



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

FIFTH INTERSESSIONAL
WORKING GROUP
Agenda item 2

92FUND/WGR.5/7
7 March 2008
Original: ENGLISH

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

DRAFT PROTOCOL

Note by the International Maritime Organization

Summary:	This document contains proposed amendments to Article 45.
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Action to be taken:	Consider the proposed amendments to draft Article 45.
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1 **Introduction**

Since receiving document 92FUND/WGR.5/6 the IMO Secretariat has had an opportunity to reflect on the draft articles relating to the Final Clauses and wishes to propose for consideration the attached revisions to draft Article 45.

2 **Action to be taken by the HNS Focus Group**

The Focus Group is invited to consider the proposed amendments to draft Article 45.

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ANNEX

New proposal for Article 45

Submitted by the International Maritime Organization

FINAL CLAUSES

Signature, ratification, acceptance, approval and accession

Article 45

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 provisions in paragraphs 4 and 5¹, 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 [A State shall not express its consent to be bound by this Protocol under this article unless it is accompanied by submission to the Secretary-General of]² [An expression of consent to be bound by this Protocol shall be accompanied by the submission to the Secretary-General of] data on the total quantities of contributing cargo liable for contributions received in that State during the preceding calendar year in respect of the general account and each separate account.

5 An expression of consent which is not accompanied by 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 May]³ 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.

7 [A State which has expressed its consent to be bound by the Protocol and which is in breach of its obligation 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 suspended⁴ from being a Contracting State until it has complied with this obligation.]

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 in accordance with paragraph 2⁵.

¹ The inclusion of proposed paragraph 5 below necessitates the inclusion of this reference; in addition, the word “condition” has been replaced by the word “provisions” as the proposed new paragraph 5 does not contain a condition.

² This drafting is modelled on Article 17, paragraph 5 of the 2002 Athens Protocol which provides that “A state shall not express its consent to be bound by this Protocol unless ...”.

³ The inclusion of this date is supported by the IMO Secretariat to facilitate the calculation of quantities of contributing cargo.

⁴ The IMO Secretariat is of the view that the concept of suspension is more in accordance with general principles of treaty law, and that the use of the term “withdrawal” may cause problems.

⁵ The reference to sub-paragraphs is not necessary.