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92FUND/WGR.5/10

CONSIDERATION OF A DRAFT TEXT OF A PROTOCOL TO THE HNS CONVENTION

DRAFT PROTOCOL - REVISED TEXT

Note by the Secretariat

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| Summary: | At its first meeting in March 2008, the Fifth Intersessional Working Group (HNS Focus Group) requested the IOPC Funds' Secretariat to produce a revised draft Protocol to the HNS Convention for consideration by the HNS Focus Group at its next meeting. Annex I contains a 'clean' version of the revised draft Protocol, whilst Annex II contains a version showing the changes that have been made. |
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| Action to be taken: | Information to be noted. |
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1 **Introduction**

At its first meeting in March 2008, the HNS Focus Group discussed a draft Protocol to the HNS Convention which had been prepared by the Chairman of the HNS Focus Group, in conjunction with the IOPC Funds' Secretariat and the Legal Affairs and External Relations Division of the International Maritime Organization (IMO).

2 **Amendments to the draft Protocol**

2.1 The HNS Focus Group made the following decisions in respect of the text of the draft Protocol:

The concept of 'receiver'

2.2 The HNS Focus Group decided to maintain the current wording in the draft Protocol and, in particular, to delete Article 5, paragraph 5 but to revert to the question of whether the whole of Article 5 should be deleted at the next meeting and to make a decision then, when delegations had had more time to consider the matter (document 92FUND/AES.13/5 and 92FUND/WGR.5/8, paragraph 7.13).

Contributions to the LNG Account

- 2.3 The HNS Focus Group decided to maintain the current wording in the draft Protocol but to keep the footnote referring to the possibility of introducing a threshold (document 92FUND/A/ES.13/5 and 92FUND/WGR.5/8, paragraph 8.16).

Non-submission of contributing cargo reports

- 2.4 The HNS Focus Group based its discussion on the text of the draft Protocol with Article 45 replaced as per the Annex of document 92FUND/WGR.5/7, submitted by IMO (document 92FUND/A/ES.13/5 and 92FUND/WGR.5/8, paragraph 9.5).
- 2.5 As regards the non-submission of reports on ratification of the Protocol and annually thereafter, the HNS Focus Group approved the policy proposal and the relevant articles of the draft Protocol, for drafting purposes. As regards Article 45, the Group decided on the second of the alternative texts proposed by IMO in paragraph 4 and to remove the square brackets in paragraphs 6 and 7 (document 92FUND/A/ES.13/5 and 92FUND/WGR.5/8, paragraph 9.7).
- 2.6 As regards the non-submission of reports after the Protocol has entered into force, the HNS Focus Group approved the policy proposal and the relevant articles of the draft Protocol, subject to the Secretariat reconsidering the text as regards geographical exclusion and correcting a mistake in the cross references in Article 21bis, paragraph 3 (document 92FUND/A/ES.13/5 and 92FUND/WGR.5/8, paragraph 9.12).

The remainder of the articles in the draft Protocol

- 2.7 The HNS Focus Group adopted the remainder of the draft articles, subject to an appropriate numbering system to be agreed between the Secretariats of the IOPC Funds and IMO (document 92FUND/A/ES.13/5 and 92FUND/WGR.5/8, paragraph 10.4).

3 Revised draft Protocol

- 3.1 The HNS Focus Group requested the Secretariat to produce a revised draft Protocol for consideration at its next meeting (document 92FUND/A/ES.13/5 and 92FUND/WGR.5/8, paragraph 10.4).
- 3.2 In accordance with this request, the Secretariat of the IOPC Funds has agreed an appropriate numbering system with the IMO Secretariat and has developed a revised draft text of a Protocol to the HNS Convention, taking into account the decisions regarding the text of the Protocol made by the HNS Focus Group at its March meeting, as set out in section 1. Annex I contains a 'clean' version of the revised draft Protocol, whilst Annex II contains a version showing the changes that have been made.

4 Action to be taken by the HNS Focus Group

The Focus Group and the Assembly are invited to take note of the information contained in this document.

ANNEX I

Draft Protocol of [200...] to amend the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996

The Parties to this Protocol,

RECOGNIZING the significant contribution which can be made by the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (hereinafter referred to as the "Convention") to the preservation of the environment and the adequate, prompt and effective compensation of persons who suffer damage caused by incidents in connection with the carriage of hazardous and noxious substances by sea,

RECOGNISING ALSO that, over many years, a large number of States have consistently expressed their determination to establish a robust and effective compensation regime for the maritime carriage of hazardous and noxious substances based on a system of shared liability and have worked towards a uniform implementation of the Convention,

ACKNOWLEDGING, HOWEVER, that certain issues have been identified as inhibiting the entry into force of the Convention and, consequently, the implementation of the international regime contained therein,

DETERMINED to resolve these issues without embarking on a wholesale revision of the Convention,

AWARE OF the need to take into account the possible impact on developing countries, as well as the interests of those States which have already ratified the Convention or are at an advanced stage in so doing,

CONSIDERING that this objective may best be achieved by the conclusion of a Protocol relating to the Convention,

HAVE AGREED as follows:

Definitions

Article 1

For the purposes of this Protocol:

- 1 "Convention" means the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996.
- 2 "Organization" means the International Maritime Organization.
- 3 "Secretary-General" means the Secretary-General of the Organization.

General obligations

Article 2

The parties to this Protocol shall give effect to the provisions of this Protocol and the provisions of the Convention, as amended by this Protocol.

Article 3

1 The following text is added as Article 1, paragraphs 5bis and 5ter, of the Convention¹:

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).

¹ Note by Chairman: Definitions introduced to distinguish between bulk and packaged HNS in order to simplify drafting of article 1, paragraph 10 and article 9, paragraph 1.

5ter "Packaged HNS" means any hazardous and noxious substances referred to in article 1, paragraph 5(a)(iv).

2 Article 1, paragraph 10, of the Convention is replaced by the following text²:

10 "Contributing cargo" means any bulk HNS which are carried by sea as cargo to a port or terminal in the territory of a State Party and discharged in that State. Cargo in transit which is transferred directly, or through a port or terminal, from one ship to another, either wholly or in part, in the course of carriage from the port or terminal of original loading to the port or terminal of final destination shall be considered as contributing cargo only in respect of receipt at the final destination.

Article 4

Article 5, paragraph 5, of the Convention is deleted³.

