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

Note by the Director

Summary:	Information is given on recent developments in respect of the preparations for the entry into force of the HNS Convention. As instructed by the Assembly, the Director has taken up with the Secretary-General of IMO the question of what action could be taken against those States which, when they ratify, do not submit the required reports on contributing cargo. The outcome of these discussions is reported.
Action to be taken:	Information to be noted.

1 Introduction

- 1.1 The Assembly noted at its 1st session, held in June 1996, that, in a Resolution of the Conference which had adopted the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (HNS Convention), it had been invited to assign to the Director of the 1992 Fund, in addition to his functions under the 1992 Fund Convention, the administrative tasks necessary for setting up the International Hazardous and Noxious Substances Fund (HNS Fund) in accordance with the HNS Convention. The Assembly instructed the Director to carry out the tasks requested by the HNS Conference (document 92FUND/A.1/34, paragraphs 33.1.1 - 33.1.3), on the basis that all expenses incurred would be repaid by the HNS Fund.
- 1.2 As at 15 May 2007, eight States (Angola, Cyprus, Morocco, the Russian Federation, Saint Kitts and Nevis, Samoa, Slovenia and Tonga) have acceded to the HNS Convention.

2 Recent developments

- 2.1 At the March 2005 session of the Assembly, a number of delegations stated that it was important for the Secretariat to take a higher profile in respect of the HNS Convention (document 92FUND/A/ES.9/28, paragraph 27.5.2).
- 2.2 As a result, the Secretariat has organised two Workshops, the first of which was held in June 2005 and was intended to facilitate States' preparations for ratification of the HNS Convention and to address the need for the uniform interpretation and application of the Convention. The Secretariat

produced a 'Guide to the Implementation of the HNS Convention' to form the basis of that Workshop. A second Workshop held in May 2006 focussed on more practical aspects of the implementation of the HNS Convention. The PowerPoint presentations given at the Workshops, together with the Guide, are available on the website www.hnsconvention.org.

- 2.3 The Secretariat has produced a brochure on the HNS Convention. The four-page brochure, which provides an accessible introduction to the Convention suitable for a wide audience, is available in English, French and Spanish.
- 2.4 The Secretariat has set up a dedicated website for the HNS Convention (www.hnsconvention.org), which is available in English, French and Spanish. Consideration will be given to further development of the website.
- 2.5 The Secretariat has also developed a system to assist in identifying and reporting contributing cargo under the HNS Convention, which includes a database of all substances qualifying as hazardous or noxious substances. The final system is available in the form of both a CD-ROM and a dedicated website (www.hnscccc.org).
- 2.6 The Secretariat has participated in a number of seminars on the HNS Convention organised by the European Maritime Safety Agency to assist European States in their preparations for ratifying the Convention. Seminars have been held in 2006 for Latvia, Romania and Bulgaria and in April 2007 for Poland. Further seminars are planned for Lithuania and Malta during the remainder of 2007. Particular emphasis is given during these seminars to the operation of the system for contributing cargo to the HNS Fund and the practical issues involved in setting up such a system.
- 2.7 The Secretariat has also been invited to participate in a workshop organised by the Danish government which is to be held in August 2007.

