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Law on the Incorporation of the 2010 HNS Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996

into the Egyptian Law

(2010 HNS Convention)

**A Legislation Drafting Project submitted in partial fulfillment of the
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Submitted By: Alia Al-gazzar

(The Arab Republic of Egypt)

Supervisor: Dr. Norman Martinez

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Table of Contents

Explanatory Note

1. The Background to the 2010 HNS Convention.....	3
2. What is the 2010 HNS Convention.....	5
2.1 Geographical Scope of Application.....	5
2.2 Damages Covered.....	6
2.3 Hazardous and Noxious Substances.....	6
2.4 Receiver of the Hazardous and Noxious Substances.....	7
2.5 Basis of the Shipowner's Liability.....	8
2.6 Limits of Liability.....	8
2.7 Compulsory Insurance.....	9
2.8 HNS Fund.....	10
2.9 Contributing Cargo to the HNS Fund.....	11
2.10 State's Reporting Obligation.....	11
3. The Need for the incorporation of the 2010 HNS Convention to Egyptian Law.....	12
4. The Interrelation between the 2010 HNS Convention and the Convention on Limitation of Liability for Maritime Claims 1976/1996.....	14
5. The Incorporation Procedures of the HNS Convention into Egyptian Law.....	15
6. The Executive Regulations Necessary for the Implementation of the 2010 HNS Convention.....	19
6.1 The State's Obligations under the 2010 HNS Convention.....	19
6.2 The Establishment of the HNS Management Department.....	20

**Law on the Incorporation of the 2010 Protocol to the
International Convention on Liability and Compensation for
Damage in Connection with the Carriage of Hazardous and
Noxious Substances by Sea, 1996 into Egyptian Law
(2010 HNS Convention)**

Explanatory Note

1. The Background to the 2010 HNS Convention:

The *Torrey Canyon* incident in 1967 stimulated the international community, specifically the shipping & oil industry to proceed in the way of creating a legal uniform regime capable of overcoming the legal problems which had risen from the aforementioned incident. In a step forward to this purpose, the Comité Maritime International with the cooperation of the International Maritime Consultative Organization (IMCO), convened an international conference for the adoption of the International Convention on Civil Liability for Oil Pollution Damage in 1969 commonly known as 'CLC 1969'.

There have been a series of incidents before and after the *Torrey Canyon* which resulted in great losses and damages, starting from the *Mont Blanc* in 1917, *Fort Stikene* in 1944, *Taquari* in 1971, *Amoco Cadiz* incident 1978, the *Mount Louis* 1984, the *Exxon Valdez* incident in 1989, *British Trent* 1993, the *Erika* and *New Carissa* incident in 1999, and ending by the *Prestige* incident in 2002.

There were many attempts to adopt various international legal regimes dealing with the issue of liability and compensation. While working on the CLC 1969, there were suggestions to adopt a liability & compensation regime for the Carriage of Hazardous & Noxious Substances (HNS) as well. Unfortunately, it was very difficult task to achieve because of its complicated fund (The HNS Fund). Therefore, it was postponed to be worked on after the adoption of the 'CLC 1969' which was subsequently amended by 1992 Protocol known as the International Convention on Civil Liability For Oil Pollution Damage 1992 'CLC 1992'.

In 1996, following persistent calls by the international maritime industry for the development of an international uniform legal regime for the HNS carriage, the IMO developed the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996, commonly referred to as the 'HNS Convention 1996'¹. It was developed on the basis of the CLC 1992. It was expected to receive the same international success and acceptance; unfortunately, there were some obstacles that prevented its entry into force.

Before ratification there were difficulties in the measures of collecting data concerning a State Party's reporting obligation on its imports from the HNS especially in their packaged form. As well as some difficulties with regard to the Liquefied Natural Gas (LNG) contribution in the LNG account. Even among the States who ratified the Convention only few of them were able to satisfy the reporting requirement in compliance with the Convention. As a result of the mentioned obstacles only 14 States ratified the HNS Convention 1996. Although a sufficient number of ratifications were reached for the Convention to enter into force, however, there were problems with regard to the reporting requirement which hindered the Convention from the Convention to enter into force.²

In an attempt of developing the HNS regime in order to overcome the obstacles that prevented its implementation, the IMO's Maritime Safety Committee (MSC), Marine Environment Protection Committee (MPEC), and the Legal Committee worked together to overcome the complications encountered.

¹ Egypt was represented among the 73 States in the Conference at the Headquarters of the International Maritime Organization in London, from the 15th of April to the 3rd of May, 1996.

² Article 45 states that;

1 This Convention 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 43 that those persons in such States who would be liable to contribute pursuant to article 18, paragraphs 1(a) and (c) have received during the preceding calendar year a total quantity of at least 40 million tonnes of cargo contributing to the general account.

In 1999 the HNS Correspondence Group of the IMO Legal Committee assigned the IOPC Fund Assembly to prepare a draft Protocol to the HNS Convention 1996. The Draft Protocol was submitted to a Diplomatic Conference, which was held for the revision of the HNS Convention 1996, at the IMO Headquarters.

The Conference resulted in the adoption of the 2010 Protocol by consensus on 30 April 2010 which together with the HNS Convention 1996 are known as "The International Convention on the Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010 (2010 HNS Convention).

2. What is the 2010 HNS Convention?

The 2010 HNS Convention aims at overcoming the obstacles which were hindering the HNS Convention 1996 from coming into force, and to reinforce security for an adequate, prompt and effective compensation to a wide range of damages and losses incurred by victims of accidents involving HNS. It is based on the two-tier system established under the CLC and Fund Conventions.

2.1. Geographical Scope of Application:

Article 3 of the 2010 HNS Convention illustrates the geographical scope within which it is to be applied. It distinguishes between damages which occur in the State's territory (including the territorial sea), and the exclusive economic zone of a State Party. It applies to any damage which may occur in the territory of a State Party including the territorial sea. However, in the exclusive economic zone, the damage covered is the environment contamination. The exclusive economic zone for the purposes of this Convention is the one established in accordance with international law, otherwise the area beyond and adjacent to the territorial sea of that State determined by that State and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured. Whereas any damage, except environment contamination, is to be covered although occurred outside the territory of a State Party, 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. Finally, it covers all preventive measures, taken, to prevent or minimize the mentioned damage

2.2. Damage Covered

The damage covered by the 2010 HNS Convention is similar to that defined in the CLC 1992 whereas more comprehensive. It includes damage caused by pollution, fire and explosion, whereas, the CLC 1992 is restricted only to pollution damage. Damage as defined in Article 1.6 of the 2010 HNS Convention includes loss of life or personal injury on board or outside the ship carrying the HNS, loss of or damage to property outside the ship, economic losses resulting from contamination of the environment, costs of preventive measures taken to prevent or minimize those damages, e.g. clean up operations at sea and onshore, and costs of reasonable measures of reinstatement of the environment. Compensation for those damages is available regardless whether the substance that caused the damage is oil or HNS. However, in case of persistent oil the 2010 HNS Convention will only apply when the damage was caused to persons or property but not to pollution damage as this would fall under the CLC 1992. If the damage was caused by HNS and other substances or if it is not reasonably possible to make a distinction between the damage caused by each, then all damages shall be deemed to have been caused by the HNS. If the damages were caused by pollution as defined in the CLC 1969, as amended, whether or not compensation is payable in respect of it under that Convention, or by radioactive material of class 7 either in the International Maritime Dangerous Goods Code (IMDG code), as amended, or in the International Maritime Solid Bulk Cargoes Code as amended (IMSBC code) they do not fall under the 2010 HNS Convention.

