevant accounts and sectors of amounts paid in compensation for damage caused by two or more substances which fall within different accounts or sectors, on the basis of an estimate of the extent to which each of the substances involved contributed to the damage.

## **Article 18**

### **Annual contributions to the general account**

1 Subject to article 16, paragraph 5, annual contributions to the general account shall be made in respect of each State Party by any person who was the receiver in that State in the preceding calendar year, or such other year as the Assembly may decide, of aggregate quantities exceeding 20,000 tonnes of contributing cargo, other than substances referred to in article 19, paragraph 1 and paragraph 1bis, which fall within the following sectors:

- (a) solid bulk materials referred to in article 1, paragraph 5(a)(vii);
- (b) substances referred to in paragraph 2; and
- (c) other substances.

2 Annual contributions shall also be payable to the general account by persons who would have been liable to pay contributions to a separate account in accordance with article 19, paragraph 1 and paragraph 1bis, had its operation not been postponed or suspended in accordance with article 19. Each separate account the operation of which has been postponed or suspended under article 19 shall form a separate sector within the general account.

## **Article 19**

### **Annual contributions to separate accounts**

1 Subject to article 16, paragraph 5, annual contributions to separate accounts shall be made in respect of each State Party:

- (a) in the case of the oil account,
  - (i) by any person who has received in that State in the preceding calendar year, or such other year as the Assembly may decide, total quantities exceeding 150,000 tonnes of contributing oil as defined in article 1, paragraph 3 of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, as amended, and who is or would be liable to pay contributions to the International Oil Pollution Compensation Fund in accordance with article 10 of that Convention; and

(ii) by any person who was the receiver in that State in the preceding calendar year, or such other year as the Assembly may decide, of total quantities exceeding 20,000 tonnes of other oils carried in bulk listed in appendix I 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;

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) in the case of the LPG account, 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 total quantities exceeding 20,000 tonnes of LPG.

(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.

2 Subject to paragraph 3, the separate accounts referred to in paragraph 1 and paragraph 1bis above shall become effective at the same time as the general account.

3 The initial operation of a separate account referred to in article 16, paragraph 2 shall be postponed until such time as the quantities of contributing cargo in respect of that account during the preceding calendar year, or such other year as the Assembly may decide, exceed the following levels:

- (a) 350 million tonnes of contributing cargo in respect of the oil account;
- (b) 20 million tonnes of contributing cargo in respect of the LNG account; and
- (c) 15 million tonnes of contributing cargo in respect of the LPG account.

4 The Assembly may suspend the operation of a separate account if:

- (a) the quantities of contributing cargo in respect of that account during the preceding calendar year fall below the respective level specified in paragraph 3; or
- (b) when six months have elapsed from the date when the contributions were due, the total unpaid contributions to that account exceed ten per cent of the most recent levy to that account in accordance with paragraph 1.

5 The Assembly may reinstate the operation of a separate account which has been suspended in accordance with paragraph 4.

6 Any person who would be liable to pay contributions to a separate account the operation of which has been postponed in accordance with paragraph 3 or suspended in accordance with paragraph 4, shall pay into the general account the contributions due by that person in respect of that separate account. For the purpose of calculating future contributions, the postponed or suspended separate account shall form a new sector in the general account and shall be subject to the HNS points system defined in Annex II.

## **Article 20**

### **Initial contributions**

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.

2 The fixed sum and the units for the different sectors within the general account as well as for each separate account referred to in paragraph 1 shall be determined by the Assembly.

3 Initial contributions shall be paid within three months following the date on which the HNS Fund issues invoices in respect of each State Party to persons liable to pay contributions in accordance with paragraph 1.

## **Article 21**

### **Reports**

1 Each State Party shall ensure that any person liable to pay contributions in accordance with articles 18, 19 or paragraph 5 of this article appears on a list to be established and kept up to date by the Director in accordance with the provisions of this article.

2 For the purposes set out in paragraph 1, each State Party shall communicate to the Director, at a time and in the manner to be prescribed in the internal regulations of the HNS Fund, the name and address of any person who in respect of the State is liable to pay contributions in accordance with articles 18, 19 or paragraph 5 of this article, as well as data on the relevant quantities of contributing cargo for which such a person is liable to contribute in respect of the preceding calendar year.