Article 5

Article 9, paragraph 1, of the Convention is replaced by the following text⁴:

1 The owner of a ship shall be entitled to limit liability under this Convention in respect of any one incident to an aggregate amount calculated as follows:

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

(i) 10 million units of account for a ship not exceeding 2,000 units of tonnage; and

(ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):

for each unit of tonnage from 2,001 to 50,000 units of tonnage, 1,500 units of account;

for each unit of tonnage in excess of 50,000 units of tonnage, 360 units of account;

provided, however, that this aggregate amount shall not in any event exceed 100 million units of account.

(b) Where the damage has been caused by packaged HNS, or where the damage has been caused by both bulk HNS and packaged HNS, or where it is not possible to determine whether the damage originating from that ship has been caused by bulk HNS or by packaged HNS:

(i) $[10 + W]$ million units of account for a ship not exceeding 2,000 units of tonnage; and

(ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):

for each unit of tonnage from 2,001 to 50,000 units of tonnage, $[1,500 + X]$ units of account;

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

² Policy proposal in respect of exclusion of packaged HNS from contributions to the HNS Fund has been implemented using new definition in article 1, paragraph 5bis: 'hazardous and noxious substances' changed to 'bulk HNS'

³ Consequential amendment: Paragraph deleted as a result of change to article 1, paragraph 10, in respect of contributing cargo. The rationale behind article 5 as a whole could also be questioned.

⁴ Policy proposal in respect of increased shipowner limits for damage caused by packaged goods has been implemented by combining paragraphs (b) and (c) and by using new definitions in article 1, paragraphs 5bis and 5ter.

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

Article 6

Article 17, paragraph 2, of the Convention is replaced by the following text⁵:

- 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.

Article 7

Article 19, paragraph 1(b), of the Convention is replaced by the following text⁶:

- (b) in the case of the LNG 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 any quantity⁷ of LNG;

Article 8

Article 20, paragraph 1, of the Convention is replaced by the following text⁸:

- 1 In respect of each State Party, initial contributions shall be made of an amount which shall for each person liable to pay contributions in accordance with article 16, paragraph 5, articles 18, 19 and article 21, paragraph 5, be calculated on the basis of a fixed sum, equal for the general account and each separate account, for each unit of contributing cargo received in that State during the calendar year preceding that in which this Convention enters into force for that State.

Article 9

1 Article 21, paragraph 4, of the Convention is replaced by the following text⁹:

- 4 If in a State Party there is no person liable to pay contributions in accordance with articles 18, 19 or paragraph 5 of this article, that State Party shall for the purposes of this Convention inform the Director of the HNS Fund thereof.

2 Article 21, paragraph 5(b), of the Convention is replaced by the following text¹⁰:

- (b) instruct the HNS Fund to levy the aggregate amount for each account by invoicing individual receivers

⁵ Consequential amendment: The words 'or, in respect of cargoes referred to in article 19, paragraph 1(b), discharged' have been deleted as a result of the change to article 19, paragraph 1(b) in respect of LNG cargoes.

⁶ Policy proposal in respect of change to standard definition of receiver for LNG cargoes: 'immediately prior to its discharge, held title to an LNG cargo discharged in a port or terminal of that State' changed to 'was the receiver in that State of any quantity of LNG'.

⁷ Note by Chairman: The change to the standard definition of receiver for LNG cargoes implies a change to the standard threshold, which would imply that 'any quantity' should be changed to 'total quantities exceeding 20,000 tonnes', bearing in mind the administrative burden related to the reporting of contributing cargo and the payment of contributions.

⁸ Consequential amendment: The words 'or, in the case of LNG, discharged in that State,' have been deleted as a result of the change to article 19, paragraph 1(b) in respect of LNG cargoes.

⁹ Note by Chairman: This paragraph, which is based on article 15, paragraph 1, of the Supplementary Fund Protocol, is required to support the policy proposal implemented in article 21bis because Article 21, paragraph 2, of the Convention does not require States to make reports if there are no persons in that State liable to pay contributions. The existing paragraph 4 has been moved to paragraph 1 of article 21bis.

¹⁰ Consequential amendment: The words 'or, in the case of LNG, the title holder who discharges within the jurisdiction of that State Party,' have been deleted as a result of the change to article 19, paragraph 1(b) in respect of LNG cargoes.

for the amount payable by each of them. These persons shall be identified in accordance with the national law of the State concerned.

Article 10

The following text is added as article 21bis of the Convention¹¹:

Non-reporting

Article 21bis

- 1 Where a State Party does not fulfil its obligations under article 21, paragraph 2, and this results in a financial loss for the HNS Fund, that State Party shall be liable to compensate the HNS Fund for such loss. The Assembly shall, on the recommendations of the Director, decide whether such compensation shall be payable by a State Party.¹²
- 2 No compensation for any incident shall be paid by the HNS Fund for damage in the territory, including the territorial sea in accordance with article 3 (a) of this Convention, exclusive economic zone or other area in accordance with article 3 (b) of this Convention, or damage in accordance with article 3 (c) of this Convention, of a State Party in respect of a given incident or for preventive measures, wherever taken, in accordance with article 3 (d) of this Convention¹³, 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 4¹⁴, have not been fulfilled within one year after the Director has notified the State Party of its failure to fulfil these obligations.
- 4 Any payments of contributions due to the HNS Fund shall be set off against compensation due to the debtor, or the debtor's agents.
- 5 Paragraphs 2 to 4 shall not apply to claims in respect of death or personal injury.

Article 11

Article 23, paragraph 1, of the Convention is replaced by the following text¹⁵:

- 1 Without prejudice to article 21, paragraph 5, a State Party may at the time when it deposits its instrument of ratification, acceptance, approval or accession or at any time thereafter declare that it assumes responsibility for obligations imposed by this Convention on any person liable to pay contributions in accordance with articles 18, 19, 20 or article 21, paragraph 5, in respect of hazardous and noxious substances received in the territory of that State. Such a declaration shall be made in writing and shall specify which obligations are assumed.

Article 12

¹¹ Policy proposal to withhold payment of compensation in States which have not submitted reports on contributing cargo: based on Supplementary Fund Protocol, article 15.

¹² Note by Chairman: Paragraph 4 of article 21 of the 1996 HNS Convention has been moved to paragraph 1 of this article, in order to bring together all provisions relating to non-reporting. The words 'to communicate to the Director the information referred to in' have been deleted to bring the text into line with the following paragraphs.

¹³ Note by Chairman: Text relating to geographical scope of application has been revised.

¹⁴ Mistake in paragraph references corrected.

¹⁵ Consequential amendment: The words 'or discharged' have been deleted as a result of the change to article 19, paragraph 1(b) in respect of LNG cargoes.

Article 43 of the Convention is deleted¹⁶.