2.3. Hazardous and Noxious Substances (HNS):

Article 1.5 of the 2010 HNS Convention defines HNS through a list which includes substances, materials and articles that have been previously identified in a number of IMO instruments with respect to safety and pollution including; MARPOL 73/78

(Appendix I of Annex I, Appendix II as well as substances and mixtures provisionally categorized as falling in pollution category X, Y or Z in accordance with regulation 6.3 of Annex II), and the IMDG code (in packaged form) and the International Bulk Carriers code (IBC code), and the International Gas Carrier code (IGC code). For the liquefied gases which are transported in bulk, such as liquefied natural gas (LNG), liquefied petroleum gas (LPG), ammonia, ethylene, butadiene, ethane and propylene are all included. Packaged cargoes mentioned in the IMDG code (containerized cargo) which are a very wide range of chemical materials are included as well. The Convention also covers residues left by the previous carriage of HNS, other than those in packaged form.

As per Article 4 cargoes excluded from the 2010 HNS Convention scope of application are, the radioactive and nuclear materials, wastes, coal, and iron ore. The 2010 HNS Convention excludes pollution damage as defined in the CLC 1992 and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND) in order to avoid overlap with these Conventions. However, pollution damage caused by persistent oils does not fall under the 2010 HNS Convention but covered by the CLC 1992, except in case of damages caused by fire and explosion of the HNS.

2.4. Receiver of the Hazardous and Noxious Substances:

For the purposes of implementation of the 2010 HNS Convention implementation, Article 1.4 distinguishes between the persistent oil, the LNG, and other HNS importers. Generally, the receiver is the person who physically receives delivery of the HNS whether in port or terminal. If there is a physical receiver acting on behalf of a third party to the fund, then this person can designate this third party to be the receiver for the purposes of the Convention, provided that both are subject to a State Party jurisdiction. However, there is a special rule for the LNG Sector title holder, in Article 1*bis* (b), that he shall immediately prior to discharge pay his contribution. Lastly, the receiver; in respect of persistent oil, will have the same definition provided by the CLC 1992. Article 1.4 (b) gives the State Party the privilege to establish its own definition or the receiver under its National Laws in order to achieve flexibility in the Convention adoption

2.5. Basis of Shipowner's Liability:

In terms of Article 7, following the existing International Liability and Compensation regimes, the 2010 HNS Convention makes the shipowner strictly liable for any damage caused by the carriage of HNS. However, he has the right to limit his liability. In line with the carrier's liability provisions, Article 9.2 deprives the shipowner of his right to limit his liability, if the damage occurred as a result of the shipowner's personal act or omission either with intention to cause such damage or recklessly with knowledge that damage would probably result, he will lose his right of limitation. However, the ship owner; like the CLC 1992; can exclude his liability by invoking certain defenses listed in Article 7.2 of the 2010 HNS Convention. There is a unique defense provided to the shipowner by virtue of Article 7.2(d) which applies if someone has failed to give him the relevant information or if he has not obtained the necessary insurance cover as a consequence of this failure to provide information. Also, if the owner proves, under Article 7.3, that the damage resulted wholly or partly either from the claimant's act or omission done with intent or negligence to cause damage, the owner may be exonerated wholly or partially from liability to such person.

Therefore, it was required to impose compulsory insurance on the shipowner for the purpose of ensuring the shipowner's capability to adequately pay the due compensation to the injured.

2.6. Limits of Liability:

In terms of Article 9 the 2010 HNS Convention provides the shipowner a layered limitation of liability depending on the ship's tonnage. It makes a distinction between the bulk and packaged HNS in terms of the shipowner's limits of liability. If the damage is caused by bulk HNS, the shipowner will be able to limit his liability to an amount ranging from 10 million to 100 million SDRs (approximately US\$ 15 million).

Tonnage	Shipowner's Limits of Liability	HNS Fund Liability
Ships of less than 2,000 tons	10,000,000 SDRs	250,000,000 SDRs, including the first tier compensation
From 2,001 to 50,000 tons	Plus 1,500 SDRs per ton	
50,001 tons and above	Plus 360 SDRs per ton (capped at 100,000,000 SDRs)	

However, according to Article 9.1(b), if it is caused by package HNS or by both packaged and bulk 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, the maximum liability limits for the shipowner is 115million SDR (approximately US\$172.5 million).

If the limits exceeded the aforementioned limits in the first tier, the compensation to be paid by the second tier (the HNS Fund) according to Article 14.5(b) is limited by 250 million SDR (approximately US\$375 million) which includes compensation paid under the first tier. In fact, the International Group of P & I Clubs certified that during five years only 2 accidents out of 126 exceeded the first tier, this shows that the limits of the shipowner's liability is adequate to cover the damages arising from the HNS incidents.

2.7. Compulsory Insurance:

Article 12 of the 2010 HNS Convention imposes an obligation on the shipowner, who actually carries HNS, to maintain a compulsory insurance or other financial security up to the limits established to cover his liability for damages under the Convention. A certificate of insurance certificate should be issued, to the ships registered in a State Party, by the ships registry authority. For the ships not registered in a State Party, the certificate is to be issued by the appropriate authority of any State Party. A copy of the certificate of insurance is to be deposited with the authority which keeps the ships registry records and another should be kept on board the ship. Compulsory certificates of insurance should be accepted among States Parties to the Convention and have the

same force of those issued by them, even if issued for a ship not registered in a State Party.

The injured party, according to the Convention, has the right to bring a claim directly against the insurer or the person providing financial security for the owner's liability for damage. However, the insurer has the right to ask the participation of the owner in the proceedings. On the other hand, the insurer is given the right to limit liability, even if the owner is not entitled to limitation of liability, and invoke defenses which the owner has the right to invoke. In addition, he can claim that the damage was a result of the owner's willful misconduct. However, he is not entitled to invoke other defenses he has against the owner.

2.8. HNS Fund:

To provide an adequate cover for the damages that are caused by carriage of HNS, Article 13 supplements the shipowner's tier (the first tier) by the HNS Fund (the second tier). The HNS fund will be established to be financed through contributions paid by receivers of HNS cargoes; according to Article 1.4, that has received cargoes transported by sea to the ports or terminal of the State Party during a calendar year in proportion to the quantities received with maximum amount of 250 million SDR for one incident. It aims at providing compensation for damage caused by the HNS in case the compensation to be paid by the shipowner is not adequate or not available for being excluded from liability according to one of the listed defenses in Articles 7.2 and 7.3.