3 For the purposes of ascertaining who are, at any given time, the persons liable to pay contributions in accordance with articles 18, 19 or paragraph 5 of this article and of establishing, where applicable, the quantities of cargo to be taken into account for any such person when determining the amount of the contribution, the list shall be prima facie evidence of the facts stated therein.

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.

5 In respect of contributing cargo carried from one port or terminal of a State Party to another port or terminal located in the same State and discharged there, States Parties shall have the option of submitting to the HNS Fund a report with an annual aggregate quantity for each account covering all receipts of contributing cargo, including any quantities in respect of which contributions are payable pursuant to article 16, paragraph 5. The State Party shall, at the time of reporting, either:

(a) notify the HNS Fund that that State will pay the aggregate amount for each account in respect of the relevant year in one lump sum to the HNS Fund; or

(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 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 21bis**

#### **Non-reporting**

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 22**

#### **Non-payment of contributions**

1 The amount of any contribution due under articles 18, 19, 20 or article 21, paragraph 5 and which is in arrears shall bear interest at a rate which shall be determined in accordance with the internal regulations of the HNS Fund, provided that different rates may be fixed for different circumstances.

2 Where a person who is liable to pay contributions in accordance with articles 18, 19, 20 or article 21, paragraph 5, does not fulfil the obligations in respect of any such contribution or any part thereof and is in arrears, the Director shall take all appropriate action, including court action, against such a person on behalf of the HNS Fund with a view to the recovery of the amount due. However, where the defaulting contributor is manifestly insolvent or the circumstances otherwise so warrant, the Assembly may, upon recommendation of the Director, decide that no action shall be taken or continued against the contributor.

### **Article 23**

#### **Optional liability of States Parties for the payment of contributions**

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.

2 Where a declaration under paragraph 1 is made prior to the entry into force of this Convention in accordance with article 46, it shall be deposited with the Secretary-General who shall after the entry into force of this Convention communicate the declaration to the Director.

3 A declaration under paragraph 1 which is made after the entry into force of this Convention shall be deposited with the Director.

4 A declaration made in accordance with this article may be withdrawn by the relevant State giving notice thereof in writing to the Director. Such a notification shall take effect three months after the Director's receipt thereof.

5 Any State which is bound by a declaration made under this article shall, in any proceedings brought against it before a competent court in respect of any obligation specified in the declaration, waive any immunity that it would otherwise be entitled to invoke.

#### **Organization and administration Article 24**

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



## **Article 25**

### **Assembly**

The Assembly shall consist of all States Parties to this Convention.

## **Article 26**

- (a) to elect at each regular session its President and two Vice-Presidents who shall hold office until the next regular session;
- (b) to determine its own rules of procedure, subject to the provisions of this Convention;
- (c) to develop, apply and keep under review internal and financial regulations relating to the aim of the HNS Fund as described in article 13, paragraph 1(a), and the related tasks of the HNS Fund listed in article 15;
- (d) to appoint the Director and make provisions for the appointment of such other personnel as may be necessary and determine the terms and conditions of service of the Director and other personnel;
- (e) to adopt the annual budget prepared in accordance with article 15(b);
- (f) to consider and approve as necessary any recommendation of the Director regarding the scope of definition of contributing cargo;
- (g) to appoint auditors and approve the accounts of the HNS Fund;
- (h) to approve settlements of claims against the HNS Fund, to take decisions in respect of the distribution among claimants of the available amount of compensation in accordance with article 14 and to determine the terms and conditions according to which provisional payments in respect of claims shall be made with a view to ensuring that victims of damage are compensated as promptly as possible;
- (i) to establish a Committee on Claims for Compensation with at least 7 and not more than 15 members and any temporary or permanent subsidiary body it may consider to be necessary, to define its terms of reference and to give it the authority needed to perform the functions entrusted to it; when appointing the members of such body, the Assembly shall endeavour to secure an equitable geographical distribution of members and to ensure that the States Parties are appropriately represented; the Rules of Procedure of the Assembly may be applied, *mutatis mutandis*, for the work of such subsidiary body;
- (j) to determine which States not party to this Convention, which Associate Members of the Organization and which intergovernmental and international non-governmental organizations

shall be admitted to take part, without voting rights, in meetings of the Assembly and subsidiary bodies;

(k) to give instructions concerning the administration of the HNS Fund to the Director and subsidiary bodies;

The functions of the Assembly shall be:

(l) to supervise the proper execution of this Convention and of its own decisions;

(m) to review every five years the implementation of this Convention with particular reference to the performance of the system for the calculation of levies and the contribution mechanism for domestic trade; and

(n) to perform such other functions as are allocated to it under this Convention or are otherwise necessary for the proper operation of the HNS Fund.

