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PREPARATIONS FOR THE ENTRY INTO FORCE OF THE HNS CONVENTION

Note by the Director

Summary:	The Assembly has instructed the Director to carry out certain tasks necessary for the setting up of the Hazardous and Noxious Substances Fund (HNS Fund). This document deals with a number of issues which will have to be considered in this regard, eg Secretariat function, location of Headquarters, Rules of Procedure for the HNS Fund Assembly and subsidiary bodies, Internal and Financial Regulations, financial aspects and claims handling.
Action to be taken:	Give the Director instructions in respect of the preparations for the entry into force of the HNS Convention.

1 Introduction

- 1.1 At its 1st session, held in June 1996, the Assembly noted 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), the Assembly 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. This Resolution is reproduced at the Annex. The Assembly instructed the Director to carry out the tasks requested by the HNS Conference on the basis that all expenses incurred would be repaid by the HNS Fund (document 92FUND/A.1/34, paragraphs 33.1.1 - 33.1.3).
- 1.2 At its 7th session, held in October 2002, the Assembly invited the Director to prepare a document on the administrative preparations for the setting up of the HNS Fund (document 92FUND/A.7/29, paragraph 28.6). This document deals with certain issues of an administrative nature which will have to be considered in this context.

2 Conditions for the entry into force of the HNS Convention

- 2.1 The HNS Convention shall under Article 46 enter into force 18 months after the date on which the following conditions are fulfilled:
- (i) at least 12 States, including four States each with not less than 2 million units of gross tonnage, have expressed their consent to be bound by it, and
 - (ii) the Secretary-General of IMO has received information in accordance with Article 43 that those persons in such States who would be liable to contribute pursuant to Article 18, paragraphs 1 (a) and (c), have received during the preceding calendar year a total quantity of at least 40 million tonnes of cargo contributing to the general account.
- 2.2 Three States, Angola, Morocco and the Russian Federation, have acceded to the HNS Convention. No reports on contributing cargo have been received by the Secretary-General from these States.
- 2.3 The following States have signed the Convention but not yet acceded to it:

Canada	Germany	Sweden
Denmark	Netherlands	United Kingdom
Finland	Norway	

3 Preparations for the entry into force of the HNS Convention carried out so far

- 3.1 The implementation of the HNS Convention has been considered by the Legal Committee of IMO, most recently at its 85th session held in October 2002. At that session the United Kingdom delegation reported on the work carried out by a Correspondence Group established by the Committee to assist it with the monitoring of the implementation of the HNS Convention (document LEG85/11, paragraphs 105-117). Reference was made to the establishment of the IMO HNS Correspondence Group website on the HNS Convention.
- 3.2 At that session a number of delegations spoke of the importance of early implementation of the HNS Convention and of their Governments' preparations for implementation. It was proposed that the Correspondence Group should meet to agree the results of its work during 2003, which would enable a comprehensive report to be made to industry in autumn 2003. It was also proposed that the meeting should not be a formal meeting of the Correspondence Group but rather a meeting of "like-minded" States. The meeting will be held in Ottawa (Canada) from 3 to 5 June 2003.
- 3.3 At the 85th session of the Legal Committee there was support for a United Kingdom proposal that the IMO Secretariat should monitor cargo contributions and report to each session of the Committee in order to enable it to monitor the efforts of States and to identify the point when 40 million tonnes of contributing cargo has been reached, thereby triggering the entry into force of the Convention. The Committee stated that it was imperative to have a reporting and contribution mechanism in place when the Convention entered into force.
- 3.4 The Correspondence Group has developed a short overview of the HNS Convention which was approved by the Legal Committee at its 84th session in April 2002. The overview has been posted on IMO's website and has been circulated in written form to Governments.
- 3.5 The 1992 Fund Secretariat has been developing a system to assist in identifying and reporting contributing cargo under the HNS Convention, and this work is in its final phase. The database will include all substances qualifying as hazardous and noxious cargo.
- 3.6 On 18 November 2002 the European Council adopted a Decision (2002/971/EC) which required all European Union Member States to take the necessary steps to ratify, or accede to, the HNS Convention within a reasonable time period and, if possible, before 30 June 2006.

