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GUIDE TO THE IMPLEMENTATION OF THE HNS CONVENTION

Prepared by the Secretariat of the International Oil Pollution Compensation Fund 1992

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CONTENTS

1 INTRODUCTION

In a Resolution of the Conference which 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), the Assembly of the International Oil Pollution Compensation Fund 1992 (1992 Fund) was 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. In 1998, the 1992 Fund 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.

In 1999, the Legal Committee of the International Maritime Organization (IMO) set up a Correspondence Group to monitor the implementation of the HNS Convention, with the United Kingdom as the co-ordinator of the Group. The Group held a Special Consultative meeting in Ottawa in June 2003 (the Ottawa meeting) and the conclusions of that meeting were set out in IMO document LEG 87/11. When those conclusions were discussed at a meeting of the Legal Committee in October 2003, the Committee agreed that the core work of the Group had been completed. At the 90th session of the Legal Committee in March 2005, the United Kingdom delegation, as co-ordinator of the Group, suggested that the 1992 Fund should assume a more active role and work with IMO as regards the responsibility for co-ordinating the implementation of the HNS Convention.

At the 1992 Fund Assembly's March 2005 session, a number of delegations proposed that the 1992 Fund's Secretariat should organise a Workshop to assist States with the implementation of the HNS Convention. A Workshop was therefore held in London on 28 and 29 June 2005 to facilitate States' preparations for ratification of the HNS Convention and to address the need for the uniform interpretation and application of the Convention.

This guide was developed by the Secretariat of the 1992 Fund to form the basis for that Workshop. The guide was refined after the Workshop, taking into account observations made during the discussion at the Workshop. The revised guide will be published in electronic format, on a website dedicated to the implementation of the HNS Convention which the Secretariat is establishing (www.hnsconvention.org).

The guide concentrates on a number of specific issues which a State would have to consider when deciding whether or not to ratify the HNS Convention and, if so, how to approach these issues. It therefore does not deal in detail with issues such as the liability of the shipowner, his insurer and/or the HNS Fund under the Convention, the types of damage covered, the handling of claims for compensation, jurisdiction in respect of legal actions or the internal workings of the HNS Fund.

It should be noted that this guide is designed to assist States in the implementation of the HNS Convention by giving a general overview of related issues. It does not address legal issues in detail and should not be seen as an authoritative interpretation of the HNS Convention.

2 OVERVIEW OF THE HNS CONVENTION

The HNS Convention was adopted by a Diplomatic Conference held in May 1996 under the auspices of the International Maritime Organization (IMO). The Convention aims to ensure adequate, prompt and effective compensation for damage to persons and property, costs of clean-up and reinstatement measures and economic losses caused by the maritime transport of hazardous and noxious substances (HNS).

HNS include bulk solids, liquids including oils, liquefied gases such as liquefied natural gases (LNG) and liquefied petroleum gases (LPG), and packaged substances. Some bulk solids such as coal and iron ore are excluded because of the low hazards they present. Loss or damage caused by non-persistent oil is covered as is non-pollution damage caused by persistent oil. Pollution damage caused by persistent oil is excluded since such damage is already covered by the existing regime on liability and compensation for oil pollution from tankers, ie the 1992 Civil Liability Convention, the 1992 Fund Convention and the Supplementary Fund Protocol. Loss or damage caused by radioactive materials is also excluded.

The HNS Convention establishes a "two tier" compensation regime. The first tier is provided by the individual shipowner and his insurer and the second tier by the International Hazardous and Noxious Substances Fund (HNS Fund), contributed to by receivers of HNS after sea transport in all States Parties to the Convention. The shipowner is liable up to the following limits: 10 million SDR[<1>] (US$15 million) for ships up to 2 000 units of gross tonnage (GT)[<2>], rising to 100 million SDR (US$150 million) for ships of 100 000 GT or over. The HNS Fund will provide additional compensation up to a maximum of 250 million SDR (US$370 million), including the amount paid by the shipowner and his insurer.

The HNS Fund will have up to four accounts: separate accounts for oil, LNG and LPG and a general account for bulk solids and other HNS. Each account will only meet claims resulting from incidents involving the respective cargoes, ie there will be no cross-subsidization.

Contributions by individual receivers to the separate accounts will be in proportion to the quantities of HNS received, provided the quantities received are above the following thresholds:

oil	persistent oil[<3>]	150 000 tonnes
	non-persistent oil[<3>]	20 000 tonnes
LNG		no minimum quantity
LPG		20 000 tonnes.

However, until the quantities of HNS received in all States Parties reach the following thresholds, operation of the relevant separate account will be postponed and the account will become a new sector within the general account:

oil	350 million tonnes
LNG	20 million tonnes
LPG	15 million tonnes.

The general account will have at least two sectors: one for bulk solids and one for other HNS; and up to five, if the operation of one or more of the three separate accounts is postponed. Contributions to each sector of the general account will also be in proportion to the quantities of HNS received, provided the quantities received are above the thresholds of 20 000 tonnes for bulk solids and 20 000 tonnes for other HNS, but the total contributions to the general account will be divided amongst the sectors according to the claims experience of each sector.

[<1>] The SDR (Special Drawing Right) is a currency unit created by the International Monetary Fund. As at 1 September 2005, 1 SDR = US$1.473. The procedure for converting SDR into national currency is set out in Article 9.9 of the Convention as regards the liability of the shipowner and in Article 14.5(d) as regards the HNS Fund.

[<2>] Under Article 9.10 of the Convention, for the purpose of calculating the limit of the shipowner's liability, the ship's tonnage shall be the gross tonnage calculated in accordance with the tonnage measurement regulations contained in annex I of the International Convention on Tonnage Measurement of Ships, 1969.

[<3>] For the term "persistent oil" in the context of contributions, see section 7.3.

The HNS Convention will enter into force 18 months after ratification by at least 12 States, subject to the following conditions: in the previous calendar year a total of at least 40 million tonnes of cargo consisting of bulk solids and other HNS liable for contributions to the general account was received in States which have ratified the Convention; and four of these States each have ships with a total tonnage of at least 2 million GT.

As at 1 September 2005, eight States (Angola, Cyprus, Morocco, the Russian Federation, Saint Kitts and Nevis, Samoa, Slovenia and Tonga) had ratified the Convention.

3 WHAT ARE HAZARDOUS AND NOXIOUS SUBSTANCES (HNS)?

3.1 Definition of HNS

Article 1.5 of the HNS Convention defines hazardous and noxious substances (HNS) as:

(a) any substances, materials and articles carried on board a ship as cargo, referred to in (i) to (vii) below:

(i) oils carried in bulk listed in appendix I of Annex I to the International Convention for the Prevention of Pollution from Ships, 1973, as amended by the Protocol of 1978 relating thereto (MARPOL 73/78), as amended;

(ii) noxious liquid substances carried in bulk referred to in appendix II of Annex II to MARPOL 73/78, as amended, and those substances and mixtures provisionally categorised as falling in pollution category A, B, C or D in accordance with regulation 3(4) of Annex II;

(iii) dangerous liquid substances carried in bulk carried in bulk listed in chapter 17 of the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk, 1983 (IBC Code), as amended, and the dangerous products for which the preliminary suitable conditions for the carriage have been prescribed by the Administration and port administrations involved in accordance with paragraph 1.1.3 of the Code

(iv) dangerous, hazardous and harmful substances, materials and articles in packaged form covered by the International Maritime Dangerous Goods Code (IMDG Code), as amended;

(v) liquefied gases as listed in chapter 19 of the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk, 1983 (IGC Code), as amended, and the products for which preliminary suitable conditions for the carriage have been prescribed by the Administration and port administrations involved in accordance with paragraph 1.1.6 of the Code;

(vi) liquid substances carried in bulk with a flashpoint not exceeding 60°C (measured by a closed cup test);

(vii) solid bulk materials possessing chemical hazards covered by appendix B of the Code of Safe Practice for Solid Bulk Cargoes (BC Code), as amended, to the extent that these substances are also subject to the provisions of the IMDG Code when carried in packaged form; and

(b) residues from the previous carriage in bulk of substances referred to in (a) (i) to (iii) and (v) to (vii) above.

