

# 1996年海上運送有害有毒物質損害責任及賠償國際公約及其2010年修正議定書

1996年5月3日及2010年4月30日通過，尚未生效

## 綜合文本(1996~2010)

### Consolidated text of The International Convention on Liability and Compensation for Damage in Connection with The Carriage of Hazardous and Noxious Substances by Sea, 1996 and the Protocol of 2010 to the Convention

Done on 3 May 1996 / 30 April 2010, Not yet in force

Condoliated Texts (1996~2010)

## HNS 綜合文本(1996~2010)



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# HNS 公約簡介

## 1996 年公約/

生效門檻：12 國 (4 國  $\geq$  2,000,000 GRT) + 18 個月

(2019.3)締約國數：14 國

## 2010 年議定書

生效門檻：12 國 (4 國  $\geq$  2,000,000 GRT) + 18 個月

(2019.3)締約國數：4 國

簡介：CLC 及 FUND 主要係賠償因「貨油」所致之污染損害責任。對於其他污染物質，特別是非油類之有毒有害物質之污染損害，仍有制定國際公約規範之必要。而此即為 IMO 於 1996 年制定關於海上運送有毒有害物質損害責任及賠償國際公約之主因。本公約主要採取 CLC 及 FUND 公約之雙重架構而制定。

1996 年 HNS 公約由於針對「包裝 HNS」貨物之責任界定及基金攤款等未為明確規定，導致很多國家不願批准 HNS 公約。基此，HNS 公約於 2010 年進行修正，針對前述問題等予以處理及解決，並藉此議定書取代 1996 年 HNS 公約。

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#### CHAPTER I GENERAL PROVISIONS

#### 第I章 總則

##### 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 ; 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).

##### 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. "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, as defined in regulation 1 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, as defined in regulation 1.10 of Annex II to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended, and those substances and mixtures provisionally categorized as falling in pollution category X, Y or Z in accordance with regulation 6.3 of the said Annex II;

(iii) dangerous liquid substances carried in bulk listed in chapter 17 of the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk, as amended, and the dangerous products for which the preliminary suitable conditions for the carriage have been prescribed by the Administration and port administrations involved in accordance with paragraph 1.1.6 of the Code;

(iv) dangerous, hazardous and harmful substances, materials and articles in packaged form covered by the International Maritime Dangerous Goods Code, as amended;

(v) liquefied gases as listed in chapter 19 of the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk, as amended, and the products for which preliminary suitable conditions for the carriage have been prescribed by the Administration and port administrations involved in accordance with paragraph 1.1.6 of the Code;

(vi) liquid substances carried in bulk with a flashpoint not exceeding 60°C (measured by a closed-cup test);

(vii) solid bulk materials possessing chemical hazards covered by the International Maritime Solid Bulk Cargoes Code, as amended, to the extent that these substances are also subject to the provisions of the International Maritime Dangerous Goods Code in effect in 1996, when carried in packaged form; and

(b) residues from the previous carriage in bulk of substances referred to in (a)(i) to (iii) and (v) to (vii) above.

5bis "Bulk HNS" means any hazardous and noxious substances referred to in article 1, paragraph 5(a)(i) to (iii) and (v) to (vii) and paragraph 5(b).

5ter "Packaged HNS" means any hazardous and noxious

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錄I第1條定義所列之散裝運送之油類;

(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第1.10條定義之散裝運送有毒液體物質及依照附則II第6.3條臨時確定為X、Y或Z類的物質及混合物;

(iii) 經修訂之國際散裝運輸危險化學品船舶建造及設備規則第17章所列之散裝運送危險液體物質及有關主管機關及港口管理部門依該規則第1.1.6款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) 經修正之國際海事固體散裝貨物規則所包括之具有化學危害之固體散裝材料,但僅限於在有包裝運輸時也受1996年實施的國際海運危險貨物準則拘束之此類物質;

(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。

5bis "散裝有害有毒物質"係指第1條第5(a)(i)至(ii)及(v)至(vii)款及第5(b)款所述之有害有毒物質。

5ter"具包裝之有害有毒物質"係指第1

substances referred to in article 1, paragraph 5(a)(iv).

6. "Damage" means:
- (a) loss of life or personal injury on board or outside the ship carrying the hazardous and noxious substances caused by those substances ;
  - (b) loss of or damage to property outside the ship carrying the hazardous and noxious substances caused by those substances ;
  - (c) loss or damage by contamination of the environment caused by the hazardous and noxious substances, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken ; and
  - (d) the costs of preventive measures and further loss or damage caused by preventive measures.

Where it is not reasonably possible to separate damage caused by the hazardous and noxious substances from that caused by other factors, all such damage shall be deemed to be caused by the hazardous and noxious substances except if, and to the extent that, the damage caused by other factors is damage of a type referred to in Article 4, paragraph 3.

In this paragraph, "caused by those substances" means caused by the hazardous or noxious nature of the substances.

7. "Preventive measures" means any reasonable measures taken by any person after an incident has occurred to prevent or minimize damage.
8. "Incident" means any occurrence or series of occurrences having the same origin, which causes damage or creates a grave and imminent threat of causing damage.
9. "Carriage by sea" means the period from the time when the hazardous and noxious substances enter any part of the ship's equipment, on loading, to the time they cease to be present in any part of the ship's equipment, on discharge. If no ship's equipment is used, the period begins and ends respectively when the hazardous and noxious substances cross the ship's rail.
10. "Contributing cargo" means any bulk HNS which is carried by sea as cargo to a port or terminal in the territory of a State Party and discharged in that State. Cargo in transit which is transferred directly, or through a port or terminal, from one ship to another, either wholly or in part, in the course of carriage from the port or terminal of original loading to the port or terminal of final destination shall be considered as contributing cargo only in respect of receipt at the final destination.
11. The "HNS Fund" means the International Hazardous and Noxious Substances Fund established under Article 13.
12. "Unit of account" means the Special Drawing Right as defined by the International Monetary Fund.

條第5(a)(iv)款所述之任何有害有毒物質。

6. "損害"係指：
- (a) 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；
  - (b) 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；
  - (c) 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
  - (d) 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。
7. "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。
8. "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。
9. "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。
10. "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散裝有害有毒物質。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。
11. "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。
12. "計算單位"係指國際貨幣基金所定義之特別提款權。