



## FACILITATING THE ENTRY INTO FORCE OF THE HNS CONVENTION: CONSIDERATION OF A DRAFT TEXT OF A PROTOCOL TO THE HNS CONVENTION

### POLICY PROPOSAL ON CONTRIBUTIONS TO THE LNG ACCOUNT FOR THE DEVELOPMENT OF A PROTOCOL TO THE HNS CONVENTION

Submitted by Canada, Denmark, Germany, Latvia, the Netherlands, Norway, Sweden and the  
United Kingdom

<b>Summary:</b>	This document discusses a policy proposal for the first issue identified in the HNS Focus Group's mandate, contributions to the LNG Account, in order to develop a Protocol to the HNS Convention.
<b>Action to be taken:</b>	The Focus Group is invited to take note of the information contained in this document, to consider the proposal in paragraph 4 and the draft treaty text in paragraph 5 and decide on a solution to the issue discussed in this document.

### 1 **Introduction**

- 1.1 Building on its long-standing work towards the implementation of the HNS Convention, the Assembly, at its 12th session in October 2007, established the HNS Focus Group with a mandate to develop a Protocol to the HNS Convention. With regard to contributions to the LNG Account, States were invited to develop and present policy proposals (cf paragraphs 27.1 to 27.19 and Annex II of document 92FUND/A.12/28) within a very short timeframe (ie for the Assembly to consider draft treaty text at its extraordinary session to be held in June 2008 in order to submit the draft Protocol to the IMO Legal Committee for its consideration and approval at its next meeting in October 2008).
- 1.2 The sponsors have considered the issue of contributions to the LNG Account that, to date, has discouraged States from ratifying the 1996 HNS Convention. After careful examination of this complex problem, which must be resolved in order to prepare a new Protocol that is workable and that will enter into force, the sponsors have proposed a potential solution to the issue of contributions to the LNG Account and invite other States and observer delegations to consider this proposal for adoption.

### 2 **Background: Titleholders in non-States Parties cannot be brought under the jurisdiction of States Parties to the Convention**

- 2.1 Article 19.1(b) of the HNS Convention places the responsibility for paying levies onto the titleholder of the LNG cargo immediately prior to its discharge, meaning that titleholders in non-States Parties cannot be brought under the jurisdiction of States Parties to the Convention. Industry and States have advised the Assembly that, depending on the type of contract used, many LNG exporters (sellers) will be titleholders at the point of discharge and it is estimated that this can represent as much as 63% of LNG contracts<sup><1></sup>. For some States, Article 19.1(b) is perceived as being iniquitous and a potential block to their ratification of the Convention. This could result

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<1> Source: International Group of Liquefied Natural Gas Importers (GIIGNL).

in significant shortfalls in contributions to the LNG Account and may affect the Fund's ability to pay claims arising from LNG incidents in full. This issue must be resolved in order to remove disincentives and to encourage the widest possible international uptake of the Convention.

- 2.2 A document that was submitted to the June 2007 session first set out the issue and provided statistics on the world trade in LNG (document 92FUND/A/ES.12/9/1/Rev.1). To update these statistics, in 2006, the world trade in LNG was 211.08 billion cubic metres (bcm), which equals 154.09 million tonnes (mmt)<sup><2></sup>. The import and export of LNG was as follows<sup><3></sup>:

Imports in 2006, in billion cubic metres (million metric tonnes)			Exports in 2006, in billion cubic metres (million metric tonnes)		
	bcm	mmt		bcm	mmt
Japan	81.86	(59.76)	Qatar	31.09	(22.70)
Republic of Korea	34.14	(24.92)	Indonesia	29.57	(21.59)
Spain	24.42	(17.83)	Malaysia	28.04	(20.47)
United States of America	16.56	(12.09)	Algeria	24.68	(18.02)
France	13.88	(10.13)	Australia	18.03	(13.16)
India	7.99	(5.83)	Nigeria	17.58	(12.83)
Turkey	5.72	(4.18)	Trinidad and Tobago	16.25	(11.86)
Belgium	4.28	(3.12)	Egypt	14.97	(10.93)
United Kingdom	3.56	(2.60)	Oman	11.54	(8.42)
Italy	3.10	(2.26)	Brunei Darussalam	9.81	(7.16)
Portugal	1.97	(1.44)	United Arab Emirates	7.08	(5.17)
China	1.00	(0.73)	United States of America	1.72	(1.26)
Mexico	0.94	(0.69)	Libya	0.72	(0.53)
Puerto Rico	0.72	(0.53)			
Greece	0.49	(0.36)			
Dominican Republic	0.25	(0.18)			
Other	10.20	(7.45)			