The Fund is composed of four accounts; which will be divided as follows, one general account for bulk solids and other HNS substances and three separate accounts for oil, LNG and LPG in accordance to Article 16.

The Fund will be setup when the 2010 HNS Convention enters into force. The HNS Fund is managed to be designed similar to the 1992 Fund. However, it may differ in the sense that it will include other types of claims for damage claims beside pollution. It is to be governed by an Assembly composed of all the States Parties to the 2010

HNS Convention. It is administered by a Secretariat that will meet once a year and headed by a Director.

2.9. Contributing Cargo to the HNS Fund:

Article 10 defines the contributing cargo as 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. With respect to the transit cargo 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 considered as contributing cargo only in respect of receipt at the final destination. The packaged HNS is excluded from the reporting obligations and contribution, however, notice that this doesn't mean that the HNS Fund will not cover the damages arising from it, it will still be covered; hence the liability limits agreed under the 2010 Protocol has increased.

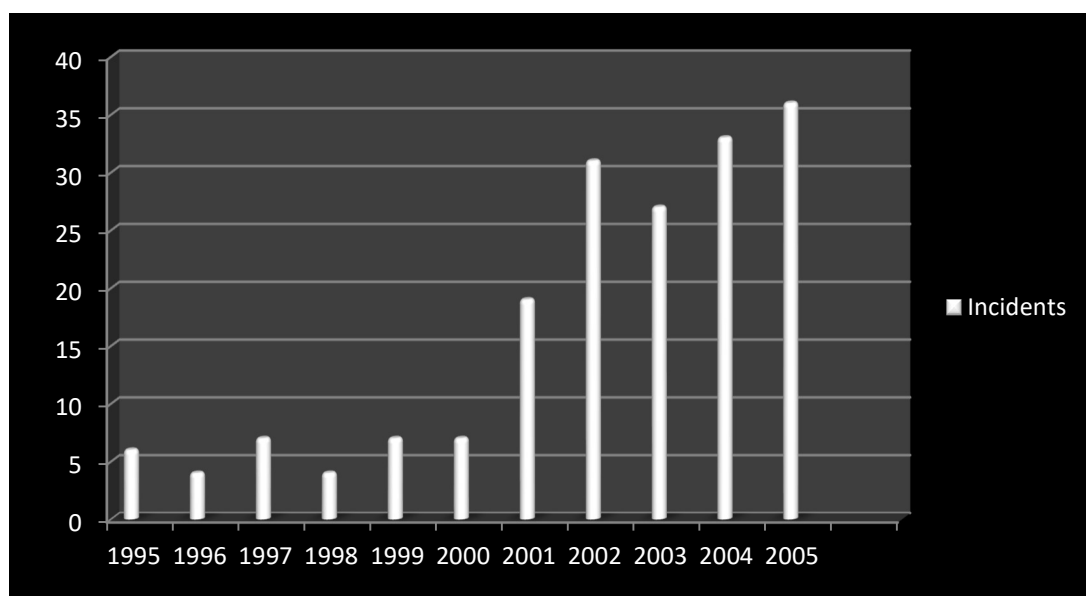
By virtue of the 2010 HNS Convention, the receiver as defined in Article 1.4 should pay an annual contribution, and with regard to the LNG account, it will be limited in the situation where the title holder pays them following an agreement to this effect with the receiver. Here the receiver is obliged to inform the State Party of the existence of such an agreement.

2.10. The State's Reporting Obligation:

Article 21 of the 2010 HNS Convention requires each State to ensure that persons liable to pay contributions in the different accounts under the Convention are identifiable and accessible by the HNS Fund. It obliges the each State Party to make reports on the HNS importers who are obliged to contribute in the HNS Fund as well as the State's HNS imports in the preceding year to be sent to the Director of the HNS Fund.

3. The Need for the incorporation of the 2010 HNS Convention into Egyptian Law:

Internationally, volumes of HNS other than oil carried by sea have constantly increased. This has led to a remarkable increase in the number of accidents involving HNS. The statistical study made by International Oil Pollution Compensation Fund on the number of incidents which occurred in the maritime transport industry for the last ten years, showed that the shipping industry is encountering serious risk of incidents which will, obviously, affect the international trade as a whole. It shows that, in the international level, there were only six accidents in 1996. However, there has been a dramatic increase to have reached 36 incidents in 2005.



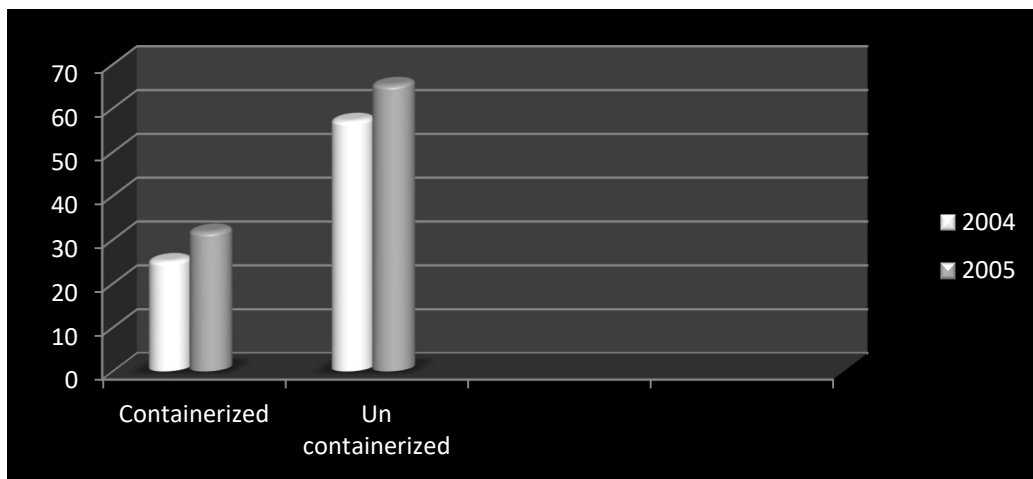
International Oil Pollution Compensation Fund Statistical Study

It was revealed from this study that HNS contributed in all the mentioned incidents at a large scale. Therefore, the international community should be aware of the damage which is caused by the HNS to the marine environment, particularly those chemical materials that can easily be dispersed in the marine environment and they posed a high level of toxicity more than oil.

The importance of Egyptian ports in the Mediterranean has increased due to the rapid flow of east-west traffic mainly originating from Asia. This traffic, whether in transit or in transshipment includes passage through the Suez Canal in Egypt. Further, Egypt

is considered the main Mediterranean partner of the European Union in terms of maritime trade, capturing almost 36%, by volume of all regional trade. Also its has an important role in the international maritime trade, especially, in the export and import of oil and gas.

The proposed location for the development of Port Said East free zone has great potential. Situated on the eastern bank of the Suez Canal and in close proximity to the new container terminal at Port Said East, the area is ideally located on one of the world's major container route between Asia and Europe. It is an ideal location for transshipment (sea-sea transport of containers). Other advantages include Egypt's low labor costs, and large market of 70 million people. In addition, the Red Sea area, comprising the Arabian Peninsula and East Africa, can well be served from Port Said East.



