

 <p><b>INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS</b></p>	<b>Agenda item: 5</b>	IOPC/JUL11/5/1/1	
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	1992 Fund Assembly	<b>92AES16</b>	•
	1992 Fund Executive Committee	<b>92EC52</b>	
1992 Fund Working Group	<b>92WG6/3</b>		

## HNS CONVENTION AND HNS PROTOCOL – PROGRESS REPORT

### REPORT OF THE SPECIAL CONSULTATIVE MEETING ON THE 2010 HNS PROTOCOL IN ROTTERDAM 14 AND 15 JUNE 2011

**Submitted by the Netherlands**

<b>Summary:</b>	This document reports on the outcome of the Special Consultative meeting held in Rotterdam on 14 and 15 June 2011 to discuss implementation and ratification strategies regarding the 2010 HNS Convention.
<b>Action to be taken:</b>	<p><u>1992 Fund Assembly</u></p> <p>(a) to take note of the information contained in this document; and</p> <p>(b) to endorse the findings of the Rotterdam meeting set out in this document, in particular paragraphs 3.2 and 4.2.</p>

## **1 Introduction**

- 1.1 At the 98th session of the IMO Legal Committee in April 2011, it was suggested that some States considering signing and ratifying the HNS Protocol should meet and agree a way forward that would ensure the rapid entry into force, as well as a guarantee of equitable contribution to the system once in place. As a follow up, the Netherlands conveyed an international Consultative Meeting of interested delegations on the 2010 HNS Convention, which was held in Rotterdam, the Netherlands on 14 and 15 June 2011. The meeting was also aimed at carrying out further work on the Overview to take into account the results of the 2003 Ottawa meeting mentioned in Resolution 4 of the 2010 International Conference on the revision of the HNS Convention (document LEG 98/14, paragraph 4.9).
- 1.2 The meeting was attended by delegations of nine Member States and the IOPC Funds, as set out in Annex I. The agenda of the meeting is contained in Annex II while the conclusions of the Ottawa meeting are listed in Annex III (excerpts from document LEG 87/11). The meeting was chaired by Mr Jan de Boer (Netherlands).

## **2 2010 HNS Protocol**

The meeting discussions first focussed on the consequences of the adoption of the 2010 HNS Protocol and the importance of the Conference Resolutions to the early entry into force of the Protocol. In that context a representative of the IOPC Funds gave a Powerpoint presentation on the current state of affairs regarding Conference Resolution N°1 and the role of the IOPC Funds' Secretariat in the setting up of the HNS Fund. This included a reminder of the conclusions of the 1992 Fund Administrative Council, acting on behalf of the 1992 Fund Assembly, in October 2010 on this issue. In particular the IOPC Funds representative referred to the latest developments with the new HNS Contributing Cargo

Calculator and the online availability of the IMDG Code and Bulk chemical codes. He also stated that when the implementation guidelines were further developed, based on the Ottawa conclusions, they should also take into account the results of the Rotterdam meeting. Furthermore, on the issue of the joint Secretariat of the HNS Fund and the IOPC Funds, the IOPC Funds representative explained that a consensus was reached on that matter at the October 2010 session of the 1992 Fund Administrative Council but that it still had to be endorsed by the Legal Committee of the International Maritime Organization (IMO) (see document IOPC/OCT10/11/1, section 8.4). The issue of the lack of signatures to the 2010 HNS Protocol while the deadline of 31st October 2011 was fast approaching was also addressed.

### **3 Monitoring the implementation of the HNS Protocol, 2010**

- 3.1 On the agenda item 'Monitoring the implementation of the 2010 HNS Protocol' the meeting discussions referred to the Guidance, as discussed at the 98th session of the IMO Legal Committee on the basis of the 2010 HNS Conference Resolution N<sup>o</sup>4.
- 3.2 The Rotterdam meeting concluded that the outcome of the 2003 Ottawa meeting had to be reconfirmed as the best approach for the implementation of the HNS Convention (cf IMO document LEG 87/11) also in the setting of the 2010 HNS Protocol. In particular, the meeting in Rotterdam reconfirmed the conclusions on the definition of receiver (option (a)), on transshipment and on reporting requirements prior to ratification including lower thresholds, among others.
- 3.3 Furthermore specific comments were given at the Rotterdam meeting as summarised in paragraphs 3.4 – 3.18 below on the conclusions reached in Ottawa, as set out in Annex III.

