



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND 1992

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Agenda item 30

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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

<b>Summary:</b>	Information is given on recent developments in respect of the preparations for the entry into force of the HNS Convention. The main conclusions of a meeting of the IMO Legal Committee Correspondence Group are reported. The Secretariat is in the final stages of the development of a system to assist in identifying and reporting contributing cargo under the HNS Convention.
<b>Action to be taken:</b>	Information to be noted.

### **1**     **Introduction**

- 1.1     The Assembly noted at its 1st session 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 (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     The Assembly may wish to note that three States, the Russian Federation, Angola and Morocco, have acceded to the HNS Convention.
- 1.3     At its 6th session held in October 2001, the Assembly instructed the Director to develop a system in the form of a website or CD-Rom to assist States and potential contributors in the identification and reporting of contributing cargo under the HNS Convention (document 92FUND/A.6/28, paragraph 28.5). The Assembly granted an extra appropriation of £150 000 for this purpose,

provided that the costs incurred would be reimbursed to the 1992 Fund by the HNS Fund when the HNS Convention entered into force (document 92FUND/A.6/28, paragraphs 28.5 and 28.6).

## **2 Consideration by the 1992 Fund Administrative Council in May 2003**

- 2.1 At its first session, held in May 2003, the 1992 Fund Administrative Council considered a document presented by the Director which dealt with certain administrative aspects of the preparation for the entry into force of the HNS Convention (document 92FUND/A/ES.7/4). The discussion of these issues is reflected in the Record of Decisions of that session (document 92FUND/AC.1/A/ES.7/7, paragraphs 6.4-6.9).
- 2.2 It was noted that the administrative arrangements would to a large extent depend on the location of the Secretariat of the HNS Fund. A number of delegations expressed the view that the most practical solution would be for the HNS Fund to have a joint secretariat with the IOPC Funds and to be based in London. The point was made that the use of a joint Secretariat would enable the HNS Fund to benefit from the experience gained by the IOPC Funds and would reduce the administrative costs for both the HNS Fund and the IOPC Funds. One delegation expressed the view that since the HNS Fund would have a different membership to the IOPC Funds, it should have a Secretariat separate to the IOPC Funds so as to ensure that there was a clear delineation of its operations and costs.
- 2.3 The Administrative Council recognised that the decision as to the location of the HNS Fund would be taken by the HNS Fund Assembly. However, the Council instructed the Director to continue the preparatory work for the time being on the assumption that the HNS Fund would have a joint Secretariat with the IOPC Funds and would be based in London. It was recognised that the HNS Fund would be a separate legal entity.
- 2.4 The Administrative Council accordingly instructed the Director to study further the issues set out in the document and submit draft texts for preliminary examination by the 1992 Fund Assembly at a future session. It was agreed that the forum where further discussion should take place would have to be considered at a later stage.

## **3 Correspondence Group**

- 3.1 At the 80th session of the Legal Committee of the International Maritime Organization (IMO), held in October 1999, a Correspondence Group was established and charged with monitoring the implementation of the HNS Convention, with the United Kingdom as co-ordinator of the Group. The Group's terms of reference were as follows:
  - (1) to provide a forum for an exchange of views concerning HNS implementation issues and to follow the implementation process in States;
  - (2) to provide, with a view to an early entry into force of the HNS Convention at a global level and for the benefit of both potential States Parties and affected industries, guidance on issues regarding the implementation and operation of that Convention, such as, but not limited to:
    - (a) the collection of information on contributing cargo;
    - (b) the development of appropriate reporting and verification systems and standard reporting forms;
    - (c) the contribution system;
    - (d) the acceptability of insurance or other financial security for the purpose of Article 12 of the HNS Convention; and
  - (3) to report to the Legal Committee at its regular sessions.

- 3.2 The Correspondence Group held a special consultative meeting in Ottawa (Canada) from 3 to 5 June 2003 in order to address those issues previously identified as requiring resolution before the coming into force of the HNS Convention and to complete the core work of the Group. The meeting was attended by representatives of 15 States and of intergovernmental and international non-governmental organisations. The IOPC Funds attended the meeting.
- 3.3 The meeting focussed on the following issues, a number of which involve treaty obligations which the Convention places on Contracting States but which are not set out in detail in the Convention:
- the inter-relationship between the HNS Convention and various maritime liability conventions,
  - shipowners' insurance and liability,
  - the definition of "receiver" and reporting requirements,
  - systems for monitoring contributing cargo, and
  - progress on implementation and promotion of the HNS Convention.
- 3.4 The Director presented a paper on the interrelationship between the various maritime liability conventions (the HNS Convention, the 1992 Civil Liability Convention, the 1992 Fund Convention, the Supplementary Fund Protocol, the Bunker Convention and the Athens Convention) by means of five hypothetical scenarios for incidents involving one or more types of damage. A revised version of this paper is reproduced at Annex I. The Director emphasised that unless States had ratified all the maritime liability conventions, claimants might not be able to receive full compensation in the event of an incident.
- 3.5 The Correspondence Group agreed that the issue of the HNS Fund Secretariat included a political decision regarding the location of the HNS Fund. The Group requested the Legal Committee to consider this issue with the view of facilitating a decision by IMO on the location of the HNS Fund. The Group expressed the view that this initial decision would provide a degree of certainty for the purposes of preparatory work prior to the entry into force of the HNS Convention, although the final decision would have to be made by the first HNS Fund Assembly. Those delegations that spoke on this matter felt that a joint Secretariat of the HNS Fund and the IOPC Funds, located in London, would have several advantages from a practical point of view. The Group agreed to request the Legal Committee to make this recommendation.
- 3.6 The Correspondence Group also recommended that the HNS Fund should conclude a Memorandum of Understanding (MOU) with organisations involved in various incidents, similar to the present agreement between the IOPC Fund and the International Group of P & I Clubs. The Correspondence Group concluded that it would be essential for the HNS Fund to develop an MOU with the 1992 Fund to the effect that the same experts be used in the assessment of claims where appropriate.
- 3.7 A presentation and demonstration of the system developed by the IOPC Funds for monitoring contributing cargo was also given (see section 4 below).
- 3.8 The report on the Ottawa meeting to the IMO Legal Committee is reproduced at Annex II. The papers submitted to the meeting are available on the Correspondence Group's website at: <http://folk.uio.no/erikro/WWW/HNS/hns.html>.
- 3.9 A follow-up meeting for European States was held in Brussels on 1 October 2003. At the meeting the conclusions of the Ottawa meeting were reviewed and the situation with regard to implementation of the HNS Convention in respect of the States present was discussed.