In addition, the HNS incidents are not only confined to pollution but also extend to other dangers that go beyond this, including damages to property or injury to persons or offshore or on board the vessel carrying the HNS. As well as, the costs of preventive or reinstatement measures that the State may take.

The adoption of the 2010 HNS Convention will fill the gap in the maritime industry by providing a comprehensive legal regime in respect of the liability and compensation for damage in connection with the carriage of HNS.

Egypt is definitely affected by the dangers due to the increase of HNS accidents. Although, Egypt has ratified the CLC 1992, the Bunker Convention on Civil Liability for Bunker Oil Pollution Damage 2001 (Bunker Convention), and the Convention on Limitation of Liability for Maritime Claims 1976 (LLMC 1976).³

Still none of those existing compensation conventions cover the damages caused by HNS or provide adequate compensation for this sort of incidents. Having no internationally uniformed legal regime to protect the states interests with regard to the environment or its national trading companies related to this type of trade, leads to the application of the General Shipowners Liability Regime which is the LLMC 1976. In fact, the latter Convention doesn't provide an adequate compensation for the victims of the HNS incidents as for the huge losses it leads to.

The importance of the 2010 HNS Convention to Egypt is obvious. The adoption of the Convention will certainly achieve the desired uniformity of the international legal regime governing this issue, and ensure that an adequate, prompt and effective compensation ne obtained for damage to persons and property, costs of clean-up and reinstatement measures as well as, the economic losses caused by maritime transport of HNS. It would indeed be a a welcome addition to the existing liability and compensation regimes.

4. The Interrelation between the 2010 HNS Convention and the Convention on LLMC 1976/96:

The LLMC 1976, which had been ratified by Egypt, provides a general cap for the limitation of liability for maritime claims. Therefore, when the HNS Convention enters into force, Egypt will have two regimes internationally applicable to the limitation of liability of the shipowner for the HNS damages.

However, neither the 2010 HNS Convention prevents the application of the LLMC 1976, nor it gives the State Party the opportunity to make its limits of liability

³ Egypt has not yet ratified the LLMC 1996 Protocol not the former 1996 HNS Convention.

exclusively applicable to the HNS incidents. Consequently, when the shipowner is entitled to limit his liability according to the 2010 HNS Convention and his exposure exceeds the LLMC 1976 limits of liability, then, it will be capped by the LLMC 1976, according to Law No. 150 of year 1986 on the incorporation of the LLMC 1976. This would undermine the aim of the 2010 HNS Convention to secure an adequate, prompt and efficient amount of compensation to the victims of the HNS incidents. This situation can be prevented through giving the 2010 HNS Convention exclusive application to the HNS damage claims.

Although Article 18 (1) (b) of the LLMC 1976, ratified by Egypt, does not allow the reservations in relation to its substantive provisions, Article 7 of the 1996 Protocol which amended the LLMC 1976 allows the State Party to reserve its right to exclude the claims subject to the 1996 HNS Convention or to any amendment or Protocol thereto. Therefore, Egypt can ratify the 1996 Protocol and reserve its right to exclude HNS claims from the application of the LLMC Convention; this will make the 2010 HNS Convention exclusively applicable to the HNS claims.

5. The Incorporation Procedures of the 2010 HNS Convention into Egyptian Law:

International conventions in Egypt are not incorporated into the Egyptian legal system unless they are '*signed*', '*ratified*' and '*published*' in the Egyptian Official Gazette. They will thereafter have the force of law. In accordance with Article 151 of the Egyptian Constitution 1971 as amended in 2007⁴, the President concludes the treaties, and communicates them to the People's Assembly accompanied with suitable clarifications.

In principle, according to Article 151 of the Constitution, the President of the Republic is the competent authority to sign the international conventions and ratify it

⁴ The Egyptian Constitution 1971 as amended on Monday, 26 March 2007, published in the Official Gazette 'Al Waka'a Al-Misrya' on 12 September 1971.

when it is concluded by one of his Ministers without an obligation to acquire the approval of the Parliament.

However, as the 2010 HNS Convention is related to the *'commercial'* and *'maritime'* matters, the President is required to present a proposal "Bill of Law" to the People's Assembly for approval. Subsequent to the approval of the People's Assembly, the President issues a Decree on the approval of the 2010 HNS Convention subject to ratification. Then the President is advised to ratify the 2010 HNS Convention according to Article 45(3) of which ratification, acceptance, approval, or accession shall be affected by the deposit of an instrument to that effect with the Secretary-General.

Finally, a Law-Decree for such ratification shall be endorsed by the President and published both with the Convention itself as it is in the Egyptian Official Gazette's Annex *Al Waka'a Al-Misrya'*. However, in practice, the Foreign Ministry does this on behalf of the President. No transformation mechanism is required for a Convention to be binding on the Egyptian authorities, domestic courts, and citizens, however, it would be automatically binding as long as it is ratified and the duly publication procedures were followed.

The efficient execution of an ordinary legislation by the executive organs of the State may require the creation of rules to facilitate such implementation through *'regulations'*. Regulations will not be enforceable unless they are published in *'Al Waka'a Al-Misrya'*.

According to the Egyptian Constitution 1971 as amended in 2007, these executive regulations are, principally, issued by the President of the Republic. However, he may delegate this responsibility to any of his Ministers.⁵ In respect of transportation issues, the Ministry of Transport is the authoritative body to which the issuance of the

⁵ Article 144 The Egyptian Constitutional Law as amended in 2007:

"The President of the Republic shall issue the necessary regulations for the implementation of the laws, in the manner that would not modify, obstruct or exempt them from execution. He shall have the right to vest others with the authority to issue them. The law would determine whoever issues the decisions requisite or its implementation."

relevant executive regulations was delegated.⁶ However, in the field of maritime transport, the Maritime Transport Sector which was established in 1997 as a subordinate to the Ministry of Transport is responsible for purposes of achieving the safety of navigation in the territorial waters according to the international standards as well as preventing and combating maritime accidents and pollution. In addition, it is responsible for the coordination with the governmental bodies, ministries, ports authorities, maritime chambers and port users in order to unify, revise and scrutiny the resolutions, laws and regulations.⁷ Therefore, it is the authorized body to issue any executive regulation required for the efficient and proper implementation of the laws related to those matters. In conclusion, it is the authoritative body for the creation of the necessary executive regulations required for the implementation of the 2010 HNS Convention.

There is an obligation on each State Party to ensure that any obligation arising under this Convention is fulfilled and is obliged to take appropriate measures under its law including the imposing of sanctions in cases of non-compliance.