4 Questions to be considered by the first HNS Fund Assembly

- 4.1 The first Assembly of the HNS Fund will have to take decisions on a number of issues, *inter alia*:
- (a) Secretariat of the HNS Fund
 - (b) Location of the HNS Fund's Headquarters
 - (c) Financial issues
 - (d) Handling of claims for compensation
- 4.2 The HNS Fund Assembly will have to adopt several documents setting out the framework for the operation of the HNS Fund, for example:
- (a) Headquarters Agreement
 - (b) Rules of Procedure for the Assembly and subsidiary bodies
 - (c) Internal Regulations and Financial Regulations and, possibly, Staff Regulations and Staff Rules
 - (d) Observer Status of intergovernmental and international non-governmental organisations
- 4.3 The above-mentioned documents could be drafted along the lines of the corresponding documents already applied by the IOPC Funds. The Director considers that it would be useful to study the IOPC Funds' documents in order to determine whether modifications should be made in view of the difference between the oil pollution liability regime and the HNS regime and in the light of experience gained over the years from the operation of the IOPC Funds.

5 Location of the HNS Fund's Headquarters and Headquarters Agreement

- 5.1 The relationship between the Host State and the 1971 and 1992 Funds is governed by Headquarters Agreements between the United Kingdom Government and the Funds.
- 5.2 If the HNS Fund's Headquarters were to be located in the United Kingdom it would be necessary to conclude a Headquarters Agreement between the United Kingdom Government and that Fund, setting out the privileges and immunities of the HNS Fund, of delegates to its meetings and of staff members.
- 5.3 Should the Headquarters of the HNS Fund be located outside the United Kingdom, a Headquarters Agreement would have to be concluded between the Host State in question and the HNS Fund.

6 Secretariat of the HNS Fund

- 6.1 There appear to be two possible solutions as to the Secretariat function for the HNS Fund. One option would be for the HNS Fund to have a Secretariat separate from that of the IOPC Funds. The other option would be for a joint Secretariat to administer both the IOPC Funds and the HNS Fund ^{<1>}. The latter option would obviously only be practical if the HNS Fund were to be located in the United Kingdom.

<1> It is possible that the 1971 Fund will have been wound up when the HNS Convention enters into force. In that case the present IOPC Funds' Secretariat would be Secretariat of the 1992 Fund only. If the proposed Supplementary Fund has been set up by this time the present Secretariat may be administering also that Fund.

- 6.2 Consideration will have to be given to the employment conditions for the members of staff of the HNS Fund Secretariat. The Staff Regulations and Staff Rules applied to the IOPC Funds' Secretariat could serve as a model.

7 Agreement with IMO

- 7.1 Under the Resolution adopted by the 1996 Conference the Director should hold negotiations with IMO to enable the HNS Fund to conclude agreements as soon as possible on the necessary premises and support services.
- 7.2 The IOPC Funds have an Agreement with IMO mainly in respect of the meetings of the IOPC Funds in the IMO Headquarters.
- 7.3 An agreement between the HNS Fund and IMO would be meaningful only if the HNS Fund were to be located in London. If the HNS Fund were to share Secretariat with the IOPC Funds it would not be necessary for the agreement with IMO to address the issue of premises, since the IOPC Funds are no longer located in the IMO building.

8 Rules of Procedure

The Rules of Procedure of the HNS Fund Assembly and any subsidiary bodies should in the Director's view in the main be the same as the Rules of Procedure of the IOPC Fund bodies, particularly if the HNS Fund were to be located in the United Kingdom and share a Secretariat with the IOPC Funds. The Director would need to examine the Rules of Procedure of the 1971 and 1992 Fund bodies in order to establish whether any amendments would be appropriate as regards the HNS Fund, either in the light of experience or in view of the differences between the two compensation regimes.

9 Internal Regulations and Financial Regulations

- 9.1 The 1971 and 1992 Funds each have Internal Regulations governing a number of aspects of the administration of the Funds. They deal, in particular, with the payment of contributions, accounts and budget, reports of contributing oil receipts, the filing of claims, intervention in legal proceedings, the settlement of claims, loans and investments, assistance to States in emergency situations and the extension of credit facilities in respect of preventive measures. These Regulations have been amended from time to time.
- 9.2 The 1971 and 1992 Funds' Financial Regulations deal with various aspects of the Funds' finances, in particular in respect of accounts, budget and investments. These Regulations also have been amended from time to time.
- 9.3 It is suggested that the Internal Regulations and Financial Regulations of the HNS Fund could in the main be the same as those applied by the IOPC Funds, in particular if the HNS Fund were to share a Secretariat with the IOPC Funds. The Director would need to examine the IOPC Funds' Regulations in order to establish whether modifications would be appropriate for the purpose of their application to the HNS Fund.

