

**A LAW TO INCORPORATE THE
INTERNATIONAL CONVENTION ON LIABILITY
AND COMPENSATION FOR DAMAGE IN
CONNECTION WITH THE CARRIAGE OF
HAZARDOUS AND NOXIOUS SUBSTANCES BY
SEA, 2010 INTO THE LAW OF GEORGIA**

**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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Submitted By: Ms. Mariam Mgeladze (Georgia)

Supervisor: Professor Norman A. Martínez Gutiérrez

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Dedicate to my country Georgia and to my family

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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.

International Maritime Dangerous Goods Code (IMDG Code) (MSC.122 (75)), effective as from 1 January 2004

Convention on the Protection of the Black Sea against Pollution (Bucharest Convention) Adopted in Bucharest, Romania on 21 April 1992

The Association Agreement between Georgia and EU, 2014/494/EU, 16 June 2014.

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 NATIONAL LEGISLATION

The Constitution of Georgia

Civil Code of Georgia

General Administrative Code of Georgia

Administrative Offences Code of Georgia

Law of Georgia on Entrepreneurs

Law of Georgia on Legal Entity of Public Law

International Private Law of Georgia

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) */.

TABLE OF ABBREVIATIONS

HNS Convention- the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea;

CLC - International Convention on Civil Liability for Oil Pollution Damage 1992;

Fund Convention- International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1992;

LLMC 1976- Convention on Limitation of Liability of Maritime Claims 1976;

1996 LLMC Protocol- Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims of 19 November 1976;

IMDG Code - International Maritime Dangerous Goods Code;

IMO- International Maritime Organisation;

IOPC Funds- International Oil Pollution and Compensation Funds;

HNS Fund- International Hazardous and Noxious Substances Fund;

EU –European Union;

HNS- Hazardous and Noxious Substances;

LNG- Liquefied Natural Gases;

LPG- Liquefied Petroleum Gases;

SDR- Special Drawing Rights;

HNS CCCC- 2010 HNS Convention Cargo Contributor Calculator;

GT- Gross Tonnage;

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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 PARLIAMENT OF GEORGIA¹

1. Introduction

The International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (the “1996 HNS Convention”) was adopted under the auspices of the IMO.

The 2010 Protocol to the HNS Convention (hereinafter referred to as '2010 Protocol') was adopted by the IMO on 30 April 2010. There were some specific issues which were identified by the “Focus Group”, set up by the IOPC Funds, which prepared a draft Protocol aiming to amend the text of the original 1996 HNS Convention.² The 2010 Protocol requires the State Parties to the Protocol to give effect to the 2010 HNS Convention.³ The 2010 Protocol to the 1996 HNS Convention contained necessary amendments to address problems identified in the 1996 HNS Convention. The 2010 Protocol and the provisions of the Convention, as amended by the Protocol, are to be read, interpreted and applied together as one single instrument, as per Articles 2 and 18 of the Protocol. A consolidated text of the 2010 Protocol was produced by the IMO Secretariat and endorsed at IMO in 2011 at the 98th Meeting of its Legal Committee, and is referred to as the '2010 HNS Convention'. The 2010 HNS Convention, as a single, consolidated instrument for the Convention, will take effect once the 2010 Protocol enters into force. The conference also adopted four resolutions relating to the setting up of the HNS Fund, the promotion of technical co-operation and assistance, avoidance of a situation in which two conflicting treaty regimes are operational, and the implementation of the 2010 HNS Protocol.⁴

¹ This is in line with the form in which the explanatory notes are drafted and issued to the Parliament of Georgia.

² REGULATION IMPACT STATEMENT 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, done at London on 30 April 2010 [2010] ATNIF 55; International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010 (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) done at London on 30 April 2010 [2010] ATNIF 56, p. 2.

³ Article 2 of the Protocol.

⁴ Maritime Transport of Hazardous and Noxious Substances: Liability and Compensation, Discussion Paper, International Marine Policy, Canada, October 2010.

The main changes from the 1996 HNS Convention to the 2010 HNS Convention are:

(a) excluding packaged HNS from the definition of contributing cargo to the HNS Fund, while damage caused by packaged HNS remains covered by the two-tier system of compensation established in the Convention (Article 1 (10) 2010 HNS Convention);

(b) increasing the liability limits of the shipowner for ships carrying packaged HNS in order to accommodate better the exclusion of packaged HNS as contributing cargo to the HNS Fund (Article 9 (1)(b) 2010 HNS Convention);

(c) making the physical receiver of LNG the responsible party for payment of the relevant contributions to the HNS Fund, unless there is a different agreement between the titleholder and the receiver (Article 19 (1bis) 2010 HNS Convention);

(d) making payment of compensation by the HNS Fund in case of a covered incident conditional upon the fulfillment by the State concerned of its obligation to submit reports on contributing cargoes for all years prior to the incident (Article 21bis (2) 2010 HNS Convention).⁵

The regime established by the 2010 HNS Convention is largely modeled on the existing regime for oil pollution from tankers set up under the 1992 CLC⁶ and Fund Convention, which covers pollution damage caused by spills of persistent oil from tankers.

The 2010 HNS Convention aims to ensure adequate, prompt and effective compensation for damage to persons and property, costs of clean up and reinstatement measures and economic losses resulting from the maritime transport of hazardous and noxious substances.⁷

The definition of the hazardous and noxious substances⁸ is very varied and includes bulk solids, liquids including oils (both persistent and non-persistent), liquefied gases such as LNG and LPG.

The 2010 HNS Convention covers both pollution damage and damage caused by other risks, e.g. fire and explosion.⁹ The Convention does not cover damage caused during the transport of HNS to or from a ship.¹⁰ The Convention covers starts from the time when the HNS enters the ship's equipment or passes its rail, on loading, and the cover ends when the HNS ceases to be present in any part of the

⁵ Rosalie P. Balkin, THE HNS PROTOCOL, p.3-4.

⁶ Richard Shaw, "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.

⁷ Axel Luttenberger, DRIVES FOR THE INTERNATIONAL CONVENTION ON LIABILITY AND COMPENSATION FOR DAMAGE IN CONNECTION WITH THE CARRIAGE OF HAZARDOUS AND NOXIOUS SUBSTANCES BY SEA, 2010, p.1.

⁸ Packaged goods are included if they are covered by the International Maritime Dangerous Goods Code (IMDG Code), which comprises a very wide range of chemicals although many of these are only carried in small quantities.

⁹ 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.

¹⁰ IMO, An overview of the 2010 HNS Convention, p.2.

ship's equipment or passes its rail on discharge.¹¹ It applies to "ships", which are defined as seagoing vessels and seaborne craft of any type whatsoever.¹² The Convention covers incidents involving the carriage of HNS as a cargo by sea by any sea-going craft of any type whatsoever, except warships and other ships owned or operated by a State and used, for the time being, only on Government noncommercial service.¹³

A State Party can, at any time, bring any of these kinds of ships within the scope of the convention, either unconditionally or subject to conditions, by notifying the Secretary-General.¹⁴ The Convention allows a State to exclude from the application of the Convention ships which do not exceed 200 GT and which carry HNS only in packaged form and while the ships are engaged on voyages between ports of that State.¹⁵

The Convention does not apply to the following circumstances and they are as follows:

- (a) any damage or claim to the extent that its provisions are incompatible with applicable laws relating to workers' compensation or social security schemes;
- (b) to pollution damage as defined in the Civil Liability Convention (*i.e.* pollution damage caused by spills of persistent hydrocarbon mineral oil from oil tankers);
- (c) to claims arising out of contracts for the carriage of goods or passengers;
- (d) to damage caused by radioactive material.¹⁶

The 2010 HNS Convention establishes a two-tier system of compensation, with the first tier being paid for by the individual ship owner and the second tier by the HNS Fund.¹⁷

The 2010 HNS Convention strengthens the position of the claimants in several important ways. The Convention introduces strict liability for the ship owner (Article 7), higher limits of liability than the present general limitation regimes (Article 9), and a system of compulsory insurance (or other financial security) and insurance certificates (Article 12). If the damage exceeds the ship owner's limitation amounts (min. 10 million SDRs, max. 100 million SDRs), the owner/insurer is financially incapable of meeting the obligations under the Convention, or no liability for the damage arises for the ship owner, the claimant may get compensation from HNS Fund.

¹¹ IMO, HNS convention overview, p.3.

¹² Article 1, paragraph 1 of the 2010 HNS Convention.

¹³ Article 4, paragraph 1 of the 2010 HNS Convention.

¹⁴ Article 4, paragraph 5 of the 2010 HNS Convention.

¹⁵ Article 5, paragraph 1 of the 2010 HNS Convention.

¹⁶ Article 4, paragraphs 1, 2 and 3 of the 2010 HNS Convention.

¹⁷ Compensation will be paid from the HNS Fund up to a maximum of 250 million SDRs, including compensation paid by the ship owner/insurer (Article 14). Contributions to the Fund are levied on persons (primarily chemical companies) in the Contracting States who receive a certain minimum quantity of HNS cargo during a calendar year. This obligation is based on a "post-event contribution system", that is, the amount of the contribution is determined primarily by the claims submitted to the HNS Fund the preceding year and by the volume of HNS cargo the receiver imported during that year (Articles 16-19). The administration of the HNS Fund is handled by an Assembly consisting of all Contracting States, which will normally meet once a year, and a Secretariat headed by a Director (Article 24).