According to the Egyptian Constitution 1971 as amended in 2007 there shall be no crime or penalty except by virtue of law.⁸ It is relevant to add the effective sanctions in Part Four of the Environmental Law No.4 of 1994 as amended by the Law No. 9 of 2009 where the penalties imposed on the shipowners and polluters of the environment are incorporated. This should be done through amending the Environmental Law 1994. Part Four of the Environmental Law is related to penalties imposed on violations of obligations incorporated in that law and other international instruments concerning liability and compensation in connection to environmental pollution. Particularly, Article 93 which imposes sanctions for non-compliance with some obligations in respect of keeping the certificates required by the Law, as well as the discharge standards in accordance with the Convention and international agreements to which the Arab Republic of Egypt adheres. It is appropriate to add the sanctions to

⁶ The Presidential Decree No. 36 of the year 1999 on the organization of the Ministry of Transport.

⁷ The Ministerial Decree No.1 of the year 1997 on Determining the Organizational Structure of the Maritime Transport Sector after its mergence in the Ministry of Transport.

⁸ Article 66: "Penalty shall be personal. There shall be no crime or penalty except by virtue of the law. No penalty shall be inflicted except by a judicial sentence. Penalty shall be inflicted only for acts committed subsequent to the promulgation of the law prescribing them"

be imposed on the shipowner for failure to obtain and keep the compulsory insurance certificate, as well as, on the HNS receiver for the non-fulfillment of his obligation to report on the contributing cargo to Article 93 of Part Four of the Environmental Law No.4 of 1994 as amended by the Law No. 9 of 2009.

6. The Executive Regulations Necessary for the Implementation of the 2010 HNS Convention:

6.1. The State's Obligations under the 2010 HNS Convention

The 2010 HNS Convention imposes some other obligations on each State Party. Those obligations are to be fulfilled through the promulgation of executive regulations which help the State Party to comply with its obligations. The main obligations on a State Party are stated in Articles 6, 12, 21, and an optional liability for the non-payment of contributions is provided by Article 23.

According to Article 6 each State shall make sure that the obligations arising under the Convention are fulfilled through taking the necessary measures under its municipal law including the imposing of sanctions as it may deem necessary.

Each State Party shall designate the appropriate authority to issue certificates of insurance; in the form of the model set out in Annex I of the Convention to each ship registered in its registry after making sure that they comply with the requirements in Article 12(1). However, if the ship is not registered in a State Party, then its certificate of insurance may be issued by appropriate authority in a State Party. The designated authority which keep the record of the ship's registry shall keep a copy of the certificate of insurance or, if the ship is not registered in a State Party, with the authority of the State issuing or certifying the certificate. Moreover, conditions of the issuance and validity of the compulsory insurance certificate shall be determined by each State Party.

In addition, in terms of Article 21, there is a crucial obligation on behalf of the State Party to send reports including the name and address of any person liable to pay contributions in accordance with articles 18 and 19 as well as data on the relevant quantities of contributing cargo in the preceding calendar year to the HNS Fund Director. In addition, it shall make sure that any person liable to pay contributions appears on a list to be established and kept up to date by the Director. However, in case there is no person liable to pay contributions, the State Party shall inform the Director of the HNS Fund.

Furthermore, the State Party shall calculate the initial contributions for the persons liable for payment according to the method prescribed in Article 20 of the Convention on the basis of a fixed sum per unit of contributing cargo received during the calendar year preceding.

6.2. The Establishment of the HNS Cargo Management Department

The Egyptian Maritime Safety Authority, in Alexandria, is Egypt's first governmental facility that dates back to 1830. It carries out its competencies to achieve the goals of its establishment specifically to regulate, monitor and manage safety of maritime navigation in accordance to the International Conventions and regulations to guarantee the compliance of the requirements of safety and security and to verify its documents and certificates. Another responsibility is monitoring the standards of Egyptian and foreign vessels calling Egyptian ports and territorial waters and to issue related certificates and permissions in accordance to international standards and conventions. In addition, it drafts laws related to pollution, monitor their implementation and coordinate with the related agencies in accordance to the equivalent internationally applied laws and represents Egypt in IMO. Furthermore, it registers Egyptian ships and marine units. Lastly, it establishes, with the consent of the Minister of Transport, companies individually or with partners to carry out tasks in its competencies.

For Egypt to duly fulfill its obligations prescribed in the aforementioned Articles of the 2010 HNS Convention, it is appropriate to have a specialized body which carries out the management of the HNS imports and exports with regard to the 2010 HNS Convention provisions. For this purposes the HNS Cargo Management Department is to be established as one of the Departments coming under the preview of the Egyptian Maritime Safety Authority departments based in Alexandria, by the Head of the Maritime Transport Sector. It is to be responsible for managing the amount of HNS imported, the number of the HNS importers and amount of contributing cargoes and receivers. It carries out its responsibilities in connection with the Port Authorities. It will be divided into three offices, namely; the HNS Auditing Office, the HNS

Reporting Office, and the HNS Certification Office, each of which carries its responsibilities determined according to its role.

As for the HNS Auditing Office, it shall identify the classes of the HNS according to Article 1.5 of the 2010 HNS Convention. It also communicates with port authorities to receive the reports regarding the HNS quantities imported to Egyptian ports⁹ as well as the information related to its importers (i.e. names and addresses). The port Authorities has to inform the HNS Auditing Office the number of Egyptian registered ships as well as foreign ship carrying HNS entering the Egyptian waters. Then send all the relevant documents concerning the HNS potential receivers and quantities of HNS imports, and the documents related to the kinds of ships registered in Egypt carrying HNS, which shall be in the model determined by the law, to the HNS Reporting Office.¹⁰

The HNS Reporting Office is responsible for preparing reports concerning the type and quantities of HNS imported, the HNS receivers/importers, and the contributing cargo, which shall be in the form of the model determined by the law, to be sent to the Director of the IMO/HNS Fund.¹¹ It also collects the contributions, determined by the HNS Assembly, from the HNS potential receivers in order to send them to the Director of the IMO/HNS Fund within the period of time determined by the Convention in Article 20(3). It should collect as well the pecuniary punishment imposed on the receiver as a result of his failure to validly report on the contributing cargo pursuant to Article 21 of the 2010 HNS Convention.

Finally, the HNS Certification Office appoints an inspector to the ships carrying HNS in order to ensure its compliance with the 2010 HNS Convention requirements prescribed by Article 12.1. Then it issues to the complied ship registered in the Egyptian registry a certificate of insurance according to the form of the model set out in Annex I of the Convention. In addition, it may issue those certificates for ships not registered in a State Party. It also ensures the validity of the certificates held by the Egyptian and Foreign ships carrying HNS through auditing the Egyptian and foreign ships carrying HNS. Finally, it collects the fines imposed on the shipowner, by virtue

⁹ See Appendix 1.

¹⁰ See Page 72.

¹¹ See Page 73.

of law, in case of in compliance with his obligations derived Article 12 of the 2010 HNS Convention.

The Arab Republic of Egypt

Presidential Decree No. _____ of year _____

Concerning the approval of ratifying the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 2010 adopted in London on 30 April 2010 subject to ratification.

Preliminary Part

The President of the Republic

According to Article (151) of the Constitution

After the People Assembly's approval, and

It is hereby decided:

Article 1

To ratify the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 2010 adopted in London on 30 April 2010.