3 Submission of reports on contributing cargo

- 3.1 Article 43 of the HNS Convention requires a State, when submitting an instrument of ratification and annually thereafter until the Convention enters into force for that State, to submit information on the total quantities of contributing cargo received in respect of each account and sector to the Secretary-General of IMO. As at 15 May 2007, only two States (Cyprus and Slovenia) of the eight States that have ratified the Convention had submitted such information.
- 3.2 Under Article 46.1, the HNS Convention will enter into force 18 months after ratification by at least 12 States, subject to two conditions, one of which is that in the previous calendar year a total of at least 40 million tonnes of cargo liable for contributions only to the General Account, ie HNS other than oils, liquefied natural gas (LNG) or liquefied petroleum gas (LPG), has been received in States which have ratified the Convention.
- 3.3 At its 11th session in October 2006, several delegations made the point that the failure of a number of States which have ratified the HNS Convention to submit the required reports on contributing cargo was a major obstacle for those States which had not yet ratified, since they were under an obligation to protect the interests of contributors in their own States. The Assembly, noting that the submission of reports on contributing cargo was key to the entry into force of the HNS Convention, therefore instructed the Director to take up with the Secretary-General of IMO the question of what action could be taken against those States which when they ratify do not submit the required reports on contributing cargo (document 92FUND/A.11/35, paragraph 33.26).
- 3.4 As instructed by the Assembly, the Director discussed this issue with the Secretary-General of IMO at a meeting held on 23 January 2007 and subsequently with the Director and the Senior Deputy Director of IMO's Legal Affairs and External Relations Division at a meeting held on

12 April 2007, which was also attended by the Fund's Legal Counsel and Head of External Relations and Conference.

- 3.5 During the discussions in April 2007, it was recalled that in June 2005, at the request of the Legal Committee, IMO had written to all States that had ratified the HNS Convention, reminding them of the requirement to submit reports on contributing cargo, but that no replies to these letters had been received. However, IMO offered to write to such States again, making the point even more strongly.
- 3.6 As regards the possibility of rejecting ratifications, IMO's interpretation of the HNS Convention is that the text does not establish a binding link between Article 43, which requires States to submit data on quantities of contributing cargo when ratifying the Convention, and Article 45, which sets out the procedure for ratification, and that, as a result, IMO does not currently have any authority to reject any ratifications which are not accompanied by such data, nor to suspend any ratifications which have previously been accepted.
- 3.7 However, it was suggested that the subject could be raised at the next meeting of the IMO Council, which will be held from 25-29 June 2007, under Agenda Item 20 ('Report on the status of conventions and other multilateral instruments in respect of which the Organization performs functions'). It was pointed out that any of the 40 States which are Members of the IMO Council (see Annex) could make an oral intervention setting out their concerns as regards this issue.
- 3.8 It was further suggested that the Secretary-General of IMO might take advantage of his regular contacts with high-level European Union (EU) officials to draw attention to the problem and to encourage the European Commission to put pressure, to the extent possible, on States that have ratified the Convention to submit the required reports. At his meeting with the European Commissioner for the Environment, Mr Stavros Dimas, on 27 April 2007, the Secretary-General requested Mr Dimas to assist in the earliest possible ratification by EU Member States of a number of IMO instruments, including the HNS Convention. Mr Dimas agreed on the need for EU Member States to show leadership in this regard and stated that he and the Environment Directorate-General would make every effort to assist in this endeavour.
- 3.9 Several other actions which might encourage States to submit the required reports were discussed, including the submission of a document by the IOPC Funds on this issue to the October 2007 session of the Legal Committee. It was also suggested that the IOPC Funds could write to States that have ratified the HNS Convention requesting the contact details for the ministry or agency responsible for the submission of these reports and offering assistance, as appropriate.

4 Action to be taken by the Assembly

The Assembly is invited to take note of the information contained in this document.

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ANNEX

IMO Council members for the period 2006-2007

Category (a): 10 States with the largest interest in providing international shipping services:

China
Greece
Italy
Japan
Norway
Panama
Republic of Korea
Russian Federation
United Kingdom
United States

Category (b): 10 other States with the largest interest in international seaborne trade:

Argentina
Bangladesh
Brazil
Canada
France
Germany
India
Netherlands
Spain
Sweden

Category (c): 20 States not elected under (a) or (b) above which have special interests in maritime transport or navigation, and whose election to the Council will ensure the representation of all major geographic areas of the world:

Algeria
Australia
Bahamas
Belgium
Chile
Cyprus
Denmark
Egypt
Indonesia
Kenya
Malaysia
Malta
Mexico
Philippines
Portugal
Saudi Arabia
Singapore
South Africa
Thailand
Turkey