The compensation system under the Convention thus resembles the international oil pollution compensation conventions (as amended), which provide a consistent and proficient international regime for compensating injured parties for oil pollution damage.¹⁸ Compensation has been paid relatively promptly-bearing in mind the frequently complex issues involved-and the claimants have in most cases received adequate compensation.¹⁹

¹⁸ Rosalie P. Balkin, THE HNS PROTOCOL, death or personal injury – compensation will be available for everyone, including members of the crew, whether on board or outside the ship carrying the hazardous and noxious substances.

¹⁹ Peter Wetterstein, CARRIAGE OF HAZARDOUS CARGOES BY SEA-THE HNS CONVENTION.

2. The 2010 HNS Convention

2.1. Scope of application

The 2010 HNS Convention covers any damage caused by HNS in the territory or territorial sea and in the exclusive economic zone²⁰ of the State Party to the Convention. The references to “seagoing” and “seaborne” exclude craft used only in internal waters (*i.e.*, areas of water lying landward of the baseline of the territorial sea, which include lakes, rivers and estuaries, harbors, bays and inlets, and certain sea areas on the landward side of reefs and lines of islands).²¹ 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. It also covers pollution damage and damage (other than pollution damage) caused by HNS carried on board ships registered in, or entitled to fly, the flag of a State Party outside the territory or territorial sea of any State. 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. Costs of preventive measures, *i.e.* measures to prevent or minimize damage, are also covered wherever taken.²²

2.2. What are Hazardous and Noxious Substances (HNS)?²³

The definition of HNS is based on lists of individual substances identified in a number of IMO Conventions and Codes, designed to ensure maritime safety and prevention of pollution. HNS represent a wide array of chemical substances of varying properties and hazards, which include both bulk cargoes and packaged goods. Bulk cargoes can be solids, liquids, including both persistent and non-persistent oils, and liquefied gases, such as LNG or LPG. Low hazard substances, such as coal and iron, are generally excluded from the 2010 HNS Convention. There are a large number of substances covered by the Convention, such as, the IMDG Code, which represents only one of the Codes covered by the Convention and lists hundreds of substances which can be dangerous when shipped in packaged form.²⁴

An electronic system, known as the 2010 HNS CCCC, has been developed to assist states and potential contributors in identifying and reporting contributing cargoes covered by the Convention,

²⁰ Exclusive Economic Zone- An Exclusive Economic Zone (EEZ) is a concept adopted at the Third United Nations Conference on the Law of the Sea (1982), whereby a coastal State assumes jurisdiction over the exploration and exploitation of marine resources in its adjacent section of the continental shelf, taken to be a band extending 200 miles from the shore.

²¹ Article 4, paragraph 4 of the 2010 HNS Convention.

²² Article 3 of 2010 HNS Convention.

²³ Michael G.Faure, Han Lixin & Shan Hongjun, Maritime Pollution Liability and Policy, HNS carried by sea of present two forms- liquid or solid. Chemicals in liquid form are mostly transported in chemical tankers. The packaged form of HNS also can be transported in container ships. p.23.

²⁴ The 1996 HNS Convention, as modified by the 2010 HNS Protocol.

which will be re-evaluated and updated in light of the adoption of the 2010 HNS Protocol. The name or United Nations number of the substance can be used to find out whether or not a chemical falls within the definition of HNS.²⁵

2.3. Damage

Article 1.6 of the Convention contains the definition of "damage". 'Damage' includes loss of life or personal injury on board or outside the ship carrying HNS, loss of or damage to property outside the ship, loss or damage caused by contamination of the environment, loss of income in fishing and tourism, and the costs of preventive measures and further loss or damage caused by such measures.²⁶

Under Article 1(6)(a), the Convention extends to claims for loss of life and personal injury whether caused on board or outside the ship and, pursuant to Article 11, these claims have priority over all others. Claims for loss of or damage to property outside ships carrying hazardous and noxious substances are also recoverable, although liability in respect of cargo inside such ships will continue to be regulated by contractual provisions. In this regard, Article 4(1) expressly excludes claims arising out of any contract for the carriage of goods and passengers on the basis that adequate arrangements for compensation in such situations already exist under the conditions of the contract of carriage itself, making it unnecessary for the Convention to provide a remedy. The inclusion of fire, explosion and toxicity damage is, nevertheless, not expressly provided for in the context of Article 1(6) but is to be inferred from the fact that the definition of 'damage' in paragraphs (a) and (b) of this Article is qualified only by the requirement that it be caused by hazardous and noxious substances. In addition, Articles 3(a)²⁷ and (c)²⁸ relating to the scope of application of the Convention make it clear that the term 'damage' is not limited to environmental damage.²⁹

The definition of "damage" in the 2010 HNS Convention also makes it clear that claims for damage to the environment ("compensation for impairment of the environment") are admissible. Although "environment" is not defined in the Convention, the notion seems to cover damage to the environment as such (*per se*), for example, damage to species of flora and fauna, to food chains in the environment, to aesthetic and cultural values, etc. The right to compensation is, however, explicitly restricted to "costs of reasonable measures of reinstatement actually undertaken or to be undertaken."³⁰

²⁵ Maritime Transport of Hazardous and Noxious Substances: Liability and Compensation, Discussion Paper, International Marine Policy, Canada, October 2010.

²⁶ 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)L:\LED\INF\FACTS\LIABILITY AND COMPENSATION LEGAL ISSUES\HNS convention overview.doc.

²⁷ 'any damage'.

²⁸ 'damage, ... other than damage by contamination of the environment'.

²⁹ Rosalie Balkin, The Hazardous and Noxious Substances Convention: Travail or Travaux —The Making of an International Convention, p.13.

³⁰ IMO, An overview of the 2010 HNS Convention, p.9.

The Convention defines preventive measures as any reasonable measures taken by any person after an incident has occurred to prevent or minimize damage. These include measures such as clean-up or removal of HNS from a wreck if the HNS present a hazard or pollution risk.

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;³¹
- (d) the costs of reasonable preventive measures, including *inter alia* clean-up or removal of HNS from a wreck,³² 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.³³

The Convention does not cover:

- ✓ Pollution damage including preventive measures;
- ✓ Any damage excluding pollution;
- ✓ Damage caused during the transport of HNS on land before or after carriage by sea;
- ✓ Pollution damage caused by persistent oil, since such damage is already covered under the existing international regime established by the 1992 CLC and Fund Conventions. However, it covers non-pollution damage caused by persistent oil, i.e., damage caused by fire or explosion; and
- ✓ Damage caused by radioactive material in either bulk or packaged form.³⁴

All or some damages are covered depending on where they occur geographically. Specifically, the Convention covers any damage caused during the international or domestic carriage of HNS by any seagoing vessels in the territory including the territorial sea of a State Party to the Convention.³⁵

It is not sufficient under the 2010 HNS Convention merely to prove damage. Where it occurs is also a factor. All damage is recoverable under Article 3(a) if it is caused in the territory, including the territorial sea, of a State Party. By comparison, any claims made under the Civil Liability or Fund Conventions, would be limited to damage by contamination.³⁶ Damage, other than damage by contamination of the environment, caused outside the territory, or the territorial sea of a State, will be recoverable if it has been caused by a substance carried on board a ship registered in a State Party or, in

³¹ 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.

³² Aleka Mandaraka - Sheppard Modern Mar.

³³ IMO, An overview of the 2010 HNS Convention, op.cit., p. 10.

³⁴ Ibid p.4.

³⁵ Ibid, p.4.

³⁶ Civil Liability Convention, article II; Fund Convention, art 3.

the case of an unregistered ship, on board a ship entitled to fly the flag of a State Party.³⁷ Claims in respect of damage by contamination of the environment will succeed provided the damage occurs within the limits of the exclusive economic zone of a State Party, established in accordance with international law, or, where no such zone has been established, 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. This provision was inspired by the 1992 Protocols to the Civil Liability and Fund Conventions.³⁸

2.4. Claims

The amount available for compensation from the ship owner and the HNS Fund will be distributed among claimants in proportion to their established claims except to the extent that the aggregate of such claims exceeds two-thirds of the total amount established in accordance with Article 9(1).³⁹ Claims in respect of expenses reasonably incurred or sacrifices, reasonably made by the shipowner voluntarily to prevent or minimise damage rank equally with other claims against the fund.⁴⁰ However, claims for loss of life and personal injury have priority over other claims. Claimants can be any individual or partnership or any public or private body including a state or any other level of government within that state.

2.5. Two tiers of Compensation

As with the original oil pollution compensation regime, the HNS Protocol establishes a two-tier system for compensation to be paid in the event of accidents at sea, in this case, involving hazardous and noxious substances, such as chemicals. First tier imposes liability on the ship owner, whereas the second tier imposes liability on the HNS Fund.⁴¹

2.5.1. 1st tier of responsibility- Ship owner's Liability under the 2010 HNS convention

Under the Convention, the ship owner will have strict liability for any damage caused by HNS, i.e. the owner at the time of an incident shall be liable for damage caused by any hazardous and noxious substance 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. The ship owner will be obliged to maintain insurance to cover his liabilities under the Convention. This insurance will normally be provided by protection and indemnity insurers.

³⁷ Article 3(c) of the 2010 HNS Convention.

³⁸ Articles 3(a) (ii) and 4(a)(ii), respectively of the 2010 HNS Convention.

³⁹ Article 11 of the 2010 HNS Convention.

⁴⁰ Article 9(8) of the 2010 HNS Convention.

⁴¹ Article 14 of the 2010 HNS Convention.

