



LEGAL COMMITTEE  
80th session  
Agenda item 10

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## ANY OTHER BUSINESS

### Special consultative meeting to discuss the Hazardous and Noxious Substances Convention: Friday, 16 April 1999

#### Secretaries' Note

#### Submitted by Denmark and the United Kingdom

#### SUMMARY

<i>Executive summary:</i>	This document reports on the outcome of the Special Consultative Meeting to discuss the HNS Convention.
<i>Action to be taken:</i>	The Committee is invited to take note of the information provided and comment and decide, as appropriate.
<i>Related documents:</i>	None

## 1 Attendance

1.1 Representatives of the following States attended the meeting: Argentina, Australia, Bahamas, Brazil, Canada, China, Cuba, Cyprus, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Liberia, Mexico, Netherlands, Norway, Republic of Korea, Singapore, South Africa, Spain, Sweden, Trinidad and Tobago, UK, USA and Vanuatu.

1.2 The following observer delegations represented the interested industries: CEFIC, FETSA, ICHCA, ICS, International Group of P&I Clubs and OCIMF. Representatives of the Secretariats of the IMO and the IOPC Funds also attended the meeting.

## 2 Election of the Chair and adoption of the agenda

2.1 The meeting elected Alfred Popp as its Chair.

2.2 The meeting adopted the agenda without debate.

## 3 Report on progress towards ratification and implementation of the HNSC

3.1 The Chair reminded the meeting of the similar special consultative meeting held the previous year. One of the purposes of the present meeting was to assess progress.

### National action

3.2 The Chair asked whether any State had decided to accede to the HNS Convention. This would indicate how many States, other than the eight that had signed the Convention, had committed themselves to bringing it into force. It would also be helpful to hear of progress in making implementing legislation.

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3.3 The UK was still the only State to have adopted implementing legislation. However, several States were undertaking preparatory work. Many States emphasised the need for international co-operation on implementation. By providing solutions in problem areas, international co-operation should make the drafting of national legislation a relatively simple process.

3.4 At least two States had decided in principle to accede to the Convention. Others were actively considering it. Several delegations stressed the need to avoid an undue burden falling on any one State or group of States. Regional and international co-ordination was therefore essential.

#### Regional action

3.5 The Chair reminded the meeting that regional co-ordination had taken place within Europe and was planned for the APEC region. The aim of this co-ordination was to complement, not to replace, international discussions such as the present meeting.

3.6 Italy informed the meeting that they had hosted a meeting of European States in Rome in September 1998. Copies of the note of the meeting were available on request. Canada said that discussions within APEC should take place later in 1999.

### **4 Exchange of information on contributing cargo**

4.1 Denmark provided a summary of information on contributing cargo and the number of receivers obtained by nine States. Two other States provided supplementary information. The Annex to this note sets out this information.

4.2 The Chair reminded the meeting that one of the entry into force criteria for the HNS Convention related to contributing cargo. Potential contributors in contracting States had, between them, to receive 40 million tonnes of cargo of a type covered by the general account. Although they were only preliminary estimates, the figures presented to the meeting suggested that the States that had provided them would be able, collectively, to satisfy this criterion. Taking into account the limited number of States and contributors, some delegations commented that it would be desirable to have a greater number of potential contributors to share the cost of compensation payments.

4.3 Several States had experienced difficulties obtaining figures from national industries. The meeting urged international trade associations to co-operate with governments to try to overcome these difficulties, and asked CEFIC to inform its members of the need for co-operation. One delegation suggested that a means of obtaining accurate information might be to enlist the help of senior management in companies that were potential contributors.

### **5 Discussion of the most accurate and effective ways of monitoring receipts of HNS**

5.1 The UK introduced draft reporting forms. Denmark, the Netherlands and the UK, inspired by a suggestion made by the IOPC Funds' Secretariat, had prepared the draft forms.

5.2 The aim of the draft reporting forms was to assist States considering becoming party to the HNS Convention. States could use such forms to obtain the information that they would need to make reports to the HNS Fund.

5.3 There were three draft forms. Forms 1 and 2 were for reports from receivers to States. Form 3 was for reports from States to the HNS Fund. Form 1 would be the general form for receivers. Form 2 was a special form for agents and subsidiaries. It would need to set a lower threshold than those set by the Convention as the information provided would only cover part of the contributing cargo received by the mother company or the principal.

5.4 Form 1 made provision for reports on receipts of contributing cargo below the thresholds set by the Convention. While not required by the Convention, the previous special consultative meeting had considered this option. By requesting such reports, States would obtain information not only on those companies that might have to contribute to the HNS Fund in respect of the relevant year but also on those companies that might become potential contributors in subsequent years.

5.5 The meeting agreed that there should be standard reporting forms. The forms prepared for the meeting provided a useful basis, but needed further work. Representatives of States and industry made suggestions on how to make the forms more user-friendly. The meeting welcomed the willingness of interested delegations to participate in the further development of reporting forms.