#### **Article 27**

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

2 Extraordinary sessions of the Assembly shall be convened by the Director at the request of at least one-third of the members of the Assembly and may be convened on the Director's own initiative after consultation with the President of the Assembly. The Director shall give members at least thirty days' notice of such sessions.

#### **Article 28**

A majority of the members of the Assembly shall constitute a quorum for its meetings.

#### **Article 29**

##### **Secretariat**

1 The Secretariat shall comprise the Director and such staff as the administration of the HNS Fund may require.

2 The Director shall be the legal representative of the HNS Fund.

#### **Article 30**

1 The Director shall be the chief administrative officer of the HNS Fund. Subject to the instructions given by the Assembly, the Director shall perform those functions which are assigned to the Director by this Convention, the internal regulations of the HNS Fund and the Assembly.

2 The Director shall in particular:

- (a) appoint the personnel required for the administration of the HNS Fund;
- (b) take all appropriate measures with a view to the proper administration of the assets of the HNS Fund;
- (c) collect the contributions due under this Convention while observing in particular the provisions of article 22, paragraph 2;
- (d) to the extent necessary to deal with claims against the HNS Fund and to carry out the other functions of the HNS Fund, employ the services of legal, financial and other experts;
- (e) take all appropriate measures for dealing with claims against the HNS Fund, within the limits and on conditions to be laid down in the internal regulations of the HNS Fund, including the final settlement of claims without the prior approval of the Assembly where these regulations so provide;
- (f) prepare and submit to the Assembly the financial statements and budget estimates for each calendar year;
- (g) prepare, in consultation with the President of the Assembly, and publish a report on the activities of the HNS Fund during the previous calendar year; and
- (h) prepare, collect and circulate the documents and information which may be required for the work of the Assembly and subsidiary bodies.

### **Article 31**

In the performance of their duties the Director and the staff and experts appointed by the Director shall not seek or receive instructions from any Government or from any authority external to the HNS Fund. They shall refrain from any action which might adversely reflect on their position as international officials. Each State Party on its part undertakes to respect the exclusively international character of the responsibilities of the Director and the staff and experts appointed by the Director, and not to seek to influence them in the discharge of their duties.

### **Article 32**

#### **Finances**

1 Each State Party shall bear the salary, travel and other expenses of its own delegation to the Assembly and of its representatives on subsidiary bodies.

2 Any other expenses incurred in the operation of the HNS Fund shall be borne by the HNS Fund.

### **Article 33**

#### **Voting**

The following provisions shall apply to voting in the Assembly:

- (a) each member shall have one vote;
- (b) except as otherwise provided in article 34, decisions of the Assembly shall be made by a majority vote of the members present and voting;
- (c) decisions where a two-thirds majority is required shall be a two-thirds majority vote of members present; and
- (d) for the purpose of this article the phrase "members present" means "members present at the meeting at the time of the vote", and the phrase "members present and voting" means "members present and casting an affirmative or negative vote". Members who abstain from voting shall be considered as not voting.

### **Article 34**

The following decisions of the Assembly shall require a two-thirds majority:

- (a) a decision under article 19, paragraphs 4 or 5 to suspend or reinstate the operation of a separate account;
- (b) a decision under article 22, paragraph 2, not to take or continue action against a contributor;
- (c) the appointment of the Director under article 26(d);
- (d) the establishment of subsidiary bodies, under article 26(i), and matters relating to such establishment; and
- (e) a decision under article 51, paragraph 1, that this Convention shall continue to be in force.