- IMO has adopted changes to some of these Codes and Conventions which are expected to take effect on 1 January 2007. These changes are likely to have an impact on the definition of HNS. At the October 2004 session of the 1992 Fund Assembly, it was noted that the 1992 Fund Secretariat intended to monitor this issue carefully and that it intended to present a proposal to the Assembly at a later stage as to how these changes could best be accommodated within the framework of the HNS Convention. The Director of the 1992 Fund has included this issue on the agenda of the October 2005 session of the 1992 Fund Assembly.

3.2 What substances are included in the definition of HNS?

The definition of HNS is largely based on lists of individual substances which have been previously identified in a number of IMO Conventions and Codes designed to ensure maritime safety and prevention of pollution. Many substances are covered under more than one section of the definition. There is considerable overlap between the three different definitions of liquid HNS, and some liquefied gases are also covered by the definition of dangerous liquid substances under the IBC Code.

HNS are very varied and include both bulk cargoes and packaged goods. Bulk cargoes can be solids, liquids including oils or liquefied gases. The number of substances included is very large: the IMDG Code, for example, lists hundreds of materials which can be dangerous when shipped in packaged form. In practice, however, the number of HNS which are shipped in significant quantities is relatively small.

Bulk solids are included if they are covered by appendix B of the BC Code, ie they possess chemical hazards, and if they are also subject to the provisions of the IMDG Code when carried in packaged form. This means that many of the major bulk solids are excluded since they either do not possess chemical hazards (eg iron ore, grain, bauxite and alumina, phosphate rock, cement and some fertilisers) or they are classified as materials hazardous only in bulk (MHB) (eg coal, reduced iron and woodchip). Bulk solids which are covered include some fertilizers, sodium and potassium nitrates, sulphur and some types of fishmeal.

Bulk liquids are included if they present safety, pollution or explosion hazards and include organic chemicals (eg methanol, xylenes and styrene), inorganic chemicals (eg sulphuric acid, phosphoric acid and caustic soda) and vegetable and animal oils & fats (eg palm oil, soybean oil and tallow). Both persistent and non-persistent oils of petroleum origin are also included, although as regards persistent oil the HNS Convention does not cover pollution damage. Bulk liquids which are not covered include most types of potable alcohol and molasses.

All liquefied gases which are transported in bulk are included, such as liquefied natural gas (LNG), liquefied petroleum gas (LPG), ammonia, ethylene, butadiene, ethane and propylene.

Packaged goods are included if they are covered by the IMDG Code, which comprises a very wide range of chemicals although many of these are only carried in small quantities.

4 THE SHIPOWNER AND HIS INSURER

4.1 Definitions of "Ship", "Owner" and "State of the Ship's registry"

"Ship", "person" and "owner" are defined in Articles 1.1-1.3 of the HNS Convention as follows:

1 "Ship" means any seagoing vessel and seaborne craft, of any type whatsoever.

2 "Person" means any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent subdivisions.

3 "Owner" means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship. However, in the case of a ship owned by a State and operated by a company which in that State is registered as the ship's operator, "owner" shall mean such company.

"State of the ship's registry" is defined in Article 1.13 of the Convention as:

"in relation to a registered ship the State of registration of the ship, and in relation to an unregistered ship the State whose flag the ship is entitled to fly."

4.2 Compulsory insurance

Article 12 of the Convention deals with the requirement for the shipowner to have compulsory insurance to cover his liability for damage under the HNS Convention.

Article 12.1 requires the owner of a ship registered in a State Party to the Convention and actually carrying HNS to maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution, to cover his liability for damage under the Convention, as set out in Article 9.1. Under Article 12.12, if insurance or other financial security is not maintained in respect of a ship owned by a State Party, the ship shall instead carry a compulsory insurance certificate issued by the appropriate authority of the State of the ship's registry stating that the ship is owned by that State and that the ship's liability for damage under the Convention is covered.

Under Article 4.4, the Convention does not apply to warships, naval auxiliary or other ships owned or operated by a State and used, for the time being, only on Government non-commercial service. Such ships therefore do not require a compulsory insurance certificate, unless a State has decided to apply the Convention to its warships and other ships of these types, pursuant to Article 4.5.

Under Article 5.1, a State may declare that the Convention does not apply to ships, which do not exceed 200 gross tonnage and which carry HNS only in packaged form, while they are engaged on voyages between ports or facilities of that State. Pursuant to Article 5.2 of the Convention, two neighbouring States may agree to extend their declarations to cover voyages between them. Such ships therefore do not require a compulsory insurance certificate.

- At the Diplomatic Conference which adopted the HNS Convention, it was indicated that, although the Boards of the individual P&I Clubs had not been consulted on the issue, it was expected that, given the precedent of the Civil Liability Conventions, P&I Clubs would agree to provide shipowners with insurance under the HNS Convention (IMO document LEG/87/11/1, Annex 4).

4.3 Compulsory insurance certificates

Article 12.2 requires that a compulsory insurance certificate be issued to each ship after the appropriate authority of a State Party has determined that the insurance or other financial security required by Article 12.1 is in place. For a ship registered in a State Party, the certificate shall be issued or certified by the appropriate authority of that State; for a ship not registered in a State Party, the certificate may be issued or certified by the appropriate authority of any State Party.

In order to be valid, an insurance or other financial security must under Article 12.5 fulfil certain conditions. Article 12.6 provides that the State of the ship's registry shall, subject to the provisions of Article 12, determine the conditions of issue and validity of the compulsory insurance certificate.

Article 12.2 also requires that the compulsory insurance certificate shall be in the form of the model set out in Annex I of the Convention and that it shall contain the following particulars:

(a) name of the ship, distinctive number or letters and port of registry;
(b) name and principal place of business of the owner;
(c) IMO ship identification number;
(d) type and duration of security;
(e) name and principal place of business of insurer or other person giving security and, where appropriate, place of business where the insurance or security is established; and
(f) period of validity of certificate, which shall not be longer than the period of validity of the insurance or other security.

Article 12.3 provides that the compulsory insurance certificate shall be in the official language(s) of the issuing State and that the text must include a translation into English, French or Spanish, if the certificate is not in one of these languages. Under Article 12.4, the certificate must be carried on board the ship and a copy deposited with the issuing authority.

Article 12.7 provides that a compulsory insurance certificate issued or certified by an appropriate authority of a State Party shall be accepted by other State Parties. However, a State may at any time request consultation with the issuing or certifying State, should it believe that the insurer or guarantor named in the certificate is not financially capable of meeting his obligations under the Convention.

Article 12.11 of the HNS Convention requires each State Party to ensure, under its national law, that such insurance or other security is in force in respect of any ship, wherever registered, entering or leaving a port in its territory, or arriving at or leaving an offshore facility in its territorial sea.