Article 13

The model of a certificate annexed to the Convention is replaced by the model annexed to this Protocol.¹⁷

Interpretation and application

Article 14¹⁸

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

Article 15¹⁹

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

Article 44bis

Final clauses of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, [200...]

- 1 Articles 1 to 44 and Annexes I and II of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996, as amended by the Protocol of [200...] thereto, together with the final clauses, shall constitute and be called the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, [200...] ([200...] HNS Convention).
- 2 The final clauses of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 200... shall be this article and the final clauses of the Protocol of [200...] to amend the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996.
- 3 The articles comprising the final clauses of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996, as amended by the Protocol of [200...] shall be renumbered sequentially with the preceding articles of that Convention. References within the final clauses to other articles of the final clauses shall be renumbered accordingly.

FINAL CLAUSES²⁰

Signature, ratification, acceptance, approval and accession

Article 16

- 1 This Protocol shall be open for signature at the Headquarters of the Organization from [.....] to

¹⁶ Note by Chairman: The provisions of deleted article 43 are incorporated in paragraphs 4 and 6 of article 45.

¹⁷ The original certificate refers to the 1996 HNS Convention.

¹⁸ Note by IMO: Articles 14 and 15 have been revised in order to avoid the consolidated text of the Convention having more than one article with the same number, cf articles 28 to 36 of the 1992 Fund Convention, which appear both in the body of the Convention and again in the Final Clauses.

¹⁹ See note 18.

²⁰ In general, the same wording has been used for the Final Clauses of the Protocol as for the Final Clauses of the 1996 HNS Convention, except that 'Convention' has been replaced by 'Protocol' and, where articles prior to the Final Clauses are referred to, 'of the Convention, as amended by this Protocol,' has been added for clarification.

[.....] and shall thereafter remain open for accession.

- 2 Subject to the provisions in paragraphs 4 and 5²¹, States may express their consent to be bound by this Protocol by:
 - (a) signature without reservation as to ratification, acceptance or approval; or
 - (b) signature subject to ratification, acceptance or approval followed by ratification, acceptance or approval; or
 - (c) accession.
- 3 Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.
- 4 An expression of consent to be bound by this Protocol shall be accompanied by the submission to the Secretary-General of data on the total quantities of contributing cargo liable for contributions²² received in that State during the preceding calendar year in respect of the general account and each separate account.^{23,24}
- 5 An expression of consent which is not accompanied by such data shall not be valid and shall not be accepted by the Secretary-General.
- 6 Each State which has expressed its consent to be bound by this Protocol shall annually thereafter on or before 31 May²⁵ until this Protocol enters into force for that State submit data on the total quantities of contributing cargo liable for contributions received in that State during the preceding calendar year in respect of the general account and each separate account.²⁶
- 7 A State which has expressed its consent to be bound by the Protocol and which is in breach of its obligations under paragraph 6 to submit data on contributing cargo for any relevant years shall, before the entry into force of the Protocol for that State, be temporarily suspended²⁷ from being a Contracting State until it has complied with this obligation.²⁸
- 8 A State which has expressed its consent to be bound by the Convention shall be deemed to have withdrawn this consent on the date on which it has signed this Protocol or deposited an instrument of ratification, acceptance, approval of or accession to it in accordance with paragraph 2²⁹.

Entry into force

Article 17³⁰

- 1 This Protocol shall enter into force eighteen months after the date on which the following conditions are fulfilled:

²¹ Note by IMO: The inclusion of paragraph 5 necessitates the inclusion of this reference; in addition, the word “condition” has been replaced by the word “provisions” as paragraph 5 does not contain a condition.

²² Note by Chairman: The word 'relevant' has been changed to 'total' and 'liable for contributions' has been added, to clarify that quantities are subsequent to application of provisions on agent/principal relationship and thresholds.

²³ Note by Chairman: The provisions of deleted article 43 are incorporated in paragraphs 4 and 6 of this article.

²⁴ Policy proposal: a State must submit data on contributing cargo in order to express its consent to be bound by the Convention.

²⁵ Note by Chairman: Date required in order to be able to ascertain when the entry into force provisions have been met, cf Supplementary Fund Protocol, article 20. The inclusion of this date is supported by the IMO Secretariat to facilitate the calculation of quantities of contributing cargo.

²⁶ Note by Chairman: The provisions of deleted article 43 are incorporated in paragraphs 4 and 6 of this article.

²⁷ Note by IMO: The concept of suspension is more in accordance with general principles of treaty law and the use of the term “withdrawal” may cause problems.

²⁸ Policy proposal: the Convention will not enter into force for a State which has not fulfilled all its obligations in respect of the annual submission of data on contributing cargo.

²⁹ Note by IMO: The reference to sub-paragraphs is not necessary.

³⁰ This article is identical in substance to Article 46 of the 1996 HNS Convention.

- (a) at least twelve States, including four States each with not less than 2 million units of gross tonnage, have expressed their consent to be bound by it, and
 - (b) the Secretary-General has received information in accordance with article 16, paragraphs 4 and 6³¹, that those persons in such States who would be liable to contribute pursuant to article 18, paragraphs 1(a) and (c), of the Convention, as amended by this Protocol, have received during the preceding calendar year a total quantity of at least 40 million tonnes of cargo contributing to the general account.
- 2 For a State which expresses its consent to be bound by this Protocol after the conditions for entry into force have been met, such consent shall take effect three months after the date of expression of such consent, or on the date on which this Protocol enters into force in accordance with paragraph 1, whichever is the later.

Revision and amendment

Article 18³²

- 1 A conference for the purpose of revising or amending the Convention, as amended by this Protocol, may be convened by the Organization.
- 2 The Secretary-General shall convene a conference of the States Parties to this Protocol, for revising or amending the Convention, as amended by this Protocol, at the request of six States Parties or one third of the States Parties, whichever is the higher figure.
- 3 Any instrument of ratification, acceptance, approval or accession deposited after the date of entry into force of an amendment to the Convention, as amended by this Protocol, shall be deemed to apply to the Convention as amended.

Amendment of limits

Article 19³³

- 1 Without prejudice to the provisions of article 18, the special procedure in this article shall apply solely for the purposes of amending the limits set out in article 9, paragraph 1, and article 14, paragraph 5, of the Convention, as amended by this Protocol.
- 2 Upon the request of at least one half, but in no case less than six, of the States Parties, any proposal to amend the limits specified in article 9, paragraph 1, and article 14, paragraph 5, of the Convention, as amended by this Protocol, shall be circulated by the Secretary-General to all Members of the Organization and to all Contracting States.
- 3 Any amendment proposed and circulated as above shall be submitted to the Legal Committee of the Organization (the Legal Committee) for consideration at a date at least six months after the date of its circulation.
- 4 All Contracting States, whether or not Members of the Organization, shall be entitled to participate in the proceedings of the Legal Committee for the consideration and adoption of amendments.
- 5 Amendments shall be adopted by a two-thirds majority of the Contracting States present and voting in the Legal Committee, expanded as provided in paragraph 4, on condition that at least one half of the Contracting States shall be present at the time of voting.