**4     System to monitor contributing cargo**

- 4.1     The outline of a system to monitor contributing cargo was described in a document submitted to the Assembly's October 2001 session (document 92FUND/A.6/25).
- 4.2     With the assistance of IT consultants, the Secretariat developed a non-functioning prototype of such a system, which showed how the system is expected to operate but could not be used to process data. A demonstration of this prototype to interested delegates was arranged during the April/May 2002 sessions of the IOPC Funds' governing bodies. The non-functioning prototype was then made available to delegates on request, in the form of a CD-ROM, so as to enable them to provide detailed comments on the operation of the system.
- 4.3     A functioning prototype was then developed which permits the processing of sample data based on a trial database of 100 substances. The functioning prototype was available for demonstration to delegates on request during the July 2002 sessions of the IOPC Funds' governing bodies and was circulated in the form of a CD-ROM in order to obtain further comments.
- 4.4     The final phase of the project has included the development of a database of all substances qualifying as hazardous or noxious substances. IMO very kindly agreed to provide data to the 1992 Fund in electronic format on the substances covered by the relevant IMO Conventions and Codes and this has greatly facilitated the development of the database. The final system is expected to be completed during the autumn of 2003 and will be demonstrated to delegations at the earliest opportunity.
- 4.5     Some observations have been received on the prototype system and these, together with any further observations which may be received, will be taken into account in the development of the final system.
- 4.6     The costs incurred in the development of the prototype system amount to some £35 000 to date.
- 4.7     As mentioned in paragraph 3.7 above, the system was demonstrated at the Ottawa meeting of the Correspondence Group. As set out in the report on that meeting, the Correspondence Group agreed that the demonstration of the HNS database had showed that many of the administrative details that had previously caused concern had now been taken care of with this straightforward and transparent system. The Group also agreed that it was now time for governments and industry to embrace the database and promote its trial and use within industry.

**5     Action to be taken by the Assembly**

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

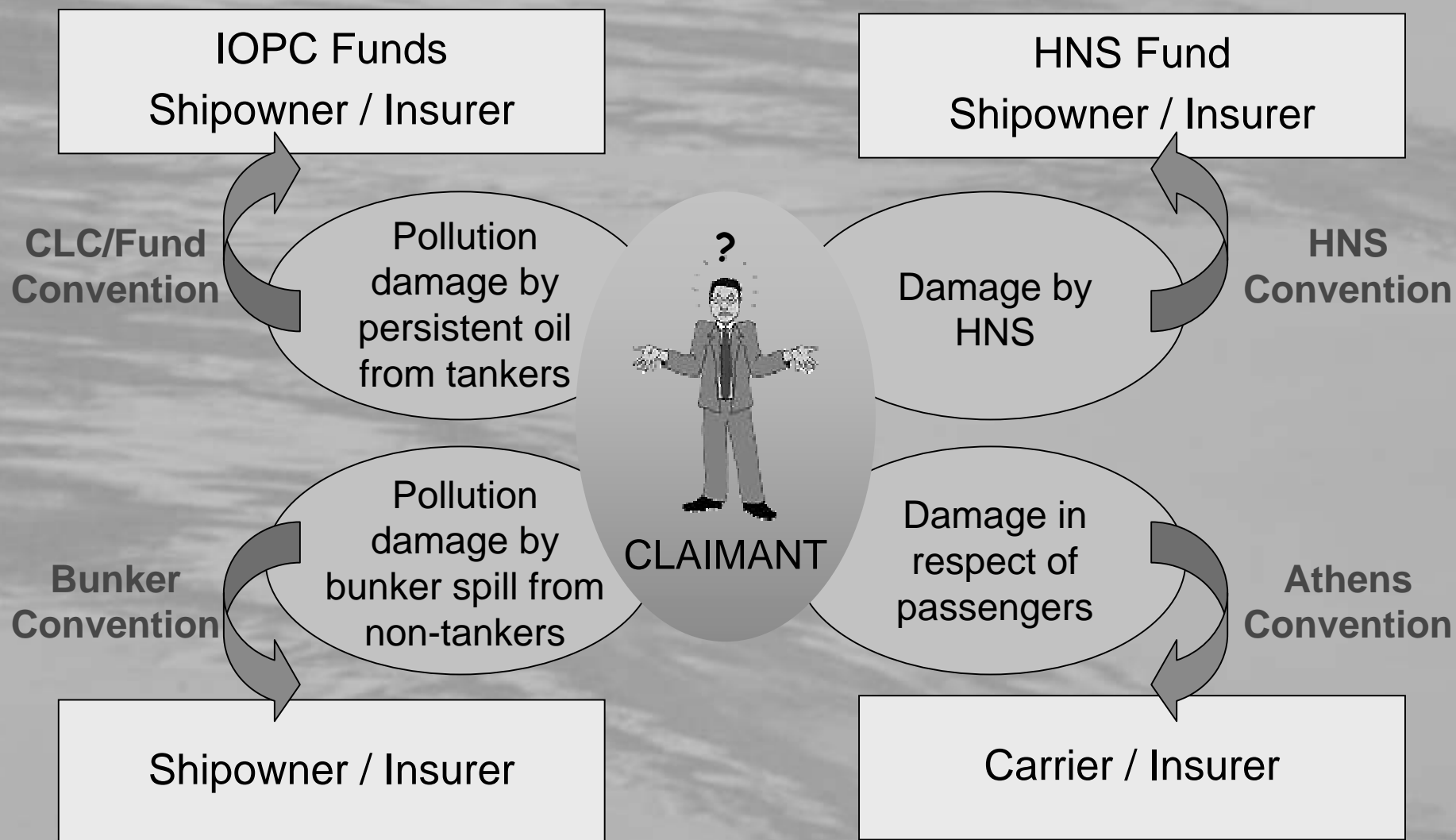
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# **The Interrelationship between the Maritime Liability Conventions**