Promulgated by the President of the Republic on _____ (Islamic Calendar) _____

(Gregorian Calendar)

Article 2

The Head of the Maritime Transport Sector to make regulations for the implementation of the provisions of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 2010.

The President of the Republic

XXXX

The People's Assembly has approved this decree in its session held in _____ (Islamic Calendar)
_____ (Gregorian Calendar).

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

THE STATES PARTIES TO THE PRESENT CONVENTION,
CONSCIOUS of the dangers posed by the worldwide carriage by sea of hazardous and
noxious substances,
CONVINCED of the need to ensure that adequate, prompt and effective compensation is
available to persons who suffer damage caused by incidents in connection with the carriage
by sea of such substances,
DESIRING to adopt uniform international rules and procedures for determining questions of
liability and compensation in respect of such damage,
CONSIDERING that the economic consequences of damage caused by the carriage by sea of
hazardous and noxious substances should be shared by the shipping industry and the cargo
interests involved,
HAVE AGREED as follows:

Chapter I GENERAL PROVISIONS

Definitions

Article 1

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 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;

(ii) noxious liquid substances carried in bulk referred to in appendix II 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, 1983, 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, 1983, 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 appendix B of the Code of Safe Practice for Solid Bulk Cargoes, as amended, to the extent that these substances are also subject to the provisions of the International Maritime Dangerous Goods Code 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 offshore 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 in² 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]⁴ 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 defenses (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 defense that the damage resulted from the willful misconduct of the owner, but the defendant shall not invoke any other defense 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 1*bis* 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 abovementioned 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 tones of contributing cargo, other than substances referred to in article 19, paragraph 1 and paragraph *1bis* which fall within the following sectors:

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

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

Article 19

Annual contributions to separate accounts

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

- (a) in the case of the oil account,
 - (i) by any person who has received in that State in the preceding calendar year, or such other year as the Assembly may decide, total quantities exceeding 150,000 tones 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;

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

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

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

(i) the titleholder has entered into an agreement with the receiver that the titleholder shall make such contributions; and
(ii) the receiver has informed the State Party that such an agreement exists.

(c) If the titleholder referred to in subparagraph (b) above does not make the contributions or any part thereof, the receiver shall make the remaining contributions. The Assembly shall determine in the internal regulations the circumstances under which the titleholder shall be considered as not having made the contributions and the arrangements in accordance with which the receiver shall make any remaining contributions.

(d) Nothing in this paragraph shall prejudice any rights of recourse or reimbursement of the receiver that may arise between the receiver and the titleholder under the applicable law.

3 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 21 bis

Non-reporting

1 Where a State Party does not fulfill 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 fulfill 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

Nonpayment 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 fulfill 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

The functions of the Assembly shall be:

- (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;
- (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 there under 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 there under 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 judgment 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 judgment 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.

Chapter VI FINAL CLAUSES

Article 44

Signature, ratification, acceptance, approval and accession

1 This Convention shall be open for signature at the Headquarters of the Organization from 1 October 1996 to 30 September 1997 and shall thereafter remain open for accession.

2 States may express their consent to be bound by this Convention 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.

Article 45

Entry into force

1 This Convention 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 43 that those persons in such States who would be liable to contribute pursuant to article 18, paragraphs 1(a) and (c) 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 Convention 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 Convention enters into force in accordance with paragraph 1, whichever is the later.

Article 46

Revision and amendment

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

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

3 Any consent to be bound by this Convention expressed after the date of entry into force of an amendment to this Convention shall be deemed to apply to the Convention as amended.

Article 47

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.

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, shall be circulated by the Secretary-General to all Members of the Organization and to all Contracting States.

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

4 All Contracting States, whether or not Members of the Organization, shall be entitled to participate in the proceedings of the Legal Committee for the consideration and adoption of amendments.

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

6 When acting on a proposal to amend the limits, the Legal Committee shall take into account the experience of incidents and, in particular, the amount of damage resulting 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.

7

(a) No amendment of the limits under this article may be considered less than five years from the date this Convention 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 Convention increased by six per cent per year calculated on a compound basis from the date on which this Convention 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 Convention 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 Convention 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 Convention enters into force for that State, if later.

Article 48
Denunciation

1 This Convention may be denounced by any State Party at any time after the date on which it enters into force for that State Party.

2 Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General.

3 Denunciation shall take effect twelve months, or such longer period as may be specified in the instrument of denunciation, after its deposit with the Secretary-General.

4 Notwithstanding a denunciation by a State Party pursuant to this article, any provisions of this Convention relating to obligations to make contributions under articles 18, 19 or article 21, paragraph 5 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 49
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 Convention with effect from the same date.

Article 50
Cessation

1 This Convention shall cease to be in force:

(a) on the date when the number of States Parties falls below 6; 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, if the data shows that the total quantity of contributing cargo to the general

account in accordance with article 18, paragraphs 1(a) and (c) received in the States Parties in that preceding calendar year was less than 30 million tonnes.

Notwithstanding (b), if the total quantity of contributing cargo to the general account in accordance with article 18, paragraphs 1(a) and (c) 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 Convention 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 Convention 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 Convention.

Article 51 ***Winding up of the HNS Fund***

1 If this Convention ceases to be in force, the HNS Fund shall nevertheless:

(a) meet its obligations in respect of any incident occurring before this Convention 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 52 ***Depositary***

1 This Convention 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 Convention 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;

(ii) the date of entry into force of this Convention;

(iii) any proposal to amend the limits on the amounts of compensation which has been made in accordance with article 48, paragraph 2;

(iv) any amendment which has been adopted in accordance with article 48, paragraph 5;

(v) 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 paragraphs 9 and 10 of that article;

(vi) the deposit of any instrument of denunciation of this Convention together with the date on which it is received and the date on which the denunciation takes effect; and

(vii) any communication called for by any article in this Convention;

and

(b) transmit certified true copies of this Convention to all States which have signed this Convention or acceded thereto.

3 As soon as this Convention 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 53 *Languages*

This Convention 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 third day of May one thousand nine hundred and ninety six.

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

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

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

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

This is to certify that there is in force in respect of the above named ship a policy of insurance or other financial security satisfying the requirements of Article 12 of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996.

Type of security

Duration of security

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

Name

Address

This certificate is valid until

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

On (Date)

(Signature and Title of issuing or certifying official)

Explanatory Notes:

1. If desired, the designation of the State may include a reference to the competent public authority of the country where the certificate is issued.
2. If the total amount of security has been furnished by more than one source, the amount of each of them should be indicated.
3. If security is furnished in several forms, these should be enumerated.
4. The entry "Duration of the Security" must stipulate the date on which such security takes effect.

5. The entry "Address" of the insurer(s) and/or guarantor(s) must indicate the principal place of business of the insurer(s) and/or guarantor(s). If appropriate, the place of business where the insurance or other security is established shall be indicated.

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 tones, 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) 0

- (b) oil, if the operation of the oil account is postponed 0
- (c) LNG, if the operation of the LNG account is postponed 0
- (d) LPG, if the operation of the LPG account is postponed 0
- (e) other substances 0.0001

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.