³¹ Consequential amendment: The paragraph reference has changed as a result of the changes to Article 16.

³² This article is identical in substance to Article 47 of the 1996 HNS Convention.

³³ This article is identical in substance to Article 48 of the 1996 HNS Convention.

- 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, of the Convention, as amended by this Protocol.
- 7 (a) No amendment of the limits under this article may be considered less than five years from the date this Protocol was opened for signature nor less than five years from the date of entry into force of a previous amendment under this article.
- (b) No limit may be increased so as to exceed an amount which corresponds to a limit laid down in this Protocol increased by six per cent per year calculated on a compound basis from the date on which this Protocol was opened for signature.
- (c) No limit may be increased so as to exceed an amount which corresponds to a limit laid down in this Protocol multiplied by three.
- 8 Any amendment adopted in accordance with paragraph 5 shall be notified by the Organization to all Contracting States. The amendment shall be deemed to have been accepted at the end of a period of eighteen months after the date of notification, unless within that period no less than one-fourth of the States which were Contracting States at the time of the adoption of the amendment have communicated to the Secretary-General that they do not accept the amendment, in which case the amendment is rejected and shall have no effect.
- 9 An amendment deemed to have been accepted in accordance with paragraph 8 shall enter into force eighteen months after its acceptance.
- 10 All Contracting States shall be bound by the amendment, unless they denounce this Protocol in accordance with article 20, paragraphs 1 and 2, at least six months before the amendment enters into force. Such denunciation shall take effect when the amendment enters into force.
- 11 When an amendment has been adopted but the eighteen month period for its acceptance has not yet expired, a State which becomes a Contracting State during that period shall be bound by the amendment if it enters into force. A State which becomes a Contracting State after that period shall be bound by an amendment which has been accepted in accordance with paragraph 8. In the cases referred to in this paragraph, a State becomes bound by an amendment when that amendment enters into force, or when this Protocol enters into force for that State, if later.

Denunciation

Article 20³⁴

- 1 This Protocol may be denounced by any State Party at any time after the expiry of one year following the date on which this Protocol comes into force for that State.
- 2 Denunciation shall be effected by the deposit of an instrument to that effect with the Secretary-General.
- 3 A denunciation shall take effect twelve months, or such longer period as may be specified in the instrument of denunciation, following its receipt by the Secretary-General.
- 4 Notwithstanding a denunciation by a State Party pursuant to this article, any provisions of this Protocol relating to obligations to make contributions under articles 18, 19 or article 21, paragraph 5, of the Convention, as amended by this Protocol, in respect of such payments of compensation as the Assembly may decide relating to an incident which occurs before the denunciation takes effect shall

³⁴ This article is identical in substance to Article 49 of the 1996 HNS Convention.

continue to apply.

Extraordinary sessions of the Assembly

Article 21³⁵

- 1 Any State Party may, within ninety days after the deposit of an instrument of denunciation the result of which it considers will significantly increase the level of contributions from the remaining States Parties, request the Director to convene an extraordinary session of the Assembly. The Director shall convene the Assembly to meet not less than sixty days after receipt of the request.
- 2 The Director may take the initiative to convene an extraordinary session of the Assembly to meet within sixty days after the deposit of any instrument of denunciation, if the Director considers that such denunciation will result in a significant increase in the level of contributions from the remaining States Parties.
- 3 If the Assembly, at an extraordinary session convened in accordance with paragraph 1 or 2, decides that the denunciation will result in a significant increase in the level of contributions from the remaining States Parties, any such State may, not later than one hundred and twenty days before the date on which the denunciation takes effect, denounce this Protocol with effect from the same date.

Cessation

Article 22³⁶

- 1 This Protocol shall cease to be in force:
 - (a) on the date when the number of States Parties falls below six; or
 - (b) twelve months after the date on which data concerning a previous calendar year were to be communicated to the Director in accordance with article 21, of the Convention, as amended by this Protocol, if the data show that the total quantity of contributing cargo to the general account in accordance with article 18, paragraphs 1(a) and (c), of the Convention, as amended by this Protocol, received in the States Parties in that preceding calendar year was less than 30 million tonnes.

Notwithstanding sub-paragraph (b), if the total quantity of contributing cargo to the general account in accordance with article 18, paragraphs 1(a) and (c), of the Convention, as amended by this Protocol, received in the States Parties in the preceding calendar year was less than 30 million tonnes but more than 25 million tonnes, the Assembly may, if it considers that this was due to exceptional circumstances and is not likely to be repeated, decide before the expiry of the above-mentioned twelve month period that the Protocol shall continue to be in force. The Assembly may not, however, take such a decision in more than two subsequent years.

- 2 States which are bound by this Protocol on the day before the date it ceases to be in force shall enable the HNS Fund to exercise its functions as described under article 23 and shall, for that purpose only, remain bound by this Protocol.

Winding up of the HNS Fund

Article 23³⁷

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

³⁵ This article is identical in substance to Article 50 of the 1996 HNS Convention.

³⁶ This article is identical in substance to Article 51 of the 1996 HNS Convention.

³⁷ This article is identical in substance to Article 52 of the 1996 HNS Convention.

- (a) meet its obligations in respect of any incident occurring before this Protocol ceased to be in force; and
 - (b) be entitled to exercise its rights to contributions to the extent that these contributions are necessary to meet the obligations under (a), including expenses for the administration of the HNS Fund necessary for this purpose.
- 2 The Assembly shall take all appropriate measures to complete the winding up of the HNS Fund including the distribution in an equitable manner of any remaining assets among those persons who have contributed to the HNS Fund.
- 3 For the purposes of this article the HNS Fund shall remain a legal person.