Article 12.10 provides that a State shall not permit a ship under its flag which requires a compulsory insurance certificate to trade unless such a certificate has been issued.

- The Ottawa meeting 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 organise an exchange of information about insurers

  d) the HNS Fund could organise 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.

- Under Article 7.2 the shipowner is exonerated from liability if the damage resulted from an act of war, hostilities, civil war or insurrection (sub-paragraph (a)) or if the damage was wholly caused by an act or omission done with the intent to cause damage by a third party (sub-paragraph (b)). At the Ottawa meeting the International Group of P&I Clubs raised the issue of the workability of these defences for acts of terrorism and the reinsurance problems which this may pose for P&I Clubs. It was noted that the grounds for exoneration of liability referred to above are identical to those set out in the 1992 Civil Liability Convention. The Ottawa meeting agreed that the International Group should engage in

discussions with administrations on the terrorism issue as soon as possible and bring this issue forward to the 1992 Fund Assembly in October 2003. It was also agreed that consideration should be given to any impact this problem may have on compulsory insurance under the 1992 Civil Liability Convention. It was further agreed that the position that would be taken by the 1992 Fund Assembly would provide an important precedent for any future consideration of this problem in the context of the HNS Convention.

When this issue was considered by the 1992 Fund Assembly in October 2003, the representative of the International Group of P&I Clubs stated that the P&I Clubs would continue to honour certificates that had already been issued up for the 2003 policy year ie until 20 February 2004, and that they would be able to extend the cover for the 2004 policy year so as to be able to continue to provide adequate cover, although this might involve a change in the terms of the P&I Clubs' reinsurance. It has since been confirmed that the P&I Clubs are issuing certificates for the 2005 policy year on the same basis. However, the situation as regards the HNS Convention will be different because the P&I Clubs have indicated that the Clubs themselves are unable to obtain suitable cover from their underwriters in relation to terrorism.

Different solutions to the problems of terrorism are being sought in relation to the Athens Convention and a suitable model may be found in that context. IMO's Legal Committee considered the issue of insurance cover under the Athens Convention for acts of terrorism in April 2005 and has submitted a draft resolution for approval by the IMO Assembly. The draft resolution recommends that States ratify the 2002 Protocol to the Athens Convention with the reservation that they reserve the right to issue and accept insurance certificates with such special exemptions and limitations as the insurance market conditions at the time of issue of the certificate necessitate, such as the bio-chemical clause and terrorism related clauses (IMO document LEG/90/15, paragraphs 355-365 and Annex 6).

- The Ottawa meeting 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) submit 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 Legal Committee has not yet addressed this issue.

5 THE HNS FUND

5.1 Establishment of the HNS Fund

Under Article 13 of the HNS Convention, the International Hazardous and Noxious Substances Fund (HNS Fund) will be established when the Convention enters into force with the primary aim of providing compensation for damage caused by HNS to the extent that the protection available from the shipowner and his insurer under Article 14 of the Convention is inadequate or not available.

5.2 Operation of the HNS Fund

The HNS Fund will operate in a similar way to the 1992 Fund. Under Articles 24 and 25, the HNS Fund will be governed by an Assembly, composed of all Member States. Its first session will, under Article 44, be convened by the Secretary-General of IMO to be held not more than thirty days after the entry into force of the HNS Convention.

Under Article 26, the Assembly's functions will include:

(f) to consider and approve as necessary any recommendation of the HNS Fund's Director regarding the scope of definition of contributing cargo; and

(m) to review every five years the implementation of the Convention with particular reference to the performance of the system for the calculation of levies and the contribution mechanism for domestic trade.

- There will be some important differences in the way the HNS Fund will operate compared to the 1992 Fund. The 1992 Fund only deals with claims for pollution damage, whereas the HNS Fund will have to deal with a wider range of potential claims, eg death and personal injury. The system for contributions to the HNS Fund is much more complicated than that for contributions to the 1992 Fund.

Under Article 26 (i), the Assembly will establish a Committee on Claims for Compensation (similar to the 1992 Fund's Executive Committee) with at least 7 and not more than 15 members. The Assembly shall endeavour to secure an equitable geographical distribution of members on the Committee and to ensure that the Member States are appropriately represented.

- The Ottawa meeting recommended that the HNS Fund should conclude a Memorandum of Understanding (MOU) with organisations involved in incidents, similar to that between the IOPC Funds and the International Group of P&I Clubs. The meeting also considered that it would be essential for the HNS Fund to conclude an MOU with the 1992 Fund so that, where appropriate, the same experts would be used in the assessment of claims.

5.3 Secretariat and Director of the HNS Fund

Under Article 24, the HNS Fund will be administered by a Secretariat headed by a Director.

- The IOPC Funds (ie the 1971 Fund, the 1992 Fund and the Supplementary Fund) have a joint Secretariat. When the issue of the Secretariat of the HNS Fund was discussed in May 2003 by the 1992 Fund Administrative Council, acting on behalf of the Assembly, 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. The point was made that a joint Secretariat would enable the HNS Fund to benefit from the experience of the IOPC Funds and would reduce the administrative costs for both the IOPC Funds and the HNS Fund. However, one delegation expressed the view that since the HNS Fund would have a different membership to the IOPC Funds, it should have a separate Secretariat so as to ensure that there was a clear delineation of its operation and costs. The 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 of the 1992 Fund 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 (document 92FUND/AC.1/A/ES.7/7, paragraphs 6.6-6.7).

- The Ottawa meeting agreed that the issue of the location of the HNS Fund Secretariat required a political decision and requested IMO's Legal Committee to consider this issue with a view to facilitating a decision by IMO on the location of the HNS Fund. The Ottawa Meeting requested the Legal Committee to recommend that the HNS Fund and the IOPC Funds should have a joint Secretariat, located in London. The Legal Committee has not yet addressed this issue.

5.4 Contributions to the HNS Fund

The HNS Fund will be financed by contributions based on the quantities of contributing cargo received in the territory of a Member State of the HNS Fund after sea transport, as set out in Articles 16-23. Under Articles 18, 19 and 20, the HNS Fund will have both initial and annual contributions which will be made to a general account (which will be divided into sectors) and to the separate accounts (see sections 7.1 and 7.2).

Under Article 16.4, the general account and the separate accounts will be available to compensate damage caused by HNS covered by the respective account ie there will be no cross-subsidization. The Assembly will decide the total amounts of contributions to be levied to each of these accounts. Article 17.3 provides that the distribution between the sectors of the general account of contributions for the compensation of damage will be calculated according to the regulations contained in Annex II to the Convention. Under Article 17.4, the Assembly shall decide on the distribution of contributions for administrative costs between the sectors of the general account and the separate accounts.

- The 1992 Fund has two types of contributions: those to the General Fund, which covers both administrative expenses and claims for compensation to the extent that the aggregate amount payable by the 1992 Fund does not exceed 4 million SDR (US$5.9 million) per incident (Article 12.2(a) of the 1992 Fund Convention); and those to Major Claims Funds, which are established for incidents which gives rise to substantial payments of compensation by the 1992 Fund, to cover payments in excess of the amount payable from the General Fund for that incident (Article 12.2(b) of the 1992 Fund Convention). No similar provisions exist in the HNS Convention. As a result, the HNS Fund will only have one type of contributions which will cover both administrative expenses and claims for compensation.