Ship owner's obligations under the Convention are based on the principle of strict or no-fault liability.⁴² Article 7(1) states that '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...'.⁴³

The registered owner of the ship in question is strictly liable to pay compensation following an incident involving HNS in accordance with the Article 7. Strict liability is in conformity with the solutions in, *inter alia*, the oil pollution conventions. The fact that damage has occurred is sufficient to establish the ship owner's liability provided there is a causal link between the damage and the HNS carried on board the ship.⁴⁴

The ship owner is exempt from liability under the 2010 HNS Convention only if he proves that:

- (a) where the damage resulted from war, hostilities, civil war, insurrection or exceptional, inevitable and irresistible natural phenomena;⁴⁵
- (b) where the damage was wholly caused by a third party with intent to cause damage;⁴⁶
- (c) where the damage was wholly caused by negligence or wrongful act of a government or authority responsible for maintaining navigational aids; or⁴⁷
- (d) where the shipper or another relevant person failed to provide information about the hazardous and noxious nature of the cargo and this caused the damage or led to the ship owner not obtaining the required liability insurance cover (unless the ship owner or its employees or agents knew or reasonably ought to have known about its hazardous and noxious nature).⁴⁸

Article 7(2)(d) exonerates the ship owner from liability in the event that 'the consignor or any other person failed to meet the obligation to inform the owner of the hazardous or noxious nature of the substances, and that ... the owner ... [neither] knew or ought to have known of their nature'. Article 7(3) exonerates the ship owner in whole or in part from liability to any person if the ship owner proves that the damage resulted wholly or partly from an act or omission done with intent to cause damage by, or from the negligence of, that person.⁴⁹

Where the damage is caused by two or more ships, each of which is carrying HNS and is a ship within the respective regime, Article 8 of the Convention provides that each owner shall be liable for the

⁴² This has always been accepted as a basic principle: see, eg, Report of the Legal Committee on the Work of its 58th session, Doc LEG 58/12 [112].

⁴³ Rosalie Balkin, *The Hazardous and Noxious Substances Convention: Travail or Travaux —The Making of an International Convention*, p.21.

⁴⁴ The HNS Convention, As modified by the 2010 HNS Protocol.

⁴⁵ Article 7(2)(a) of the 2010 HNS Convention; Same also can be founded in Aleka Mandarakaka- Sheppaerd, *Modern Maritime Law*, Vol.2, managing risk and liabilities, third edition, p.871, where is stated that The fund is free from its obligation to pay compensation to a claimant in the event: the damage was caused by an act of war, hostilities, civil war or insurrection, or by HNS discharged from a warship or from a vessel on government, non-commercial service;

⁴⁶ Article 7(2)(b) of the 2010 HNS Convention.

⁴⁷ Article 7(2)(c) of the 2010 HNS Convention.

⁴⁸ Article 7, paragraphs 1 to 3 of the 2010 HNS Convention.

⁴⁹ A similarly worded provision is contained at art III(3) of the Civil Liability Convention.

damage.⁵⁰ The owners of the ships will be jointly and severally liable for damage which is not reasonably separable.⁵¹

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.⁵²

2.5.1.2. Limitation of Liability

Concerning limitation of liability⁵³, it is of course essential that the limits are high enough. The shipowner is normally entitled to limit his liability under the 2010 HNS Convention in respect of any one incident to an aggregate amount calculated on the basis of the units of GT of the ship, as follows:

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

(i) 10 million SDR 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) 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.⁵⁴

The ship owner will be denied the right to limitation of liability if it is proved that the damage resulted from his personal act or omission committed either with intent to cause damage, or recklessly and with knowledge that damage would probably result.

⁵⁰ Aleka Mandarakaka- Sheppaerd, Modern Maritime Law, Vol.2, managing risk and liabilities, third edition, p.869.

⁵¹ Article 8, paragraph 1 of the 2010 HNS Convention.

⁵² L:\LED\INF\FACTS\LIABILITY AND COMPENSATION LEGAL ISSUES\HNS convention overview.doc

⁵³ Article 9 of the 2010 HNS Convention.

⁵⁴ Article 9 (1) of the 2010 HNS Convention.

If damage is caused by bulk HNS, compensation would first be sought from the ship owner, up to a maximum limit of 100 million SDR. The aggregate amount of the ship owners' liability shall not exceed 100 million SDR. Where damage is caused by packaged HNS, or by both bulk HNS and packaged HNS, the maximum liability for the ship owner is 115 million SDR. Once this limit is reached, compensation would be paid from the second tier, the HNS Fund, up to a maximum of 250 million SDR (including compensation paid under the first tier).

2.5.1.3. Channeling of Liability⁵⁵

The registered ship owner is liable for pollution damage under the Convention. No claim for compensation may be made against the following persons unless the damage resulted from their personal act or omission committed with intent to cause such damage, or recklessly and with knowledge that such damage would probably result:

- (a) the servants or agents of the ship owner or 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 (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) all servants or agents of persons mentioned in (c), (d) and (e).⁵⁶

Liability is channelled, not by placing any express obligation on claimants to pursue the owner, but rather by providing that the owner shall be liable for damage caused by hazardous and noxious substances carried aboard the ship and, as a corollary, excluding claims against the servants or agents of the ship owner,⁵⁷ as well as against crew members, pilots, charterers, salvors, or persons taking preventive measures unless the damage resulted from their personal act or omission, committed with intent to cause such damage or recklessly and with knowledge that damage would probably result.⁵⁸ Another consequence of the channeling provision is that the Convention also protects the ship owner

⁵⁵ This notion of channelling, which was first incorporated into the 1969 Civil Liability Convention as Article III, was intended, in part at least, to provide victims of hazardous and noxious substance incidents with a readily accessible and identifiable party against whom to initiate action, thereby helping to ensure prompt recovery of compensation. As is the position under the Civil Liability Convention, (Article III(5). the shipowner (or the shipowner's insurer) may exercise a right of recourse against any third parties notwithstanding that other parties are unable to initiate action against them. (Article 7(6)).

⁵⁶ Article 7, paragraph 5 of the 2010 HNS Convention International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010 (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) done at London on 30 April 2010[2010] ATNIF 56 p.11

⁵⁷ Civil Liability Convention, article III(4).

⁵⁸ Article 7(5). This mirrors article 4(2) of the 1992 Protocol to the Civil Liability Convention that extended the list of persons exempted from suit.

from being sued otherwise than in accordance with the Convention.⁵⁹ This means that, if for a Convention reason, the ship owner is exempt from liability, no action may be taken outside of the Convention to recover compensation. Similarly, the ship owner cannot be sued in common law actions for negligence in an attempt to recover an amount greater than that for which it is liable under the Convention.⁶⁰

2.5.2. Compulsory insurance

States Parties shall ensure that ship owners 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 as prescribed in Article 9 of the Convention.⁶¹

The Convention achieves two ends: the protection of potential victims and a more equitable situation for ship owners in a market where, previously, those ship owners operating according to good practice who took out insurance were at a competitive disadvantage in comparison with their less-responsible counterparts. For practical purposes the 2010 HNS Convention also requires that a compulsory insurance certificate attesting that insurance or other financial security is in force is required to be carried on board the ship carrying hazardous and noxious substance cargo.⁶²

The 2010 HNS Convention requires ship owners to provide evidence of insurance cover upon the ship’s entry into port of any State which is party to the Convention by production of a certificate, regardless of whether the State of the ship’s registry is party to the Convention. The certificates will be issued by the State of the ship’s register or, if that State is not party to the Convention, by a State Party. States Parties are required to accept any certificate issued by any other State Party.⁶³ The ship owner 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.⁶⁴ 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.⁶⁵

⁵⁹ Article 7(4) of 2010 HNS Convention.

⁶⁰ Rosalie Balkin, *The Hazardous and Noxious Substances Convention: Travail or Travaux —The Making of an International Convention*, p.20.

⁶¹ Article 12(1) of the 2010 HNS Convention.

⁶² Cf art VII(2) Civil Liability Convention.

⁶³ Article 12 (2) of the 2010 HNS Convention. Where a compulsory insurance certificate has been issued in accordance with the Convention, other states parties are obliged to accept it for the purposes of the Convention and to regard it as having the same force as compulsory insurance certificates issued or certified by themselves. Where a State Party has reason to believe that the insurer or guarantor named in the compulsory certificate is not financially capable of meeting the obligations imposed by the Convention, it may at any time request consultation with the issuing or certifying state. Such a State Party is not, however, entitled to ignore or dismiss the certificate out of hand.

⁶⁴ Article 12 (11) of the 2010 HNS Convention.

⁶⁵ Article 12 (10) of the 2010 HNS Convention.

The compulsory insurance shall contain the name of the ship, distinctive number or letters and port of registry; name and principal place of business of the owner; IMO ship identification number; type and duration of security; 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 period of validity of certificate, which shall not be longer than the period of validity of the insurance or other security.⁶⁶

Claims for compensation may be brought directly against the insurer or person providing financial security.

2.5.3. 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 ship owner's right to limit his own liability is lost. Any defenses that are available to the ship owner, apart from “the bankruptcy or winding up of the owner”, are available to the insurer, together with the defense that the damage was the result of “the willful misconduct” of the ship owner. The insurer cannot rely on any defenses, “which the defendant might have been entitled to invoke in proceedings brought by the owner against the defendant.”⁶⁷

2.5.4. Time Limits for claims

Pursuant to Article 37(1) an action for compensation under the 2010 HNS Convention must be brought 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. Further, according to Article 37(2) rights to compensation from the HNS Fund will be extinguished unless an action is brought, or a notification pursuant to Article 39(7) is made, within three years from the date when the person suffering the damage knew or ought reasonably to have known of the damage. Consequently, if a claimant discovers the identity of the ship owner later than three years from the date when he knew of the damage, a claim against the Fund might be extinguished, for example, in cases of limitation of the ship owner's liability or his insolvency.