**Måns Jacobsson**  
**Director**



International Oil Pollution Compensation Funds



# SCENARIO 1

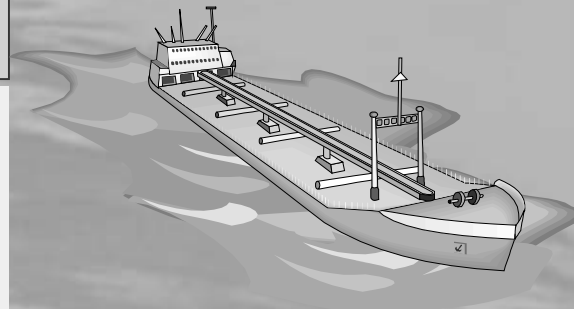
## HNS Convention only

Chemical tanker (15 000 GT) with cargo of benzene ruptures tank during berthing. Some immediate deaths amongst caged fish in port area and possible long term effects to mariculture and human health.

### HNS Convention

Shipowner	29.5	million SDR
HNS Fund	220.5	million SDR
Total	250	million SDR

Preventive measures,  
Property damage,  
Studies of damage to  
environment & human health  
Economic loss due to preventive  
measures & property damage



International Oil Pollution Compensation Funds

## SCENARIO 2

### HNS Convention & CLC/Fund Convention: oil

Oil tanker (120 000 GT) with cargo of crude oil explodes in port killing 16 crew and port workers and spilling oil. Further explosions result in the ship sinking with remaining oil cargo on board. Town evacuated as a precautionary measure.

#### HNS Convention

Shipowner	100	million SDR
HNS Fund	150	million SDR
<b>Total</b>	<b>250</b>	<b>million SDR</b>

Damage caused by explosion and fire, including:

- preventive measures
- deaths,
- property damage



#### CLC/Fund Convention

Shipowner	77.075	million SDR
1992 Fund	125.925	million SDR
Supp. Fund	547	million SDR
<b>Total</b>	<b>750</b>	<b>million SDR</b>

Damage caused by oil pollution, including:

- cleanup activities,
- property damage,
- economic loss,
- pumping oil cargo from wreck





## SCENARIO 3

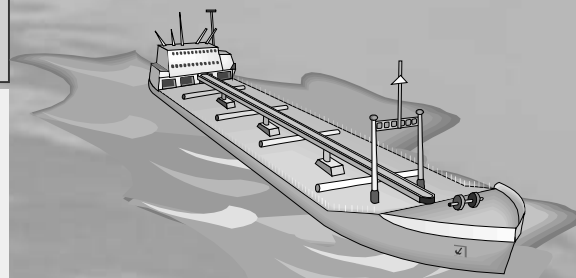
### HNS Convention & CLC/Fund Convention: oil & HNS

Product tanker (25 000 GT) grounds on rocks spilling gasoline, medium fuel and bunker fuel. Mangroves killed but not possible to establish whether this resulted from smothering by oil or from toxic effects of gasoline.

#### HNS Convention

Shipowner	44.5	million SDR
<u>HNS Fund</u>	<u>205.5</u>	<u>million SDR</u>
Total	250	million SDR

Damage caused by gasoline,  
including:  
preventive measures,  
environmental impact studies  
reinstatement of mangroves?



#### CLC/Fund Convention

Shipowner	17.13	million SDR
1992 Fund	185.87	million SDR
<u>Supp. Fund</u>	<u>547</u>	<u>million SDR</u>
Total	750	million SDR

Damage caused by medium fuel oil  
and bunker fuel, including:  
cleanup,  
property damage  
consequential & pure economic  
loss  
environmental impact studies  
reinstatement of mangroves?