- The Director of the 1992 Fund has estimated that the administrative expenses of the HNS Fund will probably be much lower than those of the IOPC Funds, perhaps in the region of £1.0 million (US$1.8 million) per annum, compared with £3.6 million (US$6.5 million) per annum for the IOPC Funds.

- The maximum amount payable by the HNS Fund for one incident will be 250 million SDR (US$370 million). Levies for contributions relating to a major incident would probably be spread over several years.

- The regulations in Annex II to the Convention are designed to distribute contributions amongst the sectors of the general account according to the relative risks presented by each sector, calculated as the weighted arithmetic average of the ratio of established claims to the volume of contributing cargo for each sector over the previous ten years.

- The 1971 Fund had both initial contributions and annual contributions whereas the 1992 Fund only has annual contributions. Under Article 16.3 of the HNS Convention the HNS Fund will have both initial contributions and annual contributions.

- Under the 1992 Fund's Internal Regulations adopted by the 1992 Fund Assembly, contributions to the 1992 Fund's General Fund are pro-rated in proportion to the part of the relevant year for which a State was a Member of the 1992 Fund. Under Article 12.2(b) of the 1992 Fund Convention, contributions to the 1992 Fund's Major Claims Funds are only payable in respect of States which were Members of the 1992 Fund at the date of the relevant incident. However, the HNS Fund Assembly will have to consider whether annual contributions to the HNS Fund from contributors in a given State should be pro-rated in proportion to the part of the relevant year for which that State was a Member of the HNS Fund, regardless of whether the State was a Member at the time of a particular incident.

- Contributions to the 1992 Fund's General Fund are based on quantities of contributing oil received in the preceding calendar year, whereas contributions to the 1992 Fund's Major Claims Funds are based on quantities of contributing oil received in the year preceding that in which the incident occurred (Article 12.2 of the 1992 Fund Convention). However, under Articles 18.1 and 19.1, annual contributions to the HNS Fund will be based on quantities of contributing cargo received in the preceding calendar year, or such other year as the Assembly may decide. It appears therefore that contributors in a State which ratifies the Convention may have to pay contributions for incidents which occurred before the Convention entered into force for that State. Conversely, contributors in a State which denounces the Convention may not have to pay all contributions for incidents which occurred whilst the Convention was in force for that State. It should be noted however that under Article 49.4 any obligations to pay contributions in respect of such incidents continue to apply after the Convention has ceased to be in force for that State.

6 CONTRIBUTING CARGO AND THE RECEIVER

6.1 Definition of contributing cargo

Article 1.10 of the HNS Convention defines "contributing cargo" as:

> "any hazardous and noxious substances which are carried by sea as cargo to a port or terminal in the territory of a State Party and discharged in that State. Cargo in transit which is transferred directly, or through a port or terminal, from one ship to another[<4>], either wholly or in part, in the course of carriage from the port or terminal of original loading to the port or terminal of final destination shall be considered as contributing cargo only in respect of receipt at the final destination."

- The concept of physical receipt after carriage by sea is expressed in the HNS Convention in a similar way as in the 1992 Fund Convention. The HNS Fund will therefore be able to build on the practice and experience of the IOPC Funds in this regard.

- Under Article 10.1(b) of the 1992 Fund Convention, oil which is received by sea in a non-Member State and is then transported by land, eg by pipeline, rail or road, to a Member State is liable for contributions. There is no similar provision in the HNS Convention and contributing cargo other than persistent oil[<5>] must therefore be received in a Member State directly by sea. However, pursuant to Article 19.1(a)(i), persistent oil (ie oil liable for contributions under the 1992 Fund Convention) received by sea in a non-Member State and then transported by land to a Member State would be liable for contributions under the HNS Convention.

- Under the HNS Convention, cargo in transit which is trans-shipped in the course of carriage only qualifies as contributing cargo when it is received at its final destination.

- As regards cargo in transit, there is a difference between the HNS Convention and the 1992 Fund Convention. Under Article 10.1(a) of the latter Convention, any receipt of contributing oil in a port or terminal of a Member State after carriage by sea is included, regardless of whether it has reached its final destination. The 1992 Fund Assembly has adopted an interpretation of Article 10.1(a) to the effect that carriage by sea does not include movement within the same port area and that ship-to-ship transfer does not constitute receipt, regardless of whether such a transfer:
  i. takes place within a port area or outside the port but within territorial waters, or
  ii. is done solely by using the ships' equipment or by means of a pipeline passing over land, or
  iii is between two sea-going vessels or from a sea-going vessel to an internal waterway vessel.

- HNS whose final destination is in a non-Member State does not qualify as contributing cargo, regardless of whether the HNS has previously been trans-shipped in the territory or territorial waters of a Member State. It should be noted that any damage caused during such trans-shipment is covered by the HNS Convention.

- The Ottawa meeting agreed that as regards the concept of trans-shipment some caution was necessary but that it would be necessary for the first HNS Fund Assembly to adopt criteria as to what should constitute trans-shipment within the terms of the Convention, taking industry practices into account.

- The terms "cargo in transit" and "in the course of carriage" are fundamental and their interpretation may have to be considered by the HNS Fund Assembly.

[<4>] ie trans-shipped.
[<5>] For the term "persistent oil" in the context of contributions, see section 7.3.

Article 1.14 defines "terminal" as:

> "any site for the storage of hazardous and noxious substances received from waterborne transportation, including any facility situated offshore and linked by pipeline or otherwise to such site."

6.2 HNS carried on certain ships do not qualify as contributing cargo

Under Article 1.1, "ship" is defined as "any seagoing vessel and seaborne craft, of any type whatsoever."

Pursuant to Article 5.1, a State may declare that the Convention does not apply to ships, which do not exceed 200 GT and which carry HNS only in packaged form, while they are engaged on voyages between ports or facilities of that State. Cargo carried on such ships does not qualify as contributing cargo. Under Article 5.2 of the Convention, neighbouring States may agree to extend their declarations to cover voyages between them.

- The Russian Federation made a declaration under Article 5.1 excluding such ships in its instrument of accession to the HNS Convention.

Under Article 4.4, the HNS Convention does not apply to warships, naval auxiliary or other ships owned or operated by a State and used, for the time being, only on Government non-commercial service, unless a State makes an appropriate declaration to the contrary under Article 4.5.

- HNS carried on such ships therefore does not qualify as contributing cargo unless a State has made such a declaration.

6.3 Definition of "Receiver" and the relationship between Agent and Principal

Article 1.2 of the HNS Convention defines "person" as:

> "any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent subdivisions."

When ratifying the Convention, a State will have to decide whether to utilise the definition of "receiver" in Article 1.4(a) of the Convention or whether, under Article 1.4(b), to implement an alternative definition of "receiver" in national law.

Under Article 1.4(a) of the Convention, "receiver" means:

> "the person who physically receives contributing cargo discharged in the ports and terminals of a State Party".

Article 1.4(a) qualifies this meaning as follows:

> "provided that if at the time of receipt the person who physically receives the cargo acts as an agent for another who is subject to the jurisdiction of any State Party, then the principal shall be deemed to be the receiver, if the agent discloses the principal to the HNS Fund".

- The basic concept under Article 1.4(a) is similar to that under the 1992 Fund Convention, ie of physical receipt.

- In order for the agent (ie the physical receiver) to be able to pass on the liability for contributions to his principal, the principal must be subject to the jurisdiction of a Member State. If not, the agent remains the receiver for the purpose of liability for contributions.

