Department for Transport

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Professor Rosaeg,
LNG Correspondence Group Leader
Scandinavian Institute of Maritime Law,
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BY EMAIL

Dear Erik,

HNS CONVENTION

Further to my original letter to the LNG Correspondence Group dated 27 July 1007, I am taking the liberty of writing again to clarify a number of points briefly touched upon in that letter. The contributions to the correspondence group that I have read to date serve to demonstrate the complexity of the task Norway has been set by the IOPC Fund Administrative Council of June 2007 and the range of industry and government responses to date have clearly elicited considerable interest.

I am writing mainly in connection with the helpful observations made by Mr. Naumof. I believe that some of the generalisations made in my 27 July letter are open to some degree of misinterpretation and this letter, I hope, will clarify a number of points. Perhaps, at this stage, it is best to go back to basics! Under Article 43 upon ratification and annually thereafter, States do not need to report receipts of HNS from receivers of less than threshold quantities except for LNG which has no such threshold. In the case of the general account the threshold is set at 20,000 tonnes per year, per receiver or principal. Oil and LPG have their separate thresholds also. For LNG discharged there is no minimum threshold for reporting prior to entry into force or under Article 21 for contributions upon entry into force, as entry into force conditions are satisfied by contributions to the general account only.

Article 43 provides that all “relevant quantities of contributing cargo” should be reported to the IMO Secretary General upon submitting an instrument of ratification, and annually thereafter until the Convention enters into force. Following entry into force Article 21 requires that the same reporting requirement of all relevant quantities of contributing cargo by all liable receivers, or titleholders, are to be submitted to the Director of the HNS Fund.

It has been suggested that “relevant quantities…” for purposes of a general interpretation, be construed as "quantities of HNS which bring a real contribution to the HNS Fund's accounts." If this general interpretation were to be accepted, it would suggest that there is general agreement in principal that, upon entry into force, LNG received where the titleholder is in a non State Party would be considered relevant for the purpose of contributions to the LNG account where the titleholder contributed to the LNG account. We think that point is clear enough.

We agree that the titleholder of LNG discharged in a State party, regardless of whether they are subject to the jurisdiction of the State party or not, is liable for contributions by virtue of Article 19.1(b) and its reference to “any person”. Indeed, there is nothing in the regime that suggests otherwise, but the issue is whether titleholders in non State Parties can be levied in practice with the certainty that they will honour requests for contributions.

We believe that some members of the correspondence group may not be in agreement with our position prior to entry into force, where Article 43 requires reports of relevant quantities of contributing cargo received or in the case of LNG discharged. The following attempts to elaborate on our general point. Article 43 is not entirely clear insofar as it mixes relevant data for entry into force purposes i.e. general account contributions and LNG. The latter has no bearing whatsoever on the entry into force provision, which refers only to 40 million tonnes of contributing cargo to the general account. In a strictly practical sense LNG received from a titleholder in a State Party, or where a titleholder in a non State Party has agreed to pay levy and or contributions, has significance because once the convention enters into force it is certain that the Fund will be able to collect contributions from such titleholders.

Where LNG titleholders are not subject to the jurisdiction of a State Party, however, and do not agree to meet the cost of contributions such LNG as may be discharged in a State Party has limited relevance in respect of contributions to the LNG account i.e. because such titleholders will not be subject to the jurisdiction of a State Party. That is not to say there is no liability.

Article 46.1(b) requires a total of 40 million tonnes of cargo contributing to the general account only (not LNG, LPG or oils). In other words, reporting quantities of LNG discharged whether the titleholder is in a State Party or not does not affect entry into force of the Convention. However, once all the entry into force provisions are met and the convention is in force contributions to the LNG account will be certain only where the titleholder is in a State Party. Therefore LNG receipts (for the purpose of contributions to the HNS Fund LNG account from that State) are relevant (for the purpose of contributions to that account) when the titleholder is in the State Party or where the titleholder in a non State Party agrees to pay.

Yours sincerely,

David Bolomini