The time limits for claims against the Fund ought to correspond to-or even exceed-the time limits against the ship owner.

The ultimate time limit for bringing claims, that is, ten years from the date of the incident which caused the damage (Article 37(3)). However, is it possible to bring an action later than ten years from

⁶⁶Peter Wetterstein, CARRIAGE OF HAZARDOUS CARGOES BY SEA-THE HNS CONVENTION

⁶⁷ Article 12 (8) of the 2010 HNS Convention.

the date of the incident which caused the damage,⁶⁸ and, where the incident consists of a series of occurrences, the ten-year period will run from the date of the last of these.⁶⁹ It can also be criticized, since many of the hazardous substances covered by the Convention may have harmful effects occurring later than ten years from the incident.⁷⁰

The more expansive time limits were regarded as necessary in order to balance the need for finality in respect of legal action arising out of a hazardous and noxious substance incident with that of allowing victims ample time in which to begin an action against the ship owner or the Fund.

2.6. 2nd tier of responsibility- Establishment of the HNS Fund

The HNS Fund shall have legal personality recognized under the domestic law of States Parties, and thus, may be sue and be sued. The Director of the HNS Fund shall be recognized by contracting States as its legal representative.⁷¹ States Parties shall also designate the competent courts in respect of actions brought by or against the HNS Fund.⁷² The HNS Fund will be established once the 2010 HNS Convention enters into force. States which ratify the 2010 HNS Protocol will become Members of the HNS Fund. The HNS Fund will provide the second tier of compensation and will be administered by a Secretariat and headed by a Director.⁷³

When damage costs exceed the ship owner's limit of liability under tier 1, additional compensation will then be paid under tier 2- by the HNS Fund - up to a maximum of 250 million SDR (approximately \$500 million) per incident, including the ship owner's portion. If the total amount of admissible claims does not exceed the maximum amount available for compensation, then all claims will be paid in full. Otherwise, the payments will be prorated, i.e. all claimants will receive an equal proportion of their admissible claims.⁷⁴

To claim against the HNS Fund, the claimants have to prove there is a reasonable probability that the damage resulted from an incident involving one or more seagoing ships. The HNS Fund may be liable to pay compensation "from the first dollar up" if the particular ship causing the damage cannot be identified. In the event that the ship owner is exonerated from liability, or if the ship owner is financially incapable of meeting his/her obligations, the Fund is also liable. However, as is the case of the ship owner, the HNS Fund can also apply certain defenses that exempt it from paying compensation e.g. if the damage was caused by an act of war, or by HNS discharged from a warship.⁷⁵

⁶⁸ Article 37(3) of the 2010 HNS Convention.

⁶⁹ Article 37(4).

⁷⁰ Peter Wetterstein, CARRIAGE OF HAZARDOUS CARGOES BY SEA-THE HNS CONVENTION

⁷¹ Article 13 (2) of the 2010 HNS Convention.

⁷² Article 39 of the 2010 HNS Convention.

⁷³ Articles 24, 25 and 26 of the 2010 HNS Convention.

⁷⁴ Article 14 (5) and Article 14 (6) of the 2010 HNS Convention.

⁷⁵ Maritime Transport of Hazardous and Noxious Substances: Liability and Compensation, Discussion Paper, International Marine Policy, Canada, October 2010. Same idea is repeating in IMO, An overview of the 2010 HNS Convention- The HNS Fund also pays compensation in the following cases: the damage exceeds the shipowner's limit of liability under the 2010

To claim against the HNS Fund, the Convention requires claimants to prove that there is a reasonable probability that the damage resulted from an incident involving one or more ships. The HNS Fund may in such cases be liable to pay compensation even if the particular ship causing the damage cannot be identified.⁷⁶

The HNS Fund is also not liable to pay compensation if the damage was caused by an act of war, hostilities, etc., or by HNS discharged from a warship or other ship owned or operated by a State and used for the time being, only on Government non-commercial service.

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. However, there shall be no such exoneration of the HNS Fund with regard to preventive measures.⁷⁷

2.6.1. Limit of compensation by the HNS Fund

The HNS Fund caters for the payment of compensation only when the liability scheme provided under the first tier is “inadequate or not available”. The HNS Fund pays, if the ship owner is not liable to pay compensation, or is financially incapable of meeting his obligation or when the damage exceeds the ship owner’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”.⁷⁸

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.” However, even if the particular ship causing the damage cannot be identified, the HNS Fund may still be liable. Another defense 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.⁷⁹

The maximum amount payable by the HNS Fund in respect of any single incident is 250 million SDR, including the sum paid by the ship owner or his insurer.⁸⁰ Where the aggregate amount is less than this maximum sum, all claims are paid in full. In the contrary case, the payments will be made on a pro

HNS Convention; the ship owner is exonerated from liability; or • the ship owner liable for the damage is financially incapable of meeting his obligations.

⁷⁶ Article 14 (4) of the 2010 HNS Convention; See also IMO, An overview of the 2010 HNS Convention, *op.cit.*, p. 6.

⁷⁷ Article 14 (4) of the 2010 HNS Convention.

⁷⁸ Article 13 (1) and Article 14 (1) of the 2010 HNS Convention

⁷⁹ Article 14 (4) of the 2010 HNS Convention and IMO, An overview of the 2010 HNS Convention, *op.cit.*, p. 6.

⁸⁰ Article 14 (5) of the 2010 HNS Convention.

rata basis.⁸¹ The convention also provides a simplified procedure to increase the maximum amount of compensation payable under the Convention in the future.

If the total amount of the admissible claims does not exceed the maximum amount available for compensation, then all claims will be paid in full. Otherwise the payments will have to be prorated i.e. all claimants will receive an equal proportion of their admissible claims. The contributions to finance the HNS Fund's compensation payments will be made post-event, i.e. levies will only be due after an incident involving the HNS Fund occurs. Levies may be spread over several years in the case of a major incident.⁸²

2.6.2. Financing of the HNS Fund

The HNS Fund will be financed by contributions paid by receivers of HNS, or titleholders for LNG cargo in some cases, that have been transported by sea to the ports and terminals of Member States. Contributions by individual receivers to the separate accounts and sectors will be in proportion to the quantities of HNS received, provided that the quantities are above the established thresholds. Whereas the total contributions to the general account will be divided amongst the sectors, according to the level of claims in each sector, the separate accounts will only meet claims resulting from incidents involving the respective cargoes, i.e. there will be no cross-subsidization.⁸³

2.6.2.1. HNS Fund Accounts

The HNS Fund will consist of four separate accounts:

- ✓ Oil (*Oil Account*);
- ✓ Liquefied natural gas (*LNG Account*);
- ✓ Liquefied petroleum gas (*LPG Account*); and
- ✓ All other HNS (*General Account*).

The principal reason for the separate accounts is to ensure that each account pays its own claims, thus avoiding cross-subsidization of claims among major HNS groups and the industries involved. However, during the early existence of the HNS Fund, it is possible that there may not be sufficient HNS received in member states to set up all four separate accounts.

If this were to be the case, the separate accounts may be postponed and the HNS Fund may for a period of time be comprised of only two accounts:

1. Oil Account; and

⁸¹ IMO, An overview of the 2010 HNS Convention, *op.cit.*, p. 5 and article 14 (6) of the 2010 HNS Convention.

⁸² IMO, An overview of the 2010 HNS Convention, *op.cit.*, p. 5.

⁸³ <http://www.hnsconvention.org/hns-reporting/>

2. General Account including three sectors: LNG, LPG and all other HNS.

The HNS Fund, when fully operational, will have four accounts:

- ✓ Oil
- ✓ Liquefied Natural Gas (LNG)
- ✓ Liquefied Petroleum Gas (LPG)
- ✓ A general account with two sectors:
 - Bulk solids
 - Other HNS

Each account will meet the cost of compensation payments arising from damage caused by substances contributing to that account, i.e. there will be no cross subsidization. Each separate account will only come into operation when the total quantity of contributing cargo received in Member States during the preceding year, or any such year as the HNS Assembly decides, exceeds the following levels:

General Account	40 million tonnes
Separate Accounts (Sectors within the General Account)	
Oil account	350 million tonnes
LNG account	20 million tonnes
LPG account	15 million tonnes

However, during the early existence of the HNS Fund, there may not be sufficient contribution basis in the form of the quantities of HNS received in Member States to set up all the four separate accounts. Initially, the separate accounts may be postponed and the HNS Fund may therefore have only two accounts:

- ✓ one separate account for oil
- ✓ one general account including four sectors:
 - LNG
 - LPG
 - Bulk solids
 - Other HNS

In addition, the separate accounts could be suspended if the total unpaid contributions to that account exceed 10 % of the most recent levy to that account. As a result, any contributions due to a separate account that has been suspended will be paid into the general account and any relevant claims will be met from this account. Any decision to suspend or re-instate the operation of an account requires a two-thirds majority of the Assembly.