- The concept of agency is not defined in the Convention and will therefore be determined by the national law of the State concerned.

- The Ottawa meeting agreed that States implementing legislation for the HNS Convention needed to ensure that the relationship between the agent and the principal was well defined to ensure that the statutory requirements to report contributing cargo were in place.

- The Ottawa meeting noted the need for work within Europe to ensure the identification of the principal where cross border controls differ to those applying elsewhere.

- The burden of proof lies with the agent to provide the HNS Fund with sufficient evidence to establish the relationship with the principal. However, once the agent has established the relationship to the Fund's satisfaction, the liability for contributions lies with the principal and does not revert to the agent if the principal fails to pay.

Under Article 1.4(b) of the Convention, a State may apply an alternative meaning of the term "receiver", as follows:

> "the person in the State Party who in accordance with the national law of that State Party is deemed to be the receiver of contributing cargo discharged in the ports and terminals of a State Party, provided that the total contributing cargo received according to such national law is substantially the same as that which would have been received under Article 1.4(a)".

- If a State implements such an alternative definition of the term receiver under Article 1.4(b):
  - the receiver under the definition must be subject to the jurisdiction of that State,
  - the definition must be implemented through national legislation, and
  - the application of the definition must result in the total contributing cargo received according to such national law being substantially the same as if the definition in Article 1.4(a) had been applied, and

- If a State does not implement Article 1.4(b) correctly, then the definition in Article 1.4(a) applies.

- The Ottawa meeting, whilst recognising the right of States to implement an alternative definition of "receiver" under Article 1.4(b), strongly recommended that they should not do so. It also considered that the use of this option should not lead to an increase in the contributions to be paid by contributors in other States.

- The Ottawa meeting noted that the application of such an alternative definition by a State would present additional complexities and would require that State to develop both a special documentation system and a system to demonstrate that the total contributing cargo was substantially the same as if the definition in Article 1.4(a) had been applied.

As regards persistent oil[<6>], under Article 19.1(a)(i) contributions to the oil account (see section 7.3) shall be made in respect of each State Party by

> "...any person who has received in that State...total quantities exceeding 150 000 tonnes of contributing oil as defined in Article 1, paragraph 3 of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, as amended, and who is or would be liable to pay contributions to the International Oil Pollution Compensation Fund in accordance with Article 10 of that Convention."

As regards LNG, under Article 19.1(b) contributions to the LNG account (see section 7.3) shall be made in respect of each State Party by

> "...any person who..., immediately prior to its discharge, held title to an LNG cargo discharged in a port or terminal of that State."

[<6>] For the term "persistent oil" in the context of contributions, see section 7.3.

- The definition of receiver in Article 1.4 applies neither to persistent oil[<7>], where the concept of receiver is the same as that under the 1992 Fund Convention, nor to LNG and any respective liability cannot therefore be passed on by an agent to his principal. States also cannot use Article 1.4(b) to apply an alternative definition of the term "receiver" to persistent oil[<7>] or LNG.

- The identity of the person holding title to an LNG cargo immediately prior to discharge will depend on the type of contract of carriage used.

- As regards LNG, pursuant to Article 19.1(b), the person liable for contributions may or may not be subject to the jurisdiction of the State in which the LNG is discharged.

6.4 Definition of "Associated person"

Article 16.6 of the HNS Convention defines "Associated person" as:

> "any subsidiary or commonly controlled entity. The question whether a person comes within this definition shall be determined by the national law of the State concerned."

Under Article 16.5 of the Convention, quantities of the same type of contributing cargo received in the same State by associated persons must be aggregated for the purposes of determining whether the relevant thresholds are exceeded (see section 6.4).

[<7>] For the term "persistent oil" in the context of contributions, see section 7.3.

7 ACCOUNTS AND SECTORS

7.1 The Separate Accounts

Under Article 16.2 of the HNS Convention, the HNS Fund will have three separate accounts for:

(a) oil as defined in Article 1, paragraph 5(a)(i) (**oil account**);
(b) liquefied natural gases of light hydrocarbons with methane as the main constituent (LNG) (**LNG account**); and
(c) liquefied petroleum gases of light hydrocarbons with propane and butane as the main constituents (LPG) (**LPG account**);

unless the operation of any of these accounts has been postponed or suspended. Under Article 19.3, the initial operation of any of the separate accounts will be postponed until the quantities of contributing cargo in respect of that account during the preceding year, or such other year as the Assembly may decide, exceed the following levels:

Oil account	350 million tonnes
LNG account	20 million tonnes
LPG account	15 million tonnes

Under Article 19.4, the operation of any of the separate accounts may be suspended by the Assembly if the quantities of contributing cargo in respect of that account during the preceding calendar year fall below these levels or if, six months after the contributions were due, the total unpaid contributions to that account exceed 10% of the most recent levy to that account. The Assembly may, under Article 19.5, reinstate the operation of any separate account which has been suspended.

7.2 The General Account

According to Article 16.1, the HNS Fund will also have a general account, which will be divided into sectors. Under Article 18.1, the general account will have at least two sectors:

(a) solid bulk materials referred to in Article 1, paragraph 5(a)(vii) (see section 3.1) (**"Bulk solids"**);
(b) other substances (**"Other HNS"**).

Under Article 18.2, if the operation of any of the three separate accounts has been postponed or suspended according to Articles 19.3 and 19.4, any such separate account will each form a separate sector within the general account. The general account may therefore have up to five sectors.

- As regards the separate accounts, it has been suggested that it is possible that initially the thresholds for the setting up of the LNG and LPG accounts will not be reached. In that case, initially of the separate accounts only the oil account will be established when the HNS Convention enters into force, whereas the operation of the LNG and LPG accounts will be postponed so that that the LNG and LPG accounts would initially form sectors in the general account.

- Under Article 4.3(b), the Convention does not apply to damage caused by a radioactive material of class 7 either in the International Maritime Dangerous Goods Code, as amended, or in appendix B of the Code of Safe Practice for Solid Bulk Cargoes, as amended. The question as to whether or not such substances should be considered as contributing cargo is not dealt with in the Convention. The HNS Assembly will have to decide how the Convention should be interpreted on this point.

7.3 Contributions to the Separate Accounts

Subject to the provisions on associated persons in Article 16.5 and 16.6 (see section 6.4), under Article 19.1 annual contributions to separate accounts shall be made in respect of each State Party:

(a) in the case of the **oil** account,

(i) by any person who has received in that State in the preceding calendar year, or such other year as the Assembly may decide, total quantities exceeding 150 000 tonnes of contributing oil as defined in Article 1.3 of the 1992 Fund Convention (**"Persistent oil"**), and who is or would be liable to pay contributions to the 1992 Fund in accordance with Article 10 of that Convention; and

(ii) by any person who was the receiver in that State in the preceding calendar year, or such other year as the Assembly may decide, of total quantities exceeding 20 000 tonnes of other oils carried in bulk listed in appendix I of Annex I to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78), as amended (**"Non-persistent oil)"**);

(b) in the case of the **LNG** account, by any person who in the preceding calendar year, or such other year as the Assembly may decide, immediately prior to its discharge, held title to an LNG cargo discharged in a port or terminal of that State;

(c) in the case of the **LPG** account, by any person who in the preceding calendar year, or such other year as the Assembly may decide, was the receiver in that State of total quantities exceeding 20 000 tonnes of LPG.