## SCENARIO 4

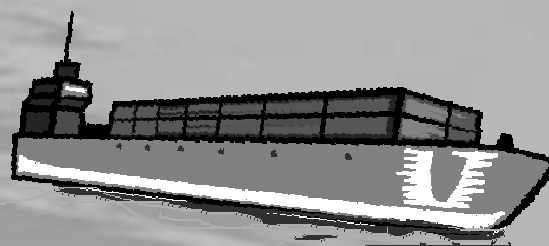
### HNS Convention & Bunker Convention

General cargo vessel (8 500 GT) breaks up in storm and sinks, spilling bunker fuel and drums of pesticide. Drums of pesticide recovered eventually but some have leaked resulting in damage to mariculture facilities.

#### HNS Convention

Shipowner	19.75	million SDR
HNS Fund	230.25	million SDR
Total	250	million SDR

Damage caused by pesticide drums, including:  
recovery of drums,  
damage to mariculture



#### Bunker Convention

Shipowner	3.6	million SDR
Total	3.6	million SDR

Damage caused by bunker fuel, including: cleanup activities, property damage, consequential economic loss



# SCENARIO 5

## HNS Convention, CLC/Fund Convention, Bunker Convention & Athens Convention

Chemical tanker (20 000 GT) and cruise ship (85 000 GT) collide, killing 5 and injuring 30 passengers and breaching the cruise ship's bunker tanks. The tanker spills some of its cargoes of lube oil & epichlorohydrin, killing 10 more passengers.

### HNS Convention

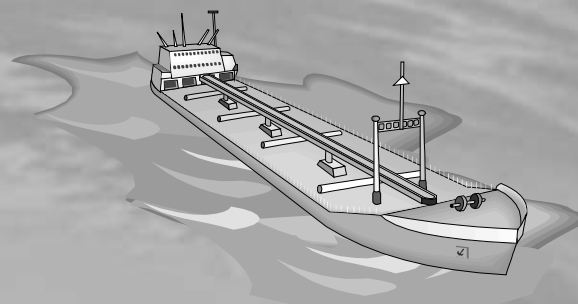
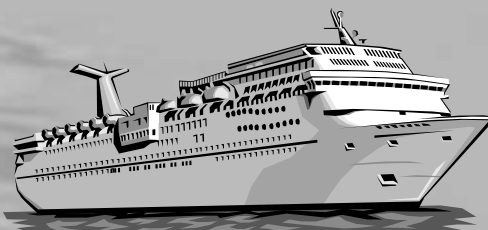
Shipowner	37	million SDR
HNS Fund	213	million SDR
<b>Total</b>	<b>250</b>	<b>million SDR</b>

Damage caused by  
epichlorohydrin, including:  
passenger deaths

### Bunker Convention

Shipowner	8.2	million SDR
<b>Total</b>	<b>8.2</b>	<b>million SDR</b>

Damage caused by bunker fuel,  
including: cleanup,  
property damage,  
consequential economic loss



### CLC/Fund Convention

Shipowner	13.975	million SDR
1992 Fund	189.025	million SDR
Supp. Fund	547	million SDR
<b>Total</b>	<b>750</b>	<b>million SDR</b>

Damage caused by lube oil,  
including: cleanup

### Athens Convention

#### No fault

Carrier	11.25	million SDR
	(250 000 SDR per passenger)	

#### With fault

Carrier	18	million SDR
	(400 000 SDR per passenger)	

Damage caused by collision:  
passenger deaths & injuries



International Oil Pollution Compensation Funds



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LEGAL COMMITTEE  
87th session  
Agenda item 11

LEG 87/11  
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## MONITORING THE IMPLEMENTATION OF THE HNS CONVENTION

### Report of the Special Consultative meeting of the HNS Correspondence Group in Ottawa, 3-5 June 2003

Submitted by the United Kingdom

#### SUMMARY

- |                                   |   |
|-----------------------------------|---|
| <b><i>Executive summary:</i></b>  | This document reports on the outcome of the Special Consultative meeting in Ottawa on 3-5 June 2003, to discuss implementation of the HNS Convention      |
| <b><i>Action to be taken:</i></b> | The Legal Committee is invited to take note of the information provided, consider the issues raised in paragraph 44 and comment and decide as appropriate |
| <b><i>Related documents:</i></b>  | LEG 86/7; resolution A.932(22)  |

#### Introduction

1 As previously announced at Legal Committee (see document LEG 86/7), the HNS Correspondence Group ("the Group") held a special consultative meeting in Ottawa, Canada on 3-5 June 2003. The aim of the meeting was to address the issues previously identified as requiring resolution before the coming into force of the Convention. The meeting was also aimed at completing the core work of the HNS Correspondence Group.

2 The meeting was attended by delegations of Member States and intergovernmental and non-governmental organizations as set out in annex 1. The various working papers submitted at this meeting are available on the HNS Correspondence Group website at <http://folk.uio.no/erikro/WWW/HNS/hns.html>. The meeting was chaired by Mr John Wren (UK), Co-ordinator of the HNS Correspondence Group.

3 The meeting focussed most of its work on those provisions in the Convention that place treaty obligations on Contracting States, but which do not set these obligations in precise, specific terms. The meeting discussed the following issues:

- the inter-relationship between the HNS Convention and various maritime liability conventions (CLC/Fund Convention; Supplementary Fund Protocol, Bunkers Convention and the Athens Convention);
- shipowners insurance and liability issues;
- definition of receiver and HNS Convention reporting requirements;
- IOPC Fund database and the Korean database reporting system, and
- progress on implementation, and promotion, of the HNS Convention.