### **Article 35**

#### **Tax exemptions and currency regulations**

1 The HNS Fund, its assets, income, including contributions, and other property necessary for the exercise of its functions as described in article 13, paragraph 1, shall enjoy in all States Parties exemption from all direct taxation.

2 When the HNS Fund makes substantial purchases of movable or immovable property, or of services which are necessary for the exercise of its official activities in order to achieve its aims as set out in article 13, paragraph 1, the cost of which include indirect taxes or sales taxes, the Governments of the States Parties shall take, whenever possible, appropriate measures for the remission or refund of the amount of such duties and taxes. Goods thus acquired shall not be sold

against payment or given away free of charge unless it is done according to conditions approved by the Government of the State having granted or supported the remission or refund.

3 No exemption shall be accorded in the case of duties, taxes or dues which merely constitute payment for public utility services.

4 The HNS Fund shall enjoy exemption from all customs duties, taxes and other related taxes on articles imported or exported by it or on its behalf for its official use. Articles thus imported shall not be transferred either for consideration or gratis on the territory of the country into which they have been imported except on conditions agreed by the Government of that country.

5 Persons contributing to the HNS Fund as well as victims and owners receiving compensation from the HNS Fund shall be subject to the fiscal legislation of the State where they are taxable, no special exemption or other benefit being conferred on them in this respect.

6 Notwithstanding existing or future regulations concerning currency or transfers, States Parties shall authorize the transfer and payment of any contribution to the HNS Fund and of any compensation paid by the HNS Fund without any restriction.

### **Article 36**

#### **Confidentiality of information**

Information relating to individual contributors supplied for the purpose of this Convention shall not be divulged outside the HNS Fund except in so far as it may be strictly necessary to enable the HNS Fund to carry out its functions including the bringing and defending of legal proceedings.

### **Chapter IV**

#### **CLAIMS AND ACTIONS**

### **Article 37**

#### **Limitation of actions**

1 Rights to compensation under chapter II shall be extinguished unless an action is brought thereunder within three years from the date when the person suffering the damage knew or ought reasonably to have known of the damage and of the identity of the owner.

2 Rights to compensation under chapter III shall be extinguished unless an action is brought thereunder or a notification has been made pursuant to article 39, paragraph 7, within three years from the date when the person suffering the damage knew or ought reasonably to have known of the damage.

3 In no case, however, shall an action be brought later than ten years from the date of the incident which caused the damage.

4 Where the incident consists of a series of occurrences, the ten-year period mentioned in paragraph 3 shall run from the date of the last of such occurrences.

### **Article 38**

#### **Jurisdiction in respect of action against the owner**

1 Where an incident has caused damage in the territory, including the territorial sea or in an area referred to in article 3(b), of one or more States Parties, or preventive measures have been taken to prevent or minimize damage in such territory including the territorial sea or in such area, actions for compensation may be brought against the owner or other person providing financial security for the owner's liability only in the courts of any such States Parties.

2 Where an incident has caused damage exclusively outside the territory, including the territorial sea, of any State and either the conditions for application of this Convention set out in article 3(c) have been fulfilled or preventive measures to prevent or minimize such damage have been taken, actions for compensation may be brought against the owner or other person providing financial security for the owner's liability only in the courts of:

(a) the State Party where the ship is registered or, in the case of an unregistered ship, the State Party whose flag the ship is entitled to fly; or

(b) the State Party where the owner has habitual residence or where the principal place of business of the owner is established; or

(c) the State Party where a fund has been constituted in accordance with article 9, paragraph 3.

3 Reasonable notice of any action taken under paragraph 1 or 2 shall be given to the defendant.

4 Each State Party shall ensure that its courts have jurisdiction to entertain actions for compensation under this Convention.

5 After a fund under article 9 has been constituted by the owner or by the insurer or other person providing financial security in accordance with article 12, the courts of the State in which such fund is constituted shall have exclusive jurisdiction to determine all matters relating to the apportionment and distribution of the fund.

Jurisdiction in respect of action against the HNS Fund or taken by the HNS Fund.

### **Article 39**

1 Subject to the subsequent provisions of this article, any action against the HNS Fund for compensation under article 14 shall be brought only before a court having jurisdiction under article 38 in respect of actions against the owner who is liable for damage caused by the relevant incident or before a court in a State Party which would have been competent if an owner had been liable.