- Under the HNS Convention, for the purpose of the oil account, contributing oil includes both persistent oil and non-persistent oil. Under the 1992 Fund Convention, however, the obligation to pay contributions only relates to crude oil and heavy fuel oil as defined in Article 1.3 of the 1992 Fund Convention, ie with the exclusion of some types of persistent oil. The obligation to contribute to the HNS Fund under sub-paragraph (a)(i) above corresponds as regards the types of oil to the obligation under the 1992 Fund Convention, whereas the obligation to contribute to the HNS Fund under sub-paragraph (a)(ii) above relates to other types of oil, whether persistent or not, for which there is no obligation to contribute under the 1992 Fund Convention. Although not technically correct, for the purposes of the HNS Convention, the term "persistent oil" has been used to refer to the types of oil covered by sub-paragraph (a)(i) and the term "non-persistent oil" has been used to refer to the types of oil covered by sub-paragraph (a)(ii).

- Under Article 4.3(a), the HNS Convention does not apply to pollution damage as defined in the 1992 Civil Liability Convention, ie pollution damage caused by persistent oil, whether or not compensation is payable in respect of such damage under that Convention. However, receivers of both persistent oil and non-persistent oil will have to contribute to the HNS Fund's compensation payments in respect of non-pollution damage caused by persistent oil, as defined in Article I.5 of the 1992 Civil Liability Convention, as a result of its carriage as cargo. Contributions to the HNS Fund will also be payable by receivers of both persistent oil and non-persistent oil in respect of both pollution damage and non-pollution damage caused by non-persistent oil.

- Receivers of oil in bulk will be liable to contribute to the oil account whereas receivers of oil in packaged form will be liable to contribute to the general account. Receivers of LNG and LPG in both bulk and packaged forms will be liable to contribute to the LNG and LPG accounts, respectively.

- The threshold for discharges of LNG is nil and so all discharges of LNG will be liable for contributions.

7.4 Contributions to the General Account

Subject to the provisions on associated persons in Article 16.5 and16.6 (see section 6.4), under Article 18.1 annual contributions to the general account shall be made in respect of each State Party to the HNS Convention by any person who was the receiver in that State in the preceding calendar year, or such other year as the Assembly may decide, of aggregate quantities exceeding 20 000 tonnes of contributing cargo falling within the "Bulk solids" and "Other HNS" sectors respectively.

If the operation of any of the separate accounts has been postponed or suspended, under Article 18.2 annual contributions to the corresponding sectors of the general account shall be made in respect of each State Party according to the same provisions as for contributions to the separate accounts. Under Article 17.3 the

distribution between the sectors of the general account of contributions for the compensation of damage will be calculated according to the regulations contained in Annex II to the Convention.

- The regulations in Annex II have been designed so that the total contributions to the general account will be divided amongst the sectors according to the claims experience of each sector, ie to minimize any cross-subsidisation.

7.5 Summary of thresholds

Separate accounts (or sectors within the general account):

(a)	Oil		
		persistent oil[8]	150 000 tonnes
		non-persistent oil [8]	20 000 tonnes
(b)	LNG		nil
(c)	LPG		20 000 tonnes

Sectors within the general account:

(d)	Bulk solids	20 000 tonnes
(e)	Other HNS	20 000 tonnes

[8] For the term "persistent oil" in the context of contributions, see section 7.3.

8 REPORTING CONTRIBUTING CARGO

8.1 Requirement to report receipts of contributing cargo

8.1.1 Before the Convention enters into force

Article 43 of the HNS Convention provides that when depositing an instrument of ratification, acceptance, approval or accession, and annually thereafter until the Convention enters into force for a State, that State shall submit to the Secretary-General of IMO data on the relevant quantities of contributing cargo received or, in the case of LNG, discharged in that State during the preceding calendar year in respect of the general account and each separate account.

- At this stage, a State is only required to report the total quantity of contributing cargo for each account and not the individual receivers or the quantities received by each receiver in respect of each account, although a State must have this information available in order to calculate the total quantity of contributing cargo for each account.

- As at 1 September 2005, only one State (Slovenia) of the eight States that have ratified the Convention to date had fulfilled its obligation in this regard (cf IMO document LEG/90/9, paragraph 2).

- The Ottawa meeting agreed that, prior to ratification of the Convention, States should implement regulations to establish a reporting system strictly for monitoring purposes. The meeting also proposed that, for the purpose of national reporting systems, lower thresholds should be applied in national regulations than those applying under the Conventions.

8.1.2 After the Convention has entered into force

When the HNS Convention has entered into force, States will be required to make more detailed reports, giving the individual contributors and the quantities of contributing cargo received by each contributor for each account and sector, as set out in Articles 21.1 and 21.2 of the Convention:

> Each State Party shall ensure that any person liable to pay contributions in accordance with articles 18, 19 or paragraph 5 of this article appears on a list to be established and kept up to date by the Director in accordance with the provisions of this article.
>
> For the purposes set out in paragraph 1, each State Party shall communicate to the Director[9], at a time and in the manner to be prescribed in the internal regulations of the HNS Fund, the name and address of any person who in respect of the State is liable to pay contributions in accordance with articles 18, 19 or paragraph 5 of this article, as well as data on the relevant quantities of contributing cargo for which such a person is liable to contribute in respect of the preceding calendar year.

- The first calendar year for which a State must submit such a detailed report is the year preceding that in which the Convention enters into force for that State.

Pursuant to Article 21.4, if a State does not fulfil its obligations under Article 21.2 to submit reports on contributing cargo and this results in a financial loss for the HNS Fund, that State shall be liable to compensate the HNS Fund for such loss (see section 9.4).

As regards domestic transport by sea of HNS, under Article 21.5, a State has the option of submitting a single report for all such contributing cargo, as follows:

---

[9] ie of the HNS Fund

In respect of contributing cargo carried from one port or terminal of a State Party to another port or terminal located in the same State and discharged there, States Parties shall have the option of submitting to the HNS Fund a report with an annual aggregate quantity for each account covering all receipts of contributing cargo, including any quantities in respect of which contributions are payable pursuant to article 16, paragraph 5. The State Party shall, at the time of reporting, either:

(a) notify the HNS Fund that that State will pay the aggregate amount for each account in respect of the relevant year in one lump sum to the HNS Fund; or

(b) instruct the HNS Fund to levy the aggregate amount for each account by invoicing individual receivers or, in the case of LNG, the title holder who discharges within the jurisdiction of that State Party, for the amount payable by each of them. These persons shall be identified in accordance with the national law of the State concerned.

- The Ottawa meeting noted that the application of Article 21.5 by States could result in problems similar to those arising from implementing an alternative definition of "receiver" under Article 1.4(b).

8.2 The HNS Convention Contributing Cargo Calculator ("HNS CCCC")

8.2.1 Development of the system

With the approval of the 1992 Fund's Assembly, the Secretariat of the IOPC Funds has developed a system to assist States in fulfilling their obligations to report receipts of contributing cargo under the HNS Convention. The HNS Convention Contributing Cargo Calculator ("HNS CCCC") is designed to enable a State to fulfil its reporting obligation by collating data from individual receivers of contributing cargo in that State.

- The Ottawa meeting agreed that the HNS CCCC demonstrated that many of the administrative details that had previously caused concern had been taken care of with this straightforward and transparent system. The meeting also agreed that governments and industry should embrace the database and promote its trial and use within industry.