DRAFT
CONFERENCE RESOLUTIONS
Text examined and approved by the Drafting Committee

RESOLUTION 1

RESOLUTION ON SETTING UP THE HNS FUND

THE CONFERENCE,

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

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

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

(a) to carry out, in addition to the tasks under the 1992 Fund Convention, the administrative tasks necessary for setting up the HNS Fund, in accordance with the provisions of the 2010 HNS Convention, on condition that this does not unduly prejudice the interests of the Parties to the 1992 Fund Convention;

(b) to give all necessary assistance for setting up the HNS Fund;

(c) to make the necessary preparations for the first session of the Assembly of the HNS Fund, which is to be convened by the Secretary-General of the International Maritime Organization, in accordance with article 43 of the 2010 HNS Convention;

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

RESOLUTION 2

RESOLUTION ON PROMOTION OF TECHNICAL CO-OPERATION AND ASSISTANCE

THE CONFERENCE,

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

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

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

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

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

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

1. URGES States Parties to the 2010 HNS Protocol, Member States of the International Maritime Organization (IMO), other appropriate organizations and the maritime industry to provide assistance, either directly or through IMO, to those States which require support in the consideration of adoption and in the implementation of the 2010 HNS Protocol;
2. INVITES the Secretary-General of IMO to make adequate provision in its Integrated Technical Co-operation Program (ITCP) related to the ratification and effective implementation of the Protocol and, in particular, to address requests for assistance in developing appropriate national legislation;
3. INVITES States Parties to the 2010 HNS Protocol, Member States of IMO, other appropriate organizations and the maritime industry to provide financial and in-kind support to IMO for technical assistance activities related to the adoption and effective implementation of the 2010 HNS Protocol.

RESOLUTION 3

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

THE CONFERENCE,

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

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

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

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

1. INVITES all States to give early and urgent consideration to the 2010 HNS Protocol with a view to their acceptance thereof at an early date;

2. URGES all States which decide to become Party to the 2010 HNS Protocol to deposit the appropriate instruments with the Secretary-General of the International Maritime Organization (IMO) as soon as possible;

3. APPEALS to all States which decide to become Party to the 2010 HNS Protocol to ensure that they deposit instruments only in respect of the Protocol, without any references to the 1996 HNS Convention;

4. REQUESTS the Secretary-General of IMO to bring this resolution, in particular the appeal in paragraph 3 above, to the attention of all States entitled to become Party to the 2010 HNS Protocol;

5. FURTHER REQUESTS the Secretary-General of IMO to provide all possible advice and assistance to States considering becoming Party to the 2010 HNS Protocol in order to ensure that action taken by these States shall be in accordance with this resolution;

6. AUTHORIZES AND REQUESTS the Secretary-General, in his capacity as depositary of the 2010 HNS Protocol, to give every assistance in conformity with the law of treaties and the depositary practice of IMO and the United Nations, so that all instruments deposited by States after the adoption of the Protocol will facilitate the entry into force of the Protocol only, and will not contribute to fulfill the conditions for the entry into force of the 1996 HNS Convention.

RESOLUTION 4

RESOLUTION ON THE IMPLEMENTATION OF THE 2010 HNS PROTOCOL

THE CONFERENCE,

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

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

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

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

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

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

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

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

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

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

The Foreign Ministry

Decree No _____ of year _____

Preliminary Part

The Foreign Minister

Upon thoroughly reviewing Presidential Decree No. _____ of year _____ promulgating the approval of ratifying the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010 adopted in London on 30 April 2010;

The People's Assembly approval dated _____;

The ratification of the President of the Republic dated _____;

It is hereby decided:

Article 1

To publish the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010 adopted in London on 30 of April 2010 (2010 HNS Convention) in the Official Gazette.

This Decree should enter into force on _____.

Issued in the Cabinet on the _____ (Islamic Calendar) corresponding _____ (Gregorian Calendar).

The Foreign Minister

Amr Moussa

Law No. _____ of year _____

Amending Law No. 4 of 1994 of the Environmental Law as amended by Law No. 9 of 2009

Preliminary Part

In The Name of the People

The President of the Republic

The People's Assembly has ratified the following Law which we have sanctioned and promulgated,

It is hereby decided:

Article 1

The following Paragraphs 5 and 6 (a) and (b) are to be added to Article 94 Part Four of the Environmental Law No.9 of 2009¹²:

5. Failure of the ship or the tanker to keep the compulsory insurance certificate required by the 2010 HNS Convention.

¹² Article 94 of the Environmental Law No.9 of 2009 as amended by Law No. _____ of year _____ is to be read as follows:

Whoever commits one of the following acts shall be fined a sum of not less than forty thousand Egyptian Pounds and not more than two hundred thousand Egyptian Pounds:

1. Loading and unloading works by ships or tankers without having a license from the competent administrative authority in violation of the provisions of Article 56 of this Law.
2. Failure of the ship or the tanker to keep the certificates and registers stipulated in Articles 58, 62, 76 and 77 of this Law.
3. Discharges polluted waste-water or throws garbage from ships in violation of the provisions of Articles 66 and 67 of this Law.
4. Discharges oil or oily mixtures into the sea in violation of the provisions of Article 50 of this Law by any ship registered in the Arab Republic of Egypt.
5. Failure of the ship or the tanker to keep the compulsory insurance certificate required by the 2010 HNS Convention.
6.
 - a) Failure of the HNS receiver, as defined in Article 1(4) of the Convention, to fulfill his reporting obligation on contributing cargo pursuant to the 2010 HNS Convention.
 - b) Any HNS receiver, who intentionally or with gross negligence submits wrong reports, commits a fraud crime and shall be subject to the penalty prescribed in Article 336 of the Egyptian Penal Code No 58 of 1937.

6.

a) Failure of the HNS receiver, as defined in Article 1(4) of the Convention, to fulfill his reporting obligation on contributing cargo pursuant to the 2010 HNS Convention.

b) Any HNS receiver, who intentionally or with gross negligence submits wrong reports, commits a fraud crime and shall be subject to the penalty prescribed in Article 336 of the Egyptian Penal Code No 58 of 1937.

Article 2

The present law shall be published in the Official Gazette and shall come into force the day next to the date of its publication.

The present Law shall receive the seal of the State, and shall come into force as one of its laws.

Promulgated by the President of the Republic on _____ (Islamic Calendar) corresponding to _____ (Gregorian Calendar).

The President of the Republic

XXX

Head of the Maritime Transport Sector's Decree

No. _____ of year _____

Issuing the Executive Regulations of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 2010 No. ____ of year ____

Preliminary Part

In accordance with the President of the Republic ratification on the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010 adopted in London on 30 April 2010 dated _____, and

The Foreign Minister's Decree No. _____ of year _____ on the publication in the Official Gazette dated _____.

Upon thoroughly reviewing:

The President of the Republic Decree No. 360 of year 1999 on the organization of the Ministry of Transport.

The Minister of Transport Decree No. 99 of year 1999 on the delegation some functions to the Head of Maritime Transport Sector.