Depositary

Article 24³⁸

- 1 This Protocol and any amendment adopted under article 19 shall be deposited with the Secretary-General.
- 2 The Secretary-General shall:
- (a) inform all States which have signed this Protocol or acceded thereto, and all Members of the Organization, of:
 - (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession together with the date thereof and data on contributing cargo submitted in accordance with article 16, paragraph 4³⁹;
 - (ii) data on contributing cargo submitted annually thereafter, in accordance with article 16, paragraph 6, until the date of entry into force of this Protocol⁴⁰;
 - (iii) the date of entry into force of this Protocol;
 - (iv) any proposal to amend the limits on the amounts of compensation which has been made in accordance with article 19, paragraph 2;
 - (v) any amendment which has been adopted in accordance with article 19, paragraph 5;
 - (vi) any amendment deemed to have been accepted under article 19, paragraph 8, together with the date on which that amendment shall enter into force in accordance with paragraphs 9 and 10 of that article;
 - (vii) the deposit of any instrument of denunciation of this Protocol together with the date on which it is received and the date on which the denunciation takes effect; and
 - (viii) any communication called for by any article in this Protocol; and
 - (b) transmit certified true copies of this Protocol to all States that have signed this Protocol or acceded thereto.
- 3 As soon as this Protocol enters into force, a certified true copy thereof shall be transmitted by the depositary to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

Languages

Article 25⁴¹

³⁸ This article is identical in substance to Article 53 of the 1996 HNS Convention, except for paragraphs (2)(a)(i) and (ii).

³⁹ Note by Chairman: Text re circulation of data added to clarify responsibilities of depositary.

⁴⁰ See note 39.

⁴¹ This article is identical in substance to Article 54 of the 1996 HNS Convention.

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

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

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

ANNEX I⁴²

***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, [200...]

| 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, [200...].

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.

⁴² This Annex is identical in substance to Annex I of the 1996 HNS Convention.

ANNEX II

Draft Protocol of [200...] to amend the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996

The Parties to this Protocol,

RECOGNIZING the significant contribution which can be made by the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (hereinafter referred to as the "Convention") to the preservation of the environment and the adequate, prompt and effective compensation of persons who suffer damage caused by incidents in connection with the carriage of hazardous and noxious substances by sea,

RECOGNISING ALSO that, over many years, a large number of States have consistently expressed their determination to establish a robust and effective compensation regime for the maritime carriage of hazardous and noxious substances based on a system of shared liability and have worked towards a uniform implementation of the Convention,

ACKNOWLEDGING, HOWEVER, that certain issues have been identified as inhibiting the entry into force of the Convention and, consequently, the implementation of the international regime contained therein,

DETERMINED to resolve these issues without embarking on a wholesale revision of the Convention,

AWARE OF the need to take into account the possible impact on developing countries, as well as the interests of those States which have already ratified the Convention or are at an advanced stage in so doing,

CONSIDERING that this objective may best be achieved by the conclusion of a Protocol relating to the Convention,

HAVE AGREED as follows:

Definitions

Article 1

For the purposes of this Protocol:

- 1 "Convention" means the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996.
- 2 "Organization" means the International Maritime Organization.
- 3 "Secretary-General" means the Secretary-General of the Organization.

General obligations

Article 2

The parties to this Protocol shall give effect to the provisions of this Protocol and the provisions of the Convention, as amended by this Protocol.

Article 3

1 The following text is added as Article 1, paragraphs 5bis and 5ter, of the Convention¹:

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).

¹ Note by Chairman: Definitions introduced to distinguish between bulk and packaged HNS in order to simplify drafting of article 1, paragraph 10 and article 9, paragraph 1.

5ter "Packaged HNS" means any hazardous and noxious substances referred to in article 1, paragraph 5(a)(iv).

2 Article 1, paragraph 10, of the Convention is replaced by the following text²:

10 "Contributing cargo" means any bulk HNS which are carried by sea as cargo to a port or terminal in the territory of a State Party and discharged in that State. Cargo in transit which is transferred directly, or through a port or terminal, from one ship to another, either wholly or in part, in the course of carriage from the port or terminal of original loading to the port or terminal of final destination shall be considered as contributing cargo only in respect of receipt at the final destination.

Article 4

Article 5, paragraph 5, of the Convention is deleted³.

Article 5

Article 9, paragraph 1, of the Convention is replaced by the following text⁴:

1 The owner of a ship shall be entitled to limit liability under this Convention in respect of any one incident to an aggregate amount calculated as follows:

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

- (i) 10 million units of account for a ship not exceeding 2,000 units of tonnage; and
- (ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):

for each unit of tonnage from 2,001 to 50,000 units of tonnage, 1,500 units of account;

for each unit of tonnage in excess of 50,000 units of tonnage, 360 units of account;

provided, however, that this aggregate amount shall not in any event exceed 100 million units of account.

(b) Where the damage has been caused by packaged HNS, or where the damage has been caused by both bulk HNS and packaged HNS, or where it is not possible to determine whether the damage originating from that ship has been caused by bulk HNS or by packaged HNS:

- (i) $[10 + W]$ million units of account for a ship not exceeding 2,000 units of tonnage; and
- (ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):

for each unit of tonnage from 2,001 to 50,000 units of tonnage, $[1,500 + X]$ units of account;

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

² Policy proposal in respect of exclusion of packaged HNS from contributions to the HNS Fund has been implemented using new definition in article 1, paragraph 5bis: 'hazardous and noxious substances' changed to 'bulk HNS'

³ Consequential amendment: Paragraph deleted as a result of change to article 1, paragraph 10, in respect of contributing cargo. The rationale behind article 5 as a whole could also be questioned.

⁴ Policy proposal in respect of increased shipowner limits for damage caused by packaged goods has been implemented by combining paragraphs (b) and (c) and by using new definitions in article 1, paragraphs 5bis and 5ter.

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

Article 6

Article 17, paragraph 2, of the Convention is replaced by the following text⁵:

- 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.

Article 7

Article 19, paragraph 1(b), of the Convention is replaced by the following text⁶:

- (b) in the case of the LNG 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 any quantity⁷ of LNG;

Article 8

Article 20, paragraph 1, of the Convention is replaced by the following text⁸:

- 1 In respect of each State Party, initial contributions shall be made of an amount which shall for each person liable to pay contributions in accordance with article 16, paragraph 5, articles 18, 19 and article 21, paragraph 5, be calculated on the basis of a fixed sum, equal for the general account and each separate account, for each unit of contributing cargo received in that State during the calendar year preceding that in which this Convention enters into force for that State.

Article 9

1 Article 21, paragraph 4, of the Convention is replaced by the following text⁹:

- 4 If in a State Party there is no person liable to pay contributions in accordance with articles 18, 19 or paragraph 5 of this article, that State Party shall for the purposes of this Convention inform the Director of the HNS Fund thereof.

2 Article 21, paragraph 5(b), of the Convention is replaced by the following text¹⁰:

- (b) instruct the HNS Fund to levy the aggregate amount for each account by invoicing individual receivers

⁵ Consequential amendment: The words 'or, in respect of cargoes referred to in article 19, paragraph 1(b), discharged' have been deleted as a result of the change to article 19, paragraph 1(b) in respect of LNG cargoes.