The system is designed to be used by potential contributors and States. Potential contributors can input data on receipts of individual substances, identify total receipts for each potential account or sector of the HNS Fund and report these receipts to the competent authority in their State. States can collate data on receipts of contributing cargo and submit the data to the IOPC Funds, in order that progress towards meeting the entry-into-force requirements of the HNS Convention can be monitored.

The system can also be used as an educational tool. Any person can use the system as if he were a potential contributor and can enter example data and print reports.

The system is currently in the form of a CD-ROM containing software for installation on a user's personal computer and the system will also be available via a dedicated website, which is currently being developed.

It is envisaged that the system will eventually form the basis for the invoicing system for the HNS Fund.

8.2.2 HNS Database

The HNS CCCC includes a database of all substances qualifying as HNS. IMO very kindly agreed to provide the IOPC Funds' Secretariat with data in electronic format on the substances covered by the relevant IMO Conventions and Codes and this greatly facilitated the development of the database.

The database has been developed using data, including flashpoints where appropriate, on substances that are listed as covered or not covered by the various Codes and Conventions on which the definition of HNS is based. The database therefore contains data on all substances that are commonly transported by sea. The database will be updated regularly to reflect any changes in the lists of substances under these Codes and Conventions.

The database contains information as to whether or not a substance qualifies as HNS under one or more parts of the definition of HNS in Article 1.5 of the HNS Convention (see section 3.1). It should be noted that parts (i)-(iii) and (v)-(vii) of the definition refer to substances carried in bulk, whereas part (iv) of the definition refers to substances carried in packaged form. Whether a substance qualifies as HNS may therefore depend on whether it is carried in bulk or packaged form. The database holds data on substances carried in bulk separately from data on substances in packaged form and so there may be two records for a particular substance, one in respect of carriage in bulk and one in respect of carriage in packaged form.

For substances that qualify as HNS, the database also contains information as to which of the accounts or sector the substances belong to for the purposes of contributions (see sections 7.1 and 7.2). It should be noted that there is limited correlation between the parts of the definition of HNS and the provisions in Articles 18 and 19 as to which separate account and/or sector of the general account a substance belongs to for the purposes of contributions. A substance may therefore qualify for one account or sector if carried in bulk and a different account or sector if carried in packaged form.

Substances that do not qualify as HNS are listed as "Not HNS" under "Account/Sector".

The database contains information on synonyms of substances to the extent that this information is given in the relevant IMO Codes and Conventions.

8.2.3 Using the system

Potential contributors can enter data on the quantities of individual substances received during a given calendar year, using the UN number or name of the substance. The system will check the UN number or name against the HNS database and identify whether the substance qualifies as HNS and, if so, which Account/Sector it qualifies for. If any cargo in transit does not qualify as contributing cargo under Article 1.10, it can be entered but marked as excluded, provided a reason for the exclusion is stated. The system displays the Proper Shipping Name of a substance, regardless of whether a synonym has been used to select the substance, for example, entering "Methyl ether" will result in "Dimethyl ether" being displayed. Once the potential contributor has entered all the substances received, he can submit a report to the appropriate State giving the total quantities received for each Account/Sector and indicating whether he has any associated persons (see section 6.4).

A State can check and either accept or reject the reports it receives from potential contributors. A State can also request to inspect for auditing purposes the complete list of substances received by a contributor. The State is responsible for ensuring that any contributors with associated persons or who are acting as agents for a principal have been marked as such in the system so that the thresholds will be applied correctly to each of the Accounts and Sectors. Once the State is satisfied with the reports from all its potential contributors, it can submit a report to the HNS Fund giving the total quantities received for each Account/Sector, taking into account any associated persons (see Section 6.4).

The HNS Fund, or the 1992 Fund acting on its behalf, can check and either accept or query the reports it receives from potential Member States. The Secretary-General of IMO will then be able to assess the situation as regards the fulfilment of the entry into force condition for receipts of contributing cargo in Article 46.1(b) of the Convention.

9 IMPLEMENTATION BY STATES

9.1 Ratification of the Convention

9.1.1 Signature, ratification, acceptance, approval and accession

Under Article 45 of the HNS Convention, States may express their consent to be bound by this Convention by:

(a) signature without reservation as to ratification, acceptance or approval; or
(b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
(c) accession.

The HNS Convention was open for signature from 1 October 1996 to 30 September 1997 and was signed subject to ratification by eight States (Canada, Denmark, Finland, Germany, Netherlands, Norway, Sweden and United Kingdom).

Ratification, acceptance, approval or accession is effected by the deposit of an appropriate instrument with the Secretary-General of IMO. As at 1 September 2005, eight States (Angola, Cyprus, Morocco, the Russian Federation, Saint Kitts and Nevis, Samoa, Slovenia and Tonga) had ratified the Convention, of which two States (Cyprus and the Russian Federation) have more than two million units of gross tonnage.

- In November 2002, the European Council adopted a decision (2002/971/EC) requiring all European Union Member States to take the necessary steps to ratify the HNS Convention within a reasonable time period and, if possible, before 30 June 2006.

9.1.2 Information on contributing cargo

Under Article 43 of the HNS Convention, when depositing an instrument of ratification, and annually thereafter until the Convention enters into force for a State, that State shall submit to the Secretary-General data on the relevant quantities of contributing cargo received or, in the case of LNG, discharged in that State during the preceding calendar year in respect of the general account and each separate account.

- As at 1 September 2005, only one State (Slovenia) of the eight States that have ratified the Convention to date had fulfilled its obligation in this regard (cf IMO document LEG/90/9, paragraph 2).

After the Convention has entered into force, Article 21 requires States to submit more detailed reports on receipts of contributing cargo, as set out in section 8.1.2.

9.2 Implementation of the Convention into national law

9.2.1 Implementation into national law

An international treaty is binding on the States which have ratified it as between those States. In order to enable the courts and administrative authorities of a State to apply its provisions, the treaty has to become part of the national law of the State concerned. Any implementation of an international treaty into national law must always be made with due consideration for the national legal system, the constitutional requirements and the legislative tradition.

For some States, an international treaty ratified by that State automatically becomes part of the national law; some States also require that the treaty should be published in its official gazette in order to have that effect. If this is the case, the question is then to what extent the provisions of the treaty can be regarded as "self-executing", ie to what extent they are drafted in such a way as to enable national courts and authorities to apply them directly. To the extent that this is the case, there is no need for additional national legislation on the issues covered by these provisions. If the provisions can not be considered as self-executing, national legislation is necessary. It is sometimes difficult, however, to ascertain whether the courts would consider a given provision as self-executing or whether implementing national legislation is necessary.

As regards States in which a treaty does not automatically become part of national law upon ratification, all substantive provisions of the treaty must be implemented by means of a national statute, unless the national law is already in conformity with these provisions. In States which apply this principle, the substantive provisions of the treaty are normally reproduced in a national statute. These provisions can be either identical with the corresponding provisions of the treaty or redrafted in accordance with the legislative tradition of the State concerned. In the latter case, it must be ensured that the statutory provisions fully reflect the substantive contents of the treaty and that they provide appropriate procedures for the application of the Convention by the courts and national authorities. Another way of implementing a treaty is by reference in a national statute to the text of the treaty which could be annexed to the statute, either in one or more of the authentic texts of the treaty (ie in the language or languages in which it was adopted) or if none of these languages is an official language(s) of the State concerned, in a translation into its official language(s).

In both cases, it is normally necessary for a State to adopt provisions dealing with issues where the treaty leaves options to States or on points which are not dealt with in the treaty but have to be regulated.