Receivers of HNS might have to contribute to one or more of the accounts. The levies applying to individual receivers will be calculated according to the quantities of contributing cargo received and, in the case of the general account, according to the Regulations in Annex II of the Convention. Liability to

contribute to the HNS Fund will arise for a given receiver only when his annual receipts of HNS exceed the following thresholds:

Oil persistent oil	150 000 tonnes
Oil non-persistent oil	20 000 tonnes
LNG	No minimum quantity
LPG	20 000 tonnes
Bulk solids and other HNS	20 000 tonnes

2.6.3. Contributions to the Fund and the concept of “receiver”

States are allowed to establish their own definition of "receiver" under national law.⁸⁴ Such a definition must, however, result in the total quantity of contributing cargo received in the State in question being substantially the same as if the definition in the Convention had been applied. This allows States flexibility to implement the Convention in conjunction with existing national law, without giving any State the possibility of obtaining an unfair commercial advantage.⁸⁵

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).⁸⁶

The HNS Fund and its account will be financed by annual contributions from those persons located in a State Party who in the preceding calendar year: (a) received over 150,000 tonnes of persistent oil; (b) received over 20,000 tonnes of LPG; (c) received any quantity of LNG cargo; (d) or held title to an LNG cargo immediately prior to its discharge where: (a) the titleholder has entered into an agreement with the receiver that the titleholder shall make such contributions; (b) the receiver has informed the State Party that such an agreement exists; and (e) received any other bulk HNS cargo, including oils other than persistent oil, in quantities exceeding 20,000 tonnes.

⁸⁴ State Parties can choose either of these two definitions of “receiver” in Article 1.4: 1.4 (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 1.4 (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).” Article 1.4(a) allows the physical receivers of cargo, such as storage companies, to pass on the obligation to pay a levy, to principal receivers or the owners of the cargo, by identifying the final receivers. Both the person who physically receives the contributing cargo in a port or terminal, and the designated third party must be subject to the jurisdiction of a State Party to enable the physical receiver to pass on the levy. In such a case, the final receiver or owner of the cargo will include it in their annual report if the total amount they received in the year exceeds the applicable thresholds of “contributing cargo”. The agent or storage company would in this case not have any obligation to pay levies in respect of the bulk HNS cargo they handle on behalf of their principal. If the agents or storage company cannot disclose who their principal is, or if the principal is located in a non-contracting state, the agent or storage company will include such cargo in their annual report. In this situation, the agent or storage company would be considered to be the “receiver” of the bulk HNS and would be responsible for payment of any levies in respect of the contributing cargo. Article 1.4 (b) allows a state to establish its own definition of “receiver” under national law. Such a definition must result in the total quantity of contributing cargo received in the state in question being the same as if the definition in 1.4 (a) had been applied.

⁸⁵ IMO, An overview of the 2010 HNS Convention, op.cit., p. 5.

⁸⁶ Ibid, p.7.

For the purpose of the contribution system, not only imported cargoes, but also cargoes received after sea transport between ports in the same State are taken into account. However, cargo is not considered to be contributing cargo so long as it is in transit. The notion of contributing cargo includes also cargoes received after transport by sea between ports of the same State.⁸⁷ That is, provided that the cargo is not imported, consumed or transformed, transshipment does not lead to a requirement for the payment of a contribution to the HNS Fund.

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. 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, submit to the Director of the HNS Fund, reports 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, 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. It is important to mention that in case of LNG, the titleholder shall pay.⁸⁸ States shall be held liable for any financial losses caused to the HNS Fund in case the required information is not provided. 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, except in the case of death and personal injury. States failing to meet their reporting obligations will be “temporarily suspended” from being contracting States.⁸⁹

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”.⁹⁰

3. Jurisdiction

The 2010 HNS Convention contains rules on jurisdiction of courts of State Parties over claims made by persons suffering damage covered by the Convention against the owner or its insurer, or against the HNS Fund. Recognition and enforcement of judgments by courts in State Parties is also covered by the Convention.

In accordance with the article 38 (1) claimants can only take legal action against the registered owner/his guarantor in a court in the State Party in whose territory, territorial water or EEZ the damage occurred, or in respect of which the preventive measures have been taken. the article 38 (2) covers the

⁸⁷ IMO, An overview of the 2010 HNS Convention, p. 7.

⁸⁸ Articles 21, 21(2), 21(5)(b) and 45(6) of the 2010 HNS Convention. see also IMO, An overview of the 2010 HNS Convention, p. 8.

⁸⁹ Ibid, p.8.

⁹⁰ Article 36 of the 2010 HNS Convention.

case of incidents which was caused damage outside of territory, including the territorial sea, of any State Party, and either damage has been caused by a substance carried on board a ship registered in a State Party, or preventive measures have been taken, action for compensation may be brought against the owner or HNS insurer/guarantor only:

- a) In the courts of the State Party, where the ship is registered;
- b) In the case of unregistered ship, the State Party whose flag the ship is entitled to fly;
- c) The State Party where the owner has habitual residence or where his principal place of business is established;
- d) Where the ship-owner's limitation fund has been established.⁹¹

Different rules apply if damage other than pollution damage to the environment occurs exclusively beyond the territorial seas of States Parties.

Actions against the HNS Fund should be brought before the same court as actions taken against the ship owner. However, if the ship owner is exempted from liability, or for another reason no ship owner is liable, legal action against the HNS Fund must be brought in a court which would have been competent had the ship owner been liable. Where an incident has occurred and the ship involved has not been identified, legal action may be brought against the HNS Fund only in States Parties where damage occurred.⁹²

4. Entry into force of the HNS Convention

The 2010 HNS Convention will enter into force eighteen months after ratification by at least twelve States subject to the following conditions: (i) four States must each have a registered ship's tonnage of at least 2 million GT; and (ii) contributors in the States that have ratified the Convention must, between them, have received during the preceding calendar year a minimum of 40 million tonnes of cargo consisting of bulk solids and other HNS liable for contributions to the general account.

⁹¹ Article 9 (3) and 38 (1) (2) of the 2010 HNS Convention; See also Aleka Mandarakaka- Sheppaerd, *Modern Maritime Law*, Vol.2, managing risk and liabilities, third edition, p.870.

⁹² Article 39 (2) of the 2010 HNS Convention.

5. Importance of Implementation of the 2010 HNS Convention and its additional Protocol for Georgia

There are several reasons why Georgia needs to accede the 2010 HNS Convention and those arguments are as follows:

A) It has its great importance to be mentioned here that the resolution A 932 (22) adopted by the IMO Assembly at its twenty second session considered the 1996 HNS Convention's implementation of high priority. 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."⁹³ In 10 December 2015, the Council of the EU adopted two Council Decisions (13806/15⁹⁴ and 14112/15⁹⁵) authorizing EU Member States to ratify or accede to the 2010 HNS Convention. As parts of the Convention fall under the EU's exclusive competence in the area of maritime transport, EU Member States needed to be authorized to be able to ratify or accede to it which is the purpose of the first Decision. In addition, the Convention contains provisions that affect EU secondary legislation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, issues which are covered by the second Council decision. The decisions will be issued to the European Parliament for its consent.⁹⁶ It is a fact that Georgia is not a part of EU, however, pursuant of the Association Agreement between Georgia and EU, Georgia has an obligation to cooperate in order to protect environment and therefore accession to the 2010 HNS Convention becomes essential.

⁹⁷

B) As mentioned earlier, modern industrial economies use an extensive range of chemicals and substances, many of which pose risks of fire, explosion, corrosion, contamination or pollution. Each year, hundreds of millions of tonnes of these substances are transported by ship between countries and between different ports within the same country. They are transported both in bulk form (often in specialised chemical tankers or bulk carriers) and in packaged form. It is also a fact that 90 per cent of world trade is carried by the international shipping industry and the significant share HNS cargo

⁹³ <<http://www.imo.org/en/MediaCentre/PressBriefings/Pages/53-hns-2010.aspx#.WGLkkn16TIW>>, see also <<http://www.hnsconvention.org/implementation/>>

⁹⁴ European Council's Decision 13806/15, available online: <http://www.hnsconvention.org/fileadmin/IOPC Upload/hns/files/EU_Council_Decision_on_ratification_of_HNS2010.pdf>

⁹⁵ 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.hnsconvention.org/fileadmin/IOPC Upload/hns/files/EU_Council_Decision_on_ratification_of_HNS2010_judicial_cooperation_aspects_\(003\).pdf](http://www.hnsconvention.org/fileadmin/IOPC Upload/hns/files/EU_Council_Decision_on_ratification_of_HNS2010_judicial_cooperation_aspects_(003).pdf)>

⁹⁶ <<http://www.iopcfunds.org/news-events/detail/item/484/>>

⁹⁷ The Association Agreement (AA) between the European Union and Georgia, signed by 16 June of 2014. <<http://www.parliament.ge/uploads/other/34/34754.pdf>>, <<http://www.parliament.ge/en/gavigot-meti-evrokavshirtan-asocirebis-shetanxmehis-shesaxe/associationagreement.page>>

represents in maritime freight transport worldwide.⁹⁸ The transport of HNS by sea is a vital trade. Chemicals and other products underpin many manufacturing processes and IMO regulations ensure their safe transport. The statistical information shows that the number of vessels carrying HNS is increasing. 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 2014.⁹⁹

