

1996年海上運送有害有毒物質損害責任及賠償國際公約

1996年5月3日 訂於倫敦，尚未生效

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

3 May 1996, London, Not yet in force

HNS 1996

The States Parties to the present convention,

CONSCIOUS of the dangers posed by the world-wide 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

Article 1 Definitions

For the purposes of this Convention:

1. "Ship" means any seagoing vessel and seaborne craft, of any type whatsoever.
2. "Person" means any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent subdivisions.
3. "Owner" means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship. However, in the case of a ship owned by a State and operated by a company which in that State is registered as the ship's operator, "owner" shall mean such company.
4. "Receiver" means either:
 - (a) the person who physically receives contributing cargo discharged in the ports and terminals of a State Party;

本公約各締約國，

意識到全球海上運送有害有毒物質所造成之危險，

確信需要確保向蒙受此類物質之海上運送事故所致損害之人提供充分、迅速及有效之賠償，

希望採用一致之國際規則及程序確定該類損害之責任及賠償問題，

認為有害有毒物質海上運送所致損害之經濟後果應由航運界及有關貨方共同承擔，

茲達成協議如下：

第I章 總則

第1條 定義

為本公約目的：

1. "船舶"係指任何類型之海船及海上航具。
2. "人"係指任何個人或合夥人或任何公共或私人機構，不論是否為法人，包括國家或其任何組成部分。
3. "所有人"係指登記為船舶所有人之人，或在未登記時，指擁有船舶之人。然如船舶為國家所有並由在該國登記為船舶經營人之公司所經營者，"所有人"應指該公司。
4. "接收人"係指：
 - (a) 實際接收卸於某締約國港口或碼頭之攤款貨物之人；然如於

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 A, B, C or D in accordance with regulation 3(4) 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 1.1.3 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 60deg.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

接收時實際接收該貨物之人係受任何締約國管轄之另一人之代理人且該代理人向有害有毒物質基金指明該委託人，則該委託人應被視為接收人；或

- (b) 於締約國並依該國法律被視為卸於某締約國港口或碼頭之攤款貨物接收人之人，然依據該國家法律所接收之攤款貨物總量應與依據(a)款所接收之總量基本上相同。

5. "有害及有毒物質"(有害有毒物質)係指：

- (a) 下列(i)至(vii)所述，於船上作為貨物運送之任何物質、物料及物件：

(i) 經修正之經1978年議定書修訂之1973年國際防止船舶造成污染公約附則I之附錄I中所列散裝運送之油類；

(ii) 經修正之經1978年議定書修訂之1973年國際防止船舶造成污染公約附則II之附錄II所列之散裝運送有毒液體物質及依上述附則II第3(4)條被暫定為A、B、C或D污染類別之物質及混合物；

(iii) 經修正之1983年國際散裝危險化學品運送船舶構造及設備規則第17章所列之散裝運送之危險液體物質及主管機關及有關港口管理部門依該規則第1.1.3段對其初步適運條件作出規定之危險產品；

(iv) 經修正之國際海運危險貨物準則所包括之包裝形式之危險、危害及有害物質、材料及物品；

(v) 經修正之1983年國際散裝液化氣體運送船舶構造及設備規則第19章所列之液化氣體及主管機關及有關港口管理部門依該規則第1.1.6段對其初步適運條件作出規定之產品；

(vi) 閃點不超過攝氏60度(由閉杯試驗測量)之散裝運送液體物質；

(vii) 經修正之固體散裝貨物安全操作規則附錄B所包括之具有化學危害之固體散裝材料，然以該類物質在以包裝形式運送時亦應遵守國際海運危險貨物準則之規定為

- (b) residues from the previous carriage in bulk of substances referred to in (a)(i) to (iii) and (v) to (vii) above.
6. "Damage" means:
- loss of life or personal injury on board or outside the ship carrying the hazardous and noxious substances caused by those substances ;
 - loss of or damage to property outside the ship carrying the hazardous and noxious substances caused by those substances ;
 - 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
 - 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.
- "Preventive measures" means any reasonable measures taken by any person after an incident has occurred to prevent or minimize damage.
 - "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.
 - "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.
 - "Contributing cargo" means any hazardous and noxious substances 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.
 - The "HNS Fund" means the International Hazardous and Noxious Substances Fund established under Article 13.
 - "Unit of account" means the Special Drawing Right as defined by the International Monetary Fund.
 - "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.
- 限；及
- (b) 先前散裝運送第(a)項(i)至(iii)及(v)至(vi)款所述物質之殘餘物。
6. "損害"係指：
- 有害有毒物質所造成對運送該物質之船上或船外之人身傷亡；
 - 有害有毒物質所造成對運送該物質之船外財產之毀損滅失；
 - 有害有毒物質所造成對環境污染所致之滅失或損害，然對於不包括環境損害所致營利損失在內之環境損害賠償，應僅限於實際採取或將要採取之合理回復措施之費用；及
 - 預防措施之費用及預防措施所造成新的滅失或損害。
- 於無法合理區分有害有毒物質造成損害與其他因素造成損害時，除其他因素造成損害係第4條第3項所述類型之損害，否則所有該類損害應視為由該有害有毒物質所造成。
- 於本款，"由有害有毒物質造成"係指由此種物質之危害性或毒性所造成。
- "預防措施"係指任何人於事故發生後，為防止或減少損害所採取之任何合理措施。
 - "事故"係指造成損害或形成造成損害之嚴重及緊迫威脅具同一來源之任何一或一系列事件。
 - "海上運送"係指從裝船時有害有毒物質進入船舶設備之任何部分之時起，至卸船時其不再存在於船舶設備之任何部分之時止之期間。如未使用任何船舶設備，則該期間分別起止於有害有毒物質越過船舷之時。
 - "攤款貨物"係指作為貨物，由海上運送至一締約國境內港口或碼頭並卸於該締約國之任何有害有毒物質。從最初裝船港口或碼頭至最後目的地港口或碼頭之運送過程中直接或通過港口或碼頭從一船全部或部分地轉到另一船之轉口貨物，僅應於最後目的地接收時，被視為攤款貨物。
 - "有害有毒物質基金"係指依據第13條設立之國際有害有毒物質基金。
 - "計算單位"係指國際貨幣基金所定義之特別提款權。
 - "船舶登記國"，就已登記之船舶言，係指該船之登記國；就未登記之船舶言，係指該船有權懸掛其國旗之國家。

