

Implementation of the HNS Convention - which issues still need further attention?

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Review of work to date

- Various meetings in Europe
- Legal Committee & Correspondence Group
- Ottawa meeting
- IOPC Funds
 - Workshops (June 2005, May 2006)
 - Guide to Implementation of the HNS Convention
 - Contributing Cargo Calculator

Definition of HNS

art. 1.5

- Basically clear
- Changes to the Codes and Conventions that the definition of HNS is based on
 - Legal Committee Resolution April 2006 resolves the problem

The shipowner and his insurer

- Compulsory insurance
 - expected that the P&I Clubs will be able to provide insurance
- Compulsory insurance certificates
 - issuance of certificates
 - terrorism

Operation of the HNS Fund

- HNS Fund will need Memoranda of Understanding with:
 - the 1992 Fund, so that, where appropriate, same experts used in assessment of claims
 - (other) organisations involved in incidents (cf 1992 Fund and International Group of P&I Clubs)
- HNS Fund Assembly will decide

Administration of the HNS Fund

- Joint Secretariat with IOPC Funds?
 - preparatory work based on this assumption
 - probably most efficient (& thus least expensive) solution
 - final decision will be taken by HNS Fund Assembly

Contributions to the HNS Fund

- System more complicated than that of the IOPC Funds
- May take some time to get used to, but no insurmountable problems

Definition of contributing cargo art. 1.10; general

- Concept of physical receipt after carriage by sea enables us to build on the practice and experience of the IOPC Funds
 - bulk cargo straightforward
 - may need some further consideration for packaged goods

Definition of contributing cargo art. 1.10; transshipment

- Cargo which is transhipped in the course of carriage only qualifies as contributing cargo when it is received at its final destination
 - HNS Fund Assembly will have to adopt criteria
 - the interpretation of the terms "cargo in transit" and "in the course of carriage" is fundamental

Definition of Receiver; art. 1.4

- NB. Not relevant for persistent oil & LNG
- State will have to decide whether to use the definition of art. 1.4(a) or 1.4(b):
 - Ottawa meeting strongly recommended to use 1.4(a) only
 - Use of 1.4(b) requires national legislation
 - Use of 1.4(b) involves additional work as State must demonstrate that total contributing cargo is "substantially the same" as under 1.4(a)

Agent/Principal relationship

- Concept of agency is determined by the national law of the State concerned
- Ottawa meeting agreed that States' implementing legislation needed to ensure that relationship was well defined; role for agent (& principal)
- Further work may be needed on cross-border controls between neighbouring States; especially relevant for EU States

Person liable to contribute for persistent oil & LNG

- Def “receiver” only relevant for general account, non-persistent oil & LPG
- Persistent oil and LNG: specific definition of person liable to contribute in art. 19.1(a)(i) and 19.1(b)), so:
 - no possibility for agent to pass liability on to principal
 - State cannot implement alternative definition of receiver

Person liable to contribute LNG; art. 19,1(b)

- Identity of receiver will depend on the type of contract of carriage used
- Receiver may not be subject to the jurisdiction of the State in which the LNG is discharged

Accounts and Sectors

- Separate accounts - which are likely to come into operation when the Convention enters into force?
- Radioactive materials - HNS Assembly will have to decide whether contributions are payable

Reporting contributing cargo

- Before the Convention enters into force
 - Only report of total quantities for each account and sector required
 - Only one State (Slovenia) has fulfilled its obligations in this regard
 - Ottawa meeting agreed that States should implement reporting system for monitoring purposes

Reporting contributing cargo

- After the Convention has entered into force
 - detailed reports required, starting with the year before the Convention entered into force
 - art. 21.5, single report for domestic transport of HNS: Ottawa meeting noted that this could result in similar problems to those resulting from the use of an alternative definition of receiver

Implementation by States

- Examples of national regulations and implementing legislation can be put on HNS website
- Council Decision 2002/971/EC (November 2002), requiring European Union Member States to ratify by 30 June 2006, if possible

Conclusions

- The work necessary for a uniform implementation of the HNS Convention has effectively been done
- Very few outstanding issues; sufficient guidance for States
- Number of formal decisions that can only be taken by the HNS Assembly once the Convention is in force
- States should feel comfortable to ratify now; remember CLC 1969/FC 1971