C) On the other hand, despite the fact that the shipping industry and seaborne trade have rapidly increased over the last fifty years (mainly increasing demand for chemicals and fuels), and despite of current regulations, the occurrence of accidental spills poses an important risk. HNS pose risks during transport and storage on land and use in industrial processes on land, their carriage by sea gives rise to additional risks, in particular, risks to the safety of ships, their crews and port facilities, and pollution of the sea and coastline. The latter can cause very extensive harm to the environment and accompanying economic loss. The risks posed by HNS are not limited to pollution.¹⁰⁰ The potential danger to the marine environment, posed by HNS at sea is acknowledged by the industry and government.¹⁰¹ HNS spills are recognized as one of the major threats to the marine environment of the Black Sea. The presence of risk associated with heavy traffic calls for coordination of all emergency response resources on national and regional level. HNS have their impact on the marine biota and wildlife.¹⁰² HNS incidents could entail great health risks as well as. www.ciimar.up.pt/hns web-site provides a database, which contains 184 entries of HNS spilled in 119 incidents in marine waters around the world.¹⁰³ HNS have been raising major concern among environmental managers and scientific community for their heterogeneity, hazardous potential towards aquatic organisms and associated social-economic impacts.¹⁰⁴ The damage caused by HNS could lead to loss by tourism industry, fisheries and the environment of a country. As can be seen, the Convention has covered nearly all substances that might be dangerous to the environment.¹⁰⁵ It also well known that sometime HNS incidents are less visible, that make these substances more dangerous and there is its great importance also for Georgia, having measures and facilities to prevent the effects and protect the environment also. It should be underlined that the effects of HNS on wildlife have not been assessed yet and cleaning procedures,

⁹⁸ <<http://www.ics-shipping.org/shipping-facts/shipping-and-world-trade>>

⁹⁹ <<http://www.iopcfunds.org/fileadmin/IOPC Upload/Downloads/English/Final HNS Why it is needed brochure-web version e.pdf>>

¹⁰⁰ REGULATION IMPACT STATEMENT 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, done at London on 30 April 2010 [2010] ATNIF 55.

¹⁰¹ Michael G. Faure, Han Lixin & Shan Hongjun, Maritime Pollution Liability and Policy (ed.2010), pg.24

¹⁰² <<http://www.oiledwildlife.eu/background-information/why-respond-oiled-wildlife/effects-hazardous-and-noxious-substances-hns-wildl>>, there are short term effect and long term effect of HNS substance; Short term effect are as follows: toxic effects from ingestion, inhalation or skin contact, loss of waterproofing of feathers or fur, impaired locomotion from adherent substances, weight loss, starvation from inability to feed, illness, impaired immune function, physiological damage, endocrine disrupters, liver and kidney damage from ingestion/inhalation, blood disorders. Long term effects are immunological or physiological damage, impaired reproduction, impaired growth and/or development.

¹⁰³ <<https://www.ncbi.nlm.nih.gov/pubmed/25559778>>

¹⁰⁴ <<https://www.ncbi.nlm.nih.gov/pubmed/26546768>>07

¹⁰⁵ Ibid, pg.377

which would allow a prompt restoration, have not yet been defined.¹⁰⁶ HNS accidents do happen and entail significant and costly consequences.

D) Another argument that should be addressed in order to underline the importance of ratification or accession of the HNS Convention is recent incident that took a place on April 4, 2017 at 10.55 a.m. in Sri Lanka. The container ship “MSC Daniela” caught fire in Indian Ocean on 120 nautical miles off Colombo port in Sri Lanka. The container ship “MSC Daniela” was operating under AIS status Cargo – Hazard A (Major).¹⁰⁷ The vessel was en route from Singapore to Suez Canal, when containers on main deck in aft part inflamed. Some containers were bleeding for more than 2 weeks, causing concerns to local authorities and hazmat teams for existence of dangerous goods.¹⁰⁸ Sri Lankan authorities worry about some chemicals in the air making their way on land and harming local population. At the present moment, it is not clear exactly what caused the fire, but some suggest that it was caused by misdeclaration of hazardous cargo.¹⁰⁹ What would be the effect of this incident will be shown in nearest future. The recent incident remains shipping community and industry as a whole to think about ratification and/or accession in order to give effect to the HNS Convention.

E) Accession of the 2010 HNS Convention is needed to ensure that those who have suffered damage have access to a comprehensive and international liability and compensation regime.¹¹⁰ Therefore, the accession of the Convention is even more essential for Georgia. The 2010 HNS Convention is based on a “long-standing and successful oil pollution regime”, 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 also includes non-persistent oils (e.g. light diesel, gasoline, etc.) which are not covered under CLC 1969, CLC 1992 the 1992 Fund Convention.

F) It should be underlined that the safeguard of Georgian coastal environments constitutes, under Georgian Constitution, a commitment of the Georgian 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, thus leading to an adequate protection of an already sensitive area, and of sectors vital for the future of Georgia.

¹⁰⁶ It should be mentioned there that there is HNS online platform provides systematized information of HNS properties and spills response, educational tools, guidelines and protocols, environmental sensitive index for the Portuguese coast and modeling tools. This platform aims to support preparedness and response to accidental spills (including Oil), to foster a more effective decision-making process and response. See also < <http://www.ciimar.up.pt/hns/>>

¹⁰⁷ <http://www.maritimeherald.com/2017/container-ship-msc-daniela-caught-fire-sri-lanka/>

¹⁰⁸ <http://www.seanews.com.tr/major-fire-on-boxship-msc-daniela-off-colombo/165361/>

¹⁰⁹ <http://splash247.com/msc-suspects-hazardous-cargo-misdeclaration-sparked-fire-giant-boxship/>

¹¹⁰ 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> p. 2.

G) In 1992 Georgia ratified the Convention on the Protection of the Black Sea Against Pollution¹¹¹, which was signed in April 1992, and ratified by all six legislative assemblies of the Black Sea countries in the beginning of 1994. The Convention is also referred to as "Bucharest Convention", is the basic framework of agreement and three specific Protocols, which are: (1) the control of land-based sources of pollution; (2) dumping of waste; and (3) joint action in the case of accidents (such as oil spills). Basic objective of the Convention on the Protection of the Black Sea Against Pollution is to substantiate the general obligation¹¹² of the Contracting Parties to prevent, reduce, combat and control the pollution by Oil and Other Harmful Substances in the Black Sea in order to protect and preserve the marine environment and to provide legal framework for co-operation and concerted actions to fulfill this obligation.¹¹³ Article 2 of the Emergency Protocol states that the Contracting Parties shall endeavour to maintain and promote either individually or through bilateral or multilateral cooperation, contingency plans for combating pollution of the sea by oil and other harmful substances. Article 2 section 4 of the Convention defines hazardous substances as follows: "Harmful substance" means any hazardous, noxious or other substance, the introduction of which into the marine environment would result in pollution or adversely affect the biological processes due to its toxicity and/or persistence and/or bioaccumulation characteristics. The article XIV states that: "The Contracting Parties shall take all measures consistent with international law and cooperate in preventing pollution of the marine environment of the Black Sea due to hazardous wastes in trans-boundary movement, as well as in combatting illegal traffic thereof, in accordance with the Protocol to be adopted by them."

The Contracting Parties have agreed to adopt the Black Sea Contingency Plan (hereinafter referred to as the Plan) for responding promptly and effectively to marine pollution incidents affecting or likely to affect the Black Sea environment. The Plan includes two volumes as follows: Volume 1: Response to Oil Spills and Volume 2: Response to Harmful Substances, Other Than Oil (to be developed). The Contracting Parties have noted that:

✓ The transportation of harmful substances other than oil in the Black Sea Area is limited even if an increase has been registered during the last few years.

✓ The Protocol of 2000 to amend the OPRC 1990 to Cover Pollution Incidents by Hazardous and Noxious Substances (OPRC, 1990 HNS Protocol, 2000) was adopted in 2000, and that international guidelines for the development of HNS Contingency Plans has not yet been adopted, and have agreed

¹¹¹ Information is available: http://www.blacksea-commission.org/_convention-fulltext.asp; <https://cil.nus.edu.sg/rp/il/pdf/1992%20Bucharest%20Convention%20for%20the%20Protection%20of%20the%20Black%20Sea%20Against%20Pollution-pdf.pdf>

¹¹² in particular To prevent pollution by hazardous substances or matter; Annex to the Convention; To prevent, reduce and control the pollution from land-based sources; Protocol to the Convention; To prevent, reduce and control the pollution of the marine environment from vessels in accordance with the generally accepted rules and standards; To prevent, reduce and control the pollution of the marine environment resulting from emergency situations; Protocol to the Convention; To prevent, reduce and control the pollution by dumping; Protocol to the Convention; To prevent, reduce and control the pollution caused by or connected with activities on the continental shelf, including exploration and exploitation of natural resources; To prevent, reduce and control the pollution from or through the atmosphere; To protect the biodiversity and the marine living resources; Draft Protocol on the biodiversity; To prevent the pollution from hazardous wastes in transboundary movement and the illegal traffic thereof; Draft Protocol to the Convention; To provide framework for scientific and technical co-operation and monitoring activities;

¹¹³ http://www.blacksea-commission.org/_convention.asp

that the Volume 2 of the Black Sea Contingency Plan should be prepared in accordance to the appropriate International Guidelines by the year 2006.

✓ As an interim measure, the Contracting Parties have agreed that as far as possible and adequate, to apply the requirements for exchange of information between them according to the Communication and Operational principles as set out in Volume 1 of the Black Sea Contingency Plan.¹¹⁴

It is suggested that the 2010 HNS Convention together with "Bucharest Convention" will establish effective legal regime in order to create flexible legal regulation rules in relation with carriage of HNS by sea. Therefore, after ratification of the CLC Convention, the Fund Convention and the "Bucharest Convention", the next logical step should be accession to the 2010 HNS Convention.