It is hereby decided:

Article 1

To establish a Hazardous and Noxious Substances Management Department in the Egyptian Maritime Safety Authority in Alexandria to be named as "The HNS Cargo Management Department".

Article 2

The HNS Cargo Management Department shall follow up the implementation of the provisions of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010.

Article 3

The HNS Cargo Management Department shall be chaired by the Head of the Egyptian Maritime Safety Authority who shall represent the Agency in its relation with third parties and before the courts.

Article 4

The Head of the Egyptian Maritime Safety Authority is authorized to take the necessary administrative decisions, follow the due procedures, and assign the required staff essential for regulating the HNS Management Department.

Without prejudice to paragraph 1, all departments of the Egyptian Maritime Safety Authority and the all the Maritime Authorities shall coordinate and cooperate, each in its scope of responsibilities, in the execution of the rules set out herein.

Article 5

The HNS Cargo Management Department is divided into the following offices:

1. The HNS Reporting Office.
2. The HNS Certification Office.
3. The HNS Auditing Office.

Article 6

The HNS Cargo Management Department's responsibilities are divided among its offices as follows:

(A) The HNS Auditing Office shall:

1. Identify the Hazardous and Noxious Substances cargo according Article 1(5) of the 2010 HNS Convention.
2. Collect and check information on the Egyptian ships carrying Hazardous and Noxious Substances departing the Egyptian territory through the Port Authorities and report to the HNS Certification office. Such report shall be in the form of the model set out in Annex 1 of this law.
3. Collect and check information on the Foreign ships carrying Hazardous and Noxious Substances entering the Egyptian territory through the Port Authorities and report to the HNS Certification Office.
4. Collect information on the Hazardous and Noxious Substances quantities imported during the preceding year and the Hazardous and Noxious Substances importers details through the Port Authority.

5. Send reports concerning the relevant information on the Hazardous and Noxious Substances potential receivers/importers and quantities of Hazardous and Noxious Substances imports, to the HNS Reporting Office, as well as the relevant information concerning the Egyptian and foreign Ships entering the Egyptian waters carrying Hazardous and Noxious Substances, to the HNS Certification Office.

(B) The HNS Reporting Office shall:

1. Prepare reports on kinds and quantities of the Hazardous and Noxious Substances imports in the preceding year, the Hazardous and Noxious Substances receivers/importers, and the contributing cargo, through the reports received from the HNS auditing office. Such reports shall be in the form of the model set out in Annex 2 of this law.
2. Send the prepared reports to the Director of the IMO/HNS Fund.
3. Collect the Contributions from the Hazardous and Noxious Substances potential receivers according to the sums fixed by the HNS Fund for each receiver.
4. Send the contributions to the HNS Fund to the Director of the IMO/HNS Fund within three months following the date on which the HNS Fund issues invoices concerning the persons liable to pay contributions.
5. Collect the fines imposed on the HNS receivers, pursuant to Article 1, paragraph 6(a) of the Law No. _____ of year _____ amending Law No. 4 of 1994 of the Environmental Law as amended by Law No. 9 of 2009, who failed to fulfill their reporting obligation on contributing cargo pursuant to Article 21 of the 2010 HNS Convention.

(C) The HNS Certification Office shall:

1. Issue a certificate of insurance attesting that insurance or other financial security is in force in accordance with the provisions of the 2010 HNS Convention, to any ship owner whose ship is registered in the Egyptian registry or, in absence of registration, the person who owns the ship, which actually carries Hazardous and Noxious Substances.
2. Check and ensure the validity of the certificates of insurance held by foreign ships carrying Hazardous and Noxious Substances entering the Egyptian ports.
3. Check and ensure the validity of the certificates of insurance of the Egyptian ships carrying HNS departing the Egyptian territory.

4. Collect the fines imposed on the shipowners, pursuant to Article 1, paragraph 5 of the Law No. _____ of year _____ amending Law No. 4 of 1994 of the Environmental Law as amended by Law No. 9 of 2009, who failed to keep the compulsory insurance certificate required by Article 12 of the 2010 HNS Convention.

Article 7

A special Fund shall be established to which shall comprise:

- a. Amounts allocated in the State budget to subsidize the Fund.
- b. Grants and donations presented by national and foreign organizations and accepted by the Board of Directors of the Agency for the purpose of protecting and promoting the environment.
- c. Fines levied and damages awarded or agreed upon for any harm caused to the environment.

The Fund shall have a special balance sheet and its fiscal year shall commence and end with that of the State. Any surplus shall be carried over to the following year. The money in this fund shall be deemed public money.

Issued in the Cabinet on the _____ (Islamic Calendar) corresponding to _____ (Gregorian Calendar).

Head of the Maritime Transport Sector

Admiral/ Tawfik Abou Gendia

Annex 1

Kinds of Ships Registered in Egypt

	Total	Passenger Ships	Cargo Ships	Oil Carrier	Tug	Others
Total						
Not Exceeding 200gt						
Over 200 ~ 2,000gt						
Over 2000gt						

Annex 2

The HNS Imports, HNS Importers, Contributing Cargoes and Receivers Report in 2009/2010

Kinds of Account	Kind of HNS	Amount of HNS Imported	Contributing Cargo	HNS Importers	HNS Receivers
General Account					
Separate Account					
Total					

Appendix 1

Classification of the Egyptian Merchant fleet according to the type of vessels till 30-06-2009 DWT

Vessel type	Operating units		Non operating units		Total	
	number	tonnage	number	tonnage	number	tonnage
RORO CARGO / FERRY	2	14002			2	14002
TUG / SUPPLY (ORSV)	8	9962			8	9962
TUG	15	16599	1	1006	16	17605
FISHING			1	1332	1	1332
OTHER SPECIAL SER.SALVAGE TRA.	3	8106			3	8106
CONTAINER SHIP	2	45401			2	45401
OTHER PONTOONS	1	0			1	0
RORO CARGO/CONTAINER SHIP	2	9975	1	3133	3	13108
SERVICES & TUGGING VESSELS	5	6236			5	6236
LANDING SHIP	2	6400	1	1077	3	7477
OTHER SPECIAL SERVICE	27	27772	1	1103	28	28875
CONTAINER / GENERAL CARGO	1	17728			1	17728
OIL TANKER	17	280098			17	280098
DREDGER	2	25785			2	25785
FUEL TANKER	2	1840			2	1840
PASSENGER/RO-RO CARGO SHIP	3	4264			3	4264
PASSENGER SHIP	2	1169	2	10734	4	11903
CARGO PASSENGER	1	3408			1	3408
AUTO-ESCALATED MARITIME DREDGER	3	0			3	0
GENERAL CARGO	27	218703	23	96063	50	314766

BULK CARRIER	11	678995	1	22031	12	701026
PASSENGER LAUNCH			1	675	1	675
RORO/LOLO GENERAL CARGO	1	10701			1	10701
PASSENGER FERRY			2	1239	2	1239
Total	137	1387144	34	138393	171	1525537

* Source: Egyptian Authority for Maritime Safety (EAFMS)