### **Inter-relationship between maritime liability conventions (WP/Ott.1)**

4 The five scenarios of possible incidents presented by the IOPC Fund Director clearly illustrated the inter-relationships between the various maritime liability conventions and the gaps that potentially exist as a result of States not ratifying these instruments.

5 The Group recognized the importance of the IOPC Fund and HNS Fund to co-operate closely, and that there would be a need to develop, where practicable, mechanisms such as Memorandum of Understandings between the two funds on the handling of compensation claims arising under the two regimes. Such mechanisms will ensure that adequate, and prompt, compensation is available to victims of maritime incidents.

6 In his summary, the Chairman noted that the HNS Convention should not be viewed on its own, but rather as a crucial component of a framework of liability and compensation regimes. Further, the functions of the HNS Fund Secretariat should be structured in such a way so as to ensure that the experience gained by the IOPC Funds' Secretariat over 25 years is reflected to best effect in the operations of the HNS Fund. In the light of the discussion on this paper the Fund's Director offered to submit a revised version of the paper and presentation to illustrate more fully the various scenarios and the position of claimants faced with pursuing claims – both with and without the various conventions in force.<sup>1</sup>

### **Conclusions on Inter-relationship between Conventions**

- **The Group agreed that the issue of the HNS Fund Secretariat includes a political decision regarding the location of the HNS Fund and, thus, the Group requests the Legal Committee to consider this issue with the view of facilitating a decision by the IMO on the location of the HNS Fund. This initial decision will provide a degree of certainty for the purposes of preparatory work prior to the entry into force of the HNS Convention, although the final decision would have to be made by the first HNS Fund Assembly. Those delegations that spoke on this matter felt that a joint secretariat of the HNS Fund and the IOPC Funds, located in London, would have several advantages from a practical point of view. Thus, the Group agreed to request the Legal Committee to make this recommendation;**
- **the Group also recommended that the HNS Fund should conclude a Memorandum of Understanding (MOU) with organizations involved in various incidents, similar to the present agreement between the IOPC Fund and the International Group of P&I Clubs, and**
- **the Group concluded that it will be essential for the HNS Fund to develop an MOU with the 1992 Fund to the effect that the same experts be used in the assessment of claims where appropriate.**

### **Insurance and Insurance Certificates**

7 Discussion under this item focused on papers presented by Norway, the International Group of P&I Clubs and CEFIC (WP2; WP3; WP4; WP5).

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<sup>1</sup> The revised document and presentation have since been added to the documents on the Correspondence Group's website.

8 The presentations dealt with State Parties tasks in respect of issuance and control of insurance certificates, effective insurance cover, and the “terrorism” defence. Under these topics the discussions focused on:

- implementation of article 12 provisions in national law (designation of a public or private authority to issue certificates; issuance of certificates to foreign vessels; fees for issuance of certificates; making information on certificates available on the internet; forms of financial security such as bank guarantees; ascertaining the financial capability of the insurer, and
- control mechanisms through implementation in national law; sanctions for non-compliance; designation of a body to perform checks; establishing routine verification procedures including establishing web-based access to insurance certificate details. Suggestions were also made for national adaptations such as requiring all cargo ships to carry HNS Convention Certificates permanently, as opposed to requiring the shipowner to prove that there is no HNS on board.

9 The International Group of P&I Clubs noted that practically all ships carry HNS at one time or another and, hence, it would be preferable to require all ships to carry HNS insurance certificates. However, the P&I Clubs indicated that the Club Boards are unwilling to issue certificates of insurance on behalf of a State Party.

10 The P&I Clubs also raised the issue of shipowners’ defences under article 7(2)(a) and 7(2)(b) and the uncertainty over the workability of the defence in the HNS Convention for acts of terrorism and the re-insurance problems this may pose for the Clubs which would have to be addressed by the time the Convention comes into force. It was noted that this problem is also expected to affect the insurance coverage currently provided by the P&I Clubs under the 1992 CLC Convention. Several delegations expressed the view that this would present a more urgent practical problem and the P&I clubs were, therefore, invited to bring this issue forward to the attention of the IOPC Assembly at its next session in October 2003.

11 CEFIC supported the guidelines on insurance presented in the Norwegian paper and also indicated its preference for all cargo ships engaged in international voyages to have certificates of insurance for HNS. It also agreed with the recommendation to have a designated authority issue certificates, but preferably a public authority modelled on the US Oil Pollution Fund Centre.

12 Following discussions on the various insurance items, in his summing up, the Chairman concluded that it would be beneficial for States to make greater use of the IMO *Guidelines on Shipowners’ Responsibilities in Respect of Maritime Claims*, and that the Legal Committee should recommend that States consistently follow the Guidelines for the specific context of the HNS Convention. He noted that Article 26 (1) of the HNS Convention and Article 31 (a) of the Vienna Convention of the Law of Treaties provided a basis for a common approach to fulfilling State Parties obligations under article 12.