10 Observer status of intergovernmental and international non-governmental organisations

- 10.1 Under the Fund Conventions and the HNS Convention, the respective Assembly determines which non-Contracting States and which intergovernmental and international non-governmental organisations should be admitted to take part, without voting rights, in meetings of the Assembly and subsidiary bodies.
- 10.2 The Rules of Procedure of the 1971 and 1992 Fund Assemblies contain provisions governing the admission of intergovernmental and international non-governmental organisations as observers. The governing bodies of the IOPC Funds have also adopted criteria for granting observer status.

The Director intends to examine these criteria in order to establish whether they would be appropriate in respect of the HNS Fund.

- 10.3 It is suggested that the IOPC Funds and the HNS Fund should be invited as observers to each other's meetings.

11 Financial issues

- 11.1 The HNS Fund will have its own accounts and its own budget. Consideration will have to be given to the appointment of an External Auditor and other issues relating to the audit of the Organisation and the investment of its assets.
- 11.2 If the IOPC Funds and the HNS Fund were to have a joint Secretariat, agreement would need to be reached between the Organisations on a formula for sharing the costs of running the Secretariat between the 1971 Fund (if still in existence), the 1992 Fund, the Supplementary Fund (if it has been set up) and the HNS Fund.

12 Handling of claims for compensation

According to Article 26 (i) of the HNS Convention, the HNS Fund Assembly shall establish a Committee on Claims for Compensation with at least 7 and not more than 15 members. It would be necessary to decide on the composition and mandate of this Committee by taking into account the requirement concerning an equitable geographical distribution of members.

13 Future preparatory work

It is important that the first session of the HNS Assembly will have before it documentation that will enable it to take decisions on the issues dealt with above so as to ensure that the HNS Fund will be operative at an early stage. It is suggested therefore that the Director be instructed to study these issues further and submit draft texts for preliminary examination by the 1992 Fund Assembly at a future session. These texts would be revised in the light of the 1992 Fund Assembly's observations and instructions. The documents would then be submitted to the first session of the HNS Assembly which will take the final decisions.

14 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 give the Director such instructions in respect of the preparations for the entry into force of the HNS Convention as it may deem appropriate.

ANNEX

Resolution 1 of the 1996 International Conference

RESOLUTION ON SETTING UP THE HNS FUND

THE CONFERENCE,

HAVING 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),

CONSIDERING that before the HNS Convention enters into force and for some time thereafter, it will be necessary to prepare some administrative and organizational measures in order to ensure that, as from the date of entry into force of the Convention, the International Hazardous and Noxious Substances Fund (HNS Fund), to be set up under the Convention, can operate properly,

1 **REQUESTS** the Assembly of the International Oil Pollution Compensation Fund, 1992 (IOPC Fund 1992), set up by the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (1992 Fund Convention), to give its Director the following assignments, on the basis that all expenses incurred would be reimbursed by the HNS Fund:

- (a) to carry out, in addition to the tasks under the 1992 Fund Convention, the administrative tasks necessary for setting up the HNS Fund, in accordance with the provisions of the HNS Convention, on condition that this does not unduly prejudice the interests of the Parties to the 1992 Fund Convention;
- (b) to give all necessary assistance for setting up the HNS Fund;
- (c) to make the necessary preparations for the first session of the Assembly of the HNS Fund, which is to be convened by the Secretary-General of the International Maritime Organization, in accordance with article 44 of the HNS Convention;
- (d) to hold negotiations with the International Maritime Organization to enable the HNS Fund to conclude agreements as soon as possible on the necessary premises and support services; and

2 **RECOMMENDS** that on behalf of the HNS Fund, the IOPC Fund 1992 should hold negotiations with the host Government to ensure that the question of the privileges, immunities and facilities accorded to the HNS Fund is considered and satisfactorily settled by mutual agreement, taking into account the privileges, immunities and facilities currently accorded at present to the IOPC Fund 1992.