14. "Terminal" means any site for the storage of hazardous and noxious substances received from waterborne transportation, including any facility situated off-shore and linked by pipeline or otherwise to such site.
15. "Director" means the Director of the HNS Fund.
16. "Organization" means the International Maritime Organization.
17. "Secretary-General" means the Secretary-General of the Organization.

Article 2 Annexes

The Annexes to this Convention shall constitute an integral part of this Convention.

Article 3 Scope of Application

This Convention shall apply exclusively:

- (a) to any damage caused in the territory, including the territorial sea, of a State Party ;
- (b) to damage by contamination of the environment caused in the exclusive economic zone of a State Party, established in accordance with international law, or, if a State Party has not established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured ;
- (c) to damage, other than damage by contamination of the environment, caused outside the territory, including the territorial sea, of any State, if this damage has been caused by a substance carried on board a ship registered in a State Party or, in the case of an unregistered ship, on board a ship entitled to fly the flag of a State Party ; and
- (d) to preventive measures, wherever taken.

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 appendix B of the Code of Safe Practice for Solid Bulk Cargoes, as amended.

14. "碼頭"係指存放收到自海上運送之有害有毒物質之任何場所，包括由管道或其他設備與該場地相連之任何離岸設施。
15. "董事"係指有害有毒物質基金之董事。
16. "本組織"係指國際海事組織。
17. "秘書長"係指本組織秘書長。

第2條 附件

本公約各附件應為本公約之組成部分。

第3條 適用範圍

本公約應僅適用於：

- (a) 於締約國領土(包括領海)內造成之任何損害；
- (b) 於締約國依國際法所確定之專屬經濟區造成之環境污染所致之損害；或如締約國未確定該區域，於該國依國際法所確定，於其領海之外並與其領海毗鄰，距離測量其領海寬度之基線向外延伸不超過200哩之區域中造成之該損害；
- (c) 於一締約國登記之船舶或就未登記船舶言，有權懸掛一締約國國旗之船舶運送之物質於任何國家之領域(包括領海)之外造成之非屬環境污染損害之損害；及
- (d) 不論在何處所採取之預防措施。

第4條

1. 本公約應適用於對海上運送有害有毒物質所致損害之求償，但不包括任何貨物或旅客運送契約所引起之求償。
2. 本公約就其規定中，與有關工人賠償或社會保障制度所適用法律之規定不一致之處，不應適用。
3. 本公約不適用於：
 - (a) 經修正之1969年國際油污損害民事責任公約所規定之污染損害，不論依據該公約對此是否應為賠償；及
 - (b) 由經修正之國際海運危險貨物準則或經修正之固體散裝貨物安全操作規則附錄B之第7類放射性物質造成之損害。

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. Where a State has made a declaration under paragraph 1 or 2 and has not withdrawn it, hazardous and noxious substances carried on board ships covered by that paragraph shall not be considered to be contributing cargo for the purpose of application of Articles 18, 20, Article 21, paragraph 5 and Article 43.
6. 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.

4. 除第5項規定外，本公約規定不適用於軍艦、海軍輔助船或由國家所有或營運並於當時專用於政府非商業服務之其他船舶。
5. 締約國可決定將本公約應用於第4項所述之軍艦或其他船舶，於此種情況下，應將其通知秘書長，說明該適用之限制性規定。
6. 對國家所有，用於商業目的之船舶，每一國家均應接受於第38條所規定之管轄範圍內之訴訟，並應放棄其基於主權國地位之所有抗辯。

第5條

1. 一國可於批准、接受、核准或加入本公約時或此後之任何時間，聲明本公約不適用於下列船舶：
 - (a) 不超過200總噸；且
 - (b) 僅運送包裝形式之有害有毒物質；且
 - (c) 其僅從事該國港口或設施間之航行時。
2. 如二相鄰國家商定當第1項(a)及(b)款所涵蓋之船舶從事這些國家港口或設施間之航行時本公約亦不適用，則有關國家可經聲明，依第1項聲明本公約所不適用之船舶亦包括本項所述船舶。
3. 依據第1或2項為聲明之任何國家可隨時撤銷該聲明。
4. 應向秘書長交存依據第1或2項所為之聲明及依據第3項所為之撤銷聲明，秘書長於本公約生效後應將其通知董事。
5. 如一國依據第1或2項為聲明且未予以撤銷，則該項所述船舶運送之有毒有害物質，就第18條、20條、21條5項及43條之適用而言，不應被視為攤款貨物。
6. 有害有毒物質基金於下列情況下不負責對本公約因依據第1或2項所為聲明而不適用之船舶運送物質所造成損害支付賠償金：
 - (a) 第1條6項(a)、(b)或(c)款定義之損害係在下述區域所致：
 - (i) 作出聲明之國家之領域(包括領海)或依據第2項作出聲明之相鄰國家之任一國之領域(包括領海)；或
 - (ii) 第(i)款所述一或多個國家之專屬經濟區或第3條(b)項所述之區域；
 - (b) 損害包括為防止或減少該損害所採取之措施。