2 In the event that the ship carrying the hazardous or noxious substances which caused the damage has not been identified, the provisions of article 38, paragraph 1, shall apply *mutatis mutandis* to actions against the HNS Fund.

3 Each State Party shall ensure that its courts have jurisdiction to entertain such actions against the HNS Fund as are referred to in paragraph 1.

4 Where an action for compensation for damage has been brought before a court against the owner or the owner's guarantor, such court shall have exclusive jurisdiction over any action against the HNS Fund for compensation under the provisions of article 14 in respect of the same damage.

5 Each State Party shall ensure that the HNS Fund shall have the right to intervene as a party to any legal proceedings instituted in accordance with this Convention before a competent court of that State against the owner or the owner's guarantor.

6 Except as otherwise provided in paragraph 7, the HNS Fund shall not be bound by any judgement or decision in proceedings to which it has not been a party or by any settlement to which it is not a party.

7 Without prejudice to the provisions of paragraph 5, where an action under this Convention for compensation for damage has been brought against an owner or the owner's guarantor before a competent court in a State Party, each party to the proceedings shall be entitled under the national law of that State to notify the HNS Fund of the proceedings. Where such notification has been made in accordance with the formalities required by the law of the court seized and in such time and in such a manner that the HNS Fund has in fact been in a position effectively to intervene as a party to the proceedings, any judgement rendered by the court in such proceedings shall, after it has become final and enforceable in the State where the judgement was given, become binding upon the HNS Fund in the sense that the facts and findings in that judgement

may not be disputed by the HNS Fund even if the HNS Fund has not actually intervened in the proceedings.

## **Article 40**

### **Recognition and enforcement**

1 Any judgement given by a court with jurisdiction in accordance with article 38, which is enforceable in the State of origin where it is no longer subject to ordinary forms of review, shall be recognized in any State Party, except:

- (a) where the judgement was obtained by fraud; or
- (b) where the defendant was not given reasonable notice and a fair opportunity to present the case.

2 A judgement recognized under paragraph 1 shall be enforceable in each State Party as soon as the formalities required in that State have been complied with. The formalities shall not permit the merits of the case to be re-opened.

3 Subject to any decision concerning the distribution referred to in article 14, paragraph 6, any judgement given against the HNS Fund by a court having jurisdiction in accordance with article 39, paragraphs 1 and 3 shall, when it has become enforceable in the State of origin and is in that State no longer subject to ordinary forms of review, be recognized and enforceable in each State Party.

## **Article 41**

### **Subrogation and recourse**

1 The HNS Fund shall, in respect of any amount of compensation for damage paid by the HNS Fund in accordance with article 14, paragraph 1, acquire by subrogation the rights that the person so compensated may enjoy against the owner or the owner's guarantor.

2 Nothing in this Convention shall prejudice any rights of recourse or subrogation of the HNS Fund against any person, including persons referred to in article 7, paragraph 2(d), other than those referred to in the previous paragraph, in so far as they can limit their liability. In any event the right of the HNS Fund to subrogation against such persons shall not be less favourable than that of an insurer of the person to whom compensation has been paid.

3 Without prejudice to any other rights of subrogation or recourse against the HNS Fund which may exist, a State Party or agency thereof which has paid compensation for damage in



accordance with provisions of national law shall acquire by subrogation the rights which the person so compensated would have enjoyed under this Convention.

#### **Article 42**

##### **Supersession clause**

This Convention shall supersede any convention in force or open for signature, ratification or accession at the date on which this Convention is opened for signature, but only to the extent that such convention would be in conflict with it; however, nothing in this article shall affect the obligations of States Parties to States not party to this Convention arising under such convention.

#### **Chapter V**

### **TRANSITIONAL PROVISIONS**

#### **Article 43**

##### **First session of the Assembly**

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

#### **Article 44**

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.

It may be noted that article 19 of the Protocol of 2010 inserts this article as number 44bis; however, since article 16 of the Protocol of 2010 deletes article 43 of the Convention and renumbers article 44 as article 43, the Secretariat has renumbered this article as 44, instead of 44bis.