⁶ Policy proposal in respect of change to standard definition of receiver for LNG cargoes: 'immediately prior to its discharge, held title to an LNG cargo discharged in a port or terminal of that State' changed to 'was the receiver in that State of any quantity of LNG'.

⁷ Note by Chairman: The change to the standard definition of receiver for LNG cargoes implies a change to the standard threshold, which would imply that 'any quantity' should be changed to 'total quantities exceeding 20,000 tonnes', bearing in mind the administrative burden related to the reporting of contributing cargo and the payment of contributions.

⁸ Consequential amendment: The words 'or, in the case of LNG, discharged in that State,' have been deleted as a result of the change to article 19, paragraph 1(b) in respect of LNG cargoes.

⁹ Note by Chairman: This paragraph, which is based on article 15, paragraph 1, of the Supplementary Fund Protocol, is required to support the policy proposal implemented in article 21bis because Article 21, paragraph 2, of the Convention does not require States to make reports if there are no persons in that State liable to pay contributions. The existing paragraph 4 has been moved to paragraph 1 of article 21bis.

¹⁰ Consequential amendment: The words 'or, in the case of LNG, the title holder who discharges within the jurisdiction of that State Party,' have been deleted as a result of the change to article 19, paragraph 1(b) in respect of LNG cargoes.

for the amount payable by each of them. These persons shall be identified in accordance with the national law of the State concerned.

Article 10

The following text is added as article 21bis of the Convention¹¹:

Non-reporting

Article 21bis

- 1 Where a State Party does not fulfil its obligations under article 21, paragraph 2, and this results in a financial loss for the HNS Fund, that State Party shall be liable to compensate the HNS Fund for such loss. The Assembly shall, on the recommendations of the Director, decide whether such compensation shall be payable by a State Party.¹²
- 2 No compensation for any incident shall be paid by the HNS Fund ~~in respect of a State Party~~ for damage in the territory, including the territorial sea in accordance with article 3 (a) of this Convention, exclusive economic zone or other area in accordance with article 3 (b) of this Convention, or damage in accordance with article 3 (c) of this Convention, of a State Party in respect of a given incident or for preventive measures, wherever taken, in accordance with article 3 (d) of this Convention¹³, until the, as long as that State Party has not fulfilled its 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 paragraphs 2 ~~and 4~~, compensation shall be denied permanently if the obligations under article 21, paragraphs 2 and 4¹⁴, have not been fulfilled within one year after the Director has notified the State Party of its failure to fulfil these obligations.
- 4 Any payments of contributions due to the HNS Fund shall be set off against compensation due to the debtor, or the debtor's agents.
- 5 Paragraphs 2 to 4 shall not apply to claims in respect of death or personal injury.

Article 11

Article 23, paragraph 1, of the Convention is replaced by the following text¹⁵:

- 1 Without prejudice to article 21, paragraph 5, a State Party may at the time when it deposits its instrument of ratification, acceptance, approval or accession or at any time thereafter declare that it assumes responsibility for obligations imposed by this Convention on any person liable to pay contributions in accordance with articles 18, 19, 20 or article 21, paragraph 5, in respect of hazardous and noxious substances received in the territory of that State. Such a declaration shall be made in writing and shall specify which obligations are assumed.

¹¹ Policy proposal to withhold payment of compensation in States which have not submitted reports on contributing cargo: based on Supplementary Fund Protocol, article 15.

¹² Note by Chairman: Paragraph 4 of article 21 of the 1996 HNS Convention has been moved to paragraph 1 of this article, in order to bring together all provisions relating to non-reporting. The words 'to communicate to the Director the information referred to in' have been deleted to bring the text into line with the following paragraphs.

¹³ Note by Chairman: Text relating to geographical scope of application has been revised.

¹⁴ Mistake in paragraph references corrected.

¹⁵ Consequential amendment: The words 'or discharged' have been deleted as a result of the change to article 19, paragraph 1(b) in respect of LNG cargoes.

Article 12

Article 43 of the Convention is deleted¹⁶.

Article 13

The model of a certificate annexed to the Convention is replaced by the model annexed to this Protocol.¹⁷

Interpretation and application

Article 14¹⁸

- 1 The Convention and this Protocol shall, as between the Parties to this Protocol, be read and interpreted together as one single instrument.
- ~~2 Articles 1 to 44bis of the Convention, including Annexes I and II, as revised by this Protocol, together with articles 45 to 54 of this Protocol shall constitute and be called the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, [200...] ([200...] HNS Convention).~~

Article 15¹⁹

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

Article 44bis

Final clauses of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, [200...]

~~The final clauses of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, [200...] shall be articles 45 to 54 of this Protocol~~

- 1 Articles 1 to 44 and Annexes I and II of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996, as amended by the Protocol of [200...] thereto, together with the final clauses, shall constitute and be called the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, [200...] ([200...] HNS Convention).
- 2 The final clauses of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 200... shall be this article and the final clauses of the Protocol of [200...] to amend the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996.
- 3 The articles comprising the final clauses of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996, as amended by the Protocol of [200...] shall be renumbered sequentially with the preceding

¹⁶ Note by Chairman: The provisions of deleted article 43 are incorporated in paragraphs 4 and 6 of article 45.

¹⁷ The original certificate refers to the 1996 HNS Convention.

¹⁸ Note by IMO: Articles 14 and 15 have been revised in order to avoid the consolidated text of the Convention having more than one article with the same number, cf articles 28 to 36 of the 1992 Fund Convention, which appear both in the body of the Convention and again in the Final Clauses.

¹⁹ See note 18.

articles of that Convention. References within the final clauses to other articles of the final clauses shall be renumbered accordingly.