## **Conclusions on Insurance and Insurance Certificates**

- **The Group agreed that the International Group of P&I Clubs should engage in discussions with administrations as regards the terrorism issue as soon as possible, and bring the terrorism issue forward to the 1992 Fund Assembly in October 2003. Consideration should be given to any impact this problem may have on compulsory insurance under the 1992 CLC/Fund regime. The position that will be taken by the 1992 Fund Assembly will provide an important**

**precedent for any future consideration of this problem in the context of the HNS Convention;**

- **the Group also agreed to request the Legal Committee to (a) review the *IMO Guidelines on Shipowners' Responsibilities in Respect of Maritime Claims* with the aim of adapting them for the purposes of the HNS Convention, and (b) submitting the Guidelines with an appropriate draft resolution to the IMO Assembly, urging States to implement them in connection with the ratification of the HNS Convention to ensure that effective insurance cover is in place;**
- **the Group favoured the view that:**
  - a) **the undertakings provided by the International Group of P&I Clubs would suffice as a basis for HNS certificates**
  - b) **the availability of funds in the jurisdiction and the solvency of insurers would be relevant when issuing insurance certificates**
  - c) **the HNS Fund could organize an exchange of information about insurers**
  - d) **the HNS Fund could organize a system to keep track of issuing authorities**
  - e) **information on certificates should be made available in a similar way as the information relating to Port State Control**
  - f) **States could delegate issuance of certificates to private bodies if they were willing to undertake this work.**

### **1910 Collision Convention**

13 The delegation of Norway suggested in document WP/Ott./3 that the Collision Convention 1910 in some rare cases could prevent the application of the provisions of strict liability in the HNS Convention (Article 7). Most delegations were of the view that this would not be a practical problem and, therefore, there was no need to recommend the denunciation of the Collision Convention.

### **Conclusion on the 1910 Collision Convention**

- **The Group concluded that, if States deemed that a problem existed then they should denounce the Collision Convention, but that this is probably unnecessary and should not prevent States from ratifying or acceding to the HNS Convention.**

### **Definition of Receiver (WP/Ott./6)**

14 Discussion under this heading focused on papers presented by Netherlands, United Kingdom, Canada, Republic of Korea and the IOPC Fund (WP6, WP7, WP8, WP9).

15 The Netherlands presented a paper on the definition of receiver and contributing cargo which highlighted issues that require guidance for the implementation of the Convention and its uniform application. Discussions focused on the definition of receiver (Article 1(4)); disclosure of the principal receiver to the HNS Fund (Article 1(5) ); clarification of the phrase “substantially the same as” in the context of using option (b) (Article 1(4)), and the issue of determining what constitutes a transshipment and the phrase “in the course of carriage” (Article 1(10)).

### *Definition of receiver*

16 The Group considered the options for receiver in Article 1(4)(a) and Article 1(4)(b) of the HNS Convention. There was a strong will in favour of option (a) in Article 1(4), mainly for reasons of practicality and equity. The Group agreed that the HNS Fund Assembly may nevertheless need to define criteria relating to option (b) to ensure that treaty obligations are met by States using this option.

17 The Group noted that Article 21(5) of the Convention on special reporting systems for domestic trade may create similar problems as option (b) contained in Article 1(4)(b).

18 A comparative analysis of the requirements each option entails was developed by the Group (see annex 2). The analysis highlights the additional complexities option (b) presents, in comparison to option (a). Most delegations recognized the statement by OCIMF that this was an important issue to resolve so that appropriate management reporting systems can be put in place by industry.

### **Conclusions on the Definition of Receiver**

- **The Group strongly recommended that Contracting States adopt option (a) in Article 1 (4)(a), in light of the analysis presented, whilst recognising the right of States to choose option (b) in Article 1(4)(b), and**
- **In connection with option (b), it was considered that use of this option by a State Party should not lead to an increased levy for contributors in another State.**

### *Disclosure of the Principal to the HNS Fund*

19 Discussions on this issue focused on the provision in the Convention that enables a physical receiver/agent to transfer the responsibility for payment of contributions to the principal. The Netherlands delegation offered a clarification of how this would apply in practice. Issues discussed included:

- the reliability of the information to be disclosed to the Fund;
- the State's liability in case of non-fulfilment of obligations (Article 21(4)), and
- the circumstances where the principal is unable to meet his obligations (e.g., bankruptcy).

20 The Canadian delegation suggested that rules be devised both internationally and nationally to capture information not only on the physical receiver but also on the principal and any other person having the same role. Such a mechanism would ensure that the provision for transferring the obligation to pay a levy from the physical to principal receiver is not used to the detriment of the Fund.

### **Conclusion on Disclosure of the Principal to the HNS Fund**

- **The Group agreed that States implementing legislation for the HNS Convention will need to ensure that the relationship between the physical and principal receiver is well defined to ensure that the statutory requirements to report contributing cargo are in place.**



*“Substantially the same as”*

21 The Group noted that the phrase “substantially the same as” is not entirely clear when read alongside the terms ‘contribution’ and ‘contributing cargo’. The Group felt that this ambiguity could lead to a distortion with regards to contribution payments, but that this had been dealt with in the conclusions already reached by the meeting on the definition of receiver.

*“In course of carriage”*

22 The Netherlands delegation noted that the dividing line between what constitutes transshipments and receipt was determined by the phrase “in the course of carriage” and suggested some criteria to assist in establishing what constitutes a transshipment, to be considered by the first Assembly of the HNS Fund. Norway added additional criteria to supplement the indicative list proposed by the Netherlands such as: amount of time a shipment spends in a port; the motive for delay and the nature of the intra-port movement and possibly others that would ensure that this provision was not used to avoid levies.