**Chapter VI**  
**FINAL CLAUSES**

[Articles 20 to 29 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]

**Article 45**

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

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

(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.

#### **Article 46**

##### **Entry into force**

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 45, 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 latter.

#### **Article 47**

##### **Revision and amendment**

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.

## **Article 48**

### **Amendment of limits**

1 Without prejudice to the provisions of article 47, 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 49, 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.

## **Article 49**

### **Denunciation**

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.

## **Article 50**

### **Extraordinary sessions of the Assembly**

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.

## **Article 51**

### **Cessation**

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

### **Article 52**

#### **Winding up of the HNS Fund**

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.

### **Article 53**

#### **Depositary**

1 This Protocol and any amendment adopted under article 48 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 45, paragraph 4;
  - (ii) data on contributing cargo submitted annually thereafter, in accordance with article 45, 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 48, paragraph 2;
  - (v) any amendment which has been adopted in accordance with article 48, paragraph 5;
  - (vi) any amendment deemed to have been accepted under article 48, paragraph 8, together with the date on which that amendment shall enter into force in accordance with article 48, 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.

#### **Article 54**

##### **Languages**

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

DONE AT London this 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.



**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.

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, 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 ..... On .....

(Place)

(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.

## **ANNEX II**

### **REGULATIONS FOR THE CALCULATION OF ANNUAL CONTRIBUTIONS TO THE GENERAL ACCOUNT**

#### Regulation 1

1 sector in accordance with these regulations.

The fixed sum referred to in article 17, paragraph 3 shall be determined for each

2 When it is necessary to calculate contributions for more than one sector of the general account, a separate fixed sum per unit of contributing cargo shall be calculated for each of the following sectors as may be required:

- (a) solid bulk materials referred to in article 1, paragraph 5(a)(vii);
- (b) oil, if the operation of the oil account is postponed or suspended;
- (c) LNG, if the operation of the LNG account is postponed or suspended;
- (d) LPG, if the operation of the LPG account is postponed or suspended;
- (e) other substances.

## Regulation 2

1 For each sector, the fixed sum per unit of contributing cargo shall be the product of the levy per HNS point and the sector factor for that sector.

2 The levy per HNS point shall be the total annual contributions to be levied to the general account divided by the total HNS points for all sectors.

3 The total HNS points for each sector shall be the product of the total volume, measured in metric tonnes, of contributing cargo for that sector and the corresponding sector factor.

4 A sector factor shall be calculated as the weighted arithmetic average of the claims/volume ratio for that sector for the relevant year and the previous nine years, according to this regulation.

5 Except as provided in paragraph 6, the claims/volume ratio for each of these years shall be calculated as follows:

(a) established claims, measured in units of account converted from the claim currency using the rate applicable on the date of the incident in question, for damage caused by substances in respect of which contributions to the HNS Fund are due for the relevant year; divided by

(b) the volume of contributing cargo corresponding to the relevant year.

6 In cases where the information required in paragraphs 5(a) and (b) is not available, the following values shall be used for the claims/volume ratio for each of the missing years:

(a) solid bulk materials referred to in article 1, paragraph 5 (a)(vii)

(b) oil, if the operation of the oil account is postponed

(c) LNG, if the operation of the LNG account is postponed

(d) LPG, if the operation of the LPG account is postponed

(e) other substances

7 The arithmetic average of the ten years shall be weighted on a decreasing linear scale, so that the ratio of the relevant year shall have a weight of 10, the year prior to the relevant year shall have a weight of 9, the next preceding year shall have a weight of 8, and so on, until the tenth year has a weight of 1.

8 If the operation of a separate account has been suspended, the relevant sector factor shall be calculated in accordance with those provisions of this regulation which the Assembly shall consider appropriate.

## **Article two**

### **Definitions**

For the purpose of this Law, the definitions given in Article 1 of the 2010 HNS Convention shall apply mutatis mutandis.

## **Article three**

### **Scope of Application - Exemptions**

1. The present Law, the 2010 HNS Convention, its Annexes and any Presidential or Ministerial Decrees for its implementation shall apply to:

- a) Greek ships wherever they are.
- b) Foreign ships, which operate under the authority of Greece.
- c) Other ships when in Greek waters.