FINAL CLAUSES²⁰

Signature, ratification, acceptance, approval and accession

Article 16

- 1 This Protocol shall be open for signature at the Headquarters of the Organization from [.....] to [.....] and shall thereafter remain open for accession.
- 2 Subject to the ~~provision~~condition regulated in paragraphs 4 and 5²¹, States may express their consent to be bound by this Protocol by:
 - (a) signature without reservation as to ratification, acceptance or approval; or
 - (b) signature subject to ratification, acceptance or approval followed by ratification, acceptance or approval; or
 - (c) accession.
- 3 Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.
- 4 An expression of consent to be bound by this Protocol ~~under this article will not be recognised by~~ shall be accompanied by the submission to the Secretary-General ~~until~~ of data on the total quantities of contributing cargo liable for contributions²² received in that State during the preceding calendar year in respect of the general account and each separate account ~~have been submitted to the Secretary-General.~~^{23,24}
- 5 An expression of consent which is not accompanied by such data shall not be valid and shall not be accepted by the Secretary-General.
- 56 Each State which has expressed its consent to be bound by this Protocol shall annually thereafter ~~for~~ or before 31 May²⁵ until this Protocol enters into force for that State submit data on the total quantities of contributing cargo liable for contributions received in that State during the preceding calendar year in respect of the general account and each separate account.²⁶
- 67 ~~{~~A State which has expressed its consent to be bound by the Protocol and which is in breach of its obligations under paragraph 56 to submit ~~information~~data on contributing cargo for any relevant years shall, before the entry into force of the Protocol for that State, be ~~deemed to have withdrawn this consent~~ temporarily suspended²⁷ from being a Contracting State until it has complied with ~~this~~all such

²⁰ In general, the same wording has been used for the Final Clauses of the Protocol as for the Final Clauses of the 1996 HNS Convention, except that 'Convention' has been replaced by 'Protocol' and, where articles prior to the Final Clauses are referred to, 'of the Convention, as amended by this Protocol,' has been added for clarification.

²¹ Note by IMO: The inclusion of paragraph 5 necessitates the inclusion of this reference; in addition, the word "condition" has been replaced by the word "provisions" as paragraph 5 does not contain a condition.

²² Note by Chairman: The word 'relevant' has been changed to 'total' and 'liable for contributions' has been added, to clarify that quantities are subsequent to application of provisions on agent/principal relationship and thresholds.

²³ Note by Chairman: The provisions of deleted article 43 are incorporated in paragraphs 4 and 6 of this article.

²⁴ Policy proposal: a State must submit data on contributing cargo in order to express its consent to be bound by the Convention.

²⁵ Note by Chairman: Date required in order to be able to ascertain when the entry into force provisions have been met, cf Supplementary Fund Protocol, article 20. The inclusion of this date is supported by the IMO Secretariat to facilitate the calculation of quantities of contributing cargo.

²⁶ Note by Chairman: The provisions of deleted article 43 are incorporated in paragraphs 4 and 6 of this article.

²⁷ Note by IMO: The concept of suspension is more in accordance with general principles of treaty law and the use of

obligations.²⁸

- 78 A State which has expressed its consent to be bound by the Convention shall be deemed to have withdrawn this consent on the date on which it has signed this Protocol or deposited an instrument of ratification, acceptance, approval of or accession to it in accordance with paragraph 2(a), (b) or (c)²⁹.

Entry into force

Article 17³⁰

- 1 This Protocol shall enter into force eighteen months after the date on which the following conditions are fulfilled:
- (a) at least twelve States, including four States each with not less than 2 million units of gross tonnage, have expressed their consent to be bound by it, and
 - (b) the Secretary-General has received information in accordance with article 16, paragraphs 4 and ~~65~~³¹, that those persons in such States who would be liable to contribute pursuant to article 18, paragraphs 1(a) and (c), of the Convention, as amended by this Protocol, have received during the preceding calendar year a total quantity of at least 40 million tonnes of cargo contributing to the general account.
- 2 For a State which expresses its consent to be bound by this Protocol after the conditions for entry into force have been met, such consent shall take effect three months after the date of expression of such consent, or on the date on which this Protocol enters into force in accordance with paragraph 1, whichever is the later.

Revision and amendment

Article 18³²

- 1 A conference for the purpose of revising or amending the Convention, as amended by this Protocol, may be convened by the Organization.
- 2 The Secretary-General shall convene a conference of the States Parties to this Protocol, for revising or amending the Convention, as amended by this Protocol, at the request of six States Parties or one third of the States Parties, whichever is the higher figure.
- 3 Any instrument of ratification, acceptance, approval or accession deposited after the date of entry into force of an amendment to the Convention, as amended by this Protocol, shall be deemed to apply to the Convention as amended.

Amendment of limits

Article 19³³

- 1 Without prejudice to the provisions of article 18, the special procedure in this article shall apply solely for the purposes of amending the limits set out in article 9, paragraph 1, and article 14, paragraph 5, of the Convention, as amended by this Protocol.

the term “withdrawal” may cause problems.

²⁸ Policy proposal: the Convention will not enter into force for a State which has not fulfilled all its obligations in respect of the annual submission of data on contributing cargo.

²⁹ Note by IMO: The reference to sub-paragraphs is not necessary.

³⁰ This article is identical in substance to Article 46 of the 1996 HNS Convention.

³¹ Consequential amendment: The paragraph reference has changed as a result of the changes to Article 16.

³² This article is identical in substance to Article 47 of the 1996 HNS Convention.

³³ This article is identical in substance to Article 48 of the 1996 HNS Convention.

- 2 Upon the request of at least one half, but in no case less than six, of the States Parties, any proposal to amend the limits specified in article 9, paragraph 1, and article 14, paragraph 5, of the Convention, as amended by this Protocol, shall be circulated by the Secretary-General to all Members of the Organization and to all Contracting States.
- 3 Any amendment proposed and circulated as above shall be submitted to the Legal Committee of the Organization (the Legal Committee) for consideration at a date at least six months after the date of its circulation.
- 4 All Contracting States, whether or not Members of the Organization, shall be entitled to participate in the proceedings of the Legal Committee for the consideration and adoption of amendments.
- 5 Amendments shall be adopted by a two-thirds majority of the Contracting States present and voting in the Legal Committee, expanded as provided in paragraph 4, on condition that at least one half of the Contracting States shall be present at the time of voting.
- 6 When acting on a proposal to amend the limits, the Legal Committee shall take into account the experience of incidents and, in particular, the amount of damage resulting therefrom, changes in the monetary values and the effect of the proposed amendment on the cost of insurance. It shall also take into account the relationship between the limits established in article 9, paragraph 1, and those in article 14, paragraph 5, of the Convention, as amended by this Protocol.
- 7 (a) No amendment of the limits under this article may be considered less than five years from the date this Protocol was opened for signature nor less than five years from the date of entry into force of a previous amendment under this article.
- (b) No limit may be increased so as to exceed an amount which corresponds to a limit laid down in this Protocol increased by six per cent per year calculated on a compound basis from the date on which this Protocol was opened for signature.
- (c) No limit may be increased so as to exceed an amount which corresponds to a limit laid down in this Protocol multiplied by three.
- 8 Any amendment adopted in accordance with paragraph 5 shall be notified by the Organization to all Contracting States. The amendment shall be deemed to have been accepted at the end of a period of eighteen months after the date of notification, unless within that period no less than one-fourth of the States which were Contracting States at the time of the adoption of the amendment have communicated to the Secretary-General that they do not accept the amendment, in which case the amendment is rejected and shall have no effect.
- 9 An amendment deemed to have been accepted in accordance with paragraph 8 shall enter into force eighteen months after its acceptance.
- 10 All Contracting States shall be bound by the amendment, unless they denounce this Protocol in accordance with article 20, paragraphs 1 and 2, at least six months before the amendment enters into force. Such denunciation shall take effect when the amendment enters into force.
- 11 When an amendment has been adopted but the eighteen month period for its acceptance has not yet expired, a State which becomes a Contracting State during that period shall be bound by the amendment if it enters into force. A State which becomes a Contracting State after that period shall be bound by an amendment which has been accepted in accordance with paragraph 8. In the cases referred to in this paragraph, a State becomes bound by an amendment when that amendment enters into force, or when this Protocol enters into force for that State, if later.

