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INTERNATIONAL CONVENTION ON LIABILITY AND COMPENSATION FOR DAMAGE IN CONNECTION WITH THE CARRIAGE OF HAZARDOUS AND NOXIOUS SUBSTANCES BY SEA

IMPLEMENTATION OF THE DEFINITION OF 'RECEIVER' IN ARTICLE 1.4(A) OF THE HNS CONVENTION

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

Summary:

Article 1.4(a) relating to the definition of 'receiver' in the HNS Convention and the proviso therein should be implemented in a unified and harmonised manner. It is recommended that States implement Article 1.4(a) subject to earlier recommendations adopted by the IMO Legal Committee and the IOPC Fund but without the proposed interpretation presented at the June 2007 session of the Administrative Council. It is further recommended that a State's reporting system be robust and transparent so as to ensure all contributing cargo since reported as this would impact on the sharing of the burden in the HNS Fund.

Action to be taken:

The Assembly is invited to take note of the information contained in this document and to endorse the recommendations made in section 4.

1 Introduction

- 1.1 At the June 2007 session of the Administrative Council, acting on behalf of the 1992 Fund Assembly, Canada and the Netherlands proposed a solution to define the 'receiver' in Article 1.4(a) of the HNS Convention (cf document 92FUND/A/ES.12/9/2). This solution would involve the adoption of a common clarification of the 'receiver' in the national law of Contracting States. However, there was no agreement on the proposed solution and the Administrative Council agreed that these two States should continue to seek a solution to the issue (92FUND/AC.3/A/ES.12/14, paragraphs 9.7-9.11).
- 1.2 The HNS Convention includes several provisions that establish certain principles and obligations but it is left to the States to decide how to implement them. In particular during previous settings and international meetings, such as the meeting of the HNS Correspondence Group in Ottawa (June 2003) and meetings of the IMO Legal Committee, further recommendations for implementation have been made. There exists a deep concern that sharing of the burden of the HNS Fund among receivers in the Contracting States is fair and equitable (ie a global level playing field).
- 1.3 Against the background, it is in the interest of all Contracting States to the HNS Convention that the definition of 'receiver' in Article 1.4(a) and the proviso therein should be implemented in a unified and harmonised manner. It would be highly desirable to ensure that the earlier

recommendations within both the IMO and the IOPC Funds respecting the definition given in Article 1.4(a) be implemented in national law^{<1>}.

2 Particulars of Earlier Recommendations

The recommendations referred to in paragraph 1.3 above, which were made at the Ottawa meeting and adopted by the IMO Legal Committee and the IOPC Funds, are as follows:

- The first part of the definition of 'receiver' of Article 1.4(a) with regards to the physical receiver is the same as under the 1992 Fund Convention, meaning the person physically receiving the cargo.
- The second part creates an exception to the rule that the physical receiver pays the levies and allows the physical receiver to pass this responsibility to their principal, only where there is an agent/principle relationship. This would depend on the Member State's national laws on agent/principal relationships.

3 Considerations

Physical Receipt by Large Terminal Operators

- 3.1 Since in most cases the more substantial quantities of HNS will be physically received by large terminal operator facilities in major harbour and port areas, the possibility of using the proviso in Article 1.4(a) may add to the acceptability of the HNS Convention for the key players in the handling of HNS cargoes worldwide. By doing so, terminal operators will be able to direct the contributions to the relevant interests in the HNS cargo (cf Working Paper 6 of the Ottawa meeting). This last point is certainly the case in the oil, bulk liquids and dry bulk sectors.

Similar Approach in the IOPC Funds

- 3.2 As regards the implementation of 'receiver' in national law, the same approach was taken by the IOPC Funds. At its 1st extraordinary session, the 1971 Fund Assembly considered the Report of the Intersessional Working Group (see document FUND/A/ES.1/8) under which circumstances contributing oil has to be considered as 'received' in accordance with Article 10.1 of the 1971 Fund Convention. The Assembly approved the following interpretation adopted by the Working Group with regard to the question of which person has to be included in the report as the 'receiver' of oil:

The Assembly agreed that, within the scope of Article 10 of the Fund Convention, Contracting States should have a certain flexibility to adopt a practical reporting system allowing an effective and easy checking of the figures and taking into account the peculiarities of the oil movement and the local circumstances of a particular country and that failing payment by persons reported other than the physical receivers, the physical receivers should ultimately be liable for contributions irrespective of whether the persons reported have their place of business or residence in a Contracting State or not' (document FUND/A/ES.1/13 dated 17 October 1980).

4 Recommendations

- 4.1 When ratifying the HNS Convention, States are encouraged to implement Article 1.4(a) subject to the above recommendations. As regards the physical receipts of packaged or containerized HNS, the co-sponsors recognise that an earlier proposal made at the 3rd session of the Administrative Council in June 2007 to adopt a uniform interpretation of Article 1.4(a) is not possible and that the Article should be implemented without such interpretation.

<1> The strong recommendation to opt for the definition in Article 1.4(a) as opposed to Article 1.4(b) was endorsed by the IMO Legal Committee (see document LEG 87/17, paragraph 172) and the IOPC Fund (cf documents 92FUND/A.8/26 and 92FUND/A.8/30, paragraph 30.5)

- 4.2 The co-sponsors also urge State Parties to ensure that any reporting system should be robust and transparent so as to ensure that it fully captures all contributing cargo discharged in the ports and terminals in that State Party.

5 Action to be taken by the Assembly

The Assembly is invited:

- (a) to take note of the information contained in this document; and
 - (b) to endorse the recommendations made in section 4.
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