



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

## FUTURE WORK ON THE HNS CONVENTION

### Submitted by the Chairman

<b>Summary:</b>	This document provides an overview of recent developments relating to the implementation of the HNS Convention.
<b>Action to be taken:</b>	To consider and decide on future work on the HNS Convention in the 1992 Fund.

## 1 Introduction

- 1.1 The HNS Convention was adopted by the International Maritime Organization (IMO) in 1996 and was signed, subject to ratification, acceptance or approval, by Canada, Denmark, Finland, Germany, the Netherlands, Norway, Sweden and the United Kingdom. It has since been ratified by nine States including Angola, Cyprus, Lithuania, Morocco, the Russian Federation, Slovenia, Saint Kitts and Nevis, Samoa, and Tonga. Only two of these states - Cyprus and Slovenia - have submitted reports on contributing cargo, as required under Article 43 of the Convention.
- 1.2 Since the adoption of the HNS Convention, the 1992 Fund<sup><1></sup> and IMO, and other international and regional organisations, as well as several States, acting individually or collectively, have undertaken substantial work and made considerable efforts over the last 11 years to facilitate the implementation of the HNS Convention and encourage its wide international acceptance. For reference, a chronology of HNS related efforts or events is set out in the Annex to this document.
- 1.3 At the June 2007 session of the 1992 Fund Administrative Council, acting on behalf of the Assembly, there were five documents on the agenda which related to the HNS Convention, four of which were submitted by States and the other by the Director reporting on the outcome of meetings held with the IMO Secretariat. The four documents submitted by States sought to resolve four major outstanding issues which, in the view of those delegations that participated in the discussion, were blocking progress on the ratification of the HNS Convention in their States. The documents sought to agree:
- (a) a proposal to secure contributions to the LNG account, when titleholders are located in non-Contracting States;
  - (b) a uniform interpretation of the definition of 'receiver' in accordance with Article 1.4(a) of the Convention;

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<1> Pursuant to Resolution 1 adopted by the IMO Diplomatic Conference on the HNS Convention.

- (c) a solution to the problem caused by ratifications submitted without contributing cargo reports, and failures to keep such reports up-to-date on an annual basis; and
  - (d) a proposal to adopt a common ratification date to ensure a level-playing field among affected industries in Contracting States.
- 1.4 At the end of the June session, the Administrative Council agreed to establish an informal correspondence group that would work quickly to find a potentially workable and widely acceptable solution to the issue of contributions by LNG titleholders located in non-Contracting States. The Correspondence Group coordinator will present a report on the discussion within the correspondence group and make recommendations to this session of the Assembly.
- 1.5 As regards the issue of ratifications submitted without contributing cargo reports, as required under Article 43 of the Convention and the obligation to report annually thereafter, the Administrative Council invited those delegations that raised the issue to further explore possible solutions in conjunction with IMO and IOPC Funds' Secretariats and other interested delegations, and report back to the Assembly at this session.
- 1.6 The Administrative Council also invited those delegations concerned about the definition of 'receiver' under Article 1.4 of the Convention to continue to work on that issue with a view to submitting a revised proposal to the Assembly at this session.
- 1.7 As regards document 92FUND/A/ES/12/9/3, submitted to the June session on a common ratification date by which a group of States could agree to ratify the Convention simultaneously, the Administrative Council noted the withdrawal of the document at the June session and it would appear that a new document on this issue is not forthcoming for discussion at this session. Moreover, it would appear that in some prospective Contracting States there would be several 'major contributor', given the projected volume of contributing cargo to the General Account received in these states (in some cases about 20 million tonnes, which is equal to half the volume of contributing cargo required to bring the HNS Convention into force). Thus, there are signs that some states would ratify the Convention only after the volume of contributing cargo in the General Account reaches a level that would be more in balance with the volume of their own contributing cargo, or when it becomes more certain that the volume in the General Account would also include the contributing cargo from their neighbouring States.
- 1.8 While an agreement on a common ratification date does not seem feasible at the present time, it is anticipated that new documents will be submitted by delegations to this session, reporting on the outcome of any intersessional work towards the resolution of the other outstanding issues as listed in paragraph 1.3 (a,b,c) above. This session will also provide another opportunity for delegations from States that have ratified the HNS Convention, but have not yet submitted their contributing cargo reports, to provide these reports or to apprise the Assembly of the challenges they face in furnishing such reports.
- 1.9 If the outcome of the intersessional work and discussions at this Assembly session should indicate that the outstanding issues have been resolved, the Assembly will no doubt welcome such progress with much satisfaction.
- 1.10 On the other hand, if the outcome of the discussion at this Assembly session should indicate that the same problems still persist and that no solution has been identified that could be recommended to the Assembly for consideration, then it would be highly desirable for the Assembly to discuss the situation and decide:
- (a) whether the Assembly wishes to continue the work, within the 1992 Fund, on promoting and facilitating the entry into force of the HNS Convention;
  - or
  - (b) whether the Assembly finds that this work has reached an impasse and, for the time being, should be suspended.

- 1.11 If the Assembly decides **to continue** its efforts to promote the entry into force of the HNS Convention, it would be essential that all interested States, those that have already ratified this Convention and those wishing to do so, make a tangible commitment to join a group - HNS Focus Group - to undertake the task of considering the issues of major concern and proposing solutions to solve them. This task would be subject to a mandate to be approved by the Assembly, ideally at this session.
- 1.12 If the Assembly decides **to suspend** further work on the HNS Convention within the 1992 Fund, it would be appropriate for the Assembly to inform IMO and in particular the Legal Committee, which has developed the HNS Convention. Given the back-to-back arrangements for the IOPC Funds and Legal Committee meetings in October, such decision could best be communicated verbally by interested delegations also attending the Legal Committee session in Panama. A more formal notice would follow in due course from the 1992 Fund to the IMO.
- 1.13 IMO and the Legal Committee would then be able to take stock of the situation and decide on any action as it may deem appropriate, taking into account that over the many years, a large number of States have consistently expressed, both in the 1992 Fund and IMO, as well as in other international or regional organizations, their determination to establish a robust and effective liability regime for the maritime carriage of hazardous and noxious substances.

**2 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 decide on the future work on the HNS Convention in the 1992 Fund, as set out in paragraph 1.10 above.

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## ANNEX

### History of international and regional work on the implementation of the 1996 HNS Convention

- 1997 - meeting in The Hague followed in 1998 by a further meeting of EU states in London under the UK Presidency.
  - 1998 - the first international special consultative meeting held at the IMO.
  - 1998 - meeting in Rome under the Italian EU Presidency.
  - 1999 - meeting in Bonn during German EU Presidency.
  - 1999 - LEG 80 asked UK to set up and lead Correspondence Group.
  - 2001 - the second international special consultative meeting held at IMO.
  - 2001 - submission of draft of Compendium on HNS Convention.
  - 2003 - Special Consultative meeting held in Ottawa.
  - 2003 - meeting in Brussels under the Finnish EU Presidency.
  - 2003 - Legal Committee and IMO Assembly.
  - 2004 - Barcelona Workshop.
  - 2004 - Legal Committee discussions.
  - 2005 - IOPC Fund holds its first HNS Convention Workshop, develops website and HNS Contributing Cargo Calculator as well as Guide to the implementation of the HNS Convention.
  - 2006 - IOPC Fund holds its second HNS Convention Workshop and develops the HNS Brochure.
  - 2006 - European Maritime Safety Agency – HNS Workshop in Brussels.
  - 2006 - European Maritime Safety Agency – HNS Workshop in Lisbon.
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