Denunciation

Article 20³⁴

- 1 This Protocol may be denounced by any State Party at any time after the expiry of one year following the date on which this Protocol comes into force for that State.
- 2 Denunciation shall be effected by the deposit of an instrument to that effect with the Secretary-General.
- 3 A denunciation shall take effect twelve months, or such longer period as may be specified in the instrument of denunciation, following its receipt by the Secretary-General.
- 4 Notwithstanding a denunciation by a State Party pursuant to this article, any provisions of this Protocol relating to obligations to make contributions under articles 18, 19 or article 21, paragraph 5, of the Convention, as amended by this Protocol, in respect of such payments of compensation as the Assembly may decide relating to an incident which occurs before the denunciation takes effect shall continue to apply.

Extraordinary sessions of the Assembly

Article 21³⁵

- 1 Any State Party may, within ninety days after the deposit of an instrument of denunciation the result of which it considers will significantly increase the level of contributions from the remaining States Parties, request the Director to convene an extraordinary session of the Assembly. The Director shall convene the Assembly to meet not less than sixty days after receipt of the request.
- 2 The Director may take the initiative to convene an extraordinary session of the Assembly to meet within sixty days after the deposit of any instrument of denunciation, if the Director considers that such denunciation will result in a significant increase in the level of contributions from the remaining States Parties.
- 3 If the Assembly, at an extraordinary session convened in accordance with paragraph 1 or 2, decides that the denunciation will result in a significant increase in the level of contributions from the remaining States Parties, any such State may, not later than one hundred and twenty days before the date on which the denunciation takes effect, denounce this Protocol with effect from the same date.

Cessation

Article 22³⁶

- 1 This Protocol shall cease to be in force:
 - (a) on the date when the number of States Parties falls below six; or
 - (b) twelve months after the date on which data concerning a previous calendar year were to be communicated to the Director in accordance with article 21, of the Convention, as amended by this Protocol, if the data show that the total quantity of contributing cargo to the general account in accordance with article 18, paragraphs 1(a) and (c), of the Convention, as amended by this Protocol, received in the States Parties in that preceding calendar year was less than 30 million tonnes.

³⁴ This article is identical in substance to Article 49 of the 1996 HNS Convention.

³⁵ This article is identical in substance to Article 50 of the 1996 HNS Convention.

³⁶ This article is identical in substance to Article 51 of the 1996 HNS Convention.

Notwithstanding sub-paragraph (b), if the total quantity of contributing cargo to the general account in accordance with article 18, paragraphs 1(a) and (c), of the Convention, as amended by this Protocol, received in the States Parties in the preceding calendar year was less than 30 million tonnes but more than 25 million tonnes, the Assembly may, if it considers that this was due to exceptional circumstances and is not likely to be repeated, decide before the expiry of the above-mentioned twelve month period that the Protocol shall continue to be in force. The Assembly may not, however, take such a decision in more than two subsequent years.

- 2 States which are bound by this Protocol on the day before the date it ceases to be in force shall enable the HNS Fund to exercise its functions as described under article 23 and shall, for that purpose only, remain bound by this Protocol.

Winding up of the HNS Fund

Article 23³⁷

- 1 If this Protocol ceases to be in force, the HNS Fund shall nevertheless:
 - (a) meet its obligations in respect of any incident occurring before this Protocol ceased to be in force; and
 - (b) be entitled to exercise its rights to contributions to the extent that these contributions are necessary to meet the obligations under (a), including expenses for the administration of the HNS Fund necessary for this purpose.
- 2 The Assembly shall take all appropriate measures to complete the winding up of the HNS Fund including the distribution in an equitable manner of any remaining assets among those persons who have contributed to the HNS Fund.
- 3 For the purposes of this article the HNS Fund shall remain a legal person.

Depositary

Article 24³⁸

- 1 This Protocol and any amendment adopted under article 19 shall be deposited with the Secretary-General.
- 2 The Secretary-General shall:
 - (a) inform all States which have signed this Protocol or acceded thereto, and all Members of the Organization, of:
 - (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession together with the date thereof and data on contributing cargo submitted in accordance with article 16, paragraph 4³⁹;
 - (ii) data on contributing cargo submitted annually thereafter, in accordance with article 16, paragraph 6, until the date of entry into force of this Protocol⁴⁰;
 - (iii) the date of entry into force of this Protocol;
 - (iv) any proposal to amend the limits on the amounts of compensation which has been made in accordance with article 19, paragraph 2;
 - (v) any amendment which has been adopted in accordance with article 19, paragraph 5;

³⁷ This article is identical in substance to Article 52 of the 1996 HNS Convention.

³⁸ This article is identical in substance to Article 53 of the 1996 HNS Convention, except for paragraphs (2)(a)(i) and (ii).

³⁹ Note by Chairman: Text re circulation of data added to clarify responsibilities of depositary.

⁴⁰ See note 39.

- (vi) any amendment deemed to have been accepted under article 19, paragraph 8, together with the date on which that amendment shall enter into force in accordance with paragraphs 9 and 10 of that article;
- (vii) the deposit of any instrument of denunciation of this Protocol together with the date on which it is received and the date on which the denunciation takes effect; and
- (viii) any communication called for by any article in this Protocol; and

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

3 As soon as this Protocol enters into force, a certified true copy thereof shall be transmitted by the depositary to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

Languages

Article 25⁴¹

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

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

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

⁴¹ This article is identical in substance to Article 54 of the 1996 HNS Convention.

ANNEX I⁴²

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, [200...]

| 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, [200...].

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.

⁴² This Annex is identical in substance to Annex I of the 1996 HNS Convention.