- The Ottawa meeting agreed that States might wish to consider the Canadian model regulations, which offered a comprehensive approach to a compliance and verification system (IMO document LEG/87/11/1, Annex 8).

- Examples of national implementing legislation for some States can be found on the Correspondence Group's website (see section 10).

9.2.2 Options for States when ratifying the Convention or at any time thereafter

The HNS Convention gives States options on a number of points. When ratifying the Convention or at any time thereafter, a State will have to decide:

Article 1.4	whether to implement an alternative definition of "receiver" under national law.
Article 4.5	whether to apply the Convention to warships and other vessels excluded by Article 4.4.
Article 5	whether to exclude ships which do not exceed 200 gross tonnage and which carry HNS only in packaged form while they are engaged in voyages between ports or facilities of that State; neighbouring States may agree to extend this exclusion to cover voyages between them.
Article 21.5	whether to submit a report with aggregate quantities for each account/sector for contributing cargo carried from one port or terminal of a State Party to another port or terminal located in the same State and discharged there and, if so, whether to assume liability for the payment of contributions on such contributing cargo.
Article 23	whether to assume liability for the payment of contributions on all contributing cargo.

- The Ottawa meeting, whilst recognising the right of States to implement an alternative definition of "receiver" under Article 1.4, strongly recommended that they should not do so (see Section 6.3).

- The Russian Federation, in its instrument of accession to the HNS Convention, declared that the Convention would not apply to ships which do not exceed 200 gross tonnage and which carry HNS only in packaged form while they are engaged in voyages between ports or facilities of that State.

As regards the limits of liability of the shipowner, a State which is not a member of the International Monetary Fund and whose national law does not permit the conversion of the SDR into national currency may, under Article 9.9(b) of the Convention, instead declare that the unit of account shall, instead of the SDR, be equal to 15 gold francs of a certain definition ("franc Poincaré").

9.3 Entry into force

Under Article 46.1, the HNS Convention, shall enter into force eighteen months after the date on which the following conditions are fulfilled:

(a) at least twelve 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

(b) 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.

- The entry-into-force requirement for contributing cargo only relates to receipts of bulk solids and other HNS (see section 7.2) and does not relate to receipts of oil (persistent or non-persistent), LNG or LPG.

- If a number of those States which are Members of the European Union ratify by the target date of 30 June 2006, the Convention is likely to enter into force early in 2008.

For a State which expresses its consent to be bound by the Convention after the conditions for entry into force have been met, such consent shall under Article 46.2 take effect three months after the date of expression of such consent, or on the date on which the Convention enters into force in accordance with Article 46.1, whichever is the later.

9.4 Obligations of States Parties

Article 6 of the HNS Convention states that:

> "Each State Party shall ensure that any obligation arising under this Convention is fulfilled and shall take appropriate measures under its law including the imposing of sanctions as it may deem necessary, with a view to the effective execution of any such obligation."

State Parties also have a number of specific obligations, as set out in the following articles, some of which are described in more detail in the relevant sections of this guide:

Article 12.2-12.6	to issue or certify compulsory insurance certificates for ships under its flag
Article 12.7	to accept compulsory insurance certificates issued by other States, even if issued or certified in respect of ships not registered in a State Party
Article 12.10	not to permit a ship under its flag to trade unless it has a compulsory insurance certificate
Article 12.11	to ensure, under its national law, that insurance or other security is in force for any ship entering or leaving a port in its territory or arriving at or leaving an offshore facility in its territorial sea
Article 13.2	to recognise the HNS Fund as a legal person and its Director as the legal representative of the HNS Fund
Article 21.1-21.2	to submit reports on receipts of contributing cargo
Article 35.2	to take, wherever possible, appropriate measures for the remission or refund of certain duties and taxes, including indirect taxes and sales taxes, paid by the HNS Fund on substantial purchases of certain property and services
Article 35.1	to exempt the HNS Fund from all direct taxation
Article 35.6	to authorise the transfer and payment of any contribution to the HNS Fund and of any compensation paid by the HNS Fund without any restriction
Article 38.4	to ensure that its courts have jurisdiction to entertain actions for compensation against the shipowner and his insurer
Article 39.3	to ensure that its courts have jurisdiction to entertain actions against the HNS Fund under Article 39.1
Article 39.5	to ensure that the HNS Fund shall have the right to intervene as a party to certain legal proceedings
Article 40	to recognise and enforce judgements under Articles 38 and 39 against the shipowner or his insurer or the HNS Fund

It should be noted that under Article 21.4, if a State does not fulfil its obligations under Article 21.2 to submit reports on contributing cargo and this results in a financial loss for the HNS Fund, that State shall be liable to compensate the Fund for such loss.

- The non-submission of reports by a significant number of States has been a recurring problem for the IOPC Funds and may become a similar problem for the HNS Fund.

10 SOURCES OF FURTHER INFORMATION

Further information on the HNS Convention can be obtained from IMO or the IOPC Funds at the following addresses:

IMO
4 Albert Embankment
London
SE1 7SR

Tel: +44 (20) 7735 7611
Fax: +44 (20) 7587 3210
Email: info@imo.org
Web: www.imo.org

The IOPC Funds
Portland House
Stag Place
London
SW1E 5PN

Tel: +44 (20) 7592 7100
Fax: +44 (20) 7592 7111
Email: info@iopcfund.org
Web: www.iopcfund.org

The Secretariat of the IOPC Funds are setting up a dedicated website for the HNS Convention at the following address:

http://www.hnsconvention.org

The website will initially be in English only but will be made available in French and Spanish in 2006.

IMO's Legal Committee established a Correspondence Group to assist the Committee in monitoring the implementation of the HNS Convention. The Group's correspondence and other useful documents which may help in answering any questions regarding implementation of the regime can be found on its website at:

http://folk.uio.no/erikro/WWW/HNS/hns.html

The Legal Committee has also agreed an overview of the HNS Convention, which was produced by the Correspondence Group, in order to provide straightforward but fundamental information on the key issues that fall within the scope of the Convention, which can be found on IMO's website at:

http://www.imo.org/Legal/mainframe.asp?topic_id=753

The text of the HNS Convention can be purchased from IMO at the address given above and is also available on the Correspondence Group's website.

11 GLOSSARY

HNS Convention	The International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (HNS Convention)
HNS Fund	The International Hazardous and Noxious Substances Fund, ie the organisation set up under the HNS Convention
1992 Civil Liability Convention	The International Convention on Civil Liability for Oil Pollution Damage, 1992
1971 Fund Convention	The International Convention on the Establishment of an International Fund for Oil Pollution Damage, 1971
1992 Fund Convention	The International Convention on the Establishment of an International Fund for Oil Pollution Damage, 1992
Supplementary Fund Protocol	Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992
IOPC Fund 1971 (1971 Fund)	The International Oil Pollution Compensation Fund 1971, ie the organisation set up under the 1971 Fund Convention
IOPC Fund 1992 (1992 Fund)	The International Oil Pollution Compensation Fund 1992, ie the organisation set up under the 1992 Fund Convention
Supplementary Fund	The International Oil Pollution Compensation Supplementary Fund, ie the organisation set up under the Supplementary Fund Protocol
IOPC Funds	The International Oil Pollution Compensation Funds, ie the 1971 Fund, the 1992 Fund and the Supplementary Fund
Athens Convention	The 1974 Athens Convention relating to the carriage of passengers and their luggage by sea, as amended by the 2002 Protocol thereto