H) The applicability of the NHS Convention for Republic of Georgia is proven by statistical information provided from the Legal Entity under Public Law (LEPL) – Maritime Transport Agency of the Ministry of Economy and Sustainable Development of Republic of Georgia. According to the statistical information:

Statistical information, 2014

<i>International Maritime Dangerous Good Statistic</i>									
Classes	1	2	3	4	5	6	7	8	9
2014	Explosives	Gases	Flammable liquids	Flammable solids; substances liable to spontaneous combustion; substances which, in contact with water, emit flammable gases	Oxidizing substances and organic peroxides	Toxic and infectious substances	Radioactive material	Corrosive substances	Miscellaneous dangerous substances and articles
	Amount (m3 / TEU)								
2014	44 TEU	263 TEU	1551 TEU	110 TEU	59 TEU	426 TEU		894 TEU	1994 TEU
			722345m3						

¹¹⁴ <<http://www.blacksea-commission.org/publ-Newsletter08-EN-07.asp>>

Statistical information, 2015

Classes	1	2	3	4	5	6	7	8	9
2015	Explosives	Gases	Flammable liquids	Flammable solids; substances liable to spontaneous combustion; substances which, in contact with water, emit flammable gases	Oxidizing substances and organic peroxides	Toxic and infectious substances	Radioactive material	Corrosive substances	Miscellaneous dangerous substances and articles
Amount (m3 / TEU)									
Jan		9 TEU	116 TEU	15 TEU	3 TEU	24 TEU		109 TEU	77 TEU
			49548 m3						
Feb		4 TEU	44 TEU	1 TEU	3 TEU	23 TEU		126 TEU	68 TEU
			27577 m3						
Mar		17 TEU	52 TEU	16 TEU	7 TEU	39 TEU		112 TEU	75 TEU
			32354 m3						
April		15 TEU	58 TEU	8 TEU	5 TEU	51 TEU		43 TEU	74 TEU
			45753 m3						
May		21 TEU	55 TEU	5 TEU	5 TEU	21 TEU		40 TEU	37 TEU
			61753 m3						
June		60 TEU	46 TEU	7 TEU	9 TEU	36 TEU		48 TEU	53 TEU
			53597 m3						
July		27	24	2 TEU	15 TEU	10 TEU		69	37

		TEU	TEU					TEU	TEU
			42569 m3						
Aug		17 TEU	124 TEU	6 TEU	11 TEU	28 TEU		55 TEU	35 TEU
			25286 m3						
Sept		6 TEU	60 TEU	16 TEU	5 TEU	14 TEU		47 TEU	32 TEU
			72177 m3						
Oct		19 TEU	106 TEU	4 TEU	9 TEU	35 TEU		46 TEU	28 TEU
			28782 m3						
Nov		16 TEU	86 TEU	2 TEU	2 TEU	30 TEU		46 TEU	30 TEU
			37808 m3						
Dec		14 TEU	94 TEU	6 TEU	6 TEU	21 TEU		85 TEU	43 TEU
			32748 m3						

Statistical information, 2016

Classes	1	2	3	4	5	6	7	8	9
2016	Explosives	Gases	Flammable liquids	Flammable solids; substances liable to spontaneous combustion; substances which, in contact with water, emit flammable gases	Oxidizing substances and organic peroxides	Toxic and infectious substances	Radioactive material	Corrosive substances	Miscellaneous dangerous substances and articles
Amount (m3 / TEU)									
January		12 TEU	63 TEU	2 TEU	1 TEU	35 TEU		36 TEU	29 TEU
			22864 m3						
February		13 TEU	64 TEU	17 TEU	1 TEU	27 TEU		51 TEU	100 TEU
			48176.1 m3						
March		8 TEU	76 TEU	1 TEU	3 TEU	38 TEU		41 TEU	50 TEU
			16906.4 m3						
April		70 TEU	60 TEU	3 TEU	8 TEU	35 TEU		55 TEU	37 TEU
			35504.2 m3						
May		18 TEU	102 TEU	6 TEU	9 TEU	42 TEU		44 TEU	45 TEU
			21392.2 m3						
June		18 TEU	101 TEU	1 TEU	16 TEU	58 TEU		36 TEU	32 TEU
			33922.						

			9m3						
July		14 TEU	130 TEU	8 TEU	13 TEU	23 TEU		49 TEU	17 TEU
			25143 m3						
Aug		13 TEU	101 TEU	12 TEU	10 TEU	56 TEU		45 TEU	56 TEU
			45898 m3						
Sept		25 TEU	125 TEU	7 TEU	10 TEU	23 TEU		51 TEU	29 TEU
			32890 m3						
Oct		34 TEU	109 TEU	13 TEU	7 TEU	31 TEU		106 TEU	43 TEU
			41004 m3						
Nov		21 TEU	148 TEU	3 TEU	11 TEU	28 TEU		33 TEU	50 TEU
			46998 m3						
Dec		11 TEU	27 TEU	8 TEU	14 TEU	15 TEU		21 TEU	16 TEU
			38234 m3						

The major impediment of the accession process of HNS are considered to include mainly three aspects: first, as for packaged goods, it is difficult to set up the reporting system; second, the concept of contributor is difficult to identify; and third, the submission of reports on contributing cargo is rarely carried out;¹¹⁵

Georgia should take the action in order to express its willingness to be bound by the accession of the 2010 HNS Convention.

¹¹⁵ Michael G.Faure, Han Lixin & Shan Hongjun, Maritime Pollution Liability and Policy, pg.30

6. The accession to the 2010 HNS Convention by Georgia

Georgia is monist country. In accordance with the Article 6 (1) of the Georgian Constitution “the Constitution of Georgia shall be the supreme law of the State. All other legal acts shall correspond to the Constitution”.¹¹⁶ This provision underlines that the Constitution is the basic law of State and it is at the top in the hierarchy of legal documents and legal rules. In Georgia, in the hierarchy of norms, an international treaty takes the next highest rank as per Article 6 (1). It enters into force in compliance with Article 65 of the Constitution (in some cases after being ratified by Parliament). Thus it is not necessary to adopt a special normative act on the enactment of its provisions only if the treaty is self-executive, if not it does need adoption of separate act. Article 6 (2) of the Constitution states, that “an international treaty or agreement of Georgia unless it comes into conflict with the Constitution or Constitutional Agreement of Georgia, shall take precedence over domestic normative acts”.

In order to implement the Convention in Georgian legislation properly and effectively, there is special need to draft separate law, which will be consistent with Convention and international standards and regulations. The reason why Georgia needs to have separate law derives from several circumstances, but first of all, from HNS Convention’s articles themselves. Convention lives gaps and gives the State Party discretion to decide the applicability of the Convention, defines relevant authorities and etc. Second of all, the Convention stays very general and outlines basic regulations. The Convention does not declare relevant authorised governmental bodies and/or agencies competence in regional level, which will have an obligation to protect and implement an undertaken obligation, so therefore administrative issues should be addressed and regulated. Third, as already mentioned the Convention creates a special Fund and Georgia needs to declare the legal status of the Fund. Fourth, there are issues such as certification, inspection, entry into force, suspension and therefore the policy should be clarified. All these issues are addressed by Law of Georgia on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substance by Sea, which is attached to present drafting project. (*See annex I*).

The separate law contains the following article: Article 1 gives the definition; Article 2 deals with the scope of application of the provisions of drafted law, the Convention, its Annexes and any Presidential or Ministerial Decrees for its implementation, excluding the application to ships which do not exceed 200 GT and which carry HNS only in packaged form and while the ships are engaged on voyages between ports of Georgia. Article 3 provides the Competent Authorities for the application of the provisions of this drafted law. Article 4 and 5 provide with HNS cargo contribution and accountability issues. Article 6 regulates the certification and the amount of the fees for the issuance of the certificate, which has been left open, because of different amount might be considered by the Georgian Parliament. Also it should be stated there, that the amount of the fine also is left open and falls under the Georgian Parliament consideration. Article 7 provides the procedure for cancellation of the certificate. Article 8 provides the rule of the inspection. Article 9 regulates sanctions and appeals

¹¹⁶The article 6 of The Constitution of Georgia

procedures in accordance with Georgian domestic law for the effective execution of any obligation arising under the Convention. Moreover, Article 10 ensures the recognition and enforcement of judgments. Article 11 declares the procedures of obtaining the legal status by the Fund. Article 12 deals with codification issues; Article 13 - suspension; Article 14 incorporates the text of the 2010 HNS Convention and its Annexes, as originally drafted in English followed by the Georgian translation. Article 15 declares the entry into force procedures. This is a general outlook of Law of Georgia on Implementation of International convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substance by Sea.

Another important point to make is that Georgia is a party to the Limitation of Liability of Maritime Claims Convention 1976 (LLMC 1976) and therefore, if and when the 2010 HNS Convention enters into force, claims would be a subject to the 2010 HNS Convention and the LLMC with its lower limits, moreover it is important to recall that the LLMC 1976, unlike 1996 LLMC Protocol does not allow reservation in relation to the HNS claims. Therefore, it is advisable for Georgia to accede to the 1996 LLMC Protocol and to make a reservation in relation to HNS claims in accordance with the Article 7 of the Protocol (relating to Article 18 (1) (b) of the amended LLMC Convention). Thereby, leaving the HNS claims to be dealt with exclusively to the 2010 HNS Convention limits.