5.6 One suggestion made was the inclusion of a complete list of substances. The Chair reminded the meeting that the Diplomatic Conference had considered this and concluded that it would not be practicable, because of the vast number of substances covered by the Convention.

5.7 The meeting noted that amendments to MARPOL Annex II were under consideration within the IMO. While noting that the HNS Convention made provision for amendments to MARPOL, the meeting agreed that the implications of these amendments would need to be considered. However, this consideration should not delay work on the implementation of the Convention.

5.8 The meeting also noted concerns about the definition of "receiver". It agreed that further work on the interpretation of the definition should take place, without re-negotiating the Convention.

## **6 Insurance certificates**

6.1 The International Group of P&I Clubs introduced their paper. States might have difficulty assessing the value of guarantees provided by some insurers. The boards of the members of the International Group would shortly decide in principle whether to provide shipowners with the guarantees required under the HNS Convention. The representative of the International Group said that he expected the clubs to take a responsible attitude to the issue.

6.2 The meeting welcomed the fact that the International Group was considering the issue and hoped for an early and positive decision. The Chair reminded the meeting that the International Group had participated in the negotiations leading to the adoption of the HNS Convention. The common understanding had been that its members would provide the guarantees required under the Convention.

6.3 Regarding the validity of insurance cover, the following points emerged from the debate. Governments would have an obligation to ensure that ships had effective insurance cover. Cargo interests had an incentive to use ships with effective insurance cover to protect the HNS Fund. There were practical steps that States could take to ensure that insurance was effective (such as requiring insurers to have assets in a State Party and sharing information).

## **7 Organisation of further discussions on the HNS Convention**

7.1 The Chair noted that there was support for more focused work on implementation of the HNS Convention. He asked whether international discussions on the implementation of the HNS Convention should continue and, if so, whether they should take place within the same framework or a different one.

7.2 He presented three options. The first option was to continue to hold informal meetings like that in April 1998 and the present one. The second option was to refer the issue to the Legal Committee for discussion as a substantive agenda item. The third option was for the Legal Committee to establish a working group with tight terms of reference. The working group could meet at the same time as the Legal Committee, or during any time available once the Committee had completed its work on the priority items.

7.3 The Chair emphasised that putting the HNS Convention on the Legal Committee's agenda would not be an invitation for the Committee to re-negotiate the Convention. The Committee's discussions would focus on finding solutions to the legal and technical problems that had emerged during discussions. These included the definition of "receiver", the acceptability of insurance cover and how to identify contributors to the HNS Fund.

7.4 Most delegations supported the third option and preferred the working group not to meet at the same time as the Legal Committee. The meeting concluded, however, that the final decision would be for the Legal Committee.

7.5 The Chair emphasised that any guidance could help governments in their implementation efforts but, as the IMO had already adopted the Convention, the guidance would only assist and not overrule national solutions.

7.6 The meeting agreed that, in the interim, interested States should continue to co-operate to clarify areas of uncertainty and to develop proposals to simplify the implementation process.

## Annex: Provisional list of estimates of receipts of HNS<sup>1</sup>

State	General Account		Special account					
	mil tonnes	No. of receivers	Oil		LNG		LPG	
			mil tonnes	No. of receivers	Mil Tonnes	No. of receivers	mil tonnes	No. of receivers
Germany	14.6 <sup>2</sup>		46.9		0		0.9	
The Netherlands <sup>3</sup>	10.75		95		0		0.95	
Denmark	8	5	6.3	4	0	0	0.008	
France	7		21 <sup>4</sup>		6		2	
Italy	6	n.a.	3	14-15	1.9 <sup>5</sup>	1	1.7	15
UK	4.9 <sup>6</sup>	17	89.9	29	0	0	0.266	5
Sweden	1.5-2.00	11	51	29	0	0	1.5	7
Finland	1.5	14	10.4	9	0	0	0.062	1
Norway	1.0	11	33.7	6	0	0	1.0	3
Greece	0.3	3	23.2	4				
Ireland	0.133 <sup>2</sup>	10	1.3	17	0	0	0.05	4
<b>Total</b>	<b>55.683</b>	<b>60</b>	<b>376.9</b>	<b>112-113</b>	<b>1.9</b>	<b>1</b>	<b>8.436</b>	<b>35</b>

<sup>1</sup> The secretaries have compiled this table using figures provided by the named States.

<sup>2</sup> This figure does not take account of the 20,000 tonne threshold.

<sup>3</sup> These figures relate only to the port of Rotterdam (estimated to receive over 90% of import to the Netherlands). It is estimated that 50% of the tonnage is imports and the remaining 50% is for transshipment.

<sup>4</sup> The amount only represents non-persistent oil

<sup>5</sup> Cubic metres

<sup>6</sup> May be as high as 5.5 million tonnes.