**Conclusions on Transshipment**

- **The Group agreed that there was a need for some caution, but agreed that it would be necessary for the first HNS Fund Assembly to adopt criteria for transshipments. These will need to address what should constitute transshipment within the terms of the Convention and should take into account industry practices;**
- **the Group also recognized that the paper presented by the Netherlands provided an indicative list of the issues to be considered by the first HNS Fund Assembly, and**
- **the Group invited industry to contribute to the HNS Fund Assembly discussion by providing insight on the general practice of the industry.**

**National Regulations on Reporting Requirements and Industry Concerns (WP/Ott./7)**

23 The delegation of the United Kingdom presented a paper on national regulations on reporting requirements and industry concerns. Two recommendations were made, namely, that implementing legislation that would allow for reporting regulations should be put in place prior to ratification, and that States should consider using a lower threshold for reporting requirements to capture annual fluctuations in receipts for monitoring purposes. A general discussion took place and the Chairman, in summing up, commended that this would be good practice for States.

24 The Group noted the statement from OCIMF that it will be necessary for industry receivers to adapt their own management systems to achieve accurate reporting in accordance with national requirements.

**Conclusions on National Regulations on Reporting Requirements and Industry Concerns**

- **The Group agreed that potential Contracting States should implement regulations to establish a reporting system prior to ratification of the Convention strictly for monitoring purposes, and**

- **The Group also proposed that for the purpose of national reporting systems, lower thresholds should be applied in national regulations for the purpose of monitoring potential contributing cargo under the HNS Convention.**

#### **National Regulations on Reporting and Verification Requirements (WP/Ott./8)**

25 The Canadian delegation presented a paper offering model regulations to monitor reports on cargo received and to ensure compliance with the requirements of the HNS Convention. These regulations are based on Canadian practice in the context of reporting requirements for oil receipts.

26 The United Kingdom delegation proposed that the contractual evidence of the relationship between the physical receiver and the principal receiver could be used as a means to establish that the physical receiver is acting as an agent on behalf of the principal receiver, to ensure that the principal is levied for contributions to the Fund.

27 The Group welcomed the Canadian proposal to be considered by implementing States as a working model.

#### **Conclusion on National Regulations on Reporting and Verification Requirements**

- **The Group agreed that the model regulations offer a comprehensive approach to a compliance and verification system which Contracting States may wish to consider for implementation.**

#### **Preparation for Implementation in the Republic of Korea (WP/Ott./9)**

28 The delegation of the Republic of Korea introduced a paper setting out the steps taken to monitor all imports which will facilitate implementation of the HNS Convention in Korea.

29 Several delegations noted the comprehensive system developed by the Korean authorities and noted that some co-ordination should be undertaken between the IOPC Fund and the Korean authorities on the two database systems to share best practices and lessons learned. The Group also noted that the Korean model focused on all imports, and not just HNS imports.

30 The Chairman noted the need for work with Europe to ensure the identification of the principal receiver where cross border customs controls differ to those applying elsewhere. The Chairman recognized the significant undertakings by the Korean authorities in developing their reporting system, and emphasised the importance of co-operation between the Korean authorities and the IOPC Fund in order to facilitate the workings of each electronic reporting system.

#### **Conclusion on Preparation for Implementation in the Republic of Korea**

- **The Group concurred with the Chairman's summing up.**

### **HNS database presentation by the IOPC Fund**

31 The IOPC Fund presented an overview of the HNS Contributing Cargo Calculator and also gave delegations an opportunity to use the system, and seek guidance on its features. The system will be available both as a CD-ROM and via a website. The website will not require any software installation whereas the CD-ROM will be quicker to use and provide users with confidence about the security of data. Importantly, the system will allow receivers using the system to determine whether specific substances qualify as contributing cargo. The system also provides mechanisms to input data on 'associated persons' and agent/principal relationships, which are currently treated by the system in the same way as associated persons in order to ensure that thresholds are applied correctly.

32 The Group recognized the importance of the work undertaken by the IOPC Fund on the system and agreed that States should give their own industry representatives an opportunity to familiarise themselves with the database, and to give input and feedback to the IOPC Funds in order to improve upon the existing database.

33 The IOPC Fund delegate clarified that any changes by IMO to the classification of HNS substances would need to be reflected in the system's database. These changes would be made centrally to the website and to the CD-ROM by downloading an update, if minor. Major changes would result in the CD-ROM having to be re-issued. The chairman noted that it might be a good idea if users could be notified electronically when changes are made.

34 The IOPC Fund delegate also noted that it might be necessary to have a hard copy reporting system initially, but that would depend on progress made towards an electronic reporting system for the 1992 Fund Convention.

### **Conclusions on the HNS database presentation by the IOPC Fund**

- **The Group agreed that the demonstration of the HNS database showed that many of the administrative details that had previously caused concern have now been taken care of with this straightforward and transparent system, and**
- **the Group agreed that it was now time for governments and industry to embrace the database, and promote its trial and use within industry.**

### **Status of Consideration, Implementation Experience, Role of States, IMO and IOPC Funds**

35 The IMO representative offered some suggestions on how the HNS Convention could be promoted, for example through the IMO Technical Cooperation Program, by way of regional seminars or workshops, and through meetings of other IMO Committees, notably the MEPC OPRC Working Group. The Chairman of the MEPC OPRC Working Group, attending the meeting, agreed that this would be beneficial and informed the meeting of the importance of ensuring that the Working Group is aware of the work on implementation of the HNS Convention. This will complement the work in that Group on contingency planning in response to HNS incidents.