In accordance with the Georgian Law on “Normative Act” it is obligatory to publish ratified or accessed treaties and conventions where the Parliament of Georgia has expressed its consent to recognising the treaty as binding for Georgia. After the treaty and/or convention come into force, it shall be published in the LEPL Legislative Herald of Georgia web-site at the request www.matsne.gov.ge of the Ministry for Foreign Affairs of Georgia. It is published in electronic format.



**LAW OF GEORGIA ON LIABILITY AND COMPENSATION FOR DAMAGE IN
CONNECTION WITH THE CARRIAGE OF HAZARDOUS AND NOXIOUS SUBSTANCES BY
SEA**

**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 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.

Article 24

Organization and administration

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.

Article 39

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

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 judgment 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 judgment 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 judgment was obtained by fraud; or

(b) where the defendant was not given reasonable notice and a fair opportunity to present the case.

2. A judgment 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 judgment 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 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) 66

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.
- 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. The fixed sum referred to in article 17, paragraph 3 shall be determined for each sector in accordance with these regulations.

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.

Law on 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

(Implementation)

Article 1
General provisions

1. For the purpose of this Law:

a) “HNS Convention” means International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea.

b) “Georgian ships”- ships registered under the Authority of Maritime Transport Agency of Georgia in accordance with the regulations provided by Chapter 2 of the Maritime Code of Georgia.

c) “Foreign ships”- ships which is not registered under the Authority of Maritime Transport Agency of Georgia in accordance with the regulations provided by Chapter 2 of the Maritime Code of Georgia; as well as, ships which is registered elsewhere and owned wholly by persons who are not habitual resident of Georgia or by bodies corporate which is not established under and is not a subject to the laws of Georgia and do not have their principal place of business in Georgia, shall not be deemed to be Georgian ships.

d) “Competent Authority” means the statutory body of Georgia in accordance with the article 3 of this law.

e) The "HNS Fund" means the International Hazardous and Noxious Substances Fund established under article 13 of the HNS Convention.

2. For the purpose of this law, the definition given in Article 1 of the “HNS Convention” shall apply mutandis mutandi.

3. This Law and the convention shall be read and interpreted together as one single document.

Article 2
Scope of Application - Exemptions

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

a) Georgian ships, flying the flag of Georgia or operating under the authority of Georgia and engaged in international voyages, wherever they are.

b) Foreign ships, ships of Party States, engaged in international voyage and entering the ports, harbors, shipyards, off shore terminals or any other shipping facility of Georgia, and/or which operate under the authority of Georgia.

c) Other ships when in Georgian waters.

2. The present Law, the 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 Georgia.
- d) any warship or other ships owned or operated by the Government of Georgia and used only in Government non- commercial service; and
- e) warships, naval auxiliary or other ships owned or operated by a member state and used for the time being only in Government non-commercial service,

3. In the application of the present Law and Convention, foreign ships of Non- Party States and Georgian ships shall be treated equally.

Article 3

Competent Authorities

1. Competent authorities for the application of the present Law and the Presidential and Ministerial Decrees issued for the HNS Convention implementation shall be:

a) in Georgia, the Maritime Transport Agency (MTA) under the auspices of the Ministry of Economy and Sustainable Development of Georgia, the Georgian Coast Guard and the Georgian Port Authorities.

b) the Officers of the Georgian Coast Guard who serve in Georgian Embassies and Consulates and exercise specific maritime tasks or in circumstances of absence, the Georgian Consulate itself in respect of matters, which arise outside of Georgian territory.

3. Competent authority has a right to exercise powers, discharge the functions and perform the duties carry out by the provisions of convention, present law, decrees issued for the HNS Convention implementation and decree into execution.

4. The Authority shall have the power to issue implementing decrees, legal orders for the purpose of giving effect to present law and convention whenever it is necessary or appropriate to do so.

5. It shall be the duty of all persons in respect of whom any implementing legal orders, decrees are issued to perform the functions and duties in order to comply with the regulation.

6. The Authority shall have the general superintendence and the general supervision of all matters relating to the convention and presented law.

Article 4

HNS cargo contribution

1. Any person having received within a calendar year contributing cargo within the territory of Georgia in total quantities exceeding the limits set out in Articles 18 and 19 of the 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 Georgia exceeds the limits specified in the 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 Georgia and then shall be transferred to the Director of the HNS Fund according to the procedure indicated by Georgian legislation.

Article 5

Accountability

1. Any person who in a calendar year received contributing cargo, so as to be liable to contribute to the HNS Fund, shall by [Data/ Month falls under parliament consideration] 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 HNS Convention within 3 working days, but no later than the [Data/ Month falls under parliament consideration] of each year.

Article 6

Certification

1. Ships to which Article 12 of the HNS Convention applies shall have on board the certificate referred to in Article 12 (2) of the HNS Convention.

2. The Certificate and Declaration shall be issued by the Competent Authority or by any agent of representative of the Competent Authority.

3. The certificate referred in the HNS Convention shall be issued to Georgian ships, both in Georgian and English, by the Competent Authorities mentioned in Article 4 of the present Law.

4. For the issuance of the certificate, a fee of 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 7

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 Georgian 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 of law, that the insurance contract in relation to which the certificate was issued is invalid and/or if there is a reason to believe that such documentation was issued on false or erroneous information the certificate may be cancelled by the Georgian 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 Georgian Port Authority, which may request the return of the certificate from the person to whom it was issued.

4. A Certificate or Declaration which has been cancelled or suspended or expired or ceased to be valid must be surrendered to the Authority.

Article 8

Inspections

1. All ships of Party States to the Convention shall be subject to the inspection by the Georgian Coast Guard when entering the ports, harbors, shipyards, offshore terminal in the territorial sea of Georgia to verify that the ships are compliant with the Convention and there is on board a valid compulsory insurance certificate.

2. Inspection shall be conducted to ascertain and verify:

(a) whether the Convention, this Act, regulations made thereunder are being complied with in respect of the ship;

(b) when required there is on board a valid Certificate or Declaration;

3. Non- Party States Ships to the Convention are also subject to inspection to verify compliance with this the Convention.

4. When inspecting a ship flying the flag of a non-party state and/or operated under the competent authority of a non- member state to the Convention, the Georgian Coast shall request for documentation that contains the same information as in the Certificate.

5. The Georgian Coast Guard may conduct a detailed inspection of a ship entering any port, harbor, shipyard, offshore terminal or any other shipping facility of Georgia, when there are clear grounds to believe that the ship is in.

6. The Georgian Coast Guard may inspect ships when it enters the port, harbor, shipyard, off shore terminal or any other shipping facility of Georgia, at the request of another member state to the Convention,

provided such request is supported by sufficient evidence that the ship is operating or has operated in contravention of the Convention. After inspection the Georgian Coast Guard shall send the inspection report to such Party State to take appropriate action.

7. The Georgian Coast Guard when conducting an inspection of a ship, if such ship is found to be in contravention of the provisions of the Convention, may warn, detain, and/or dismiss such ship from the port, harbor, shipyard, offshore or any other shipping facility of Georgia. When foreign ship is warned, detained or dismissed from entry, the relevant notice shall be served on Foreign Ministry of Georgia and Ministry of Justice in order to inform the country to which the ship belongs.

8. The Georgian Coast shall detain a ship when certification is invalid or missing.

Article 9

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 [amount falls under parliament consideration] percent for each additional month of delay of payment of the contribution.

2. The fine is imposed by decision of the Georgian Port Authority. The update process of the Port Authorities for failure to pay contributions by the parties responsible shall be determined by Administrative Offences Code of Georgia.

3. Any person liable to pay a fine has the right to appeal to the competent Court in accordance with the provisions of the General Administrative Code of Georgia. Such an action shall not suspend the execution of the decision.

4. No ship to which Article 12 of the 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 converted into Georgian Lari]. 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 Georgia. The fines are collected in accordance with the provisions on the public revenue collection.

6. An alleged offender may seek leave to appeal within a period of thirty (30) days against the decision imposing the fine in accordance with Georgian legislation. Such an action shall not suspend the execution of the decision.

Article 10

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 Georgia in accordance with provisions of International Private Law of Georgia, except in the cases provided in Article 40 paragraph 1.

2. Judgments on matters covered by the HNS Convention, when given by a court of a Party State of European Union shall be recognized and enforced in Georgia in accordance with the relevant European Union rules on the subject.

3. Judgments on matters covered by the 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 recognized and enforced in Georgia by the Supreme Court of Georgia in accordance with that Convention, International Private Law of Georgia and Georgian Legislation.

Article 11

1. The legal personality of the HNS fund shall be recognized in accordance with relevant provisions of Civil Code of Georgia, the Law of Georgia on Entrepreneurs and the law of Georgia on Legal Entity of Public Law.

2. 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 the law of Georgia.

Article 12

Codification of Amendments and Guidelines to the HNS Convention and its Annexes

By Presidential decrees issued at the proposal of the Ministry of Economy and Sustainable Development of Georgia after given notice by MTA shall be regulated:

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

Article 13

Suspension

The application of the HNS Convention can be suspended wholly or partly in times of war in accordance with procedure of the Law of Georgia.

Article 14

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

Article 15 **Entry into force**

The present law shall enter into force upon the date of its publication in the LEPL Legislative Herald of Georgia and in accordance with the conditions of Article 46 of the HNS Convention.

Head of State of Georgia
03 May 2017
Tbilisi

George Margvelashvili

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