2. The present Law, the 2010 HNS Convention, its Annexes and any Presidential or Ministerial Decrees for its implementation shall not apply to ships:

- a) which do not exceed 200 gross tonnage; and
- b) which carry hazardous and noxious substances only in packaged form; and
- c) while they are engaged on voyages between ports or facilities of Greece.

## **Article four**

### **Competent Authorities**

Competent authorities for the application of the present Law, the 2010 HNS Convention, its Annexes and the Presidential and Ministerial Decrees issued for its implementation shall be:

- a) In Greece, the Merchant Marine Inspectorate of the Ministry of Shipping, the Hellenic Coast Guard and the Greek Port Authorities.
- b) Abroad, the Officers of the Hellenic Coast Guard who serve in Greek Embassies and Consulates and exercise specific maritime tasks or in circumstances of absence, the Greek Consulate itself.

### **Article five**

1. Any person having received within a calendar year contributing cargo within the territory of Greece in total quantities exceeding the limits set out in Articles 18 and 19 of the 2010 HNS Convention, shall pay initial contributions and, as required, annual contributions to the HNS Fund in accordance with Article 16, 18 and 19 of that Convention in the amount and by the date determined by the HNS Fund Assembly.
2. This obligation applies equally to any associated person or persons when the aggregated quantity of contributing cargo received in the same calendar year in Greece exceeds the limits specified in the 2010 HNS Convention.
3. The amounts of the contributions shall be deposited in the special account "the Fund for compensation for HNS Damage" maintained in the Bank of Greece and then shall be transferred to the Director of the HNS Fund, according to the procedure indicated by the joint decision of the Ministers of Finance and Shipping.

### **Article six**

1. Any person who in a calendar year received contributing cargo, so as to be liable to contribute to the HNS Fund, shall by 1 March of the following calendar year report to the Ministry of Finance the exact quantity of the received contributing cargo in the preceding calendar year.
2. The Minister of Finance shall, in accordance with Article 21 of the HNS Fund, forward a notice to the Director of the HNS Fund including the data of persons liable for contributions as prescribed in Article 21 of the 2010 HNS Convention, as soon as possible, and no later than the 31 March of each year.

### **Article seven**

#### **Certification**

1. Ships to which Article 12 of the 2010 HNS Convention applies shall have on board the certificate referred to in Article 12 (2) of the 2010 HNS Convention.
2. The certificate referred in the 2010 HNS Convention shall be issued to Greek ships, both in Greek and English, by the Competent Authorities mentioned in Article four of the present Law.

3. For the issuance of the certificate, a fee of [(25) euro] shall be paid, following the submission of the relevant application. This fee constitutes public revenue and shall be collected in accordance with the provisions on the public revenue collection.

## **Article eight**

### **Cancellation of the certificate**

1. If, after the issuance of the certificate and during the period that it is valid, the person to whom the certificate was granted ceases to be the owner of the ship, that person shall submit this certificate to the Greek Port Authority nearest to the place where the ship or his principal place of business is located which shall cancel the certificate.
2. If, after the issuance of the certificate, and during the period that it is valid, it is proven by due process, that the insurance contract in relation to which the certificate was issued is invalid, the certificate may be cancelled by the Greek Port Authority, which may request the return of the certificate from the person to whom it was issued.
3. If, after the issuance of the certificate, and during the period that it is valid, issues in relation to the insurers shown on the certificate arise, so that if the issuance of the certificate had been requested at that time, the entitled Port Authority would refuse the issuance of the certificate, the certificate may be cancelled by the Greek Port Authority, which may request the return of the certificate from the person to whom it was issued.

## **Article nine**

### **Inspections**

The Hellenic Coast Guard may inspect any ship in any port or offshore terminal in Greece or abroad to verify that there is on board a valid compulsory insurance certificate.

## **Article ten**

### **Sanctions – Appeals**

1. Any person who is obliged to pay contribution to the HNS Fund and refuses or delays to pay after the specified day shall pay a fine of an amount equal to the double of his contribution. The fine shall be increased by 10 per cent for each additional month of delay of payment of the contribution.