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

- 3.4 The issue of the HNS Fund Secretariat includes a political decision regarding the location of the HNS Fund and, thus, the Legal Committee is still requested to consider this issue with the view of facilitating a decision by IMO on the location of the HNS Fund. In the view of the delegations at the Rotterdam meeting, due regard should be given to the decision taken by the 1992 Fund Administrative Council at its October 2010 session on the matter of the joint Secretariat of the HNS Fund and the IOPC Funds.
- 3.5 On the further two conclusions about the development of Memorandums of Understanding (MoUs) with organisations and experts involved in HNS incidents, it was considered that the current work undertaken by the IOPC Funds' Secretariat under the 2010 International Conference on the revision of the HNS Convention Resolution N<sup>o</sup>1 related to those issues.

#### *Conclusions on insurance and insurance certificates*

- 3.6 The delegations at the Rotterdam meeting considered that the first conclusion on insurance certificates in relation to the issue of terrorism had been solved in practice and therefore was no longer relevant based on the knowledge of those present at the meeting. With regards to the second conclusion dealing with the IMO *Guidelines on Shipowners' Responsibilities in Respect of Maritime Claims*, it was noted that a number of relevant conventions adopted since 2003 had taken into account the content of the Guidelines and that a review was not necessary. It was concluded therefore, that States should follow the Guidelines when ratifying the 2010 HNS Protocol.
- 3.7 As for the third conclusion the delegations at the Rotterdam meeting fully endorsed the points therein with the necessary changes with respect to the 2010 Protocol. It was suggested that minor clarifications could be made in reference to points (e) and (f). With regard to point (e) the delegations at the Rotterdam meeting were of the opinion that the text referred to the fact that HNS Certificates could be checked during a Port State Control. With regard to point (f) it was considered that, even though the Convention/Protocol is silent on delegation of competence to private companies, any such private company would nevertheless act on behalf of that State.

*Conclusion on the 1910 Collision Convention*

- 3.8 It was agreed that this conclusion was self-explanatory.

*Conclusions on the definition of receiver*

- 3.9 There was full agreement with the conclusions of the Ottawa meeting that Contracting States should adopt the option (a) in Article 1 (4) to define receiver in a State Party.

*Conclusion on disclosure of the principal to the HNS Fund*

- 3.10 The delegations at the Rotterdam meeting fully endorsed the conclusion that the implementing legislation for the 2010 HNS Convention needed to ensure that the relationship between the physical and principal receiver was well defined to ensure that the statutory requirements to report contributing cargo were in place.
- 3.11 It was noted in the context of a presentation made by the Chairman that the need for corresponding reporting requirements between physical receivers and principal receivers in the same or in another State Party are issues to be dealt with before ratification, as part of the initial reporting obligations at national level before the entry into force of the Convention. It was further considered that such reporting obligations may subsequently have to be reviewed following the adoption by the first HNS Fund Assembly of the internal regulations on reporting, as referred to in article 21 (2) of the Convention.

*Conclusions on transshipment*

- 3.12 Full endorsement was given to the three Ottawa conclusions on transshipment. It was further noted that following the changes introduced by the 2010 HNS Protocol with regard to packaged goods, the issue of transshipment will now only be relevant in respect of bulk HNS.

*Conclusions on national regulations on reporting requirements and industry concerns*

- 3.13 Full endorsement was also given to the two Ottawa conclusions on this point.

*Conclusion on national regulations on reporting and verification requirements*

- 3.14 The delegations at the Rotterdam meeting agreed with this conclusion.

*Conclusion on preparation for implementation in the Republic of Korea*

- 3.15 It was agreed that this conclusion was presented for information only.

*Conclusions on the HNS database presentation by the IOPC Funds*

- 3.16 The IOPC Funds delegation provided an update on the work being carried out for the development of a new HNS Calculator (previously known as the HNS CCCC) as well as the consolidation of the indicative list of substances. The details of the update are reproduced in document IOPC/JUL11/5/1. The delegations present at the meeting thanked the IOPC Funds' Secretariat for the work carried out so far and agreed it was the right way forward. It was also noted that the HNS Calculator would be an important tool for the efficient running of the contribution system, before and after the entry into force of the Convention and as such, that its early availability was a matter of priority.

*Conclusion on status of consideration, implementation experience, role of States, IMO and IOPC Funds*

- 3.17 It was confirmed that further work should be carried out within IMO for the promotion of the HNS Convention as revised by the 2010 HNS Protocol. However, it was recognised that progress had been

made since the adoption of the 2010 HNS Protocol in April 2010, including the excellent cooperation between IMO and the IOPC Funds' Secretariat on the development of a contributing cargo reporting form, a revised HNS Convention overview, the consolidated text of the HNS Convention as revised by the Protocol and the progress made towards the availability of the indicative list of HNS substances.