36 The Group agreed that States ratifying the HNS Convention should be encouraged to ratify the OPRC-HNS Protocol (2000), and vice versa. The IMO Assembly has already adopted a resolution urging Member States to place a high priority on working towards implementation of the HNS Convention, and the IOPC Fund Assembly has adopted a resolution encouraging Contracting States to the 1992 IOPC Fund to become party to the OPRC-HNS Protocol (2000).

37 The IOPC Fund noted that the Fund Secretariat had not been instructed to promote the HNS Convention but it would be prepared to help States, with the assistance of the IMO, to overcome any technical problems that may arise in the implementation of the Convention.

38 The Canadian delegation noted that the best possible promotion of the HNS Convention would be its early ratification by those states that have signed the Convention. Clearly, the decision by IMO on the location of the HNS Fund discussed earlier, resolving the current uncertainty, should help to advance the implementation work.

39 The Spanish delegation highlighted that the on-going work on implementation of the HNS Convention would also complement the work to combat substandard shipping and to minimize incidents and their impacts on coastal states. In response to a request on the handling of HNS incidents, ITOPF advised that they have been preparing for HNS incidents for some time and while there is limited physical capacity to respond to such incidents, the required expertise does exist at the international level.

40 C indicated that they have been highlighting the issues contained in the HNS Convention to their members and associates, especially in countries that have signaled their intention to ratify the Convention, so that industry representatives can participate in deliberations on a national level.

#### **Conclusion on Status of Consideration, Implementation Experience, Role of States, IMO and IOPC Funds**

- **The Group agreed that further work should be done within the IMO to promote the HNS Convention.**

#### **Summary of Meeting**

41 Delegations, reflecting on the outcome of this special meeting, agreed that the questions of complexity where they related to practical matters have, for the most part, been resolved. There was still the issue of possible market distortion depending on how certain provisions of the HNS Convention are implemented. However, the Group had undertaken all possible means at this stage to minimize this problem. In short, the Group has come a long way, with only the political hurdles remaining – ratification of the HNS Convention – in a manner that would promote uniformity of international maritime law.

42 The Chairman, in closing, summarised the Conclusions reached at the meeting. The meeting had fulfilled its objective to finalise the core work of the HNS Correspondence Group on the arrangements and options for implementation of this key IMO Convention. The Correspondence Group had undertaken a significant amount of work since its establishment at the eightieth session of the Legal Committee in October 1999, culminating in this meeting.

43 The best possible promotion of the HNS Convention is ratification by States. The Chairman urged all delegations at the meeting, and those not present through the report of the meeting, to use the Conclusions reached at the meeting to work towards implementation and ratification of the Convention with a view to ensuring entry into force as soon as possible.

**Action requested of the Legal Committee**

44 To note the issues and Conclusions raised in this paper from the meeting in Ottawa in June 2003, and to agree that:

- **the core work of the HNS Correspondence Group is complete;**
- **the conclusions reached from the Ottawa meeting present the best approach for implementation of the HNS Convention prior to its entry into force;**
- **the HNS Correspondence Group should continue to operate to monitor progress on implementation of the Convention, and to identify HNS incidents;**
- **the IMO and the Correspondence Group should continue to assist States on implementation of the Convention, liaising with the IOPC Fund as appropriate;**
- **the Legal Committee reports to the twenty-third regular session of the IMO Assembly on the progress made on implementation of the HNS Convention and the outcome of the Ottawa meeting, in accordance with Assembly resolution A.22/Res.932, and**
- **the Legal Committee informs MEPC 50 of the work of the HNS Correspondence Group on implementation, and the interaction between this work and the work of the MEPR/OPRC Working Group.**

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## ANNEX 1

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Department of Fisheries and Oceans  
Department of Transport  
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Department of Environment

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## ANNEX 2

## Comparative analysis of options “a” and “b” under Article 1(4)

	Art 1(4)(a)	Art 1(4)(b)/ art 21(5)
Clarity	Fairly clear (based on the contributing system under the IOPC Fund Conventions under which the physical receiver is liable to pay contributions).	Uncertainty as to <ul style="list-style-type: none"> <li>• the design of the contribution system – must be made from scratch</li> <li>• what amounts to substantially the same as (a): <ul style="list-style-type: none"> <li>○ Does it refer to amount of cargo or levies? <i>(The Group agreed that it was the levies that should be substantially the same).</i></li> <li>○ How to treat thresholds and associated persons?</li> <li>○ How to treat cargo attributed to principals abroad under (a)?</li> </ul> </li> <li>• test of what is substantially the same as (a). <i>(The Group agreed that this should be onerous.).</i></li> </ul>
Agents	Possibility to make principals (in practice owners of cargoes) liable for the levy even if abroad (as long as in a Contracting State).	No possibility to make principals (in practice owners of cargoes) liable for the levy if abroad.
Transshipment (Art 1(10))	No difference.	No difference.
Documentation	IOPC Fund type reports and use of HNS Database.	Require the development of a special documentation system and, in addition, a system to prove that the results of that system are substantially the same as



		under (a).
Uniformity	Will be the dominant system, which is a particular advantage to multi-national groups of companies that use centralised accounting and reporting systems.	No uniformity, which is a particular disadvantage to multi-national groups of companies that use centralised accounting and reporting systems. This may also be a competitive disadvantage to State Parties in their relation to the industry.

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