- 2.3 A recent correspondence group, which was coordinated by Professor Erik Røsæg of Norway, discussed potential solutions to this issue. However, despite the significant efforts of the Correspondence Group and Professor Røsæg to achieve consensus, there was insufficient support both within the Correspondence Group and the Assembly for the proposed Resolution (cf document 92FUND/A.12/25/1).

### 3 Rationale

- 3.1 LNG is the only cargo covered by the HNS Convention where the receiver is not responsible for the payment of contributions and post-incident levy to the HNS Fund. Thus, as a matter of policy, it is proposed to modify Article 19, paragraph 1(b) placing the responsibility on the physical receiver of LNG to report annually the amount of LNG received and to pay any related contributions and levies to the HNS Fund. This proposed change is necessary to ensure legal certainty and achieve an equitable solution for all LNG receivers in State Parties. If accepted, this modification would bring LNG into line with other HNS cargoes, and with the successful IOPC Fund Convention, which has attracted over 100 Member States.
- 3.2 Other solutions, similar to the one proposed by the informal Correspondence Group led by Professor Røsæg of requiring financial or bank guarantees from titleholders in non-States Parties, are impractical and costly to implement. Furthermore, the increasing LNG trade on spot markets would severely complicate the administration of such a requirement for financial guarantees.

<2> The conversion is: 1 billion cubic metres = 0.73 million tonnes of LNG.

<3> Provisional numbers from Cedigaz. Source: BP Statistical Review of World Energy 2007, <http://www.bp.com/sectiongenericarticle.do?categoryId=9017913&contentId=7033441>

- 3.3 At the October 2007 session of the Assembly, developing countries expressed concern that any proposed solution should take the status of developing countries into consideration, and that under the terms of Article 19 of the HNS Convention, LNG producers and exporters in such countries could face potentially heavy and disproportionate economic burdens. The solution proposed in this document, to make the receiver of LNG the contributor, meets these concerns of developing countries.

#### **4 Policy Proposal**

As indicated above, to retain the current provisions of the 1996 HNS Convention could lead to a shortfall in contributions to the LNG Account. This would place a disproportionate burden on those contributors who fall within the jurisdiction of a State Party to the HNS Convention. States have also expressed deep concern that there is potential for other HNS accounts to subsidise a claim resulting from an LNG incident. Many States have been firm in their opinion that this situation, if it were to occur, would be unacceptable. Furthermore, the current situation also would lead to a negative impact on developing countries that are major exporters of LNG. The proposed treaty text will treat LNG cargoes in the same manner as all other HNS commodities and avoid any future complications or under-funding of the LNG Account.

#### **5 Draft Treaty Text**

- 5.1 It is proposed that the draft Protocol amend Article 19, paragraph 1(b) (Annual contributions to separate accounts) as follows:

- (a) **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, ~~immediately prior to its discharge, held title to~~ was the receiver in that State of an LNG cargo ~~discharged in a port or terminal of that State;~~**

- 5.2 Consequential amendments would need to be made to:

- Article 17, paragraph 2 (General provisions on annual contributions) – delete 'or, in respect of cargoes referred to in Article 19, paragraph 1(b), discharged';
- Article 20, paragraph 1 (Initial Contributions) - delete 'or, in the case of LNG, discharged';
- Article 21, paragraph 5(b) (Reports) - delete 'or in the case of LNG, the titleholder who discharges within the jurisdiction of that State Party', and
- Article 43 (Information on contributing cargo) - delete 'or, in the case of LNG, discharged'.

#### **6 Action to be taken by the HNS Focus Group**

The Focus Group is invited:

- (a) to take note of the information contained in this document;
- (b) to consider the proposal in paragraph 4 and the draft treaty text in paragraph 5 and decide on a solution to the issue discussed in this document; and
- (c) to request the Chairman of the Focus Group as well as the IOPC Funds and IMO Secretariats to develop draft treaty text based on the policy proposal in this document.
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