*Action requested of the Legal Committee*

3.18 The delegations at the Rotterdam meeting concurred with the Ottawa conclusions as summarised for consideration by the IMO Legal Committee and made the following observations:

- With regards to the identification of HNS incidents, it was noted that there was actual information being collected by the International Group of P&I Clubs as well as by IMO through the OPRC-HNS Technical Group; and
- With regards to the assistance to be provided to States for the implementation of the Convention, the IOPC Funds' Secretariat had developed a guidance document in 2005 and was considering the development of an updated simplified version to provide assistance to States on the implementation of the Convention.

**4 Signature/Ratification strategies**

4.1 The strategic issues of deadlines for signature, ratification (including states with major receiving cargo) and capacity building were addressed at the Rotterdam meeting. It was generally considered that no single State could do this alone, without the assurance that the States with major HNS receipts would also be joining.

4.2 The delegates at the Rotterdam meeting were reminded that the 2010 HNS Protocol was open for signature until 31 October 2011. It was agreed that States considering ratification of the 2010 HNS Protocol should be encouraged to sign the Protocol before the deadline, subject to national procedures.

4.3 It was further agreed that it would be important for those States that are unable to meet the deadline, even though they are interested in ratification/accession, to at least clarify their position during the meetings of the IOPC Funds' governing bodies in July 2011 or at the regular session of the 1992 Fund Assembly to be held from 24 to 28 October 2011, which coincides with the end of the signature period.

4.4 The delegates at the Rotterdam meeting also agreed to aim at finalising their implementation legislation during the course of 2012-2013 which is considered to be the time necessary before the ratification/accession process can be undertaken.

**5 Action to be taken**

1992 Fund Assembly

The 1992 Fund Assembly is invited:

- (a) to take note of the information contained in this document; and
- (b) to endorse the findings of the Rotterdam meeting, in particular paragraphs 3.2 and 4.2.

## ANNEX I

### LIST OF PARTICIPANTS

**Chairman:** Jan de Boer (the Netherlands)

<b>AUSTRALIA</b>	Sharon Pearce
<b>BELGIUM</b>	Steven Werkers
<b>DENMARK</b>	Sine Rosenborg
<b>FRANCE</b>	Fabien Joret
<b>GERMANY</b>	Volker Schöfisch
<b>MALAYSIA</b>	Razif Ahmad
<b>NETHERLANDS</b>	Wouter Pietersma
	Welmoed van der Velde
	Kirsten Redeker
<b>NORWAY</b>	Anne-Karin Nesdam
	Gaute Sivertsen
<b>POLAND</b>	Pawel Krezel

### INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS (IOPC FUNDS)

Mr. Thomas Liebert  
Ms. Akiko Yoshida

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## ANNEX II

**SPECIAL CONSULTATIVE MEETING HNS PROTOCOL, 2010**  
**Rotterdam – Tuesday 14 and Wednesday 15 June 2011**  
**De Maastoren - AKD Rotterdam**  
**Wilhelminakade 1**  
**Rotterdam**  
**AGENDA**

### Tuesday 14 June

- 08.45 Registration and welcome coffee
- 10.00 Opening of the meeting:
  - 2010 HNS Protocol
  - Conference resolutions
  - Monitoring the implementation of the HNS Protocol, 2010:
    - Overview
    - Incorporation outcome Special Consultative Meeting Ottawa 2003
- 12:30 Lunch
- 13:30 Monitoring the implementation of the HNS Protocol, 2010 Continued
- 16:00 Video-presentation of Port of Rotterdam with special focus on HNS
- 17:00 Invitation of the Rotterdam Port Authority for a visit to the port/reception-dinner on board ms 'Nieuwe Maze' with special focus on HNS

### Wednesday 15 June

- 9:30 Continuation of the meeting:
  - Monitoring the implementation of the HNS Protocol, 2010, Continued
  - Ratification procedures
- 12:30 Lunch
- 13:30 Continuation of meeting
- 15:00-16: 00 Conclusions

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## ANNEX III

### **Report on the outcome of the Special Consultative meeting in Ottawa on 3-5 June 2003, to discuss implementation of the HNS Convention: conclusions (excerpts from Document LEG 87/11 dated 6 August 2003)**

#### **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.

#### **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.

#### **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.

## **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.

## **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.

## **Conclusions on Transshipment**

“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.” (LEG87/11 paragraph 22)

- 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.

## **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.

## **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.

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

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

## **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

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

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

#### **Action requested of the Legal Committee:**

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.**