2. The fine is imposed by decision of the Greek Port Authority. The update process of the Port Authorities for failure to pay contributions by the parties responsible shall be determined by joint decision of the Ministers of Finance and Shipping. The fines imposed under this Article, constitute revenue of the Special Fund for the Implementation of the Regulatory and Planning Policies (Special Account "Blue Fund") and are collected in accordance with the provisions on the revenue collection of this Fund.

3. Any person liable to pay a fine has the right to appeal to the competent Administrative Court within a period not exceeding sixty (60) days beginning from the day of service of the judgment to him in accordance with the provisions of the Code of the Administrative Procedure. Such an action shall not suspend the execution of the decision.

4. No ship to which Article 12 of the 2010 HNS Convention applies shall proceed or attempt to proceed to the sea, unless it has a valid certificate.

5. In case that the ship proceeds or attempts to proceed in infringement of this Article, the master or owner shall be liable to pay a fine which may not exceed the amount of **[fifty thousand (50,000) euro]**. The ship may be detained from the date that the decision imposing the fine has been notified until the fine has been paid or a letter of credit of an equivalent amount has been filed to a bank in Greece. The fines are collected in accordance with the provisions on the public revenue collection.

6. An alleged offender may seek leave to appeal before the Minister of Shipping within a period of thirty (30) days against the decision imposing the fine. Such an action shall not suspend the execution of the decision.

7. The maximum limit of the fine may be increased by a Presidential Decree issued at the proposal of the Minister of Shipping.

#### **Article eleven**

1. Judgments given by a court with jurisdiction in accordance with Article 40, which are enforceable in the State of origin and no longer subject to ordinary forms of review, shall be recognized and enforced in Greece, except in the cases provided in Article 40 paragraph 1.

2. Judgments on matters covered by the 2010 HNS Convention, when given by a court of a Member State of European Union to which Decision 14112/15 applies, shall be recognised and enforced in Greece in accordance with the relevant European Union rules on the subject.

3. Judgments on matters covered by the 2010 HNS Convention, when given by a court of the Kingdom of Denmark, shall be recognised and enforced in Greece, in accordance with the 2005 Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

4. Judgments on matters covered by the 2010 HNS Convention, when given by a court of a third State bound by the Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters of 30 October 2007, shall be recognised and enforced in Greece, in accordance with that Convention.

#### **Article twelve**

The organs and the general administrative and judicial litigation procedure of cases in which the HNS Fund intervenes as a party shall be determined by Presidential Decrees issued at the proposal of the Minister of Environment and the Minister of Shipping.

#### **Article thirteen**

##### **Acceptance of amendments and Guidelines**

##### **to the 2010 HNS Convention and its Annexes – Codification**

By Presidential Decrees issued at the proposal of the Minister of Shipping:

- a) Any amendments to the 2010 HNS Convention and its Annexes can be adopted.
- b) Any other detail necessary for the implementation of the 2010 HNS Convention and the present Law can be regulated.
- c) The provisions of the 2010 HNS Convention, its Annexes and any amendments to them can be codified in a uniform text.

#### **Article fourteen**

##### **Suspension**

The application of the 2010 HNS Convention can be suspended wholly or partly in times of war by a Presidential Decree issued at the proposal of the Minister of Shipping.

#### **Article fifteen**

In case the Greek text differs from the English, the latter shall prevail.



**Article sixteen**

**Entry into force**

The present law shall enter into force upon the date of its publication in the Government Gazette of the Hellenic Republic and in accordance with the conditions of Article 46 of the 2010 HNS Convention.

We order the publication of the law hereof in the Government Gazette and its execution as a law of the State.

**Athens, 2 May 2016**

**THE PRESIDENT OF THE DEMOCRACY**

**PROKOPIS B. PAVLOPOULOS**

**THE MINISTERS OF**

FOREIGN AFFAIRS

**N. KOTZIAS**

JUSTICE

**N. PARASKEVOPOULOS**

ENVIRONMENT

**P. SKOURLETIS**

SHIPPING

**T. DRITSAS**

FINANCE

**G. STATHAKIS**

Certified and sealed by the Great Seal of the State.

Athens, 2016

THE MINISTER OF JUSTICE

**N. PARASKEVOPOULOS**

**Issued by the National Printing House**

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